

INTERGOVERNMENTAL AGREEMENT
Project Name: Seismic Equipment Relocation

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 and its elected officials, hereinafter referred to as "Agency." Agency is acting by and through its Bureau of Transportation, hereinafter referred to as "PBOT", its Bureau of Parks and Recreation, hereinafter referred to as "Parks," and its economic development department known as and hereinafter referred to as "Prosper Portland," all herein referred to individually or collectively as "Party" or "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. PBOT is constructing a project extending SW Bond Avenue in the area underneath State's Marquam Bridge. State has a seismic freefield sensor that needs to be relocated to accommodate PBOT's project. Prosper Portland has land where State can relocate its seismic freefield sensor equipment. This land is maintained by Parks.

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 Agency agree to State relocating its seismic freefield sensor and conduit located under the Marquam Bridge to a location on Prosper Portland / Parks property, 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.
2. The Project will be financed at an estimated cost of \$28,000 in Agency funds. The estimate for the total Project cost is subject to change. State will pay for the Project and seek reimbursement from Agency upon completion of the Project. Agency shall be responsible for any Project costs beyond the estimate; however total costs reimbursable by Agency shall not exceed \$36,400.
3. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing use and maintenance of the seismic equipment relocated as part of the Project. The seismic equipment useful life is defined as twenty (20) calendar years. The Project shall be completed

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within one (1) calendar year following the date of final execution of this Agreement by both Parties.

AGENCY OBLIGATIONS

1. In consideration for the services performed, Agency, through PBOT, agrees to pay State within forty-five (45) days of receipt by PBOT of the Project invoice an amount estimated at \$28,000. Said estimated amount shall include reimbursement for all expenses, except for the cost of upgrading the sensor equipment. State will pay for upgrading the sensor equipment.
2. Agency, through Prosper Portland / Parks, grants State the right to enter onto Prosper Portland / Parks property for the performance of duties as set forth in this Agreement. Prosper Portland / Parks agrees to the placement of State's seismic equipment at the location mutually agreed to and as shown on Exhibit A.
3. If Prosper Portland or Parks requires the removal of the equipment, Prosper Portland and Parks will work with State on a plan and timeline to relocate the equipment, and Agency will reimburse State for all costs incurred to relocate, recalibrate, and reconnect the equipment.
4. Agency agrees to coordinate with the State the timing of installation of the conduit and utility box. At this time the Agency will provide personnel to repair landscape irrigation system and landscaping.
5. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement.
6. 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.
7. Agency's Project Manager for this Project is Steve Szigethy, Capital Project Manager, PBOT, 1120 SW 5th Avenue, Suite 800, Portland, OR 97204, 503-823-5117, 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.

STATE OBLIGATIONS

1. State shall complete the Project to remove the seismic sensor equipment and relocate it to a location on Prosper Portland / Parks property that will be mutually agreed upon and shown on Exhibit A.
2. State shall keep accurate cost accounting records for the relocation of the equipment. State shall prepare and submit a final invoice upon completion of the Project in a form identifying the Project, the Agreement number, the invoice number or the account

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number or both, and will itemize all expenses for which reimbursement is claimed. State will pay for the cost of upgrading the sensor equipment and all other costs will be billed to Agency.

3. 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.
4. State's Project Manager for this Project is Susan Ortiz, Senior Bridge Geotechnical Engineer, 4040 Fairview Industrial Drive SE, Salem OR 97302, 503.986.3377, susan.c.ortiz@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.

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.
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

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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 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.
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. 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.

SIGNATURE PAGE TO FOLLOW

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CITY OF PORTLAND, by and through its
elected officials

By _____

Date _____

By _____

Date _____

APPROVED AS TO FORM

By *Mary Riva* 44
Counsel

CITY ATTORNEY

Date 11/11/17

Agency Contact:

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

State Contact:

Susan Ortiz, Senior Bridge Geotechnical
Engineer
4040 Fairview Industrial Drive SE
Salem OR 97302
503.986.3377
susan.c.ortiz@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____

Region 1 Manager

Date _____

APPROVAL RECOMMENDED

By _____

State Bridge Engineer

Date _____

By _____

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By N/A

Assistant Attorney General (If Over
\$150,000)

Date _____

188662

