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Oregon Department of Transportation
LOCAL AGENCY CERTIFICATION PROGRAM AGREEMENT

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Program Agreement to Follow**

A167-G030424

Oregon Department of Transportation
LOCAL AGENCY CERTIFICATION PROGRAM AGREEMENT

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 CITY OF SALEM, acting by and through its elected officials, hereinafter referred to as "City" or "Certified Agency," both herein referred to individually as "Party" and collectively as "Parties."

I. RECITALS

1. By the authority granted in Oregon Revised Statutes (ORS) 190.110 and 283.110, a state agency may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that the state agency, or its officers or agents, have the authority to perform.
2. By the authority granted in Oregon Revised Statutes (ORS) 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities, and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. Under the authority of Title 23 United States Code (USC), the Federal Highway Administration (FHWA) is accountable for all programs under the Federal-Aid Highway Program; and ODOT is responsible for project-level activities associated with Title 23 USC, Section 106. ODOT, pursuant to the Oregon Department of Transportation Federal-Aid Highway Program Stewardship and Oversight Agreement (Stewardship Agreement), is responsible for reviews and approvals associated with the planning, design, construction, award, and final inspection of federal-aid projects with certain specified exceptions. ODOT, pursuant to Title 23 Code of Federal Regulations (CFR) Part 1.11, Title 23 CFR Part 635.105, and the Stewardship Agreement, may further delegate certain federal-aid project authorities to well-qualified and suitably equipped local public agencies (LPAs). ODOT retains oversight responsibility under federal law and regulations for all delegated activities.
4. Through its FHWA-approved Local Agency Certification Program (Certification Program), ODOT "certifies" certain LPA procedures and delegates authority to certified LPAs to administer specified federal-aid project activities. Certification Program requirements and procedures are set out in ODOT's current *Local Agency Guidelines for Certified Local Public Agencies* (LAG Manual), as amended and published by the ODOT Certification Program Office, which is incorporated herein by this reference. Certification Program and federal-aid project expectations between ODOT and each certified LPA is formalized through the execution of a Local Agency Certification Program Agreement and related Supplemental Project Authorizations.
5. City has been recognized as a certified LPA to deliver federal-aid projects through the Certification Program. City has met the requirements to be certified in the functional areas of consultant contracting, design (excluding bridge design), and construction contracting as described in Section

IV below.

6. Since March 9, 2016, City has been delivering federal-aid projects through the Certification Program under Local Agency Certification Agreement No. 29113. Any existing Supplemental Project Agreements entered into under Agreement No. 29113 shall remain in full force and effect under the authority of Agreement No. 29113, and be governed by its terms, until such time as the Supplemental Project Agreement or Agreement No. 29113 expires or is terminated according to its terms.
7. This Local Agency Certification Program Agreement No. 73000-00029503, hereinafter referred to as “Program Agreement”, sets out the Parties’ Certification Program obligations and the terms by which ODOT authorizes City to deliver federal-aid projects as a certified agency. Any new Supplemental Project Authorizations executed after the effective date of this Program Agreement shall be entered into under the authority of this Program Agreement, and are not subject to the terms of Agreement No. 29113.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties that for the federal-aid projects covered by this Program Agreement, the following provisions apply:

II. ABBREVIATIONS

As used in this Agreement, abbreviations shall mean as follows:

AASHTO	American Association of State Highway and Transportation Officials
A&E	Architecture and Engineering
ADA	Americans with Disabilities Act
BOLI	Oregon Bureau of Labor and Industries
CFR	Code of Federal Regulations
COBO	“Certified on behalf of” (Certified Agency delivering a project on behalf of a Non-certified Agency)
DBE	Disadvantaged Business Enterprise
EEO	Equal Employment Opportunity
FAPG	Federal-Aid Policy Guide
FHWA	Federal Highway Administration
LAG	Local Agency Guidelines for Certified Local Public Agencies
LPA	Local Public Agency
LRFD	Load and Resistance Factor Design (bridge)
LRFR	Load and Resistance Factor Rating (bridge)
MTIP	MPO Transportation Improvement Program
MPO	Metropolitan Planning Organization
MUTCD	Manual on Uniform Traffic Control Devices
NHS	National Highway System
OAR	Oregon Administrative Rules
ODOT	Oregon Department of Transportation
OJT	On-the-Job Training
OMB	Office of Management and Budget
ORS	Oregon Revised Statutes

OTC	Oregon Transportation Commission
OTP	Oregon Transportation Plan
PS&E	Plans, Specifications, and Estimates (including schedule)
PSK	Personal Services Contract
STIP	Statewide Transportation Improvement Program
USC	United States Code
USDOT	United States Department of Transportation

III. EXHIBITS ATTACHED AND INCORPORATED, ORDER OF PRECEDENCE

1. This Program Agreement includes the following exhibits and attachments, each of which is attached and fully incorporated into this Program Agreement by this reference:
 - Exhibit A – Supplemental Project Authorization (unexecuted form)
 - Attachment – Project Vicinity Map/Project Location List/Statement of Work (placeholder)
 - Attachment – Special Provisions: State Highway Work
 - Exhibit B – Standard Provisions: Federal Transparency Act Subaward Reporting
 - Exhibit C – Standard Provisions: Contract Insurance
 - Exhibit D – Standard Provisions: Americans with Disabilities Act Compliance
 - Exhibit E – Standard Provisions: Local Bridge Projects
 - Exhibit F – Standard Provisions: Right of Way Services
2. Unless a different order is required by law, this Program Agreement shall be interpreted in the following order of precedence:
 - a. Fully executed Exhibit A (including all amendments, if any) and any attachments or special provisions.
 - b. Standard Provisions Exhibit B, Exhibit C, and Exhibit D, which apply to all federal-aid projects, and which may be modified by Special Provision in a Supplemental Project Authorization.
 - c. Standard Provisions Exhibit E and Exhibit F, which apply if indicated in the Supplemental Project Authorization and which may be modified by Special Provision in a Supplemental Project Authorization.
 - d. This Program Agreement (including all amendments, if any), less all other exhibits, attachments, and other documents and information incorporated into this Program Agreement.
 - e. Any documents and information incorporated into this Program Agreement by reference.
3. In the event of a conflict between two or more of the documents comprising this Program Agreement, the language in the document with the highest precedence shall control. This provision survives expiration or termination of the Program Agreement.

IV. CERTIFICATION TERMS AND CONDITIONS

1. Coordination

The Parties shall each assign a liaison to coordinate activities under this Program Agreement and ensure that the interests of both Parties are considered during all projects. ODOT's Regional Local Agency Liaison and/or assigned ODOT Project Contact(s) (both hereafter referred to as "ODOT

Project Contact”) will provide program advice and support, in consultation with the Certification Program Office, as needed for individual projects. Certified Agency’s “Certification Program Liaison” shall be a full-time employee of Certified Agency and designated as the single point of contact to the Certification Program.

2. Scope of Certification

- a. The Parties agree that City is certified by ODOT to perform work on federal-aid projects in the following functional areas of the Certification Program (hereinafter “Certified Areas”):
 - Consultant contracting: small purchase, intermediate, informal, and formal selection procedures as appropriate to A&E and non-A&E procurements and within Certified Agency’s procurement limits; consultant contract administration
 - Design (excluding bridge design)
 - Construction contracting: advertisement, bid, and award procedures; construction contract administration
- b. Certified Agency understands and agrees that while federal-aid projects may originate from one or more of Certified Agency’s other divisions or departments, only Certified Agency’s Public Works Department and Certified Agency’s Certification Program Liaison, as described in Paragraph IV.1 above, shall provide quality control and oversight, exercise Certified Agency’s final approval authority for all federal-aid projects authorized under this Program Agreement, and ensure that the guidance, rules, regulations, and processes outlined herein are followed.
- c. Certified Agency is authorized to:
 - i. Perform work in Certified Areas on federal-aid projects off the NHS and on projects that are on locally owned and maintained NHS facilities as agreed to in a Supplemental Project Authorization entered into under this Program Agreement.
 - ii. Perform work on federal-aid projects developing transportation plans, facility plans, and other related planning activities, subject to the terms of the applicable Supplemental Project Authorization.
 - iii. Request to perform work on or along the State Highway System or other State-owned facility, including on or along a State-owned NHS facility, on a per project basis. If approved, all work is subject to the terms of the applicable Supplemental Project Authorization and the project-specific requirements set out in the Attachment: Special Provisions: State Highway Work.
 - iv. Request to perform work outside the Certified Areas described in Paragraph IV.2.a above on a per project basis. If approved, all work is subject to the terms of the applicable Supplemental Project Authorization.
- d. Certification is approved by ODOT’s Certification Program Manager with the advice and recommendation of the applicable ODOT Region Manager and other ODOT technical resource managers. At any time and in ODOT’s sole discretion, or upon Certified Agency’s request, ODOT may suspend or rescind certification, as described in Section B of the LAG Manual. The suspension or rescission may apply to any or all of Certified Agency’s Certified Areas or projects authorized under the Certification Program.

- e. Certified Agency represents that it has the means to provide, and agrees to maintain, adequate expertise and support staff to perform the functions in the Certified Areas and other work authorized on federal-aid projects.
 - i. If Certified Agency does not possess adequate expertise or support staff in-house, the support staff may include consultants as approved by ODOT, or ODOT may agree to provide the necessary expertise and perform certain functions, to be charged to the applicable project. However, Certified Agency's "Person in Responsible Charge" assigned to each project shall be a full-time employee of the Certified Agency (see 23 CFR 635.105, Supervising Agency).
 - ii. Certified Agency shall document its program and project approval authorities by position title on Certified LPA Approval Authority Form ([734-5084](#)), and its key staff by name and title on Certified LPA Key Qualified Staff Form ([734-5091](#)). Certified Agency agrees that the named positions and individuals have authority to bind Certified Agency as documented on the identified forms. Certified Agency agrees that any individual who signs a Supplemental Project Authorization, contract, quality assurance, or other project document on behalf of Certified Agency shall do so in accordance with Certified Agency's most current forms 734-5084 and 734-5091.
- f. Certified Agency shall ensure current forms 734-5084 and 734-5091 are submitted to ODOT within fourteen (14) calendar days of execution of this Program Agreement. Certified Agency shall notify ODOT of any changes to its approval authorities or key staff as soon as practicable and shall submit updates on the applicable form. Forms must be submitted to the ODOT Certification Program Manager with a copy to the ODOT Project Contact.

3. Certification Program Policy and Guidance

- a. Certified Agency shall comply with the following Certification Program policy and guidance documents, which are incorporated herein by this reference:
 - i. LAG Manual: The program and project requirements of the Certification Program as set out in the version of the LAG Manual in place at the time the work is performed, unless otherwise approved in writing by ODOT. This includes but is not limited to the applicable programs, policies, procedures, manuals, guidelines, standards, approval authorities, forms, and checklists referenced therein.
 - ii. Certification Program bulletins: All applicable Certification Program bulletins and other correspondence received by Certified LPAs identifying updates to the Certification Program requirements.
- b. Certified Agency shall ensure adequate key staff training and shall maintain, update, and submit for review and approval or acceptance, as required by ODOT, Certified Agency's "foundational documents" as described in Section B of the LAG Manual. Required foundational documents for Certified Agency include the following:
 - i. Quality Program Plan for Federal-aid Project Delivery (including a plan to ensure and maintain staff training)
 - ii. Title VI Program and Plan

- iii. ADA Title II Transition Plan
- iv. Construction contracting templates (general conditions, bid book, and related contract documents)
- v. Consultant contracting templates (developed and maintained by ODOT, except as otherwise approved by ODOT)
- c. Certified Agency shall cooperate fully with the Certification Program Compliance and Oversight Plan set out in Section B of the LAG Manual, including self-audits and program and project reviews. If deficiencies are identified by ODOT in Certified Agency's program or project documentation or procedures, Certified Agency agrees to participate in the corrective action process set out in Section B of the LAG Manual, as required by ODOT.
- d. Certified Agency is responsible for monitoring and complying with updates to ODOT contracting templates, technical guidance, manuals, bulletins, memoranda, directives, and other notifications as applicable to each project authorized under this Program Agreement. The Parties acknowledge that due to changing technology and ongoing process improvement efforts, the titles and numbers assigned to forms may be changed during the term of this Program Agreement. Where provisions within this Program Agreement refer to a particular form title or number, the intent is to apply the relevant form title(s), form number(s), or process(es) currently in effect at the time the work is performed as requested by ODOT through updates to the materials listed in this subsection.
- e. Certification Program guidance, forms, and the LAG Manual are available on the ODOT Local Government page: <https://www.oregon.gov/odot/localgov/pages/index.aspx>.

V. PROJECTS

Certified Agency agrees to assume responsibility for the overall delivery and daily management of federal-aid projects authorized under, and subject to the limitations specified in, this Program Agreement. However, the Parties understand and agree that pursuant to the Stewardship Agreement, ODOT remains responsible and accountable to FHWA for Certified Agency's compliance with all applicable federal laws and requirements. As such, if requested by Certified Agency, or if deemed necessary by ODOT to meet its obligations to FHWA, ODOT may act for Certified Agency in matters pertaining to projects. Prior to taking such action, ODOT will confer with Certified Agency concerning actions necessary to meet federal obligations. Certified Agency grants ODOT or others designated by ODOT the right to enter onto Certified Agency right of way for performance of duties set forth in this Program Agreement and all Supplemental Project Authorizations issued hereunder.

1. Demonstration Projects

- a. Certified agencies are required to demonstrate competency in each Certified Area. As a condition of certification, Certified Agency has presented its processes, procedures, and documentation to the Certification Program Office in accordance with the demonstration project (formerly "test project") processes set out in the LAG Manual.
- b. For each activity, the Certification Program Office, in consultation with the applicable ODOT technical resource(s), has conducted a compliance review.

- c. Given Certified Agency's successful completion of the demonstration projects for each Certified Area, and written approval by ODOT, Certified Agency is certified to administer future federal-aid projects, in accordance with this Program Agreement.

2. Supplemental Project Authorizations

- a. Through this Program Agreement and on a project-by-project basis, ODOT authorizes Certified Agency to deliver federal-aid projects, including performing project work in Certified Areas and other related work necessary to deliver the approved project, subject to ODOT's oversight and retained responsibilities.
- b. **Certified Agency Projects:** Certified Agency's authority to deliver a specific federal-aid project shall be written in the form of a Supplemental Project Authorization, substantially in the form of Exhibit A, except as provided in subsection c of this Paragraph. Each Supplemental Project Authorization must be within the scope of this Program Agreement.
- c. **Certified Agency delivery of a project on behalf of a non-certified agency:** With prior approval from the ODOT Certification Program Manager and the ODOT Project Contact, Certified Agency may deliver a federal-aid project on behalf of a non-certified LPA. This arrangement is known as "certified on behalf of" or "COBO" project delivery. Certified Agency's authority to deliver a federal-aid project on behalf of a non-certified agency shall be written in the form of a modified Supplemental Project Authorization, Exhibit A that includes special provisions specifying the terms of agreement, including party obligations and cost responsibilities between ODOT, Certified Agency, and the non-certified LPA(s).
- d. Each Supplemental Project Authorization issued hereunder shall at a minimum meet the following requirements:
 - i. Be signed by all Parties before any reimbursable work begins on the federal-aid project. At least one (1) of Certified Agency's approval authorities, as described in Paragraph IV.2.e above, is required to sign the Supplemental Project Authorization.
 - ii. Document project-specific details, including project name, the name and title of Certified Agency's Person in Responsible Charge ("Certified Agency Project Contact"), project location, description of work, project schedule, and funding sources.
 - iii. Include a description of services or contributions to be provided by ODOT, Certified Agency, and others, as applicable.
 - iv. Indicate whether the project is a Demonstration Project as described in Paragraph V.1 above and, if so, describe each activity to be evaluated.
 - v. If the project receives federal funding through Title 23 Code of Federal Regulations (CFR), be for a project that is consistent with the Regional Transportation Plan and the Statewide Transportation Improvement Program (STIP) and, if awarded by a Metropolitan Planning Organization (MPO), be for a project that appears in the MPO's Transportation Improvement Program (MTIP).

