

Misc. Contracts & Agreements  
No. 29164

**INTERGOVERNMENTAL AGREEMENT  
OR99W: N Victory Blvd – N Argyle St  
Preliminary Engineering and Design**

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

**RECITALS**

1. Pacific West Highway (OR 99W), also known as North Denver Avenue, is under the jurisdiction and control of the Oregon Transportation Commission. North Schmeer Road is a city street under the jurisdiction and control of City.
2. By the authority granted in 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.
3. The State has a project to reconstruct the intersection of N. Denver Avenue and N. Schmeer Road. City will be reviewing the design and right of way activities as it pertains to City facilities at State'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. Under such authority, State and City agree that State will do the preliminary engineering and design and Right of way phases for the following: design the realignment and reconstruction of the intersection of N Denver Ave. and N. Schmeer Road, create a new stop controlled Victory to Denver Avenue south ramp, provide bike and pedestrian improvements along Denver Avenue between Argyle Street and Victory Blvd, rehabilitate the bridge deck with a structural overlay, and retrofit the bridge rail and rehabilitate the bridge deck expansion joints on the Denver Viaduct and Slough Bridge, 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. This Agreement covers only the preliminary engineering and design and Right of way phases of the Project. The purpose of this Agreement is to establish a review process for the City to review State's design and right of way activities as they pertain to a City facility and for State to reimburse City

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for certain review costs. As applicable, a subsequent agreement or an amendment to this Agreement will be entered into before subsequent phases of the Project begin.

2. Under this Agreement, State shall be responsible for the costs for City's review on areas of the Project that are City facilities, which is estimated to be \$76,000. These costs are outlined in the Estimated Design Review Budget attached hereto, marked Exhibit B, and by this reference made a part hereof. Under no conditions shall State's obligations exceed \$76,000, including all expenses, without an executed amendment approved by both Parties to this Agreement. Funds for the Project were approved in the 2012-2015 Statewide Transportation Improvement Program, (Key #15190).
3. If the cost for any of City's work on this Project is to be reimbursed for work performed prior to execution of this Agreement, then proof of approval from the Federal Highway Administration must be obtained and provided to the State Finance Office before said payment occurs, unless said costs will be reimbursed with state funds.
4. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.

#### **CITY OBLIGATIONS**

1. City shall use the funds provided under this Agreement for review of State's Project design and right of way activities impacting City facilities. City shall review State's design at Design Acceptance Package, Advance Plans, Final Plans stages, and other stages as needed, and shall indicate in writing to State's project manager any issues or changes required. City shall use its best efforts to perform plan review in a timely way so as to meet State's requested Project schedule.
2. City shall keep accurate cost accounting records. City shall prepare and submit monthly itemized, progress invoices for 100 percent of actual costs incurred by City on behalf of the Project directly to State's Project manager for review and approval. Such invoices shall be in a form identifying the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$76,000, including all expenses, without an executed amendment approved by both Parties to this Agreement. Travel expenses shall not be reimbursed.

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3. City shall accept all right, title and interest to the "operating" right-of-way where PROJECT acquisition affected said rights-of-way. ODOT shall acquire fee title to the land underlying proposed City streets areas and will pass that title to City for use as public roadway. No "excess" right-of-way which may have been acquired by ODOT will be transferred. Transfer of operating right-of-way will be by separate Right of Way Relinquishment Deed. Should the land cease to be used for public roadway, title to the land will automatically revert to ODOT.
4. City shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from State.
5. 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 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, City 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.
6. City 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.
7. 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. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. City shall ensure that each of its contractors complies with these requirements.
8. City 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 City's contractor or any of the officers, agents, employees

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- 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.
9. Any such indemnification shall also provide that neither City's contractor and subcontractor nor any attorney engaged by City'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 City's contractor is prohibited from defending the State of Oregon, or that City'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 of Oregon reserves all rights to pursue claims it may have against City's contractor if the State of Oregon elects to assume its own defense.
  10. City 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 City 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.
  11. City certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of City, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind City.
  12. City's Project Manager for this Project is Winston Sandino, City of Portland Transportation, 1120 SW 5<sup>th</sup> Avenue, Room 800, Portland, OR 97204, 503-823-5767, [winston.sandino@portlandoregon.gov](mailto:winston.sandino@portlandoregon.gov) or assigned designee upon his absence. City shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## **STATE OBLIGATIONS**

1. State, or its consultant, shall conduct the necessary field surveys, environmental studies, traffic investigations, preliminary engineering and design work and necessary right of way activities required to produce and provide final plans, specifications and cost estimates for the Project.

