

**CORONAVIRUS STATE FISCAL RECOVERY FUND
GRANT AGREEMENT**

Contract Number: PO-73000-00005445

This grant agreement (“Agreement”), dated as of the date the Agreement is fully executed, is between the State of Oregon, acting through its Oregon Department of Transportation (“ODOT” or “State”), and the City of Portland (“Recipient”). This Agreement becomes effective only when fully signed and approved as required by applicable law (“Effective Date”). Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire **April 30, 2027** (“Expiration Date”).

This Agreement includes Exhibit A - Contact Information, Use of Funds/Project Description and Reporting Requirements, Exhibit B - Insurance Requirements, Exhibit C - Federal Award Identification, Exhibit D – Recipient Requirements.

Pursuant to Oregon Laws 2021, chapter 669, section 152, ODOT is authorized to distribute grant funds from funds received by the State of Oregon under the federal American Rescue Plan Act Coronavirus State Fiscal Recovery Fund (codified as 42 U.S.C. 802) for the purpose of constructing the OR-213 (82nd Avenue) Safety Improvement project as more particularly described in Exhibit A (the “Project”).

SECTION 1 - KEY GRANT TERMS

The following capitalized terms have the meanings assigned below.

Act: The federal American Rescue Plan Act Coronavirus State Fiscal Recovery Fund (codified as 42 U.S.C. 802), including all implementing regulations (31 CFR 35.1 *et seq.*) and other guidance promulgated by the U.S. Department of the Treasury.

Grant Amount: \$80,000,000.

Expenditure Deadline: December 31, 2026.

Obligation Deadline: December 31, 2024.

SECTION 2 - FINANCIAL ASSISTANCE

- A. ODOT shall provide Recipient, and Recipient shall accept from ODOT, a grant (the “Grant”) in an aggregate amount not to exceed the Grant Amount.
- B. ODOT’s obligations are subject to the receipt of the following items, in form and substance satisfactory to ODOT and its Counsel:
 - (1) This Agreement duly signed by an authorized officer of Recipient; and
 - (2) Such other certificates, documents, opinions and information as ODOT may reasonably require.
- C. Obligation Deadline. Pursuant to the Act, Recipient shall **obligate** Grant funds for Eligible Costs (as that term is defined in Section 4) no later than the Obligation Deadline. Funds are obligated on the date an order is placed for Project-related property or services, as well as the date Recipient contracts, subawards, or enters into similar transactions that require payment for Project activities. Grant funds may not be used for Project activities obligated after the Obligation Deadline, and any such activities are the sole responsibility of Recipient.

- D. Expenditure Deadline. Grant funds may not be expended for Project activities after the Expenditure Deadline. Project activities occurring after the Expenditure Deadline are the sole responsibility of Recipient.
- E. Return of Unobligated and Unexpended Grant Funds. Recipient must return to ODOT all Grant funds (i) not obligated by the Obligation Deadline (“Unobligated Funds”) and (ii) not expended by the Expenditure Deadline (even if such funds were obligated by the Obligation Deadline) (“Unexpended Funds”). Recipient must return all Unobligated Funds to ODOT no later than April 15, 2025, and must return all Unexpended Funds to ODOT no later than April 15, 2027.

SECTION 3 - DISBURSEMENT

- A. Full Disbursement. Within five business days of execution of this Agreement and satisfaction of all conditions precedent, ODOT shall disburse the full Grant to Recipient.
- B. Conditions to Disbursements. ODOT has no obligation to disburse Grant funds unless:
 - (1) ODOT has sufficient funds currently available for this Agreement; and
 - (2) ODOT has received appropriations, limitations, allotments or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to make payment, and notwithstanding anything in the Agreement, occurrence of such contingency does not constitute a default.

SECTION 4 - USE OF GRANT

As more particularly described in Exhibit A, Recipient will use Grant funds to plan for, design and construct the Project. Recipient may only use Grant funds to cover actual, reasonable and necessary Project costs in accordance with the Act and Oregon law, as applicable, incurred during the period beginning March 3, 2021, and ending on the Obligation Deadline (“Eligible Costs”). Recipient must expend the entire Grant Amount on Eligible Costs no later than the Expenditure Deadline. Grant funds cannot be used for costs in excess of one hundred percent (100%) of the total Project costs.