3. Funding

- a. Certified Agency acknowledges that federal funds are provided for projects under this Program Agreement under Title 23, United States Code, and agrees to meet all applicable federal requirements.
- b. ODOT considers Certified Agency a subrecipient of the federal funds that Certified Agency receives as reimbursement under the Supplemental Project Authorizations issued under this Program Agreement, using criteria in 2 CFR 200.331. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.
- c. "Total Project Cost" means the cost to complete the entire project identified in the Supplemental Project Authorization, and includes any federal funds, state funds, required local matching funds, and any other funds. The Total Project Cost is subject to change. Federal and State funds for a project shall be limited to the amount shown in the Funding Details section of the Project Details Table in the Supplemental Project Authorization that authorizes the project. Unless otherwise expressly agreed to in the Supplemental Project Authorization, 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 required match percentage for all eligible costs.
- d. ODOT will submit a separate written project funding request to FHWA requesting approval of federal-aid participation for each project phase applicable to a project. Any work performed prior to FHWA's approval of each funding request or outside the period of performance will be considered non-participating and shall be paid by Certified Agency. Certified Agency may not proceed on any activity in which federal-aid participation is desired or expected until such written notice to proceed for each corresponding phase is obtained by ODOT. ODOT will notify Certified Agency in writing after authorization to proceed has been received from FHWA. All work and records of such work shall be in conformance with FHWA rules and regulations. The federal funding for each project and project phase is contingent upon approval by FHWA.
- e. Certified Agency shall make all payments for work performed on a Project, including all contractor costs, and invoice ODOT for one hundred percent (100%) of its costs. ODOT will reimburse approved Certified Agency invoices at the pro-rated federal share shown in the Funding Details section of the Project Details Table in the Supplemental Project Authorization for the project. All costs beyond the federal and state reimbursement and any non-participating costs are the responsibility of Certified Agency and will not be reimbursed by ODOT unless otherwise agreed to by special provision in an individual Supplemental Project Authorization.
- f. ODOT may exercise reasonable administrative discretion in applying sources of funds to a project. Federal funds shall be applied toward individual project costs at the current federal-aid matching ratio, unless otherwise agreed to and allowed by law. Certified Agency shall be responsible for the entire match amount for the federal funds and any portion of the individual projects which are not covered by federal funding, unless otherwise agreed to and specified in the Supplemental Project Authorization. Certified Agency must obtain written approval from the ODOT Program and Funding Services Manager prior to using in-kind contributions, which must come from a third party, rather than cash to satisfy all or

part of the matching funds requirement for a project.

- g. If ODOT performs work on an individual project, ODOT will provide Certified Agency with a preliminary cost estimate for ODOT's work with costs broken out by phase (ODOT Cost Estimate). The initial ODOT Cost Estimate will be provided to Certified Agency prior to execution of the Supplemental Project Authorization. Prior to the start of each project phase, ODOT will provide an updated ODOT Cost Estimate for that phase to Certified Agency. ODOT will make every effort to perform services within the most recent ODOT Cost Estimate. However, Certified Agency understands that ODOT's costs are estimates only and agrees to reimburse ODOT for the actual amount expended, subject to the limitations of this paragraph. If ODOT anticipates that ODOT's costs will exceed the most recent ODOT Cost Estimate, ODOT will notify Certified Agency as soon as possible. Additionally, prior to ODOT rendering services in excess of ten percent (10%) over the most recent ODOT Cost Estimate for the project overall or for any given phase, ODOT will obtain Certified Agency's written approval. Certified Agency shall not unreasonably withhold approval and shall provide a response to ODOT within thirty (30) calendar days unless another time frame is agreed to by the Parties.
- h. ODOT will invoice FHWA and Certified Agency for work provided as part of the project. Certified Agency agrees to reimburse ODOT for work performed for the project upon receipt of ODOT's 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.
- i. Certified Agency shall pay one hundred percent (100%) of the cost of any item in which FHWA will not participate (non-participating costs). If Certified Agency has not repaid non-participating costs, future allocations of federal funds or allocations of State Highway Trust Funds to Certified Agency may be withheld by ODOT to pay the non-participating costs. If ODOT approves Certified Agency processes, procedures, or contract administration outside the LAG Manual that result in items being declared non-participating by FHWA, responsibility for such items deemed non-participating will be negotiated between Certified Agency and ODOT.
- j. **Funding Responsibilities:** Certified Agency understands that it is expected to secure funding sufficient to fully fund the scope of work described in each Supplemental Project Authorization, including contingencies and accounting for federal-aid project requirements. Certified Agency acknowledges that changes to federal-aid projects in the STIP affect ODOT's overall ability to meet its responsibility to FHWA to timely obligate federal transportation funds allocated to the State (including funds allocated for local agency projects). It may also negatively impact the State's ability to meet federal requirements for obligation of funds and the amount of future federal allocations.
 - i. Should Certified Agency determine it may be unable to cover its share of costs to complete a Supplemental Project Authorization, Certified Agency shall notify ODOT as soon as possible, but no later than June 30th of the year in which the next phase of the project is due to be obligated. Certified Agency agrees to consult with the ODOT Project Contact, applicable ODOT Region Manager, and program manager(s) of the program(s)

providing funding for the project. Certified Agency agrees to diligently pursue securing the additional funding needed to complete the project.

- ii. Certified Agency acknowledges changes to the amount of funding of a federal project in the STIP, including cancellation, are subject to the appropriate project change request and amendment processes and may require approval of the Oregon Transportation Commission (OTC) (or approved delegate), or appropriate MPO, and FHWA. Guidance on STIP amendment requirements is available at:
<https://www.oregon.gov/odot/stip/pages/current-future-stip.aspx>.
- iii. If Certified Agency fails to meet its project funding responsibilities, resulting in project cancellation, or if ODOT undertakes Certified Agency's funding responsibilities to avoid project cancellation, ODOT may restrict Certified Agency's consideration for future funding awarded through ODOT and/or decline to enter into a future Supplemental Project Authorization or other project agreement if, in ODOT's estimation, Certified Agency has not demonstrated that the future project is adequately scoped and funded to complete the project as programmed in the STIP.
- iv. For additional provisions regarding cancellation of a project, see Paragraph V.4 below. Also see termination of a project, Paragraph VII.13.

4. Cancellation of Project

- a. Cancellation of a project is subject to the funding provisions in Paragraph V.3 above.
- b. Certified Agency shall provide no less than ninety (90) calendar days written notification of intent to cancel a project unless otherwise agreed to by ODOT.
- c. If Certified Agency makes a written request for the cancellation of a federal-aid project, Certified Agency shall bear one hundred percent (100%) of all costs as of the date of cancellation. If ODOT was the sole cause of the cancellation, ODOT will bear one hundred percent (100%) of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of ODOT or Certified Agency and if repayment of federal funds is required, Certified Agency shall bear all costs, whether incurred by ODOT or Certified Agency, either directly or through contract services, except that ODOT will bear any ODOT administrative costs (including ODOT's staff time, legal costs, and expenses) related to cancellation of the project.
- d. Project cancellation is subject to ODOT approval. ODOT will not unreasonably withhold approval of cancellation. However, there may be circumstances, including federal funding considerations or minimum federal responsibility requirements, which could cause cancellation to be denied.
- e. For termination of a project, see Paragraph VII.13.

5. Invoices for Project Progress Billing

- a. Certified Agency shall present invoices for one hundred percent (100%) of actual costs incurred by Certified Agency on behalf of each project directly to the ODOT Project Contact for review, approval, and reimbursement to Certified Agency. Costs will be reimbursed

consistent with federal funding provisions and the Supplemental Project Authorization for the project.

- b. Each of Certified Agency's invoices must include all of the following: a) invoice number; b) vendor number; c) "remit to" name and address; d) this Program Agreement number 73000-00029503; e) ODOT's Expenditure Account number; f) ODOT's Supplemental Project Authorization number; g) the project name in the Supplemental Project Authorization; and h) itemization and explanation for all expenditures for which reimbursement is claimed, including supporting documents and information as needed to verify the federal eligibility of costs incurred during the billing cycle.
- c. In order to be paid, each invoice received from Certified Agency must obtain approval from the ODOT Project Contact. Certified Agency's actual costs eligible for federal-aid or ODOT participation shall be those allowable under the provisions of the Federal-Aid Policy Guide (FAPG), Title 23 CFR Parts 1, 140 and 710.
- d. Upon receipt of an invoice, which meets the above invoice requirements, from Certified Agency that requests expedited payment of construction contract expenditures ("Expedited Construction Invoice"), ODOT will reimburse Certified Agency within ten (10) business days of the date of receipt.
- e. Certified Agency shall submit invoices for project progress billings **at least quarterly** but not more frequently than monthly, based on actual expenditures to date. Partial billing invoices (progress payment requests) shall be submitted to ODOT within ninety (90) calendar days from the date that costs are expended. Final invoices shall be submitted to ODOT for processing within forty-five (45) calendar days from the end of each funding phase identified in the Supplemental Project Authorization. Invoices submitted more than forty-five (45) calendar days after the period of performance (defined in 2 CFR 200.1) may not be eligible for reimbursement by FHWA.
- f. When calculating the period of performance, the Parties agree to include at least ninety (90) calendar days for Certified Agency's closeout processes at the end of the project.
- g. ODOT will submit all claims received from Certified Agency for federal-aid participation to FHWA and compile accurate cost accounting records. ODOT will pay Certified Agency all reimbursable costs on each project subject to the funding limitations in Paragraph V.3 above. Certified Agency shall provide ODOT with a statement of costs to date upon written request by ODOT. When the actual total cost of each project has been computed, Certified Agency shall furnish ODOT with an itemized statement of final costs.
- h. Using the Quarterly Report Form 734-5034 referenced in Paragraph V.6 below, or other format as required by project special provision or updated Certification Program guidance, Certified Agency shall report the final cost of each phase of each project to the ODOT Project Contact at the completion of each phase, as well as the Total Project Cost at the end of the project.

6. Quarterly Reporting

Certified Agency shall submit contracting data and financial progress reports for each project covered under this Program Agreement as follows and as required by any project special provisions:

- a. Agency shall submit quarterly progress reports using the Certified Local Public Agency Quarterly Report Form [734-5034](#) (Quarterly Report), included by reference and made a part of this Agreement.
- b. Quarterly Reports are due by April 20th for the period January through March, July 20th for the period April through June, October 20th for the period July through September, and January 20th for the period October through December. Quarterly Reports shall be submitted in accordance with the Quarterly Report form instructions and with the terms of the Supplemental Project Authorization until ODOT issues the project acceptance document.
- c. A sample Quarterly Report form and instructions are available at the following website under "Compliance – Forms & Guidance":
<https://www.oregon.gov/ODOT/LocalGov/Pages/Certification-Guidance-Forms.aspx#applications>.

7. Repayment

- a. Certified Agency shall refund to ODOT all federal funds paid to Certified Agency, if FHWA requests such funds be returned by ODOT because Certified Agency has not followed a requirement, process, rule, or procedure outlined in Certified Agency's procedures, this Program Agreement, federal law, or a Supplemental Project Authorization. Certified Agency shall refund such federal funds to ODOT within thirty (30) calendar days of ODOT's written notification. If Certified Agency does not repay ODOT within thirty (30) calendar days, ODOT may withhold Certified Agency's proportionate share of State Highway Trust Fund distribution until repayment has been made in full.
- b. Projects for acquisition of right-of-way: Upon ODOT's written request and as directed by FHWA in accordance with 23 CFR 630.112(c), Certified Agency shall reimburse ODOT for federal-aid funds distributed to Certified Agency for the acquisition of right-of-way if actual construction of a road or transportation improvement on this right-of-way is not undertaken by the close of the twentieth (federal) fiscal year following the fiscal year in which the project is authorized. Certified Agency may submit to the ODOT Project Contact a written request for a time extension beyond the 20-year limit, and ODOT will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
- c. This Paragraph V.7 shall survive expiration or termination of this Program Agreement.

8. Indirect Cost Rate(s)

- a. Certified Agency shall invoice ODOT using the current, approved indirect cost rate(s) on file with ODOT.
- b. As required by 2 CFR 200.332(a)(4), the indirect cost rate(s) for Certified Agency in effect at the time a Supplemental Project Authorization is written will be identified in the Project Details Table of the Supplemental Project Authorization. The rate(s) may change during the

term of the Supplemental Project Authorization upon notice to ODOT and ODOT's subsequent written approval.

- c. If the approved rate(s) change(s) during the term of a Supplemental Project Authorization, Certified 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 Certified Agency does not have an approved indirect cost rate(s) on file with ODOT at the time the work is performed, Certified Agency shall invoice ODOT using a zero percent (0%) rate.

9. Transportation Planning, Project Development, and Administration Standards

- a. Certified Agency agrees that each project authorized under this Program Agreement, including but not limited to project plans, contract specifications, and estimate documents, shall, when applicable, comply with the version of each of the following in place at the time the work is performed:
 - i. Certified Agency's Public Improvement Works Design Standards
 - ii. General Conditions for Construction of City of Salem Federal Aid Transportation Projects.
 - iii. All AASHTO standards, policies, and guidelines
 - iv. *Oregon Standard Specifications for Construction (Oregon Department of Transportation and APWA Oregon Chapter)* and Certified Agency's amendments as approved by ODOT, unless otherwise approved in writing by the ODOT Certification Program Manager
 - v. *Manual on Uniform Traffic Control Devices (MUTCD)* and Oregon Supplements
 - vi. *Oregon Temporary Traffic Control Handbook*
 - vii. *National Association of City Transportation Officials (NACTO) Urban Bikeway Design Guide* (In the event of a conflict between this guide and the MUTCD and Oregon Supplements, the MUTCD and Oregon Supplements shall take precedence.)
 - viii. Transportation Research Board *Highway Capacity Manual*
 - ix. Local Agency Certification Procedures found in the LAG Manual
 - x. Applicable project development and delivery standards, guidance, processes, forms, and checklists set out in the LAG Manual
 - xi. Applicable contracting procedures found in the LAG Manual, LPA A&E Requirements Guide, LPA Non-A&E PSK Requirements Guide, Title 23 and Title 49 USC, and Title 23 and Title 49 CFR
 - xii. FHWA *Contract Administration Core Curriculum Manual*
 - xiii. ODOT *Right of Way Manual*
 - xiv. ODOT *Highway Design Manual*
 - xv. ODOT *Bridge Section Load and Resistance Factor Rating (LRFR) Procedures* (Use Tier 2 LRFR for bridges designed using AASHTO *Load Resistance Factor Design (LRFD)*.)
 - xvi. *Oregon Transportation Plan (OTP)* and associated mode and topic plans

- b. Each of the documents, statutes, and administrative rules listed in this Paragraph V.9 are incorporated herein by reference and made a part of this Program Agreement.

10. Professional, Technical and Expert Services

- a. **Consultant Services:** Certified Agency or others as described in this Paragraph V.10 may develop transportation plans or perform other planning related activities. Certified Agency agrees that to engage the services of a professional, technical, or expert services consultant to perform any work covered by this Program Agreement, Certified Agency is required to use one of the following processes to ensure federal reimbursement:
 - i. Certified Agency shall select A&E and Non-A&E consultants using one of the appropriate procurement methods for which it is certified (see Paragraph IV.2) or other method as approved by ODOT.
 - ii. If Certified Agency seeks to obtain consultant services from another certified LPA, that certified LPA must have entered into a Certification Program agreement with ODOT to perform the same consultant services Certified Agency is seeking to use; or Certified Agency shall follow the processes approved by ODOT for obtaining consultant services described in Paragraph V.10.a.i above. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment.
- b. **Design Standards:**
 - i. Certified Agency and ODOT agree that, except as otherwise provided in Paragraph V.11.b below, project design standards on all local public agency jurisdictional roadway or street projects, whether on or off the NHS, shall be in compliance with AASHTO standards. Certified Agency or its consultant shall use either AASHTO's A Policy on Geometric Design of Highways and Streets or ODOT's Resurfacing, Restoration and Rehabilitation (3R) design standards for 3R projects in the ODOT Highway Design Manual. Certified Agency or its consultant may use AASHTO standards for vertical clearance requirements on local public agency jurisdictional roadways or streets. For bridge projects, Certified Agency shall comply with the design standards specified in Exhibit E— Standard Provisions: Local Bridge Projects.
 - ii. Certified Agency agrees that if a project is on the Oregon State Highway System or a State-owned facility, Certified Agency shall substantially comply with the ODOT Highway Design Manual, Oregon Standard Specifications for Construction, ODOT CAD Manual and discipline-specific CAD Manuals, and the project-specific requirements set out in the Supplemental Project Authorization, including Attachment – Special Provisions: State Highway Work.
 - iii. Design Exceptions: Certified Agency agrees to comply with the following for design exceptions:
 - 1. For portions of a project that are on or along the Oregon State Highway System or a State-owned facility, any design element that does not meet ODOT Highway Design Manual design standards must be justified and documented by means of a design

exception. ODOT will review any design exceptions on the Oregon State Highway System and retains authority for said approval.

