

GRANT AGREEMENT  
CONNECTOREGON VI  
OREGON DEPARTMENT OF TRANSPORTATION  
**CONNECTOREGON FUND PROGRAM 2016**  
**Project Name: Yamhelas Westsider Trail: Bridge Construction**

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 “**ODOT**,” and “**Yamhill County**”, acting by and through its Board of Commissioners, hereinafter referred to as “**Recipient**,” both hereinafter referred to individually or collectively as “**Party**” or “**Parties**.”

1. **Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Unless otherwise terminated or extended, Grant Funds under this Agreement shall be available for Project Costs incurred on or before the earlier of five years after the Effective Date or the third anniversary date of the Lottery Revenue Bonds (the “**Bonds**”) issued, in part, to fund this grant (Availability Termination Date). No Grant Funds are available for any expenditures before the Effective Date or after the Availability Termination Date. ODOT’s obligation to disburse Grant Funds under this Agreement shall end as provided in Section 6.b.iv of this Agreement.
2. **Agreement Documents.** This Agreement consists of this document and the following documents:
  - a. Exhibit A: **Project Description, Key Milestones, Schedule and Budget**
  - b. Exhibit B **Recipient Requirements**
  - c. Exhibit C: **Subcontractor Insurance**
  - d. Exhibit D: **Memorandum of Agreement and Acknowledgement of ODOT Assistance**
  - e. Exhibit E: **Application and documents provided by Recipient to ODOT prior to the execution of the Agreement**

Exhibits A through E are incorporated by reference into this Agreement. Exhibits A through D are attached hereto. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits; Exhibit D; Exhibit A; Exhibit B; Exhibit C; Exhibit E.

3. **Project Cost; Grant Funds; Match.** The total Project Cost is estimated at \$2,967,457. In accordance with the terms and conditions of this Agreement, ODOT shall provide Recipient Grant Funds in an amount not to exceed \$1,012,186 or seventy (70) percent of the total eligible Project Costs, whichever is less, of eligible Project Costs described in Section 6 hereof. ODOT acknowledges that Recipient has met the required match. ODOT shall reimburse Recipient for one hundred (100) percent of the amount of eligible costs until the sum of \$1,012,186 is reached. Recipient shall provide matching funds for all Project Costs as described in Exhibit A. ODOT will withhold five (5) percent of the Grant Funds to be distributed as provided in Section 6.c.

**4. Project:**

- a. **Use of Grant Funds.** The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by ODOT by amendment pursuant to Section 11.c hereof.
- b. **Eligible Project Costs.** The Grant Funds will only be used for Recipient's actual Project Costs to the extent those costs are (a) reasonable, necessary and directly used for the Project, (b) costs permitted by generally accepted accounting principles established by the Governmental Accounting Standards Board, as reasonably interpreted by the State, to be capitalized to an asset that is part of the Project, (c) capital expenditures for federal income tax purposes within the meaning of Section 1.150-1(b) of the Internal Revenue Code (the "Code"), and (d) eligible or permitted uses of the Grant under State law and this Agreement.

Eligible Project Costs do NOT include operating and working capital expenditures charged to the Project by Recipient or payments made to related parties, do NOT include loans or grants to be made to third parties, and may only include the payment of principal due on interim financing for the Project with the prior written consent of the State.

**c. Project Change Procedures.**

- i. If Recipient anticipates Project key milestones will be delayed by more than ninety (90) days from the key milestones shown in Exhibit A, Recipient shall submit a Request for Change Order (Form 734-2648), the form of which is hereby incorporated by reference, to ODOT's Project Liaison as soon as Recipient becomes aware of any possible delay. The Request for Change Order must be submitted prior to the milestone completion date shown in Exhibit A. The fillable form can be downloaded on-line at the following address: [http://www.oregon.gov/ODOT/TD/AT/Pages/Forms\\_Applications.aspx](http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx)
- ii. Recipient shall not proceed with any changes to Project scope or delivery schedule prior to the execution of an amendment to this Agreement executed in response to ODOT's approval of a Request for Change. A Request for Change Order may be rejected at the discretion of ODOT. ODOT may choose to request review by the Oregon Transportation Commission.

