

**RESOLUTION NO. 1387  
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION APPROVING COOPERATIVE IMPROVEMENT AGREEMENT  
WITH THE STATE OF OREGON DEPARTMENT OF TRANSPORTATION**

**Whereas**, The City of Prineville (“City”) and the State of Oregon, acting by and through its Department of Transportation (“ODOT”) have negotiated an agreement titled “Cooperative Improvement Agreement” designated by ODOT as No. 32415 Miscellaneous Contracts and Agreements (the “Agreement”); and

**Whereas**, the Ochoco highway, US Route 26, State Highway No. 41, is part of the State of Oregon highway system under the jurisdiction and control of the Oregon Transportation Commission (“OTC”); and

**Whereas**, US Route 26 is within the Prineville city limits known as NW/NE 3<sup>rd</sup> Street; .

**Whereas**, NW Beaver Street, NE Belknap Street, NW Claypool Street, NE Combs Flat Road, NE Court Street, NW Deer Street, NE Dunham Street, NE Elm Street, NE Fairview Street, NE Garner Street, NW Harwood Street, NE Holley Street, NE Idlewood Street, NE Juniper Street, NE Knowledge Street, NW Locust, NW Maple Street, NW Meadow Lakes Avenue, NE Spruce Street, and Main Street are part of the city street system under the jurisdiction and control of the City; and

**Whereas**, ODOT currently has a Meadow Lakes Ave-Combs Flat Road (Prineville) project (Key No. 20268) consisting of the rehabilitation and infill of sidewalks, bringing existing curb ramps up to current ADA standards, replacing and upgrading existing traffic signals, providing intersection safety improvements and constructing and upgrading portions of the ODOT Intelligent Information Systems (ITS) Infrastructure; and

**Whereas**, City was approved for \$3,000,000.00 in HB 2017 funding by the Oregon Legislature in House Bill 207, SECTION 71D (2017); and

**Whereas**, City wishes to apply its HB 2017 funding in the amount of \$3,000,000.00 to expanding the design analysis and development efforts of State’s US26; Meadow Lakes Ave.- Comb Flats Road to include key storm-water drainage system needs, Prineville Downtown Streetscape amenities, bicycle facilities, crossing and pedestrian/ADA improvements at SE Lynn Blvd. and Comb Flats Road;

**Whereas**, City and ODOT entered into a Memorandum of Agreement to document the Parties’ understanding and intentions in regard to creating a “complete corridor” of coordinated and leveraged improvements to make the corridor safe and functional for all anticipated users on US 26 between Meadow Lakes Avenue and Combs Flat Road, including all funding options; and

**Whereas**, pursuant to the Agreement, the total Project cost is estimated at \$4,748,200.00. Federal funds for the Project are limited to \$934,627.68; State funds for the project are limited to

\$813,572.32; and the City has agreed to contribute \$3,000,000.00 from its HB 2017 funding; and

**Whereas,** City staff believes it is in the best interest of the City to approve and execute the Agreement.

**Now, Therefore,** the City of Prineville resolves that the Agreement attached hereto is hereby approved and that the Mayor is authorized to sign such Agreement on behalf of the City.

Approved by the City Council this \_\_\_\_ day of February, 2019.

\_\_\_\_\_  
Stephen P. Uffelman, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Morgan, City Recorder

**COOPERATIVE IMPROVEMENT AGREEMENT  
2017 Oregon Transportation Funding  
US26: Meadow Lakes Ave-Combs Flat Rd (Prineville)  
City of Prineville**

**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 PRINEVILLE, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. The Ochoco highway, US Route 26, State Highway No. 41, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). US 26 within the Prineville city limits is also known as NW/NE 3<sup>rd</sup> Street.
2. NW Beaver Street, NE Belknap Street, NW Claypool Street, NE Combs Flat Road, NE Court Street, NW Deer Street, NE Dunham Street, NE Elm Street, NE Fairview Street, NE Garner Street, NW Harwood Street, NE Holley Street, NE Idlewood Street, NE Juniper Street, NW Locust St, NE Knowledge Street, NW Maple Street, NW Meadow Lakes Avenue, NE Spruce Street, and Main Street, are a part of the city street system under the jurisdiction and control of Agency.
3. State's US26: Meadow Lakes Ave - Comb Flats Rd (Prineville) project (Key No. 20268) consists of the rehabilitation and infill of sidewalks, bringing existing curb ramps up to current ADA standards, replacing and upgrading existing traffic signals, providing intersection safety improvements and constructing and upgrading portions of the ODOT ITS (Intelligent Information Systems) infrastructure.
4. Agency was approved for \$3,000,000.00 in HB 2017 funding by the Oregon Legislature in House Bill 207, SECTION 71d (2017).
5. Agency wishes to apply its HB2017 funding in the amount of \$3,000,000.00 to expanding the design analysis and development efforts of State's US26: Meadow Lakes Ave - Comb Flats Rd to include key storm-water drainage system needs, Prineville Downtown Streetscape amenities, bicycle facilities, crossing and pedestrian/ADA improvements at SE Lynn Blvd and Comb Flats Road.
6. Parties entered into Memorandum of Agreement No. 32817, attached hereto, marked Exhibit A, and by this reference made a part hereof, to document the Party's understanding and intentions in regard to creating a 'complete corridor' of coordinated and leveraged improvements to make the corridor safe and functional for all anticipated users on US 26 between Meadow lakes Avenue and Combs Flat Road, including all funding options.

7. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, State 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.
8. State, by ORS 366.220, is vested with complete jurisdiction and control over the roadways of other jurisdictions taken for state highway purposes. By the authority granted by ORS 373.020, the jurisdiction extends from curb to curb, or, if there is no regular established curb, then control extends over such portion of the right of way as may be utilized by State for highway purposes. Responsibility for and jurisdiction over all other portions of a city street remains with the Agency.
9. By the authority granted in ORS 810.080 State has the authority to establish marked pedestrian crosswalks on its highway facilities.
10. By the authority granted in ORS 810.210, State is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where State deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than State, except with its written approval. Traffic signal work on this Project will conform to the current State standards and specifications.

**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, Parties agree to State incorporating Agency's pedestrian safety improvements into State's US26: Meadow Lakes Ave - Comb Flats Rd (Prineville) project, hereinafter referred to as "Project". The Project improvements are described in Exhibit B, attached hereto and by this reference made a part hereof. The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit C, and by this reference made a part hereof.

2. The Project will be financed at an estimated cost as follows:

<b>FUND SOURCE</b>	<b>AMOUNT</b>
Federal	\$966,033.18
State	\$782,166.82
Local Agency (HB 2017 Funds)	\$3,000,000.00
<b>Total</b>	<b>\$4,748,200.00</b>

The estimate for the total Project cost is subject to change. State shall be responsible for any nonparticipating costs, and Project costs beyond the estimate.

3. Parties agree to work collaboratively and in good faith to execute any additional agreement or agreement amendment that may be necessary as the Project develops, including but not limited to:
  - a. Changes to the project budget or scope;
  - b. Amendment(s) to this Agreement identifying each Party's maintenance responsibilities related to the completed project.
4. Prior to the advertisement of construction plans and request for bid proposals, all specifications, staging plans and construction plans shall be subject to a mutual review and the approval by the Parties, and the Parties shall reach an agreement on the final plans.
5. Parties agree to the creation of a Public Involvement Plan for the Project, focused on collaboration for public meetings, briefings, updates, meeting with individual stakeholders, focus groups, media, property and business owners, emergency services, and in conducting any other needed public involvement during the life of the Project.
6. Parties agree to work collaboratively with affected property and business owners on an Access Management Strategy for the Project.
7. Americans with Disabilities Act Compliance:
  - a. When the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, the Parties shall:
    - i. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended by the ADA

Amendments Act of 2008 (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;

- ii. Follow ODOT's processes for design, modification, upgrade, or construction of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
- iii. At Project completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed, modified, upgraded, or improved as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/HwyConstForms1.aspx>

- b. State shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. State shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the start of construction.
- c. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
  - i. Pedestrian access is maintained as required by the ADA,
  - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
  - iii. Any repairs or removal of obstructions needed to maintain Project features in compliance with the ADA requirements that were in effect at the time of Project construction are completed by Agency

or abutting property owner pursuant to applicable local code provisions,

- iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
- v. Applicable permitting and regulatory actions are consistent with ADA requirements.

d. Maintenance obligations in this section shall survive termination of this Agreement.

8. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.

#### **AGENCY OBLIGATIONS**

1. Agency agrees that State shall use Agency's \$3,000,000.00 in HB2017 funding to incorporate Agency pedestrian safety improvements into State's Project at Agency's request.
2. Agency shall grant State, its consultants and/or contractors, the right to enter onto and occupy Agency right of way within the Project limits as required to complete the Project and to stage construction supplies and equipment.
3. Agency agrees to allow temporary closure or detouring of city streets to allow construction and tie in to said streets as deemed necessary by State during the construction phase of the Project.
4. Agency agrees at its own expense to maintain and repair all improvements within the right of way and jurisdiction of the city including but not limited to those sidewalks, curb ramps, landscaping, drainage swales, irrigation, decorative pedestrian lighting, electrical infrastructure and appurtenances constructed as a part of the Project, but excluding those Project elements not listed above and constructed within State right of way and jurisdiction.
5. Agency shall cause to be relocated or reconstructed, all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements for the portions of the Project which are on Agency right of way.
6. 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

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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.

7. Agency shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
8. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State
9. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
10. Agency, if a city, by execution of Agreement, gives its consent as required by ORS 373.030(2) and ORS 105.760 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.
11. Relocation Assistance and Acquisition of property rights needed for the construction of the project must be performed in accordance with all Federal and State laws, including The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended; ORS Chapter 35 and the ODOT Right of Way Manual. A Right of Way Services Agreement is required and will be executed between State and Agency when it has been determined what Relocation and Acquisition tasks are needed to successfully deliver the project. Refer to Federal Standard Provisions, Attachment 2, Right of Way, Items 31-35.
12. 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.