2. For portions of a project not on or along the Oregon State Highway System, and for locally owned portions of a project on the NHS, regardless of funding source, any design element that does not meet AASHTO standards must be justified and documented by means of a design exception in accordance with Certified Agency's design exception procedures, as approved by ODOT.
3. FHWA shall review any design exceptions for projects for which FHWA has retained authority for approval.

c. Preliminary Engineering:

- i. Certified Agency shall, on any project that uses federal funds in project development, submit final PS&E and related documents, construction schedule, environmental requirements, and right of way co-certification to the ODOT Project Contact at least six (6) weeks prior to bid opening. ODOT will review such submittals and then submit a request to FHWA for approval of federal-aid participation for the construction phase when federal-aid participation is desired in this phase.
- ii. ODOT will, as a cost to the project, review, process, and approve or submit for approval to the federal regulators all environmental statements. If ODOT prepares these documents, ODOT will offer Certified Agency the opportunity to review and approve the documents prior to advertising for bids.
- iii. Certified Agency shall perform the following project activities, as a federal-aid participating preliminary engineering function, in accordance with the requirements of this Program Agreement and any special provisions of the Supplemental Project Authorization:
 1. All necessary field surveys, environmental studies, traffic investigations, foundation explorations, and hydraulic studies.
 2. Acquisition of the necessary rights of way and/or easements in accordance with Exhibit F— Standard Provisions: Right of Way Services.
 3. All preliminary engineering and design work required to produce final plans, preliminary and final specifications, and cost estimates.
 4. All public involvement processes.
 5. Identification of and obtaining all required permits necessary for the construction. (Said permits must include, but are not limited to, state highway access, utility, railroad, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.)

d. Construction Activities and Administration:

- i. Certified Agency shall prepare construction contract and bidding documents, advertise for bid proposals, award all contracts, and conduct all contract administration. Upon Certified Agency's award of the construction contract, Certified Agency, or its consultant, shall be responsible to perform all construction engineering, field testing of

- materials, technical inspection, and project manager services for administration of the contract and making contractor payments.
- ii. Certified Agency agrees that the construction contract procurement, administration, quality control, quality assurance, and material sampling and testing shall be in accordance with Certified Agency's current ODOT-approved standards for federal-aid projects as set out in Certified Agency's Quality Program Plan and the LAG Manual, or Certified Agency may use ODOT's current Construction Manual and the LAG Manual.
 - iii. Certified Agency shall include in each solicitation and contract the applicable prevailing wage rates for federal-aid projects in accordance with the federal Davis-Bacon Act and ORS 279C.830. Certified Agency shall monitor labor compliance and prevailing wage rate compliance.
- e. **Contractor Claims and Contract Change Orders:** Certified Agency shall follow Certified Agency's procedures for contractor claims and contract change orders as described in Certified Agency's standards for federal-aid projects and as outlined in the Approval Authority Matrix (734-5191) and the LAG Manual. Certified Agency's contract specifications must include a process for dispute and claim resolution.
- f. **Bridge:** When a project is identified as a Bridge project in an applicable Supplemental Project Authorization, Certified Agency agrees to conform to the Local Bridge Program Project requirements in Exhibit E– Standard Provisions: Local Bridge Projects.
- g. **Right of Way:**
- i. All construction projects must have right of way co-certification coordinated through ODOT to declare compliance and project readiness for construction, including projects where no federal funds were used for right of way, but where federal funds were used for any other project phase. ODOT will, as a cost to the project, coordinate co-certification of the right of way and provide oversight and monitoring as applicable to the project.
 - ii. For any project that includes acquisition of right of way or has the potential of requiring right of way, Certified Agency shall:
 - 1. Comply with ODOT-established policies, procedures, and guidance set forth in the LAG Manual and the ODOT Right of Way Manual for acquisition of right of way in federal-aid projects.
 - 2. Conform to the Right of Way Services requirements in Exhibit F– Standard Provisions: Right of Way Services.
 - iii. Exhibit F sets forth the responsibilities and activities to be accomplished by each Party, except as modified by the Supplemental Project Authorization.
- h. **Utilities and Railroads:**
- i. Certified Agency shall follow federal and state law, ODOT-established policies, procedures, and the guidance set forth in the LAG Manual for utility relocation and railroad crossings in federal-aid projects.

- ii. For privately or publicly owned utilities, Certified Agency or its consultant shall provide copies of all signed utility notifications, agreements, and utility certification to ODOT's State Utility and Railroad Liaison for co-certification. Only those utility relocations which are eligible for reimbursement under the FAPG, Title 23 CFR part 645 subparts A and B, shall be included in the Total Project Cost; all other utility relocations shall be the responsibility of Certified Agency. Certified Agency shall not perform any utility work on state highway right of way without first receiving written authorization from ODOT.
- iii. For projects involving railroad work, only those costs allowable under Title 23 CFR Part 140 subpart I, and Title 23 Part 646, Subpart B shall be included in the Total Project Cost; all other costs associated with railroad work will be the responsibility of Certified Agency.
- i. **Grade Change Liability:** Certified Agency agrees that all acts necessary to complete construction of a project which may alter or change the grade of existing city streets are being accomplished by the City as part of a Certified Agency project, and not by ODOT. Approval of plans by ODOT shall not subject ODOT to liability under ORS 105.760 for change of grade.
- j. **Maintenance Responsibilities:**
 - i. General: Certified Agency shall, at its own expense, maintain, operate, and provide power for the project as needed upon project completion at a minimum level that is consistent with normal depreciation and service demand throughout the useful life of the project, unless otherwise specified in the Supplemental Project Authorization. The useful life of the project is defined in the Supplemental Project Authorization. ODOT may conduct periodic inspections during the useful life of the project to verify that the project is properly maintained and continues to serve the purpose for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of the Supplemental Project Authorization and this Program Agreement. If the project includes or affects a state highway, Paragraph IV.10.j.ii below shall also apply.
 - ii. Maintenance of a state highway: Unless otherwise agreed to in the Supplemental Project Authorization or a fully executed maintenance agreement that covers the project-specific improvements, Certified Agency shall, at its own expense, be responsible for all maintenance, operation, repair, replacement, and removal of any project-specific improvements constructed or installed on a state highway as part of a Certified Agency Project. Maintenance responsibilities shall survive expiration or termination of the Supplemental Project Authorization and this Program Agreement.

11. Civil Rights

- a. **General Requirements:**
 - i. Certified Agency shall follow ODOT's federally required and FHWA-approved civil rights programs and associated procedures, which are set out in the LAG Manual.
 - ii. ODOT's Office of Equity and Civil Rights will determine, establish, and assign civil rights goals and contract provisions to be included in Certified Agency's consultant and

construction contracts as set out in the LAG manual. Certified Agency shall include the applicable goals and provisions in the solicitation documents for each contract prior to advertising. Certified Agency is responsible for monitoring contractor compliance and enforcing the civil rights goals and program provisions included in its contracts funded under this Agreement.

- b. **Americans with Disabilities Act (ADA):** Certified Agency shall:
- i. Ensure that its activities under this Program Agreement and each Supplemental Project Authorization issued hereunder comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, “ADA”). All work product produced under this Program Agreement or any Supplemental Project Authorization issued hereunder shall be ADA-compliant.
 - ii. Conform with the ADA requirements in Exhibit D – Standard Provisions: Americans with Disabilities Act Compliance, as specified in the Supplemental Project Authorization.
 - iii. Consider ADA issues from the beginning of project development, through the entire project process, including project closure. Certified Agency understands and agrees to comply with the ADA requirements listed in the LAG Manual, including but not limited to maintaining a Title II Transition Plan and submitting it to ODOT for review.
- c. **Title VI:**
- i. Certified Agency agrees to comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964, Title 49 CFR part 21, and Executive Order 11246, relative to the employment practices under any contract awarded in conjunction with this Agreement. If Certified Agency fails to comply with any federal or state Civil Rights requirements identified in this Agreement, sanctions may be imposed by FHWA or ODOT as appropriate, including, but not limited to:
 1. Withholding of payments to Certified Agency under this Agreement until Certified Agency causes compliance, or
 2. Cancellation, termination, or suspension of this Agreement, in whole or in part.
 - ii. Certified Agency shall consider Title VI issues from the beginning of project development, through the entire project process, including project closure. Certified Agency understands and agrees to comply with the Title VI requirements listed in the LAG Manual, including but not limited to maintaining a Title VI Program and Plan and submitting Annual Title VI Accomplishment Reports to the address shown in Paragraph IV.11.b.iii below.
 - iii. Complaint Procedures: Certified Agency shall comply with Title VI by referring all Civil Rights discrimination complaints to ODOT’s Office of Equity and Civil Rights; and Certified Agency must include the following language in any of its contracts under the Certification Program:

Any person who believes that he/she has been excluded from participation in, denied benefits or services of any program or activity administered by the Department or its subrecipients, consultants, and contractors on the

basis of age, disability, race, color, national origin, sex, or income status may bring forth a complaint of discrimination under Title VI and related statutes to the Oregon Department of Transportation, Office of Equity and Civil Rights, Attn: Title VI/EJ/ADA Manager, 800 Airport Rd SE, Salem OR 97301; ODOT.TITLEVI@odot.oregon.gov; (503)986-3870.

- d. Disadvantaged Business Enterprise (DBE):
- i. Certified Agency agrees to follow the ODOT *DBE Program Plan*, available at: https://www.oregon.gov/ODOT/CS/CIVILRIGHTS/Pages/dbe_prog_plan.aspx. For additional information about the DBE Program and DBE Program Plan, contact the Oregon Department of Transportation, Office of Equity and Civil Rights, Attn: DBE Program Manager, 800 Airport Rd SE, Salem, OR 97301; ocrinforequest@odot.oregon.gov; Phone: (503) 986-4350 or FAX: (503) 986-6382.
 - ii. Certified Agency and its contractors and subcontractors shall not discriminate on the basis of race, color, national origin, sex, sexual orientation, or gender identity in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. Certified Agency shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. State's DBE program, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this Program Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Program Agreement. Upon notification to Certified Agency of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
 - iii. Certified Agency shall include in all transportation contracting solicitations and contracts, relative to receiving federal-aid, the following assurance:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the contractor from future bidding as non-responsible. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
 - iv. Certified Agency shall follow the procedures set out in the LAG Manual and the applicable *LPA A&E Requirements Guide* or the *LPA Non-A&E PSK Requirements Guide* to request or assign DBE contract goals and ensure the appropriate DBE provisions and goals are incorporated in the solicitation documents prior to Certified Agency

- advertising a request for bids or proposals on projects financed in whole or in part with federal funds. Certified Agency also agrees to include and enforce the applicable provisions and goals in each resulting contract. Failure by Certified Agency to carry out these requirements on any project is a material breach of contract, which may result in the termination of the Supplemental Project Authorization or this Program Agreement or such other remedy as State deems appropriate. Federal regulations Title 49 CFR part 26 are also incorporated into this Program Agreement by this reference and shall be made a part of the contract specifications of any contract entered into by Certified Agency for delivery of a project under this Program Agreement.
- v. Certified Agency shall submit additional civil rights forms and reports to ODOT as required in the LAG Manual, the *LPA A&E Requirements Guide* and the *LPA Non-A&E PSK Requirements Guide* as applicable.
 - e. Equal Employment Opportunity Program (EEO) and On-the-Job Training (OJT)/Apprenticeship:
 - i. Certified Agency, its contractors, and subcontractors shall not discriminate on the basis of age, disability, race, color, national origin, sex, sexual orientation, gender identity, income status, or religion in the award, administration, and performance of any federal-aid contract in the administration of EEO and OJT/Apprenticeship requirements under Title 23 CFR Part 230.
 - ii. Certified Agency shall ensure that the OJT/Apprenticeship requirements are a part of all solicitations for bids on all federal-aid construction contracts or subcontracts of ten thousand dollars (\$10,000) or more and when an OJT/ Apprenticeship goal is assigned and is in implementation of Title 23 USC Section 140(a).
 - iii. Certified Agency shall ensure that EEO requirements are a part of all solicitations for bids on all federal-aid construction contracts or subcontracts of ten thousand dollars (\$10,000) or more. Title 23, USC, Section 140, Equal Employment Opportunity, as in effect on May 1, 1982, is incorporated herein by reference and shall be made a part of any construction contract specifications and this Program Agreement. Federal regulations Title 23 CFR part 230 are also incorporated into this Program Agreement by this reference and shall be made a part of the construction contract specifications of any construction contract entered into by Certified Agency for delivery of a project under this Program Agreement.
 - f. ODOT Support:
 - i. ODOT will make available to Certified Agency, by electronic medium, all current and pertinent ODOT civil rights forms and provisions.
 - ii. ODOT will provide support to Certified Agency with program training, compliance monitoring, and on-site reviews (as needed) for civil rights programs. If ODOT acts on behalf of Certified Agency regarding civil rights contract administration activities, ODOT will report any discrepancies or issues to Certified Agency, not the contractor. Certified Agency maintains responsibility to uphold the DBE program requirements with each contractor.
 - iii. Resources and ODOT Office of Equity and Civil Rights contact information links:

- Non-construction contracts-related e-mailbox (consultant contracts):
ocr.psk@odot.oregon.gov
- Construction contracts goal request e-mailbox:
OCRGOALSREQUEST@odot.oregon.gov
- Construction contracts-related forms e-mailbox:
OCRINFOREQUEST@odot.oregon.gov
- Office of Civil Rights page:
<https://www.oregon.gov/odot/business/ocr/pages/index.aspx>
- Forms page (DBE, Title VI, and ADA, other):
<https://www.oregon.gov/odot/Business/OCR/Pages/Forms.aspx>

VI. OTHER FEDERAL PROVISIONS

1. Single Audit Act

Certified Agency shall follow the requirements stated in the Single Audit Act. Agencies expending seven hundred and fifty thousand dollars (\$750,000) or more in federal funds (from all sources) in a fiscal year shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Agencies expending less than seven hundred and fifty thousand dollars (\$750,000) in a fiscal year are exempt from federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Paragraph VI.4 herein. The cost of this audit can be partially prorated to the federal program.

2. 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 herein by reference. Certified Agency shall include this requirement in each construction or equipment purchase contract, ensure that contractors include the requirement in their subcontracts, and further agrees to take such action as required to enforce such requirements.

3. Clean Air Act, Clean Water Act

Certified Agency shall ensure compliance with the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) as required by 2 CFR 200.326. Certified Agency shall include this requirement in each of its contracts and subcontracts, and further agrees to take such action as required to enforce such requirements.

4. Buy America and Build America, Buy America

Certified Agency and its contractors and subcontractors shall comply with the Buy America requirements established in Section 635.410 Title 23, Code of Federal Regulations and the Intermodal Surface Transportation Efficiency Act, as amended by the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, which includes the Build America, Buy America Act, Pub. L. No. 117-58, Sections 70901-70941, and all applicable USDOT implementing regulations and

guidance. Certified Agency shall include these requirements in each of its contracts and subcontracts, and further agrees to take such action as required to enforce such requirements.

