

Exhibit A

Misc. Contracts and Agreements
No. 30977

**INTERGOVERNMENTAL AGREEMENT
STATEWIDE TUNNEL INSPECTIONS**

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON acting by and through its Oregon Department of Transportation, hereinafter referred to as "ODOT," and City of Portland acting by and through its Bureau of Transportation, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110 and 283.110 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. The Code of Federal Regulations (CFR), Title 23 – Highways, CFR Part 650 – Bridges, Structures, and Hydraulics, Subpart E – National Tunnel Inspection Standards (NTIS), Section 650.503 makes each State Transportation Department responsible for inspecting, reporting, and load rating all highway tunnels that are located on a public road within the boundaries of the State. The terms of this Agreement apply specifically to the City street tunnels owned and maintained by Agency.

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. In order to ensure that the State of Oregon remains in full compliance with the NTIS criteria, ODOT will perform tunnel inventory, inspection, load rating, and reporting tasks to Federal Highway Administration (FHWA) on behalf of Agency, hereinafter referred to as "work tasks," at the following locations shown on Exhibit A, attached hereto and by this reference made a part hereof.
2. ODOT will use Surface Transportation Program (STP) funds (federal funds) and will be responsible for the required matching funds. ODOT will inventory, inspect, load rate and report on the entire length of each tunnel, at no cost to Agency.
3. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate ten (10) years from the date of final execution. This Agreement may be modified by mutual consent of the Parties and upon execution of amendments to this Agreement stating said modifications.

AGENCY OBLIGATIONS

1. Agency hereby grants ODOT the right to enter onto and occupy Agency right of way for the work tasks to be performed under this Agreement. ODOT entry and occupancy shall be undertaken with notice to Agency and with reasonable mutual coordination with Agency to ensure no conflict with the entities' operational or Agreement responsibilities.
2. Agency shall continue to maintain responsibility for monitoring the condition of their tunnels and determining the appropriate course of action associated with the administration of their tunnel program.

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3. Agency shall be responsible for the review of the inventory, inspection, and maintenance recommendation reports (reports) located on ODOT's Internet Tunnel Inspection Web Site.
4. Agency shall be responsible for handling deficiencies identified in reports as requiring urgent action, as defined in the FHWA Tunnel Element Specifications.
5. Based upon the tunnel maintenance recommendations and the load rating calculations identified in the reports, it will be Agency's full responsibility to decide upon the corrective actions to be taken regarding repair or rehabilitation.
6. Agency shall provide ODOT with a repair report that is a clear narrative description of all structural repairs performed on the tunnel and supported by photo documentation, if repair is readily accessible and visible, in an electronic format, within ninety (90) days of completion of the repair work. It will not be necessary for Agency to provide ODOT with a description of or documentation about minor repairs or preventative tunnel maintenance activities.
7. Agency shall provide a staff member to work directly in the field with ODOT Bridge Section personnel, so the tunnels that meet the NTIS criteria can be located, and the work tasks can be performed by ODOT.
8. Agency shall, when possible, locate and provide a copy of original tunnel plans.
9. In addition to maintaining a tunnel file that contains a hard copy of each previous tunnel inspection, Agency shall also create a tunnel maintenance file that will contain records for all repair work performed over the lifetime of the tunnel. The tunnel maintenance file shall be retained through the lifetime of the tunnel.

ODOT OBLIGATIONS

1. ODOT will perform the work tasks on tunnels under the jurisdiction of Agency that meet the NTIS criteria.
2. Following the completion of work tasks, ODOT will place official hard copies of the tunnel inventory, inspection and load rating reports in the tunnel file. The inspection report will be signed by the designated tunnel inspection team leader and the load rating report will be signed and stamped by the designated engineer of record.
3. ODOT or the assigned tunnel inspection consultant company will notify the Agency Contact at least ten (10) days prior to the work tasks being performed, so Agency staff is available to actively participate in the work tasks. ODOT will obtain an access permit from Agency before entering onto any tunnels or Agency right of way.
4. ODOT will provide Agency with a security code access to the internet Tunnel Inspection Web Site, so that Agency can obtain copies of inventory, inspection, and maintenance recommendation reports. ODOT will provide official training in a classroom setting for Agency to learn how to access the internet Tunnel Inspection Web Site, and how to interpret inspection reports and the load rating summary sheet.