13. Agency's Project Manager for this Project is Eric Klann – City Engineer, 387 NE Third Street, Prineville, OR 97754, (541) 447-2357, [eklann@cityofprineville.com](mailto:eklann@cityofprineville.com), or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## **STATE OBLIGATIONS**

1. State shall complete the Project as described in TERMS OF AGREEMENT, Paragraph 1.
2. State shall be responsible for all construction contract administration, inspection and change order approvals.
3. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
4. State shall, upon signal turn on and proper operation, perform all necessary maintenance of said traffic signals, control the timing established for operation of the traffic signals and pay for maintenance and power costs for the traffic signals.
5. State, or its consultant, shall conduct the necessary field surveys, environmental studies, traffic investigations, preliminary engineering and design work required to produce and provide final plans, specifications and cost estimates for the highway Project; identify and obtain all required permits; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid and contract documents; advertise for construction bid proposals; award all contracts; pay all contractor costs, provide technical inspection, project management services and other necessary functions for sole administration of the construction contract entered into for this Project.
6. State shall be responsible for all costs associated with construction and installation of the Project. State shall cause to be relocated or reconstructed, all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements for the portions of the Project which are on State right of way.
7. State's Project Manager for this Project is Mike Darling – Senior Project Leader, 63055 N. Highway 97, Bldg M, Bend, OR 97701, (541) 388-6329, [Charles.m.darling@odot.state.or.us](mailto:Charles.m.darling@odot.state.or.us), or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## **GENERAL PROVISIONS**

1. This Agreement may be terminated by mutual written consent of both Parties.
2. 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:
  - 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.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. 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.
5. 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.

6. 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.
7. 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.
8. If Agency fails to maintain facilities in accordance with the terms of this Agreement, State, at its option, may maintain the facility and bill Agency, seek an injunction to enforce the duties and obligations of this Agreement or take any other action allowed by law.
9. As federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by Agency representative.
10. Agency, as a recipient of federal funds, pursuant to this Agreement with the 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 shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the 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 shall 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.

11. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall 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 shall constitute an original.

12. 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 shall 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, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall 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.

This Project is in the 2018-2021 Statewide Transportation Improvement Program, (Key #20268) that was adopted by the Oregon Transportation Commission on July 21, 2017 (or subsequently approved by amendment to the STIP).

**SIGNATURE PAGE FOLLOWS**

City of Prineville/ODOT  
Agreement No. 32415

**CITY OF PRINEVILLE**, by and through its  
elected officials

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
Counsel

Date 2/19/19

**City Contact:**

Eric Klann – City Engineer  
387 NE Third Street  
Prineville, OR 97754  
(541) 447-2357  
[eklann@cityofprineville.com](mailto:eklann@cityofprineville.com)

**State Contact:**

Mike Darling – Senior Project Leader  
63055 N. Highway 97, Bldg M  
Bend OR, 97701-5765  
(541) 388-6329  
[Charles.m.darling@odot.state.or.us](mailto:Charles.m.darling@odot.state.or.us)

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

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
State Traffic/Roadway Engineer

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 4 Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 4 Right of Way/Survey  
Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By: Bonnie Heitsch by email  
Assistant Attorney General

Date: November 29, 2018

EXHIBIT A – Copy of MOU No. 32817

Misc. Contracts and Agreements  
Agreement No. 32817

**MEMORANDUM OF UNDERSTANDING**

US 26: Meadow Lakes Ave to Combs Flat Rd Improvement Project  
December 19, 2017

This Memorandum of Understanding dated December 12, 2017, is between the Oregon Department of Transportation (Region 4), an agency of the State of Oregon (ODOT), and the City of Prineville, an Oregon municipal corporation (City).