**5. Progress Reports.**

- a. **Monthly Reports.** Recipient shall submit monthly progress reports to ODOT using the *ConnectOregon* Monthly Progress Report (Form 734-2668), attached by reference and made a part of this Agreement. ODOT will appoint a Project Liaison after execution of this Agreement and provide Recipient with the contact information. Progress reports must be submitted to the ODOT Project Liaison and ODOT's *ConnectOregon* Program Manager by the first Wednesday of each month. The fillable form can be downloaded on-line at the following address: [http://www.oregon.gov/ODOT/TD/AT/Pages/Forms\\_Applications.aspx](http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx)

- b. Final Report.** Recipient shall submit a written report to ODOT's *ConnectOregon* Program Manager that identifies the number of jobs created or retained both during construction and after Project completion, as a direct result of this Project. The report must also include the number of jobs projected in the application. This report must also include data on the methodology that measures the Project's success as described in the grant application. The report must be received and approved by ODOT within eighteen (18) months after the completion of Project. Recipient's obligation to provide this report will survive expiration of this Agreement. Recipient shall use ("Final Report" Form 734-2947), which also must be signed by Recipient. The form is available at: [http://www.oregon.gov/ODOT/TD/AT/Pages/Forms\\_Applications.aspx](http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx).

**6. Disbursement and Recovery of Grant.**

- a. Disbursement Generally.** ODOT shall reimburse eligible costs incurred in carrying out the Project, as described in and limited by Section 4.b., up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by ODOT within forty-five (45) days of ODOT's approval of a request for reimbursement from Recipient. Recipient must pay its contractors, consultants and vendors prior to submitting invoices to ODOT for reimbursement. Requests for Reimbursement will identify the Project, Agreement number, Project start and end date, the request for reimbursement number or the account number or both, and itemize all expenses as well as provide a detailed breakdown of Project Costs expended and Grant Funds reimbursed to date, and the amount of undisbursed Grant Funds. Upon request by ODOT, Recipient shall provide to ODOT proof of payment and backup documentation supporting Recipient's invoices. Requests for reimbursement shall be submitted monthly for any month for which Recipient seeks reimbursement of eligible costs. Eligible costs are the reasonable and necessary costs incurred by the Recipient, or under a subagreement described in Section 9 of this Agreement, in performance of the Project and that are not excluded from reimbursement by ODOT, either by this Agreement or by exclusion as a result of financial review or audit.
- b. Conditions Precedent to Disbursement.** ODOT's obligation to disburse Grant Funds to Recipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
- i.** ODOT has received funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to make the disbursement.
  - ii.** Recipient is in compliance with the terms of this Agreement, including without limitation completion of all prerequisites for reimbursement provided in Exhibit B.
  - iii.** Recipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
  - iv.** Recipient has provided to ODOT a request for reimbursement in accordance with Section 6.a. Recipient must submit its final request for reimbursement following completion of the

Project and no later than ninety (90) days after the earlier of completion of the Project or the Availability Termination Date. Failure to submit the final request for reimbursement within ninety (90) days after the completion of the Project or the Availability Termination Date could result in non-payment.

