



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

November 3, 2022

Board of County Commissioners
Clackamas County

Approval of an Intergovernmental Agreement with Oregon Department of Transportation for Right of Way Services for the Courtney Ave Complete Street: River Rd - OR 99E Project. Total value is \$5,661,421. Funding through Federal Regional Flexible Funds Allocation Grant and County Roads Fund. County General Funds are not involved.

Purpose/Outcome	Defines the roles and responsibilities of the County and ODOT relating to acquiring right of way for the Courtney Avenue Complete Street: River Rd – OR 99E Project.
Dollar Amount and Fiscal Impact	Federal Capital Funds (RFFA Grant): up to \$5,079,992 County Road Fund: \$571,429 ODOT Costs Not to exceed: \$10,000
Funding Source	Metro / Federal Capital Grant Funds, via Regional Flexible Funds Allocation Grant and County Road Funds
Duration	Completion of the Project or ten (10) years following the date of final execution of the Supplemental Agreement (February 24, 2032), whichever is sooner.
Previous Board Action/Review	01/05/17: BCC Approval of Master Certification Agreement No. 30923 for County implementation of federally funded projects. 06/13/19: BCC Approval to Apply for a 2022-2024 Regional Flexible Funds (RFFA) Grant 02/24/22: BCC Approval of Supplemental Project Agreement No. 34822. 11/1/22: Discussion item at issues
Strategic Plan Alignment	1. This item supports the DTD Strategic Focus on Safe Roads and Strategic Result of “Travelers on Clackamas County roads will experience safe roads in good condition.” 2. The project will: a. Build a strong infrastructure, and b. Ensure safe, healthy and secure communities.
Counsel Review	Date of Counsel review:10/18/2022; NB
Procurement Review	(Please check yes or no for procurement review. If the answer is “no,” please provide an explanation.) 1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. If no, provide brief explanation: item is an IGA
Contact Person	Carol Hager, Senior Right of Way Agent, 503-742-4674

BACKGROUND: Clackamas County obtained a Regional Flexible Funds Allocation grant from Metro to construct improvements to Courtney Avenue from River Road to OR99E. The improvements include 6-foot-wide separated sidewalks on both sides of Courtney Avenue, 8-foot-wide buffered bike lanes,

intermittent rain gardens for storm water management, street and pedestrian lighting, ADA curb ramps, and crosswalk enhancements. This project will be administered through an existing Local Agency Certification Program Master Agreement No. 30923 with the Oregon Department of Transportation (ODOT) and Supplemental Project Agreement No. 34822.

This Intergovernmental Agreement for Right of Way Services between Clackamas County and ODOT defines the roles and responsibilities of both parties relating to acquiring the right of way for the project. This project uses federal funds and, therefore, requires ODOT certification of the Right of Way Acquisition. The agreement defines ODOT's role to oversight of the right of way services, and limits ODOT's oversight costs to \$10,000.

RECOMMENDATION: Staff recommends approval of the Intergovernmental Agreement with ODOT for Right of Way Services for the Courtney Ave Complete Street: River Rd - OR 99E Project, and authorizes the Chair to sign on behalf of the County.

Respectfully submitted,

Carol Hager

Carol Hager
Sr. Right of Way Agent
Department of Transportation and Development

**INTERGOVERNMENTAL AGREEMENT
FOR RIGHT OF WAY SERVICES**
Courtney Ave Complete Street: River Rd - OR99E

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” or “ODOT”; and CLACKAMAS COUNTY, acting by and through its elected officials, hereinafter referred to as “Agency,” both herein referred to individually as “Party” and collectively as “Parties.”

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 283.110, 366.572 and 366.576, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a Party to the agreement, its officers, or agents have the authority to perform.
2. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. Money so deposited shall be disbursed for the purpose for which it was deposited.
3. **Agency** is responsible for delivering the Courtney Ave Complete Street: River Rd – OR99E project (“Project”) under **Local Agency Certification Program Supplemental Project Agreement Number 34822/73000-00003200** executed on **March 25, 2022** (“Project Agreement”) attached hereto as Exhibit C and by this reference made a part hereof.
4. This Agreement covers a subset of the work set forth in the Project Agreement; therefore, the Project Agreement describes the general scope and funding for the right of way activities carried out under this Agreement. This Agreement further defines the roles and responsibilities of the Parties regarding real property to be used as part of the right of way for the Project, and further refines the details of the scope and funding for these right of way activities
5. As of the Effective Date of this Agreement, there are no local public agencies (“LPAs”) certified to independently administer federal-aid projects for right of way services. State is ultimately responsible for the certification and oversight of all right of way activities under this 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

1. Under such authority, to accomplish the objectives in the Project Agreement, Agency agrees to perform the right of way Services shown in Exhibit A - Special Provisions (“Services”), attached hereto and by this reference made a part hereof.
2. The Parties agree to comply with the terms of this Agreement and the applicable terms of the project agreement in performing the Services. In the event of a direct conflict, the terms of the Project Agreement will control over any conflicting provision in this Agreement.
3. The funding and payment for the Services are set forth in the Project Agreement. This Agreement commits no additional funding for the Services.
4. Agency shall pay the actual costs of oversight and any ROW Services performed by State on the Project using Agency’s matching funds identified in the Project Agreement. Oversight costs will not exceed \$10,000 unless agreed upon by both Parties in writing in a fully executed amendment to this Agreement. If Agency’s matching funds are insufficient to cover State’s actual costs, Agency is responsible for any additional costs per the terms of the Project Agreement and in accordance with the following:
 - i. Expenditures must be charged according to the appropriate Project phase as listed in Exhibit A.
 - ii. Agency agrees to reimburse State for all expenses, including salaries and other personnel expenses (OPE) of State employees performing Services, direct costs, costs of rental equipment used, travel expenses, and per-diem expenditures. Travel expenses shall be reimbursed in accordance with the current Oregon Department of Administrative Services rates.
 - iii. For Services provided under this Agreement, Agency may satisfy its funding requirement partially or entirely through a contribution of real property for the Project. Credit for this contribution will only be allowed if the contribution complies with all requirements of 23 CFR 710.501 and 710.507 and if written approval is obtained from State’s Active Transportation Section, Program and Funding Services Manager and FHWA prior to the start of the right of way phase of the Project and after review for compliance with State’s procedures for donations and contributions.
5. Exhibits Attached and Incorporated.
 - a. This Agreement includes the following exhibits, each of which is attached and incorporated into this Agreement by reference as though fully set forth herein:
 - Exhibit A – Special Provisions
 - Exhibit B – Resolution Exercising The Power of Eminent Domain

- Exhibit C - Local Agency Certification Program Supplemental Project Agreement
Number 34822/73000-00003200

6. This Agreement becomes effective on the date all required signatures are obtained (“Effective Date”). Services shall begin on or after the Effective Date and shall be completed no later than 10 calendar years on which date this Agreement automatically expires unless extended by a fully executed amendment.

