

RESOLUTION NO. 6146

A RESOLUTION ACCEPTING A FLEXIBLE FUND PROGRAM GRANT FROM THE OREGON DEPARTMENT OF TRANSPORTATION AND A COMMITMENT TO PROVIDE A LOCAL MATCH.

WHEREAS, the Oregon Department of Transportation (ODOT) has offered Albany a Flexible Fund Program grant in the amount of \$1,180,000 to fund construction of sidewalk improvements and transit stops along Gibson Hill Road; and

WHEREAS, Gibson Hill Road is an important arterial street in North Albany linking residents with schools and shopping areas; and

WHEREAS, Gibson Hill Road currently lacks pedestrian and transit stop improvements; and

WHEREAS, the Albany City Council supports the construction of pedestrian and transit stop improvements on Gibson Hill Road and is willing to provide a local match of up to \$298,000; and

WHEREAS, Oregon Local Budget Law provides that expenditures in the year of receipt of grants, gifts, bequests or devices transferred to the local government in trust for a specific purpose may be made after enactment of a resolution or ordinance authorizing the expenditure (ORS 294.326(3)).

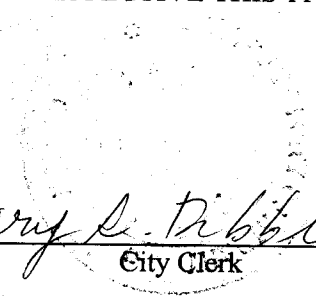
NOW, THEREFORE, BE IT RESOLVED that the City of Albany accepts this Flexible Funding Program grant in the amount of \$1,180,000 for purposes of construction of sidewalk and transit stop improvements along Gibson Hill Road and approves the City of Albany's local match of \$298,000, and authorizes the City Manager to execute the agreements and conditions for their acceptance.

BE IT FURTHER RESOLVED that the grant in the amount of \$1,180,000 is hereby appropriated as follows:

	<u>Debit</u>	<u>Credit</u>
Resources:		
ODOT Flex Fund Program 203-50-5097-42426		\$1,180,000
Transportation SDC 203-50-5097-49080		\$47,000
North Albany Street Improvement 203-50-5097-49081		\$251,000
Requirements:		
Gibson Hill Sidewalks 203-050-5097-85029	\$1,478,000	
250-50-2703-91203	\$47,000	
250-50-2703-85029		\$47,000
250-50-2701-91203	\$251,000	
250-50-2701-85029		\$240,100
250-50-2701-90012		\$10,900

DATED AND EFFECTIVE THIS 11TH DAY OF JULY 2012.

ATTEST:


Mary S. Tibbels
City Clerk


Mayor

**Oregon Department of Transportation
LOCAL AGENCY AGREEMENT
FLEXIBLE FUNDS PROGRAM 2011
Non-Highway Transportation Projects
NW Gibson Hill Road Scenic Drive to North Albany Road
City of Albany**

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State," and the CITY OF ALBANY, acting by and through its designated officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties "

RECITALS

- 1 NW Gibson Hill Road is a county road under the jurisdiction and control of Benton County "Exhibit A", attached hereto and by this reference made a part hereof, is a Letter of Understanding between Benton County and Agency granting Agency permitting authority over the road
- 2 By the authority granted in Oregon Revised Statutes (ORS) 190 110, state agencies may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties
- 3 In February 2010, the Oregon Transportation Commission (OTC) established the Flexible Funds Program to more strategically focus investment in non-highway transportation projects, programs, and services. The Flexible Funds Program was put in place to support sustainable non-highway transportation projects, programs, and services that positively impact modal connectivity, the environment, mobility and access, livability, energy use, and the overall operation of the transportation system. In July 2011, the OTC approved updated Flexible Funds Program criteria
- 4 On March 21, 2012, the OTC approved the allocation of \$23,600,000 in Surface Transportation Program flexible funds for use on non-highway Transit, Bicycle and Pedestrian, and Transportation Demand Management (TDM) projects

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows

TERMS OF AGREEMENT

- 1 Under such authority, State and Agency agree to construct approximately 11,500 lineal feet of sidewalk improvements on both sides of NW Gibson Hill Road,

Res 6146 - attach / replace

hereinafter referred to as "Project". The location of the Project is approximately as shown on the detailed map attached hereto, marked "Exhibit B," and by this reference made a part hereof. The Project description, tasks and deliverables, schedule and budget are further described in "Exhibit C," attached hereto and by this reference made a part hereof.