5. Federal Transparency Act Subaward Reporting

As applicable to each Supplemental Project Authorization, Certified Agency agrees to provide to ODOT the subaward reporting information required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), as amended by section 6202 of Public Law 110–252 (“Federal Transparency Act”) in accordance with Exhibit B – Standard Provisions: Federal Transparency Act Subaward Reporting. See [CFR Appendix A to Part 170, Title 2](#).

6. Lobbying Restrictions

Certified Agency certifies by signing this Program Agreement and upon signing each Supplemental Project Authorization issued hereunder that:

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

7. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Non-procurement and Lower Tier Covered Transactions

Certified Agency agrees to fulfill the responsibilities imposed by 2 CFR Part 1200 and 2 CFR Part 180 regarding debarment, suspension, and other responsibility matters for its principals and all covered lower-tier transactions. Upon execution of each Supplemental Project Authorization issued under this Program Agreement, Certified Agency is considered a participant in a covered transaction. By signing a Supplemental Project Authorization, Certified Agency is providing the certification for its principals required in Subpart C to 2 CFR Part 180 that its principals are not excluded or disqualified from participating in a covered transaction with a federal agency. See the federal System for Award Management website to determine whether a person is excluded: <https://www.sam.gov>.

VII. GENERAL PROVISIONS

1. Compliance with Applicable Laws

Certified Agency shall comply with all applicable federal, state, and local laws, regulations, executive orders, and ordinances applicable to the work under this Program Agreement and all Supplemental Project Authorizations issued hereunder, including, but not limited to, the provisions of ORS Chapters 279A, 279B, and 279C (Public Contracting Code); Title 23 CFR Chapter 1, parts 1 (General Management and Administration), 140 (Reimbursement), 200 (Title VI Program and Related Statutes—Implementation And Review Procedures), 420 (Planning and Research Program Administration), 450 (Planning Assistance and Standards), and 710 (Right of Way and Real Estate); 2 CFR part 1201 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards); Title 49 CFR part 26 (DBE Participation); and 2 CFR part 200, subpart F (Audit Requirements); Title 23 USC Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58 (Anti-Kickback Act); Title 42 USC; local contract review board contracting rules, and Certified Agency's applicable contracting rules of procedure adopted pursuant 279A.060 and 279A.065(5). Certified 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, as amended; (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.

2. Records

- a. Certified Agency shall maintain all program and project documentation in keeping with State and FHWA standards. This shall include, but is not limited to, daily work records, planning products, work program, and all other actions necessary to carry out the transportation planning and project delivery processes. Certified Agency is responsible for using its procedures, subject to approval by ODOT, for program and project documentation and long-term retention of documentation.
- b. Certified Agency shall retain and keep all program and project files and records for a minimum of six (6) years following the date of final voucher to FHWA, unless a different period is required by law. This includes financial records, supporting documents, statistical records, and all other Certified Agency records pertinent to projects authorized under this Program Agreement. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (2 CFR 1201). Also see the applicable Secretary of State Retention Schedule OAR

Chapter 166, Division 150 for counties and special districts. If any litigation, claim, or audit is started before the end of the retention period, Certified Agency shall retain the records until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

- c. In all contracts, Certified Agency shall expressly require that the contractor and subcontractor(s) maintain all records related to the project and keep the records accessible and available at reasonable times and places for the following minimum periods: six (6) years for personal services contracts and three (3) years for construction contracts, unless another minimum period is set forth in the current, relevant contract template provided by ODOT to Certification Agency, or unless a different period is required by law. Such minimum records maintenance period begins on the date of final payment under the contract or subcontract or the conclusion of any audit, controversy, or litigation arising out of or related to the contract with Certified Agency, whichever date is later. This includes, but is not limited to:
 - i. daily work records, planning products, planning processes, data gathered; and
 - ii. related documents relevant to the performance of the work and payment of costs in conformance with law, and other applicable contract requirements. Such documents include, but are not limited to, documents demonstrating completion of the work.
- d. Certified Agency acknowledges and agrees that ODOT, the Oregon Secretary of State's Office, USDOT Office of Inspector General, FHWA, any other federal government agency, and their duly authorized representatives shall have access to such fiscal records and other books, project documents, papers, plans, and writings of Certified Agency pertaining to work covered by this Program Agreement and any Supplemental Project Authorizations issued hereunder to perform examinations and audits and make excerpts and transcripts.
- e. This Paragraph VII.2 shall survive expiration or termination of this Program Agreement.

3. No Third Party Beneficiaries to Program Agreement

ODOT and Certified Agency are the only parties to this Program Agreement and are the only parties entitled to enforce its terms. Nothing in this Program 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, or within a specific Supplemental Project Authorization by special provision, and expressly described as intended beneficiaries of the terms of this Program Agreement. This Paragraph VII.3 shall survive expiration or termination of this Program Agreement.

4. Independent Contractor

Certified Agency shall perform the activities under this Program Agreement and any Supplemental Project Authorization issued hereunder 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 Program Agreement and any Supplemental Project Authorization issued hereunder, including, but not limited to, retirement contributions, workers'

compensation, unemployment taxes, and state and federal income tax withholdings. This Paragraph VII.4 shall survive expiration or termination of this Program Agreement.

5. Contribution and Contract-Related Indemnification

- a. For purposes of this Paragraph VII.5, the term "State" means "the State of Oregon, the Oregon Transportation Commission, the Oregon Department of Transportation, and their respective officers, members, agents, and employees." This definition applies to both the application of Paragraph VII.5 to this Program Agreement and to any Supplemental Project Authorization issued under this Program Agreement.
- b. **Contribution:**
 - i. 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 Certified 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.
 - ii. Except as otherwise provided in Paragraph VII.5.c below, with respect to a Third Party Claim for which State is jointly liable with 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 in such proportion as is appropriate to reflect the relative fault of State on the one hand and of 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 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.
 - iii. Except as otherwise provided in Paragraph VII.5.c below, with respect to a Third Party Claim for which Certified Agency is jointly liable with State (or would be if joined in the Third Party Claim), 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 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 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'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.
- c. **Contract-Related Indemnification:** Notwithstanding Paragraph VII.5.b, and subject to any limitations imposed by State law and the Oregon Constitution, Certified Agency agrees to the following contract-related indemnification for all projects authorized under this Program Agreement:
- Where Certified Agency contracts for services or performs project management for a project, Certified Agency shall accept all responsibility, defend lawsuits, indemnify, and hold State harmless for all contract-related claims and suits. This includes, but is not limited to, all contract claims or suits brought by any contractor, whether arising out of the contractor's work, Certified Agency's supervision of any individual project or contract, or Certified Agency's failure to comply with the terms of this Program Agreement or any Supplemental Project Authorization.
- d. This Paragraph VII.5 shall survive expiration or termination of this Program Agreement.

6. Dispute Resolution

- a. The Parties agree to take a proactive, collaborative approach to managing program and project communications and to document and escalate project issues as outlined in Section C, Chapter 1 of the LAG Manual.
- b. The Parties shall attempt in good faith to resolve any dispute arising out of this Program Agreement or any Supplemental Project Authorization issued hereunder. 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. This Paragraph VII.6.b shall survive expiration or termination of this Program Agreement.

7. Remedies

- a. For purposes of this Paragraph VII.7, the term "this Agreement" means either this Program Agreement or any Supplemental Project Authorization issued under this Program Agreement, as applicable.
- b. If Certified Agency fails to meet the requirements of this Agreement or applicable federal statute or regulation, ODOT may withhold Certified Agency's proportional share of Highway Fund distribution necessary to reimburse ODOT for costs incurred by such Certified Agency breach.
- c. In the event Certified Agency is in default under this Agreement, ODOT may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity. Such remedies are cumulative to the extent the remedies are not inconsistent, and

ODOT may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

- d. In the event ODOT is in default under this Agreement and whether or not Certified Agency elects to exercise its right to terminate this Agreement or in the event ODOT terminates this Agreement under Paragraph VII.13, Certified Agency's sole monetary remedy will be a claim for unpaid invoices under Paragraph V.5 of this Program Agreement for work completed according to the requirements of this Agreement and for authorized expenses incurred and interest within the limits of ORS 293.462, less any claims ODOT has against Certified Agency. In no event will ODOT be liable to Certified Agency for any expenses related to termination of this Agreement. If previous amounts paid to Certified Agency exceed the amount due to Certified Agency, Certified Agency shall promptly pay any excess to ODOT.
- e. This Paragraph VII.7 shall survive expiration or termination of this Program Agreement.

8. Certified Agency Contracts and Procurements

- a. **Contracts:** Certified Agency may enter into contract(s) for performance of work under this Program Agreement, subject to all of the following conditions:
 - i. All contracts must be in writing, executed by Certified Agency and must incorporate and pass through all of the applicable requirements of this Program Agreement to the other party or parties to the contract(s). Use of a contract does not relieve Certified Agency of its responsibilities under this Program Agreement.
 - ii. Certified Agency shall include the State of Oregon, the Oregon Transportation Commission, and the Oregon Department of Transportation as intended third-party beneficiaries in the terms of Certified Agency's contract on any project, with express independent authority to enforce the terms and conditions of the contract.
 - iii. Certified Agency shall require its construction contractor(s) to name the Oregon Department of Transportation as an additional or dual obligee on the construction contractor's performance bond and payment bond.
 - iv. Certified Agency shall require its contractor(s) to comply with the indemnification requirements in Paragraph VII.9.
 - v. Certified Agency shall require its contractor(s) to comply with the insurance requirements in Paragraph VII.10.
 - vi. Certified Agency shall provide ODOT with a copy of each signed contract, as well as any other purchasing or contracting documentation, upon ODOT's request at any time.
 - vii. Certified Agency shall report to ODOT any material breach of a term or condition of a Contract within ten (10) business days of Certified Agency discovering the breach.
 - viii. This Paragraph VII.8.a shall survive expiration or termination of this Agreement.
- b. **Procurements:** Certified Agency shall make purchases of any equipment, materials, or services for the project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code, Oregon Revised Statutes (ORS) 279A, 279B and 279C, and related administrative rules, ensuring that:

- i. All applicable clauses required by federal statute, executive orders, and their implementing regulations are included in each competitive procurement; and
- ii. All procurement transactions are conducted in a manner providing full and open competition.

9. Contractor 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) 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, the Oregon Transportation Commission and its members, and the Oregon Department of Transportation and its officers, employees and agents, from and against any and all claims, suits, actions, losses, damages, liabilities cost, and expenses whatsoever, including attorneys' fees, (hereinafter, referred to individually and collectively as "Claims"), to the extent such Claims result from, arise out of, or relate to the activities or omissions of Certified Agency's contractor(s) or Certified Agency's contractors' subcontractor(s) or their respective officers, agents, or employees under the resulting contract or otherwise related to the project. 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 Certified Agency's contractor(s) or Certified Agency's contractors' subcontractor(s).
- b. Any such indemnification shall also provide that neither Certified Agency's contractor nor any attorney engaged by Certified Agency's contractor 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(s) or Certified Agency's contractors' subcontractor(s) if the State of Oregon elects to assume its own defense.
- c. Certified Agency shall include provisions in each of its contracts requiring its contractors to comply with the indemnification requirements within this Contractor Indemnification section.
- d. Certified Agency shall include a provision in each of its contracts requiring its contractor(s) to include a provision in each of its subcontracts requiring subcontractors to indemnify, defend, and hold harmless the State in accordance with this Paragraph VII.9.

10. Contract Insurance

- a. Certified Agency shall determine insurance requirements and insurance types and amounts for its contractor, as appropriate, based on the risk of the work outlined within the contract between Certified Agency and its contractor. Certified Agency shall specify such insurance

requirements and require its contractor(s) to meet the insurance requirements. Insurance requirements shall not be less than the minimum insurance requirements provided in Exhibit C – Standard Provisions: Contract Insurance. However, Certified Agency may specify insurance requirements for its contractor(s) above the minimum insurance requirements specified in Exhibit C. Certified Agency shall verify that each of its contractor(s) meet the insurance requirements in Exhibit C.

- b. Certified Agency shall obtain proof of the required insurance coverages from any contractor providing services related to the contract.
- c. Certified Agency shall require each of its contractors to require and verify that all subcontractors of the contractor obtain and maintain insurance coverage that the contractor deems appropriate based on the risks of the subcontracted work.
- d. Certified Agency shall include provisions in each of its contracts requiring contractors to comply with the insurance requirements within this Paragraph VII.10.

11. Insurance Workers' Compensation and Employer's Liability

All employers, including Certified Agency, that employ subject workers who work under this Program 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. Employer's Liability Insurance with coverage limits of not less than five hundred thousand dollars (\$500,000) must be included. Certified Agency shall ensure that each of its contractors complies with these requirements.

12. Term

- a. The term of this Program Agreement shall begin on the date all required signatures are obtained (Program Agreement Effective Date) and shall terminate twenty (20) calendar years following the Program Agreement Effective Date or upon termination of all Supplemental Project Authorizations issued under this Program Agreement, whichever is later.
- b. Unless otherwise specified by special provision in a Supplemental Project Authorization, the term of each Supplemental Project Authorization shall begin on the date all required signatures are obtained on the Supplemental Project Authorization (Supplemental Project Authorization Effective Date) and shall terminate upon completion of the Project identified in that Supplemental Project Authorization and final payment or ten (10) calendar years following the Supplemental Project Authorization Effective Date, whichever is sooner.

13. Termination

- a. For purposes of this Paragraph VII.13 only, the term "this Agreement" applies to either this Program Agreement or any Supplemental Project Authorization issued under the Program Agreement, as specified in the mutual written consent or notice of termination.
- b. This Agreement may be terminated by mutual written consent of all Parties.

- c. ODOT may terminate this Agreement effective upon delivery of written notice to Certified Agency, or at such later date as may be established by ODOT, under any of the following conditions:
 - i. If Certified Agency fails to perform the work called for by this Agreement within the time specified therein or any extension thereof.
 - ii. If 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 thirty (30) calendar days or such longer period as ODOT may authorize in the notice provided.
 - iii. If Certified Agency fails to provide payment of its share of the cost of the Project.
- d. Certified Agency may terminate this Agreement if ODOT fails to perform its obligations under any of the 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 Certified Agency fails to correct such failures within thirty (30) calendar days or such longer period as Certified Agency may authorize in the notice provided.
- e. Either Party may terminate this Agreement effective upon delivery of written notice to the other Party, or at such later date as may be established by the terminating Party, under any of the following conditions:
 - i. If either Party fails to receive funding, appropriations, limitations, or other expenditure authority sufficient to allow either Party, in the exercise of their reasonable administrative discretion, to continue to make payments for performance under this Agreement.
 - ii. 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 either Party is prohibited from paying for such work from the planned funding source.
 - iii. As otherwise expressly provided in this Agreement.
- f. Any expiration or termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
- g. Upon termination, the Parties shall do the following:
 - i. Immediately cease all activities under this Agreement, unless expressly agreed otherwise;
 - ii. Deliver to the other Party all project plans, documents, information, works-in-progress, work product, and other property that are or would be deliverables under this Agreement; and
 - iii. Provide the other Party with a detailed summary of all expended costs.
- h. If Certified Agency is in default under this Agreement, upon ODOT's request, Certified Agency will surrender all project plans, documents, research, objects, or other tangible things reasonably needed to complete the work that would have been performed by

Certified Agency under this Agreement. Said project plans, documents, research, objects, or other tangible things do not include any third-party software licenses.

14. Applicability; Amendment; Merger; Waiver; Severability

- a. The provisions of this Program Agreement shall apply to all federal-aid Supplemental Project Authorizations issued hereunder. The provisions of this Program Agreement may be modified by the special provisions in a fully executed individual Supplemental Project Authorization. However, any such modification shall apply only to the specific project identified in that Supplemental Project Authorization. In the event of a conflict, the Supplemental Project Authorization, including any attachments or exhibits, shall control over this Program Agreement.
- b. This Program Agreement may be modified by mutual consent of both Parties through execution of an amendment that states such modifications.
- c. This Program Agreement, as amended, and all attached and incorporated exhibits, including any executed Supplemental Project Authorization issued hereunder, and any attachments and exhibits, constitutes the entire agreement between the Parties on the subject matter hereof. In the event of conflict, this Program Agreement and the attached exhibits, and any executed Supplemental Project Authorization (including exhibits or attachments), will control over the project application and documents provided by Certified Agency to ODOT. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Program Agreement.
- d. No waiver, consent, modification, or change of terms of this Program 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.
- e. If any term or provision of this Program Agreement or a Supplemental Project Authorization issued hereunder 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 Program Agreement or Supplemental Project Authorization, as applicable, did not contain the particular term or provision held to be invalid.

