

Memorandum Date: April 22, 2009
Order Date: May 6, 2009

W. S. D. B.

TO: Lane County Board of Commissioners

DEPARTMENT: Public Works

PRESENTED BY: Bill Morgan, County Engineer

AGENDA ITEM TITLE: **IN THE MATTER OF APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH OREGON DEPARTMENT OF TRANSPORTATION (ODOT) FOR RIVER ROAD AREA COLLECTORS AND 23RD STREET OVERLAYS PROJECT TO BE FUNDED THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA) AND THAT THE COUNTY ADMINISTRATOR IS AUTHORIZED TO SIGN THE AGREEMENT**

I. MOTION

THAT THE BOARD ORDER BE APPROVED FOR LANE COUNTY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH ODOT FOR RIVER ROAD AREA COLLECTORS AND 23RD STREET OVERLAYS PROJECT TO BE FUNDED THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA); AND THAT THE COUNTY ADMINISTRATOR BE AUTHORIZED TO SIGN THE AGREEMENT.

II. DISCUSSION

A. Background / Analysis

Pursuant to ORS 190.010 and the Lane County Home Rule Charter, units of local government may enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agents, have authority to perform.

On January 28, 2009, Board Order No. 09-1-28-18 was signed by the Lane County Board of Commissioners, approving River Road area collectors (River Road from MP 10.52 to 11.04, North Park Avenue, Lake Drive, Park Avenue, River Loop 1, River Loop 2, Wilkes Drive, Hunsaker Lane-Beaver Street) and 23rd Street (Yolanda to Hayden Bridge Road) as part of a list of projects in priority order to submit to Oregon Department of Transportation (ODOT) for funding through the ARRA (American Recovery and Reinvestment Act of 2009). The ARRA provides funding for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization, for fiscal years 2009 and 2010. The ARRA provides each state a sub-allocation of ARRA funds for cities, counties, and metropolitan areas.

As of April 16, 2009, the River Road area collectors and 23rd Street overlays (Project) were accepted for funding through the ARRA, and ODOT issued a Local Agency Agreement with a request that it be signed and returned to ODOT no later than May 11, 2009.

Under the terms of the agreement, ODOT and Lane County agree to construct the Project, which will consist of a 2-inch pavement overlay in accordance with 1R (Resurfacing) Guidelines. The Project will be conducted as part of the ARRA Program under Title 23, United States Code, and ODOT will be responsible for bidding the project.

The total Project cost is estimated at \$1,126,300 and the ARRA Program funds for the Project are limited to \$882,000, which will be financed with ARRA funds at 100 percent. Lane County is not required to provide a match for the ARRA funds, but is responsible for any non-participating costs, including all costs in excess of the available federal funds, which is estimated at \$244,300. There may be additional ARRA funds available later in 2009 to Lane County to use toward the excess project costs; however, at this time balances, if any, are unknown. Should ARRA funds be limited or not available to allocate toward the excess project costs, Lane County has the option of scaling the size of the Project back to fit available ARRA funding or to use existing budgeted Pavement Preservation funds.

Lane County will perform preliminary engineering (design work) required to produce final plans, specifications, and cost estimates for the Project, and Lane County will also perform construction engineering work during the construction of the Project. ODOT will reimburse Lane County for preliminary and construction engineering work as revenue not-to-exceed \$50,000.

B. Recommendation

The Board's options are to approve the motion stated above, to deny the motion, or take some other course of action. Staff is recommending that the Board approve the motion.

III. ATTACHMENTS

Order

**IN THE BOARD OF COMMISSIONERS OF LANE COUNTY
STATE OF OREGON**

ORDER NO.