- 2 The Project will be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. The total Project cost is estimated at \$1,478,000, which is subject to change. STP funds for this Project will be limited to \$1,180,000. The Project will be financed with STP funds at eighty (80) percent with Agency providing the twenty (20%) percent match and any non-participating costs, including all costs in excess of the available federal funds. Agency match includes 10.27% required match and additional funds to provide a total of \$298,000 or twenty percent (20%) of the total Project cost, whichever is less. The STP flexible funds are available for the Preliminary Engineering and Construction phases of the Project.
- 3 Agency agrees that no portion of the match requirement will be in-kind contributions.
- 4 All STP flexible funds must adhere to the specific obligation and completion requirements. Non-construction projects must be ready for obligation no later than September 30, 2012, and completed or implemented by December 31, 2014. Construction projects must obligate the Preliminary Engineering phase by September 30, 2012, Right of Way and Construction phases must be obligated by September 30, 2013. Construction projects must be completed by December 31, 2014. After September 30, 2012, for non-construction Projects and September 30, 2013, for construction projects, the State may withdraw and reassign any STP flexible funds not yet obligated for the Project and shall have no obligation to fund any remaining phases of work through the Flexible Funds Program. The withdrawal of funds will not affect funding and payments for Preliminary Engineering or other phases of work that were obligated prior to the above stated dates.
- 5 If Agency cannot meet obligation of STP flexible funds as intended by the program as stated in Paragraph No 4 above, then Agency shall adhere to the Project Change Request process as stated in Exhibit C.
- 6 Agency shall submit Monthly Progress Reports to State's contact and State's Flexible Funds Program Manager, and Project Change Requests to State's contact following the process as listed in Exhibit C.
- 7 As applicable, this Agreement is contingent upon an amendment to the Statewide Transportation Improvement Program (STIP) to add the Project or adjust funding and a subsequent approval by the OTC. If the STIP amendment does not occur within one-hundred twenty (120) days of execution of this Agreement, the Agreement shall be considered null and void.

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- 8 The federal funding for this Project is contingent upon approval by the Federal Highway Administration (FHWA) Any work performed prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and paid for at Agency expense
- 9 State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20 205, Highway Planning and Construction
- 10 The term of this Agreement will begin upon execution and will terminate upon completion of the Project and final payment, or ten (10) calendar years following the date of final execution, whichever is sooner
- 11 Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190 003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Oregon Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30 260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims") It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of State, be indemnified by the contractor and subcontractor from and against any and all Claims
- 12 Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense
- 13 This Agreement may be terminated by mutual written consent of both Parties
- 14 State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions

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- a If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof
 - b If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize
 - c If Agency fails to provide payment of its share of the cost of the Project
 - d If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement
 - e If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source
- 15 Any termination of this Agreement will not prejudice any rights or obligations accrued to the Parties prior to termination
- 16 The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement will control over the attachments, and Attachment 1 will control over Attachment 2.
- 17 If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach. Agency will be ineligible to receive or apply for any STP flexible funds until State receives full reimbursement of the costs incurred.
- 18 Agency, as a recipient of federal funds, pursuant to this Agreement with State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and will, upon Agency's breach of any such conditions that requires State to return funds to the FHWA, hold harmless and indemnify State for an amount equal to the funds received under this Agreement, or if legal limitations apply to the indemnification ability of Agency, the indemnification amount will be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

