

**INTERGOVERNMENTAL AGREEMENT**  
**I-5 Northbound Ramps at SW Coronado Street**  
**OR99W MP 7.15 to MP 7.7**  
(Approximately 11280 SW Barbur to 11450 SW Pacific)  
**City of 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 "ODOT," and the CITY OF PORTLAND, acting through its elected officials, hereinafter referred to as "City," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. Pacific Highway, also known as I-5, and Pacific West Highway, also known as OR 99W are a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). SW Coronado Street is a part of the city street system under the jurisdiction of City.
2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, 373.010, 373.020 and 373.030, state agencies may enter into agreements with units of local government for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions as mutually agreeable to the contracting parties and assume jurisdiction of city streets.
3. The purpose of this Agreement is for ODOT to construct ramp improvements to the northbound ramps onto I-5 adjacent to SW Coronado Street; establish jurisdiction and control of that portion of SW Coronado Street, denoted by the patterned area on the sketch map attached hereto marked Exhibit A (the patterned area shall hereinafter be referred to as "Parcel A"); and to establish the maintenance responsibilities of such parcel. This agreement is being implemented in order to allow ODOT to make improvements to the parcel, which will also require continued maintenance work upon completion of construction.

**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, ODOT and City agree to have ODOT construct improvements on the northbound ramp on to I-5 from OR 99W, hereinafter referred to as "Project." The improvements within Parcel A (Exhibit A) shall include widening the ramp, striping, signing, retaining wall, and signal work.
2. The Project will be financed at an estimated cost of \$2,301,000 in state and federal funds. The estimate for the total project costs is subject to change. ODOT shall be responsible for all construction and maintenance costs for the Project, including those denoted in Parcel A.

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3. ODOT shall assume jurisdiction of Parcel A, subject to rights retained by City under ORS 373.020.
4. 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 life of the facilities constructed as part of the Project or until terminated in accordance with the General Provisions of this Agreement. The Project shall be completed within five (5) calendar years following the date of final execution of this Agreement by both Parties.

#### **ODOT OBLIGATIONS**

1. ODOT shall, upon City's review of final plans, prepare the contract and bidding documents, advertise for construction bid proposals, award all contracts, pay all contractor costs, furnish all construction engineering, field testing of materials, technical inspection, and Project manager services for administration of the contract.
2. ODOT shall, at no cost to City, be responsible for 100 percent of the maintenance denoted in Parcel A, to include retaining walls, graffiti abatement, trash clean up, landscape, water, and electrical costs.
3. ODOT shall be responsible for 100 percent of power costs associated with the luminaires installed as a part of this Project. ODOT shall require the power company to send invoices directly to ODOT.
4. ODOT shall, without expense to City, take all steps necessary to effectively protect the adjacent transportation facilities from any damage or incident from ODOT activities within the Project area. Subject to the limitations in Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ODOT shall be liable to and shall reimburse City for any damage to City's facilities resulting from or reasonably attributed to ODOT's installation, repair, or maintenance for the Project. This paragraph does not apply to effects on City facilities from Project construction that is a part of ODOT's final plans that will be reviewed by City. Any existing City utilities located within Parcel A will not require any relocation in the future at the City's expense. ODOT will issue an x-permit for the eligible reimbursable utilities denoted in Parcel A.
5. ODOT 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. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

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6. 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 City's current appropriation or limitation of current biennial budget.
7. ODOT's contact person for all notifications regarding this Agreement is Ana Jovanovic, 123 NW Flanders Street, Portland, OR 97209 (503) 731-8469, ana.jovanovic@odot.state.or.us, or assigned designee upon individual's absence. ODOT shall notify the other Party in writing of any contact information changes during the term of this Agreement.

### **CITY OBLIGATIONS**

1. City hereby grants ODOT and its contractors the right to enter onto and occupy City right of way for the performance of necessary preliminary engineering, construction, and maintenance of the Project.
2. City shall, without expense to ODOT, take all steps necessary to effectively protect the adjacent ODOT facilities from any damage or incident from City activities within the Project area. Subject to the limitations in Article XI, section 9 of the Oregon Constitution and the Oregon Tort Claims Act, City shall be liable to and shall reimburse ODOT for any damage to ODOT's facilities resulting from or attributed to City activities in the Project area.
3. City's Project Manager for this Project is Winston Sandino, 1120 SW 5<sup>th</sup> Avenue, Room 800, Portland, OR 97204, (503) 823-5767, winston.sandino@portlandoregon.gov, or assigned designee upon individual's absence. City 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. ODOT or City may terminate this Agreement effective upon delivery of written notice, or at such later date as may be established, under any of the following conditions:
  - a. If ODOT or City fail to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If ODOT or City fail 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 fails to correct such failures within ten (10) days or such longer period as may be authorized by the Party giving notice.
  - c. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is

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prohibited or ODOT is prohibited from paying for such work from the planned funding source.

- 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.
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 ODOT 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 ODOT is jointly liable with City (or would be if joined in the Third Party Claim), ODOT 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 ODOT 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 ODOT 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. ODOT'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 ODOT had sole liability in the proceeding.
6. With respect to a Third Party Claim for which City is jointly liable with ODOT (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 ODOT in such proportion as is appropriate to reflect the relative fault of City on the one hand and of ODOT 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 ODOT on the other hand shall be determined by reference to, among other things, the Parties'

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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 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, 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.
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. 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.
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. 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.
11. 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 ODOT or City to enforce any provision of this Agreement shall not constitute a waiver by ODOT or City 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.

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

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

Date \_\_\_\_\_

By \_\_\_\_\_  
Recorder

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By James H. Van Dyke  
City Attorney

Date 6/7/13

**City Contact:**

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

**ODOT Contact:**

Ana Jovanovic  
Region 1 Senior Project Leader  
123 NW Flanders Street  
Portland, OR 97209  
(503) 731-8469  
Ana.Jovanovic@odot.state.or.us

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

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Technical Services/  
Chief Engineer

Date \_\_\_\_\_

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

Date \_\_\_\_\_

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

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

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

Date \_\_\_\_\_

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