- c. **Retainage.** ODOT will withhold five percent retainage from the amount paid pursuant to each reimbursement request and shall release this retainage to Recipient as the following conditions are met:
    - i. Eighty percent (80%) of the five percent retainage shall be released to Recipient upon final project acceptance by ODOT.
    - ii. Twenty percent (20%) of the five percent retainage shall be released to Recipient upon approval by ODOT of the report described in Section 5.b of this Agreement. In accordance with Administrative Rule OAR 731-035 and Oregon Laws 2013, Chapter 723 (House Bill 5008) ODOT may not pay and the Recipient forfeits the amount under this paragraph if the Recipient does not submit the report required by Section 5.b on or before the due date. Recipient acknowledges and agrees that Recipient may not apply for another *ConnectOregon* grant during the next application cycle if Recipient fails to submit the report required by Section 5.b on or before the due date.
  - d. **Recovery of Grant Funds.** Any Grant Funds disbursed to Recipient under this Agreement that are expended in violation of one or more of the provisions of this Agreement (“Misexpended Funds”) or that remain unexpended on the earlier of the Availability Termination Date or termination of this Agreement must be returned to ODOT. Recipient shall return all Misexpended Funds to ODOT promptly after ODOT’s written demand and no later than fifteen (15) days after ODOT’s written demand. Recipient shall return all unexpended Grant Funds to ODOT within fourteen (14) days after the earlier of the Availability Termination Date or termination of this Agreement.
7. **Representations and Warranties of Recipient.** Recipient represents and warrants to ODOT as follows:
- a. **Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient’s Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.

- b. Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. No Solicitation.** Recipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- d. No Debarment.** Neither Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from any federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify ODOT immediately if it is debarred, suspended or otherwise excluded from any federally assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.
- e. Compliance with Oregon Taxes, Fees and Assessments.** Recipient is, to the best of the undersigned(s) knowledge, and for the useful life of the Project will remain, current on all applicable state and local taxes, fees and assessments.
- f. Representations and Covenants Regarding the Tax-Exempt Status of Bonds.**

  - i.** Recipient acknowledges that the Bonds issued to fund this grant have been or are expected to be issued with the interest paid on the Bonds excludable from gross income for federal income tax purposes and that the uses of the Grant proceeds and the Project by Recipient during the term of the Bonds may impact the tax-exempt status of the Bonds. Recipient agrees to comply with all applicable provisions of the Code necessary to protect the exclusion of interest on the Bonds from federal income taxation.
  - ii.** Recipient shall not, without prior written consent of ODOT, permit more than five percent (5%) of the Project to be used in a "private use" by a "private person" (as defined in the Code) if such private use could result in the State of Oregon, receiving direct or indirect payments or revenues from the portion of the Project to be privately used.

This paragraph f. shall survive any expiration or termination of this Agreement.

- g.** The warranties set forth in this Section 7 are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

**8. Records Maintenance and Access; Audit.**

- a. Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Recipient shall ensure that each of its subrecipients and subcontractors complies with these requirements. ODOT, the Secretary of State of the State of Oregon (Secretary) and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, ODOT, the Secretary and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of ODOT, and the Secretary to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.
- b. Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records, that are directly related to this Agreement, the funds or the Project until the date that is three (3) years following the later of the final maturity or earlier retirement of all of the Bonds funding the Grant (including the final maturity or redemption date of any obligations issued to refund the Bonds, or such longer period as may be required by other provisions of this Agreement or applicable law, following the Availability Termination Date. State anticipates issuing 20 year Lottery Revenue bonds, therefore, Recipient should anticipate retaining project records until at least June 30, 2040. It is recommended that the Recipient consult with the State before final destruction of Project records. If there are unresolved audit questions at the end of the period described in this Section 8, Recipient shall retain the records until the questions are resolved.
- c. Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by ODOT under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit ODOT to verify how the Grant moneys were expended.

This Section 8 shall survive any expiration or termination of this Agreement.

**9. Recipient Subagreements and Procurements**

- a. Subagreements.** Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, "subagreements") for performance of the Project.

  - i.** All subagreements must be in writing, executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.

