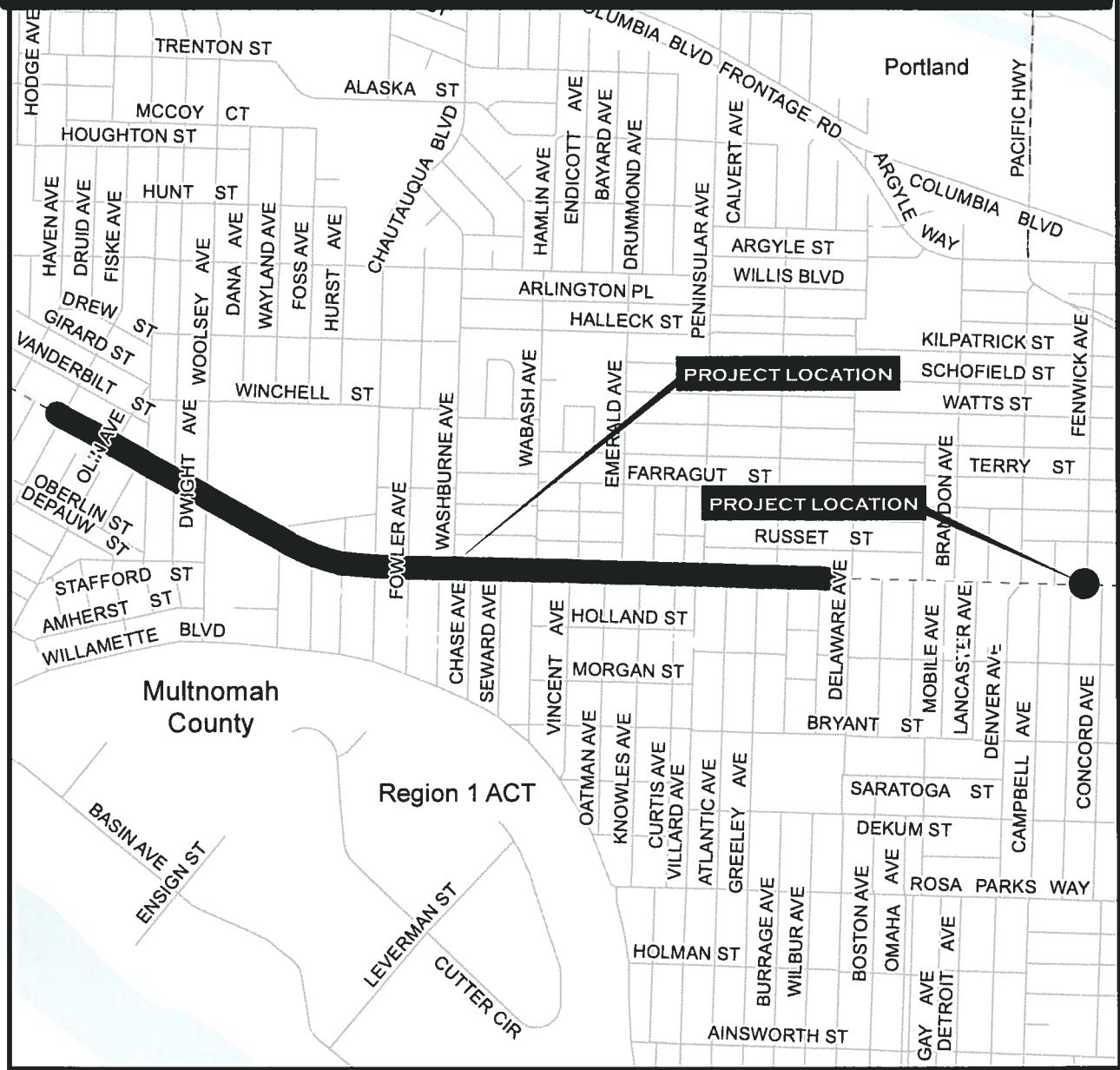


STIP PROJECT LOCATION

ODOT REGION 1

Region 1 Area Commission on Transportation



US30BY: N FISKE AVE -
 N WILBUR AVE (PORTLAND)
 KEY NO. 20413

LEGEND

- PROJECT LOCATION
- HYDRO
- LOCAL ROADS
- STATE HIGHWAY CLASSIFICATION**
- INTERSTATE
- STATEWIDE
- REGIONAL / DISTRICT
- BOUNDARIES**
- ODOT REGION
- COUNTY

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0 0.2 Miles
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 (503) 986-3154 - MAY 2018
 GIS No. 23-52