SECTION 5 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

Recipient represents and warrants to ODOT as follows:

- A. Organization and Authority.
 - (1) Recipient is a public body validly organized and existing under the laws of the State of Oregon.
 - (2) Recipient has all necessary right, power and authority under its organizational documents and applicable Oregon law to execute and deliver this Agreement and incur and perform its obligations under this Agreement.
 - (3) This Agreement has been authorized by an ordinance, order or resolution of Recipient’s governing body if required by its organizational documents or applicable law.
 - (4) This Agreement has been duly executed by Recipient, and when executed by ODOT, is legal, valid and binding, and enforceable in accordance with their terms.
- B. Compliance with the Act. Recipient will comply with the terms, conditions and requirements of the Act.

- C. Full Disclosure. Recipient has disclosed in writing to ODOT all facts that materially adversely affect the Grant, or the ability of Recipient to perform all obligations required by this Agreement. Recipient has made no false statements of fact, nor omitted information necessary to prevent any statements from being misleading. The information contained in this Agreement, including Exhibit A, is true and accurate in all respects.
- D. Pending Litigation. Recipient has disclosed in writing to ODOT all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Grant or the ability of Recipient to perform all obligations required by this Agreement.

SECTION 6 - COVENANTS OF RECIPIENT

Recipient covenants as follows:

- A. Notice of Adverse Change. Recipient shall promptly notify ODOT of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient related to the ability of Recipient to perform all obligations required by this Agreement.
- B. Compliance with Laws.
- (1) Recipient will comply with the requirements of all applicable federal, state and local laws, rules, regulations, and orders of any governmental authority, except to the extent an order of a governmental authority is contested in good faith and by proper proceedings.
 - (2) Recipient is responsible for all federal or state tax laws applicable to its implementation of the Project and its use of the Grant funds or compensation or payments paid with the Grant funds.
- C. Federal Audit Requirements. The Grant is federal financial assistance, and the associated Assistance Listings number is 21.027. Recipient is a subrecipient.
- (1) If Recipient receives federal funds in excess of \$750,000 in Recipient's fiscal year, it is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Recipient, if subject to this requirement, shall at its own expense submit to ODOT a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Agreement and shall submit or cause to be submitted to ODOT the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Agreement.
 - (2) Audit costs for audits not required in accordance with 2 CFR part 200, subpart F are unallowable. If Recipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the funds received under this Agreement.
 - (3) Recipient shall save, protect and hold harmless ODOT from the cost of any audits or special investigations performed by the Federal awarding agency or any federal agency with respect to the funds expended under this Agreement. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and the State of Oregon.
 - (4) Recipient is authorized to use the Grant funds to pay itself for those administrative costs that are eligible costs under the Act to implement the Project. Recipient's use of Grant funds for

administrative costs does not preclude the State of Oregon from later recovering costs from Recipient if the U.S. Department of the Treasury disallows certain costs after an audit.

- D. System for Award Management. Recipient must comply with applicable requirements regarding the federal System for Award Management (SAM), currently accessible at <https://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining current information in SAM.
- E. Employee Whistleblower Protection. Recipient must comply, and ensure the compliance by subcontractors or subrecipients, with 41 U.S.C. 4712, Program for Enhancement of Employee Whistleblower Protection. Recipient must inform subrecipients, contractors and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.
- F. Compliance with 2 CFR Part 200. Recipient must comply with all applicable provision of 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, including the Cost Principles and Single Audit Act requirements.
- G. Federal Employment. ODOT's payments to Recipient under this Grant will be paid by funds received from the United States Federal Government. Recipient, by signing this Agreement certifies neither it nor its employees, contractors, subcontractors or subrecipients who will administer this Agreement are currently employed by an agency or department of the federal government.
- H. Recipient Subagreements and Procurements.

Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, "subagreements") for performance of the Project. If Recipient enters into a contract for performance of work under this Agreement, Recipient agrees to comply with the following:

(1) Subagreements.

- i. All subagreements must be in writing, executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
- ii. Recipient shall require all of its contractors performing work under this Agreement to name ODOT as a third-party beneficiary of Recipient's subagreement with the Contractor and to name ODOT as an additional or "dual" obligee on contractors' payment and performance bonds.
- iii. Recipient shall provide ODOT with a copy of any signed subagreement, as well as any other purchasing or contracting documentation, upon ODOT's request at any time. This paragraph shall survive expiration or termination of this Agreement.
- iv. Recipient must report to ODOT any material breach of a term or condition of a subagreement within ten (10) days of Recipient discovering the breach.

