



DAN JOHNSON
DIRECTOR

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

October 23, 2025

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of an Amendment to a Supplemental Project Agreement with the Oregon Department of Transportation for increased funding for the Courtney Ave Complete Street Project. Amendment Value is \$2,693,997.87 for no time change. Total Agreement Value is \$8,355,418 for 10 years. Funding is through Metro Funds and County System Development Charges. No County General Funds are Involved.

Previous Board Action/Review	04/17/25: Approval of a Resolution Declaring the Public Necessity and Purpose for the Acquisition of Rights of Way, Easements, and Fee Property, and Authorizing Good Faith Negotiations and, if necessary, Condemnation Proceedings, for the Courtney Ave Complete Street River Road to OR99E Project. 08/17/23: Approval of an Engineering and Related Services Contract with Harper Houf Peterson Righellis Inc. for the Courtney Ave Complete Street: River Rd-OR99E Project. 11/03/22: Approval of an Intergovernmental Agreement with the Oregon Department of Transportation for Right of Way Services for the Courtney Ave Complete Street: River Rd - OR 99E Project. 02/24/22: Approval of a Supplemental Project Agreement with Oregon Department of Transportation for the Courtney Ave Complete Street: River Rd - OR99E Project. 06/13/19: Approval to Apply for a 2022-2024 Regional Flexible Funds Allocation (RFFA) Grant.		
Performance Clackamas	1. Strong infrastructure.		
Counsel Review	Yes	Procurement Review	No
Contact Person	Bob Knorr	Contact Phone	503-742-4680

EXECUTIVE SUMMARY: The Courtney Ave Complete Street: River Rd - OR99E Project will improve safety and accessibility by providing 6-foot-wide separated sidewalks on both sides of Courtney Avenue, 8-foot-wide buffered bike lanes, street lighting, ADA compliant intersection curb ramps, and crosswalk enhancements at two intersections. The

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sidewalk and bikeway improvements will provide a direct east-west connection to the Trolley Trail between SE McLoughlin Blvd. (OR99E) and SE River Road.

The project is in the design phase and estimated construction costs are significantly higher due to rising construction costs and adding a pavement overlay the entire length of this project. Metro agreed to the County's request to increase the federal award grant amount and Amendment No. 1 to the supplemental project agreement increases the federal funding from \$5,079,992 to \$7,031,957.05 and updates the right-of-way services language for the project. The project's total estimated cost is now \$8,355,418.00, which was originally estimated at \$5,661,420.13. The project's remaining funding of \$1,323,460.95 is from County System Development Charges.

RECOMMENDATION: Staff respectfully recommends that the Board approve the attached Amendment 01 to the Supplemental Project Agreement with ODOT for the Courtney Ave Complete Street: River Rd - OR99E Project as listed in the agreement.

Respectfully submitted,

Dan Johnson

Dan Johnson
Director of Transportation & Development

AMENDMENT NUMBER 01
LOCAL AGENCY CERTIFICATION PROGRAM
Supplemental Project Agreement No. 34822/73000-00003200
Project Name: Courtney Ave Complete Street: River Rd – OR99E

This is Amendment No. 01 to the Agreement between the **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as “State” or “ODOT,” and **Clackamas County**, acting by and through its elected officials, hereinafter referred to as “Agency,” entered into on 03/25/22.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to increase the estimated total Project cost, update the federal requirements in Exhibit B, include right of way services by attaching Exhibit D, and update language.

1. **Effective Date.** This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.

2. **Amendment to Agreement.**

a. **Exhibit B shall be deleted in its entirety and replaced with the attached Revised Exhibit B. All references to “Exhibit B” shall hereinafter be referred to as “Revised Exhibit B.” The requirement to comply with the terms and conditions of Revised Exhibit B shall be effective upon execution of this Amendment.**

b. **TERMS OF AGREEMENT Paragraph 2, Page 2, which reads:**

2. The total Project cost for all phases of the project is estimated at \$5,661,420.13, which is subject to change. Federal funds for this Project shall be limited to \$5,079,992. Agency shall be responsible for all remaining costs, including any non-participating costs, all costs in excess of the federal or state funds, and the 10.27 percent match for all eligible costs. Any unused federal or state funds obligated to this Project will not be paid out by State, and will not be available for use by Agency for this Agreement or any other projects. “Total Project Cost” means the cost to complete the entire Project, and includes any federal funds, state funds, local matching funds, and any other funds. Agency will report the final cost of each phase of the Project at the completion of each phase, as well as the Total Project Cost at the end of the Project, to the ODOT Regional Local Agency Liaison.

