

AMENDMENT NUMBER 01
SURFACE TRANSPORTATION PROGRAM –URBAN
N Ivanhoe Street: N Richmond Avenue to N St. Louis Avenue (St. Johns)
City of Portland

The **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "State," and the **City of Portland**, acting by and through its elected officials, hereinafter referred to as "Agency," hereinafter individually referred to as the "Party" or collectively referred to as the "Parties," entered into an Agreement on December 30, 2008. Said Agreement covers upgrading the traffic signals at N Ivanhoe Street at N Baltimore Avenue and N Lombard Street at St. Louis Avenue (to interconnect with the existing signal at N Ivanhoe Street at N Philadelphia Avenue); reconstruct three corners to improve the turning radii for freight; install a new traffic signal at the intersection of N Ivanhoe Street at N Richmond Avenue; and install curb extensions at various locations within the town center to improve pedestrian crossing safety.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to construct five (5) stormwater management facilities, update obligations and add maintenance responsibilities. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

Special Provisions, Attachment No. 1 shall be deleted in its entirety and replaced with the Revised Attachment No. 1, Revised Special Provisions. All references to "Attachment 1" shall hereinafter be referred to as "Revised Attachment No. 1."

Recitals, Paragraph 1, Page 1, which reads:

1. US 30 Bypass (Neast Portland Highway) is part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission and is routed through the corporate limits of the City of Portland. Portions of US 30 Bypass are known as N Philadelphia Avenue and N Ivanhoe Street within this Project's limits. N Lombard Street, N St. Louis Avenue, N Baltimore Avenue, portions of N Ivanhoe Street and N Richmond Avenue are a part of the city street system under the jurisdiction and control of Agency.

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

1. US 30 Bypass (Northeast Portland Highway) is part of the State highway system under the jurisdiction and control of the Oregon Transportation Commission and is routed through the corporate limits of the City of Portland. Portions of US 30 Bypass are known as N Philadelphia Avenue and N Ivanhoe Street within this

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Project's limits. N Lombard Street, N St. Louis Avenue, N Baltimore Avenue, portions of N Ivanhoe Street and N Richmond Avenue are a part of the city street system under the jurisdiction and control of Agency.

Terms of Agreement, Paragraph 1, Page 2, which reads:

1. Under such authority, Agency agrees to upgrade the traffic signals at N Ivanhoe Street at N Baltimore Avenue and N Lombard Street at St. Louis Avenue (and interconnect with the existing signal at N Ivanhoe Street at N Philadelphia Avenue); reconstruct three corners to improve the turning radii for freight; install a new traffic signal at the intersection of N Ivanhoe Street at N Richmond Avenue; and install curb extensions at various locations within the town center to improve pedestrian crossing safety, hereinafter referred to as "Project." The location of the Project is approximately as shown on the detailed map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

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

1. Under such authority, Agency agrees to upgrade the traffic signals at N Ivanhoe Street at N Baltimore Avenue and N Lombard Street at St. Louis Avenue (and interconnect with the existing signal at N Ivanhoe Street at N Philadelphia Avenue); reconstruct three corners to improve the turning radii for freight; due to increased traffic and pedestrian volume, install a new full vehicle and pedestrian actuated traffic control signal at the intersection of N Ivanhoe Street at N Richmond Avenue; install curb extensions at various locations within the town center to improve pedestrian crossing safety; and construct five (5) storm water management facilities on US 30 Bypass, hereinafter referred to as "Project." The location of the Project is approximately as shown on the detailed map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

Terms of Agreement, Paragraph 4, Page 2, which reads:

4. The term of this Agreement will begin upon execution and will terminate upon completion of the Project and final payment or ten (10) calendar years following the date of final execution, whichever is sooner.

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

4. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance responsibilities for the assumed life of the facilities. The life of the storm water management facilities is defined as forty (40) calendar years. The Project shall be completed within ten (10) calendar years following the date of final execution of this

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Agreement by both Parties. Maintenance responsibilities shall survive any termination of this Agreement.