- ii. Recipient shall require all of its contractors performing work under this Agreement to name ODOT as a third party beneficiary of Recipient's subagreement with the Contractor and to name ODOT as an additional obligee on contractors' bonds.
  - iii. Recipient agrees to provide ODOT with a copy of any signed subagreement upon request by ODOT. Any substantial breach of a term or condition of a subagreement relating to funds covered by this Agreement must be reported by Recipient to ODOT within ten (10) days of its being discovered.
- b. Subagreement indemnity; insurance.**
- i. *Recipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless ODOT and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Recipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that ODOT shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of ODOT, be indemnified by the other party to Recipient's subagreement(s) from and against any and all Claims.*
  - ii. Any such indemnification shall also provide that neither Recipient's subrecipient(s), contractor(s) nor subcontractor(s), nor any attorney engaged by Recipient's subrecipient(s), contractor(s) nor subcontractor(s) shall defend any claim in the name of ODOT or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient's subrecipient is prohibited from defending the State, or that Recipient's subrecipient is not adequately defending the State's interests, or that an important governmental principle is at issue or that it is in the best interests of the State to do so. The State reserves all rights to pursue claims it may have against Recipient's subrecipient if the State of Oregon elects to assume its own defense.
  - iii. Recipient shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement.
- c. Procurements.** Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code and rules, ensuring that:

- i. all applicable clauses required by federal statute, executive orders and their implementing regulations are included in each competitive procurement;
- ii. all procurement transactions are conducted in a manner providing full and open competition;
- iii. procurements exclude the use of statutorily or administratively imposed in-state or geographic preference in the evaluation of bids or proposals (with exception of locally controlled licensing requirements).

#### 10. Termination

- a. **Termination by ODOT.** ODOT may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by ODOT in such written notice, if:
  - i. Recipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Recipient is, for any reason, rendered improbable, impossible, or illegal; or
  - ii. ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
  - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
  - iv. The Project would not produce results commensurate with the further expenditure of funds; or
  - v. Recipient takes any action pertaining to this Agreement without the approval of ODOT and which under the provisions of this Agreement would have required the approval of ODOT.
- b. **Termination by Recipient.** Recipient may terminate this Agreement effective upon delivery of written notice of termination to ODOT, or at such later date as may be established by Recipient in such written notice, if:
  - i. The requisite local funding to continue the Project becomes unavailable to Recipient;
  - ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
  - iii. ODOT fails to make payments due in accordance with this Agreement.

- c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten (10) days' notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Agreement.
- d. **Rights upon Termination; Remedies.** Any termination of this Agreement shall not prejudice any rights or obligations accrued prior to termination. The remedies set forth in this Agreement are cumulative and are in addition to any other rights or remedies available at law or in equity.

## 11. GENERAL PROVISIONS

- a. **Contribution.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or Recipient with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which ODOT is jointly liable with Recipient (or would be if joined in the Third Party Claim), ODOT shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Recipient in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of Recipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.

With respect to a Third Party Claim for which Recipient is jointly liable with ODOT (or would be if joined in the Third Party Claim), Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of ODOT on the other hand shall be determined by reference to, among

other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

- b. Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- c. Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- d. Duplicate Payment.** Recipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- e. No Third Party Beneficiaries.** ODOT and Recipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.
- f. Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same, postage prepaid, to Recipient Contact or ODOT Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 11.f. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.
- g. Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between ODOT (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of

any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

- h. Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- i. Insurance; Workers' Compensation.** All employers, including Recipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Recipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- j. Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of ODOT. Recipient has no right or authority to incur or create any obligation for or legally bind ODOT in any way. ODOT cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of ODOT, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- k. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- l. Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- m. Integration and Waiver.** This Agreement, including all Exhibits, constitutes 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. The delay or failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. Recipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

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

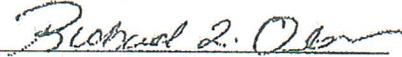
The Oregon Transportation Commission at its August 2016 meeting approved the *ConnectOregon VI* project application list and delegated authority to the Director of the Oregon Department of Transportation to enter into project agreements.

