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DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
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January 18, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners

Approval of a Supplemental Project Agreement with the Oregon Department of Transportation for the Trolley Trail Bridge: Portland Avenue to Clackamas River Greenway Trail Project. Total agreement value is \$1,369,442. Funding is through Federal Regional Flexible Fund Allocation Program and the City of Gladstone. No County General Funds are involved.

Previous Board Action/Review	01/16/24: Request for consent 07/27/17: BCC approval of a Supplemental Project Agreement No. 31952 with Oregon Department of Transportation for the Trolley Trail Bridge: Gladstone to Oregon City Project. 01/01/17: BCC Approval of Master Certification Agreement No. 30923 for County implementation of federally funded projects.		
Performance Clackamas	The project will build a strong infrastructure.		
Counsel Review	Yes – Hong Huynh	Procurement Review	No
Contact Person	Joel Howie	Contact Phone	503-742-4658

EXECUTIVE SUMMARY: This is a three-party project agreement between Clackamas County, City of Gladstone, and the Oregon Department of Transportation (ODOT) to perform Preliminary Engineering activities up to 30-percent design or Type, Size, Location Report for replacing a bridge crossing the Clackamas River to connect the City of Gladstone and Oregon City.

The City obtained a 2022-2024 Regional Flexible Funds Allocation to perform Preliminary Engineering for the Project and requested that Clackamas County complete the work on its behalf as a Supplemental Project under the County’s Local Agency Certification Program Agreement No. 30923 with ODOT. This Federal Regional Flexible Funds Allocation Program

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funds will be matched by City of Gladstone Funds. No Clackamas County funds are expected to be expended on this project.

Clackamas County previously performed a feasibility study for the project on behalf of the City of Gladstone to study the feasibility of rebuilding an abandoned trolley bridge crossing the Clackamas River in the City that collapsed in 2014 as an extension of the Trolley Trail. The study involved an extensive public outreach process in 2020 that resulted in three bridge super-structure options for the City of Gladstone to consider in the preliminary engineering phase. The three super-structure options are a three-span precast concrete girder, three-span steel girder, and a single-span steel truss.

RECOMMENDATION: Staff respectfully recommends that the Board of County Commissioners sign the attached Supplemental Project Agreement No. 73000-00003197 with the Oregon Department of Transportation for the Trolley Trail Bridge: Portland Ave. – Clackamas River Greenway Trail Project.

Respectfully submitted,

Dan Johnson

Dan Johnson, Director
Department of Transportation & Development

**OREGON DEPARTMENT OF TRANSPORTATION
LOCAL AGENCY CERTIFICATION PROGRAM
SUPPLEMENTAL PROJECT AGREEMENT No. 73000-00003197
CERTIFIED AGENCY PERFORMING ON BEHALF OF A NON-CERTIFIED AGENCY
Trolley Trail Bridge: Portland Ave. – Clackamas River Greenway Trail**

THIS SUPPLEMENTAL PROJECT AGREEMENT (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" or "ODOT," CLACKAMAS COUNTY, acting by and through its elected officials, hereinafter referred to as "Certified Agency," and CITY OF GLADSTONE acting by and through its elected officials, hereinafter referred to as "Non-certified Agency," all herein referred to individually as "Party" or collectively as "Parties."

RECITALS

1. 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.
2. ODOT and Certified Agency entered into Local Agency Certification Program Agreement No. 29025, executed on September 10, 2014 (Local Agency Certification Program Agreement). The Certification Program allows ODOT to certify a Local Agency's procedures and delegates authority to the certified Local Agency to administer federal-aid projects. The Local Agency Certification Program Agreement also allows a certified agency to perform work on behalf of a non-certified agency. The certified agency is a subrecipient of federal funds and will be eligible for reimbursement as the delivering agency. The non-certified agency is a third party and is not eligible for federal reimbursement.
3. Certification status information as of the date of execution of this Agreement:
 - a. Certified Agency is fully certified in the following functional area(s):
 - consultant selection (formal and informal process(es))
 - design (excluding bridge design)
 - "advertise, bid, and award" for construction contracts
 - construction contract administration
 - b. Certified Agency is conditionally certified in the following functional areas:
 - consultant selection (direct appoint process)
 - c. Certified Agency is not currently seeking certification in the following functional area(s):
 - bridge design
 - d. Certified Agency has completed or is in the process of completing the number of test project(s) required by ODOT for the Certified Agency to become fully certified in the following functional areas:
 - consultant selection (direct appoint process)

The Parties are in the process of assessing the Certified Agency's test project(s) and required program documents to transition the Certified Agency from conditional to full certification for the

functional areas listed in this subsection, and anticipate a successful transition. Therefore, the project described in this Agreement is not one of the test project(s) described in the Local Agency Certification Program Agreement for the functional areas listed in this subsection.