7. Both Parties will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended and implemented through Title 49, Part 24, ORS Chapter 35 and the ODOT Right of Way Manual, located at <https://www.oregon.gov/ODOT/ROW/Documents/ROW-Manual.pdf> and incorporated herein by this reference. Each Party will require its contractors and subcontractors, if any, to comply with this provision.

STATE OBLIGATIONS

1. State shall perform the Services assigned to State in Exhibit A.
2. State’s right of way contact person for this Agreement is Damon Gray, Project Manager, 123 NW Flanders St., Portland, OR 97209, 503-731-8425 Damon.Gray@ODOT.state.or.us or assigned designee upon individual’s absence. State shall notify the other Party in writing of any contact changes during the term of this Agreement.

AGENCY OBLIGATIONS

1. Agency shall perform the Services assigned to Agency in Exhibit A. All Services provided by Agency shall comply with ODOT’s Right of Way Manual in effect at the time the Services are performed.
2. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency’s current appropriation or limitation of current budget. Agency is willing and able to finance its share of all costs and expenses incurred under this Agreement.
3. Agency’s performance of Services.
 - a. In performing Services under this Agreement, Agency may utilize qualified individuals from Agency’s staff or the Staff of another local public agency, as described in the ODOT Right of Way Manual and approved by the State’s Region Right of Way Office. Agency may also request State staff perform Services under this Agreement, as further described in Exhibit A.
 - b. Agency may also request State act as the lead contracting agency and deliver a consultant contract on behalf of Agency, using consultants from State’s Full Service

Architectural and Engineering (A&E) Price Agreement 2 Tier Selection Process, as applicable. Tier 2 procurements must be requisitioned through State's Local Agency Liaison (LAL) with solicitation process administered by State's Procurement Office. Forms and procedures for Tier 2 process are located at: <https://www.oregon.gov/ODOT/Business/Procurement/FS/tier2guide.doc>

- c. Agency's needed right of way services may be performed by utilizing appraiser Services procured by Agency from State's Qualified Appraiser List (online at: https://www.oregon.gov/ODOT/ROW/Documents/Appraisal_Qualified-Consultant-List.pdf) or other right of way related Services procured by Agency from any source of qualified contractors or consultants.
 - d. Contractor selections under Agency Obligations, Paragraphs 3.c above may be based on price alone, price and qualifications, or qualifications alone followed by negotiation. **Federally funded procurements** carried out by Agency for right of way Services must be conducted under State's certification program for consultant selection and must comply with requirements in the [LPA A&E Requirements Guide](#), and must use the State's standard [A&E Contract Template for LPAs](#) which may be modified to include State-approved provisions required by Agency. **State and locally funded procurements** carried out by Agency must comply with applicable State rules and statutes for A&E "Related Services" (Agency may use its own contract document). The LPA A&E Requirements Guide and A&E Contract Template are available at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/LPA.aspx>.
4. If Agency intends to use Agency staff, staff of another local public agency, consultants (except for consultants on State's Qualified Appraiser List), or contractors to perform Services under this Agreement, Agency must receive prior written approval from State's Region Right of Way Office.
 5. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Oregon Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260 ("Claims"), to the extent such Claims are caused, or alleged to be caused, by the negligent or willful acts or omissions of 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.
 6. Any such indemnification shall also provide that neither the Agency's contractor or subcontractor nor any attorney engaged by Agency's contractor or 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 Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.

7. Agency shall perform all 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 Services under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
8. When Agency is performing Services under this Agreement, Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone in accordance with the terms of the Project Agreement.
9. Agency certifies and represents that all individuals signing this Agreement have 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.
10. 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 this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
11. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the Services under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 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.
12. Agency shall upon State's request provide copies of any required documentation related to the Services as described in Exhibit A.
13. Agency's right of way contact person for this Agreement is Joel Howie, 150 Beaver Creek Rd. 503-742-4658, JHowie@co.clackamas.or.us., 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.

GENERAL PROVISIONS:

1. Termination.
 - a. This Agreement may be terminated by mutual written consent of both Parties.
 - b. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing, and delivered by certified mail or in person, under any of the following conditions:
 - i. If either Party fails to provide Services called for by this Agreement within the time specified herein or any extension thereof.
 - ii. If either Party fails to perform any of the other provisions of this Agreement or so fails to pursue the Services as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice fails to correct such failures within ten (10) days or such longer period as may be authorized.
 - c. 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:
 - i. 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.
 - ii. If Agency fails to provide payment of its share of the cost of the Project.
 - iii. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Services under this Agreement is prohibited or State is prohibited from paying for such Services from the planned funding source.
 - d. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
2. All employers that employ subject workers who perform Services under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Both Parties shall ensure that each of its subcontractors complies with these requirements.
3. 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.

4. 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.
5. 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.
6. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
7. Agency, 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.

8. Agency and State are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or will be construed to give or provide, any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
9. 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.
10. 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.
11. 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.
12. Survival. All rights and obligations of the Parties under this Agreement will cease upon termination or expiration of this Agreement, other than the rights and obligations of the parties that by their nature or express terms survive termination or expiration 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.