{ **IN THE MATTER OF APPROVING AN**
{ **INTERGOVERNMENTAL AGREEMENT**
{ **WITH OREGON DEPARTMENT OF**
{ **TRANSPORTATION (ODOT) FOR RIVER**
{ **ROAD AREA COLLECTORS AND 23RD**
{ **STREET OVERLAYS PROJECT TO BE**
{ **FUNDED THROUGH THE AMERICAN**
{ **RECOVERY AND REINVESTMENT ACT OF**
{ **2009 (ARRA) AND THAT THE COUNTY**
{ **ADMINISTRATOR IS AUTHORIZED TO**
{ **SIGN THE AGREEMENT**

WHEREAS, ORS 190.010 and the Lane County Home Rule Charter provide that units of local government may enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agents, have authority to perform; and

WHEREAS, on January 28, 2009, Board Order No. 09-1-28-18 was signed by the Lane County Board of Commissioners, approving River Road area collectors (River Road from MP 10.52 to 11.04, North Park Avenue, Lake Drive, Park Avenue, River Loop 1, River Loop 2, Wilkes Drive, Hunsaker Lane-Beaver Street) and 23rd Street (Yolanda to Hayden Bridge Road) part of a list of projects in priority order to submit to the Oregon Department of Transportation (ODOT) for funding through the ARRA (American Recovery and Reinvestment Act of 2009). The ARRA provides funding for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization, for fiscal years 2009 and 2010; and

WHEREAS, as of April 16, 2009, the River Road area collectors and 23rd Street overlays (Project) was accepted for funding through the ARRA and ODOT issued a Local Agency Agreement with a request that it be signed and returned to ODOT no later than May 11, 2009; and

WHEREAS, the total Project cost is estimated at \$1,126,300, and the current ARRA Program funds for this Project are limited to \$882,000, which will be financed with ARRA funds at 100 percent. Lane County is not required to provide a match for the ARRA funds, but is responsible for any non-participating costs, including all costs in excess of the available federal funds, which is estimated at \$244,300; and

WHEREAS, Lane County has the option of scaling the size of the Project back to fit the available ARRA funding, request additional ARRA funds if available, or to use existing budgeted Pavement Preservation funds to allocate toward costs in excess of the available ARRA funds; and

WHEREAS, Lane County will conduct preliminary engineering and construction engineering work required to produce final plans, specifications, and cost estimates for the Project, which will result in reimbursement revenue for the County not-to-exceed \$50,000; **NOW THEREFORE, BE IT**

ORDERED, that the Department of Public Works is authorized to enter into an intergovernmental agreement with ODOT; **AND, BE IT**

FURTHER ORDERED, that the County Administrator is authorized to execute the agreement in substantially the form as Attachment A to this Order.

DATED this _____ day of _____ 2009.

APPROVED AS TO FORM

Date 4-28-09 Lane County



OFFICE OF LEGAL COUNSEL

Chair
Lane County Board of Commissioners

"IN THE MATTER OF APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH OREGON DEPARTMENT OF TRANSPORTATION (ODOT) FOR RIVER ROAD AREA COLLECTORS AND 23RD STREET OVERLAYS PROJECT TO BE FUNDED THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA) AND THAT THE COUNTY ADMINISTRATOR IS AUTHORIZED TO SIGN THE AGREEMENT"

Misc. Contract & Agreement
No. 25585

DRAFT

LOCAL AGENCY AGREEMENT
American Recovery and Reinvestment Act of 2009
1R-Paving

**River Road Area Overlays (Lane County)
Lane County**

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its **Department of Transportation**, hereinafter referred to as "State," and **Lane County**, acting by and through its elected officials, hereinafter referred to as "Agency," collectively hereinafter referred to as the "Parties."

RECITALS

1. **All roads identified in Exhibit A-1** are part of the **county road** system under the jurisdiction and control of **Agency**.
2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. The American Recovery and Reinvestment Act of 2009, hereinafter referred to as the "ARRA", provides funding for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization, for fiscal years 2009 and 2010.
4. The ARRA provides each state a sub-allocation of ARRA funds for cities, counties and metropolitan areas.