- 19 Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency
- 20 Agency's contact for this Project is Ron Irish, Transportation Systems Analyst, City of Albany Public Works Department, 333 Broadalbin Street SW, PO Box 490, Albany, Oregon 97321-0144, phone (541) 917-7656, email ron.irish@cityofalbany.net, or assigned designee upon individuals' absence Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement
- 21 State's contact for this Project is Michael Starnes, Local Agency Liaison, ODOT, Region 2, 455 Airport Road, SE, Building B, Salem, Oregon 97301-5395, phone (503) 986-6920, email michael.s.starnes@odot.state.or.us, or assigned designee upon individuals' absence State shall notify the other Party in writing of any contact information changes during the term of this Agreement
- 22 State's Flexible Funds Program Manager is Carol Olsen, Active Transportation Section, 555 13th Street NE, Salem, Oregon 97301-4178, phone (503) 986-3327, email carol.a.olsen@odot.state.or.us, or assigned designee upon individuals' absence State shall notify the other Party in writing of any contact information changes during the term of this Agreement
- 23 This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together will constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart Each copy of this Agreement so executed will constitute an original
- 24 This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement No waiver, consent, modification or change of terms of this Agreement will bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given The failure of State to enforce any provision of this Agreement will not constitute a waiver by State of that or any other provision


THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions

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This Project is in the 2010-2013 Statewide Transportation Improvement Program, (Key No. 18116) that was approved by the Oregon Transportation Commission on December 16, 2010 (or subsequently approved by amendment to the STIP).

The Oregon Transportation Commission at its March 21, 2012 meeting approved the Flexible Funds Program project application list and delegated authority to the Director of the Oregon Department of Transportation to enter into project agreements.

**CITY OF ALBANY, by and through its
designated officials**

By 
Mayor

Date 7-11-12

By 
City Manager *Pro Tem*

Date 7-12-12

APPROVED AS TO LEGAL FORM

By 
City Legal Counsel

Date 6-20-12

Agency Contact:

Ron Irish, Transportation Systems Analyst
City of Albany Public Works Department
333 Broadalbin Street SW
PO Box 480
Albany, OR 97321-0144
Phone: (541) 917-7658
Email: ron.irish@cityofalbanynet

State Contact:

Michael Starnes, Local Agency Liaison
ODOT, Region 2
466 Airport Road, SE, Bldg. B
Salem, OR 97301-5395
Phone: (503) 986-8920
Email: michael.s.starnes@odot.state.or.us

**STATE OF OREGON, by and through
its Department of Transportation**

By 
Director

Date 7-19-12

APPROVAL RECOMMENDED

By 
Planning Section Manager

Date 7-18-12

By 
Active Transportation Section Manager

Date 7/16/12

**APPROVED AS TO LEGAL
SUFFICIENCY**

By 
Assistant Attorney General

Date 7/16/12

State Contact:

Carol Olsen, Flexible Funds Program Mgr.
ODOT, Active Transportation Section
555 13th Street NE
Salem, OR 97301-4178
Phone: (503) 986-3327
Email: carol.a.olsen@odot.state.or.us

EXHIBIT A

**Letter of Understanding between Benton County and City of Albany
Regarding NW Gibson Hill Road**

BC MOV A2005-051

**BENTON COUNTY & CITY OF ALBANY
LETTER OF UNDERSTANDING**

RECITALS

WHEREAS the CITY and the COUNTY desire to agree upon the responsibilities of the operation, maintenance and safety of NW North Albany Road, County Road Number 14400, and NW Gibson Hill Road, County Road Number 04910 in a timely manner,

WHEREAS the CITY and the COUNTY have entered into an intergovernmental agreement dated May 11, 2005 that outlines an orderly process, which may be utilized to determine the method and timeliness of the transfer of jurisdiction and maintenance responsibility for County Roads within the City's Urban Growth Boundary to the CITY,

WHEREAS it is in the public interest to have only one governmental agency responsible for the operation and safety of any given street and the CITY is the logical and appropriate provider for these services,

WHEREAS urbanized development along North Albany Road and Gibson Hill Road continues as a rapid pace,

WHEREAS it is in the CITY'S, COUNTY'S and public's best interest that permitting, inspection, and regulation of North Albany Road and Gibson Hill Road responsibilities be transferred to the CITY as soon as possible,

