

**INTERGOVERNMENTAL AGREEMENT**  
**Funding Contribution**  
**NE 42<sup>nd</sup> Bridge Replacement: Bike Improvements at NE Lombard (US30BY)**

**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 "Agency," each herein referred to individually as a "Party" and 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. NE 42<sup>nd</sup> Avenue is part of Agency's street system under the jurisdiction and control of Agency. NE Lombard Street (US30B) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission.
3. Agency is replacing the NE 42<sup>nd</sup> Avenue bridge over NE Lombard Street to improve the flow and safety of bicycle and pedestrian traffic. State has requested that Agency make certain improvements on NE Lombard Street in this location in conjunction with their bridge project. This Agreement outlines State's contribution to Agency's project.

**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. **Agency shall construct improvements along NE Lombard Street right under the NE 42<sup>nd</sup> Avenue Bridge, hereinafter referred to as the "Project."** The Project includes widening the shoulder of NE Lombard St on both the EB and WB directions in conjunction with the Agency's NE 42<sup>nd</sup> Ave Bridge Replacement project.
  - a. In the EB direction, final design shall remove guardrail and replace existing asphalt MUP with a combined 8' buffered bike lane (6' lane, 2' buffer) and an 8' sidewalk (may be pinched where the bridge abutment is, no narrower than 6'). Sidewalk shall transition back to shoulder. Will not impact driveway on the eastern side. Inlets will be relocated to final curb location. A micro seal will be required for the full lane width of all lanes affected by the inlet relocation and any saw cuts not at a lane line (total length of widening/improvements approx. 425LF)

Agency/State  
Agreement No. 34917/73000-00013633

- b. In the WB direction, a 6' standard bike lane (no buffer) will be added. Outside travel lane may be reduced to 11', guardrail posts to be relocated, and slope stone embankment may be utilized to minimize widening into UPRR ROW. A micro seal will be required for the full lane width of all lanes affected by any striping removal along NE Lombard (total length of widening/improvements approx. 550LF)
  - c. ASSUMPTIONS:
    - i. At least one review will be required by ODOT – anticipated reviews by Roadway, Traffic & Drainage teams, District 2B. Second review will be in full 100% package for Agency's 42<sup>nd</sup> Bridge Replacement Project.
    - ii. One design package will be sent to bid for a single contractor including combined specifications and estimate using Agency's standard specifications and format.
    - iii. No presentation to State MAC will be required. No BUD concurrence is required. No access management work to be completed.
    - iv. No new retaining walls or modification of existing retaining walls north of NE Lombard will be required.
    - v. No ODOT stormwater treatment or detention requirements will be added or analyzed for State system (inlet modification will match existing inlets to new curb locations).
    - vi. Analysis of increased flow to UPRR ditch will be analyzed by Agency and presented to UPRR. Current assumptions don't predict any change to UPRR drainage system and will require no additional flow or treatment control.
    - vii. Existing pavement depth will be provided by State via as-builts. No additional pavement analysis will be completed by Agency; existing depths will be matched.
    - viii. Infiltration testing was previously completed for the drywells on NE 42nd Ave will be sufficient to prove infiltration rates along NE Lombard.
    - ix. Existing culverts crossing NE Lombard are assumed in good condition and will not be investigated or replaced
  - d. The location of the Project is approximately as set forth in the sketch map attached hereto as Exhibit A.
2. In consideration for Agency's construction of the Project, State shall reimburse Agency an amount up to \$597,000. State and Agency shall discuss any change orders attributable to State facilities and scope of the Project prior to issuance and shall work together to determine the source of the overrun and decide which party or parties will be responsible for payment of any cost overrun. In any event, the State

Agency/State  
Agreement No. 34917/73000-00013633

shall review and approve any cost increase or change in scope prior to any amendment in which the State agrees to incur any additional costs.

3. 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.

### **AGENCY OBLIGATIONS**

1. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates in accordance with current state and federal laws and regulations; obtain all required permits; be responsible for all utility relocations; advertise for bid proposals; award all contracts; perform all construction engineering; and make all contractor payments required to complete the Project.
2. Agency shall keep accurate cost accounting records. Upon execution of the Agreement, Agency shall send a letter of request to State for \$298,500 towards the Project. Upon completion of the Project, Agency shall send to State a Project invoice showing Project expenses, and State shall pay Agency up to the remaining \$298,500. Under no conditions shall State's obligations exceed \$597,000, including all expenses, without an amendment to this Agreement. Travel expenses will not be reimbursed.
3. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from State.
4. Agency 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 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency 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. Agency shall construct the Project in accordance with the requirements of ORS 276.071 including the public contracting laws within ORS Chapters 279A, 279B and 279C.
6. If Agency chooses to assign its contracting responsibilities to a consultant or contractor, Agency shall inform the consultant or contractor of the requirements of ORS 276.071, to ensure that the public contracting laws within ORS Chapters 279A, 279B and 279C are followed.