- e. Certified Agency has had its Americans with Disabilities Act (ADA)-related design exception and curb ramp inspection processes reviewed and approved by ODOT and FHWA for use on federally funded projects.
4. The purpose of this Agreement is to establish the Parties' terms and obligations to deliver the Trolley Trail Bridge Project through the Local Agency Certification Program as a Certified Agency Supplemental Project. The "Project" is defined under Terms of Agreement, Section I, paragraph 2 of this Agreement. This Agreement covers a portion of the Preliminary Engineering (PE) activities up to 30% or Type, Size, Location Report for bridge project (TSL) of the Project only and will be amended if and when future funding for completion of PE phase and phases are added to the Project.
5. Trolley Trail Bridge: Portland Ave. – Clackamas River Greenway is a part of the street system under the jurisdiction and control of the City of Gladstone.
6. The Project was selected as part of the Regional Flexible Fund Allocation (RFFA) program and may include a combination of federal, state, and local funds.
7. The Parties recognize that the Local Agency Certification Program Agreement was entered into between ODOT and Certified Agency only, and that this Agreement includes Non-Certified Agency as an additional third party. Accordingly, some terms in this Agreement have been modified to address the rights and obligations of all three parties. The Parties intend these modified terms to supersede any corresponding terms in the Local Agency Certification Program Agreement.

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

I. Project Overview

1. The Parties agree that Certified Agency shall perform work for Non-certified Agency in accordance with the Local Agency Certification Program Agreement No. 29025, which is hereby incorporated by reference, and the terms of this Supplemental Project Agreement. Non-certified Agency acknowledges that it is not a Party to Agreement No. 29025 and that Agreement No. 29025 confers no obligations or benefits to Non-certified Agency.
2. The Parties agree to Certified Agency delivering a portion of the PE phase of the Trolley Trail Bridge: Portland Ave – Clackamas River Greenway Trail, hereinafter referred to as the "Project". Specifically, the Project includes Certified Agency completing project development activities for a new pedestrian bridge across the Clackamas River, identifying type, size, and location alternatives for the pedestrian bridge, which will link workers, residents, and tourists in Gladstone and Oregon City. The proposed pedestrian bridge will increase travel options and improve safety and mobility for pedestrians and cyclists. The location of the Project is shown on the sketch map attached hereto, marked "Exhibit A", and by this reference made a part hereof.
3. Parties anticipate Certified Agency delivering the remaining portion of the PE phase and additional phases of the Project. Upon full funding of the PE phase and additional phases, and the addition of the additional phases to the Project in the Statewide Transportation Improvement Program (STIP), this Agreement will be amended to include completion of PE phase and additional phases work, and costs. If the Parties do not amend this Agreement to add additional phases pertaining to

construction and maintenance, the construction and maintenance provisions in this Agreement will not apply.

4. Non-certified Agency grants ODOT and Certified Agency the authority to enter onto Non-certified Agency's right of way as needed to complete this Project. Certified Agency grants ODOT and Non-certified Agency the authority to enter onto Certified Agency's right of way as needed to complete this Project.
5. The total Project cost is estimated at \$1,369,442.00, which is subject to change. The federal and state funds for this Project are limited to \$1,228,800.31. Certified Agency shall be responsible for all remaining costs, including any non-participating costs, all costs in excess of the federal or state funds, and the 10.27 percent match for all eligible costs. Certified Agency shall invoice Non-certified Agency for all costs as agreed to between the local public agencies pursuant to Section III, paragraph 3. Any unused federal or state funds obligated to this project will not be paid out by the applicable funding agency and will not be available for use by Certified Agency or Non-certified Agency for this Agreement. "Total Project Cost" means the cost to complete the entire Project, and includes any federal funds, state funds, local matching funds, and any other funds. Certified Agency will report the final cost of each phase of the Project at the completion of each phase, as well as the final Total Project Cost at the end of the Project, to the ODOT Regional Local Agency Liaison.
6. Parties agree ODOT will perform Project oversight in accordance with the Local Agency Certification Program Agreement, and ODOT will provide Certified Agency and Non-certified Agency with a preliminary estimate for the cost of ODOT's work. Certified Agency and Non-certified Agency understand that ODOT's costs are estimates only and Certified Agency agrees to pay ODOT's actual cost incurred per the Terms of this Agreement.
7. Parties agree Certified Agency shall perform Project management in accordance with the Local Agency Certification Program Agreement No. 29025, and Certified Agency shall provide ODOT and Non-certified Agency with a preliminary estimate for the cost of Certified Agency's work. ODOT and Non-certified Agency understand that Certified Agency's costs are estimates only, and Non-Certified Agency agrees to pay Certified Agency's actual cost incurred per the Terms of this Agreement.
8. ODOT may conduct periodic inspections during the useful life of the Project to verify that Project is being properly maintained and continues to serve the purpose for which federal funds were provided.
9. The Parties agree that the useful life of the Project is 10 years.

II. Funding

1. The Parties acknowledge that the Federal funds are provided under Title 23, United States Code and agree to meet all applicable federal requirements.
2. ODOT considers Certified 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.
3. By signing this Agreement, Certified Agency agrees to comply with the provisions of the Federal Funding Accountability and Transparency Act (FFATA) and is subject to the following award terms:
 - <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>, and
 - <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>.

If, in the preceding fiscal year, Certified Agency received more than 80% of its gross revenues from the federal government, those federal funds exceed \$25,000,000 annually, and the public

does not have access to information about the compensation of executives through reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986, Certified Agency shall report the total compensation and names of its top five executives to ODOT. Certified Agency shall report said information to ODOT within 14 calendar days of execution of this Agreement and annually thereafter, utilizing the FFATA form attached hereto as Exhibit B.