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

TERMS OF AGREEMENT

1. Under such authority, State and Agency agree to pave various streets or roads as further identified and shown in the description (Exhibit A-1) and map (Exhibit A-2) both attached hereto and by this reference made a part hereof, hereinafter referred to as "Project". The Project will consist of a **2-inch pavement overlay in accordance with 1R Guidelines**.

\$1,126,300

2. The Project shall be conducted as a part of the ARRA Program under Title 23, United States Code. The total Project cost is estimated at ~~\$2,175,000~~, which is subject to change. ARRA Program funds for this Project shall be limited to **\$882,000**. The Project will be financed with ARRA funds at 100 percent of the maximum allowable federal participating amount. Agency will not be required to provide a match for the ARRA funds but will be responsible for any non-participating costs, including all costs in excess of the available federal funds. No ARRA funded invoices will be accepted and no ARRA funded payments will be made after September 30, 2015.
3. The federal funding for this Project is contingent upon approval by the FHWA and receipt of federal funds by State. Any work performed prior to "authorization" (also called obligation of funds) by FHWA or outside the scope of work will be considered non-participating and paid for at Agency expense.
4. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.
5. Agency can place signs that identify the Project as "American Recovery and Reinvestment Act of 2009" (State approved design). Agency may affix additional signage that identifies local funds used for the Project.
6. Agency shall report to State the required reporting data by federal and state mandates for delivery of the ARRA program. State shall inform the local agencies of the reporting requirements once they have been received from FHWA and the Department of Administrative Services and such requirements shall be made a part of this Agreement.
7. The term of this Agreement will begin upon execution and will terminate upon completion of the Project and final payment or September 30, 2015, whichever is sooner. Any work performed prior to Notice to Proceed from State's Local Agency Liaison will not be reimbursed.
8. This Agreement may be terminated by mutual written consent of both Parties.
9. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.

- b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
- c. If Agency fails to provide payment of its share of the cost of the Project.
- d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
- e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
10. Because of the ARRA funding requirements, Agency must advance the Project for obligation of funds prior to March 1, 2010; and State must make a determination no later than December 31, 2009 whether this date will be met. Therefore, if Agency has not submitted the Project's "Plans, Specifications and Estimates" (PS&E) package to State's Region office by December 31, 2009, the Project will be reviewed by State, in coordination with the Oregon Local Program Committee. If State determines that the ARRA funds will not be, or are unlikely to be, obligated for construction prior to March 1, 2010, State may terminate this Agreement effective upon delivery of written notice to Agency, allowing the funds to be distributed to another project at State's discretion; and State shall have no obligation to replace the ARRA funds with other state or federal funds.
11. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
12. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
13. Agency, as a recipient of federal funds, pursuant to this Agreement with State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon

Agency's breach of any such conditions that requires State to return funds to the Federal Highway Administration, hold harmless and indemnify State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

14. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
15. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
16. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

This Project is amended into the 2008-2011 Statewide Transportation Improvement Program, Key Numbers **16442 and 16422** that were approved by the Oregon Transportation Commission on November 14, 2007 or will subsequently be approved by amendment to the STIP.

The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

Agency/State
Agreement No. 25585

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways, to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

Lane County, by and through its elected officials

By _____

Date _____

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____

Agency Counsel

Date _____

Agency Contact:

Bill Morgan, PE, County Engineer
3040 N Delta Highway
Eugene, OR 97408
bill.morgan@co.lane.or.us
541.682.6990

State Contact:

Ted Keasey, ODOT Region 2
455 Airport RD SE, Bldg B
Salem, OR, 97301-4989
ted.w.keasey@ODOT.state.or.us
503.986.6903

STATE OF OREGON, by and through its Department of Transportation

By _____

Deputy Director, Highways

Date _____

APPROVAL RECOMMENDED

By _____

Local Government Section Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____