15. Signature Authorities; Counterparts

- a. Each Party certifies and represents that the individuals signing this Program Agreement have been authorized to enter into and execute this Program Agreement on behalf of the Party under the direction or approval of its governing body, commission, board, officers, members, or representatives, and to legally bind the Party.
- b. If any Supplemental Project Authorization issued under this Program Agreement exceeds two hundred and fifty thousand dollars (\$250,000) (or other amount authorized by the

Department of Justice), the Department of Justice must review and approve this Program Agreement, any amendments hereto, and the Supplemental Project Authorization prior to performance of any work.

- c. This Program Agreement may be executed in several counterparts 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 Program Agreement so executed shall constitute an original.
- d. **Electronic Signatures:** The Parties agree that signatures showing on portable document format (PDF) documents, including but not limited to PDF copies of the Program Agreement, any Supplemental Project Authorizations, and amendments, submitted or exchanged via email are “Electronic Signatures” under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. ODOT reserves the right at any time to require the submission of the hard copy originals of any documents.

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

CITY OF SALEM, acting by and through its elected officials

By _____

Title _____

Date _____

LEGAL REVIEW APPROVAL (If required by Certified Agency's process)

By _____

Certified Agency Legal Counsel

Date _____

Certified Agency Contact:

Rick Barnes, P.E. Assistant City Engineer
14567 23rd Street
Salem, Oregon 97302
503.588.6211 ext. 7796
ribarnes@cityofsalem.net

ODOT Project Contact:

Valerie Greenway, Sr. Transportation Project Manager, Region 2
455 Airport Road SW, Building B
Salem, Oregon 97301
971.304.5021
valerie.greenway@odot.oregon.gov

ODOT Certification Program Contact:

Tiffany Hamilton, Certification Program Manager
Statewide Programs Unit
355 Capitol St NE
Salem, OR 97301
503.551.6277
ODOTCertification@odot.oregon.gov

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

By _____

Delivery and Operations Division
Administrator

Date _____

APPROVAL RECOMMENDED

By _____

Certification Program Manager

Date _____

By _____

Region 2 Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____

Assistant Attorney General

Date _____

Yellow highlighted areas indicate instructions that must be deleted prior to finalization. Gray highlighted areas indicate fields that need to be completed. Blue text indicates options that need to be included, revised, or deleted (as applicable to the circumstances).

EXHIBIT A
 Oregon Department of Transportation
 LOCAL AGENCY CERTIFICATION PROGRAM
 Supplemental Project Authorization No.

Under the authority of Certification Program Agreement No. _____ (“Program Agreement”) between the **Oregon Department of Transportation** (“State” or “ODOT”) and _____ (“Certified Agency”), dated _____, which is hereby incorporated by reference, the Parties agree to Certified Agency delivering the “Project” shown on the Project Details Table in Section A below (“Project”) as agreed to herein.

A. PROJECT DETAILS TABLE

SPA NUMBER	#
Project Key Number:	
Project Name:	
Project Description:	
Funding Award Program:	Funds have been awarded under the [Highway Safety Improvement Program (HSIP), Surface Transportation Program – Urban (STIP-U), _____ Program] and will be applied in accordance with Paragraph V.3.f of the Program Agreement.
Project End Date:	Certified Agency must complete the Project by: _____.
Project Location and Jurisdiction:	<ul style="list-style-type: none"> • [Street/road/facility name] [is/are] a part of Certified Agency’s street/road system or public improvement under the jurisdiction and control of Certified Agency. • Within the limits of the Project, [Street/road/facility name] [is/are] a part of Certified Agency’s (street/road system or public improvement) under the jurisdiction and control of Certified Agency. • [Highway/road/facility name] [is/are] a part of the Oregon State Highway System (state highway) under the jurisdiction and control of the Oregon Transportation Commission. • [Project name] is a part of Certified Agency’s [name of program] program under the control of Certified Agency. • Within the limits of the Project, the [traffic signals/areas/etc.] identified for [crossing/bike/pedestrian/etc.] enhancements are under the jurisdiction and control of Certified Agency.
FUNDING DETAILS	
Certified Agency’s Unique Entity Identifier:	
Certified Agency to report executive compensation information per Federal Transparency Act (see Exhibit B):	Yes/No

Award is for Research and Development (R&D) as defined in 2 CFR 200.1:	Yes/No	
Certified Agency Indirect Cost Rate(s):	%	
Pro-rated Federal Share Percentage ([CMAQ, Local Bridge, PL, STBG, Other ___]):	%	
Certified Agency Required Match Percentage ([CMAQ, Local Bridge, PL, STBG, Other ___]):	%	
Federal Funds ([CMAQ, Local Bridge, PL, STBG, Other ___]): Funding note:	\$	
State Funds ([CMAQ, Local Bridge, PL, STBG, Other ___] match): Funding note:	\$	
Certified Agency Funds ([CMAQ, Local Bridge, PL, STBG, Other ___] match): Funding note:	\$	
Other Funds: Description:	\$	
Approved In-kind Contribution: Description:	\$	
Total Project Cost	\$	
INFORMATIONAL DETAILS	DATA	
ODOT's preliminary estimated costs for oversight and other ODOT services for Project phases covered by this Supplemental Project Authorization, applied in accordance with Section B, Paragraph 3 below:	\$	
APPLICABLE PROVISIONS		
<p>Standard Provisions: The following exhibits to the Program Agreement apply to this Project if marked "Yes" below ("No" indicates the exhibit does not apply to this Project).</p>		
Yes/No	Exhibit #	Description
Yes/No	Exhibit B:	Standard Provisions: Federal Transparency Act Subaward Reporting
Yes	Exhibit C:	Standard Provisions: Contract Insurance
Yes	Exhibit D:	Standard Provisions: Americans with Disabilities Act Compliance
Yes/No	Exhibit E:	Standard Provisions: Local Bridge Projects
Yes/No	Exhibit F:	Standard Provisions: Right of Way Services
<p>Special Provisions: The following attachment(s) to the Program Agreement apply(ies) to this Project if marked "Yes" below ("N.A." indicates "not applicable").</p>		
Yes/N.A.	Attachment #	Description
Yes/N.A.	Attachment 1:	[N.A./Project Vicinity Map/Project Location List/Statement of Work/Other]
Yes/N.A.	Attachment 2:	[N.A./Special Provisions: State Highway Work]
Yes/N.A.	Also, see Section B, Paragraph(s) 4, 5, and 8 for any other Project-specific modifications to the Program Agreement that apply to this Project.	

B. SUPPLEMENTAL PROJECT AUTHORIZATION TERMS

1. **Applicable Provisions:** Except as otherwise modified by the terms of this Supplemental Project Authorization, the Project is subject to the terms and conditions of the Program Agreement, including the Standard Provisions and Special Provisions specified in the Project Details Table above, which are incorporated into this Supplemental Project Authorization by reference as though fully set forth herein.
2. **Scope:** The Project includes [planning, preliminary engineering, right of way, and construction] of _____, located at _____ as shown on Attachment 1 – [Project Vicinity Map / Project Location List / Statement of Work].

The Parties also anticipate Certified Agency delivering the [preliminary engineering, right of way, and construction phase(s)] of the Project. Upon full funding and addition of other phases to the Project in the STIP, this Supplemental Project Authorization will be amended to include [preliminary engineering/right of way/construction] phase work and costs.

3. **ODOT Costs:** The Parties agree that ODOT will perform risk-based Project oversight in accordance with the Program Agreement. A preliminary estimate for the cost of ODOT’s work is shown above in the Project Details Table under Informational Details. The Parties agree that ODOT services to be performed in excess of this preliminary estimate shall be addressed as provided in Paragraph V.3 Subsection g. of the Program Agreement. Certified Agency understands that ODOT’s costs are estimates only and Certified Agency agrees to pay ODOT’s actual costs incurred per the Terms of this Supplemental Project Authorization. On a quarterly/monthly basis, ODOT will provide Certified Agency a statement of costs expended by ODOT.
4. **Funding:** A combination of federal, state, and local funds may be expended on the Project as detailed in the Project Details Table above, subject to the limitations and obligations set forth in the Program Agreement and this Supplemental Project Authorization. Federal and State funds for a project shall be limited to the amount shown in the Funding Details section of the Project Details Table above.
 - a. Certified Agency guarantees the availability of Certified Agency funding in an amount required to fully fund Certified Agency’s share of the Total Project Costs, as shown in the Project Details Table, and in accordance with the Funding provisions in Paragraph V.3 of the Program Agreement, as modified by the following Project-specific Special Provisions:
 - i. _____.
 - b. Certified Agency understands and agrees that federal funding for this Project is contingent upon FHWA’s approval of each funding request. Any work performed outside the period of performance approved by FHWA or outside the Project Scope will be considered non-participating and paid for at Certified Agency expense.
 - c. ODOT will submit requests for federal funding authorizations to FHWA by Project phase. The ODOT Project Contact or designee will provide Certified Agency with a written notice to proceed for each Project phase when FHWA approval has been secured and funds are available for expenditure on the Project.

- d. With the notice to proceed, ODOT will provide Certified Agency with a copy of the USDOT FHWA Federal Aid Project Agreement between ODOT and FHWA for this Project, which contains the information required of pass-through entities by 2 CFR 200.332(a)(1).
- 5. **Invoicing:** Certified Agency shall submit invoices for Project progress billings in accordance with the invoicing provisions in Paragraph V.5 of the Program Agreement. **These provisions are modified by the following Project-specific Special Provisions:**
 - a. **[REDACTED]**.
- 6. **Period of Performance:**
 - a. **Begin and End Dates:** The Project period of performance begins when both the initial FHWA Project authorization has been received by ODOT and a notice to proceed for the first phase of the Project has been issued by the ODOT Project Contact. The Project period of performance ends on the Project End Date shown in the Project Details Table. All Project work must be completed within the period of performance.
 - b. **Project End Date Changes:** The Project End Date may be changed upon written approval by the ODOT Project Contact, which shall be incorporated by reference into this Supplemental Project Authorization. To extend the Project End Date, Certified Agency shall submit a written request to the ODOT Project Contact as soon as Certified Agency becomes aware that a schedule change is necessary, but no less than sixty (60) calendar days prior to the authorized Project End Date. The ODOT Project Contact will coordinate with ODOT Program and Funding Services to seek authorization from FHWA prior to approving the extension request. FHWA authorization for extensions is not guaranteed. Any work performed outside the period of performance authorized by FHWA will be nonparticipating and paid for at Certified Agency expense.
- 7. **Project Useful Life:** The useful life of the Project is **20** years.
- 8. **Project-Specific Modifications:** **Reserved.** / For purposes of this Project only, the Parties agree to the following modifications to the terms of the Program Agreement:
 - a. **Exhibit C - Contract Insurance:** The coverage specified in Exhibit C of the Program Agreement are / is modified as follows:
 - i. **Professional Liability:** Professional liability coverage shall be written on an occurrence basis in an amount of not less than \$_____.
Each annual aggregate limit shall not be less than \$_____.
Professional liability continuous claims made liability coverage or tail coverage must continue the same coverage for a duration of **3 years** or **5 years**.
 - ii. **Commercial General Liability:** Commercial general liability coverage shall be written on an occurrence basis in an amount of not less than \$_____ for prime construction contractors and \$_____ for all other contractors, for each job site or location.
Each annual aggregate limit shall not be less than \$_____ for prime construction contractors and \$_____ for all other contractors.

iii. **Automobile Liability:** Automobile liability coverage shall be written on a combined single limit in an amount of not less than \$_____.

b. **Exhibit D – Americans with Disabilities Act Compliance:** The Parties agree that Exhibit D of the Program Agreement is modified [as follows / by the following Project-specific Special Provisions]: . . .

c. **Exhibit E - Local Bridge Program Requirements:** The Parties agree that Exhibit E of the Program Agreement is modified [as follows / by the following Project-specific Special Provisions]: . . .

i. Certified Agency’s approved qualified staff is _____, a Qualified Agency Project Manager in accordance with the Appendix to Chapter 14 of the LAG Manual. Any change to Agency’s qualified staff is subject to State’s review and written approval.

ii. Certified Agency shall submit, and ODOT’s Local Bridge Section will review, the consultant services contract, cost proposal, and design acceptance package in coordination with the ODOT Project Contact.

d. **Exhibit F - Right of Way Services Requirements:** The Parties agree that Exhibit F of the Program Agreement is modified [as follows / by the following Project-specific Special Provision(s)]: . .

C. PROJECT CONTACTS, SIGNATURE AUTHORITIES, COUNTERPARTS, ACKNOWLEDGEMENT

1. Each Party’s Project Contact is shown on the signature page of this Supplemental Project Authorization. Each Party agrees to notify the other Party in writing of any contact information changes during the term of this Supplemental Project Authorization.
2. Each Party certifies and represents that the individuals signing this Supplemental Project Authorization have been authorized to enter into and execute this Supplemental Project Authorization on behalf of the Party under the direction or approval of its governing body, commission, board, officers, members, or representatives, and to legally bind the Party.
3. This Supplemental Project Authorization 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 Supplemental Project Authorization so executed shall constitute an original. The Parties may use Electronic Signatures in accordance with Paragraph VII.15. of the Program Agreement.
4. This Project is in the 2024-2027 Statewide Transportation Improvement Program, (Key No. _____) that was approved by the Oregon Transportation Commission on July 13, 2023 (or subsequently approved by amendment to the STIP).
5. **Certified Agency Acknowledgement:**

Certified Agency’s signing representatives certify that by initialing here, and signing this Supplemental Project Authorization, they have read the Program Agreement, including the following exhibits that apply to this Supplemental Project Authorization: Exhibit B (Federal Transparency Act), Exhibit C (Contract Insurance), and / , Exhibit D (ADA), and / , Exhibit E (Local Bridge Program), and Exhibit F (Right of Way Services).

Certified Agency (Initial here.)