Signature Page to Follow

Clackamas County, by and through its elected officials

By _____

Date _____

By _____

Date _____

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

By _____
Agency's Counsel

Date _____

Agency Contact:

Joel Howie
150 Beaver Creek Rd.
503-742-4658
JHowie@co.clackamas.or.us

State Contact:

Damon Gray Project Manager
123 NW Flanders St Portland, OR 97209
503-731-8425
Damon.Gray@ODOT.state.or.us

STATE OF OREGON, by and through its Department of Transportation

By _____
State Right of Way Manager

Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Right of Way Manager

Date _____

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By N/A
Assistant Attorney General

Date _____

Exhibit A
SPECIAL PROVISIONS
Right of Way Services

A. Preliminary Phase: State or Agency shall perform the Services outlined in this Section A during the preliminary right of way phase of the Project as identified below. When Services listed under this Section A are performed by Agency, Agency shall charge the Services as preliminary engineering expenditures.

1. Agency shall prepare preliminary cost estimates.
2. Agency shall make preliminary contacts with property owners.
3. Agency shall gather and prepare data for environmental documents.
4. Agency shall develop access and approach road list.
5. Agency shall help prepare field location and project data as defined in the Project Agreement.
6. Title. Agency shall provide preliminary title reports, if State determines they are needed, before negotiations for acquisition commence.
7. Legal Descriptions:
 - a. Agency shall prepare sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.
 - b. Agency shall prepare construction plans and cross-section information for the Project.
 - c. Agency shall write legal descriptions and prepare right of way maps. If the Agency acquires any right of way on a State highway, the property descriptions and right of way maps shall be based upon centerline stationing and shall be prepared in accordance with the current ODOT [Right of Way Engineering Manual](https://www.oregon.gov/ODOT/ETA/Documents_Geometronics/ROW-Eng-Manual.pdf), located at https://www.oregon.gov/ODOT/ETA/Documents_Geometronics/ROW-Eng-Manual.pdf and incorporated herein by reference. The preliminary and final versions of the property descriptions and right of way maps must be reviewed and approved by the State.
 - d. Agency shall specify the degree of title to be acquired (e.g., fee, easement), which must be determined in accordance with the current ODOT Right of Way Manual.
8. Hazmat:
 - a. Agency shall conduct a Level 1 Initial Site Assessment, according to State Guidance, within Project limits to detect presence of hazardous materials on any property purchase, excavation or disturbance of structures, as early in the Project

design as possible, but at a minimum prior to property acquisition or approved design.

- b. Agency shall conduct a Level 2 Preliminary Site Investigation, according to ODOT's Hazmat Program Procedures Guidebook and other applicable requirements of the Oregon Department of Environmental Quality, of sufficient scope to confirm the presence of contamination, determine impacts to properties and develop special provisions and cost estimates, if the Level 1 Initial Site Assessment indicates the potential presence of contamination that could impact the properties. If contamination is found, Agency will promptly disclose the severity and extent of contamination to State and present a recommendation for remediation to State as set forth in ODOT's Right of Way Manual Section 6.330 paragraph 2.
- c. Agency shall attempt to have the property owner undertake any necessary remediation at the property owner's expense. Other options are set forth in ODOT's Right of Way Manual section 6.330 paragraph 2.b. If Agency undertakes any remediation on the site, Agency will be solely responsible for any liability that may arise from such remediation.

B. Right of Way Phase: State or Agency shall perform the Services outlined in this Section B during the acquisition right of way phase of the Project as identified below. When Services listed under this Section B are performed by Agency, Agency shall charge the Services as right of way expenditures.

1. Right of Way Acquisition:

- a. Right of Way Acquisition is the process of obtaining property necessary for the Project, from negotiation to possession of the property, using various sub-processes including, but not limited to, appraisal, negotiation, condemnation, relocation, title closing, and project related property management related to the potential exercise of eminent domain. The basic requirements for carrying out right of way acquisition for the Project are set forth in this Section B.
- b. When performing the right of way acquisition Services, Agency shall provide State with a quarterly status report of the Services.
- c. Title to properties acquired shall be in the name of Clackamas County.
- d. The Agency shall adopt a resolution of intention and determination of necessity in accordance with ORS 35.235 and ORS 35.610, authorizing acquisition and condemnation ("Resolution"). Agency's Resolution shall be substantially in the form of Exhibit B, attached hereto and by this reference made a part hereof.

2. Real Property and Title Insurance:

- a. Agency shall determine sufficiency of title (taking subject to). If the Agency acquires any right of way on a State highway, sufficiency of title (taking subject to) shall be

determined in accordance with the current ODOT Right of Way Manual, and after obtaining State's concurrence. Agency shall clear any encumbrances necessary to conform to these requirements, obtain Title Insurance policies as required and provide the State copies of any title policies for the properties acquired.

3. Appraisal:

- a. Agency shall conduct the valuation process of properties to be acquired. If hazardous materials are located on the property, Agency shall use section 6.330, paragraph 2 in ODOT's Right of Way Manual.
- b. Agency shall perform the appraisal reviews to set just compensation.
- c. Agency shall recommend just compensation, based upon a review of the valuation by qualified personnel.

4. Negotiations:

- a. Agency shall tender all monetary offers to landowners in writing at the compensation shown in the appraisal review. Agency shall have sole authority to negotiate and make all settlement offers. When settlements for property acquisitions are made for more or less than the approved just compensation amount, a justification is required. Said statement will include the consideration of any property trades, construction obligations and zoning or permit concessions. If Agency performs this function, it will provide State with all pertinent letters, negotiation records and obligations incurred during the acquisition process.
- b. State and Agency shall determine a date for certification of right of way and agree to cosign the State's Right of Way Certification form. State and Agency agree possession of all right of way is complete prior to advertising for any construction contract, unless otherwise agreed to by Agency and State.
- c. Agency agrees to file all Recommendations for Condemnation (Form 734-3311 and accompanying documents) with the court at least seventy (70) days prior to the right of way certification date if negotiations have not been successful on those properties.

5. Relocation:

- a. Agency shall perform any relocation assistance, make replacement housing computations, and do all things as required by applicable state and federal law necessary to relocate any persons displaced by the Project.
- b. Agency shall determine all relocation benefits each property owner is eligible for and shall make all relocation and moving payments.
- c. Agency shall facilitate the relocation appeal process.