Yamhill County, by and through its Board of Commissioners

By   
(Legally designated representative)

Name Stan Pnmozich  
(printed)

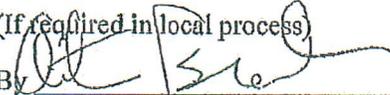
Date 3/9/2017

By 

Name Richard L. Owsen  
(printed)

Date 3/9/2017

**APPROVED AS TO LEGAL SUFFICIENCY**

(If required in local process)  
By   
Recipient's Legal Counsel

Date 3/9/17

**Recipient Contact:**

Jayne Mercer, Project Manager  
535 NE 5th Street  
McMinnville, OR 97128  
503-474-4991  
mercervj@co.yamhill.or.us

STATE OF OREGON, by and through its Department of Transportation

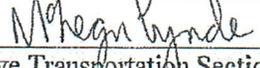
By   
Director

Date 3-10-17

**APPROVAL RECOMMENDED**

By   
Freight Planning Program Manager

Date 3/9/17

By   
Active Transportation Section Manager

Date 3/9/17

**APPROVED AS TO LEGAL SUFFICIENCY**  
By Marvin D. Fjordbeck, Senior Assistant Attorney General by email 2/8/2017.

**ODOT Contact:**

Marie Wright, *ConnectOregon* Program Manager  
ODOT - Active Transportation Section  
555 13th Street NE  
Salem, OR 97301  
503-986-3327  
marie.a.wright@odot.state.or.us

Accepted by Yamhill County Board of Commissioners on 3-9-17 by Board Order # 17-75

**EXHIBIT A**  
**Project Description, Key Milestones, Schedule and Budget**

Agreement No. 31632

Application Number: 2B0409

Project Name: Yamhelas Westsider Trail: Bridge Construction

**A. PROJECT DESCRIPTION**

The Project includes planning and design of three pedestrian bridges and constructs one of the bridges. The Project consists of design of pedestrian bridges along the Yamhelas Westsider Trail including a) an approximately 103-foot single span structure identified as Unnamed Creek No. 1 Bridge (South of Stag Hollow Creek); and b) an approximately 82-foot single span structure identified as Unnamed Creek No. 2 Bridge (north of Fryer Road). A third bridge, approximately 111 feet in length, single span pedestrian bridge, identified as Stag Hollow Creek bridge, will be designed and constructed. The bridge will be open to the public and is expected to provide a safer route to schools in the community. The Stag Hollow Creek bridge will include five 48-inch precast, prestressed box girders supported on reinforced concrete pile caps and drive piles.

**B. PROJECT KEY MILESTONES AND SCHEDULE**

Project has six (6) Key Milestone(s). Key Milestones are used for evaluating performance on Project as described in the Agreement. Key Milestones cannot be changed without an amendment to the Agreement.

If Recipient anticipates Project Key Milestones will be delayed by more than ninety (90) days, Recipient shall submit a Request for Change Order, as described in Section 4(c) of the Agreement, to the ODOT Project Liaison as soon as Recipient becomes aware of any possible delay. The Request for Change Order must be submitted prior to the Key Milestone completion date shown in this Exhibit.

The anticipated start date of Project is: 3/15/2017

The estimated completion date of Project is: 10/31/2019

**Table 1: Key Milestones**

Key Milestone	Description	Estimated Due Date
1	Scoping and planning	5/31/2017
2	Right of way and land acquisition	04/30/2017
3	Permits	11/30/2017
4	Final plans/bidding engineering documents	4/30/2018
5	Construction contract award	11/30/2018

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6	Project completion	10/31/2019
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**Table 2 – Funding Breakdown**

<b>A</b>	<b>Total Project Cost</b>	\$2,967,457
<b>B</b>	<b>Grant Award Amount</b>	\$1,012,186
<b>C</b>	<b>Recipient Match (must be at least 30% of Total Project Cost)</b>	\$1,955,271