WHEREAS a full jurisdictional transfer action will take an extended length of time to evaluate, negotiate and obtain approval for both the City Council and County Board of Commissioners,

THEREFORE, THE CITY AND THE COUNTY AGREE AS FOLLOWS:

Administrative Items

- It is the intent of the parties that the COUNTY delegates to the CITY responsibility for all of the operation and safety over NW North Albany Road, County Road Number 14400, and NW Gibson Hill Road, County Road Number 04910.
- CITY agrees to accept all administration, operation and safety responsibilities of NW North Albany Road, County Road Number 14400, and NW Gibson Hill Road, County Road Number 04910 until the transfers of jurisdiction of the above roads have been completed.
- The CITY will issue all permits, perform all inspections for construction within the right of way of North Albany Road and Gibson Hill Road. COUNTY maintenance of these roads will not require a permit.
- The CITY will handle traffic speed and safety issues, provide for traffic control enforcement and establish traffic regulation for North Albany Road and Gibson Hill Road.
- The CITY will maintain traffic control signs, street improvements and pavement markings for all sections of roadway improved to urban standards.
- The COUNTY will maintain traffic control signs, pavement markings, shoulder, roadside vegetation, and drainage ditches for all sections of roadway that are not improved to urban standards.

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- To the extent it is permitted by law, COUNTY agrees to delegate to the CITY full authority to award construction contracts for maintenance and construction or reconstruction of facilities, to collect fees for services per the City of Albany ordinances or fee structure.
- COUNTY will offer that County owned property described in M-57929-84, Benton County Deed Records, located at the southwest corner of North Albany Road and NW Gibson Hill Road to the CITY as part of the transfer of jurisdiction of the above said roads.
- COUNTY will evaluate raising the existing bridge on NW North Albany Road that spans Thornton Lake to an elevation that is 1 foot above the 100-year flood elevation.
- COUNTY will dedicate to the CITY the necessary right of way for the construction of a roundabout at the intersection of North Albany Road and Gibson Hill Road at no cost to the CITY.
- CITY and COUNTY agree to work together to arrive at a solution acceptable to both parties in order that the transfer of jurisdiction of NW North Albany Road, County Road Number 14400, and NW Gibson Hill Road, County Road Number 04910, can be considered by the Albany City Council and the Benton County Board of Commissioners for approval.
- CITY and COUNTY agree that this Letter of Understanding does not bind the Benton County Board of Commissioners or the City of Albany Council to enter into any agreement or take action.

Enforcement

- Nothing in this agreement shall affect the jurisdiction or responsibilities of the law enforcement agencies of the CITY or COUNTY.

Termination

- This agreement shall not be terminable, except by mutual agreement of the CITY and COUNTY, or upon the transfer of jurisdiction of the above-mentioned roads.