C. Closing Phase

1. Agency shall close all transactions. This includes drawing of deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and making all payments. When State is providing Services as a consultant for the Agency, State shall submit all signed Final Report packets, information required by the Uniform Act, and agreements to the Agency.
2. Upon acceptance by Agency the conveyance documents shall be recorded.

D. Property Management

1. Agency shall take possession of all the acquired properties. There shall be no encroachments of buildings or other private improvements allowed upon the State highway right of way.
2. Agency shall dispose of all improvements and excess land consistent with applicable state, federal, and local laws and policies.
3. Agency shall conduct asbestos, lead paint and other hazardous materials surveys for all structures that will be demolished, renovated or otherwise disturbed. Asbestos surveys must be conducted by an AHERA (asbestos hazard emergency response act) certified inspector.

E. Condemnation

1. Agency may offer mediation if the Agency and property owners have reached an impasse.
2. Agency shall perform all administrative functions in preparation of the condemnation process, such as preparing final offer and complaint letters.
3. Agency shall perform all legal and litigation Services related to the condemnation process. Agency agrees to pass a resolution substantially in the form attached hereto as Exhibit B specifically identifying the property being acquired.

F. Transfer of Right of Way to State

When right of way is being acquired in Agency's name, Agency agrees to transfer and State agrees to accept all right of way acquired on the State highway. Agency shall identify the existence of any hazardous materials on or in the property prior to the transfer. The specific method of conveyance will be determined by the Agency and the State at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. Agency agrees to provide the State all information and file documentation the State deems necessary to integrate the right of way into the State's highway system. At a minimum, this includes: copies of all recorded conveyance documents used to vest title in the name of the Agency during the right of way acquisition process, and the Agency's Final Report or Summary Report for each acquisition file that reflects the terms of the acquisition and all agreements with the property owner(s).

G. Transfer of Right of Way to Agency

When right of way is being acquired in State's name, State agrees to transfer and Agency agrees to accept, at no additional cost to the State, all right of way acquired on the Agency's facility, subject to concurrence from the Oregon Transportation Commission and FHWA at the time of the transfer. State shall identify the existence of any hazardous materials on or in the property prior to the transfer. The specific method of conveyance will be determined by the State and the Agency at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. If requested, State agrees to provide Agency information and file documentation associated with the transfer.

EXHIBIT B
RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN
Right of Way Services

(Instructions, please delete before completing form)Regions: This portion of the document is unlocked. The LPA should block and copy to incorporate this language into their own standard resolution form **OR** fill in an "attested to" line or signature line at the bottom and use this form.

WHEREAS (insert title of agency) may exercise the power of eminent domain pursuant to (Agency's charter) (statutes conferring authority) and the Law of the State of Oregon generally, when the exercise of such power is deemed necessary by the (insert title of agency)'s governing body to accomplish public purposes for which (insert title of agency) has responsibility;

WHEREAS (insert title of agency) has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public;

WHEREAS the project or projects known as (insert Project name) have been planned in accordance with appropriate engineering standards for the construction, maintenance or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, travel safeguarded; and

WHEREAS to accomplish the project or projects set forth above it is necessary to acquire the interests in the property described in "Exhibit A" attached to this Resolution and, by this reference incorporated herein; now, therefore,

BE IT HEREBY RESOLVED by (Agency's Council, Commission, or Board)

1. The foregoing statements of authority and need are, in fact, the case. The project or projects for which the property is required and is being acquired are necessary in the public interest, and the same have been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury;
2. The power of eminent domain is hereby exercised with respect to each of the interests in property described in Exhibit A to this Resolution. Each is acquired subject to payment of just compensation and subject to procedural requirements of Oregon law;
3. ([Insert title of Agency]'s staff and [attorney/counsel] --OR-- (The Oregon Department of Transportation and the Attorney General) are authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any court to decide matters determined above or determinable by the (Agency's Council, Commission, or Board).
4. (insert title of agency) expressly reserves its jurisdiction to determine the necessity or propriety of any acquisition, its quantity, quality, or locality, and to change or abandon any acquisition.

DATED this ____ day of _____, 20__

[insert signature blocks here]

Attachments: Exhibit A to Agency Resolution Exercising the Power of Eminent Domain –
Property Description

Exhibit A to Agency Resolution Exercising the Power of Eminent Domain – Property Description

[insert property description]

Exhibit C
PROJECT AGREEMENT

Starts on next page

**Oregon Department of Transportation
LOCAL AGENCY CERTIFICATION PROGRAM
Supplemental Project Agreement No. 34822/73000-00003200
Project Name: Courtney Ave Complete Street: River Rd – OR99E**

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

RECITALS

1. By the authority granted in Local Agency Certification Program Agreement No. 30923, executed on January 30, 2017 (Local Agency Certification Program Agreement) incorporated herein and by this reference made a part hereof, State may enter into this Supplemental Project Agreement with Agency for the performance of work on this improvement project; The Certification Program allows State to certify a Local Agency's procedures and delegates authority to the certified Local Agency to administer federal-aid projects.
2. Certification status information as of the date of execution of this Agreement:
 - a. Agency is fully certified in the following functional areas:
 - consultant selection (formal and informal processes)
 - design (excluding bridge design)
 - "advertise, bid, and award" for construction contracts
 - construction contract administration
 - b. Agency is conditionally certified in the following functional areas:
 - consultant selection (direct appoint process)
 - c. Agency is not currently seeking certification in the following functional area(s):
 - bridge design
 - d. The project described in this Agreement may be used as one of the required test projects described in Local Agency Certification Program Agreement that Certified Agency must perform in order to obtain full certification in the following functional area:
 - consultant selection (direct appoint process)

Agency/State

Agreement No. 34822/73000-00003200

- e. 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.
3. OR99E (McLoughlin Blvd), is a part of the State highway system under the jurisdiction and control of the Oregon Transportation Commission. Courtney Avenue is a part of Agency's street system under the jurisdiction and control of Agency.
4. The Project was selected as a part of the Regional Flexible Fund Allocation (RFFA) award program and is eligible under the Congestion Mitigation and Air Quality Improvement program. "Project" is defined under Terms of Agreement, paragraph 1 of this Agreement. The RFFA funding award letter is attached, marked "Exhibit C," and by this reference made a part hereof.