**INTERGOVERNMENTAL AGREEMENT
US30BY: N Fiske Ave – N Wilbur Ave (Portland)**

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" or "ODOT," and the CITY OF PORTLAND, acting by and through its elected officials, hereinafter referred to as "Agency," each herein referred to individually as a "Party" and both referred to collectively as the "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (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.
2. US30 Bypass, also known as N Lombard Street, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). N Greeley, N Newman, N Fenwick, and N Washburn are a part of the city system under the jurisdiction and control of Agency.
3. By the authority granted in ORS 810.210, State is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where State deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than State, except with its written approval. Traffic signal work on the Project will conform to the current State standards and specifications.
4. State and Agency desire to collaborate on various improvements on N Lombard Street (hereinafter "Project"). Project shall consist of the design and construction of a truck apron on N Lombard Street at the intersection of N Lombard and N Greeley, completion of a pedestrian study at the intersections of N Lombard and N Newman and N Washburn, and the design and construction of a full traffic signal at the intersection of N Lombard and N Fenwick. Project, when taken together, shall be divided into "State Project" and "Agency Project" as further detailed in this Agreement.
5. State is currently engaged in the "US30BY (Lombard) Safety Extension project (the "Lombard Project"). Agency desires that State design and construct a truck apron on N Lombard Street at the intersection of N. Lombard and N. Greeley Street as part of State's existing Statewide Transportation Improvement Program (STIP) project. Agency further desires that State complete a pedestrian study at the intersections of N Lombard and N Newman and N Washburn. Although the design and construction of a full traffic signal at the intersection of N Lombard and N Fenwick was originally part of State's STIP project, State desires that Agency design and construct the full traffic signal at the intersection of N Fenwick and N Lombard

because Agency is better suited to design and construct that traffic signal using Agency funds.

6. State is willing to design and construct a truck apron on N Lombard Street at the intersection of N. Lombard and N. Greeley Street, as well as completion of a pedestrian study at the intersections of N Lombard and N Newman and N Washburn as part of its Lombard Project provided that State receives payment from Agency in the amount agreed upon herein. Agency is willing to design and construct a full traffic signal at the intersection of N Lombard and N Fenwick at Agency's expense.

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. State and Agency agree to deliver the Project as provided in this paragraph. The location of the Project is approximately as set forth on the map marked Exhibit A, attached hereto and by this reference made a part hereof.
 - a. The State Project will consist of the State:
 - Designing and constructing a truck apron at the southwest corner of N Lombard and N Greeley; and
 - Completing a pedestrian study at the intersections of N Lombard and N Newman and N Washburn.
 - b. The Agency Project will consist of the Agency:
 - Designing and constructing a full traffic signal at the intersection of N Lombard and N Fenwick.
2. The Project does not alter the Parties' respective existing maintenance responsibilities in the locations affected by the Project.
3. State's pedestrian study on N Lombard intersections at N Newman and N Washburn may result in recommendations for pedestrian improvements. If State decides to pursue any pedestrian improvements at Agency's expense, an amendment to this Agreement will be completed to define the improvements and responsibilities.
4. In consideration for State delivering the State Project, Agency agrees to pay to State \$175,000. Upon completion of the design phase of the truck apron and the pedestrian study portion of the State Project, and prior to bidding for the construction of the truck apron portion of the State Project, State will notify Agency of the expected cost to complete the State Project. If the total cost exceeds the original estimate of \$175,000, Agency has the option to proceed with the State Project without construction of the truck apron and will be refunded any unused funds. If the Agency decides to proceed with construction of the truck apron portion of the State

Project, and the cost exceeds \$175,000, Agency agrees to make further contributions totaling a hundred percent (100%) of the State Project upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the State-delivered improvements. State will return any unused funds to Agency if State Project costs less than \$175,000.

5. Upon Agency's completion of the Agency Project, Agency shall be responsible for power, operation, and maintenance of the traffic signal at N. Fenwick and N. Lombard. Agency shall require the electric utility to send invoices directly to Agency. Agency will invoice State once a year for 50 percent of the total yearly electrical cost for the traffic signal. Agency shall, upon signal activation and operation, perform all necessary maintenance of said traffic signal and control the timing established for operation of the traffic signal according to state traffic signal specifications and standards. Agency shall invoice State once a year for 50 percent of the yearly maintenance costs.
6. The term of this Agreement begins on the date all required signatures are obtained and terminates upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.