**RECITALS**

- A. ODOT builds, maintains, repairs, and operates state highways in Oregon. City builds, maintains, repairs, and operates streets within the Prineville city limits. ODOT has jurisdiction and authority for state highways. City has jurisdiction and authority over City streets.
- B. The US 26: Meadow Lakes Ave to Combs Flat Rd Project is included in the Statewide Transportation Improvement Program (STIP) Key #20268, and consists of rehabilitation and infill of sidewalks, bringing existing sidewalk curb ramps up to current ADA standards, replacing and upgrading existing traffic signals, providing intersection safety improvements, constructing and upgrading portions of the ODOT ITS (Intelligent Information Systems) infrastructure. The total budget is currently \$1,838,200.
- C. In conjunction with the STIP Project Key #20268, City and ODOT intend to collaborate by expanding the design analysis and development efforts of the Project to including key storm-water drainage system needs, Prineville Downtown Streetscape amenities, bicycle facilities, crossing and pedestrian/ADA improvements at SE Lynn Blvd & Combs Flat Road, and potential expansion or supplements to the Project scope elements described in Recital B; followed by amending the current project with additional construction improvements which could be funded with at least a portion of City's \$3,000,000, and other potential City funding sources.
- D. US 26 is part of the State Highway System under the jurisdiction and control of the Oregon Transportation Commission (OTC) and ODOT. From Meadow Lake Drive to Juniper Street it was established as a state highway routed over the city street system as allowed under ORS 373.020. West of the Meadow Lakes Drive/Locust Street intersection, US 26 is owned in fee. East of the Meadow Lakes Drive/Locust Street intersection, US 26 is owned curb-to-curb only to the East line of Juniper Street, except for a minor strip of land on the North side of US 26 for approximately 280 feet East of the intersection. US 26 from Juniper Street to Combs Flat Road is owned in fee. The Paulina Highway (Combs Flat Road) from Ochoco Highway South to Lynn Blvd is under ODOT jurisdiction.
- E. ODOT and City share a mutual and ultimate goal of creating a "complete corridor" of coordinated and leveraged improvements to make the corridor safe and functional for all anticipated users, including pedestrians, bicyclists, public transit riders, and motorists on US 26 between Meadow Lakes Ave and Combs Flat Rd, including phasing and funding options, with a first phase ready for construction as early as 2020.

**POINTS OF UNDERSTANDING**

1. ODOT and City will work in partnership to create an Intergovernmental agreement (IGA) that will address jurisdiction, rights, funding, and phasing, and responsibilities toward completing the following project elements (also see attached sketch map Exhibit A) ("the Project"):
  - a. Rehabilitation and infill of sidewalks, and/or bicycle-pedestrian paths, along US 26 from Meadow Lakes Ave to Combs Flat Road to current ODOT standards;
  - b. Replace/upgrade each pedestrian ramp between Meadow Lakes and Knowledge St by implementing appropriate geometric design/ADA elements at each location.
  - c. Replace and upgrade existing traffic signals at US 26/Deer St, US 26/Main St, US 26/Elm St. These upgrades include adding optimized detection, illumination devices and incorporate improved geometric design and ADA elements at each intersection;
  - d. Apply Safety Upgrades (e.g., signing) at the US 26 intersections with Harwood St, Deer St, Main St, Elm St and Combs Flat Rd and NW Maple Ave.
  - e. Conduct design analysis and potentially provide correction to the existing storm system within the "downtown" section of the corridor, based the balancing of costs, priorities, and funding contributions of the overall project;
  - f. Implementing ODOT ITS Central Signal System improvements and upgrades, including a base goal of improved high-speed connectivity along and adjoining the Corridor and signals;
  - g. Perform analyses of the overall Corridor for priorities, coordination with other projects, phasing, and additional funding opportunities.
  
2. Mutual work efforts between ODOT and City include:
  - a. An ODOT staff resourcing (including any procurement of consultant) design services and construction contracting, with mutual development and review of all contract documents prior to advertisements;
  - b. An ODOT lead Project Management Team Structure, with membership of both ODOT and City and other agreed-upon partner membership, and a mutually agreed-upon Team Charter;
  - c. Through the Project Management Team, creation of a Public Involvement Plan for the Project, focused on collaboration for public meetings, briefings, updates, meeting with individual stakeholders, focus groups, media, property and business owners, emergency services, and in conducting any other needed public involvement during the life of the Project;
  - d. ODOT and City will work together with affected property and business owners on an Access Management Strategy for the Project;
  - e. Updates and decision-making opportunities at meetings with key ODOT/City staff decision-makers and City Council as needed;
  
3. ODOT and City, in this partnership effort, will seek out coordination opportunities related to or to supplement or benefit to the Project, such as:
  - a. City's Rails to Trails STIP Project, Key #20269;
  - b. City's planned Bicycle/Pedestrian route planning in the Project vicinity;
  - c. City's Downtown Planning;
  - d. ODOT's and City's drainage system related to US 26 beyond noted in item 1e, including asset conditions and ways to reduce flooding overall.

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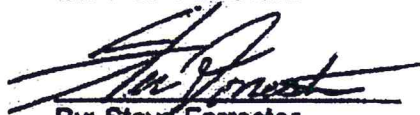
Coordination opportunities are anticipated to include meetings, phone and email communications, exchange of drawings and documents. Coordination may ultimately include joint projects or other cooperative efforts or using the authority of one party to assist the efforts of the other party. No binding commitment will occur without a written agreement. Both parties recognize that planning and funding of improvements will occur only following appropriate processes, including Council approval for City actions, funding commitments, and projects and OTC or other appropriate state approval for ODOT projects.