4. Certified Agency, as a recipient of federal funds, pursuant to this Agreement with ODOT, shall assume sole liability for Certified Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Certified Agency's breach of any such conditions that requires ODOT to return funds to the United States Department of Transportation (USDOT) Federal Highway Administration (FHWA), hold harmless and indemnify ODOT for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Certified 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.
5. If Certified Agency fails to meet the requirements of this Agreement or the underlying federal regulations, ODOT may withhold the Certified Agency's proportional share of Highway Fund distribution necessary to reimburse ODOT for costs incurred by such Certified Agency breach.
6. Information required of pass-through entities by 2 CFR 200.332(a)(1) shall be contained in the USDOT FHWA Federal Aid Project Agreement between ODOT and FHWA for this Project, a copy of which shall be provided by ODOT to Certified Agency with the Notice to Proceed.
7. ODOT will submit the requests for federal funding to the FHWA. The federal funding for this Project is contingent upon approval of each funding request by FHWA. Any work performed outside the period of performance approved by FHWA or outside the scope of work will be considered nonparticipating and paid for at Certified Agency expense.
8. ODOT's Regional Local Agency Liaison or designee will provide Certified Agency with a written notice to proceed for the Project when FHWA approval has been secured and funds are available for expenditure on this Project.
9. Certified Agency guarantees the availability of Certified Agency funding in an amount required to fully fund Certified Agency's participation in the Project.
10. Non-certified Agency guarantees the availability of funding in an amount required to fully reimburse Certified Agency for the match, any non-participating costs, and any costs not covered by state and federal funding that Certified Agency expends on behalf of the Project.

III. Invoicing and Payments

1. Certified Agency shall make all payments for work performed on the Project, including all consultant and contractor costs, and invoice ODOT for one-hundred percent (100%) of its costs. ODOT shall reimburse approved Certified Agency invoices at the pro-rated federal share of 89.73 percent. Certified Agency is responsible for 100% of all costs beyond the federal and state reimbursement including the 10.27 percent match for all eligible costs, any non-participating costs, and all costs in excess of the federal or state funds.
2. Indirect Cost Rate:
 - a. Certified Agency shall invoice ODOT using the current, approved indirect cost rate on file with ODOT.

- b. As required by 2 CFR 200.332(a)(4), the indirect cost rates for this project at the time the agreement is written is 31.99% de minimis rate per 2 CFR 200.414. This rate may change during the term of this Agreement upon notice to ODOT and ODOT's subsequent written approval.
 - c. If the approved rate(s) change(s) during the term of this Agreement, Agency shall invoice ODOT using the current indirect cost rate(s) for the Project on file with ODOT at the time the work is performed. If Agency does not have an approved indirect cost rate(s) on file with ODOT at the time the work is performed, Agency shall invoice ODOT using a zero percent (0%) rate.
3. Certified Agency shall invoice Non-certified Agency for the federal match share, any non-participating costs, and all costs expended for the Project not reimbursed by ODOT. Upon receipt of Certified Agency invoice(s), Non-certified Agency shall reimburse Certified Agency for the federal match share, any non-participating costs, and all costs expended for the Project not reimbursed by ODOT. Failure of Non-certified Agency to make such match payments to Certified Agency may result in ODOT withholding of Non-certified Agency's proportional allocation of State Highway Trust Funds until such costs are paid.
 4. Non-certified Agency and Certified Agency agree that any disputes arising on this Project regarding Certified Agency's invoices or Non-certified Agency payment of invoices identified in the preceding paragraph are to be resolved between the Non-certified Agency and Certified Agency only, except to the extent otherwise provided in Section III, Paragraph 3 above.
 5. ODOT will invoice FHWA and Certified Agency for ODOT's Project costs, and Certified Agency agrees to reimburse ODOT for the federal-aid matching state share and any non-participating costs as determined in accordance with Section III Paragraph 3, above, upon receipt of invoice. Failure of Certified Agency to make such payments to ODOT may result in withholding of Certified Agency's proportional allocation of State Highway Trust Funds until such costs are paid.

IV. Certified Agency Obligations

1. Certified Agency Work on this Project:

- a. Certified Agency shall perform the following functional area(s) in which Certified Agency is fully certified and as authorized by the Local Agency Certification Program Agreement:
 - consultant selection (formal and informal process(es))
 - design (excluding bridge design)
 - "advertise, bid, and award" the construction contract
 - construction contract administration
- b. While Certified Agency is in the process of transitioning from conditional to full certification, by the terms of this Agreement and for only this Project, Certified Agency is authorized and shall perform as if fully certified in the following functional area:
 - consultant selection (direct appoint)

Certified Agency understands that this Project is subject to the terms and conditions of the Local Agency Certification Program Agreement and may also be subject to the terms of a corrective action plan and increased monitoring if ODOT's evaluation of Certified Agency's test project(s) or program documents identifies the need for corrective action.

- c. Bridge design work must be performed by qualified consultants contracted by Certified Agency and under the supervision of Certified Agency's qualified staff identified in section IV. paragraph 5.

