

**INTERGOVERNMENTAL AGREEMENT
I-84 Sullivan's Gulch Pedestrian/Bike Bridge**

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 CITY OF PORTLAND, acting by and through its elected officials, hereinafter referred to as "Agency," each herein referred to individually as a "Party" and 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 and all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. I-84 is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
3. Agency is undertaking a locally funded project to build a pedestrian and bike bridge connecting NE 7th Avenue on the north and south sides of I-84 (the "Project"). Numerous impacts to State's facility will require State review of design plans, coordination throughout design and construction, and inspection throughout construction and upon completion of the Project.
4. The Parties desire to enter into this Agreement to provide a reimbursement process for services provided by State as part of the Project.

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 performing engineering review, project management coordination, and inspection services for the Project. A more detailed description and estimate of the services are set forth in Exhibit A, attached hereto and by this reference made a part hereof.
2. In consideration for State's performance of services for the Project, Agency shall reimburse State according to the terms set forth in Agency Obligations Paragraph 1.
3. State and City will enter into a subsequent agreement delineating maintenance responsibilities for the finished Project.

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4. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for five (5) calendar years following the date of final execution of this Agreement by both Parties.

AGENCY OBLIGATIONS

1. In consideration for the services performed by State, Agency agrees to pay State within forty-five (45) days of receipt of any Project invoice. Said amount shall include reimbursement for all expenses up to a maximum amount of \$100,000. If State thinks it will exceed the estimate included in Exhibit A, it will notify Agency's Project leader. State agrees to not incur costs exceeding \$75,000 without first receiving notification of Agency's approval of State's estimated costs.
2. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement.
3. Agency shall construct the Project in compliance with all applicable requirements of the Americans with Disabilities Act (42 U.S.C. Chapter 126), revised regulations implementing Title II (28 C.F.R. Part 35), and the Rehabilitation Act (29 U.S.C. § 701 et seq.) (collectively, "ADA"), including, but not limited to, ensuring that all sidewalks, curb cuts, curb ramps, signals, and signal poles installed or modified as part of the Project are ADA-compliant and existing facilities are modified to comply with the ADA when required by law. As part of its maintenance obligations under this Agreement, Agency shall, at its own expense, periodically inspect the Project and perform any repairs and modifications necessary to ensure ongoing compliance with all ADA requirements.
4. Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include 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. Agency 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.
5. Agency shall provide to State permanent Mylar "as constructed" plans for work on state highways. If Agency redrafts the plans, done in Computer Aided Design and Drafting (CADD) or Microstation, to get the "as constructed" set, and they follow the most current version of the "Contract Plans Development Guide, Volume 1 Chapter 16" http://www.oregon.gov/State/HWY/ENGSERVICES/docs/dev_guide/vol_1/V1-16.pdf, Agency shall provide to State a Portable Document Format (PDF) file and a paper copy of the plan set.
6. Agency shall obtain a permit to "Occupy or Perform Operations upon a State Highway" from assigned State District 2B Project Manager as well as land use permits, building permits, and engineering design review approval from State. Agency agrees to comply with all provisions of said permit(s), and shall require its developers, contractors,

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subcontractors, or consultants performing such work to comply with such permit and review provisions.

7. If Agency enters into a construction contract for performance of work on the Project, then Agency will require its contractor to provide the following:
 - a. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under the resulting contract.
 - b. Contractor and Agency shall name State as a third party beneficiary of the resulting contract.
 - c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than \$ 2,000,000 for each job site or location. Each annual aggregate limit will not be less than \$ 4,000,000.
 - d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than \$1,000,000.
 - e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees as Additional Insured but only with respect to Contractor's activities to be performed under the resulting contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.
 - f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor's or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.
8. Agency certifies and represents that the 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.

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9. Agency shall perform services 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.
10. 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.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
11. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.
12. Any such indemnification shall also provide that neither the Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
13. Agency 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, 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;

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(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.