Signature Page to Follow

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

_____, acting by and through its **elected**
officials
By _____
Title _____
Date _____

LEGAL REVIEW APPROVAL

(If required by Certified Agency's process)
By _____
Certified Agency Legal Counsel
Date _____

Certified Agency Project Contact:

Name/Title
Address
Phone
Email

ODOT Project Contact:

Name/Title
Address
Phone
Email

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

By _____
**(Over \$1,000,000 Delivery & Operations
Division Administrator signs, less than
\$1,000,000 Region Manager can sign.)**
Delivery and Operations Division
Administrator / Region _____ Manager
Date _____

(If this project includes _____ of way)
By _____
State Right of Way Manager
Date _____

PROPOSAL RECOMMENDED

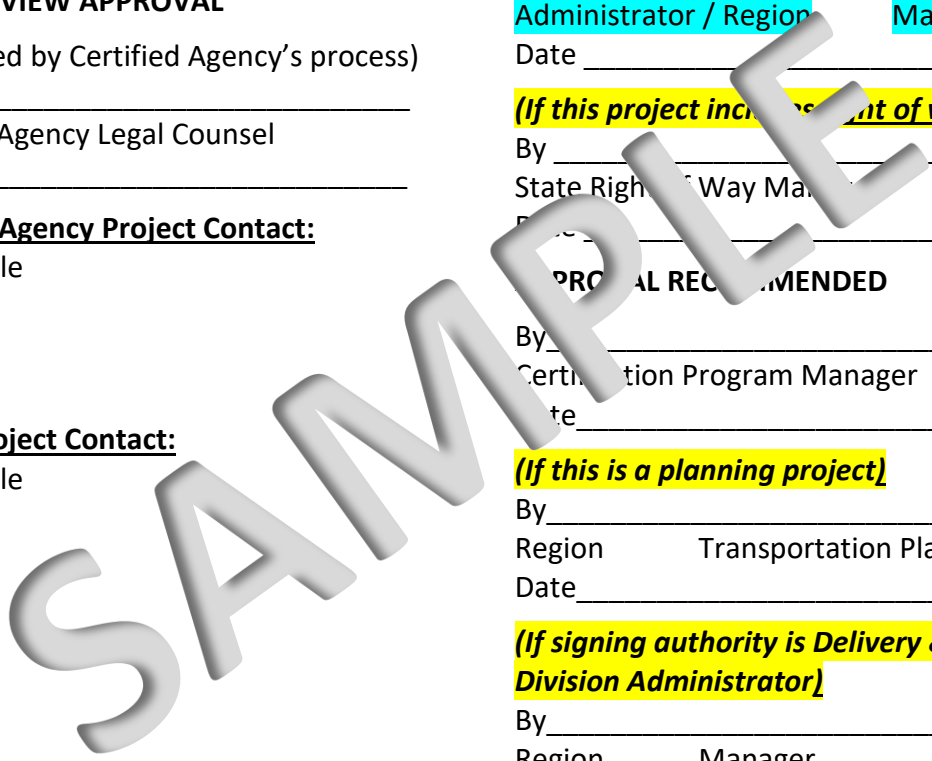
By _____
Certification Program Manager
Date _____

(If this is a planning project)
By _____
Region _____ Transportation Planner
Date _____

**(If signing authority is Delivery & Operations
Division Administrator)**
By _____
Region _____ Manager
Date _____

**(If a traffic signal, marked crosswalk, or other
traffic control device is being installed or
improved on a state highway, as defined in
ODOT's Traffic Manual, Chapter 5. Send to
Scott Cramer as a technical reviewer.)**
By _____
State Traffic Roadway Engineer
Date _____

(If this project includes Bridge)
By _____
State Bridge Engineer
Date _____



(If this project includes right of way)

By _____

Region Right of Way Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____

Assistant Attorney General ***(If required per the
Program Agreement, Section VII General
Provisions, Paragraph 15 b)***

Date _____

Attachment 1

Project Vicinity Map / Project Location List / Statement of Work

(Instructions: This Attachment is intended to apply only to Projects that include work that is on or along state highway, including work over or under the state highway right of way. Delete if inapplicable. If this project includes project elements on or along the state highway, send the Agreement to the applicable District Manager for technical review.)

Attachment 2

Special Provisions: State Highway Work (Applicable to work on or along the state highway.)

A. GENERAL REQUIREMENTS AND RESTRICTIONS

1. **General:** Certified Agency agrees to comply with all federal, state, and local laws, rules, and regulations and shall obtain and comply with the provisions of all necessary permits, licenses, and approvals, including land use permits, building permits, and environmental clearances for the Project. Certified Agency shall ensure its developers, contractors, subcontractors, and consultants performing work on the Project comply with such requirements.
2. **Notification:** Certified Agency shall notify the ODOT District **(Insert District # where work is occurring.)** Office when performing onsite work on or along the state highway as follows:
 - a. Preliminary Engineering: At least **(May be adjusted by District Office if needed.)** **two (2)** business days prior to performing preliminary engineering or survey work.
 - b. Construction: At least **(May be adjusted by District Office if needed.)** **thirty (30)** calendar days prior to performing initial Project construction work.
 - c. Maintenance: At least **(May be adjusted by District Office if needed.)** **two (2)** business days prior to performing any maintenance work.
 - d. Lane Restrictions: At least thirty (30) calendar days prior to performing any type of work requiring lane restrictions.
3. **Restrictions:** Certified Agency shall not perform any work on or along the state highway requiring lane restrictions as follows:
 - a. Between **(Insert a.m. /p.m. and time of day.)** and Monday through Friday.
 - b. During inclement weather (snow, ice, heavy fog, high wind), between sunset and sunrise, on weekends, or between noon on the day preceding a legal holiday or holiday weekend and midnight of the legal holiday.
 - c. Without providing required notice as described in Paragraph 2.d above.
 - d. **(Include additional site-specific restrictions as may be appropriate.)**

B. PERMITTING REQUIREMENTS

1. **Permission for Project Work:** ODOT grants Certified Agency permission to conduct Project work within the state highway right of way as described in this Supplemental Project Authorization and in accordance with the limitations set forth in Section A above. The work shall be protected in accordance with the versions of the *Manual on Uniform Traffic Control Devices for Streets and*

Highways (MUTCD), the Oregon Supplement to the Manual on Uniform Traffic Control Devices, and the Oregon Temporary Traffic Control Handbook that are in effect at the time the work is conducted. In addition, the Project may be subject to the requirements of the ODOT *Mobility Procedures Manual* and approval by the ODOT Mobility Advisory Committee prior to submittal of the Plans, Specifications, and Estimates (PS&E) documents.

2. **Highway Approaches, Access Control, Spacing Standards and Medians:** Prior to PS&E, Certified Agency shall ensure that all state highway approach and access management requirements in [Oregon Administrative Rules \(OAR\) Chapter 734, Division 51](#) that are applicable to the Project are met.
 - a. State highway access management in the project delivery process for each STIP project is required to be conducted in accordance with OAR 734-051-5120. To ensure that all projects subject to OAR 734-051-5120 are carried out consistent with this rule, Certified Agency shall refer all Project-related access management to ODOT to determine the process for complying with OAR 734-051-5120.
 - b. Any Project-related permits, agreements, or other documents required to comply with OAR Chapter 734, Division 51 must be included in Certified Agency's final PS&E submittal to ODOT.
 - c. For additional information, see the [ODOT Access Management](#) page and ODOT Technical Bulletin [AM21-01\(B\): Determination of Approach Modification in a Highway Improvement Project](#) in the [ODOT Technical Guidance Directory](#).
3. **Utility Permits:** Certified Agency shall ensure that any utility installing a utility service within state highway right of way as part of the Project has obtained a utility permit issued by ODOT's District office under OAR Chapter 734, Division 55 prior to installation of the utility service line.
- C. **(Select one of the following headings.)**[RESERVED / PROJECT-SPECIFIC FEATURES]
 1. **Traffic Control Devices** *(Delete if inapplicable to the project.)*
 - a. Pursuant to OAR 734-020-0430, Certified Agency shall obtain the approval of the State Traffic Engineer prior to the design, construction, or removal of any traffic signal, traffic control device, or illumination to be installed on a state highway. An engineering study is required for approval. See ODOT's *Traffic Signal Policy and Guidelines* for the approval process.
 - b. Certified Agency and ODOT shall have an executed maintenance and operations agreement to cover obligations for any signaling devices being installed on a state highway for this Project. This agreement must be in effect prior to receiving design approval from ODOT. Traffic signals on a state highway must be designed per the current edition of ODOT's *Traffic Signal Design Manual*.
 - c. Electrical inspectors used by Certified Agency or its contractor(s), shall possess a current State Certified Traffic Signal Inspector certificate in order to inspect electrical installations on state highways.
 - d. ODOT will, as a cost to the Project, perform signal equipment environmental testing. For ODOT-owned or ODOT-maintained signals, ODOT will, as a cost to the Project, perform the signal field testing and turn-on. Traffic signal timing for ODOT-owned and ODOT-operated signals shall be

the responsibility of ODOT, unless there is an agreement that specifically allows Certified Agency to perform that function. ODOT retains the right to review traffic signal timing for signals on state highways, and for those signals which ODOT maintains, and reserves the right to request adjustments when needed. In cases where Certified 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 approved by ODOT's Region Traffic Engineer. ODOT's Region Traffic Engineer will notify the local jurisdiction whenever timing changes are scheduled that affect the operation of local street connections to the state highway. All modifications shall follow guidelines set forth in the versions of the *MUTCD* and the *Traffic Signal Policy and Guidelines* in effect at the time the work is conducted.

- e. Certified Agency shall ensure that all work involving pedestrian-activated signals performed under this Supplement Project Authorization, including maintenance activities, complies with the ADA. Certified Agency shall ensure that all traffic signals, illumination poles, and foundations installed on a state highway conform to State's standards, pursuant to the versions of ODOT's *Traffic Structures Design Manual* and *Geotechnical Design Manual* in effect at the time the work is conducted.

2. Landscaped Areas ***(Delete if inapplicable to the project.)***

- a. Any landscaped area within the state highway right of way allowed by this Supplemental Project Authorization shall be designed and maintained by Certified Agency using water conservation principles.
- b. Any irrigation of the landscape area shall be limited to irrigation necessary for plant establishment and shall be disabled or removed at Certified Agency's expense upon expiration of the plant establishment period.

3. Decorative Embellishments ***(Delete if inapplicable to the project.)***

- a. Certified Agency shall be responsible for the cost of decorative embellishments on Certified Agency signal or illumination poles allowed within state highway right of way under this Supplement Project Authorization. No decorative embellishments may be attached to ODOT-owned traffic signal or illumination poles or other highway features.
- b. Any decorative lighting shall be the responsibility of Certified Agency, including the cost of electricity and maintenance. Such illumination shall be served by a separate system from the traffic and pedestrian signal system. Any such additional illumination on the state highway must be approved by the ODOT Office of the State Traffic Roadway Engineer.
- c. Decorative poles and foundations installed on state highways must conform to ODOT standards, as per ODOT Technical Bulletin TR07-06(B).
- d. Any artwork included as a Project-specific element on the state highway right of way shall conform to ODOT's standard for artwork on state highways, ODOT Directive HWY 01.
- e. Painting or wrapping of ODOT-owned traffic signal controller cabinets is not allowed.
- f. All decorative embellishments are subject to approval by ODOT and must comply with all applicable state laws and policies.

4. Bridge Over State Highway *(Delete if inapplicable to the project.)*

- a. In addition to the Program Agreement and this Supplemental Project Authorization, Certified Agency must obtain a property right such as an easement from ODOT's Right of Way Section prior to construction of any bridge over state highway right of way.
- b. If a bridge over state highway right of way becomes unsafe, or if Certified Agency no longer supports the continued operation of the bridge for public use, Certified Agency shall be responsible for all costs for closure and removal or replacement of the bridge.

D. MAINTENANCE RESPONSIBILITIES

1. Maintenance of Project-specific Improvements: Certified Agency shall maintain, operate, repair, replace, move, and remove, as applicable, any Project-specific improvements within state highway right of way, unless otherwise specified in this Supplemental Project Agreement or in a fully executed maintenance agreement. Such Project-specific improvements shall be maintained and operated at the same level as similar facilities owned by ODOT.
2. Work Zone Protection: Certified Agency's maintenance work on or along state highway right of way, including work performed by Certified Agency's contractors, shall be protected in accordance with the versions of the *MUTCD*, *Oregon Supplement to the Manual on Uniform Traffic Control Devices*, and the *Oregon Temporary Traffic Control Handbook* which are in effect at the time the work is conducted.
3. Contribution and Indemnification: Certified Agency's obligations under the Contribution and Contract-Related Indemnification and Contractor Indemnification provisions in the Program Agreement, Section VII, Paragraphs 5 and 9, respectively, apply to Certified Agency's ongoing maintenance work.
4. Power: Certified Agency shall, at its own expense, provide power needed for signals, lighting, and other Project-specific improvements, unless otherwise specified in this Supplement Project Agreement or in a fully executed maintenance agreement.
5. Landscaping: Maintenance of landscaped areas shall include:
 - a. Replacement of dead or dying plants and trees.
 - b. Removal of litter and debris.
 - c. Mowing, leaf removal, and weed removal and control.
 - d. Trimming trees and other vegetation to maintain vehicle and pedestrian sight distance with clearance of at least 8 feet over a sidewalk and 20 feet over the roadway.
6. Sidewalks: Maintenance of sidewalks and other pedestrian or bicycle paths shall include removing litter, debris, and vegetation; repairing surface irregularities such as holes and cracks; and maintaining a smooth, level surface for the unimpeded movement of pedestrians and bicyclists.
7. Adjacent Property Owners: Should Certified Agency allow an adjacent property owner to perform maintenance of the landscape, sidewalk, or other behind-the-curb improvements on or along state

right of way, Certified Agency remains responsible and liable for compliance with the terms of this Supplemental Project Authorization and for the performance of such work, regardless if the work is performed by Certified Agency or an adjacent property owner.

8. Project-specific Improvements:

- a. ODOT will be responsible for any maintenance, operation, and repair of the following Project-specific improvements on the state highway **(select and insert project-specific improvements below. If none, delete):**
 - Additional pavement for turn lanes
 - Other:
- b. Certified Agency, at its own expense, shall be responsible for any maintenance, operation, repair, replacement, and removal of the following Project-specific improvements on the state highway **(select and insert project-specific improvements below):**
 - Decorative embellishments
 - Rectangular rapid flashing beacons
 - Buffered bike lanes; bike boxes
 - Specialty pavement markings
 - Other:
- c. Certified Agency, at its own expense, shall be responsible for maintenance, operation, repair, replacement, and removal of any Project-specific improvements not specified in Paragraph 8.a or Paragraph 8.b above.

9. Removal or Replacement of Project-Specific Improvements: Certified Agency agrees the following paragraphs apply to the Project-specific improvements specified in Paragraphs 8.b and 8.c above.

- a. Certified Agency is responsible for any removal or replacement of the Project-specific improvements, unless otherwise specified in a fully executed maintenance agreement.
- b. If Certified Agency fails to maintain the Project-specific improvements or Certified Agency no longer supports the continued operation of the Project-specific improvements, Certified Agency shall, at its own expense, remove the improvement and restore the state highway right of way.
- c. Certified Agency understands that if ODOT determines the need for the Project-specific improvements to be moved or removed for any reason, including but not limited to highway construction, reconstruction, maintenance, or operational projects, Certified Agency will promptly move or remove the improvement at Certified Agency's expense. This does not apply to Project-specific improvements requested by ODOT and constructed by Certified Agency in full compliance with this Supplemental Project Authorization.
- d. ODOT reserves the right to maintain, operate, repair, replace, move, or remove any Project-specific improvement at Certified Agency's expense if Certified Agency fails to maintain, operate, repair, replace, move, or remove any Project-specific improvement in accordance with this Supplemental Project Authorization.

10. Survival: Maintenance responsibilities, including the responsibility to maintain, operate, repair, replace, move, and remove any Project-specific improvements, shall survive any expiration or termination of this Supplemental Project Authorization.

EXHIBIT B

Standard Provisions: Federal Transparency Act Subaward Reporting

For each Supplemental Project Authorization that indicates that this Exhibit B applies, Certified Agency agrees to comply with the following provisions. For purposes of this Exhibit, references to “your organization” mean “Certified Agency” and references to “project agreement” mean “Supplemental Project Authorization.”

A. **Background:** To fulfill its obligations under the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), as amended by section 6202 of Public Law 110–252 (“Federal Transparency Act”), the Oregon Department of Transportation (ODOT) must report subawards (also known as subrecipient awards) and, when applicable, information about a subrecipient’s highly compensated executives to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS). Federal Transparency Act reporting is required for each subaward that equals or exceeds thirty thousand dollars (\$30,000) in federal funds.

The Federal Transparency Act requires information on federal awards (federal financial assistance and expenditures) be made publicly available on a single, searchable website: <https://www.usaspending.gov/>. More information about the Federal Transparency Act is available at <https://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>, [CFR Appendix A to Part 170, Title 2](#), and the FSRS website <https://www.fsr.gov/>.

B. **Unique Entity Identifier:** Prior to execution of the project agreement, your organization shall provide to ODOT the federal Unique Entity Identifier (UEI) applicable to the project so that ODOT may include the UEI in its reports to FSRS. Effective April 4, 2022, the UEI is the primary means of identifying entities registered for federal awards in the System for Award Management (SAM) at <https://www.sam.gov>. If your entity is already registered in SAM, it has been assigned a UEI. The Federal Service Desk has [posted instructions for finding the UEI in SAM](#).