Insert new Terms of Agreement, Paragraphs 8 and 9, Page 3, to read as follows:

8. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation 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 Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of State, be indemnified by the contractor and subcontractor from and against any and all Claims.
9. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor 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's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.

Terms of Agreement, Paragraphs 8 through 12 shall be hereinafter re-numbered as Paragraphs 10 through 14.

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

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.

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This Project is in the 2010-2013 Statewide Transportation Improvement Program (Key #13514) that was approved by the Oregon Transportation Commission on December 16, 2010.

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

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.

Signature page to follow

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CITY OF PORTLAND, acting by and
through its elected officials

By _____
Mayor

Date _____

By _____
Auditor

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**
APPROVED AS TO FORM

By _____
Agency Legal Counsel

Date 12/8/2011
CITY ATTORNEY

Agency Contact: PDOT
Rich Newlands, Project Manager
1120 SW 5th Ave, Suite 800
Portland, Oregon 97204-1971
Phone: 503-823-7780
rich.newlands@pdxtrans.org

State Contact: ODOT
Mark Foster
Local Agency Liaison
123 NW Flanders Street
Portland, Oregon 97209-4012
Phone: 503-731-8288
mark.a.foster@state.state.or.us

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

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/
Chief Engineer

Date _____

By _____
Region 1 Manager

Date _____

By _____
State Traffic Engineer

Date _____

By _____
Highway Finance Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

REVISED ATTACHMENT NO. 1

REVISED 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, assist State with acquisition of necessary right of way and/or easements, 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 Office of Procurement Manager or designee (Salem). Said contract must be reviewed and approved by the Office of Procurement Manager 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 1'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 make funds available to the State for payment of those services. All eligible work will be a federally participating cost and included as part of the total cost of the Project.
5. Indemnification language in the Standards Provisions, Paragraphs 45 and 46, shall be replaced with the following language:
 - a. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to

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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.

- b. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
 - c. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
 - d. 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.
6. In the event additional right of way is needed, then a Right of Way Services Agreement must be entered into between the Parties. Any right of way obtained

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for Project utility installations or relocations that shall become ODOT right of way shall be obtained and conveyed to ODOT prior to the installation of said utilities.

7. State's District 2B Manager (or designee) shall, at Project expense, issue the required permits, and review and concur with the Project plans and specifications for all work to be performed on State right of way.
8. State and Agency agree to the construction of five (5) storm water management facilities on US 30 Bypass (Northeast Portland Highway), to treat State right of way-generated stormwater.
9. State shall be responsible for the maintenance of the US 30 Bypass (Northeast Portland Highway) roadway from curb to curb, as well as improvements to the storm water management facilities and signage on State facilities, consistent with past agreements, including, but not limited to, Misc. Contract and Agreement No. 4837 (1973) and Misc. Contract and Agreement No. 6324 (1978).
10. Agency shall be responsible for the maintenance of the Agency streets and all appurtenances thereto.
11. Agency shall be responsible for performance of maintenance of the Project storm water management facilities as well as any operational, conductive and connective feature(s) of said storm water management facilities up to and including the connection to the street inlet or inlet lead, including portions within US 30 right of way. Agency shall provide services consistent with Agency's Bureau of Environmental Services (BES) standards for operation and maintenance of storm water management facilities at the time of the maintenance work. The term for these services shall be for the assumed facility life of forty (40) years for this improvement and shall not exceed \$50,000 during the 40-year term. The funding for these services shall come from the State Region 1 Maintenance and Operations budget, which is not a part of the total Project cost of this Project. Upon execution of this Agreement and successful completion of the periodic performance of services required, Agency shall bill State as costs are incurred for such services.
12. State shall be responsible for the costs for the continuing operation and maintenance services for the storm water management facilities installed on State facilities or treating the storm water runoff from State facilities only. Upon completion of this Agreement and receipt of an acceptable billing, State shall reimburse Agency, as costs are incurred, for the completed performance of Agency's services required for the successful continuing operation of this improvement on State facilities. The term for these services shall be for the assumed facility life of forty (40) years for this improvement and shall not exceed \$50,000 for the services completed during the 40-year term.