## **EXHIBIT B**

### **Recipient Requirements**

- I. Recipient shall comply with all applicable requirements of ORS 367.080 to 367.086, OAR chapter 731, Division 35. Failure by Recipient to comply with these requirements will subject Recipient to the sanctions as described in OAR735-035-0080.
- II. Recipient shall comply with ORS 280.518, which requires any economic development program financed with proceeds from the state lottery to display a sign in a conspicuous location on Project site or specify in the program information that Project is financed with proceeds from the state lottery. ODOT will provide standard signage as appropriate. If Recipient chooses to make a custom sign, Recipient must obtain written approval from ODOT's ConnectOregon Program Manager to use its custom sign and Recipient shall be responsible for the cost of such custom signage. If Project site is remote and a sign would not be visible to the public, Recipient shall provide proof to ODOT's ConnectOregon Program Manager that Recipient has specified in its program information that Project is financed with proceeds from the state lottery.
- III. Recipient shall comply with all applicable provisions of ORS 279C.800 to 279C.870 pertaining to prevailing wage rates and including, without limitation, that workers on the Project shall be paid not less than rates in accordance with ORS 279C.838 and 279C.840 pertaining to wage rates and ORS 279C.836 pertaining to having a public works bond filed with the Construction Contractors' Board.
- IV. Recipient acknowledges and agrees that, whenever OAR 839-025-0230(4) requires ODOT as the public agency providing public funds for a project that is a public work under ORS 279C.800(6)(a)(B) to pay the fee required under ORS 279C.825, ODOT will calculate and pay the fee and deduct the amount of the fee from Recipient's Grant Funds under this Agreement.
- V. Recipient shall notify ODOT's Project Liaison and ODOT's ConnectOregon Program Manager in writing when any contact information changes during the term of this Agreement.
- VI. Recipient must provide matching funds in an amount equal to thirty (30) percent of the eligible Project Costs. Matching funds must be used for elements necessary for implementation of Project, including land, excavation, permits, engineering, payroll, special equipment purchase, rental or lease. Recipient is responsible for all costs in excess of the Grant Funds.
- VII. Recipient shall pay back all of the Grant Funds to ODOT if Project is not completed in accordance with, or consistent with Exhibit A and Exhibit E, as each may be amended. Recipient obligations for Recovery of Grant Funds are provided in Section 6.d of this Agreement.
- VIII. Recipient and ODOT's Project Liaison shall, upon completion of all on-site work for the Project, perform an on-site review. Once review is completed, the ODOT Project Liaison may recommend acceptance of Project by signing the ConnectOregon "Recommendation of

Acceptance” (Form 734-2649), which also must be signed by Recipient. The form is available at: [http://www.oregon.gov/ODOT/TD/AT/Pages/Forms\\_Applications.aspx](http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx)