C. **Executive compensation:** Prior to execution of the project agreement, your organization shall determine and provide to ODOT information on whether your organization’s executive compensation information must be reported under the Federal Transparency Act, based on the following criteria:

1. In your organization’s previous fiscal year, did your organization receive eighty percent (80%) or more of its annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Federal Transparency Act, as defined in [2 CFR 170.320](#) (and subawards), and twenty five million dollars (\$25,000,000) or more in federal procurement contracts (and subcontracts) and federal financial assistance subject to the Federal Transparency Act, as defined in 2 CFR 170.320 (and subawards)? (Include parent organization, all branches, and all affiliates worldwide in determining annual gross revenues.)
 - If “yes,” proceed to question 2.
 - If “no,” reporting executive compensation to ODOT will not be required.
2. 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? (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <https://www.sec.gov/answers/excomp.htm>.)

- If “yes,” reporting executive compensation to ODOT will not be required.
- If “no,” within fourteen (14) calendar days of execution of the project agreement and annually thereafter, your organization shall report the names and total compensation for each of your organization’s five most highly compensated executives for the preceding completed fiscal year by completing the following online form:

Federal Transparency Subaward Report: <https://forms.office.com/g/WNVpUFmdki>.

(Total compensation means the cash and noncash dollar value earned by the executive during your organization’s preceding fiscal year. For more information on the compensation information required see [17 CFR 229.402\(c\)\(2\)](#).)

D. Subrecipient information to be provided to ODOT: By signing the project agreement with ODOT, your organization certifies it has reviewed and confirmed that the following subrecipient information included in the project agreement is true and accurate at the time of execution:

- Your organization’s UEI.
- Whether your organization is required to report executive compensation to comply with the Federal Transparency Act.

E. Technical assistance: If you have any questions about this exhibit, email the ODOT Federal Funding Manager at: ODOTFederalFunding@odot.oregon.gov.

EXHIBIT C
Standard Provisions: Contract Insurance

For each Supplemental Project Authorization, Certified Agency agrees to comply with the provisions listed in this Exhibit C.

All references to "Contractor" in this Exhibit C refer to any person or entity, other than a unit of local government as defined in ORS 190.003, with whom Certified Agency enters into a contract for the performance of work under this Agreement. All references to "Subcontractor" in this Exhibit C refer to subcontractors of Certified Agency's Contractor performing work related to this Agreement.

A. GENERAL REQUIREMENTS

1. Certified Agency shall, in its contract with each of its Contractors, require the Contractor to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the contract commences, and ii) maintain the insurance in full force throughout the duration of the contract. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Certified Agency. Certified Agency shall not authorize work to begin under contract until the insurance is in full force. Thereafter, Certified Agency shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Certified Agency shall incorporate appropriate provisions in the contract permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Certified Agency permit work under a contract when Certified Agency is aware that the Contractor is not in compliance with the insurance requirements.
2. The insurance specified below is the minimum requirement that the Certified Agency shall require of its Contractors. Certified Agency may require insurance types and amounts in excess of the minimum requirement as deemed appropriate based on the risks of the work outlined within the contract.
3. Certified Agency shall require each Contractor to require and verify that all Subcontractors obtain and maintain insurance coverage that the Contractor deems appropriate based on the risks of the subcontracted work. Certified Agency shall require its Contractor to obtain proof of the required insurance coverages from each of its Subcontractors providing services related to the contract.

B. TYPES AND AMOUNTS

1. Workers' Compensation and Employer's Liability

All employers, including Certified Agency's Contractor(s), that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide **Workers' Compensation insurance** coverage for those workers, unless they qualify for an exemption under ORS 656.126(2). The coverage shall include Employer's Liability insurance with limits not less than five hundred thousand dollars (\$500,000) each accident. **Certified Agency shall require compliance with these requirements in each of its contracts.**

2. Professional Liability

A&E and Related Services: Professional Liability insurance is required for A&E design services and A&E Related Services, except that Professional Liability coverage may be waived by Certified Agency for low-risk related services, such as public involvement or outreach.

Non-A&E: Professional Liability insurance is required for non-A&E land-use planning contracts, except that Certified Agency may waive Professional Liability coverage for low-dollar planning contracts if Certified Agency conducts a project-specific risk assessment and determines that the contract is low-risk. However, if a mixed non-A&E planning contract will include some element of engineering services, then Certified Agency shall require Professional Liability insurance for the contract. Professional Liability insurance is typically obtained and maintained by most planning firms.

General: Professional Liability insurance must cover damages caused by negligent acts, errors or omissions of Contractor and Contractor’s Subcontractors, agents, officers, or employees related to the professional services to be provided under the contract.

- Coverage shall be written with a per claim, incident or occurrence limit, or the equivalent, of not less than one million dollars (\$1,000,000) unless otherwise specified in the Supplemental Project Authorization.
- Annual aggregate limits shall not be less than two million dollars (\$2,000,000) unless otherwise specified in the Supplemental Project Authorization.

If this insurance is provided on a “claims made” basis, Contractor shall maintain continuous claims made liability coverage or shall acquire tail coverage to continue the same coverage for a duration of at least **two (2) years**, unless **three (3) years** or **five (5) years** is specified in the Supplemental Project Authorization, after completion of the contract or for the foregoing extended period beyond contract expiration or termination. Evidence of any required extended period coverage will be a condition of final payment under the contract.

3. Commercial General Liability

Commercial General Liability Insurance shall be issued on an occurrence basis covering bodily injury and property damage and shall include personal and advertising injury liability, products and completed operations, and contractual liability coverage. When work to be performed includes operations or activity within fifty (50) feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass or crossing, the Certified Agency shall provide the Contractual Liability – Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy. Amounts below are a minimum requirement as determined by ODOT:

Prime construction Contractor:

- Coverage shall be written on an occurrence basis in an amount of not less than one million dollars (\$1,000,000) per occurrence unless otherwise specified in the Supplemental Project Authorization.
- Annual aggregate limit shall be not less than two million dollars (\$2,000,000) unless otherwise specified in the Supplemental Project Authorization.

Other Contractor(s):

- Coverage shall be written on an occurrence basis in an amount of not less than one million dollars (\$1,000,000) per occurrence unless otherwise specified in the Supplemental Project Authorization.
- Annual aggregate limit shall be not less than two million dollars (\$2,000,000) unless otherwise specified in the Supplemental Project Authorization.

4. Automobile Liability

Automobile Liability Insurance covering Contractor's business-related automobile use covering all owned, non-owned, or hired vehicles for bodily injury and property. Amount below is a minimum requirement as determined by ODOT:

- Coverage shall be written with a combined single limit of not less than one million dollars (\$1,000,000) unless otherwise specified in the Supplemental Project Authorization.
- Automobile Liability coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability).

5. Excess/Umbrella Liability

A combination of primary and Excess/Umbrella Liability Insurance may be used to meet the required minimum limits of insurance. If any Excess/Umbrella Liability policies are in place, they must be on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying insurance.

6. Additional Insured

The liability insurance coverages, except Professional Liability, Workers' Compensation or Employer's Liability, if included, must endorse the **"State of Oregon, the Oregon Transportation Commission, and the Oregon Department of Transportation, and their respective officers, members, agents and employees"** as an **endorsed** Additional Insured but only with respect to the Contractor's activities to be performed under the contract. Coverage shall be primary and noncontributory with any other insurance and self-insurance.

Additional Insured Endorsement on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations.

Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to the Certified Agency.

7. "Tail" Coverage

If any of the required insurance policies is on a "claims made" basis, such as Professional Liability insurance or Pollution Liability insurance, Certified Agency shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the contract, for a minimum of twenty-four

(24) months following the later of: (i) the Contractor's completion and Certified Agency's acceptance of all Services required under the contract or, (ii) the expiration of all warranty periods provided under the contract. Notwithstanding the foregoing twenty-four (24) month requirement, if the Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then the Contractor may request and ODOT may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If ODOT approval is granted, Certified Agency shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

Certified Agency shall require that its Contractor(s) provide evidence of any required extended period coverage to Certified Agency as a condition of final payment under the contract.

C. NOTICE OF CANCELLATION OR CHANGE

Certified Agency shall require its Contractor or its insurer to provide thirty (30) calendar days written notice to Certified Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s). **The Certified Agency shall immediately notify ODOT of any change in insurance coverage.**

D. CERTIFICATE(S) OF INSURANCE

Certified Agency shall obtain from the Contractor a certificate(s) of insurance for all required insurance before the Contractor performs under the contract. Each certificate or an attached endorsement must endorse: (i) **"State of Oregon, the Oregon Transportation Commission, and the Oregon Department of Transportation, and their respective officers, members, agents and employees"** as an endorsed Additional Insured in regards to the liability insurance coverages, except Professional Liability or Workers' Compensation and Employer's Liability, if included and (ii) that all liability insurance coverages shall be primary and noncontributory with any other insurance and self-insurance, with exception of Professional Liability, Workers' Compensation and Employer's Liability.

EXHIBIT D
Standard Provisions: Americans with Disabilities Act Compliance

For each Supplemental Project Authorization, Certified Agency agrees to comply with the applicable provisions of this Exhibit D. The applicable provisions depend on the type of project activities specified in Paragraph B.2 of the Supplemental Project Authorization.

When the Supplemental Project Authorization identifies project activities that involve:

- **Design and Construction:** Certified Agency shall comply with Section A of this Exhibit, titled “Design and Construction Projects.”
- **Planning Only:** Certified Agency shall comply with Section B of this Exhibit, titled “Planning Projects.”
- **Design Only:** Certified Agency shall comply with Section C of this Exhibit, titled Design-Only Projects.”

A. DESIGN AND CONSTRUCTION PROJECTS

1. General Requirements

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”).

2. ADA Design Standards, Construction Specifications, and Inspections

Certified Agency agrees to comply with the design and construction standards and the design exception documentation and approval requirements agreed to in the **Transportation Planning, Project Development, and Administration Standards** section of this 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 for each project authorized under this Program Agreement:

- a. 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 all project facilities, including but not limited to, sidewalks, curb ramps, pedestrian-activated signals, shared use paths, transit stops, park-and-rides, and on-street parking, as applicable to each Supplemental Project Authorization, **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 compliance of each project with the ADA, and to document ramp inspections per Section A.3.a below. Design exceptions on State-owned facilities must be approved by ODOT. For project locations on or along State-owned portions of the National Highway System (“NHS”), any design exceptions must be approved by ODOT and/or FHWA.
- b. For portions of a 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 ODOT 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 ODOT the following:

- a. For all curb ramps constructed or altered as part of a 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 the ODOT Project Contact. 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/ADA/Pages/asset-inspection.aspx>
- b. 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 completion of each individual project and allow ODOT to inspect all project facilities, including but not limited to, sidewalks, curb ramps, pedestrian-activated signals, shared use paths, transit stops, park-and-rides, and on-street parking, as applicable to each Supplemental Project Authorization, located on or along a state highway, prior to acceptance of the 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 or Certified Agency Standards, as set forth in Sections A.1 through A.3 above. For any work zone on or along a 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 a 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, ODOT will only reimburse Certified Agency for work that meets the applicable ODOT or Certified Agency Standards as set forth in Sections A.1 through A.3 above, regardless of whether the work is on a State-owned or a Certified Agency-owned facility.

7. On-going Maintenance Obligation

Certified Agency shall ensure that any portions of a project under Certified 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, Certified Agency ensuring that:

- a. Pedestrian access is maintained as required by the ADA,
- b. Any complaints received by Certified Agency identifying safety or access issues regarding a sidewalk, curb ramp, pedestrian-activated signal, shared use path, transit stop, park-and-ride, on-street parking, or any other feature that might need to be accessible are promptly evaluated and addressed,
- c. Certified 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,
- d. Any future alteration work on a 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.

8. Survival

Maintenance obligations in Section A.7 shall survive termination or expiration of this Program Agreement and any Supplemental Project Authorization issued hereunder.

B. PLANNING PROJECTS

1. General Requirements

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").

2. ADA Design Standards

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 all project facilities, including but not limited to, sidewalks, curb ramps, pedestrian-activated signals, shared use paths, transit stops, park-and-rides, and on-street parking, will result in ADA-compliant facilities and improvements for all projects authorized under this Program Agreement:

- a. For portions of a project on or along the Oregon State Highway System ("state highway"), Certified Agency shall apply ODOT's current ADA-related standards.
- b. For portions of a project **not** on or along a state highway, including locally-owned portions of the NHS, Certified Agency shall apply its own ADA-compliant standards, as approved by ODOT and FHWA for use on federally funded projects.

3. Work Zone Access

Agency shall ensure that temporary pedestrian routes are provided through or around any project work zone. For any work zone on or along a 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 a 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 any work zone in accordance with ODOT standards and processes.

C. DESIGN-ONLY PROJECTS

1. General Requirements

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").

2. ADA Design Standards, Construction Specifications, and Inspections

Certified Agency agrees to design the Project in compliance with the design and construction standards and the design exception documentation and approval requirements agreed to in the **Transportation Planning, Project Development, and Administration Standards** section of this 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 for all projects authorized hereunder:

- a. 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 all project facilities, including but not limited to, sidewalks, curb ramps, pedestrian-activated signals, shared use paths, transit stops, park-and-rides, and on-street parking, as applicable to each Supplemental Project Authorization, **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.** Design exceptions on State-owned facilities must be approved by ODOT. For project locations on or along State-owned portions of the National Highway System ("NHS"), any design exceptions must be approved by State and/or FHWA.
- b. For portions of a 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 ODOT and FHWA for use on federally funded projects.

3. 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 Certified Agency Standards, as set forth in Sections C.1 and C.2 above. For any work zone on or along a 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 a 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 any work zone.

EXHIBIT E
Standard Provisions: Local Bridge Projects

For each Supplemental Project Authorization that indicates that the authorized project will have work performed on a local bridge that is listed on the National Bridge Inventory (NBI), Certified Agency agrees to comply with the provisions listed in this Exhibit E.

LOCAL BRIDGE PROGRAM REQUIREMENTS

1. Certified Agency shall require bridge design work to be performed by qualified staff as follows:
 - a. By Certified Agency's qualified staff, if Certified Agency is certified in Bridge Design under Program Agreement Paragraph IV.2.a; or
 - b. By qualified consultants contracted by Certified Agency, under the supervision of Certified Agency's qualified staff or consultant(s) that are ODOT-approved and meet the requirements of the [Qualifications and Coordination Requirements for Certified LPA not Certified in Bridge Design](#) policy, per Section C, Chapter 14 of the LAG Manual.
2. Certified Agency understands that for Local Bridge Program funding, roadway approach elements are:
 - a. Non-reimbursable for on-system bridges.
 - b. Reimbursable for the minimum roadway approaches of off-system bridges.

Guidance material to determine whether a bridge is on-system or off-system can be found at the following website under the "ODOT Bridge Log" dropdown menu:
<https://www.oregon.gov/odot/Bridge/Pages/Guidance-Material.aspx>.

3. Certified Agency agrees to follow the quarterly reporting process as described in the Program Agreement Paragraph V.6 and project change process listed in this Paragraph A.3. Certified Agency shall submit Quarterly Reports, Form 734-5034, to the ODOT Project Contact as required by the Program Agreement and copy bridge@odot.oregon.gov. Certified Agency shall submit Project Change Requests to the ODOT Project Contact.
 - a. **Project Change Request (PCR) Process:** If the project is funded by the ODOT Local Bridge Program, the Certified Agency must obtain approval from the State Bridge Engineer for changes to a local bridge project's scope, schedule, or budget by submitting a PCR, as specified in Subsections i., ii., and iii. of this paragraph below. Certified 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. An amendment to the Supplemental Project Authorization may be required to implement any approved PCR that results in a scope change, a change in the amount of federal or state funding available for the project, or other changes as determined by ODOT. Such amendments are also subject to any other approvals required by law.
 - i. Scope: A PCR is required for any significant change or reduction in the scope of work described in the Supplemental Project Authorization.
 - ii. Schedule: A PCR is required if Certified Agency or the ODOT Project Contact anticipates that any project phase will be delayed by more than ninety (90) calendar days, and for any

change in schedule that will require amendment of the Statewide Transportation Improvement Program (STIP).

