

Misc. Contracts & Agreements
No. 28326

**INTERGOVERNMENTAL AGREEMENT
US 30 Bypass: NE 122nd to M.P. 13.54
Detour Traffic Monitoring and Signal Adjustment**

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 the CITY OF PORTLAND, acting by and through its elected officials, hereinafter referred to as "City," collectively hereinafter referred to as the "Parties."

RECITALS

1. Northeast Portland Highway (NE Sandy Boulevard), State Highway No. 123, also designated as US Route 30 Bypass Highway, is under the jurisdiction and control of the Oregon Transportation Commission. NE 122nd and NE 138th Avenue are city streets under the jurisdiction and control of City.
2. By the authority granted in ORS 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
3. The State has a safety project on NE Sandy Blvd between NE 122nd Avenue and milepost 13.54. A detour route will have to be created around the temporary closure of the NE 122nd Avenue ramp to Sandy Boulevard and around the intersection of NE 138th and Sandy Boulevard. In order to mitigate disruption of traffic, there will need to be a traffic engineer monitoring the detour route and determining traffic signal timing and adjustment along the detour route.

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 wishes to retain the services of City to provide one traffic engineer to monitor the detour route and, in coordination with the State, determine traffic signal timing and adjustment along the detour route due to street closures, hereinafter referred to as "Project." The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof. The scope, schedule, and budget for said Project services is shown on Exhibit B, attached hereto and by this reference made a part hereof. Payment for said services shall not exceed a maximum amount of \$10,800 in state funds.

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2. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate on December 13, 2013.

CITY OBLIGATIONS

1. City shall perform the work in accord with Project's scheduled needs as described in Exhibit B.
2. City shall present invoices for 100 percent of actual costs incurred by City on behalf of the Project directly to State's Project manager for review and approval. Such invoices shall be in a form identifying the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one month duration, based on actual expenses incurred. Under no conditions shall State's obligations exceed \$10,800, including all expenses, without an executed amendment approved by both Parties to this Agreement. Travel expenses shall not be reimbursed.
3. City shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from State.
4. City shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, City 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.
5. City shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
6. All employers, including City, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. City shall ensure that each of its contractors complies with these requirements.

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7. City 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 City'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 the State, be indemnified by the contractor and subcontractor from and against any and all Claims.
8. Any such indemnification shall also provide that neither City's contractor and subcontractor nor any attorney engaged by City'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 City's contractor is prohibited from defending the State of Oregon, or that City'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 City's contractor if the State of Oregon elects to assume its own defense.
9. City acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of City which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
10. City certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of City, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind City.
11. City's Project Manager for this Project is Winston Sandino, City of Portland Transportation, 1120 SW 5th, Room 800, Portland OR 97204, 503.823.5767, winston.sandino@portlandoregon.gov or assigned designee upon individual's

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absence. State's Project Manager shall be notified in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. In consideration for the services performed, State agrees to pay City within forty-five (45) days of receipt by State of the Project invoice for actual costs, not to exceed a maximum amount of \$10,800, unless an executed amendment to this Agreement is approved by both Parties to this Agreement. Said maximum amount shall include reimbursement for all expenses. Travel expenses shall not be reimbursed.
2. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
3. State's Project Manager for this Agreement is Robyn Bassett, 123 NW Flanders Street, Portland, OR 97209, 503-731-8469, robyn.bassett@odot.state.or.us or assigned designee upon individual's absence. City's Project Manager shall be notified in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to City, or at such later date as may be established by State, under any of the following conditions:
 - a. If City fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If City 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 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.

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- d. 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.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. 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 City 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.
5. With respect to a Third Party Claim for which State is jointly liable with City (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 City in such proportion as is appropriate to reflect the relative fault of State on the one hand and of City 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 City 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.
6. With respect to a Third Party Claim for which City is jointly liable with State (or would be if joined in the Third Party Claim), City 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 City 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 City on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative

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7. 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.
8. 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.
9. 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.

IN WITNESS WHEREOF, the Parties hereto have set their hands as of the day and year hereinafter written.

This Project is in the 2006-2009 Statewide Transportation Improvement Program, (Key # 15068) that was approved by the Oregon Transportation Commission on August 17, 2005 (or subsequently approved by amendment to the STIP).