Shall be deleted in its entirety and replaced with the following:

2. The total Project cost for all phases of the project is estimated at \$8,355,418.00, which is subject to change. Federal funds for this Project shall be limited to \$7,031,957.05. Agency shall be responsible for all remaining costs, including

any non-participating costs, all costs in excess of the federal or state funds, and the 10.27 percent match for all eligible costs. Any unused federal or state funds obligated to this Project will not be paid out by State and will not be available for use by Agency for this Agreement or any other projects. "Total Project Cost" means the cost to complete the entire Project and includes any federal funds, state funds, local matching funds, and any other funds. Agency will report the final cost of each phase of the Project at the completion of each phase, as well as the Total Project Cost at the end of the Project, to the ODOT Regional Local Agency Liaison.

c. TERMS OF AGREEMENT, Paragraph 16, Page 4, which reads:

16. Reserved.

Shall be deleted in its entirety and replaced with the following:

16. Right of Way:

- a. 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.
- b. For the Project, which includes acquisition of right of way or has the potential of requiring right of way, Agency shall:
 - i. 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.
 - ii. Conform to the Right of Way Services requirements in Exhibit D—Standard Provisions: Right of Way Services, attached hereto and by this reference made a part hereof.
- c. Right of Way Special Provisions: Exhibit D sets forth the responsibilities and activities to be accomplished by each Party, except as modified by the following Project special provisions:
 - i. ODOT Performing Services as a Consultant: Not applicable.
 - ii. Transfer of Right of Way: Not applicable.

d. TERMS OF AGREEMENT, Paragraph 20, Page 4, which reads:

20. By signing this Agreement, Agency agrees to comply with the provisions of the Federal Funding Accountability and Transparency Act (FFATA) and is subject

to the following award terms: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>. If, in the preceding fiscal year, Agency received more than 80 percent (80%) of its gross revenues from the federal government, those federal funds exceed \$25,000,000 annually, and the public does not have access to information about the compensation of executives through reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986, Agency shall report the total compensation and names of its top five executives to State. Agency shall report said information to State within 14 calendar days of execution of this Agreement and annually thereafter, utilizing the FFATA form attached hereto and marked as "Exhibit B."

Shall be deleted in its entirety and replaced with the following:

20. 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 "Revised Exhibit B – Federal Transparency Act Subaward Reporting," attached hereto and by this reference made a part hereof. See **CFR Appendix A to Part 170, Title 2**.

a. Agency's Unique Entity Identifier is: NVWKAVB8JND6

b. Agency is not required to report executive compensation information per Federal Transparency Act in accordance with Revised Exhibit B.

e. TERMS OF AGREEMENT, Paragraph 51, Page 13, which reads:

51. This Agreement, the Local Agency Certification Program (Certification Program) Agreement No. 30923, as amended and all attached exhibits constitutes the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and the attached Exhibits will control over Project application and documents provided by Agency to State. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State or Agency to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision. Notwithstanding this provision, the Parties may enter into a Right of Way Services Agreement in furtherance of the Project.

Shall be deleted in its entirety and replaced with the following:

51. This Agreement, the Local Agency Certification Program (Certification Program) Agreement No. 30923, as amended, and all attached exhibits

constitutes the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and the attached exhibits will control over Project application and documents provided by Agency to State. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State or Agency to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

3. **Counterparts.** This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
4. **Original Agreement.** Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. Agency certifies that the representations, warranties, and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.
5. **Electronic Signatures.** The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the Agreement 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. State reserves the right at any time to require the submission of the hard copy originals of any documents.