- iii. 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 ODOT Project Contact.
- b. A PCR that results 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, may be approved by the State Bridge Engineer.
- c. A PCR that results 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, and is subject to any other approvals required by law.
- d. PCR Form: Certified Agency must submit all change requests using PCR Form [734-5409](#), incorporated herein by this reference and made a part of this Program Agreement. The PCR Form is due no later than thirty (30) calendar days after the need for change becomes known to Certified 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 the State Bridge Engineer.

The fillable PCR form and its instructions are available in the Forms Library at the following web site: <https://www.oregon.gov/odot/LocalGov/Pages/Forms-Apps.aspx>

4. ODOT Local Bridge Program Consequences for Non-Performance: If Certified Agency fails to fulfill its obligations to submit Quarterly Reports or PCRs as required by this Exhibit E, or does not assist in advancing the project or perform tasks that the Certified Agency is responsible for under a Supplemental Project Authorization, ODOT's course of action through the duration of Certified Agency's default may include: (a) restricting Certified Agency consideration for future funds awarded through ODOT's Local Bridge Program, (b) withdrawing unused Local Bridge Program project funds, and (c) terminating the Supplemental Project Authorization as stated in Paragraph VII.13 of this Program Agreement and recovery of payments pursuant to Paragraph VII.7 of this Program Agreement.
5. Except as otherwise provided in this Program Agreement, ODOT 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 at the time the work is performed), as supplemented by the LAG Manual Chapter 14, and AASHTO Guide Specifications for LRFD Seismic Bridge Design and ODOT Load and Resistance Factor Rating (LRFR), Tier 2 Load rating.
6. 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 for the National Bridge Inventory can be scheduled, pursuant to 23 CFR Part 650. This information must be submitted within ninety (90) calendar days of the issuance of Second Notification pursuant to Oregon Standard Specification 00180.50(g), or Certified Agency's approved equivalent.

7. Certified Agency or its consultant shall email the following information for any bridge project to bridge@odot.oregon.gov and to the ODOT's Senior Local Bridge Standards Engineer at Holly.M.WINSTON@odot.oregon.gov. This information must be received within ninety (90) calendar days of the issuance of Second Notification pursuant to Oregon Standard Specification 00180.50(g), or Certified Agency's approved equivalent.
 - a. PDF copy of As-Constructed Bridge Drawings (signed, final copy, which contains final construction notes)
 - b. PDF Copy of the Foundation Report
 - c. Pile Records and drill logs (If applicable)
 - d. Hydraulic Reports (scour analysis report included in this report)
 - e. Final Load Rating Calculation (with a stamped report containing all electronic files)
8. Certified Agency shall schedule a final bridge inspection with the ODOT Project Contact and either ODOT's Regional Bridge Lead Engineer or ODOT's Senior Local Bridge Standards Engineer. This request to inspect must be submitted within ninety (90) calendar days of the issuance of Second Notification pursuant to Oregon Standard Specification 00180.50(g), or Certified Agency's approved equivalent.

EXHIBIT F
Standard Provisions: Right of Way Services

For each Supplemental Project Authorization that indicates a project will require or has the potential to require right of way services, Certified Agency agrees to comply with the provisions listed in this Exhibit F except as otherwise modified by the Supplemental Project Authorization. References to “project” in this Exhibit F refer to each project identified in a Supplemental Project Authorization.

A. RIGHT OF WAY SERVICES

1. The Parties agree to the performance of the Right of Way Services (“Services”) as specified in the Supplemental Project Authorization.
2. The Parties agree to strictly follow the rules, policies, and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), 42 USC Chapter 61, as amended and implemented through Title 49 CFR 24, ORS Chapter 35, 23 USC Chapter 1 as implemented through Title 23 CFR 710 relating to acquisition of real property for federal-aid highway projects, 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 shall require its contractors and subcontractors, if any, to comply with these provisions.
3. The Parties agree that Services performed on the project shall be provided in accordance with an approved project-specific “Staffing Plan” as described in Paragraph A.7.
4. **Funding:**
 - a. Certified Agency shall prepare a programming cost estimate for the right of way phase and submit it to ODOT for approval.
 - b. Certified Agency shall request federal right of way funding authorization through the ODOT Project Contact and must receive from ODOT a written authorization to proceed prior to beginning Services.
 - c. Certified Agency shall pay its share of the actual cost of ODOT’s oversight and other agreed to Services in accordance with the funding provisions in Paragraph V.3. of the Program Agreement, unless otherwise modified in the Supplemental Project Authorization.
5. **ODOT Roles and Responsibilities:** ODOT, at project expense, will:
 - a. Provide oversight of the Services performed for the project.
 - b. Request the obligation of project funding from FHWA based on the approved programming cost estimate identified in Paragraph 4.a.
 - c. Coordinate co-certification of the right of way.
 - d. Prepare cost estimates for such oversight, obligation, and coordination work following the process specified in the Program Agreement Paragraph V.3.
 - e. Perform any Services assigned to ODOT in the Supplemental Project Authorization.

6. Certified Agency use of Qualified Individuals to Perform Services:

- a. In performing Services under this Program Agreement, Certified Agency shall utilize “Qualified Individuals” from Certified Agency’s staff, another local public agency’s staff, or consultant’s staff who meet the qualifications described in Chapter 10 - Local Public Agency Program Oversight of the ODOT Right of Way Manual and as approved by the ODOT Right of Way Section. Certified Agency may also request ODOT staff to perform Services under the Program Agreement, as further described in a Supplemental Project Authorization. (See “Staffing Plan” requirements in Paragraph A.7.)
- b. Certified Agency may perform needed appraisal Services by utilizing appraiser services procured by Certified Agency from ODOT’s Qualified Appraiser List, located online at: https://www.oregon.gov/ODOT/ROW/Documents/Appraisal_Qualified-Consultant-List.pdf.
- c. Certified Agency may perform other right of way related Services as needed by utilizing right of way consultants that meet the requirements of Paragraph 6 a. above.
- d. Certified Agency shall procure any consultant services according to Program Agreement Paragraph V.10.a.

7. Staffing Plan: Prior to performing Services described in Section B below, Certified Agency shall prepare a project-specific Staffing Plan and submit it to ODOT for review and approval by the ODOT Right of Way Section. The Staffing Plan must detail the Services to be performed by Qualified Individuals. Certified Agency shall submit Staffing Plan updates to ODOT for approval as needed throughout the project to ensure all project Services are performed by Qualified Individuals.

8. ODOT Performing Services as a Consultant: The Parties agree this Paragraph 8 applies only when ODOT will perform Services for Certified Agency as a consultant on a project. Under such circumstances, the Parties agree:

- a. Certified Agency is responsible for delivering the project under the authority of the Certification Program Agreement and the Supplemental Project Authorization; and ODOT will perform Services as a consultant for Certified Agency.
- b. The Certification Program Agreement and Supplemental Project Authorization for the project are sufficient for Certified Agency to contract ODOT to perform Services. The Parties need not enter into a separate agreement for performance of Services.
- c. Any consultant Services to be performed by ODOT will be detailed in the Supplemental Project Authorization as a special provision.
- d. In accordance with the funding provisions in Paragraph V.3. subsection g. of the Program Agreement, ODOT will provide estimates for the costs of its consultant Services, which are a subset of the Total Project Costs identified in the Supplemental Project Authorization. Services performed by ODOT as a consultant shall be invoiced and reimbursed at actual cost to the project according to Paragraph V.3., subsections g. and h. of the Program Agreement.

9. Previously Donated or Acquired Property: Property previously donated to or acquired by Certified Agency prior to right of way funding authorization may be incorporated into the Project’s right of way only after review and approval by ODOT and FHWA. Certified Agency shall submit such requests

in writing on a form to be provided by the ODOT Program and Funding Services Manager, who will coordinate ODOT's and FHWA's approval.

10. **Disposition of Real Property:** Certified Agency agrees that if any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall comply with 2 CFR 200.311 and 23 CFR 710. The disposition of such property may be subject to ODOT and FHWA approval, and reimbursement to ODOT and FHWA of the required proportionate shares of the fair market value may be required.
11. **Monumentation:** Certified Agency shall ensure that all project right of way monumentation is conducted in conformance with ORS 209.155.

B. CERTIFIED AGENCY ROLE AND RESPONSIBILITIES

1. **Preliminary Phase:** Certified Agency is responsible for the performance of Services set out in this Section B.1 during the preliminary right of way phase of each project identified in a Supplemental Project Authorization, and as identified below. Costs incurred for Services listed under this Section B.1 shall be charged as preliminary engineering expenditures.
 - a. **Preliminary Phase Services:** Certified Agency shall provide the following preliminary phase Services:
 - i. Prepare preliminary cost estimates.
 - ii. Make preliminary contacts with property owners.
 - iii. Gather and prepare data for environmental documents.
 - iv. Develop access and approach road list.
 - v. Prepare field location and project data as defined in the Supplemental Project Authorization.
 - b. **Title:** Certified Agency shall provide the following title Services on the project as follows:
 - i. Prepare preliminary title reports, if ODOT determines they are needed, before negotiations for acquisition commence.
 - ii. Specify the degree of rights to be acquired (e.g., fee, easement), which must be determined in accordance with the current ODOT Right of Way Manual.
 - c. **Legal Descriptions:** Certified Agency shall provide property legal description Services as follows:
 - i. Prepare sufficient horizontal control, recovery, and retracement surveys; vesting deeds; maps; and other data so that legal descriptions can be written.
 - ii. Prepare project construction plans and cross-section information.
 - iii. Write legal descriptions and prepare right of way maps.
 - A. If Certified Agency acquires right of way along or adjacent to a state highway, property descriptions and right of way maps shall be prepared in accordance with the current ODOT Right of Way Engineering Manual, incorporated herein by reference. Preliminary and final versions of the property descriptions and right of way maps must be reviewed

and approved by ODOT.

B. The ODOT Right of Way Engineering Manual is available at:
<https://www.oregon.gov/odot/ETA/Pages/ROW-Engineering.aspx>

d. Hazmat: Certified Agency shall provide the following Services regarding possible hazardous materials on the project site:

- i. Conduct a Level 1 Initial Site Assessment, consistent with ODOT Guidance, within project limits to detect the 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.
- ii. If the Level 1 Initial Site Assessment indicates the potential presence of contamination that could impact the properties, conduct a Level 2 Preliminary Site Investigation of sufficient scope to confirm the presence of contamination, determine impacts to properties, and develop special provisions and cost estimates. The investigation shall be conducted according to the current ODOT Hazmat Program Manual, incorporated herein by reference, and applicable requirements of the Oregon Department of Environmental Quality. The ODOT Hazmat Program Manual is available at:
<https://www.oregon.gov/odot/GeoEnvironmental/Pages/Hazmat-Manual.aspx>
- iii. If contamination is found as a result of the Level 2 Preliminary Site Investigation, promptly disclose the severity and extent of contamination to ODOT and present a recommendation for remediation to ODOT as set forth in ODOT's Right of Way Manual Section 6.330.
- iv. 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. If Certified Agency undertakes any remediation on the site, Certified Agency will be solely responsible for any liability that may arise from such remediation.

2. **Right of Way Phase:** Certified Agency is responsible for the performance of Services outlined in this Section B.2 during the acquisition right of way phase of the project as identified below, except as modified by a Supplemental Project Authorization. Costs incurred for Services listed under this Section B.2 must be charged as right of way phase expenditures.

a. **Right of Way Acquisition:**

- i. 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.
- ii. When performing Services, Certified Agency shall provide ODOT with a quarterly status update regarding acquisition of project right of way.
- iii. Fee Title to properties acquired must be in the full legal name of Certified Agency, unless otherwise provided in a Supplemental Project Authorization and agreed to by FHWA.
- iv. Certified Agency shall adopt a resolution of intention and determination of necessity, prior to the initiation of negotiations, in accordance with ORS 35.235 and ORS 35.610, authorizing acquisition and condemnation ("Resolution"). Certified Agency's Resolution

shall be substantially in the form of Section C below.

- b. **Real Property and Title Insurance:** Certified Agency shall determine the sufficiency of title (taking subject to) in accordance with the current ODOT Right of Way Manual and after obtaining ODOT's concurrence; clear encumbrances necessary to conform to these requirements; obtain title insurance policies as required for the properties acquired; and provide ODOT copies of the title insurance policies.
- c. **Appraisal:** Certified Agency shall provide the following appraisal Services:
 - i. Conduct the valuation process of properties to be acquired. If potential contamination of hazardous materials is identified on the property, Certified Agency shall follow section 6.330 in ODOT's Right of Way Manual.
 - ii. Perform the appraisal reviews that will be used by Certified Agency to set just compensation.
- d. **Just Compensation:** Certified Agency's authorized official shall set just compensation, based upon the appraisal review performed by Qualified Individuals.
- e. **Negotiations:**
 - i. Certified Agency shall tender all monetary offers to landowners in writing at the just compensation amount set by Certified Agency. Certified Agency shall have sole authority to negotiate and make all settlement offers, subject to the limitations in the ODOT Right of Way Manual.
 - ii. When an administrative settlement for a property acquisition is made for an amount above the set just compensation amount, Certified Agency shall prepare a written justification statement. Said statement shall document Certified Agency's determination that the administrative settlement is reasonable, prudent, and in the public interest. It shall include the consideration of any property trades, construction obligations, trial risks, and other relevant items used to justify the administrative settlement.
 - iii. Certified Agency shall provide ODOT with all pertinent letters, negotiation records, settlement justification statements, and obligations incurred during the acquisition process.
 - iv. ODOT and Certified Agency shall determine a date for certification of right of way and agree to co-sign ODOT's Right of Way Certification form. ODOT and Certified Agency agree possession of all right of way is to be complete prior to advertising for any construction contract, unless otherwise agreed to by Certified Agency and ODOT.
 - v. Certified Agency is responsible for all project condemnation proceedings and for ensuring all condemnation processes are complete prior to the agreed upon certification date identified in subsection iv above.
- f. **Relocation:** Certified Agency shall provide the following relocation Services in accordance with Chapter 8 of the ODOT Right of Way Manual:
 - i. 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.
 - ii. Determine relocation benefits for eligible property owners and make relocation and moving

payments.

iii. Facilitate any relocation appeal process(es).

3. Closing Phase:

- a. Certified Agency shall close all transactions, including: drawing deeds, releases, and satisfactions necessary to clear title; obtaining signatures on release documents; and making payments. When ODOT provides Services as a consultant for Certified Agency, ODOT will submit to Certified Agency: (a) applicable portions of a Final Report packet as described in Section 6.590 of the ODOT Right of Way Manual; (b) all agreements with property owners; and (c) other information required by the Uniform Act or other federal laws regarding acquisition when federal funds are used as part of a transportation project.
- b. Upon acceptance by Certified Agency, any permanent conveyance documents shall be recorded by Certified Agency.

4. Property Management:

- a. Certified Agency shall take possession of all acquired properties. There shall be no encroachments of buildings or other private improvements allowed upon the state highway right of way.
- b. Certified Agency shall dispose of all improvements and excess land consistent with applicable state, federal, and local laws and policies, including but not limited to 23 CFR 710.409 and ODOT Right of Way Manual Chapter 9.
- c. Certified Agency shall conduct asbestos, lead paint, and other hazardous materials surveys for all structures that will be demolished, renovated, or otherwise disturbed as a result of the project. Asbestos surveys must be conducted by an Asbestos Hazard Emergency Response Act (AHERA) certified inspector.

5. Condemnation:

- a. Certified Agency may offer mediation if Certified Agency and property owners have reached an impasse.
- b. Certified Agency shall perform all administrative functions in preparation of the condemnation process, such as preparing final offer and complaint letters.
- c. Certified Agency shall perform all legal and litigation services related to the condemnation process.

6. Transfer of Right of Way: When the project will involve a transfer of right of way between the Parties, the Parties shall coordinate to determine when and how to transfer and accept all right of way and include that information as a special provision in the Supplemental Project Authorization.

C. SAMPLE RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN

The Parties agree the following language is provided as a sample. Certified Agency may copy this language to incorporate into their own standard resolution form or use the full language and add an “attested to” line or signature line:

WHEREAS (insert title of agency) may exercise the power of eminent domain pursuant to (Certified 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 (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 (Certified 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 Certified Agency]'s staff and [attorney/counsel]) 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 (Certified 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]