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

TERMS OF AGREEMENT

1. Under such authority, State and Agency agree to Agency delivering the "Courtney Ave Complete Street: River Rd – OR99E" project, hereinafter referred to as "Project." The Project includes constructing 6-foot-wide separated sidewalks on both sides of Courtney Avenue; 8-foot-wide buffered bike lanes; intermittent rain gardens for storm water management; street and pedestrian lighting; curb ramps and crosswalk enhancements on Courtney Avenue from River Road to OR99E. The location of the Project is shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.
2. The total Project cost for all phases of the project is estimated at \$5,661,420.13, which is subject to change. Federal funds for this Project shall be limited to \$5,079,992. 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. Any unused federal or state funds obligated to this Project will not be paid out by State, and will not be available for use by Agency for this Agreement or any other projects. "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. Agency will report the final cost of each phase of the Project at the completion of each phase, as well as the Total Project Cost at the end of the Project, to the ODOT Regional Local Agency Liaison.
3. Federal funds under this Agreement are provided under Title 23, United States Code.
4. If State performs work on the Project, State will provide Agency with a preliminary estimate for the cost of State's work. Prior to the start of each Project phase, State will provide an updated estimate of State's costs from that phase to Agency. Such phases generally consist of Preliminary Engineering, Right of Way, Utility, and

Construction. Agency understands that State's costs are estimates only and agrees to reimburse State for actual cost incurred per the Terms of this Agreement.

5. Agency shall make all payments for work performed on the Project, including all construction costs, and invoice State for one-hundred (100%) percent of its costs. State shall reimburse approved Agency invoices at the pro-rated federal share of 89.73 percent. All costs beyond the federal and state reimbursement and any non-participating costs are the responsibility of the Agency, and will not be reimbursed by State. State shall invoice Federal Highway Administration (FHWA) and Agency for work provided as part of the Project. Agency agrees to reimburse State for work performed for the project upon receipt of invoice. Failure of Agency to make such payments to State may result in withholding of Agency's proportional allocation of State Highway Trust Funds until such costs are paid. Agency understands that State's costs are estimates only and agrees to reimburse State for the actual amount expended.
6. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project.
7. This Agreement is subject to the terms and provisions of the Local Agency Certification Program Agreement.
8. Information required by 2 CFR 200.331(a)(1) shall be contained in the USDOT FHWA Federal Aid Project Agreement for this Project, a copy of which shall be provided by State to Agency with the Notice to Proceed.
9. Indirect Cost Rate.
 - a. As required by 2 CFR 200.331(a)(4), the indirect cost rate(s) for this project at the time the agreement is written is 36.07 percent (36.07%). This rate may change during the term of this Agreement upon notice to ODOT and ODOT's subsequent written approval.
 - b. If the approved rate changes during the term of this Agreement, Agency shall invoice ODOT using the current indirect cost rates for the project on file with ODOT at the time the work is performed. If Agency does not have approved indirect cost rates on file with ODOT at the time the work is performed, Agency shall invoice ODOT using a zero percent (0%) rate.
10. Agency Work on this Project:
 - a. As applicable to this Project, Agency shall perform the following functional area(s) in which Agency is fully certified and as authorized by the Local Agency Certification Program Agreement:
 - consultant selection (formal and informal processes)
 - design (excluding bridge design)

- “advertise, bid, and award” for construction contracts
 - construction contract administration
- b. Agency agrees that if it hires a consultant for this Project using the direct appoint process, and this is the Agency’s first time following the direct appoint process, the Project must be used as a test project. 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 Agency’s test project(s) or program documents identifies the need for corrective action.
11. RESERVED.
12. State 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 and scope of work approved by FHWA will be considered nonparticipating and paid for at Agency expense.
13. State’s Regional Local Agency Liaison or designee will provide Agency with a written notice to proceed for each phase of the Project when FHWA approval has been secured and funds are available for expenditure on this Project.
14. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.
15. 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.
16. RESERVED.
17. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency’s proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.
18. State 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.
19. State and Agency Agree that the useful life of the Project is twenty (20) years.
20. By signing this Agreement, 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, 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, Agency shall report the total compensation and names of its top five executives to State. Agency shall report said information to State within 14 calendar days of execution of this Agreement and annually thereafter, utilizing the FFATA form attached hereto as Exhibit "B".

21. Americans with Disabilities Act Compliance:

- a. General: 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.
- b. ADA Design Standards, Construction Specifications, and Inspections: 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, Agency agrees to comply with the following:
 - i. For portions of the Project on or along the Oregon State Highway System (state highway), 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. 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, 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.

- c. ADA Inspection Forms: Prior to issuing the Second Notification, per Oregon Standard Specification 00180.50(g) or Agency's approved equivalent, 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 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, Agency shall complete and keep on file Agency's ODOT- and FHWA-approved ADA curb ramp inspection form (or other approved document) to show that each Project curb ramp meets Agency's curb ramp standards and is ADA compliant or conforms to Agency's approved ADA design exception.
- d. State inspection: Agency shall promptly notify State 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 a state highway prior to acceptance of Project by Agency and prior to release of any Agency contractor.
- e. Work Zone Access: Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone in accordance with the applicable ODOT or Agency Standards, as set forth in subsections (a) through (c) above. 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. 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 10 days prior to the start of construction in accordance with ODOT standards and processes.
- f. Reimbursement: Unless Agency has an approved design exception, State will only reimburse Agency for work that meets the applicable ODOT or Agency standards as set forth in subsections (a) through (c) above, regardless of whether the work is on a State-owned or an Agency-owned facility.
- g. On-going Maintenance Obligation: 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,