Agency/State  
Agreement No. 34917/73000-00013633

7. Agency shall obtain a permit to "Occupy or Perform Operations upon a State Highway" from assigned State District 2B Project Manager as well as engineering design review approval from State. Agency agrees to comply with all provisions of said permit(s), and shall require its developers, contractors, subcontractors, or consultants performing such work to comply with such permit and review provisions.
8. Pursuant to the statutory requirements of ORS 279C.380 Agency shall require their contractor to submit a performance bond to Agency for an amount equal to or greater than the estimated cost of the Project.
9. Agency 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.
10. If Agency enters into a construction contract for performance of work on the Project, then Agency will require its contractor to provide the following:
  - a. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorneys' fees, resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under the resulting contract.
  - b. Contractor and Agency shall name State as a third party beneficiary of the resulting contract.
  - c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage and shall include personal and advertising injury liability, products and completed operations, and contractual liability coverage. Coverage shall be written on an occurrence basis in an amount of not be less than  \$1,000,000  \$2,000,000  \$5,000,000 per occurrence. Annual aggregate limit shall not be less than  \$1,000,000  \$2,000,000  \$4,000,000  10,000,000.
  - d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Automobile Liability Insurance covering Contractor's business-related automobile use covering all owned, non-owned, or hired vehicles for bodily injury and property. Coverage shall be written with a combined single limit of not less than \$1,000,000. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability).
  - e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers

Agency/State  
Agreement No. 34917/73000-00013633

and employees as Additional Insured but only with respect to Contractor's activities to be performed under the resulting contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.

- f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor's or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.
11. Agency 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.
12. 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.
13. 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 the State, be indemnified by the contractor and subcontractor from and against any and all Claims.
14. 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

Agency/State  
Agreement No. 34917/73000-00013633

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.

15. 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.
16. Agency certifies and represents that the individuals signing this Agreement have 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.
17. Agency's Project Manager for this Project is Winston Sandino, 1120 SW Fifth Ave, Suite 800, Portland, OR 97204, 503.823.2804, [winston.sandino@portlandoregon.gov](mailto:winston.sandino@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.

## **STATE OBLIGATIONS**

1. In consideration for the services performed, State agrees to pay Agency a maximum amount of \$597,000 for the Project. Said maximum amount shall include reimbursement for all expenses. Travel expenses shall not be reimbursed. Upon execution of this Agreement and receipt of a letter of request from Agency, State shall pay Agency \$298,500 for the Project. Upon completion of the Project and receipt of the Project invoice showing Project expenses, State shall pay the remaining amount, up to \$298,500.
2. State is responsible for all maintenance of the Project upon Project completion.
3. 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.
4. State's Project Manager for this Project is Shelli Romero, 123 NW Flanders Street, Portland, OR 97209, 503-731-8231, [shelli.romero@odot.state.or.us](mailto:shelli.romero@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.

## **GENERAL PROVISIONS**

1. Agreement may be terminated by mutual written consent of both Parties.

Agency/State  
Agreement No. 34917/73000-00013633

2. 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.

If Agency fails to provide payment of its share of the cost of the Project.

- 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.
  - 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. Americans with Disabilities Act Compliance:

- a. State Highway: For portions of the Project located on or along the State Highway System or a State-owned facility ("state highway"):
  - i. Agency shall 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 (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
  - ii. Agency shall follow ODOT's processes for design, construction, or alteration 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, Agency shall send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form and to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp

Agency/State  
Agreement No. 34917/73000-00013633

meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>

- iv. Agency shall promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, 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.
  - v. 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, disability organizations, and ODOT at least 10 days prior to the start of construction.
- b. 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. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
  - 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.
- c. Maintenance obligations in this section shall survive termination of this Agreement.
5. 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



Agency/State  
Agreement No. 34917/73000-00013633

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.

6. 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.
7. 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.
8. 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.
9. 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.

Agency/State

Agreement No. 34917/73000-00013633

10. 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. 34917/73000-00013633

**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.

**CITY OF PORTLAND**, by and through its elected officials

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

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

By \_\_\_\_\_

Date \_\_\_\_\_

**Agency Contact:**

Winston Sandino  
1120 SW Fifth Ave, Suite 800  
Portland, OR 97204  
503.823.2804  
winston.sandino@portlandoregon.gov

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

By \_\_\_\_\_  
Region 1 Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Pedestrian and Bicycle Program Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 1 Operations & Maintenance Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
District 2B Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By Serena Hewitt  
Assistant Attorney General

Date via email dated 11/4/2022

**State Contact:**

Shelli Romero  
123 NW Flanders Street  
Portland, OR 97209  
503-731-8231  
Shelli.romero@odot.state.or.us

Agency/State  
Agreement No. 34917/73000-00013633

**EXHIBIT A – PROJECT LOCATION**