Assistant Attorney General

Date: _____

DRAFT

DRAFT

Project Limits

River Road from MP 10.52 to 11.04
North Park Avenue from MP 0.0 to 0.13
Lake Drive from MP 0.0 to 0.43
Park Avenue from MP 0.0 to 0.79
River Loop 2 from MP 0.0 to 1.18
Wilkes Drive from 0.0 to 0.93
River Loop 1 from MP 0.0 to 2.08
Hunsaker Lane – Beaver Street from MP 0.0 to 1.14
23rd Street from MP 0.0 to MP 0.25

DRAFT

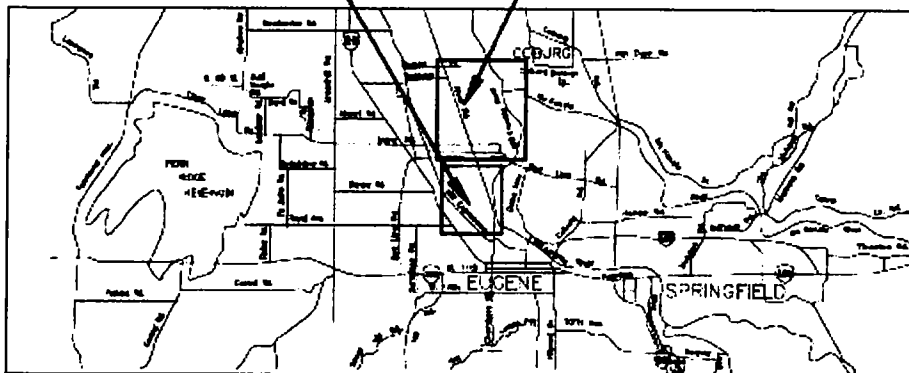
DRAFT

RIVER RD. AREA ROADS

T.17S. R.4W. W.M.

SEE INSET 'A'

SEE INSET 'B'



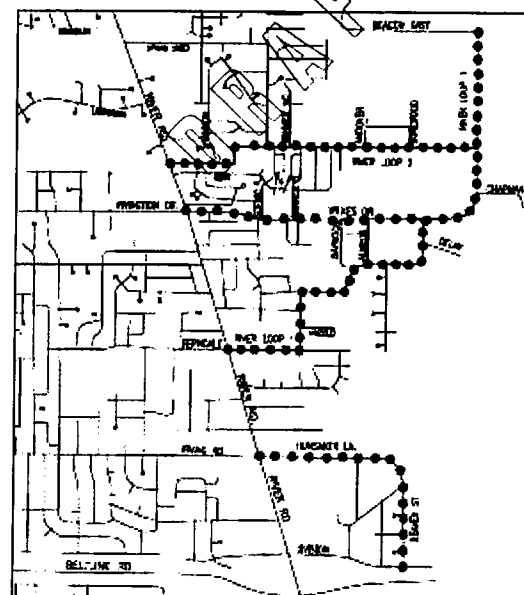
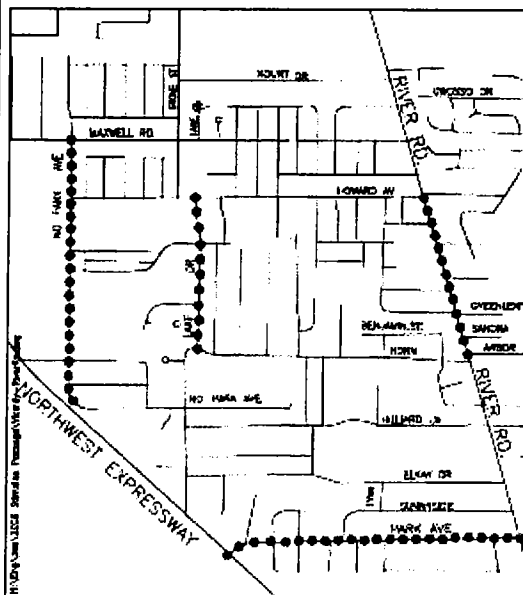
No Scale