(2) Subagreement Indemnity.

- i. ***Recipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save***

and hold harmless State of Oregon, the Oregon Transportation Commission and its members, and the Department of Transportation, their officers, agents and employees from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Recipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that ODOT shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of ODOT, be indemnified by the other party to Recipient's subagreement(s) from and against any and all Claims.

- ii. Any such indemnification shall also provide that neither Recipient's subrecipient(s), contractor(s) nor subcontractor(s), nor any attorney engaged by Recipient's subrecipient(s), contractor(s) nor subcontractor(s) shall defend any claim in the name of ODOT 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 may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient's subrecipient is prohibited from defending the State, or that Recipient's subrecipient is not adequately defending the State's interests, or that an important governmental principle is at issue or that it is in the best interests of the State to do so. The State reserves all rights to pursue claims it may have against Recipient's subrecipient if the State of Oregon elects to assume its own defense.

(3) Subagreement Insurance.

- i. If the Project or Project work is on or along a state highway, Recipient shall require its contractor(s) to meet the minimum insurance requirements provided in Exhibit B. Recipient may specify insurance requirements of its contractor(s) above the minimum insurance requirements specified in Exhibit B. Recipient shall verify its contractor(s) meet the insurance requirements in Exhibit B.
- ii. Recipient shall determine insurance requirements, insurance types and amounts, as deemed appropriate based on the risk of the work outlined within the subagreement. Recipient shall specify insurance requirements and require its contractor(s) to meet the insurance requirements. Recipient shall obtain proof of the required insurance coverages, as applicable, from any contractor providing services related to the subagreement.
- iii. Recipient shall require its contractor(s) to require and verify that all subcontractors carry insurance coverage that the contractor(s) deems appropriate based on the risks of the subcontracted work.

(4) Recipient shall include provisions in each of its subagreements requiring its contractor(s) to comply with the indemnification and insurance requirements in paragraphs H.(2) and H.(3).

(5) Procurements. Recipient 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 Statute (ORS) Chapters 279 A, B, and C, and 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.
- iii. This provision does not prevent Recipient from self-performing work funded by the Grant.

(6) **Conflicts of Interest.** Recipient's public officials shall comply with Oregon's government ethics laws, ORS 244.010 *et seq.*, as those laws may be subsequently amended, if applicable.

I. **RESERVED.**

J. **Financial Records.** Recipient will cooperate with ODOT to provide all necessary financial information and records to comply with the Act's reporting requirements, as well as provide ODOT the reporting required in Exhibit A. Recipient will keep proper books of account and records on all activities associated with the Agreement, including, but not limited to, invoices, cancelled checks, payroll records, instruments, agreements and other supporting financial records documenting the use of the Grant. Recipient will maintain these books of account and records in accordance with generally accepted accounting principles and will retain these books of account and records until five years after the Expenditure Deadline or the date that all disputes, if any, arising under this Agreement have been resolved, whichever is later.

K. **Inspection.** Recipient shall permit ODOT, and any party designated by ODOT, the Oregon Secretary of State's Office, the federal government and their duly authorized representatives, at any reasonable time, to inspect and make copies of any accounts, books and records related to the administration of this Agreement. Recipient shall supply any Agreement-related information as ODOT may reasonably require.

L. **Notice of Event of Default.** Recipient shall give ODOT prompt written notice of any Event of Default, or any circumstance that with notice or the lapse of time, or both, may become an Event of Default, as soon as Recipient becomes aware of its existence or reasonably believes an Event of Default is likely.

M. **Contribution and Indemnification.**

(1) **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 a party (the "Notified Party") with respect to which the other party ("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. Either 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 the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third-Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third-Party Claim.

(ii) With respect to a Third-Party Claim for which ODOT is jointly liable with Recipient (or would be if joined in the Third-Party Claim), ODOT 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 Recipient in such proportion as is appropriate to reflect the relative fault of

ODOT on the one hand and of Recipient 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 ODOT on the one hand and of Recipient 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. ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if ODOT had sole liability in the proceeding.

