

**COOPERATIVE IMPROVEMENT AGREEMENT
Infrastructure Safety Investment Program
North Lombard @ Mississippi Pedestrian Crossing Improvement**

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 "ODOT"; and City of Portland, acting by and through its elected officials, hereinafter referred to as "City".

RECITALS

1. Northeast Portland Hwy, also known as North Lombard Street, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission. North Mississippi Avenue is a city street, under the jurisdiction and control of the City.
2. By the authority granted in ORS 190.110, 366.770 and 366.775, ODOT may enter into cooperative agreements with the counties and cities or units of local government for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. By the authority of the Oregon Transportation Commission, on January 15, 2003, Infrastructure Safety Investment Program (ISIP) funds were added to the 2002-2005 Statewide Transportation Improvement Program 2003 to be expended by ODOT and the various counties, cities or units of local government to improve safety at pedestrian crossings on State Highways.

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. For the purpose of providing acceptable traffic patterns on public highways, and improving safety at pedestrian crossings on State Highways, ODOT and City plan and propose to provide a curb extension or median pedestrian island at North Lombard Street, at its intersection with North Mississippi Avenue, 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.

2. The estimated cost of this Project is \$45,000. ODOT shall fund the Project with ISIP funds in an amount not to exceed \$45,000. City shall be responsible for any portion of the Project cost which is not covered by ODOT funding. There is no match requirement for the Project. These funds must be obligated through the signature of all parties and execution of this agreement by June 30, 2003.
3. 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 useful life of the facilities constructed as part of the Project. The Project shall be completed within 3 calendar years following the date of final execution of this agreement by both parties, and completion of final payments shall be no later than January 1, 2007 unless extended by a fully executed amendment. No environmental impact or right-of-way needs are foreseen for the Project.

CITY OBLIGATIONS

1. City shall authorize execution of this agreement by Ordinance during a regularly convened session of its elected officials.
2. City shall, at Project expense, conduct the necessary field surveys, prepare plans and contract documents; advertise for bid proposals, award all contracts, and supervise construction of the Project. Actual construction of the Project may be accomplished by City forces, by contract, or by any combination of these methods. At a minimum, City shall prepare plans and specifications for ODOT review and acceptance prior to construction.
3. City shall design and construct Project to ODOT standards and conform to the current Oregon Bicycle and Pedestrian Plan and the current edition of *A Policy on Geometric Design of Highways and Streets* by the American Association of State Highway and Transportation Officials (AASHTO).
4. City shall obtain all necessary permits for the Project. Said permits shall include a permit from ODOT to occupy and perform construction upon ODOT Right-of-way through the ODOT District 2B office and all City-required permits for the Project.
5. City shall not award a construction contract until ODOT's Project Manager has reviewed and approved the low bidder's proposal and costs, if project work is contracted out.

6. City shall not enter into any subcontracts for any of the work scheduled under this agreement without obtaining prior written approval from ODOT's Project Manager.
7. City shall keep accurate cost accounting records. City shall, within 60-days of completion of Project, submit to ODOT's Project Manager an itemized statement of the final actual total cost of the Project. Actual project cost will include an overhead recovery rate of 40% on all City personnel costs which includes direct wages, benefits and accrued leave benefits. If Project costs exceed \$45,000, City agrees to be responsible for the remaining costs.
8. 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. City shall ensure that each of its subcontractors complies with these requirements.
9. City acknowledges and agrees that ODOT, the Secretary of State's Office of the State of Oregon, 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 three years after final payment or completion of Project. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.
10. 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 279.312, 279.314, 279.316, 279.320 and 279.555, which hereby are incorporated by reference. Without limiting the generality of the foregoing, City expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Section V 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.
11. City shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless the State of Oregon, Oregon Transportation Commission and its members, and the Oregon Department of Transportation and its officers and employees, from all claims, suits or actions of any nature arising out of activities of City, its consultant, its contractor, its officers, subcontractors, agents, or employees under this agreement.