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

This Project is in the 2024-2027 Statewide Transportation Improvement Program (STIP), (Key #22131), that was adopted by the Oregon Transportation Commission on July 13, 2023 (or subsequently by amendment to the STIP).

State/Agency
Agreement No. 34822/73000-00003200

CLACKAMAS COUNTY, by and through
its elected officials

By _____
Chair
Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Caleb Huegel
Assistant County Counsel

Date via email 07/30/25

Agency Contact:

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

State Contact:

Mahasti Hastings, Local Agency Liaison
123 NW Flanders St
Portland, OR 97209
971-264-8253
Mahasti.V.HASTINGS@odot.oregon.gov

STATE OF OREGON, by and through its
Department of Transportation

By _____
Region 1 Manager

Date _____

APPROVAL RECOMMENDED

By _____
State Right of Way Manager

Date _____

By _____
Certification Program Manager

Date _____

By _____
Region 1 Right of Way Manager

Date _____

By N/A
State Traffic Engineer

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Karen Clevering
Assistant Attorney General

Date via email 06/24/25

Revised Exhibit B Federal Transparency Act Subaward Reporting

Agency agrees to comply with the following provisions in this Exhibit B. For purposes of this Exhibit B, references to “your organization” mean “Agency” and references to “project agreement” mean “Supplemental Project Agreement.”

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/execomp.htm>.)
- If “yes,” reporting executive compensation to ODOT will not be required.
 - If “no,” within fourteen (14) calendar days of execution of this Amendment 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 D
Standard Provisions: Right of Way Services

Agency (referred to in this exhibit as “Certified Agency”) agrees to comply with the provisions listed in this Exhibit D, except as otherwise modified by the Supplemental Project Agreement to which this Exhibit D is attached. References to “project” in this Exhibit D refer to the defined “Project” identified in the Supplemental Project Agreement.

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 Agreement to which this Exhibit is attached.
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 Services in accordance with Terms of Agreement, Paragraphs 4 and 5 of this Supplemental Project Agreement.
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 Terms of Agreement, Paragraph 4 of this Supplemental Project Agreement.
- e. Perform any Services assigned to ODOT in this Supplemental Project Agreement.

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

- a. In performing Services under this Supplemental Project 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, which must be further described in this Supplemental Project Agreement. (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 the ODOT Certification Program's consultant selection requirements and [LPA A&E Requirements Guide](#) and shall use ODOT's standard [A&E contract template for LPAs](#), which may be modified to include ODOT-approved provisions required by Agency.

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 Terms of Agreement, Paragraph 16 of this Supplemental Project Agreement provides that 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 Local Agency Certification Program Agreement and this Supplemental Project Agreement; and ODOT will perform Services as a consultant for Certified Agency.
 - b. The Local Agency Certification Program Agreement and this Supplemental Project Agreement 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 are detailed in the right of way special provisions under Terms of Agreement, Paragraph 16 of this Supplemental Project Agreement.
 - d. In accordance with the funding provisions in this Supplemental Project Agreement, ODOT will provide estimates for the costs of its consultant Services, which are a subset of the Total Project Costs identified in this Supplemental Project Agreement. Services performed by ODOT as a consultant shall be invoiced and reimbursed at actual cost to the project according to this Supplemental Project 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. In any instrument transferring rights to such property, including deeds, easements, and leases, Certified Agency shall include applicable nondiscrimination assurances required by Title VI of the Civil Rights Act of 1964, 42 USC 2000d *et seq.*, 49 CFR Part 21, and 28 CFR 50.3, as amended. See US Department of Transportation guidance document number DOT 1050.2A for additional information related to applicable assurances.
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 the project. Costs incurred for Services listed under this Section B.1 shall be charged as preliminary engineering expenditure.
 - 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 this Supplemental Project Agreement.
 - b. **Title:** Certified Agency shall provide 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 the right of way special provisions of this Supplemental Project Agreement. 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 the right of way special provisions of this Supplemental Project Agreement 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 transfer and accept all right of way as provided in the right of way special provisions of this Supplemental Project Agreement.

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]