2. **Independent Contractor Requirement:** Certified Agency shall perform the services 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.
3. **Contractor and Subcontractor Indemnification:**
 - a. To the fullest extent permitted by law, and except to the extent otherwise void under ORS 30.140, Certified 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, 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 (hereafter, referred to individually and collectively as "Claims"), to the extent such Claims are caused, or alleged to be caused, by the negligent or willful acts or omissions of Certified Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that State shall, in all instances, except to the extent Claims arise solely from the negligent or willful acts or omissions of State, be indemnified from and against all Claims caused or alleged to be caused by the contractor or subcontractor.
 - b. Any such indemnification shall also provide that neither Certified Agency's contractor and subcontractor nor any attorney engaged by Certified 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 any time at its election assume its own defense and settlement in the event that it determines that Certified Agency's contractor is prohibited from defending the State of Oregon, or that Certified 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 Certified Agency's contractor if the State of Oregon elects to assume its own defense.
4. **Cargo Preference Act:** Certified Agency shall ensure compliance with the Cargo Preference Act and implementing regulations (46 CFR Part 381) for use of United States-flag ocean vessels transporting materials or equipment acquired specifically for the Project. Strict compliance is required, including but not limited to the clauses in 46 CFR 381.7(a) and (b) which are incorporated by reference. Certified Agency shall also include this requirement in all contracts and ensure that contractors include the requirement in their subcontracts.
5. **Local Bridge Program Requirements:**
 - a. Certified Agency shall submit Quarterly Progress Reports to State's Regional Local Agency Liaison and State's Bridge STIP Coordinator and PCR Form to State's Regional Local Agency Liaison following the process as listed in **Exhibit C**. Certified Agency agrees to the conditions set forth in **Exhibit C**.
 - b. Except as otherwise provided in this Agreement, State and Certified Agency agree that the design of the Project shall meet the American Association of State Highway and Transportation Officials (AASHTO) Load Resistance Factor Design (LRFD) Bridge Design Specifications (current version) and AASHTO Guide Specifications for LRFD Seismic Bridge Design and ODOT Load and Resistance Factor Rating (LRFR), Tier 2 Load rating.

- c. Certified Agency or its consultant must provide written notification to State's Bridge Inventory Coordinator when a bridge project is complete so the initial inspection can be scheduled. This information must be submitted within 90 days of the issuance of Second Notification pursuant to Oregon Standard Specification 00180.50(g), or Certified Agency's approved equivalent.
- d. Certified Agency or its consultant must email the following information for any bridge project to bridge@odot.state.or.us and to the State's Senior Local Bridge Standards Engineer at Holly.M.WINSTON@odot.state.or.us. This information must be received within ninety (90) days of the issuance of Second Notification pursuant to Oregon Standard Specification 00180.50(g), or Certified Agency's approved equivalent.
 - 1) PDF copy of As-Constructed Drawings (signed, final copy, which contains final construction notes).
 - 2) PDF Copy of the Foundation Report.
 - 3) Pile Records and drill logs (If applicable).
 - 4) Hydraulic Reports (scour analysis report included in this report)
 - 5) Load Rating calculation book: may either be a digital pdf document that is digitally sealed and signed, or a hard copy that is a printed, stamped, bound and labeled. Certified Agency shall provide a stamped report with all electronic files to the State's Senior Local Bridge Standards Engineer when Project is complete.
- e. Certified Agency's approved qualified staff is Joel Howie, a Qualified Agency Project Manager in accordance with the Appendix to Chapter 14 of the Local Agency Guidelines Manual. Any change to Certified Agency's qualified staff is subject to State's review and written approval.
- f. Certified Agency shall submit and ODOT Local Bridge Section will review the consultant services agreement, cost proposal, and the design acceptance package in coordination with State's Regional Local Agency Liaison.

V. Americans with Disabilities Act Compliance:

- 1. **General:** Certified Agency agrees to comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA") as identified in paragraph 1 of the **General Provisions** section of the Local Agency Certification Program Agreement, and to utilize ODOT standards to assess and ensure Project compliance with the ADA.
- 2. **ADA Design Standards and Construction Specifications:** Certified Agency agrees to utilize the following standards to assess and ensure that the Project and all component activities comply with ADA requirements, including ensuring that all plans and proposed alternatives for future design or construction of pedestrian, bicycle, and transit routes and facilities will result in ADA-compliant facilities and improvements. Certified Agency agrees to comply with the design and construction standards and the design exception documentation and approval requirements agreed to in the Standards section of the Local Agency Certification Program Agreement. In addition, with respect to ADA-related design standards, design exception approvals, construction specifications, and inspections, Certified Agency agrees to comply with the following:
 - i. For portions of the Project on or along the Oregon State Highway System (state highway), Certified Agency shall apply ODOT's current ADA-related design standards, construction specifications, and design exception documentation and approval requirements for design, construction, or alteration of Project sidewalks, curb ramps, and pedestrian-activated signals, as applicable to the Project, including using the ODOT Highway Design Manual, ODOT Design

Exception process, ODOT Standard Drawings, ODOT Construction Specifications, and providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form. Certified Agency further agrees to utilize ODOT standards to assess and ensure Project compliance with the ADA, and to document ramp inspections per subsection (c.)(i.) below. Design exceptions on State-owned facilities must be approved by State. For project locations on or along State-owned portions of the National Highway System (“NHS”) design exceptions must be approved by State and/or FHWA.

ii. For portions of the Project not on or along a state highway, including locally-owned portions of the NHS, Certified Agency shall apply its own ADA-compliant design standards, construction specifications, design exception documentation, and approval process, and inspection documentation process, as approved by State and FHWA for use on federally funded projects.