4. ODOT and City will complete an Intergovernmental Agreement for the Project by February 2018, formalizing mutual and individual obligations, and addressing the following Project Cost and Budget expectations, currently understood as:

US 26: Meadow Lakes Ave - Combs Flat Rd (3rd St) - DRAFT Budget/Funding Amounts									
Funding Phase	Current Phase Total	R4 Operations (Signals / ITS / Other)	R4 Safety/ARTS (Intersections)	R4 ADA Program (Curb Ramps)	R4 SWIP (Sidewalk Upgrades / Infill)	City of Prineville House Bill 2017 Funds	City of Prineville Trans SDC Funds	City of Prineville Trans Fund	City of Prineville General Funds
PE-'18	\$ 670,000	\$ 184,578	\$ 80,750	\$ 50,000	\$ 54,672	\$ 300,000	TBD	TBD	TBD
ROW-'19	\$ 140,000	\$ 5,000	\$ 10,000	\$ 40,000	\$ 15,000	\$ 70,000	TBD	TBD	TBD
UR-'19	\$ 40,000	\$ 10,000	\$ 5,000	\$ -	\$ 5,000	\$ 20,000	TBD	TBD	TBD
CN '20-'21	\$3,988,200	\$ 527,022	\$ 379,250	\$ 225,000	\$ 246,928	\$2,610,000	TBD	TBD	TBD
<b>Total</b>	<b>\$4,838,200</b>	<b>\$ 726,600</b>	<b>\$ 475,000</b>	<b>\$ 315,000</b>	<b>\$ 321,800</b>	<b>\$3,000,000</b>	<b>TBD</b>	<b>TBD</b>	<b>TBD</b>

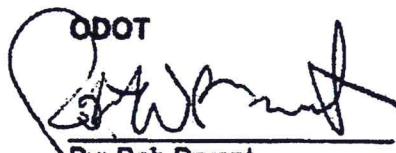
\* This MOU does not establish any additional funding commitments on the part of the City (which would be subject to future City Council approval) nor ODOT, pending an Intergovernmental Agreement targeted for early 2018.