(iii) With respect to a Third-Party Claim for which Recipient is jointly liable with ODOT (or would be if joined in the Third-Party Claim), Recipient 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 ODOT in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of ODOT 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 Recipient on the one hand and of ODOT 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. Recipient'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.

(2) Indemnification. Subject to any limitations imposed by State law and the Oregon Constitution, Recipient agrees to the following contract-related indemnification for all projects authorized under this Agreement: Where Recipient contracts for services or performs project management for a project, Recipient 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, Recipient's supervision of any individual project or contract, or Recipient's failure to comply with the terms of this Agreement.

(3) Recipient shall meet the insurance requirements within Exhibit B.

N. Representations and Covenants Regarding Prevailing Wage.

(1) The prevailing wage rate requirements that may apply to the Project are set forth in ORS 279C.800 through 279C.870, the administrative rules promulgated thereunder (OAR Chapter 839, Division 25) and Oregon Laws 2021, chapter 678, section 17 (collectively, state "PWR"), or, if applicable, 40 U.S.C. 3141 et seq. (federal "Davis-Bacon Act"). If applicable, Recipient shall:

- a) comply with PWR, require its contractors and subcontractors to pay the applicable PWR or Davis-Bacon Act rates, and comply with all other Oregon Bureau of Labor and Industries ("BOLI") requirements pursuant to the PWR, including on all contracts and subcontracts and in filing separate public works bonds with the Construction Contractors Board;
- b) pay to BOLI, within the required timeframe and in the appropriate amount, the project fee required by OAR 839-025-0200 to 839-025-0230, including any additional fee that may be owed upon completion of the Project; and

- c) unless exempt under Section 17(2) of Oregon Laws 2021, chapter 678, if Recipient is a “public body” and the Project is a “qualified project,” as those terms are defined in Section 17(3) of Oregon Laws 2021, chapter 678, Recipient shall require each contactor in a contract with an estimated cost of \$200,000 or greater to:
 - i. Enter into a project labor agreement that, at a minimum, provides for payment of wages at or above the prevailing rate of wage;
 - ii. Employ apprentices to perform 15 percent of the work hours that workers in apprenticeable occupations perform under the contract, in a manner consistent with the apprentices’ respective apprenticeship training programs;
 - iii. Establish and execute a plan for outreach, recruitment and retention of women, minority individuals and veterans to perform work under the contract, with the aspirational target of having at least 15 percent of total work hours performed by individuals in one or more of those groups; and
 - iv. Require any subcontractor engaged by the contractor to abide by the requirements set forth in subparagraphs i., ii. and iii. above, if the work to be performed under the subcontract has an estimated cost of \$200,000 or greater.

- (2) Recipient represents and warrants that it is not on the BOLI current List of Contractors Ineligible to Receive Public Works Contracts and that it will not contract with any contractor on this list.
- (3) Pursuant to ORS 279C.817, Recipient may request that the Commissioner of BOLI make a determination about whether the Project is a public works project on which payment of the prevailing rate of wage is required under ORS 279C.840.

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

SECTION 7 - DEFAULT

- A. Recipient Default. Any of the following constitutes an “Event of Default” of Recipient:
 - (1) Misleading Statement. Any materially false or misleading representation is made by or on behalf of Recipient, in this Agreement or in any document provided by Recipient related to this Grant.
 - (2) Failure to Perform. Recipient fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement, other than those referred to in subsection (1) of this section, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by ODOT. ODOT may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.
- B. ODOT Default. ODOT will be in default under this Agreement if it fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.

SECTION 8 - REMEDIES

- A. ODOT Remedies. Upon the occurrence of an Event of Default, ODOT may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to, termination of ODOT's obligations to make the Grant or further disbursements, return of all or a portion of the Grant Amount, payment of interest earned on the Grant Amount, and declaration of ineligibility for the receipt of future awards from ODOT. If, as a result of an Event of Default, ODOT demands return of all or a portion of the Grant Amount or payment of interest earned on the Grant Amount, Recipient shall pay the amount upon ODOT's demand. ODOT may also recover all or a portion of any amount due from Recipient by deducting that amount from any payment due to Recipient from the State of Oregon under any other contract or agreement, present or future, unless prohibited by state or federal law. ODOT reserves the right to turn over any unpaid debt under this Section 8 to the Oregon Department of Revenue or a collection agency and may publicly report any delinquency or default. These remedies are cumulative and not exclusive of any other remedies provided by law.
- B. Recipient Remedies. In the event of default by ODOT, Recipient's sole remedy will be for disbursement of Grant funds for Eligible Costs of the Project, not to exceed the total Grant Amount, less any claims ODOT has against Recipient.