Agency/State

Agreement No. 34822/73000-00003200

- ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
 - 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.
- h. Survival: Maintenance obligations in this section shall survive termination of this Agreement.
22. 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. Agency shall also include this requirement in all contracts and ensure that contractors include the requirement in their subcontracts.
23. Agency shall contact the State's District 2B Office prior to commencement of work to determine if any permits are needed to occupy State right-of-way. Agency agrees to comply with all provisions of any State-issued permits to "Occupy or Perform Operations Upon a State Highway" and to also obtain Highway Approach Permits from State's District 2B Office for all public roads and private properties adjacent to the highway, if they are needed, according to Oregon Administrative Rules (OAR) Chapter 734, Division 51. Agency agrees to comply with all provisions of required permits, and shall require its developers, contractors, subcontractors, or consultants performing such work to comply with such provisions.
24. State grants Agency or others designated by Agency and permitted by State District Permitting Office, permission to access State right of way for the purpose of maintaining Project-related landscaping and sidewalks. In lieu of State district permits, State hereby grants Agency or others designated by Agency the right to enter and occupy State right of way for the purpose of routine maintenance of all Project related landscaping and sidewalk improvements. Agency shall contact State's Regional Liaison to determine if a permit is required from State's District Office for all other activities beyond the listed routine maintenance prior to commencing activities.
25. Pursuant to OAR 734-020-0430, Agency shall 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.

26. Agency and State shall enter into a separate traffic signal agreement to cover obligations for any traffic signal being installed on a State Highway.
27. Agency, or its contractor's, electrical inspectors shall possess a current State Certified Traffic Signal Inspector certificate, in order to inspect electrical installations on State highways. The State District Permitting Office shall verify compliance with this requirement prior to construction. The permit fee also covers the State electrician's supplemental inspection.
28. State's Region Electrical Crew shall, at Project expense, perform the signal equipment environmental testing. State Signal Technicians shall, at Project expense, perform the signal field testing and turn on. Traffic signal timing shall be the responsibility of State, unless there is an agreement that specifically allows Agency to perform that function. State retains the right to review the traffic signal timing for signals on state highways, or those which State maintains, and reserves the right to request adjustments when needed. In cases where the Agency modifies timing to add railroad or emergency vehicle preemption, bus priority, or other changes that affect vehicle or pedestrian clearances, or operation of the state highway, such modifications shall be reported to State's Region Traffic Engineer. State's Region Traffic Engineer will notify the local jurisdiction whenever timing changes that affect the operation of local street connections to the state highway are scheduled. All modifications shall follow guidelines set forth in the current *Manual on Uniform Traffic Control Devices*, and the current *ODOT State Traffic Signal Policy and Guidelines*.
29. Agency shall, upon completion of the Project and at its own expense, maintain the pavement surrounding the vehicle detector loops installed in the Agency street in such a manner as to provide adequate protection for said detector loops. Failure to do so may result in State requiring Agency to repair or replace the damaged loops at Agency expense. Future Agency roadwork activities involving the detector loops may also result in the same State requirements. Agency shall also adequately maintain the pavement markings and signing installed in accordance with the approved signal plan sheets for the signal installation or current *Manual on Uniform Traffic Control Devices* standards.
30. State shall, upon completion of the Project and at its own expense, maintain the pavement surrounding the vehicle detector loops installed in the State highway in such a manner as to provide adequate protection for said detector loops. State shall also adequately maintain the pavement markings and signing installed on the State highway in accordance with current State standards.
31. Agency shall ensure that all Project work and maintenance activities involving pedestrian-activated signals comply with the ADA and Terms of Agreement Paragraph 21.
32. In addition to the third party beneficiary, indemnification, and insurance requirements included in the Local Agency Certification Program Agreement, Agency shall include

the following stipulations in the Special Provisions of any contract for this Project where Agency is contracting work on or along a state highway:

- a. Contractor and Agency shall name State as a third party beneficiary of the resulting contract.
- b. To the fullest extent permitted by law, and except to the extent otherwise void under ORS 30.140, Contractor shall indemnify, defend and hold harmless Agency, State and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, sub-contractors, or agents under the resulting contract.
- c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal and advertising injury liability, products and completed operations, and contractual liability coverage. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 \$2,000,000 \$5,000,000 per occurrence for each job site or location. Each annual aggregate limit shall not be less than \$1,000,000 \$2,000,000 \$4,000,000 10,000,000.
- d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles for bodily injury and property. Coverage shall be written with a combined single limit per occurrence of not less than \$1,000,000. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability).
- e. Additional Insured Endorsement. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees as Additional Insured but only with respect to the Contractor's activities to be performed under the resulting contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
- f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of the resulting contract and shall be grounds for immediate termination of the resulting contract and this Agreement.
- g. Agency shall require its contractor(s) and/or subcontractor(s) as appropriate to acquire construction and performance bonding covering State's interests where

Project construction affects State Property. Agency will ensure that State is included as either a dual obligee or a named additional obligee under the performance and payment bonds. Proof of said bonding will be provided to State by the Agency. If Agency fails to meet the requirements of this paragraph or the underlying agreement conditions, including all incorporated State and federal laws, rules and regulations and costs are incurred by State because of it, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for those costs.

33. Traffic signal, illumination poles and foundations installed on state highways shall conform to State's standards, pursuant to State's Traffic Structures Design Manual and Geotechnical Design Manual.

Behind the Curb improvements

34. Agency shall be responsible for any maintenance of behind the curb improvements including areas located within highway right-of-way. Such improvements shall be maintained at the same level as are similar facilities owned by State. Agency may require the adjacent property owners to fund or perform maintenance of the behind the curb improvements. Agency shall remain responsible for compliance with the terms of this Agreement, and responsible for the performance of such work, even when maintenance is performed by Agency contractors or property owners, or if right of way behind the curb is partly or in whole State right of way.
35. Agency shall maintain the landscaping and irrigation to be installed for all improvements behind the curbs or roadway. Maintenance along and on highway shall include replacement of dead or dying plants and trees, removal of litter, removal of weeds or weed control and tree trimming to maintain a 17 foot clear zone in the travel lane, leaf removal and irrigation for healthy sustainability of said landscaping.
36. Agency shall be responsible for 100 percent of water and power costs associated with the landscape and irrigation installed as part of improvements behind the curbs or roadway. Agency shall ensure that the water and power companies send water and power bills directly to Agency.