- IX.** Recipient shall, at its own expense, maintain and operate Project upon completion and throughout the useful life of Project at a minimum level that is consistent with normal depreciation or service demand or both. ODOT and Recipient agree that the useful life of Project is defined as seventy five (75) years. Recipient has, by submitting its application for this *ConnectOregon* VI grant, represented and certified to sufficient funds and to its ability to operate and maintain Project. Recipient may not transfer, convey, sell or lease the property and assets of the Project during the useful life of the Project without the prior written approval of ODOT. Such approval shall not be unreasonably withheld. Recipient agrees to require any successor owner of the Project property to comply with this requirement. Failure to comply with this requirement may be remedied by Recipient or its successor in interest by (a) restoring the property to the uses(s) required by this Agreement or (b) repayment of expended funds. In the event repayment of expended funds is required, the amount determined using the Straight Line Depreciation (SLD) method must be repaid to ODOT. The SLD is calculated by taking the grant amount divided by seventy five years. ODOT may conduct site reviews of the Project as provided in Section 8.a of this Agreement throughout the useful life of the Project. This paragraph shall survive any expiration or termination of this Agreement.
- X.** Recipient shall, within 30 days of acquisition of all needed property for this Project and as a condition of this Agreement, complete and file with the appropriate County Clerk, “Memorandum of Agreement and Acknowledgment of ODOT Assistance”, substantially in the form of Exhibit D attached hereto and by this reference made a part hereof. Recipient shall provide confirmation of this filing by forwarding to ODOT’s *ConnectOregon* Program Manager a notarized copy of the recorded Memorandum of Agreement and Acknowledgment of ODOT Assistance. By means of said acknowledgment of Recipient’s financial obligations, the continued use of said property for public purposes, and the maintenance of the facility or service at a level consistent with normal depreciation or demand or both is recognized and attached to the property as conditions. Any interest in said property by ODOT is proportional to the state participation in Project. While in default of conditions of this Agreement, Recipient will be ineligible to receive state funds from any ODOT-administered program for any project on a street, road or property. The Memorandum of Agreement and Acknowledgment of ODOT Assistance shall remain in place for the useful life of Project. ODOT acknowledges that such interest shall not be deemed a lien, mortgage, deed of trust or other security instrument or interest granted by Recipient for security purposes. The useful life of Project is defined as seventy five (75) years. Reimbursement to Recipient will not be made until the Recipient receives a letter from the *ConnectOregon* Program Manager indicating that the conformed copy of the Memorandum of Agreement and Acknowledgement of Assistance has been received. Recipient may have additional obligations to meet in prior to receiving reimbursement for construction costs identified in this Agreement.
- XI.** Recipient shall provide pre-construction Project photographs within thirty (30) days of the execution of this Agreement. Recipient shall provide Project photographs thirty (30) days after Project is completed. These photographs must be provided to the ODOT Project Liaison and ODOT’s *ConnectOregon* Program Manager.

**XII.** If sidewalk, curb ramp and traffic signal improvements are on or along a state highway, Recipient shall:

- a. Work with the ODOT contact to obtain a miscellaneous permit to occupy state right of way through the ODOT District Office prior to the commencement of construction.
- b. Ensure Project meets current *ODOT Highway Design Manual* design standards for the work that is on or along the state highway.
- c. Follow ODOT's processes in addressing Americans with Disabilities Act of 1990 (ADA) features, including using the *ODOT Highway Design Manual*, Design Exception process, *ODOT Standard Drawings*, State's Construction Specifications, the *Manual on Uniform Traffic Control*, and current State Traffic Signal Policy and Guidelines, and ODOT's Curb Ramp Inspection form.
- d. At Project completion, send an ADA Ramp Inspection Form 734-5020 to the address on the form as well as to ODOT's Contact.

State's fillable ADA Ramp Inspection Form and instructions are available at the following address:

<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/HwyConstForms1.aspx>

- e. Work with ODOT's contact when on any traffic signal timing signal improvements are involved. ODOT maintains responsibility, unless an agreement exists with Recipient that specifically allows Recipient to perform that function. As part of those traffic signal responsibilities ODOT shall:
  - i. Ensure its Region Electrical Crew, at Project expense, perform the signal equipment environmental testing and perform the signal field testing and turn on.
  - ii. Retain the right of review of the traffic signal timing for signals on state highways, or those which State maintains, and shall reserve the right to request adjustments when needed.
  - iii. Notify the local jurisdiction whenever timing changes that affect the operation of local street connections to the state highway are scheduled. All modifications shall follow guidelines set forth in the current *Manual on Uniform Traffic Control Devices*, and the current ODOT's *Traffic Signal Policy and Guidelines*.
  - iv. Maintain the pavement surrounding the vehicle detector loops installed in the state highway in such a manner as to provide adequate protection for said detector loops at its own expense upon completion of the project.
  - v. Maintain the pavement markings and signing installed on the state highway in accordance with current ODOT standards.

**XIII.** Recipient shall, at its own expense, periodically inspect the Project upon completion and throughout the useful life of the Project to ensure continuing compliance with ADA standards. This provision shall survive termination of the Agreement.