3. **ADA Inspection Forms:** Prior to issuing the Second Notification, per Oregon Standard Specification 00180.50(g) or Certified Agency’s approved equivalent, Certified Agency agrees to submit to State the following:

i. For all curb ramps constructed or altered as part of this Project on or along a state highway, submit completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State’s Regional Local Agency Liaison. The completed form is the required documentation from Certified Agency that each curb ramp meets ODOT standards and is ADA compliant. ODOT’s fillable Curb Ramp Inspection Form 734-5020 and instructions are available at the following website:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>

ii. For all curb ramps not located on or along a state highway, Certified Agency shall complete and keep on file Certified Agency’s ODOT- and FHWA-approved ADA curb ramp inspection form (or other approved document) to show that each Project curb ramp meets Certified Agency’s curb ramp standards and is ADA compliant or conforms to Certified Agency’s approved ADA design exception.

4. **State Inspection:** Certified Agency shall promptly notify ODOT of Project completion and allow State to inspect Project sidewalks, curb ramps, and pedestrian-activated signals, as applicable to the Project, located on or along the state highway prior to acceptance of Project by Certified Agency and prior to release of any Certified Agency contractor.

5. **Work Zone Access:** Certified Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone in accordance with the applicable ODOT standards. For any work zone on or along the state highway, any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian facility. Certified Agency shall also ensure that advance notice of any temporary pedestrian route on or along the state highway is provided in accessible format to the public, people with disabilities, and disability organizations at least ten (10) days prior to the start of construction in accordance with ODOT standards and processes.

6. **Reimbursement:** Unless Certified Agency has an approved design exception, State will only reimburse Certified Agency for work that meets the applicable ODOT standards, regardless of whether the work is on a State-owned or a local agency-owned facility.

7. **On-going Maintenance Obligation:** Certified Agency and Non-certified Agency shall each ensure that any portions of the Project under their respective maintenance jurisdictions are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Certified Agency and Non-certified Agency each ensuring that:

- a. Pedestrian access is maintained as required by the ADA,
 - b. Any complaints received by Certified Agency or Non-certified Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety, shared use path, transit stop, park-and-ride, on-street parking or access issues are promptly evaluated and addressed,
 - c. 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 Certified Agency or abutting property owner pursuant to applicable local code provisions,
 - d. Any future alteration work on the 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
 - e. Applicable permitting and regulatory actions are consistent with ADA requirements.
6. **Survival:** Maintenance obligations in this section shall survive termination of this Agreement.

VI. Term and Termination

1. 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.
2. This Agreement may be terminated by mutual written consent of all Parties.
3. ODOT may terminate this Agreement effective upon delivery of written notice to Certified Agency and Non-certified Agency, or at such later date as may be established by ODOT, under any of the following conditions:
 - a. If Certified Agency or Non-certified Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Certified Agency or Non-certified 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 ODOT fails to correct such failures within ten (10) days or such longer period as ODOT may authorize.
 - c. If Certified Agency or Non-certified Agency fails to provide payment of its share of the cost of the Project.
 - d. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, 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 if ODOT is prohibited from paying for such work from the planned funding source.
4. Any termination of this Agreement shall not extinguish or prejudice any rights or obligations accrued to the Parties prior to termination.
5. The rights and obligations set out in this Agreement shall survive Agreement expiration or termination, as well as any provisions of this Agreement that by their context are intended to survive.

VII. Other Terms and Conditions

1. Contribution:

- 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 a Party with respect to which any other Party may have liability, the notified Party must promptly notify the other Parties in writing of the Third Party Claim and deliver to the other Parties 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 Certified Agency or Non-certified 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 Certified Agency or Non-certified Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Certified Agency and Non-certified 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 Certified Agency and Non-certified 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 Certified Agency or Non-certified Agency is jointly liable with State (or would be if joined in the Third Party Claim), Certified Agency and Non-certified 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 Certified Agency and Non-certified 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 Certified Agency and Non-certified 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. Certified Agency and Non-certified Agency's contribution amount(s) 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.

2. The Parties hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties

shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

3. State certifies and represents that each individual signing this Agreement has been authorized to enter into and execute this Agreement on behalf of State, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind State.
4. Certified Agency certifies and represents that each individual signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Certified Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Certified Agency.
5. Non-certified Agency certifies and represents that each individual signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Non-certified Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Non-certified Agency.
6. 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.
7. This Agreement and the Local Agency Certification Program Agreement No. 30923, as amended and all attached exhibits constitutes the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and the attached Exhibits will control over Project application and documents provided by Certified Agency or Non-certified Agency to ODOT. 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 a Party unless in writing and signed by all 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 a Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Notwithstanding this provision, the Parties may enter into a Right Of Way Services Agreement in furtherance of the Project.