Agency Using Decorative Embellishment on a State Highway

37. Agency shall be responsible for the cost of decorative embellishment on any signal or separate illumination poles and shall be responsible for any decorative embellishment maintenance on such poles upon completion of Agency Projects. Any decorative lighting shall be the responsibility of the Agency for both electrical costs and maintenance. Such illumination shall be served by a separate system from the signal system. Any such additional illumination on the highway must be reviewed by the State Office of the State Traffic Engineer. State District Office shall coordinate all such reviews. Decorative poles and foundations installed on state highways must conform to State standards, as per ODOT Technical Bulletin TR07-06(B).

State Right of Way Obligation for Project on State Property

38. Except as provided in Terms of Agreement Paragraphs 34-37 above, State shall, at its own expense, maintain and operate the portions of the Project on State right of way.
39. To the fullest extent permitted by law, and except to the extent otherwise void under ORS 30.140, 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 (hereinafter, 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 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 from the negligent or willful acts or omissions of State, be indemnified for all Claims caused or alleged to be caused by the contractor or subcontractor.
40. Any such indemnification shall also provide that neither Agency's contractor nor subcontractor nor any attorney engaged by Agency's contractor or 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 Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
41. This Agreement may be terminated by mutual written consent of both Parties.
42. 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 if State is prohibited from paying for such work from the planned funding source.
43. Any termination of this Agreement shall not extinguish or prejudice any rights or obligations accrued to the Parties prior to termination.
44. Notwithstanding anything in this Agreement or implied to the contrary, the rights and obligations set out in Terms of Agreement, paragraphs 6-7, 12, 17, 18, 21.g-h, 23, 24, 27-31, 33-38, 43, and 51 of this Agreement shall survive Agreement expiration or termination, as well as any provisions of this Agreement that by their context are intended to survive.
45. Agency, as a recipient of federal funds, pursuant to this Agreement with State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires State to return funds to the FHWA, hold harmless and indemnify State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount 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.
46. State and Agency 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.
47. Each Party grants to the other Party, or others designated by State or Agency, as the case may be, the right to enter onto the other Party's right of way for the performance of duties as set forth in this Agreement.
48. Agency certifies and represents that each individual 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.
49. 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.

50. 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.
51. This Agreement and the Local Agency Certification Program (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 Agency to State. 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 or Agency to enforce any provision of this Agreement shall not constitute a waiver by State 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.
52. State's Regional Local Agency Liaison for this Agreement is Mahasti Hastings, Local Agency Liaison, 123 NW Flanders Street, Portland, OR 97209, 503-731-8595, mahasti.v.hastings@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.
53. Agency's Project Liaison for this Agreement is Robert Knorr, Project Manager, 150 Beaver Creek Road, Oregon City, OR 97045, 503-742-4680, rknorr@clackamas.us, 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.

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 #22131) that was adopted by the Oregon Transportation Commission on July 15, 2020 (or subsequently approved by amendment to the STIP).

SIGNATURE PAGE TO FOLLOW

Agency/State
Agreement No. 34822/73000-00003200

CLACKAMAS COUNTY, acting by and
through its elected officials

By 

Title Chair

Date 2/24/22

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

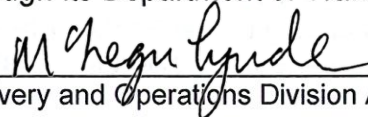
By _____

Date _____

Agency Contact:

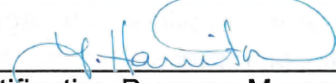
Joel Howie, Civil Engineering Supervisor
150 Beavercreek Road
Oregon City, OR 97045
503-742-4658
jhowie@clackamas.us

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

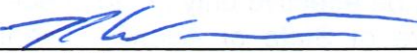
By 
Delivery and Operations Division Administrator

Date 03/25/2022

APPROVAL RECOMMENDED

By 
Certification Program Manager

Date 3/23/2022

By 
Region 1 Manager

Date 3-23-2022

By Michael Kimlinger Mar 21 2022 10:13 AM
State Traffic Roadway Engineer

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Jennifer O'Brien via email 1/11/22

State's Regional Local Agency Liaison:

Mahasti Hastings, Local Agency Liaison
123 NW Flanders St
Portland, OR 97209
503.731.8595
mahasti.v.hastings@odot.state.or.us