CITY OF Prineville



By: Steve Forrester  
 Its: City Manager

ODOT



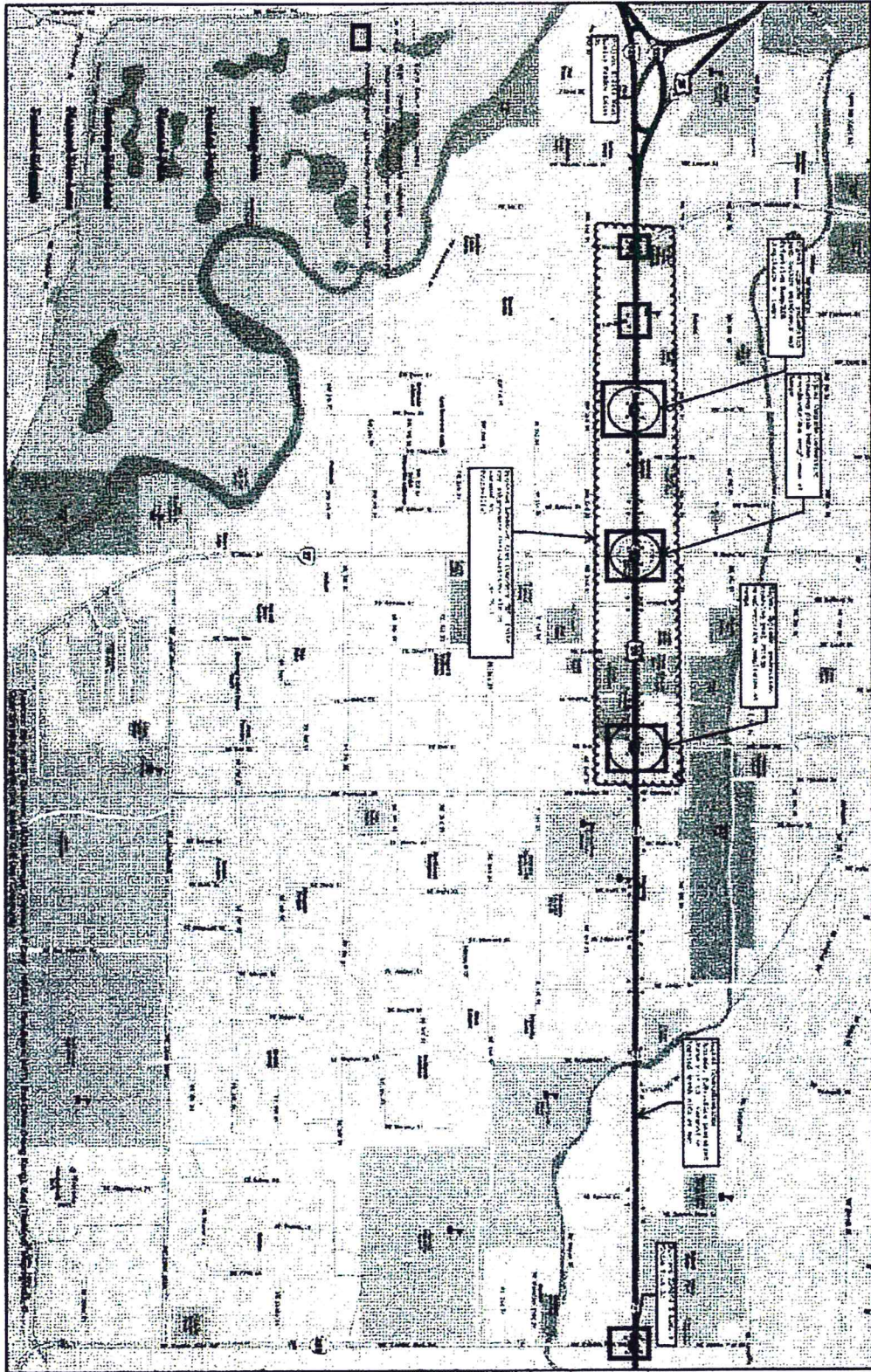
By: Bob Bryant  
 Its: Region 4 Manager



EXHIBIT B – Project Description

- a) Rehabilitation and infill of sidewalks, and/or bicycle-pedestrian paths along US 26 from Meadow Lakes Avenue to Combs Flat Road to current ODOT Requirements;
- b) Replace/upgrade each pedestrian ramp between Meadow Lakes Avenue and Knowledge Street by implementing appropriate geometric design/ADA elements at each location;
- c) Replace and upgrade existing traffic signals at the following intersections:
  - i. US26 and Deer Street;
  - ii. US26 and Main Street;
  - iii. US 26 and Elm Street;
- d) Apply Safety upgrades (e.g., signing) at the following intersections:
  - i. US 26 and Harwood Street;
  - ii. US 26 and Deer Street;
  - iii. US 26 and Main Street;
  - iv. US 26 and Elm Street;
  - v. US 26 and NW Maple Avenue;
- e) Conduct design analysis and potentially provide correction to the existing storm water system within the 'downtown' section of the corridor, based on the balancing of cost, priorities and funding contributions of the overall Project;
- f) Implementing ODOT ITS Central Signal System Improvements and upgrades, including a base goal of improved high-speed connectivity along and adjoining the Corridor and signals;
- g) Perform analyses of the overall Corridor for priorities, coordination with other projects, phasing and additional funding opportunities.

**EXHIBIT C – Approximate Project Location**



## **ATTACHMENT NO. 2 FEDERAL STANDARD PROVISIONS**

### **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 act for Agency in other matters pertaining to the Project. Prior to taking such action, State will confer with Agency concerning actions necessary to meet federal obligations. 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 person in responsible charge "liaison" 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.
3. Non-certified agencies must contract with State or a State certified local public agency to secure services to perform plans, specifications and estimates (PS&E), construction contract advertisement, bid, award, contractor payments and contract administration. Non-certified agencies may use a State-approved consultant to perform preliminary engineering, and construction engineering services.

### **PROJECT FUNDING REQUEST**

4. State shall submit a separate written Project funding request to FHWA requesting approval of federal-aid participation for each project phase including a) Program Development (Planning), b) Preliminary Engineering (National Environmental Policy Act - NEPA, Permitting and Project Design), c) Right of Way Acquisition, d) Utilities, and e) Construction (Construction Advertising, Bid and Award). Any work performed prior to FHWA's approval of each funding request will be considered nonparticipating and paid for at Agency expense. Agency shall not proceed on any activity in which federal-aid participation is desired until such written approval for each corresponding phase is obtained by State. State shall notify Agency in writing when authorization to proceed has been received from FHWA. All work and records of such work shall be in conformance with FHWA rules and regulations.

### **FINANCE**

5. 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 for the federal funds and any portion of the Project, which is not covered by

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federal funding, unless otherwise agreed to and specified in the intergovernmental Agreement (Project Agreement). Agency must obtain written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Project Agreement. State will also determine and clearly state in the Project Agreement if recipient is a subrecipient or vendor, using criteria in 2 CFR 200.330.

6. 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 pay one hundred (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 Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the *Local Agency Guidelines Manual* that result in items being declared non-participating by FHWA, such items deemed non-participating will be negotiated between Agency and State.
7. Agency agrees that 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 by the Parties.
8. 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 one hundred ten (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 cancelled. Any balance of a cash deposit in excess of amount needed, 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 Oregon Revised Statutes (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 State's Active Transportation Section, Funding and Program Services Unit, or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
9. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear one hundred (100) percent of all costs incurred as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear one hundred (100) percent of all

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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 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.