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5. ODOT will be responsible for ensuring that the work task data is correct, prior to compiling and submitting the work task data to FHWA.
6. ODOT will be responsible for performing a Quality Assurance Review of the work tasks in accordance with the NTIS provisions and ODOT's tunnel inspection and load rating guidelines.
7. ODOT will provide recommendations, as contained in the body of the routine tunnel inspection report, to Agency for maintenance, repairs or follow-up inspections. Recommendations will be recorded on the Tunnel Inspection Report. Maintenance and repair recommendations will identify the deficient tunnel element or problem, an action for its correction or monitoring and a priority. Deficiencies identified as substantially endangering the load capacity of the tunnel or public safety will be identified as requiring urgent action and must be handled by Agency in accordance with the instructions under "Tunnels with Critical Structural Deficiencies".
8. ODOT's Project Manager for this Agreement is Craig Shike, ODOT Bridge Operations and Standards Managing Engineer, 4040 Fairview Industrial Dr. SE, MS #4, Salem, OR 97302; 503-986-3323, Craig.L.Shike@odot.state.or.us, or assigned designee upon individual's absence.
9. ODOT's Team Leader for this Agreement is Jeff Swanstrom, Senior Bridge Inspector; 4040 Fairview Industrial Dr. SE MS #4, Salem, OR 97302; 503-986-3337, jeff.swanstrom@odot.state.or.us, or assigned designee upon individual's absence.
10. ODOT acknowledges and agrees that Agency and its duly authorized representatives shall have access to the books, documents, papers, and records of ODOT 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 work under this Agreement whichever is later.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by Agency.
11. 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.
12. All employers, including ODOT, 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. ODOT shall ensure that each of its subcontractors complies with these requirements.
13. ODOT certifies and represents that the individual(s) signing this Agreement are authorized to enter into and execute this Agreement on behalf of ODOT, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind the State of Oregon.

GENERAL PROVISIONS

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1. This Agreement may be terminated by mutual consent of both Parties. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
2. A Party may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by ODOT, 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 ODOT fails to correct such failures within 10 days or such longer period as ODOT may authorize.
 - c. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, 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 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 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.
5. 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 will 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

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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 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.
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. Both 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 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, both Parties expressly agree 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.
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 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.
11. 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 work under this Agreement

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whichever is later.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.

12. Agency 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.
13. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from ODOT.
14. 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 subcontractors complies with these requirements.
15. Agency certifies and represents that the individual(s) signing this Agreement are 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.
16. Agency's Project Manager for this Project is Cameron Glasgow, 1120 SW 5th Avenue, Suite 800, Portland, OR 97204; 503-823-9726, Cameron.glasgow@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.

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.

CITY OF PORTLAND by and through its Bureau of Transportation

By _____

Date _____

By _____

Date _____

APPROVED AS TO LEGAL

SUFFICIENCY (If required in Agency's process)

By _____

Counsel

Date _____

STATE OF OREGON, by and through its Department of Transportation

By _____

Technical Services Manager/Chief Engineer

Date _____

APPROVAL RECOMMENDED

By _____

State Bridge Engineer

Date _____

By _____

ODOT Bridge Operations and Standards Managing Engineer

Date _____

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Agency Contact:

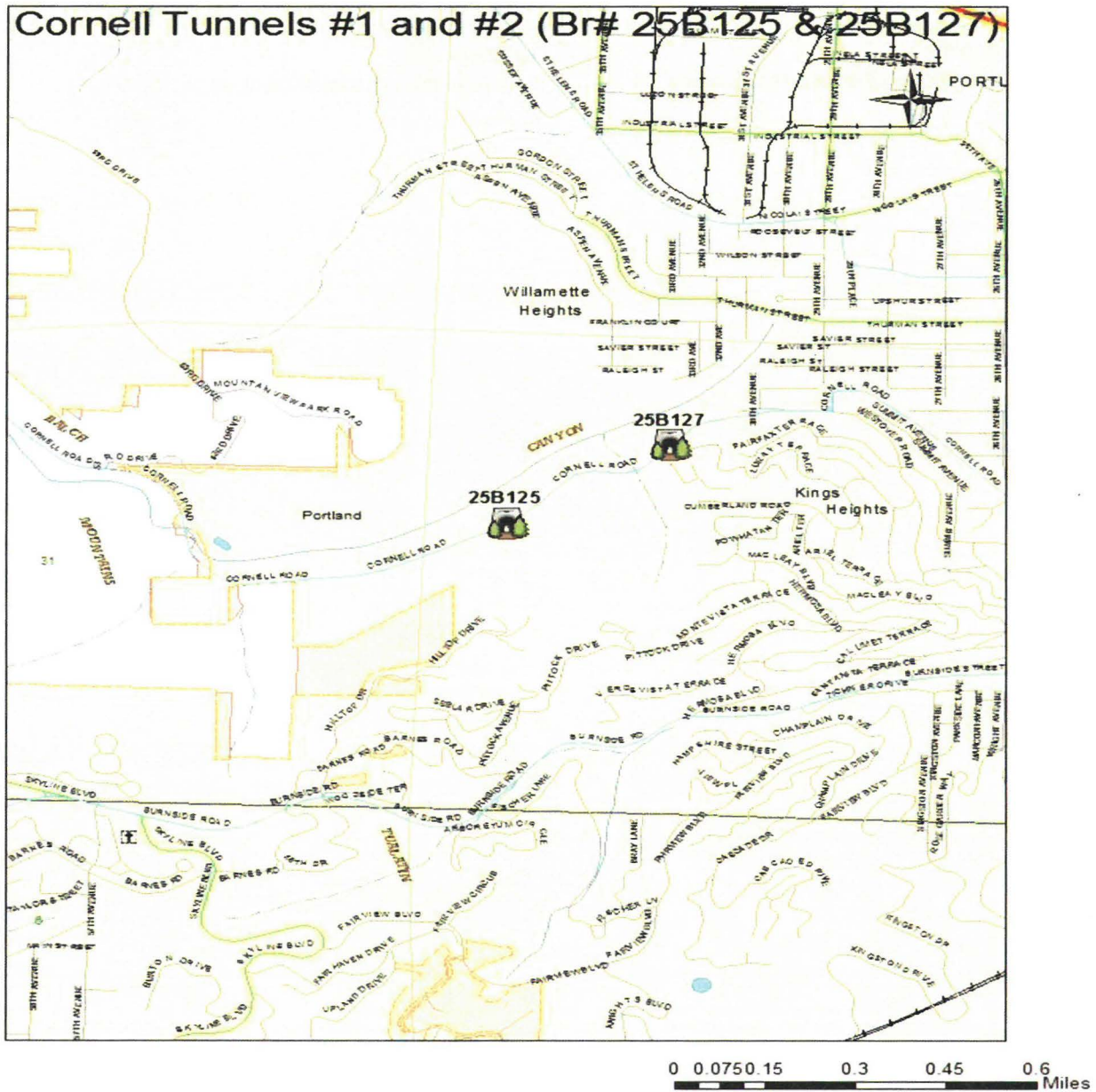
Cameron Glasgow, Project Manager
City of Portland
1221 SW 4th Avenue, Room 110
Portland, Oregon 97204
503-823-9726
Cameron.glasgow@portlandoregon.gov

State Contact:

Jeff Swanstrom
ODOT – Bridge Section
4040 Fairview Industrial Drive SE, MS#4
Salem, Oregon 97302
503-986-3337
Jeff.swanstrom@odot.state.or.us

EXHIBIT A – LOCATION MAPS

Cornell Tunnels #1 and #2 (Br. nos. 25B125 and 25B127)



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Rocky Butte Tunnel (Br. no. 51C32)

