

**INTERGOVERNMENTAL AGREEMENT
OR99W (Barbur Blvd) at SW Capitol Hwy**

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" or "ODOT," 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 both referred to 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. OR99W, also known as SW Barbur Boulevard, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). SW Capitol Highway and SW Taylors Ferry Road are a part of the city system under the jurisdiction and control of Agency.
3. 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 the Project will conform to the current State standards and specifications.
4. State is currently engaged in the "OR99W (Barbur Blvd) at SW Capitol Hwy project (the "Barbur Project"), Key Number 20438. Agency desires that State design and construct sidewalk improvements on SW Capitol Highway as part of State's existing Statewide Transportation Improvement Program (STIP) project.
5. State is willing to design and construct sidewalk improvements on SW Capitol Highway as part of its Barbur Project provided that State receives payment from Agency in the amount agreed upon herein.

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. State and Agency agree to State delivering the OR99W (Barbur Blvd) at SW Capitol Hwy project, hereinafter referred to as the Project. State is responsible for the full cost of the Project, which is estimated to be \$3,081,403.45. The State's Project includes installing an eastbound right turn lane at Taylors Ferry, constructing

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missing sidewalks along SW Capitol Hwy, improving striping and signing, prohibiting northbound left turns from SW Capitol Hwy onto the I-5 ramp or OR99W, and addressing ADA ramps and pedestrian buttons. As part of the Project, Agency is contributing funds towards sidewalk improvements on SW Capitol Highway just north of OR 99W, hereinafter referred to as the Sidewalk Improvement Project. The location of the Sidewalk Improvement Project is approximately as set forth on the map marked Exhibit A, attached hereto and by this reference made a part hereof.

2. Neither the Project nor the Sidewalk Improvement Project component alters the Parties' respective existing maintenance responsibilities in the locations affected by the State Project. Agency shall continue to maintain the sidewalk after the Project is complete.
3. In consideration for State delivering the Sidewalk Improvement Project, Agency agrees to pay to State a total of \$209,000. State will be responsible for all other costs of the Project. State will return any unused funds to Agency if State Project costs less than \$209,000.
4. 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.

STATE OBLIGATIONS

1. State shall complete and deliver the portion of the Project identified as Sidewalk Improvement Project in TERMS OF AGREEMENT, paragraph 1.
2. State shall, upon execution of this Agreement, forward to Agency a letter of request for an advance deposit or irrevocable letter of credit in the amount of \$209,000.
3. Upon completion of the Sidewalk Improvement Project portions of the Project, State shall refund to Agency any portion of said advance deposit which is in excess of the total State costs for the Project.
4. State certifies that, at the time this Agreement is executed, sufficient funds are available and authorized for expenditure to finance the costs of this Agreement within State's current appropriation or limitation of the current biennial budget.

AGENCY OBLIGATIONS

1. Agency shall, upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from State, forward to State an advance deposit or irrevocable letter of credit in the amount of \$209,000 for the Sidewalk Improvement Project, said amount being equal to the estimated total cost for the work performed by State at Agency's request under Terms of Agreement paragraph 1. Any portion of said advance deposit which is in excess of the total costs of the Sidewalk Improvement Project will be refunded or released to Agency.

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2. 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.
3. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
4. Agency certifies and represents that each individual 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.

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

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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. When the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, the Parties shall:
 - i. 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 by the ADA Amendments Act of 2008 (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - ii. 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, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as 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 meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<http://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>
 - 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,

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- 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 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

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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. 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.
10. State's Project Manager for this Project is Nate Scott, 123 NW Flanders Street, Portland, OR 97209, 503-731-3437, nate.s.scott@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.
11. Agency's Project Manager for this Project is Steve Szigethy, @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.
12. 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.
13. 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

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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 2021-2024 Statewide Transportation Improvement Program, (Key #20438) that was adopted by the Oregon Transportation Commission on July 15, 2020 (or subsequently approved by amendment to the STIP).

CITY OF PORTLAND, by and through its
elected officials

By _____

Date _____

By _____

Date _____

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

By _____
Counsel

Date _____

Agency Contact:

Steve Szigethy
1120 SW 5th Avenue, Suite 800
Portland, OR 97204
503-823-5117
Steve.szigethy@portlandoregon.gov

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Herbert Lovejoy
Assistant Attorney General (if over
\$150,000)

Date via email dated December 21, 2021

State Contact:

Nate Scott
123 NW Flanders Street
Portland, OR 97209
503-731-3437
Nate.s.scott@odot.state.or.us

EXHIBIT A

Sidewalk improvements on SW Capitol Highway