CITY OF ALBANY

By *Trane Jaregobrenni* 5-1-05
Public Works Director Date

CITY OF ALBANY

By *Jmy* 6-2-05
City Attorney Date

BENTON COUNTY

By *M. Mc. Bin* 5-25-05
Director of Public Works Date
Contracting Officer

APPROVED

By *Clara A. Crony* 5-18-05
County Counsel Date

BENTON COUNTY BOARD OF COMMISSIONERS

By *Annabelle Jaramillo*
Annabelle Jaramillo, Chair Date

Exhibit B Project Location Map

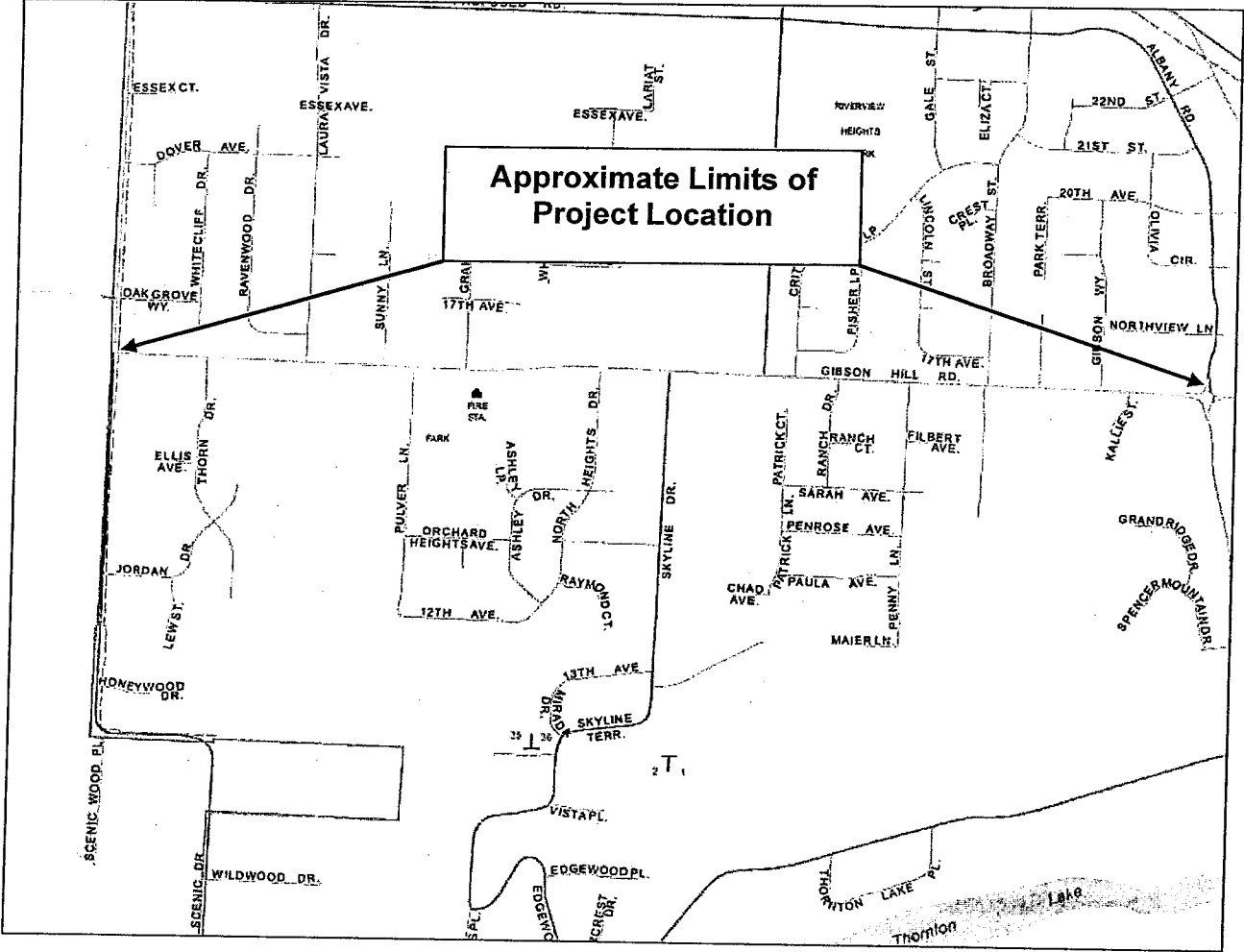


EXHIBIT C
Progress Reports and Project Change Request Process

Agreement No. 28477

Application Number: BP-2-009

Project Name: NW Gibson Hill Road: Scenic Drive to North Albany Road

1. Project Description

This Project constructs approximately 11,500 lineal feet of sidewalk improvements on both sides of NW Gibson Hill Road from Scenic Drive east to connect with existing sidewalk improvements; includes Americans with Disabilities Act (ADA) compliant bus stops.

2. This Project is subject to progress reporting and project change process as stated in Paragraphs No. 3 through 6 below.

3. **Monthly Progress Reports (MPR)** – Agency shall submit monthly progress reports using MPR Form 734-2862, attached by reference and made a part of this Agreement. The Monthly Progress Report is due by the 5th day of each month, starting the first full month after execution of this Agreement, and continuing through the first month after State issues Project Acceptance (Second Note) for the Project’s construction contract.