VIII. Contacts

1. Mahasti Hastings, ODOT Region 1 Local Agency Liaison, 123 Flanders Street, Portland, Oregon, 503.731.8595, Mahasti.V.HASTINGS@odot.oregon.gov or assigned designee upon individual's absence, is ODOT's contact for this Agreement. ODOT shall notify the other Party in writing of any contact information changes during the term of this Agreement.
2. Joel Howie, Civil Engineering Supervisor, 503.742.4658, jhowie@clackamas.us or assigned designee upon individual's absence, is Certified Agency's contact for this Agreement. Certified Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.
3. Jacque Betz, City Administrator, 503.656.7957, betz@ci.gladstone.or.us or assigned designee upon individual's absence, Non-certified Agency's contact for this Agreement. Certified Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

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 2021-2024 Statewide Transportation Improvement Program (STIP), (Key #22139) that was adopted by the Oregon Transportation Commission on July 15, 2020 (or subsequently approved by amendment to the STIP).

Certified Agency, Clackamas County,
acting by and through its elected officials

By _____

Date _____

**LEGAL REVIEW APPROVAL (If required
in Agency's process)**

By _____
Certified Agency Legal Counsel

Date _____

Non-certified Agency, City of Gladstone,
acting by and through its elected officials

By Jacque Betz

Title City Administrator, City of Gladstone

Date 12/19/23

**LEGAL REVIEW APPROVAL (If required
in Agency's process)**

By [Signature]
Non-certified Agency Legal Counsel

Date 12/19/23

Certified Agency Contact:

Joel Howie, Civil Engineering Supervisor
Clackamas County
150 Beaver Creek Road
Oregon City, OR 97045
503-742-4658
jhowie@co.clackamas.or.us

Non-certified Agency Contact:

Jacque Betz, City Administrator
City of Gladstone
18505 Portland Avenue
Gladstone, Oregon 97027
betz@ci.gladstone.or.us

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

By _____

Delivery & Operations Division
Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Manager

Date _____

By _____
Certification Program Manager

Date _____

By _____
State Traffic Roadway Engineer

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By EMAIL Andrea Goodwin
Assistant Attorney General (If over
\$150,000)

Date 12/01/23

ODOT Contact:

Mahasti Hastings, Local Agency Liaison
ODOT R1
123 NW Flanders St
Portland, OR 97209
971-264-8253
mahasti.v.hastings@odot.Oregon.gov