14. Agency's Project Manager for this Project is Dan Layden, 1120 SW 5th Avenue, #800, Portland, OR 97218, 503-823-2804, dan.layden@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 services set forth in Exhibit A.
2. State shall send Agency monthly invoices detailing work done on the Project and requesting payment of the services listed in Exhibit A. State agrees to not incur costs exceeding \$75,000 without first receiving approval from Agency and upon sending an estimated cost to complete Project.
3. State shall keep accurate cost accounting records. State shall prepare and submit itemized, progress invoices directly to Agency's Project Manager for review and approval. Such invoices will be in a form identifying the Project, the Agreement number, the invoice number or the account number or both, and will itemize all expenses for which reimbursement is claimed.
4. State shall perform the services 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.
5. State's Project Manager for this Project is Kristen Stallman, 123 NW Flanders Street, Portland, OR 97209, 503.731.4957, Kristen.stallman@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. Agency may terminate this Agreement, effective upon delivery of written notice to State or at such later date as may be established by Agency, under any of the following conditions:
 - a. If State fails to provide services called for by this Agreement within the time specified herein or any extension thereof.

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- b. If State 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 Agency fails to correct such failures within ten (10) days or such longer period as Agency may authorize.
 - c. If Agency fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow Agency, 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 Agency is prohibited from paying for such work from the planned funding source.
3. 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 perform any of its obligations set forth in 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.
 - b. 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 perform the Services.
 - c. If federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the work under this Agreement is prohibited.
4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
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.

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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 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. 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 State to

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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

DRAFT

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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:

Dan Layden
1120 SW 5th Avenue, #800
Portland, OR 97218
503-823-2804
Dan.layden@portlandoregon.gov

State Contact:

Kristen Stallman
123 NW Flanders Street
Portland, OR 97209
503.731.4957
Kristen.stallman@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Region 1 Manager

Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Maintenance & Operations
Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____ N/A _____
Assistant Attorney General (If Over
\$150,000)

Date _____

EXHIBIT A
Estimated ODOT Staff Services and Budget

The table is an estimate of the hours and cost of ODOT staff time for the Project. State and Agency will work together to complete this Project and if State thinks it will exceed this estimate, it will notify Agency's project leader. State agrees to not incur costs exceeding \$75,000 without first submitting to Agency a request for additional deposit accompanied by an itemized statement of expenditures and an estimated cost to complete Project and receiving Agency's approval. ODOT may use different staff based on availability to cover a given discipline at its discretion.

Sullivan's Gulch Bridge - ODOT Estimate					
Staff	Discipline	Task	Hours	Rate	
Zachary Horowitz	Traffic		130	\$ 80	\$ 10,400
Robert Tovar	Bridge	Start Up	20	\$ 80	\$ 1,600
Xu Liantao	Bridge	DAP	35	\$ 80	\$ 2,800
	Bridge	Preliminary	60	\$ 80	\$ 4,800
	Bridge	Final	40	\$ 80	\$ 3,200
	Bridge	PS&E	20	\$ 80	\$ 1,600
	Bridge	Meetings	30	\$ 80	\$ 2,400
Tina Gutierrez	ROW		8	\$ 80	\$ 640
Fred Gullixson	Geology		25	\$ 80	\$ 2,000
Tom Braibish	Geo Tech		25	\$ 80	\$ 2,000
David McDonald	Hydro		25	\$ 80	\$ 2,000
Teresa Nowicki	HazMat		25	\$ 80	\$ 2,000
Cory Hamilton	Maintenance	Meetings	25	\$ 80	\$ 2,000
Tom McConnell	Environmental		8	\$ 80	\$ 640
Shelli Romero	Community Affairs		80	\$ 80	\$ 6,400
Chris Bores	Roadway		25	\$ 80	\$ 2,000
Ron Larson	Construction		25	\$ 80	\$ 2,000
Steve Muma	Survey		25	\$ 80	\$ 2,000
TOTAL					\$ 50,480