SIGNATURE PAGE TO FOLLOW

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CITY OF PORTLAND, by and through its
elected officials

By _____
Mayor

Date _____

By _____
Auditor

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

APPROVED AS TO FORM
By James H. Van Dyke
Counsel CITY ATTORNEY

Date 2/26/2012

City Contact:
Winston Sandino
City of Portland Transportation
1120 SW 5th, Room 800
Portland, OR 97204
503.823.5767
winston.sandino@portlandoregon.gov

STATE OF OREGON, by and through
its Department of Transportation

By _____
Region 1 Manager

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief
Engineer

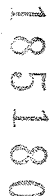
Date _____

By _____
District 2B Manager

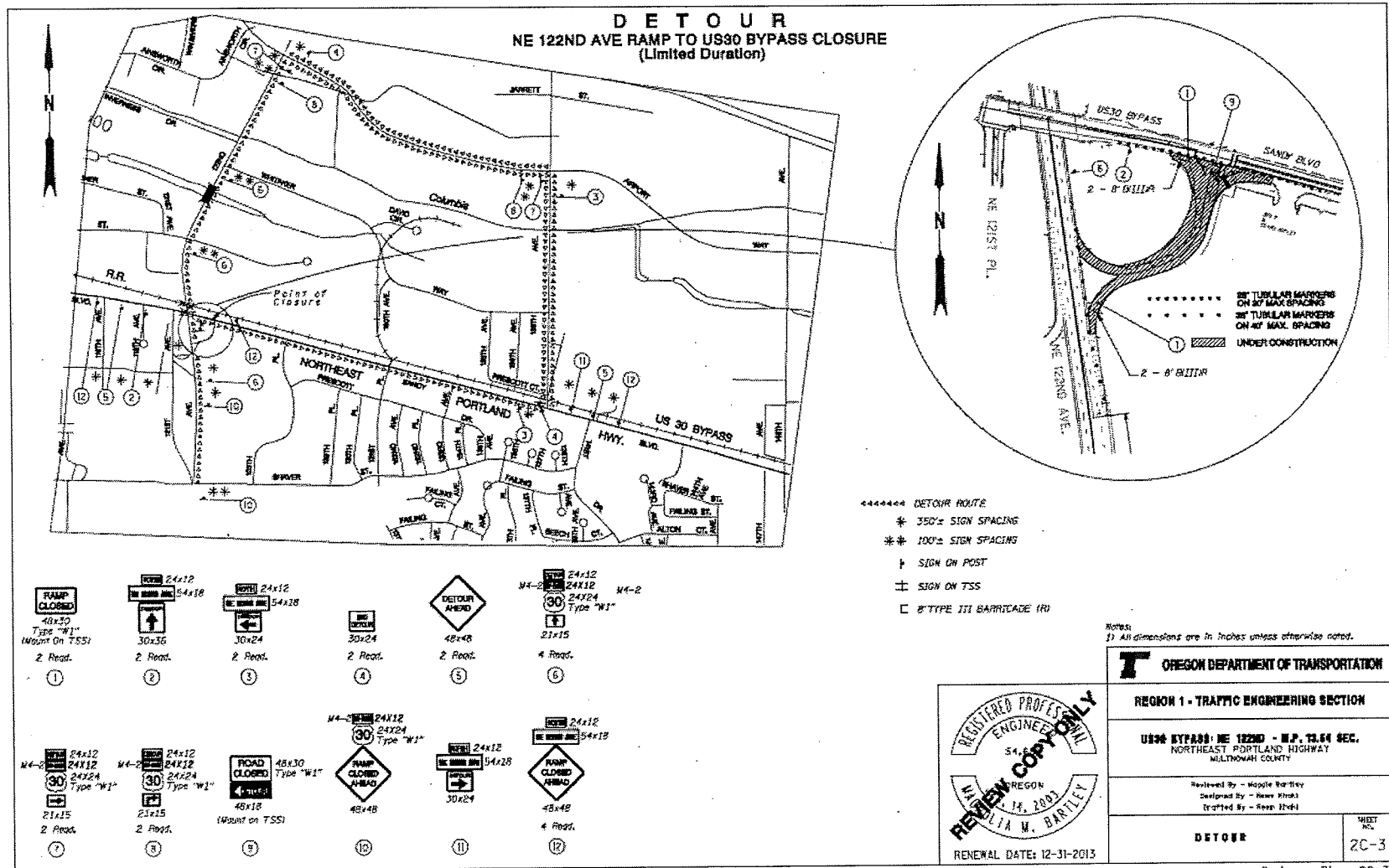
Date _____

State Contact:
Robyn Bassett
ODOT, Project Leader
123 NW Flanders Street
Portland, OR 97209
503.731.8469
robyn.bassett@odot.state.or.us

D E T O U R
NE 138TH AVE TO US30-BYPASS CLOSURE
(Limited Duration)



Agreement No. 28326 EXHIBIT A



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Detour Plan 2C-3

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EXHIBIT B – SCOPE, SCHEDULE AND BUDGET
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Task 1: Provide one traffic engineering staff to determine traffic signal timing and adjustment along the congested detour routes due to Sandy Blvd closures and field observation. This task can be required prior to the closure and during the closure as needed.

Task Schedule: This task can happen prior to Sandy Blvd closure or during the closure weekends of summer 2012. Traffic engineering time requires to determining signal timing adjustment for this task depends on actual traffic flow condition as observed along the detour routes.

Task Cost: Task cost to total no more than \$10,800. This amount is estimated as follow: 4 days x 1 staff @ \$515 a day plus overhead = \$10,800.