Exhibit A – Project Location Map

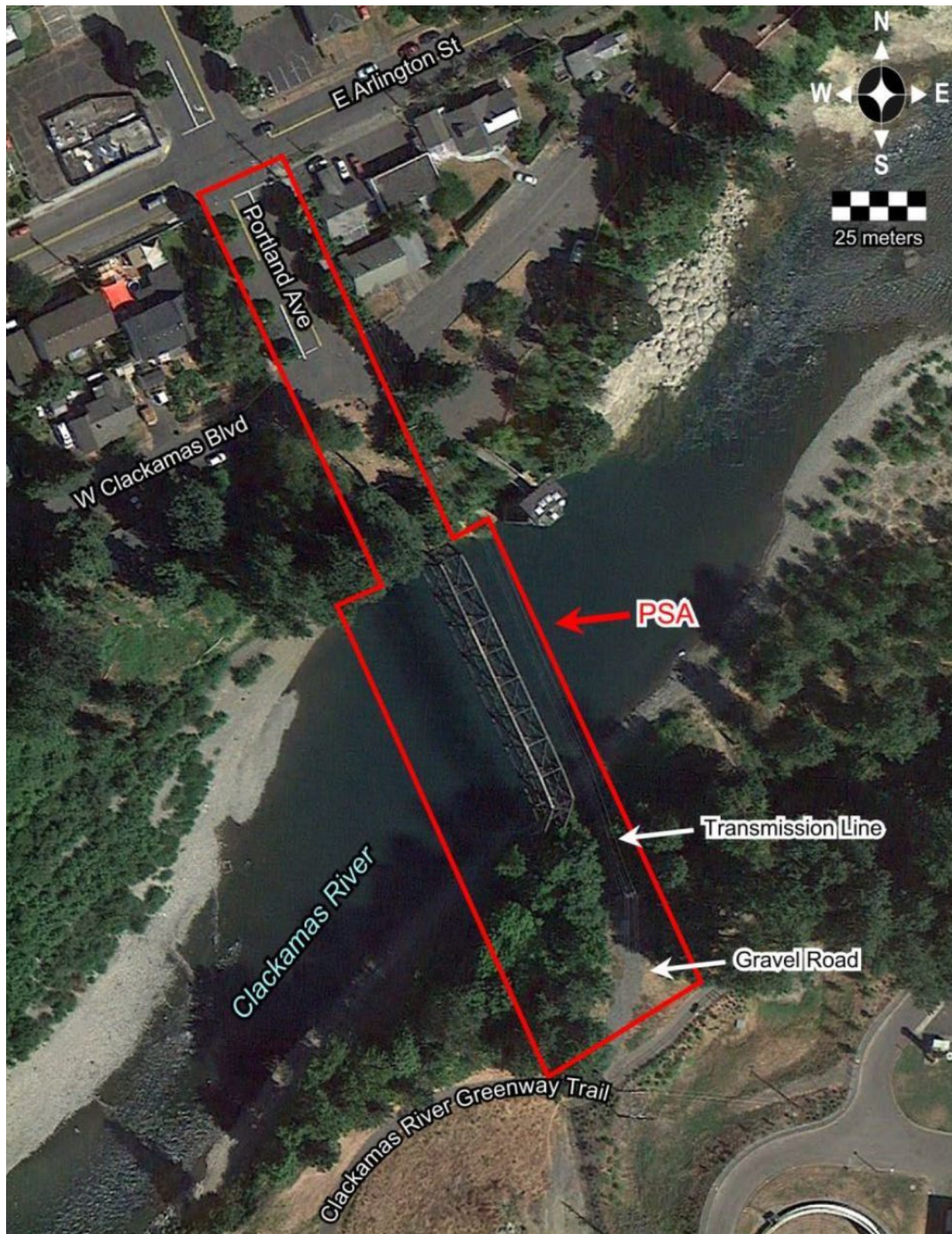


Exhibit B
Federal Funding Accountability and Transparency Act (FFATA)
Subaward Reporting

(For purposes of this Exhibit, references to “your organization” shall mean “Certified Agency” and references to “ODOT” shall mean “State.”)

The Oregon Department of Transportation (ODOT) is required to fulfill a federal requirement for contracting under the Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting System (FSRS). FFATA reporting is a requirement for subawards (also known as subrecipients) of federal awards in excess of \$30,000. Your organization will enter into an agreement with ODOT where the funding source is a federal grant with a subrecipient relationship. Your organization is required to submit the information below to the Oregon Department of Transportation within fourteen calendar days of execution of the Agreement and annually thereafter, if applicable. (See the following page for further details.)

Legal entity name:

Unique Entity Identifier (UEI) number:

Executive compensation

Executive compensation information is also required to determine whether or not the following information must be reported in FSRS:

a. In your organization’s previous fiscal year, did your organization receive 80% or more of its annual gross revenue and \$25,000,000 or more in federal procurement contracts, subcontracts, loans, grants, subgrants, cooperative agreements and federal financial assistance awards subject to the Transparency Act? (Include parent organization, all branches, and all affiliates worldwide.)

Yes No If “yes,” proceed to b. If “no,” no further action is required and submittal of this form is not required.

b. Does the public have access to information about the compensation of the senior executives in your organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?

Yes No If “yes,” provide a link to the SEC: <http://www.sec.gov> where this information is located and return form to the ODOT contact shown at the bottom of this form.

Provide link here:

If “no,” provide compensation information below.

Names and annual compensation amounts of the five most highly compensated executives:

1.	\$
2.	\$
3.	\$
4.	\$
5.	\$

Business entity contact information (person completing form):

Type name	Title	Date
-----------	-------	------

Return completed form to: Program and Funding Services Manager; Oregon Department of Transportation; 555 13th Street NE; Salem, OR 97301; projectfundingcoordinators@odot.oregon.gov

State/Certified Agency/Non-certified Agency
Agreement No.

Background on FFATA requirements

The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The intent of the Act is to empower every American with the ability to hold the government accountable for each spending decision. The end result is to reduce wasteful spending in the government. The FFATA legislation requires information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is www.USASpending.gov.

Definition of compensation

Your organization is considered a subrecipient of federal funds. Unless your organization is exempt, FFATA requires you to report total compensation for each of your five most highly compensated executives for the preceding completed year. Total compensation means the cash and non-cash dollar value earned by the executive during the subrecipient's preceding fiscal year and includes the following: salary and bonus; awards of stock, stock options, and stock appropriation rights; earnings for services under non-equity incentive plans; change in pension value; above-market earnings on deferred compensation which is not tax-qualified; and other compensation as defined in 2 CFR Part 170, Section 170.330(b)(5)(vi).

More detailed information about the FFATA can be found at: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>

If you have any questions on this Exhibit, contact: projectfundingcoordinators@odot.oregon.gov

EXHIBIT C – PROJECT KEY MILESTONES AND SCHEDULE

Agreement No. 73000-00003197

Project Name: Trolley Trail Bridge

1. Project Description

The Project includes Certified Agency completing project development activities for a new pedestrian bridge across the Clackamas River, identifying type, size, and location alternatives for the pedestrian bridge, which will link workers, residents, and tourists in Gladstone and Oregon City. The proposed pedestrian bridge will increase travel options and improve safety and mobility.

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

3. **Quarterly Progress Reports (QPR)** - Agency shall submit quarterly progress reports using QPR Form 734-2850, attached by reference and made a part of this Agreement. QPR's are due by April 5th for the period January through March, July 5th for the period April through June, October 5th for the period July through September, and January 5th for period October through December. When this Agreement is executed within the last month of a quarter, the first quarterly report is due at the end of the first full quarter and will cover the first month of the Agreement and the quarter. QPR's shall be submitted until the State issues the Project Acceptance document.