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2. In consideration for the services performed, State agrees to pay City within forty-five (45) days of receipt by State of the Project invoice for actual costs, not to exceed a maximum amount of \$76,000, unless an executed amendment to this Agreement is approved by both Parties to this Agreement. Said maximum amount shall include reimbursement for all expenses. Travel expenses shall not be reimbursed.
3. State shall transfer title to land acquired during PROJECT which was used for the realignment of City streets. Transfer of title will be by separate Relinquishment Deed, drafted by State's Right of Way Section. Transfer of title will be made to City for its use of the land as public roadway. Should the land cease to be used for public roadway, the land will automatically revert to ODOT ownership.
4. 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.
5. State's Project Manager for this Agreement is Reem Khaki, Project Leader, 123 NW Flanders Street, Portland, OR 97209, 503-731-4670, reem.d.khaki@odot.state.or.us or assigned designee upon his absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

**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 City, or at such later date as may be established by State, 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 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.

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- 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. 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 City 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.
5. With respect to a Third Party Claim for which State is jointly liable with City (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 City in such proportion as is appropriate to reflect the relative fault of State on the one hand and of City 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 City 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.
6. With respect to a Third Party Claim for which City is jointly liable with State (or would be if joined in the Third Party Claim), City 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 City 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 City on the one hand and of State on the other

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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. City'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.

7. 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.
8. 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.
9. 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.

**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 2012-2015 Statewide Transportation Improvement Program, (Key #15190) that was approved by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

**SIGNATURE PAGE TO FOLLOW**

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

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

Date \_\_\_\_\_

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

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

APPROVED AS TO FORM

By James H. Van Dyke  
Counsel  
CITY ATTORNEY

Date 3/8/13

**City Contact:**  
Winston Sandino  
City of Portland  
1120 SW 5<sup>th</sup> Avenue, Room 800  
Portland, OR 97204  
503-823-5767  
winston.sandino@portlandoregon.gov

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

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

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
State Right of Way Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 1 Right of Way Manager