SECTION 9 - TERMINATION

In addition to terminating this Agreement upon an Event of Default as provided in Section 8, ODOT may terminate this Agreement with notice to Recipient under any of the following circumstances:

- A. If ODOT anticipates a shortfall in applicable revenues or ODOT fails to receive sufficient funding, appropriations or other expenditure authorizations to allow ODOT, in its reasonable discretion, to make payment under this Agreement.
- B. There is a change in federal or state laws, rules, regulations or guidelines so that the uses of the Grant are no longer eligible for funding.

This Agreement may be terminated at any time by mutual written consent of the parties.

SECTION 10 - MISCELLANEOUS

- A. No Implied Waiver. No failure or delay on the part of ODOT to exercise any right, power, or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.
- B. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- C. Notices and Communication. Except as otherwise expressly provided in this Agreement, any communication between the parties or notices required or permitted must be given in writing by personal delivery, email, or by mailing the same, postage prepaid, to Recipient or ODOT at the addresses listed in Exhibit A, or to such other persons or addresses that either party may subsequently indicate pursuant to this Section.

Any communication or notice by personal delivery will be deemed effective when actually delivered to the addressee. Any communication or notice so addressed and mailed will be deemed to be received and effective five (5) days after mailing. Any communication or notice given by email becomes effective 1) upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system or 2) the recipient's confirmation of receipt, whichever is earlier. Notwithstanding this provision, the following notices may not be given by email: notice of default or notice of termination.

- D. Amendments. This Agreement may not be altered, modified, supplemented, or amended in any manner except by written instrument signed by both parties.
- E. Severability. If any provision of this Agreement will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision.
- F. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of ODOT, Recipient, and their respective successors and assigns, except that Recipient may not assign or transfer its rights, obligations or any interest without the prior written consent of ODOT.
- G. Counterparts. This Agreement may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.
- H. Integration. This Agreement (including all exhibits, schedules or attachments) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Agreement.
- I. No Third-Party Beneficiaries. ODOT and Recipient are the only parties to this Agreement and are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives or provides, or is intended to give or provide, to third persons any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- J. Survival. The following provisions, including this one, survive expiration or termination of this Agreement: Sections 2.E, 6 (excepting 6.H, Recipient Subagreements and Procurements), 7, 8, 10.B, 10.C, 10.L and 10.M.
- K. Time is of the Essence. Recipient agrees that time is of the essence under this Agreement.

L. Attorney Fees. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Agreement will be entitled to recover from the other its reasonable attorney fees and costs and expenses at trial, in a bankruptcy, receivership or similar proceeding, and on appeal. Reasonable attorney fees shall not exceed the rate charged to ODOT by its attorneys.

M. Public Records. ODOT's obligations under this Agreement are subject to the Oregon Public Records Laws.

Recipient, by its signature below, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON
acting by and through its
Department of Transportation

CITY OF PORTLAND

By: _____
Jeff Flowers
Statewide Investments Management
Section Manager

By: _____
Jo Ann Hardesty
City Commissioner

Date: _____

Date: _____

APPROVAL RECOMMENDED

By _____
State Traffic Roadway Engineer

Date _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

Sam Zeigler via email dated 4/8/22

Samuel B. Zeigler, Senior Assistant Attorney General

EXHIBIT A
CONTACT INFORMATION, USE OF FUNDS/ PROJECT DESCRIPTION AND REPORTING REQUIREMENTS

Contact Information:

ODOT

State of Oregon, acting by and through its
 Department of Transportation
 123 NW Flanders Street
 Portland, OR 97209

Recipient

City of Portland
 Portland Bureau of Transportation
 1120 SW Fifth Avenue
 Suite 1300
 Portland, OR 97204

Contract Administrator: Kristen Stallman

Telephone: 503-731-4957

Email: Kristen.stallman@odot.oregon.gov

Contact: Mark Lear

Telephone: 503-823-7604

Email: mark.lear@portlandoregon.gov

Use of Funds/ Project Description:

Recipient shall use Grant funds to develop and complete safety upgrades and multi-modal improvements on 82nd Avenue from NE Killingsworth Street south to SE Clatsop Street in Portland.