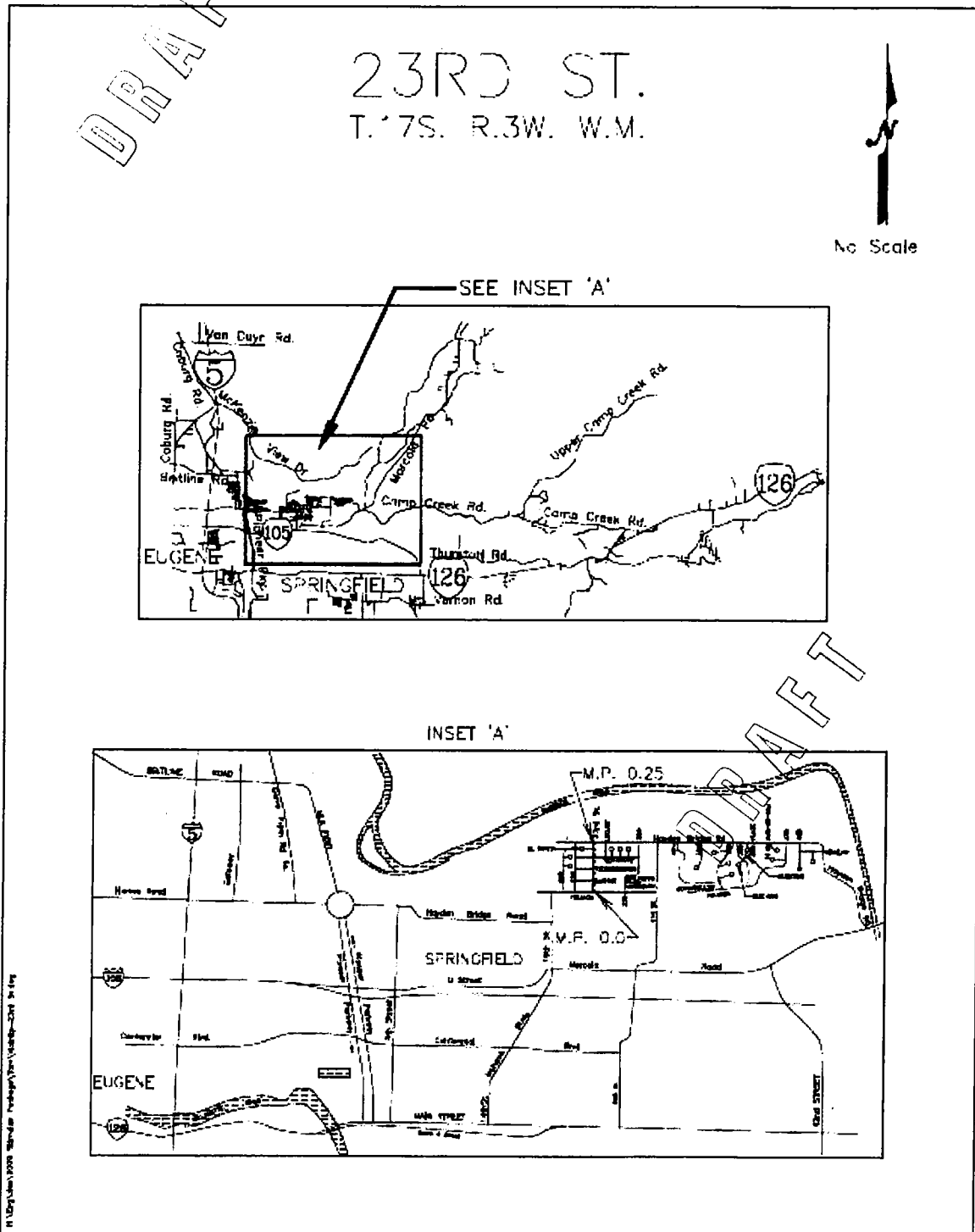
INSET 'A'

RD. NO.	NAME	MILEPOST
1100-00	River Rd.	10.52 To 11.04
1329-00	N Park Ave.	0.0 To 0.13
1352-00	Laker Dr.	0.0 To 0.43
1380-00	Park Ave.	0.0 To 0.79