10. Agency shall follow the requirements stated in the Single Audit Act. Agencies expending \$500,000 or more in Federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, shall have a single organization-wide audit conducted in accordance with the Single Audit Act of 1984, PL 98-502 as amended by PL 104-156 and subject to the requirements of 49 CFR Parts 18 and 19. Agencies expending \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014 shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Agencies expending less than \$500,000 in Federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials based on the records retention period identified in the Project Agreement. The cost of this audit can be partially prorated to the federal program.
11. 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.
12. Agency shall present invoices for one hundred (100) percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison for review, approval and reimbursement to Agency. Costs will be reimbursed consistent with federal funding provisions and the Project Agreement. Such invoices shall identify the Project by the name of the Project Agreement, reference the Project Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one-month duration, based on actual expenses to date. All invoices received from Agency must be approved by State's Liaison prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of the Federal-Aid Policy Guide (FAPG), Title 23 CFR parts 1.11, 140 and 710. Final invoices shall be submitted to State for processing within forty-five (45) days from the end of each funding phase as follows: a) preliminary engineering, which ends at the award date of construction b) last payment for right of way acquisition and c) contract completion for construction. Partial billing (progress payment) shall be submitted to State within forty-five (45) days from date that costs are incurred. Invoices submitted after 45 days may not be eligible for reimbursement by FHWA. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the Project Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period ending on the later of six (6) years following the date of final voucher to FHWA or after resolution of any disputes under the Project Agreement. 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 ((2 CFR 200.333(c)).

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13. Agency shall, upon State's written request for reimbursement in accordance with Title 23, CFR part 630.112(c) 1 and 2, as directed by FHWA, reimburse State for federal-aid funds distributed to Agency if any of the following events occur:
  - a) Right of way acquisition is not undertaken or actual construction is not started by the close of the twentieth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized for right of way acquisition. Agency may submit a written request to State's Liaison for a time extension beyond the twenty (20) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
  - b) 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 federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized. Agency may submit a written request to State's Liaison for a time extension beyond the ten (10) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
14. 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 the Project is completed in conformance with approved plans and specifications.
15. State shall submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. State shall pay all reimbursable costs of the Project. 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 one hundred (100) percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of the 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.

## STANDARDS

16. Agency agrees that minimum design standards on all local agency jurisdictional roadway or street projects on the National Highway System (NHS) and projects on the non-NHS shall be the American Association of State Highway and Transportation Officials (AASHTO) standards and be in accordance with *State's Oregon Bicycle & Pedestrian Design Guide* (current version). Agency shall use either AASHTO's A Policy on Geometric Design of Highways and Streets (current version) or State's Resurfacing, Restoration and Rehabilitation (3R) design standards for 3R projects. Agency may use AASHTO for vertical clearance requirements on Agency's jurisdictional roadways or streets.
17. Agency agrees that if the Project is on the Oregon State Highway System or State-owned facility, that design standards shall be in compliance with standards specified in the current *ODOT Highway Design Manual* and related references. Construction plans for such projects

shall be in conformance with standard practices of State and all specifications shall be in substantial compliance with the most current *Oregon Standard Specifications for Highway Construction* and current *Contract Plans Development Guide*.

18. Agency agrees that for all projects on the Oregon State Highway System or State-owned facility any design element that does not meet *ODOT Highway Design Manual* design standards must be justified and documented by means of a design exception. Agency further agrees that for all projects on the NHS, regardless of funding source; any design element that does not meet AASHTO standards must be justified and documented by means of a design exception. State shall review any design exceptions on the Oregon State Highway System and retains authority for their approval. FHWA shall review any design exceptions for projects subject to Focused Federal Oversight and retains authority for their approval.
19. Agency agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the *Manual on Uniform Traffic Control Devices and Oregon Supplement* as adopted in Oregon Administrative Rule (OAR) 734-020-0005. Agency must obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a state highway pursuant to OAR 734-020-0430.
20. 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.

## **PRELIMINARY & CONSTRUCTION ENGINEERING**

21. Preliminary engineering and construction engineering may be performed by either a) State, b) Agency, c) State-approved consultant, or d) certified agency. Engineering work will be monitored by State or certified agency to ensure conformance with FHWA rules and regulations. Project plans, specifications and cost estimates shall be performed by either a) State, b) State-approved consultant or c) certified agency. State shall review and approve Project plans, specifications and cost estimates. State shall, at project expense, review, process and approve, or submit for approval to the federal regulators, all environmental statements. State or certified agency shall, if they prepare any of the documents identified in this paragraph, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
22. Agency may request State's two-tiered consultant selection process as allowed by OAR 137-048-0260 to perform architectural, engineering, photogrammetry, transportation planning, land surveying and related services (A&E Services) as needed for federal-aid transportation projects. Use of the State's processes is required to ensure federal reimbursement. State will award and execute the contracts. State's personal services contracting process and resulting contract document will follow Title 23 CFR part 172, 2 CFR part 1201, ORS 279A.055, 279C.110, 279C.125, OAR 137-048-0130, OAR 137-048-0220(4) 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. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or the consultant prior to receiving authorization from State to proceed.

23. 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.
24. State or certified agency shall prepare construction contract and bidding documents, advertise for bid proposals, and award all construction contracts.
25. Upon State's or certified agency's award of a construction contract, State or certified agency shall perform quality assurance and independent assurance testing in accordance with the FHWA-approved Quality Assurance Program found in State's *Manual of Field Test Procedures*, 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.
26. State shall, as a Project expense, assign a liaison to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). State's liaison shall process reimbursement for federal participation costs.