12. City shall require its contractor/consultant, if any, to obtain and keep in effect during the term of the Project, Comprehensive or Commercial General Liability insurance covering bodily injury and property damage. This insurance shall include personal injury coverage; contractual liability coverage for the indemnity provided under this agreement and products/completed operations liability. Combined single limit per occurrence shall not be less than \$1,000,000 or the equivalent. Each annual aggregate limit shall not be less than \$2,000,000, when applicable. The certificate of insurance shall include the State of Oregon, Transportation Commission and its members, the Department of Transportation, officers and employees as additional insured. City shall provide a copy of the certificate to ODOT prior to construction of the Project. The insurance coverage shall not be amended, altered, modified or cancelled insofar as the coverage contemplated herein is concerned without at least 30 days prior written notice to City and ODOT's Project Manager.
13. The City shall maintain the Project within City right-of-way lines or properties. ODOT shall maintain the Project within ODOT fee simple right-of-way lines.
14. City's Project Manager is Hollie D. Berry, Portland Office of Transportation, 1120 SW 5th Ave, Ste 800, Portland, OR 97204; phone: 503-823-0007

ODOT OBLIGATIONS

1. ODOT selected and approved the Project for ISIP funds in the amount not to exceed \$45,000. ODOT certifies, at the time this agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this agreement within ODOT's current appropriation or limitation of current biennial budget.
2. ODOT's Project Manager or designee shall, at Project expense, provide material testing and technical inspection to insure ODOT standards are met, and shall monitor the work performed by City, or its contractors on ODOT right-of-way. ODOT's Project Manager will provide general oversight of the work, but City shall perform all technical inspections and contractor coordination.
3. Upon execution of this agreement, ODOT shall deposit 50% of the ODOT share with the City. Upon completion of Project inspection and approval by ODOT staff, and receipt from City of an itemized statement of the actual total cost of the Project, which includes an overhead recovery rate of 40% on all City personnel costs which includes direct wages, benefits and accrued leave benefits, ODOT shall deposit with City a final payment, which when added to all prior payments and ODOT's costs for the Project will not exceed the sum of \$54,000. If final Project costs are less than original estimate and approved

amount, ODOT shall deposit with City a final payment totaling the actual cost of the Project. City shall be responsible for any portion of the Project which is not covered by approved ISIP funding.

4. ODOT grants authority to City to enter upon ODOT right-of-way for the construction of this Project as provided for in a permit to be issued by ODOT District 2B Office.
5. ODOT's Project Manager for this Project is Basil Christopher, Region 1 Bikeway/Walkway Coordinator, 123 NW Flanders, Portland, OR 97209, (503) 731-3261.
6. ODOT shall maintain the Project within ODOT fee simple right-of-way lines. The City shall maintain the Project within City right-of-way lines or properties.

GENERAL PROVISIONS

1. ODOT and City agree that a mutual review and approval of the construction plans and specifications including a traffic control plan will be conducted prior to advertisement for construction bid proposals.
2. This agreement may be terminated by mutual written consent of both parties. ODOT may terminate this agreement effective upon delivery of written notice to City or at such later date as may be established by ODOT, 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 ODOT fails to correct such failures within 30 days or such longer period as ODOT may authorize.
 - c. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the 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 if ODOT 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 City fails to meet the requirements of this agreement, ODOT, at its option, may complete the Terms of this agreement and bill City, seek an injunction to enforce the duties and obligations of this agreement, or take any other action allowed by law necessary to reimburse ODOT for costs incurred by such breach.
5. This agreement and attached Exhibit A 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 ODOT to enforce any provision of this agreement shall not constitute a waiver by ODOT of that or any other provision.

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

This Project was approved by the Oregon Transportation Commission on January 15, 2003.

The Oregon Transportation Commission on February 13, 2002, 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 6, 2002, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director grants authority to the

Region Managers for their respective Region, to approve and execute agreements up to \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program, other system plans approved by the Commission such as the Traffic Safety Performance Plan, or in a line item in the approved biennial budget.