INSET 'B'

RD. NO.	NAME	MILEPOST
3185-00	River Lp. 2	0.0 To 1.19
3214-00	Walker Dr.	0.2 To 0.93
3258-00	River Lp. 1	0.9 To 2.08
3320-00	Hanscher Ln - Stecher St	0.0 To 0.74





Agency/State
Agreement No. 25585

ATTACHMENT NO. 1 to Agreement No. 25585
SPECIAL PROVISIONS

1. Agency or its consultant shall, as a federal-aid participating preliminary engineering function, conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, and hydraulic studies, identify and obtain all required permits, and perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates.
2. Upon State's award of the construction contract, Agency, or its consultant, shall be responsible to perform all construction engineering, field testing of materials, technical inspection and project manager services for administration of the contract.
3. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered under this Agreement, Agency and Consultant shall enter into a Personal Services Contract approved by State's Chief Procurement Officer or designee (Salem). Said contract must be reviewed and approved by State's Chief Procurement Officer or designee prior to beginning any work. This review includes, but is not limited to the Request for Proposal, Statement of Work, advertisement and all contract documents. This review and approval is required to ensure federal reimbursement.
4. State may make available Region 2's On-Call Preliminary Engineering (PE), Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, Agency agrees to manage the work performed by the Consultant and reimburse State for payment of those services, which are not eligible as federal participating costs and included as part of the total cost of the Project.
5. Final billings shall be submitted to State for processing within two (2) years from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering (PE) and 2) third notification for construction. Partial billing (progress payment) shall be submitted to State within one (1) year from the date that costs are incurred. Final billings submitted after two (2) years shall not be eligible for reimbursement. No ARRA funded invoices will be accepted and no ARRA funded payments will be made after September 30, 2015. State shall not be responsible to provide additional funding to Agencies that do not have final billings processed before this date.
6. If Project involves pavement overlay on a bridge, Agency shall either (a) load rate the bridge when adding two (2) inches of pavement depth to an existing bridge deck to determine the capacity of the bridge or (b) remove two inches of Asphalt Concrete (AC) from the bridge deck and then place two inches back for a zero net gain of

Agency/State
Agreement No. 25585

Asphalt Concrete (in-lay/over-lay) on the bridge deck. Agency shall then sawcut the new AC pavement at the bridge ends and fill with poured joint filler to account for bridge movement.

7. If Project is a 1R resurfacing project included in the Statewide Programmatic Categorical Exclusion approved for ARRA projects, Agency shall ensure that Project conforms to the 1R Resurfacing Guidelines, attached by reference and shown on <http://www.oregon.gov/ODOT/HWY/LGS/online.shtml>.
8. This Project Agreement does not require a Right of Way Services agreement as described in Standard Provisions, Paragraph 18. This Project will require right of way certification. Agency shall complete and sign the attached Right of Way Certification form, shown on Exhibit B, attached hereto and by this reference made a part hereof.
9. Agency 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 and/or service demand. State and Agency agree that the useful life of this Project is defined as eight (8) calendar years. State may conduct periodic inspections during the life of the Project to verify that Project is properly maintained and continues to serve the purpose for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of this Agreement.

DRAFT

DRAFT

Oregon Department of Transportation
RIGHT-OF-WAY CERTIFICATION
Local Government ARRA 1R Projects

1. Project Information:

Section _____	Bid Opening _____
Highway _____	FAP No. _____
County/City _____	Key No. _____
R/W Map # <u>NONE</u>	

2. Primary Declaration:

(Modify or delete statements that do not apply then delete this instruction).
I certify that to the best of my knowledge the following statements are correct with regard to the right-of-way for this project (23 CFR 635.309):

No additional right-of-way was acquired. Construction can be accomplished within the existing right-of-way.