Reporting Requirements: All reports must be submitted to the contact person above and tami.weil@odot.oregon.gov.

Schedule

| Report Name | Frequency | Due Dates |
|--------------------------|--|--|
| Project Performance Plan | One-Time | 45 days after the Effective Date |
| Quarterly Report | Quarterly starting in 2022 through the Expiration Date | April 10 th , July 10 th , October 10 th , January 10 th |
| Annual Report | Annually starting in 2022 through the Expiration Date | July 10 th |

Project Performance Plan

Recipient shall submit to ODOT, using a template and instructions provided by ODOT, the following information in the Project Performance Plan:

1. Problem Statement
2. Goal
3. Rationales
4. Assumptions
5. Resources
6. Activities
7. Outputs
8. Short-Term Outcomes
9. Intermediate Outcomes
10. Long-Term Outcomes

Quarterly Reports

Recipient shall submit Quarterly Reports to ODOT which shall include such information as is necessary for ODOT to comply with the reporting requirements established by 42 U.S.C. 802, guidance issued by the U.S. Treasury, and 2 CFR Part 200 (known as the “Super Circular”). The reports shall be submitted using a template provided by ODOT that also includes the following minimum information:

1. Expenditure Report
 - a) Quarterly Obligation Amount
 - b) Quarterly Expenditure Amount
 - c) Projects
 - d) Primary Location of Project Performance
 - e) Detailed Expenditures (categories to be provided by ODOT)
2. Project Status Update
 - a) Status of project: not started, completed less than 50 percent, completed 50 percent or more, completed.
 - b) Progress since last update including project outputs and achieved outcomes.
 - c) Identify barriers/risks to outcomes and describe actions taken to mitigate delays/risks to the overall project goal.
 - d) Optional: Share with ODOT community outreach/engagement or other positive local news stories.

Annual Reports

Recipient shall submit to ODOT a report annually on the following, as applicable, using a template provided by ODOT:

1. How the Project is Promoting Equitable Outcomes, if applicable
2. How the Project is Engaging with the Community, if applicable

Administrative Costs

Recipient shall also deliver to ODOT no later than April 15, 2025, an accounting of all of its direct administrative costs paid by this Grant accompanied by a certification statement that all such costs comply with the Act. Grant funds may not be used to pay for administrative costs incurred after the Obligation Deadline.

EXHIBIT B – INSURANCE REQUIREMENTS**1. GENERAL.**

- a. If the Project is on or along a state highway, Recipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003 (if any) that its sub-recipients, contractors or subcontractors (“contractor”): i) obtain insurance specified in this Exhibit 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 subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. 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 the Recipient. Recipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Recipient permit work under a subagreement when Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, “first tier” means a subagreement in which the Recipient is a Party. All references to “contractor” in this Exhibit refer to Recipient’s contractor as identified in this paragraph 1.a.
- b. The insurance specified below is a minimum requirement that the Recipient shall require each of its contractors to meet, and shall include such requirement in each of Recipient’s subagreements with its contractors. Recipient may determine insurance types and amounts in excess of the minimum requirement as deemed appropriate based on the risks of the work outlined within the subagreement.
- c. Recipient shall require each of its contractors to require that all of its subcontractors carry insurance coverage that the contractor deems appropriate based on the risks of the subcontracted work. Recipient’s contractors shall obtain proof of the required insurance coverages, as applicable, from any subcontractor providing Services related to the Contract.

2. TYPES AND AMOUNTS.**a. WORKERS COMPENSATION.**

All employers, including Recipient’s contractors, 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 meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employer’s Liability Insurance with limits not less than \$500,000 each accident. **Recipient’s contractors shall require compliance with these requirements in each of their subcontractor contracts.**

b. 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 50 feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass or crossing, the Recipient's contractors 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:

Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 \$2,000,000 \$5,000,000 per occurrence.

Annual aggregate limit shall not be less than \$2,000,000 \$4,000,000 \$10,000,000.

c. AUTOMOBILE LIABILITY.