Exhibit A – Project Location Map

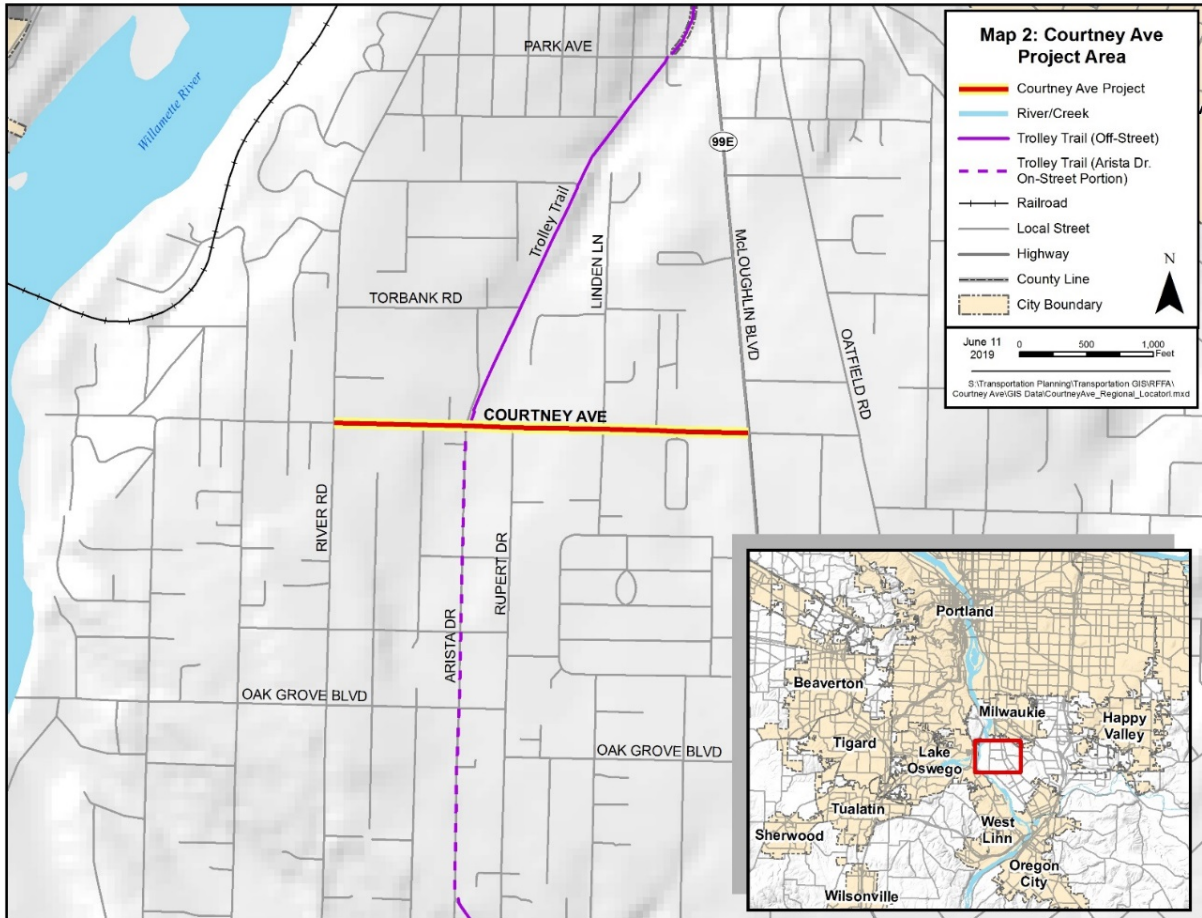


EXHIBIT B
Federal Funding Accountability and Transparency Act (FFATA)
Subaward Reporting

(For purposes of this Exhibit, references to “your organization” shall mean “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 \$25,000,000. 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: _____

Data Universal Number System (DUNS) 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: Alice Bibler, Program and Funding Services Manager; Oregon Department of Transportation; 555 13th Street NE; Salem, OR 97301; Alice.Bibler@odot.state.or.us

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, contact:

Alice Bibler
Program and Funding Services Manager
Oregon Department of Transportation
555 13th Street NE
Salem, OR 97301
Alice.Bibler@odot.state.or.us
Telephone: 503-986-3880

EXHIBIT C – RFFA FUNDING AWARD LETTER



RE: Courtney Avenue Bike/Ped Improvements, RFFA Funding Award Conditions and Next Steps Dear Scott Hoelscher, Clackamas County

Congratulations! Metro Council recently adopted Resolution 20-5063, which formally allocated funding to projects through the 2022-2024 Regional Flexible Funds Allocation (RFFA). This letter will serve as Metro's official notice of our intent to provide your agency with funding for the referenced project through the RFFA. We are looking forward to working with you over the next several years to develop and/or construct the referenced project.

The amount of RFFA funding awarded is \$5,079,992.

Prior to this funding being available for use, there are several steps in the process leading to a notice to proceed and the ability to spend the RFFA funds. Additionally, there may be conditions specific to your project to which your agency will be required to adhere. This letter will provide details on these areas.

Please note that you will not be able to request reimbursement for any expenditures of staff, consultant time, or any other project-related expenses until an intergovernmental funding agreement (IGA) with ODOT is signed by both parties and you have received an official notice to proceed. Expenditures related to this project occurring prior to an official notice to proceed date will not be eligible for reimbursement.

Next Steps

Metro staff will contact you to set up a project kick-off meeting with your agency and ODOT liaison staff. We would like you, as the project applicant, to attend the meeting along with the local project lead delivery staff. Please begin internal agency conversations to arrange for those people who are anticipated to lead delivery of the project to be available to coordinate with us. We have copied staff we anticipate may be leading project delivery for your agency, but please confirm who should be involved in that role at this time.

At this meeting, several topics will be covered:

- Federal aid delivery process and role of the local agency (delivery by a certified local agency or ODOT led delivery). Includes the roles and responsibilities of the local agency, ODOT, and Metro.
- Local agency match and staff commitments. Discuss the budgeted availability of local agency staff to complete the project delivery process, consistent with the delivery schedule. Arrange for deposit or availability of local match funding needed.

State/ Agency


Agreement No. 34822/73000-00003200

- Completion of project Prospectus, detailed scope, budget, and delivery schedule.
- Pre-EA match submission to start project development process.
- IGA for project development to begin the Planning or Preliminary Engineering phase.
- Use of Consultants - Local agency will discuss with ODOT the needs for consultant services and steps needed to acquire services.
- Project monitoring and milestone progress reporting to Metro and ODOT.

Attached is a project check list that will be reviewed at the meeting, including the draft programming for your project. The programming is based on the cost estimate provided with your application and a schedule based on our assessment of a realistic project delivery schedule. We will discuss potential adjustments to the programming based on our conversations about project delivery schedule, local and ODOT staff capacity, and funding considerations. Metro staff will review the conditions of funding approval to ensure they are accounted for in the project scope, schedule and agreements.

We look forward to working with you on the delivery of your project. With the COVID-19 precautions in place, we may propose on-line meeting options. Please expect to hear from us soon regarding potential meeting dates.

Sincerely,



Ted Leybold

Metro Planning Manager

Cc:

Bob Knorr, Clackamas County Joel

Howie, Clackamas County

Mahasti Hastings, Local Area Liaison, Oregon Department of Transportation

Sam Hunaidi, Region 1 Project Services Manager, Oregon Department of Transportation

COVER SHEET

- New Agreement/Contract
- Amendment/Change/Extension to _____
- Other _____

Originating County Department: _____

Other party to contract/agreement: _____

Description:

After recording please return to: **X** _____

- County Admin
- Procurement

If applicable, complete the following: _____

Board Agenda Date/Item Number: _____