STATE OBLIGATIONS

1. State shall complete and deliver the portion of the Project identified as State Project in TERMS OF AGREEMENT, paragraph 1.
2. State shall, upon execution of this Agreement, forward to Agency a letter of request for an advance deposit or irrevocable letter of credit in the amount of \$175,000 for payment for State's portion of the Project. State shall provide a budget update prior to bidding the construction contract for the truck apron of the State Project and inform Agency of estimated cost to complete the truck apron aspect of the State Project. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the State-delivered improvements.
3. Upon completion of the State Project portions of the Project, State shall either send to Agency a bill for the amount which, when added to Agency's advance deposit, will equal 100 percent of the total state costs or State will refund to Agency any portion of said advance deposit which is in excess of the total State costs for the Project.
4. Upon completion of the State Project, State will maintain the truck apron at the corner of N Lombard and N Greeley.
5. If applicable, State shall maintain the asphaltic concrete pavement surrounding the vehicle detector loops installed in N Lombard as part of the Agency Project, in such a manner as to provide adequate protection for said detector loops.

6. State certifies that, at the time this Agreement is executed, sufficient funds are available and authorized for expenditure to finance the costs of this Agreement within State's current appropriation or limitation of the current biennial budget.

AGENCY OBLIGATIONS

1. Agency shall, upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from State, forward to State an advance deposit or irrevocable letter of credit in the amount of \$175,000 for the State Project, said amount being equal to the estimated total cost for the work performed by State at Agency's request under Terms of Agreement paragraph 1. Upon completion of the design phase of the truck apron and the pedestrian study portion of the State Project, and prior to bidding the construction of the truck apron portion of the State Project, State will notify Agency of the expected cost to complete the State Project. If the total cost exceeds the original estimate of \$175,000, Agency has the option to proceed with the State Project without construction of the truck apron and will be refunded any unused funds. If the Agency decides to proceed with construction of the truck apron portion of the State Project, and the cost exceeds \$175,000, Agency agrees to make further contributions totaling a hundred percent (100%) of the State Project upon request from State. Any portion of said advance deposit which is in excess of the total costs of the State Project will be refunded or released to Agency.
2. Agency is responsible for all costs for designing and constructing the Agency Project.
3. Agency shall obtain a miscellaneous permit to occupy State right of way through the State District 2B Office prior to the commencement of construction.
4. Agency, or its consultant'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 Permitting Office shall verify compliance with this requirement prior to construction.
5. If applicable, Agency shall maintain the asphaltic concrete pavement surrounding the vehicle detector loops installed in N Fenwick Street as part of Agency Project in such a manner as to provide adequate protection for said detector loops.
6. Agency is responsible for all permit costs, fees, and Agency staff time associated with design, construction, and delivery of the Agency Project. Agency's costs for the Agency Project are separate and distinct from Agency's payment obligations to State for the State Project as set forth in AGENCY OBLIGATIONS paragraph 1, above.
7. Agency 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 Agency 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.

8. Agency certifies and represents that each individual signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.

GENERAL PROVISIONS

1. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.
2. This Agreement may be terminated by mutual written consent of both Parties.
3. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. 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 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, 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, 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>
- b. Parties 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. Parties 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, 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.
6. 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 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.
7. 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.
8. 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.

9. 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.
10. State's Project Manager for this Project is Jennifer Bachman, 123 NW Flanders Street, Portland, OR 97209, 503-731-4851, jennifer.l.bachman@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.
11. Agency's Project Manager for this Project is David Backes, 1120 SW 5th Avenue, Suite 800, Portland, OR 97204, 503-823-5811, david.backes@portlandoregon.gov, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.
12. 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.
13. 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.

Signature Page to Follow

Agency/State
Agreement No. 32595

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.

This Project is in the 2018-2021 Statewide Transportation Improvement Program, (Key #20413) that was adopted by the Oregon Transportation Commission on July 20, 2017 (or subsequently approved by amendment to the STIP).

CITY OF PORTLAND, by and through its
elected officials

By _____

Date _____

By _____

Date _____

APPROVED AS TO FORM

By _____
Counsel

Date _____

Agency Contact:

David Backes
1120 SW 5th Avenue, Suite 800
Portland, OR 97204
503-823-5811
David.backes@portlandoregon.gov

STATE OF OREGON, by and through
its Department of Transportation

By _____

Region 1 Manager

Date _____

APPROVAL RECOMMENDED

By _____

State Traffic-Roadway Engineer

Date _____

By _____

Area Manager - Central

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____

Assistant Attorney General (if over
\$150,000)

Date _____

State Contact:

Jennifer Bachman
123 NW Flanders Street
Portland, OR 97209
503-731-4851
jennifer.l.bachman@odot.state.or.us