3. Signature of Certifying Agency: (Both signatures required on Local Public Agency Projects).

_____	_____
(enter name), Asst. State R/W Manager	Local Government Agency
_____	_____
Date	Date

4. Distribution: (modify the distribution to fit your particular Region, with the exception of R/W Project Administration)

Original:	R/W Project Administration
Copy:	Local Governments Section
Copy:	Region R/W Manager
Copy:	Region Local Agency Liaison

ATTACHMENT NO. 2
STANDARD PROVISIONS
JOINT OBLIGATIONS

PROJECT ADMINISTRATION

DRAFT

State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will further act for Agency in other matters pertaining to the Project. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases of the Project.

2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

PRELIMINARY & CONSTRUCTION ENGINEERING

3. State, Agency, or others may perform preliminary and construction engineering. If Agency or others perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered by this Agreement, Agency and Consultant shall enter into a State reviewed and approved personal services contract process and resulting contract document. State must concur in the contract prior to beginning any work. State's personal services contracting process and resulting contract document will follow Title 23 Code of Federal Regulations (CFR) 172, Title 49 CFR 18, ORS 279A.055, the current State Administrative Rules and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. Subcontracts shall contain all required provisions of Agency as outlined in the Agreement. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or its consultant prior to receiving authorization from State to proceed. Any amendments to such contract(s) also require State's approval.
4. On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency, subject to any limitations imposed by state law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

**REQUIRED STATEMENT FOR United States Department of Transportation
(USDOT) FINANCIAL ASSISTANCE AGREEMENT**

5. If as a condition of assistance, Agency has submitted and the United States Department of Transportation (USDOT) has approved a Disadvantaged Business Enterprise Affirmative Action Program which Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of the financial assistance agreement. Upon notification from USDOT to Agency of its failure to carry out the approved program, USDOT shall impose such sanctions as noted in Title 49, CFR, Part 26, which sanctions may include termination of the agreement or other measures that may affect the ability of Agency to obtain future USDOT financial assistance.
6. **Disadvantaged Business Enterprises (DBE) Obligations.** State and its contractor agree to ensure that DBE as defined in Title 49, CFR, Part 26, have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with Title 49, CFR, Part 26, to ensure that DBE have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. Agency shall carry out applicable requirements of Title 49, CFR, Part 26, in the award and administration of such contracts. Failure by Agency to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as State deems appropriate.
7. The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Agreement.
8. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
9. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR Parts 1.11, 140, 710, and 771; Title 49 CFR Parts 18, 24 and 26; OMB CIRCULAR NO. A-87 and NO. A-133 Title 23, USC, Federal-Aid Highway Act, Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended and provisions of Federal-Aid Policy Guide (FAPG).

STATE OBLIGATIONS

PROJECT FUNDING REQUEST

10. State shall submit a Project funding request to FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or construction work for the Project. **No work shall proceed on any activity in which federal-aid participation is desired until such approval has been obtained.** The program shall include services to be provided by State, Agency, or others. State shall notify

Agency in writing when authorization to proceed has been received from FHWA. Major responsibility for the various phases of the Project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations.

FINANCE

11. State shall, in the first instance, pay all reimbursable costs of the Project, submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.

PROJECT ACTIVITIES

12. State shall, if the preliminary engineering work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
13. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
14. State shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts.
15. Upon State's award of a construction contract, State shall perform independent assurance testing in accordance with State and FHWA Standards, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
16. State shall, as a Project expense, assign a liaison person to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). The liaison shall process reimbursement for federal participation costs.

RIGHT OF WAY

17. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of the Project. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project, provided Agency (or Agency's consultant) are qualified to do such work as required by the State's Right of Way Manual and have obtained prior approval from State's Region Right of Way office to do such work.