Date \_\_\_\_\_

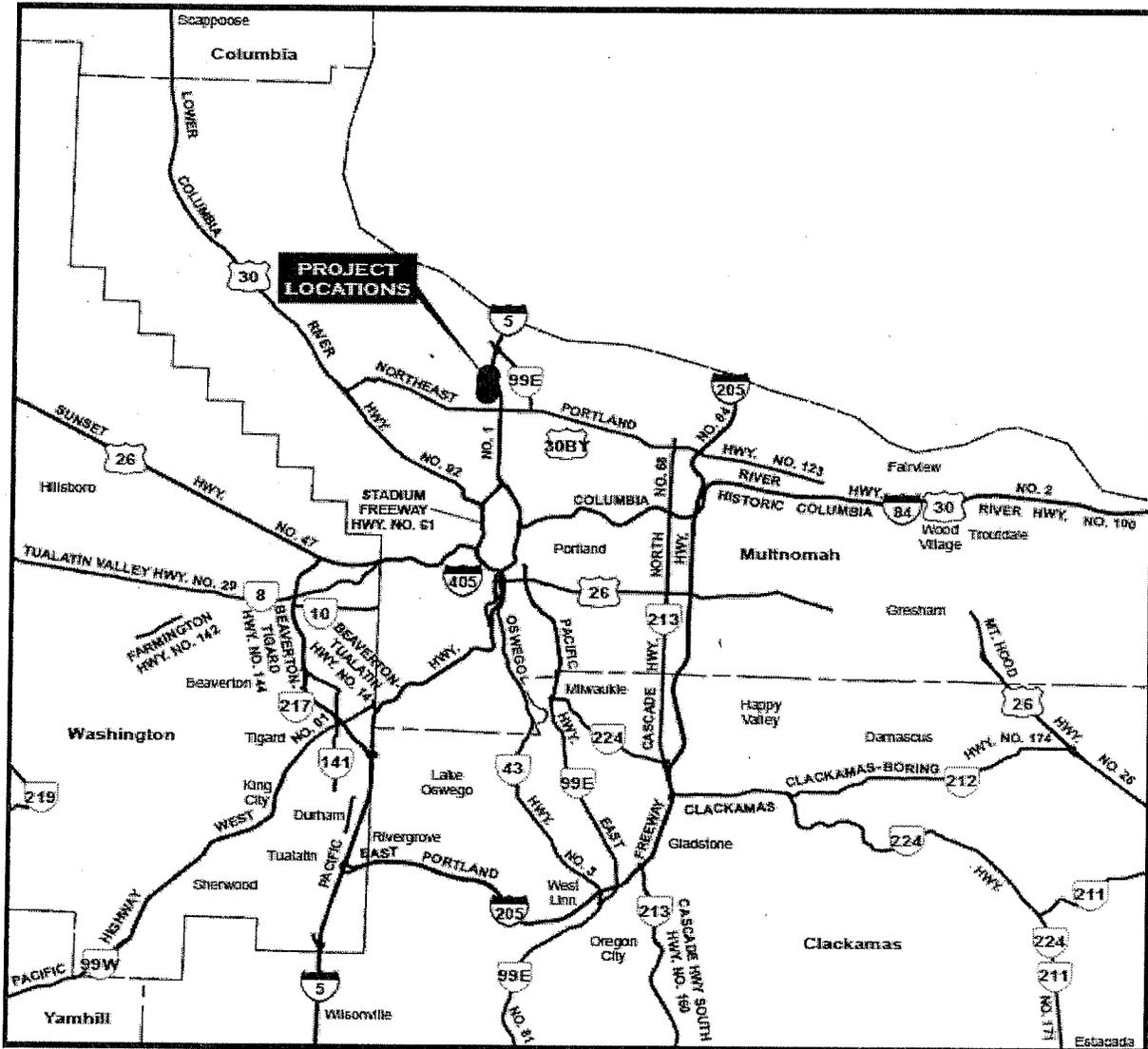
By \_\_\_\_\_  
District 2B Manager

Date \_\_\_\_\_

**State Contact:**  
Reem Khaki  
ODOT Project Leader  
123 NW Flanders Street  
Portland, OR 97209  
503-731-4670  
Reem.d.khaki@odot.state.or.us

EXHIBIT A  
PROJECT LOCATION

ODOT REGION 1



OR99W: N VICTORY BLVD -  
N ARGYLE ST. (PORTLAND) SEC.  
KEY NO. 15190

LEGEND

-  PROJECT LOCATION
-  STATE HIGHWAY
-  COUNTY BOUNDARY
-  STATE BOUNDARY

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0 3.5 Miles



PRODUCED BY ODOT - GIS UNIT  
(503) 986-3154 - FEBRUARY 2013  
GIS No. 23-52

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**EXHIBIT B  
 ESTIMATED DESIGN REVIEW BUDGET – CITY OF PORTLAND  
 OR 99W: N Victory Blvd – N Argyle**

Overview by  
 ODOT- I-5 Argyle to Victory  
 FY13-14  
 SAP No.

ODOT will realign Schmeer Rd and modify  
 existing Denver ramp and signals.

**PMD Staff**

Capital Project Manager I

Total PMD staff

**CDS Staff**

Engineering Associate, Sr-Civil (Designer)

Engineer, Sr (EOR)

Total CDS Staff

**TDS Staff**

Engineer-Civil

Engineer, Supervising

Total TDS Staff

**BAS Staff**

Engineer-Bridge

Engineer, Supervising

Total BAS Staff

**OVERVIEW BY SECTION**

See comment for OH

	Days	FTE	Rate	Cost	PBOT OH 74%	TOTAL
Capital Project Manager I	8	3.6%	\$527	\$ 4,216	\$ 3,120	\$ 7,336
Total PMD staff				\$ 4,216	\$ 3,120	\$ 7,336
Engineering Associate, Sr-Civil (Designer)	4	1.8%	\$591	\$ 2,364	\$ 1,749	\$ 4,113
Engineer, Sr (EOR)	2	0.9%	\$719	\$ 1,438	\$1,064	\$ 2,502
Total CDS Staff				\$ 3,802	\$2,813	\$ 6,615
Engineer-Civil	2	0.9%	\$709	\$ 1,418	\$1,049	\$ 2,467
Engineer, Supervising	2	0.9%	\$756	\$ 1,512	\$1,119	\$ 2,631
Total TDS Staff				\$ 2,930	\$2,168	\$ 5,098
Engineer-Bridge	1	0.5%	\$616	\$ 616	\$456	\$ 1,072
Engineer, Supervising	1	0.5%	\$816	\$ 816	\$604	\$ 1,420
Total BAS Staff				\$ 1,432	\$1,060	\$ 2,492

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 SSL Staff

Engineering Associate, Sr-Traffic	6	2.7%	\$607	\$ 3,642	\$2,695	\$ 6,337
Engineer, Sr	4	1.8%	\$735	\$ 2,940	\$2,176	\$ 5,116
<b>Total SSL Staff</b>				<b>\$ 6,582</b>	<b>\$4,871</b>	<b>\$ 11,453</b>
<b>RWA Staff</b>						
Right of Way Agent I	4	1.8%	\$307	\$ 1,228	\$909	\$ 2,137
Right of Way Agent III	6	2.7%	\$545	\$ 3,270	\$2,420	\$ 5,690
Right of Way Acquisition Supervisor	4	1.8%	\$655	\$ 2,620	\$1,939	\$ 4,559
<b>Total RWA Staff</b>				<b>\$ 7,118</b>	<b>\$ 5,267</b>	<b>\$ 12,385</b>
<b>Other City Bureau Staff</b>						
BES				\$ 10,000	\$6,971	\$ 16,971
Parks/Forestry				\$ 10,000	\$4,396	\$ 14,396
<b>Total Other Staff</b>				<b>\$ 20,000</b>	<b>\$11,367</b>	<b>\$ 31,367</b>
<b>SUBTOTAL PBOT + I/A's</b>				<b>\$ 46,080</b>	<b>\$19,299</b>	<b>\$ 76,746</b>
<b>TOTAL</b>				<b>\$ 46,080</b>	<b>\$19,299</b>	<b>\$ 76,746</b>