

**AMENDMENT NUMBER 03
INTERGOVERNMENTAL AGREEMENT
WALKWAY/BIKEWAY PROJECT AGREEMENT
2010-2011 Pedestrian and Bicycle Program Grant
NW Naito Parkway Mid-block Crossing Between Flanders and Glisan Street
City of Portland**

This is Amendment No. 03 to Agreement No. 26192 between the **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "State," and **City of Portland**, acting by and through its elected officials, hereinafter referred to as "Agency". State and Agency entered into this Agreement on November 10, 2009, Amendment No. 01 on January 10, 2012 and Amendment No. 02 on July 9, 2013. Said Agreement covers NW Naito Parkway Mid-block Crossing between Flanders and Glisan Street.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to extend the Project completion date to October 31, 2019, add an additional ODOT Contact person, update language to include required ADA provisions, update the Scope of Work and increase funding and to specify a new funding source.

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

2. **Amendment to Agreement.**

a. **TERMS OF AGREEMENT, Paragraph 1, Page 1, which reads:**

1. Under such authority, State and Agency agree to design and construct a pedestrian crossing of NW Naito Parkway between Flanders and Glisan, including refuge islands, lighting, curb ramps, signing and striping, 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.

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

1. Under such authority, State and Agency agree to design and construct a pedestrian crossing of NW Naito Parkway between Flanders and Glisan, including rail signal modifications as required, refuge islands, lighting, curb ramps, signing and striping, 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.

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

2. Agency has determined that the total cost of the Project is estimated to be \$408,000. State shall fund the Project in an amount not to exceed \$387,000. Agency shall provide a match in the amount of \$21,000 and shall be responsible for any portion of the Project, which is not covered by State funding.

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

2. Agency has determined that the total cost of the Project is estimated to be \$1,000,000.00. State shall fund the Project in an amount not to exceed \$637,000. \$387,000 shall be from the Pedestrian and Bicycle Grant Program and \$250,000 will be from the Rail Crossing Protection Fund. Agency shall provide a match in the amount of \$363,000 and shall also be responsible for any additional cost of the Project, which is not covered by State funding.

b. TERMS OF AGREEMENT, Paragraph 3, Page 2, which reads:

3. The work is to begin upon execution of this Agreement by all Parties and shall be completed no later than December 31, 2013. This Agreement will terminate five (5) years after that date unless extended by a fully executed amendment. Maintenance responsibilities shall survive any termination of this Agreement.

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

3. The work is to begin upon execution of this Agreement by all Parties and shall be completed no later than October 31, 2019. This Agreement will terminate five (5) years after that date unless extended by a fully executed amendment. Maintenance responsibilities shall survive any termination of this Agreement.

c. Insert new AGENCY OBLIGATIONS, Item number 16 to read as follows:

16. Americans with Disabilities Act Compliance:

- a. When the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps, rail crossings or pedestrian signals, the Parties shall:
 - i. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended by the ADA Amendments Act of 2008 (together, "ADA"), including ensuring that all sidewalks, curb ramps, rail crossings and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - ii. Follow ODOT's processes for design, modification, upgrade, or construction of sidewalks, curb ramps, rail crossings and pedestrian-activated signals, including using the ODOT Highway Design Manual,

ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;

- iii. At Project completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed, modified, upgraded, or improved as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

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

- iv. Promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, rail crossings and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by Agency and prior to release of any Agency contractor.
- b. Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Agency shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the start of construction.
 - c. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
 - i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Agency identifying sidewalk, curb ramp, rail crossings or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Any repairs or removal of obstructions needed to maintain Project features in compliance with the ADA requirements that were in effect at the time of Project construction are completed by Agency or abutting property owner pursuant to applicable local code provisions,

- iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- d. Maintenance obligations in this section shall survive termination of this Agreement.

d. STATE OBLIGATIONS, Paragraph 2, Page 5 which reads;

- 2. Upon receipt of notification that the Agency is prepared to proceed with the development of Project, State shall deposit with Agency the sum of \$193,500, such amount being equal to fifty (50) percent of the State's share of the estimated Project costs. Upon completion of Project, inspection and approval by State staff, and receipt from Agency of an itemized statement of the actual total cost of the Project, State shall deposit with Agency a final payment, the sum of \$193,500, such amount being equal to fifty (50) percent of the State's share of the estimated Project costs. When added to the initial deposit, the final deposit will equal the State's share of the originally estimated costs (\$408,000). Should final Project costs exceed the original estimate, extra costs shall be borne by Agency; the maximum amount of State reimbursement is \$387,000. If final Project costs are less than original estimate, State shall deposit with Agency a final payment in an amount which, when added to the initial deposit, would equal the State's proportionate share of the originally estimated costs, based on a percentage calculated using State share and local match.

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

- 2. Upon receipt of notification that the Agency is prepared to proceed with the development of Project, State shall deposit with Agency the sum of \$193,500. Upon completion of Project, inspection and approval by State staff and receipt from Agency of an itemized statement of the actual total cost of the Project, State shall deposit with Agency a final payment for the sum of \$443,500. When added to the initial deposit, the final deposit will equal the State's share of the estimated project costs of \$1,000,000.00. Should final Project costs exceed the original estimate, extra costs shall be borne by Agency; the maximum amount of State reimbursement is \$ \$637,000. If final Project costs are less than the original estimate, State shall deposit with Agency a final payment in an amount which, when added to the initial deposit, would equal the State's proportionate share of the estimated costs, based on a percentage calculated using State share and local match.

3. **Counterparts.** This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
4. **Original Agreement.** Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. Agency certifies that the representations, warranties and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

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.

Signature page to follow

CITY OF PORTLAND, by and through
its elected officials

By _____

Title _____

Date _____

By _____

Title _____

Date _____

**LEGAL REVIEW APPROVAL (If
required in Agency's process)**

By _____

Agency Counsel

Date _____

Agency Contact:

Rich Newlands
Project Management Division
Portland Office of Transportation
1120 SW 5th Ave., Suite 800
Portland, OR 97204
503-823-7780
Rich.Newlands@portlandoregon.gov

STATE OF OREGON, by and through
its Department of Transportation

By _____

Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____

Pedestrian/Bicycle Program Manager

Date _____

By _____
Interim State Traffic and Roadway
Engineer

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By: Amy E. Alpaugh
Assistant Attorney General, Oregon
Department of Justice

Date December 13, 2017

State Contacts:

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