A sample Quarterly Report from and instructions are available at the following website under "Compliance – Forms & Guidance". <https://www.oregon.gov/ODOT/LocalGov/Pages/Certification-Guidance-Forms.aspx#applications>

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 be changed only by obtaining an approved Project Change Request (PCR) for this Project as described in paragraph 5 below.

Table 1: Project Milestones

	Milestone Description	Obligation Date*
1	Obligation (Federal Authorization) of LBP Funds for the Preliminary Engineering phase of Project	FFY24
2	Obligation (Federal Authorization) of LBP Funds for the Right-of-Way phase of the Project	N/A
4	Obligation (Federal Authorization) of LBP Funds for the Utility phase of Project	N/A
5	Obligation (Federal Authorization) of LBP Funds for the Construction phase of Project	N/A

5. **Project Change Request (PCR) Process** - Agency must obtain approval from State's Bridge STIP Coordinator and State's Bridge Engineer for changes to the Project's scope, schedule, or budget by submitting a PCR, as specified in Paragraphs 5a, 5b, and 5c, below. Agency shall be fully responsible for all costs attributable to changes to the established Project scope, schedule or budget

made prior to an approved PCR. Amendments to this Agreement are required for all approved PCRs.

- a. **Scope** - A PCR is required for any significant change or reduction in the scope of work described in the Project Description (Paragraph 1 of this Exhibit).
- b. **Schedule**— A PCR is required if Agency or State’s Contact anticipates 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).
- c. **Budget** – The Project’s estimated budget is used for determining the level of compensation for completed work. Increases or decreases in the budget which require a STIP amendment also require the submission of a PCR to the State’s Regional Local Agency Liaison.
- d. PCR requests that result in Project cost increases that are equal to or less than twenty (20) percent of the total estimated Project cost or \$200,000, whichever amount is less, can be approved by the State Bridge Engineer. Amendments can be approved and entered into by the State Bridge Engineer, subject to any other approvals required by law.
- e. PCR requests that result in a Project cost increase in excess of twenty (20) percent of the total estimated Project cost or \$200,000, whichever amount is greater, must be approved by the State Bridge Engineer and the Local Agency Bridge Selection Committee with a majority vote.

6. PCR Form - Agency must submit all change requests using PCR Form 734-2851, 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 Bridge Engineer.

The fillable PCR form and its instructions are available at the following web site:
<http://www.oregon.gov/ODOT/Forms/20DOT/2851.doc>

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, (b) withdrawing unused Project funds, and (c) terminating this Agreement as stated in Section VI, Paragraphs No. 3 (a-e) of this Agreement and recovery of payments pursuant to Section II, Paragraph 5 of this Agreement.

From: [Huynh, Hong](#)
To: [Howie, Joel](#)
Subject: FW: K22139_3197 COBO Trolley Trail DRAFT
Date: Monday, November 13, 2023 3:16:29 PM
Attachments: [K22139_3197 FINAL COBO trolley trail_MH 11.9.23_jh-th.docx](#)

Joel: I have reviewed ODOT's edits. I see that they took some of our changes into consideration.

The most significant one that they did not accept is at Section III.1, which puts the County, as the Certified Agency, on the hook via ODOT. ODOT did not make the revision to Non-Certified Agency.

ODOT did keep Section I.5 and III.3 which specify the Non-Certified Agency's responsibility for the remaining costs and to be invoiced by the county. They are helpful risk mitigation terms. They do not address, however, what if the Non-Certified Agency cannot pay the County for whatever reason. In this case, the County remains responsible to ODOT. It is a business decision whether to accept this or move to have a direct IGA with the Non-Certified Agency requiring some other form of financial assurance be provided to the County.

I understand that this arrangement is common, and the County has experience in assessing these risks. So, let me know if I can be of further assistance.

From: Howie, Joel <JHowie@clackamas.us>
Sent: Thursday, November 9, 2023 12:06 PM
To: Huynh, Hong <HHuynh@clackamas.us>
Subject: FW: K22139_3197 COBO Trolley Trail DRAFT

Hi Hong,

This IGA has gone through another iteration and ODOT Certification Program provided feedback on out comments. Looks like some of these comments were incorporated but not all. Please review and let me know if you have any questions or concerns.

Regards,

Joel Howie, P.E.
Civil Engineering Supervisor
503-742-4658

From: SCOTT-MYERS Dessia <Dessia.SCOTT-MYERS@odot.oregon.gov>
Sent: Thursday, November 9, 2023 8:28 AM
To: HASTINGS Mahasti V <Mahasti.V.HASTINGS@odot.oregon.gov>; Howie, Joel <JHowie@clackamas.us>; Jacque Betz <betz@ci.gladstone.or.us>
Cc: Region 1 Agreements <Region1.Agreements@odot.oregon.gov>
Subject: K22139_3197 COBO Trolley Trail DRAFT

Warning: External email. Be cautious opening attachments and

links.

Joel,

Attached is the latest DRAFT agreement. Tiffany Hamilton addressed your comments.

I would like to revise this draft and sent to DOJ for comment.

Is there anything else you'd like to address?

Dessia Scott-Myers (she/her/hers)

Region 1 Agreement Specialist

123 NW Flanders St.

Portland, OR 97209-4012

Cell Phone: 503-706-2077

Email: Dessia.scott-myers@odot.oregon.gov