**XIV. Additional requirements**

**a. Prerequisites for Reimbursement of Costs – General**

**i. Prior approvals.** Recipient shall provide documentation of having met all pre-construction requirements, including, but not limited to, meeting all public agency conditions of Project approval and obtaining all Project-specific land entitlements and permits, including in-water work permits, prior to any construction costs (labor and material) being considered eligible for reimbursement or reimbursed. Project Costs will be reimbursed from Grant Funds only through the design phase of Project until all applicable documentation is received by ODOT. Recipient shall provide this documentation to ODOT's ConnectOregon Program Manager.

**ii. Real Property.** Recipient shall provide documentation of having acquired real property *prior to any* costs being considered eligible for reimbursement or reimbursed from Grant Funds. Recipient shall provide this documentation to ODOT's ConnectOregon Program Manager.

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

**b. Prerequisites for Reimbursement of Construction Costs – Bicycle-Pedestrian Design Documentation.** Recipient shall provide design documentation which demonstrates compliance with the American Disabilities Act (ADA) and the current ODOT Bicycle and Pedestrian Design Guide. Documentation shall be provided a when design is thirty (30) percent, and ninety (90) percent complete. This documentation must be received prior to any construction cost (labor and material) being considered eligible for reimbursement or reimbursed from Grant Funds. Project Costs will be reimbursed from Grant Funds only through the design phase of Project until all applicable documentation is received by ODOT. Recipient shall provide this documentation to ODOT's ConnectOregon Program Manager.

**c. Requirements Associated with Use of Federal Transportation Alternative Program Funds (TAP)**

**i.** Recipient understands and agrees that any project that uses federal funds in project development is subject to plans, specifications and estimate (PS&E) review and approval by FHWA or ODOT acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction. This project is subject to such a review.

**ii.** Recipient understands and agrees that because federal TAP funds under Title 23, United States Code, were used to conduct preliminary National Environmental Policy Act (NEPA) work and acquire the railroad right-of-way, each future phase of design and construction of the Yamhelas Westsider Trail project must comply with 23 CFR 771 (FHWA's procedures for implementing NEPA) and 23 CFR 774 (FHWA's procedures for implementing 23 U.S.C. 138 (Section 4(f) of the U.S. DOT Act)), regardless of the source of funding.

**iii.** Recipient understands and agrees that for each future phase, ODOT, on behalf of FHWA, shall review and process all NEPA documentation and acquire FHWA's approval of said documents.

**iv.** Recipient understands and agrees that the provisions of 23 U.S.C. 313 "Buy America" shall apply to all future phases of construction. All construction specifications shall include the verbatim language contained in Section 00160.20(a) of the Oregon Standard Specifications for Construction (current edition).

## **EXHIBIT C**

### **Subagreement Insurance Requirements**

#### **GENERAL.**

Recipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to ODOT. Recipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Recipient permit work under a subagreement when Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which the Recipient is a Party.

#### **TYPES AND AMOUNTS.**

- i. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employer's liability insurance with coverage limits of not less than \$500,000 must be included.
  
- ii. **COMMERCIAL GENERAL LIABILITY.** Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to ODOT. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by ODOT:  
  
Bodily Injury, Death and Property Damage:  
  
\$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).
  
- iii. **AUTOMOBILE Liability Insurance: Automobile Liability.** Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by ODOT:

Bodily Injury, Death and Property Damage:

\$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

- iv. **ADDITIONAL INSURED.** The Commercial General Liability Insurance and Automobile Liability insurance must include ODOT, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.
- v. **"TAIL" COVERAGE.** If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of twenty-four (24) months following the later of : (i) the contractor's completion and Recipient's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing twenty-four (24) month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then the contractor may request and ODOT may grant approval of the maximum "tail " coverage period reasonably available in the marketplace. If ODOT approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.
- vi. **NOTICE OF CANCELLATION OR CHANGE.** The contractor or its insurer must provide thirty (30) days' written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).
- vii. **CERTIFICATE(S) OF INSURANCE.** Recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

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