

EXHIBIT A

Misc. Contracts and Agreements
No. 32454

INTERGOVERNMENTAL AGREEMENT
US26 (Powell Blvd): SE 122nd Ave – SE 136th Ave
Pedestrian Activated Beacon on SE 130th Avenue

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. US 26, also known as SE Powell Boulevard, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
3. Agency would like State to add the design and construction of a Pedestrian Activated Beacon (PAB) at the intersection of SE Powell Boulevard and SE 130th Avenue and a two-way bikeway on the north side of SE Powell Boulevard between SE 129th Avenue and SE 130th Avenue, which are within the boundaries of an existing State project. State is currently engaged in the "US26 (Powell Blvd): SE 122nd Ave – SE 136th Ave" project. State is willing to add the PAB and bikeway into its project on Powell Blvd 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 shall design and construct a PAB at the intersection of SE Powell Boulevard and SE 130th Avenue and the two-way bikeway on the north side of SE Powell Boulevard between SE 129th Avenue and SE 130th Avenue, hereinafter the "Project." The location of the Project is approximately as set on the map marked Exhibit A, attached hereto and by this reference made a part hereof. It will be delivered as part of State's US26 (Powell Blvd): SE 122nd Ave – SE 136th Ave project and follow the conditions set forth in the memo marked Exhibit B, attached hereto and by this reference made a part hereof, which sets the conditions of approval for the improvements by the State Traffic Engineer.

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2. 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.
3. In consideration for State's work on the Project, Agency shall pay to State \$47,500. Agency shall make such payment within thirty days of the execution of this Agreement. State shall be responsible for all other costs of designing and constructing the Project.
4. State is responsible for maintenance of the Project upon completion of State's project on Powell Blvd. This includes power costs and costs to maintain, operate, and repair the Pedestrian Activated Beacon. State will retain maintenance responsibilities until SE Powell Blvd is jurisdictionally transferred to the Agency, at which time maintenance responsibility will be with Agency.
5. **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, modification, upgrade, or construction 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, modified, upgraded, or improved 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/HWY/CONSTRUCTION/Pages/HwyConstForms1.aspx>; and
 - b. State shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include

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directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. State shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the start of construction.

6. 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.
7. Agency agrees to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement. Without limiting the generality of the foregoing, Agency 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 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.
9. 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.
10. 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. Maintenance responsibilities will survive the termination of this Agreement

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.

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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 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

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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. State's Project Manager for this Project is Matt Freitag, 123 NW Flanders Street, Portland, OR 97209, 503-731-4851, matthew.d.freitag@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.
9. Agency's Project Manager for this Project is Elizabeth Mahon, 1120 SW 5th Avenue, Suite 800, Portland, OR 97204, 503-823-0396, Elizabeth.mahon@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.
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

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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 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 2018-2021 Statewide Transportation Improvement Program (STIP), (Key #19690) that was adopted by the Oregon Transportation Commission on July 20, 2017 (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 _____

Date _____

By _____

Date _____

APPROVED AS TO FORM

By _____
Counsel

Date _____

Agency Contact:

Elizabeth Mahon
1120 SW 5th Avenue, Suite 800
Portland, OR 97204
503-823-0396
Elizabeth.mahon@portlandoregon.gov

STATE OF OREGON, by and through
its Department of Transportation

By _____
Region 1 Manager

Date _____

APPROVAL RECOMMENDED

By _____
State Traffic/Roadway Engineer

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____ N/A _____
Assistant Attorney General

Date _____

State Contact:

Matt Freitag, Project Leader
123 NW Flanders Street
Portland, OR 97209
503-731-4851
Matthew.d.freitag@odot.state.or.us

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Agency/State
Agreement No.

189064

Key No. 19690