Automobile Liability Insurance covering Recipient's contractor's business-related automobile use covering all owned, non-owned, or hired vehicles for bodily injury and property. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Amount below is a minimum requirement as determined by ODOT:

Coverage shall be written with a combined single limit of not less than \$1,000,000 \$2,000,000 \$5,000,000.

d. ADDITIONAL INSURED.

The Commercial General Liability Insurance and Automobile Liability Insurance must include the **“State of Oregon, the Oregon Transportation Commission and the 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 Subcontract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Additional Insured Endorsements 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 Recipient.

e. “TAIL” COVERAGE.

If any of the required insurance policies is on a “claims made” basis, such as professional liability insurance or pollution liability insurance, the contractor 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 Subcontract, for a minimum of twenty-four (24) months following the later of : (i) the contractor's completion and Recipient's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. 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, the contractor shall maintain “tail” coverage for the maximum time period that “tail” coverage is reasonably available in the marketplace.

f. NOTICE OF CANCELLATION OR CHANGE.

The contractor or its insurer must provide thirty (30) days’ written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

g. CERTIFICATE(S) OF INSURANCE.

Recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must endorse: i) **“State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees”** as an endorsed Additional Insured in regards to the Commercial General Liability and Automobile Liability policies and ii) that all liability insurance coverages shall be primary and non-contributory with any other insurance and self-insurance, with exception of Workers’ Compensation.

The Recipient shall immediately notify ODOT of any change in insurance coverage.

**EXHIBIT C
FEDERAL AWARD IDENTIFICATION
(REQUIRED BY 2 CFR 200.332(A)(1))**

| | |
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| (i) Subrecipient* Name: <i>(must match name associated with UEI)</i> | City of Portland |
| (ii) Subrecipient’s Unique Entity Identifier (UEI): | 054971197 (DUNS) |
| (iii) Federal Award Identification Number (FAIN): | N/A |
| (iv) Federal award date: <i>(date of award to DAS by federal agency)</i> | |
| (v) Grant period of performance start and end dates: | Start: March 3, 2021 End: December 31, 2026 |
| (vi) Grant budget period start and end dates: | Start: March 3, 2021 End: December 31, 2026 |
| (vii) Amount of federal funds obligated by this Grant: | \$80,000,000 |
| (viii) Total amount of federal funds obligated to Subrecipient by pass-through entity, including this Grant: | \$80,000,000 |
| (ix) Total amount of the federal award committed to Subrecipient by pass-through entity**: <i>(amount of federal funds from this FAIN committed to Recipient)</i> | \$80,000,000 |
| (x) Federal award project description: | Coronavirus State Fiscal Recovery Fund |
| (xi) a. Federal awarding agency: | U.S. Department of the Treasury |
| b. Name of pass-through entity: | Oregon Department of Transportation |
| c. Contact information for awarding official of pass-through entity: | Cece Gilbert, Cecelia.GILBERT@odot.oregon.gov |
| (xii) Assistance listings number, title and amount: | Number: 21.027 Title: Amount: |
| (xiii) Is award research and development? | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| (xiv) Indirect Cost: a. Indirect Cost Allocation Plan (ICAP) b. Is the 10% de minimis rate being used per 2 CFR § 200.414? c. None | <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |

* For the purposes of this Exhibit C, “Subrecipient” refers to Recipient and “pass-through entity” refers to ODOT.

** The total amount of federal funds obligated to the Subrecipient by the pass-through entity is the total amount of federal funds obligated to the Subrecipient by the pass-through entity during the current state fiscal year.

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| EXHIBIT D RECIPIENT REQUIREMENTS |
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1. Americans with Disabilities Act Compliance

- a. State Highway:** For portions of the Project located on or along the State Highway System or a State-owned facility (“state highway”):
- i.** Recipient shall utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, “ADA”), including ensuring that all sidewalks, curb ramps, pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - ii.** Recipient shall follow ODOT’s processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
 - iii.** At Project completion, Recipient shall send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form and to State’s Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT’s fillable Curb Ramp Inspection Form and instructions are available at the following address:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>
 - iv.** Recipient shall promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by Recipient and prior to release of any Recipient contractor.
 - v.** Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, disability organizations, and ODOT at least 10 days prior to the start of construction.
- b. Local Roads:** For portions of the Project located on Recipient roads or facilities that are not on or along a state highway:
- i.** Recipient shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed and maintained in compliance with the ADA.
 - ii.** Recipient may follow its own processes or may use ODOT’s processes for design, construction, or alteration of Project sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard

Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:

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

Additional ODOT resources are available at the above-identified link. ODOT has made its forms, processes, and resources available for Recipient's use and convenience.