The fillable MPR form and instructions are available at the following address:
<http://www.oregon.gov/ODOT/HWY/LGS/online.shtml>

4. **Project Milestones** – The Parties agree that the dates shown in Table 1 constitute the intended schedule for advancing and completing the Project. Project Milestones may only be changed through amendment of this Agreement, after obtaining an approved Project Change Request.

Table 1: Project Milestones

	Milestone Description	Completion Date
1	Obligation (Federal Authorization) of STP flexible funds for the Preliminary Engineering phase of Project	9/30/2012
2	Obligation (Federal Authorization) of STP flexible funds for the Right-of-Way phase of the Project	N/A
3	Obligation (Federal Authorization) of STP flexible funds for the Construction phase of Project	9/30/2013
4	Project Completion based on State issuing Project Acceptance or “Second Note”	12/31/2014

5. **Project Change Request (PCR) Process** – Agency must obtain approval from State's contact and State's STP Flexible Funds Program Manager for changes to the Project's scope, schedule, or budget by submitting a PCR as specified in Paragraphs No. 5a and 5b below. Agency shall be fully responsible for all costs attributable to changes to the established Project scope, schedule or budget and prior to an approved PCR. Amendments to this Agreement are required for all approved PCRs.
 - a. **Scope** – A PCR is required for a change in the scope of work described in the Project Description (Paragraph No. 1 of this Exhibit).
 - b. **Schedule** – A PCR is required if Agency or State's contact anticipate that any Project Milestone will be delayed by more than ninety (90) days, and also for any change in schedule that will require amendment of the Statewide Transportation Improvement Program (STIP).
6. **PCR Form** – Agency must submit all change requests using PCR Form 734-2863, attached by reference and made a part of this Agreement. The PCR Form is due no later than thirty (30) days after the need for change becomes known to Agency. The PCR shall explain what change is being requested, the reasons for the change, and any efforts to mitigate the change. A PCR may be rejected at the discretion of State's Flexible Funds Program Manager.

The fillable PCR form and its instructions are available at the following web site:
<http://www.oregon.gov/ODOT/HWY/LGS/online.shtml>

7. **Consequence for Non-Performance** - If Agency fails to fulfill its obligations in Paragraphs No. 3 through No. 6 above, or does not assist in advancing the Project or perform tasks that the Agency is responsible for under the Project Milestones, State's course of action through the duration of Agency's default may include: (a) restricting Agency consideration for future funds awarded through State's Active Transportation Section; then (b) withdrawing unused Project funds; and then (c) terminating this Agreement as stated in Terms of Agreement, Paragraphs No. 14a and 14b of this Agreement and recovery of payments pursuant to Special Provision No. 1.

**ATTACHMENT NO. 1
SPECIAL PROVISIONS**

1. The Parties agree that this Agreement may be terminated if the funds for this Project are not obligated as stated in Terms of Agreement, Paragraph No. 4. Upon termination of this Agreement, State may reassign any STP flexible funds not yet obligated for the Project and will have no obligation to fund any remaining phases of work through the Flexible Funds Program.
2. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right of way; obtain all required permits; arrange for all utility relocations or reconstruction; perform all construction engineering, including all required materials testing and quality documentation; and prepare necessary documentation to allow State to make all contractor payments. Project plans will conform to the Oregon Highway Design Manual and the Oregon Bicycle and Pedestrian Plan.
3. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project. Prior to award of the contract, Agency shall provide State its share of the Project cost upon receipt of request from State. The Project cost is defined as the Engineer's Estimate plus ten (10) percent.
4. State may make available the appropriate Region On-Call Preliminary Engineering (PE), Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, Agency agrees to manage the work performed by the consultant and make funds available to the State for payment of those services. All eligible work will be a federally participating cost and included as part of the total cost of the Project.
5. Agency shall pay all reimbursable costs of the Project, submit all claims for federal-aid participation to State in the manner described in the Standard Provisions and compile accurate cost accounting records. When the actual total cost of the Project has been computed, Agency shall furnish State with an itemized statement of final costs. State will reimburse Agency at the appropriate rate for costs incurred. Reimbursement to Agency shall take place after the federal funds are released to State.
6. Indemnification language in the Standards Provisions, Paragraphs 46 and 47, and Paragraph 4 in regards to tort claims, shall be replaced with the following language:
 - a. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party

Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

- b. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
- c. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
- d. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

7. Agency shall, at its own expense, maintain and operate the Project upon completion and throughout the useful life of the Project at a minimum level that is consistent with normal depreciation and/or service demand. State and Agency agree that the useful life of this Project is defined as twenty (20 years). State may conduct periodic inspections during the life of the Project to verify that Project is properly maintained and continues to serve the purpose for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of this Agreement.
8. State grants authority to Agency to enter upon State right of way for the construction of this Project.
9. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
10. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach. Agency will be ineligible to receive or apply for any Title 23, United States Code funds until State receives full reimbursement of the costs incurred.
11. Maintenance responsibilities will survive any termination of this Agreement.

ATTACHMENT NO. 2 FEDERAL STANDARD PROVISIONS

JOINT OBLIGATIONS

PROJECT ADMINISTRATION

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will further act for Agency in other matters pertaining to the Project. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

PRELIMINARY & CONSTRUCTION ENGINEERING

3. State, Agency, or others may perform preliminary and construction engineering. If Agency or others perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered by this Agreement, Agency and Consultant shall enter into a State reviewed and approved personal services contract process and resulting contract document. State must concur in the contract prior to beginning any work. State's personal services contracting process and resulting contract document will follow Title 23 Code of Federal Regulations (CFR) 172, Title 49 CFR 18, ORS 279A.055, the current State Administrative Rules and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. Subcontracts shall contain all required provisions of Agency as outlined in the Agreement. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or its consultant prior to receiving authorization from State to proceed. Any amendments to such contract(s) also require State's approval.
4. On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency, subject to any limitations imposed by state law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

**REQUIRED STATEMENT FOR UNITED STATES DEPARTMENT OF
TRANSPORTATION (USDOT) FINANCIAL ASSISTANCE AGREEMENT**

5. If as a condition of assistance, Agency has submitted and the United States Department of Transportation (USDOT) has approved a Disadvantaged Business Enterprise Affirmative Action Program which Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of the financial assistance agreement. Upon notification from USDOT to Agency of its failure to carry out the approved program, USDOT shall impose such sanctions as noted in Title 49, CFR, Part 26, which sanctions may include termination of the agreement or other measures that may affect the ability of Agency to obtain future USDOT financial assistance.
6. **Disadvantaged Business Enterprises (DBE) Obligations.** State and its contractor agree to ensure that DBE as defined in Title 49, CFR, Part 26, have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with Title 49, CFR, Part 26, to ensure that DBE have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. Agency shall carry out applicable requirements of Title 49, CFR, Part 26, in the award and administration of such contracts. Failure by Agency to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as State deems appropriate.
7. The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Agreement.
8. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
9. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR Parts 1.11, 140, 710, and 771; Title 49 CFR Parts 18, 24 and 26; 2 CFR 225, and OMB CIRCULAR NO. A-133, Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended and provisions of Federal-Aid Policy Guide (FAPG).

STATE OBLIGATIONS

PROJECT FUNDING REQUEST

10. State shall submit a Project funding request to FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or construction work for the Project. **No work shall proceed on any activity in which**

federal-aid participation is desired until such approval has been obtained. The program shall include services to be provided by State, Agency, or others. State shall notify Agency in writing when authorization to proceed has been received from FHWA. Major responsibility for the various phases of the Project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations.

FINANCE

11. State shall, in the first instance, pay all reimbursable costs of the Project, submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.
12. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Agreement. State will also determine and clearly state in the Agreement if recipient is a subrecipient or vendor, using criteria in Circular A-133.

PROJECT ACTIVITIES

13. State shall, if the preliminary engineering work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
14. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
15. State shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts.
16. Upon State's award of a construction contract, State shall perform independent assurance testing in accordance with State and FHWA Standards, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
17. State shall, as a Project expense, assign a liaison person to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). The liaison shall process reimbursement for federal participation costs.

