

Misc. Contracts and Agreements  
No. 28592

**WALKWAY/BIKEWAY PROJECT AGREEMENT  
OR 99W – Barbur Boulevard at Luradel Street**

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," both herein referred to individually or collectively as "Party," or "Parties."

**RECITALS**

1. OR 99W (Barbur Boulevard), is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). SW Luradel Street is a part of the city street system under the jurisdiction and control of Agency.
2. By the authority granted in Oregon Revised Statutes (ORS) 366.514, funds received from the State Highway Trust Fund are to be expended by the State and the various counties and cities for the establishment of footpaths and bicycle trails. For purposes of Article IX, Section 3(a), of the Oregon Constitution, the establishment and maintenance of such footpaths and bicycle trails are for highway, road, and street purposes when constructed within the public right of way.
3. By the authority granted in ORS 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments 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.
4. 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 this Project will conform to the current State standards and specifications.
5. By the authority granted in ORS 810.080 State has the authority to establish marked pedestrian crosswalks on its highway facilities.
6. State established a Bicycle and Pedestrian Program fund in the Statewide Transportation Improvement Program (STIP) to meet the minimum requirement of one (1) percent requirement of State Highway funds to be spent on Pedestrian and Bicycle facilities. The 2010-2013 STIP programs allocated \$27.2 million for the Bicycle and

State/Agency  
Agreement No. 28592

Pedestrian Program to three (3) programs: Grants, Sidewalk Improvement Programs and Quick Fixes.

**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, Agency and State agree that State shall design and construct pedestrian crossing improvements on OR 99W (Barbur Blvd) at SW Luradel Street, including sidewalk, curb ramps, pedestrian island, signing, cross walk markings, and a Rectangular Rapid Flash Beacon (RRFB), hereinafter referred to as "Project." The location of the Project is approximately as shown on the sketch map marked Exhibit A, attached hereto and by this reference made a part hereof.
2. The total cost of the Project is estimated to be \$200,000 and shall be funded entirely with funds available to State.
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 useful life is defined as twenty (20) calendar years. Maintenance responsibilities shall survive any termination of this Agreement.

#### **STATE OBLIGATIONS**

1. State shall conduct the necessary field surveys, prepare plans and contract documents, advertise for bid proposals, award all contracts, and supervise construction of the Project.
2. State shall, at its own expense, maintain all Project improvements within its right of way, which includes the curb ramps, pedestrian island, signing and cross walk markings at said Project location.
3. State shall submit a copy of the plans and specifications to Agency for review and concurrence prior to construction. Agency's review and concurrence shall be for the purpose of future maintenance of the Project RRFB. The Project design, signing, and marking shall be in conformance with the current Oregon Bicycle and Pedestrian Plan and shall comply with the most current Americans with Disabilities Act (ADA) guidelines.
4. State 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

State/Agency  
Agreement No. 28592

and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, State 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. State 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 Agency, 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 State's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that the Agency shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Agency, be indemnified by the contractor and subcontractor from and against any and all Claims.
6. Any such indemnification shall also provide that neither the State's contractor and subcontractor nor any attorney engaged by State's contractor and subcontractor shall defend any claim in the name of the Agency. The Agency may, at anytime at its election assume its own defense and settlement in the event that it determines that State's contractor is prohibited from defending the Agency, or that State's contractor is not adequately defending the Agency's interests, or that an important governmental principle is at issue or that it is in the best interests of the Agency to do so. The Agency reserves all rights to pursue claims it may have against State's contractor if the Agency elects to assume its own defense.
7. State shall be 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 system contributions, workers compensation, unemployment taxes, and state and federal withholdings.
8. All employers, including State, 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. State shall ensure that each of its contractors complies with these requirements.

State/Agency  
Agreement No. 28592

9. State grants authority to Agency to enter upon State right of way for the Maintenance of the Project RRFB.
10. In accordance with the "2002 Policy Statement for Cooperative Traffic Control Projects" Agreement No. 19719 between State and the League of Oregon Cities and the Association of Oregon Counties, dated, June 5, 2002, State shall, upon receipt from Agency of annual maintenance costs for the Project RRFB, reimburse the Agency for 50 percent of all said costs.
11. State certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of State, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind State.
12. State's Project Manager for this Project is Basil Christopher, Region 1 Bike/Pedestrian Coordinator, 123 NW Flanders St., Portland, OR 97209, 503-731-3261, basil.r.christopher@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.

#### **AGENCY OBLIGATIONS**

1. Agency grants authority to State to enter upon Agency right of way for the construction of this Project.
2. Agency certifies and represents that the individual(s) 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.
3. Agency's Project Manager for this Project is Winston Sandino, Project Manager, 1120 SW 5<sup>th</sup> Ave., Rm. 800, Portland, OR 97204, 503-823-5767, winston.sandino@portlandoregon.gov 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.
4. Agency shall, upon completion of Project, maintain the RRFB in a manner satisfactory to State. Maintenance consists of bulb replacement and maintenance of the solar-powered panels.
5. In accordance with the "2002 Policy Statement for Cooperative Traffic Control Projects" Agreement No. 19719 between State and the League of Oregon Cities and the Association of Oregon Counties, dated, June 5, 2002, Agency shall, submit an

State/Agency  
Agreement No. 28592

invoice annually to State for 50 percent of all maintenance costs for the Project RRFB.

6. Agency shall, at its own expense, maintain sidewalks and any other improvements made behind the sidewalks at said Project location.

#### **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 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 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. If any funds are remaining from the advance deposit, they shall be refunded to State.
4. If City cannot or does not fulfill its maintenance obligations, including routine replacement of equipment, State reserves the right to perform, or cause to be performed, the necessary maintenance and bill the local agency for its share of the costs.
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

State/Agency  
Agreement No. 28592

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.

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.

State/Agency  
Agreement No. 28592

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.
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 State 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 a Party to enforce any provision of this Agreement shall not constitute a waiver by a Party of that or any other provision.

**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**

State/Agency  
Agreement No. 28592

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

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

By \_\_\_\_\_  
Auditor

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By James H. Van Dyke  
City Counsel  
CITY ATTORNEY

Date 12/4/12

**Agency Contact:**

Winston Sandino  
Project Manager  
1120 SW 5<sup>th</sup> Ave., Rm. 800  
Portland, OR 97204  
503-823-5767  
winton.sandino@portlandoregon.gov

**State Contact:**

Basil Christopher  
R1 Bike/Pedestrian Coordinator  
123 NW Flanders St.  
Portland, OR 97209  
503-731-3261  
basil.r.christopher@odot.state.or.us

**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 \_\_\_\_\_  
State Traffic Engineer

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 1 Traffic Engineer

Date \_\_\_\_\_

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

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_



EXHIBIT A – Project Location Map  
OR99W: BARBUR BLVD. AT SW LURADEL ST.