CITY OF PORTLAND,
by and through its
elected officials

By _____
Mayor

Date _____

STATE OF OREGON,
by and through its
Department of Transportation

By _____
Region 1 Manager

Date _____

APPROVAL RECOMMENDED

By _____
Auditor

Date _____

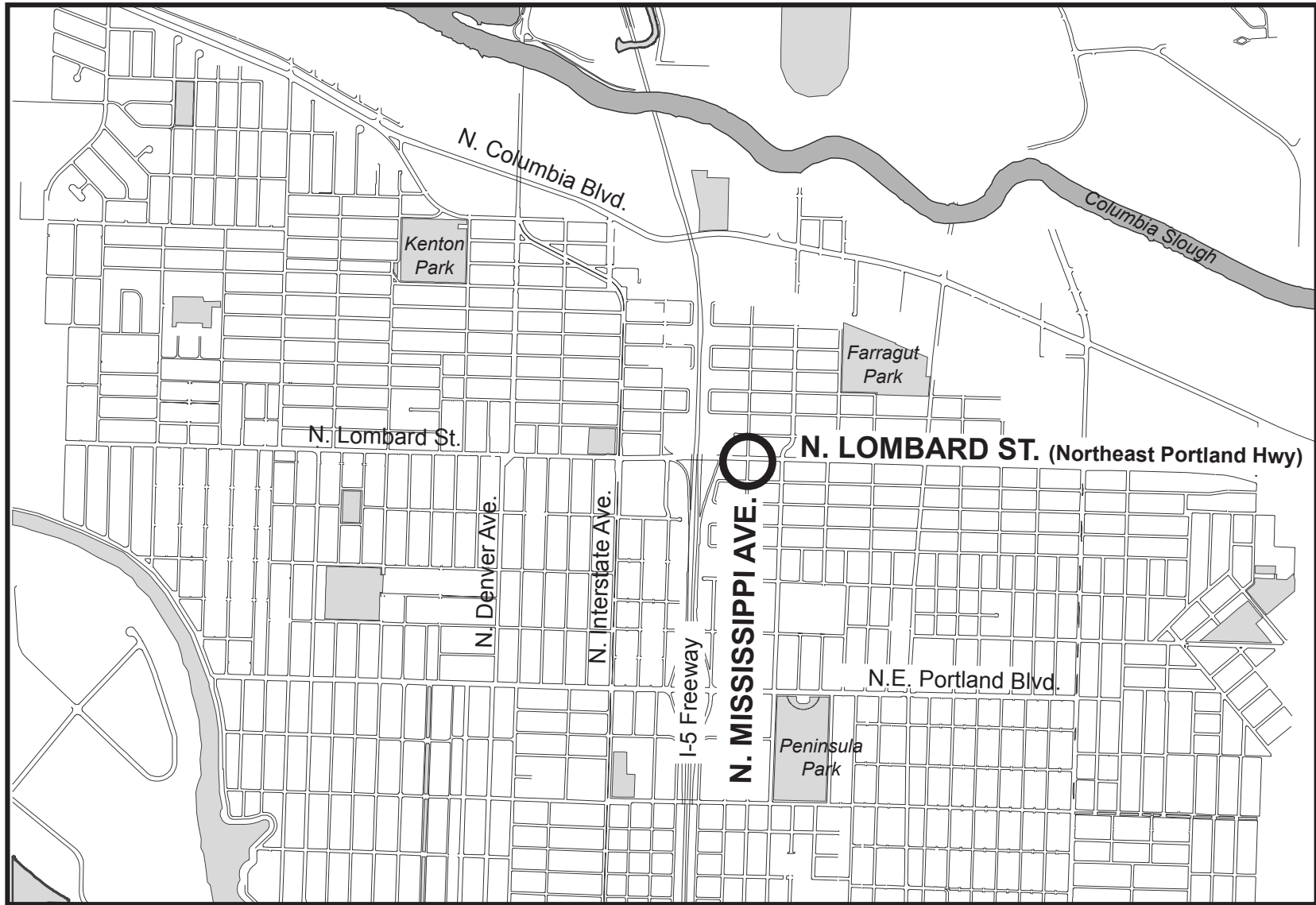
By _____
District 2B Manager

Date _____

**APPROVED AS TO
LEGAL SUFFICIENCY**

By _____
City Legal Counsel

Date _____



ISIP Pedestrian Crossing Improvement
Miscellaneous Contracts & Agreements - No. 20654

N. LOMBARD ST. (Northeast Portland Hwy) AT N. MISSISSIPPI AVE.