RIGHT OF WAY

18. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of the Project. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project, provided Agency (or Agency's consultant) are qualified to do such work as required by the State's Right of Way Manual and have obtained prior approval from State's Region Right of Way office to do such work.
19. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each party. State shall always be responsible for requesting project funding, coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through the State's Region Right of Way offices on all projects. All projects must have right of way certification coordinated through State's Region Right of Way offices (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on the Project). Agency should contact the State's Region Right of Way office for additional information or clarification.
20. State shall review all right of way activities engaged in by Agency to assure compliance with applicable laws and regulations. Agency agrees that right of way activities shall be in accord with the Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FHWA Federal-Aid Policy Guide, State's Right of Way Manual and the Code of Federal Regulations, Title 23, Part 710 and Title 49, Part 24.
21. If any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
22. Agency insures that all Project right of way monumentation will be conducted in conformance with ORS 209.155.
23. State and Agency grants each other authority to enter onto the other's right of way for the performance of the Project.

AGENCY OBLIGATIONS

FINANCE

24. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement.
25. Agency's estimated share and advance deposit.
 - a. Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may

be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.

- b. Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
 - c. Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
 - d. Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.
26. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.
27. Costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon.
28. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear 100 percent of all costs as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear 100 percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all development costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
29. Agency shall follow requirements of the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving \$500,000 or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls

and compliance with federal laws and regulations of all federally-funded programs in which the local agency participates. The cost of this audit can be partially prorated to the federal program.

30. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
31. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison Person for review and approval. Such invoices shall identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of Title 23 CFR Parts 1.11, 140 and 710. Final billings shall be submitted to State for processing within three (3) months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering (PE) 2) last payment for right of way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three (3) months from date that costs are incurred. Final billings submitted after the three months shall not be eligible for reimbursement.
32. The cost records and accounts pertaining to work covered by this Agreement are to be kept available for inspection by representatives of State and FHWA for a period of six (6) years following the date of final voucher to FHWA. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (Title 49 CFR 18.42).
33. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:
 - a. Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the federal-aid funds were authorized;
 - b. Right of way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right of way acquisition.
 - c. Construction proceeds after the Project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).
34. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.

RAILROADS

35. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through State's appropriate Region contact or State's Railroad Liaison. Only those costs allowable under Title 23 CFR Part 646, subpart B and Title 23 CFR Part 140, subpart I, shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

UTILITIES

36. Agency shall follow State established Statutes, Policies and Procedures when impacts occur to privately or publicly-owned utilities. Only those utility relocations, which are eligible for federal-aid participation under, the FAPG, Title 23 CFR 645A, Subpart A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties.
37. The State utility relocation policy, procedures and forms are available through the appropriate State's Region Utility Specialist or State Utility Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison.

STANDARDS

38. Agency agrees that design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current "State Highway Design Manual" and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the Project shall be in substantial compliance with the most current "Oregon Standard Specifications for Highway Construction".
39. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "Oregon Bicycle and Pedestrian Plan", unless otherwise requested by Agency and approved by State.
40. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".
41. All plans and specifications shall be developed in general conformance with the current "Contract Plans Development Guide" and the current "Oregon Standard Specifications for Highway Construction" and/or guidelines provided.

42. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

GRADE CHANGE LIABILITY

43. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
44. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
45. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the project covered by the Agreement.

CONTRACTOR CLAIMS

46. Agency shall, to the extent permitted by state law, indemnify, hold harmless and provide legal defense for State against all claims brought by the contractor, or others resulting from Agency's failure to comply with the terms of this Agreement.
47. Notwithstanding the foregoing defense obligations under Paragraph 46, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Agency if the State of Oregon elects to assume its own defense.

MAINTENANCE RESPONSIBILITIES

48. Agency shall, upon completion of construction, thereafter maintain and operate the Project at its own cost and expense, and in a manner satisfactory to State and FHWA.

WORKERS' COMPENSATION COVERAGE

49. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability Insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.

LOBBYING RESTRICTIONS

50. Agency certifies by signing the Agreement that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.
- d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Paragraphs 36, 37, and 48 are not applicable to any local agency on state highway projects.