- iii. Recipient assumes sole responsibility for ensuring that the Project complies with the ADA, including when Recipient uses ODOT forms and processes. Recipient acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.
 - iv. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations prior to the start of construction.
- c. Recipient shall ensure that any portions of the Project under Recipient's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Recipient ensuring that:
 - i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Recipient identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Recipient, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the Project in compliance with the ADA requirements that were in effect at the time the Project was constructed or altered,
 - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
 - vi. Maintenance obligations in this Section 5 shall survive termination of this Agreement.
2. If the Project includes traffic signal or illumination improvements on or along a state highway, Recipient shall:
 - a. Obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal or illumination, pursuant to Oregon Administrative Rule (OAR) 734-020-0430,
 - b. Enter into a separate traffic signal agreement with State to cover obligations for any traffic signal or illumination being installed on or along a state highway,

- c. Ensure Recipient, or its contractor's, electrical inspectors possess a current State Certified Traffic Signal Inspector certificate, in order to inspect electrical installations on State highways. The State District Permitting Office shall verify compliance with this requirement prior to construction. The permit fee should also cover the State electrician's supplemental inspection,
 - d. Maintain, at the Recipient's expense, the pavement surrounding any vehicle detector loops installed in the Recipient street in such a manner as to provide adequate protection for said detector loops. Failure to do so may result in State requiring Recipient to repair or replace the damaged loops at Recipient expense. Future Recipient roadwork activities involving detector loops may also result in the same State requirements. Recipient shall also adequately maintain the pavement markings and signing installed in accordance with the approved signal plan sheets for the signal installation or current Manual on Uniform Traffic Control Devices standards,
 - e. Promptly report modifications to State's Region Traffic Engineer where Recipient has an agreement with State to modify signal timing and the Recipient 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. Any such timing modification shall comply with the ADA and Exhibit D – Recipient Requirements, paragraph 1; and
 - f. Ensure that all Project work and maintenance activities involving pedestrian-activated signals comply with the ADA and Exhibit D – Recipient Requirements, paragraph 1.
3. Recipient shall obtain a permit to occupy State right of way through the ODOT District Permitting Office prior to the commencement of construction.
 4. Recipient shall, at its own expense, maintain and operate the Project upon completion and throughout the useful life of the Project at a minimum level that is consistent with normal depreciation or service demand or both. The Parties agree that the useful life of the Project is defined as seven (7) years from its completion date (the "Project Useful Life").
 5. Recipient shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. If the Project or any portion is destroyed, insurance proceeds will be paid to ODOT, unless Recipient has informed ODOT in writing that the insurance proceeds will be used to rebuild the Project.
- 6. Work Performed within ODOT's Right of Way**
- a. Prior to the commencement of work, Recipient shall obtain, or require its contractor to obtain, permission from the appropriate ODOT District Office to work on or along the state highway. This Agreement does not provide permission to work on or along the state highway.
 - b. If the Project includes traffic control devices (see ODOT's Traffic Manual, Chapter 5, for a description of traffic control devices) on or along a state highway, Recipient shall, pursuant to Oregon Administrative Rule (OAR) 734-020-0430, obtain the approval of the State Traffic Engineer prior to design or construction of any traffic control device being installed.

- c. Recipient shall enter into a separate traffic signal agreement with ODOT to cover obligations for any traffic signal being installed on a state highway.
- d. Recipient shall ensure that its electrical inspectors possess a current State Certified Traffic Signal Inspector certificate before the inspectors inspect electrical installations on state highways. The ODOT's District Office shall verify compliance with this requirement before construction. The permit fee should also cover the State electrician's supplemental inspection.

7. General Standards

The Project shall be completed within industry standards and best practices to ensure that the functionality and serviceability of the Program's investment meets the intent of the application and the Program.

8. Website

Recipient shall provide ODOT a link to any website created about the Project identified in Exhibit A before any costs being considered eligible for reimbursement. Recipient shall notify the ODOT Contact in writing when the link changes during the term of this Grant Agreement.