#### **REQUIRED STATEMENT FOR United States Department of Transportation (USDOT) FINANCIAL ASSISTANCE AGREEMENT**

27. By signing the Federal-Aid Agreement to which these Federal Standard Provisions are attached, Agency agrees to adopt State's DBE Program Plan, available at [https://www.oregon.gov/ODOT/CS/CIVILRIGHTS/Pages/dbe\\_prog\\_plan.aspx](https://www.oregon.gov/ODOT/CS/CIVILRIGHTS/Pages/dbe_prog_plan.aspx). Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. Agency agrees to take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. State's DBE program, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this Project Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Project Agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 United States Code (USC) 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

#### **Disadvantaged Business Enterprises (DBE) Obligations**

28. State and Agency agree to incorporate by reference the requirements of 49 CFR part 26 and State's DBE Program Plan, as required by 49 CFR part 26 and as approved by USDOT, into all contracts entered into under this Project Agreement. The following required DBE assurance shall be included in all contracts:

*"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR part 26 in the award and administration of federal-aid contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or*



*such other remedy as Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b))."*

29. 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.
30. 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, 635, 710, and 771; Title 49 CFR parts 24 and 26; 2 CFR 1201, 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, the provisions of the FAPG and FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide. State and Agency agree that FHWA-1273 Required Contract Provisions shall be included in all contracts and subcontracts verbatim and not by reference.

## **RIGHT OF WAY**

31. Agency and the consultant, if any, agree that right of way activities shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FAPG, CFR, and the *ODOT Right of Way Manual*, Title 23 CFR part 710 and Title 49 CFR part 24. State, at Project expense, shall review all right of way activities engaged in by Agency to ensure compliance with all laws and regulations.
32. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of projects. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project provided Agency or the consultant are qualified to do such work, as required by the *ODOT Right of Way Manual*, and Agency has obtained prior approval from State's Region Right of Way office to do such work.
33. 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. If the Project has the potential of needing right of way, to ensure compliance in the event that right of way is unexpectedly needed, a right of way services agreement will be required. State, at Project expense, shall be responsible for requesting the obligation of project funding from FHWA. State, at Project expense, shall be responsible for 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 State's Liaison, who will forward the request to State's Region Right of Way office on all projects. Agency must receive written authorization to proceed from State's Right of Way Section prior to beginning right of way activities. All projects must have right of way certification coordinated through State's Region Right of Way office to declare compliance and project readiness for construction (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on a project). Agency shall contact State's Liaison, who will contact State's Region Right of Way office for additional information or clarification on behalf of Agency.

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34. Agency agrees that 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.
35. Agency ensures that all project right of way monumentation will be conducted in conformance with ORS 209.155.
36. State and Agency grants each other authority to enter onto the other's right of way for the performance of non-construction activities such as surveying and inspection of the Project.

## **RAILROADS**

37. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through the State's Liaison, who will contact State's Railroad Liaison on behalf of Agency. Only those costs allowable under Title 23 CFR part 140 subpart I, and Title 23 part 646 subpart B 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 and at Project expense, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

## **UTILITIES**

38. Agency shall follow State established statutes, policies and procedures when impacts occur to privately or publicly-owned utilities. Policy, procedures and forms are available through the State Utility Liaison or State's Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison. Only those utility relocations, which are eligible for reimbursement under the FAPG, Title 23 CFR part 645 subparts 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. Agency may send a written request to State, at Project expense, to arrange for utility relocations/adjustments lying within Agency jurisdiction. 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. Agency shall not perform any utility work on state highway right of way without first receiving written authorization from State.

## **GRADE CHANGE LIABILITY**

39. 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.
40. 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.
41. Agency, if a City, by execution of the Project 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 Project Agreement.

## **MAINTENANCE RESPONSIBILITIES**

42. Agency shall, at its own expense, maintain operate, and provide power as needed upon Project completion at a minimum level that is consistent with normal depreciation and/or service demand and throughout the useful life of the Project. The useful life of the Project is defined in the Special Provisions. State may conduct periodic inspections during the life of the Project to verify that the 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 the Project Agreement. In the event the Project will include or affect a state highway, this provision does not address maintenance of that state highway.

## **CONTRIBUTION**

43. 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.
44. 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.
45. 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.

## **ALTERNATIVE DISPUTE RESOLUTION**

46. The Parties shall attempt in good faith to resolve any dispute arising out of this Project 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.

## **WORKERS' COMPENSATION COVERAGE**

47. All employers, including Agency, that employ subject workers who work under this Project 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 five hundred thousand (\$500,000) must be included. Agency shall ensure that each of its contractors complies with these requirements.

## **LOBBYING RESTRICTIONS – pursuant to Form FHWA-1273, Required Contract Provisions**

48. Agency certifies by signing the Project 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 one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

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- 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 ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.