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13. Agency or its contractor's electrical inspectors shall possess a current State Certified Traffic Signal Inspector certificate, in order to inspect electrical installations on State highways. The State District 2B Permitting Office shall verify compliance with this requirement prior to construction. Said inspectors must coordinate their traffic inspections with State District 2B and Electrical inspectors during the course of the Project.
14. State's Traffic Engineer (or designee) shall, at Project expense, review and concur with the signal plans and the signal timing plans prior to signal turn-on.
15. State's Traffic Systems Services Unit Manager (or designee) shall, at Project expense, perform the signal equipment environmental chamber testing in accordance with the current State procedures.
16. Agency shall be responsible for all costs for the installation of the signal interconnect facilities installed as part of the Project. This includes the initial costs associated with the hook-up of the communication service connections for said system. Upon inspection and approval by State, said interconnect facilities so constructed thereafter become the property of State.
17. Traffic signal timing shall remain the responsibility of State, but shall be performed by Agency. All modifications shall follow guidelines set forth in the current *Manual on Uniform Traffic Control Devices* and *Oregon Supplements*, and the current *State Traffic Signal Policy and Guidelines*.
18. Agency shall, upon completion of the Project and at its own expense, maintain the pavement surrounding the vehicle detector loops installed in Agency streets as part of the Project in such a manner as to provide adequate protection for said detector loops. Failure to do so may result in State requiring Agency to repair or replace the damaged loops at Agency expense. Future Agency roadwork activities involving the detector loops may also result in the same State requirements.
19. Upon completion of the Project and satisfactory signal turn on, State shall retain ownership and complete jurisdiction and control for the operation of the traffic signal equipment installed for the Project on the intersections with the State Highway. Any and all design drawings, manufacturer or contractor's warranties, guarantees, operation manuals or similar items necessary to operate or maintain the signal improvements will be provided to State by Agency.
20. Agency shall, upon traffic signal turn on and proper operation, perform and pay all upfront costs for necessary maintenance and operation for the Project traffic signal improvements. Consistent with the Agreement 19,719, 2002 Policy Statement for Cooperative Traffic Control Projects, the Parties shall share all

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operation maintenance and electrical energy costs for the new traffic signal at N Ivanhoe Street and Richmond Avenue, at a rate of fifty (50) percent each, for the traffic signals and any attached illumination. Agency will bill State annually for their portion of the total maintenance and operation costs for the traffic signals that are part of the Project or are covered by existing agreements between State and Agency.

21. Agency shall be responsible for 100 percent of the maintenance and power costs for the traffic signals and illumination on Agency streets.
22. Agency or its contractor shall lay out and paint the necessary lane lines and erect the required directional and traffic control signing for the Project. Plans for all lane striping and pedestrian, directional and traffic control signage relating to operation of the new signal at N Ivanhoe Street and Richmond Avenue must be reviewed by and receive approval from the State Traffic Engineer, or designee, prior to installation. The required review shall be coordinated through the State District 2B office.
23. State shall retain all utility and access permit-issuing authority along the state highway.
24. In lieu of State district permits, State hereby grants Agency, or others designated by Agency, with the right to enter and occupy State right of way for the purpose of routine maintenance of Project-related improvements. Should such maintenance activities intrude into the roadway of US 30, or for any other activities beyond routine maintenance for the improvements described herein, State Maintenance District 2B-issued permits shall be required.
25. Agency shall, within ninety (90) calendar days of completion or termination without completion of the Project, provide to State permanent mylar "as constructed" plans for work on state highways. If Agency or its consultant redrafts the plans, done in Computer Aided Design and Drafting (CADD) or Microstation, to get the "as constructed" set, and they follow the most current version of the "Contract Plans Development Guide, Volume 1 Chapter 16" <http://egov.oregon.gov/ODOT/HWY/ENGSERVICES/cpdg.shtml>, Agency shall provide to State a Portable Document Format (PDF) file and a paper copy of the plan set.