- DRAFT**
18. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each party. State shall always be responsible for requesting project funding, coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through the State's Region Right of Way offices on all projects. All projects must have right of way certification coordinated through State's Region Right of Way offices (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on the Project). Agency should contact the State's Region Right of Way office for additional information or clarification.
 19. State shall review all right of way activities engaged in by Agency to assure compliance with applicable laws and regulations. Agency agrees that right of way activities shall be in accord with the Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FHWA Federal-Aid Policy Guide, State's Right of Way Manual and the Code of Federal Regulations, Title 23, Part 710 and Title 49, Part 24.
 20. If any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
 21. Agency insures that all Project right of way monumentation will be conducted in conformance with ORS 209.155.
 22. State and Agency grants each other authority to enter onto the other's right of way for the performance of the Project.

AGENCY OBLIGATIONS

FINANCE

23. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement. If federal funds are used, Agency will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Agreement. Agency will also determine and clearly state in the Agreement if recipient is a subrecipient or vendor, using criteria in Circular A-133.
24. Agency's estimated share and advance deposit.
 - A. Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
 - B. Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within

forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.

- C. Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
- D. Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.
25. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.
26. Costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon.
27. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear 100 percent of all costs as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear 100 percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all development costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
28. Agency shall follow requirements of the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving \$500,000 or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which the local agency participates. The cost of this audit can be partially prorated to the federal program.
29. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.

30. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison Person for review and approval. Such invoices shall identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of Title 23 CFR Parts 1.11, 140 and 710. Final billings shall be submitted to State for processing within three months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering 2) last payment for right-of-way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three months from date that costs are incurred. Final billings submitted after the three months shall not be eligible for reimbursement.
31. The cost records and accounts pertaining to work covered by this Agreement are to be kept available for inspection by representatives of State and FHWA for a period of six (6) years following the date of final voucher to FHWA. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (Title 49 CFR 18.42).
32. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:
- a) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the federal-aid funds were authorized;
 - b) Right of way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right of way acquisition.
 - c) Construction proceeds after the Project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).
33. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.

RAILROADS

34. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through State's appropriate Region contact or State's Railroad Liaison. Only those costs allowable under Title 23 CFR Part 646, subpart B and Title 23 CFR Part 140, subpart I, shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others.

Agency may request State, in writing, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

UTILITIES

35. Agency shall cause to be relocated or reconstructed, all privately or publicly-owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements of the Project. Only those utility relocations, which are eligible for federal-aid participation under, Title 23 CFR 645A, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties.
36. Agency shall follow established State utility relocation policy and procedures. The policy and procedures are available through the appropriate State's Region Utility Specialist or State's Right of Way Section Railroad Liaison, and Utility Engineer.

STANDARDS

37. Agency agrees that design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current "State Highway Design Manual" and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the Project shall be in substantial compliance with the most current "Oregon Standard Specifications for Highway Construction".
38. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "Oregon Bicycle and Pedestrian Plan", unless otherwise requested by Agency and approved by State.
39. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".
40. All plans and specifications shall be developed in general conformance with the current "Contract Plans Development Guide" and the current "Oregon Standard Specifications for Highway Construction" and/or guidelines provided.
41. The standard unit of measurement for all aspects of the project shall be English Units. All project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

GRADE CHANGE LIABILITY

42. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.

43. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.

44. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the project covered by the Agreement.

CONTRACTOR CLAIMS

45. Agency shall, to the extent permitted by state law, indemnify, hold harmless and provide legal defense for State against all claims brought by the contractor, or others resulting from Agency's failure to comply with the terms of this Agreement.

46. Notwithstanding the foregoing defense obligations under Paragraph 45, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Agency if the State of Oregon elects to assume its own defense.

MAINTENANCE RESPONSIBILITIES

47. Agency shall, upon completion of construction, thereafter maintain and operate the Project at its own cost and expense, and in a manner satisfactory to State and FHWA.

WORKERS' COMPENSATION COVERAGE

48. All employers, including Agency 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. Agency shall ensure that each of its contractors complies with these requirements.

LOBBYING RESTRICTIONS

49. Agency certifies by signing the Agreement that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

DRAFT

- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.
- D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- E. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Paragraphs 35, 36, and 47 are not applicable to any local agency on state highway projects.

DRAFT