

**EXHIBIT A**

Misc. Contracts and Agreements  
No.

**INTERGOVERNMENTAL AGREEMENT  
US26 (Powell Blvd): SE 99<sup>th</sup> Ave – East City Limits  
Engineering Review and Coordination Services**

**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. State is designing and delivering the US26 (Powell Blvd): SE 99<sup>th</sup> Ave – East City Limits project, Key Number 21178, within Portland city limits. The Oregon Legislature in House Bill 2017 mandated that upon completion of design and construction of this project, the jurisdiction of this section of US 26 is to be transferred to the Agency. The jurisdictional transfer of this portion of US 26 will be covered in a separate Jurisdictional Transfer agreement between State and Agency.
3. This Agreement covers the provision of services from the Agency during the design phase, including design review and coordination. The Agreement is anticipated to be amended for services to be provided during the construction phase.

**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 is designing the US26 (Powell Blvd): SE 99<sup>th</sup> Ave – East City Limits project, hereinafter referred to as the Project. As part of the Project, Agency will perform a variety of services for the Project that are set forth in in greater detail in Exhibit A, attached hereto and by this reference made a part hereof.
2. The estimate for the cost of Agency's work on the Project is \$451,000. State agrees to pay up to \$451,000 for Agency's services on the Project. If Agency thinks it will exceed \$451,000, Agency will present State with an updated estimate of costs of services and State and Agency may mutually agree to increase the amount payable to Agency. An amendment to this Agreement will be required for any increase in the not to exceed amount. Agency understands that any additional request for funding for Agency services will result in a corresponding decrease in available funds for design and construction of the Project and may result in decreased scope of Project improvements.

Agency/State  
Agreement No.

3. This Agreement becomes effective on the last date all required signatures are obtained (Execution Date) and terminates on December 31, 2022.

## AGENCY OBLIGATIONS

1. Agency shall complete the services listed in Exhibit A.
2. Agency shall keep accurate cost accounting records. Agency shall prepare and submit itemized, progress quarterly invoices directly to State'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. Requests for payment shall not exceed \$451,000. Travel expenses shall not be reimbursed to Agency.
3. Agency shall not enter into any subcontracts for any of the work under this Agreement without obtaining prior written approval from State.
4. 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](#); (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.
5. 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.
6. Agency 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.
7. 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

Agency/State  
Agreement No.

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 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.

8. Any such indemnification shall also provide that neither 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.
9. 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
10. 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.
11. Agency's Project Manager for this Project is Dan Layden, 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. In consideration for the services performed by Agency, State agrees to pay Agency within forty-five (45) days of receipt of any Project invoice. Said amount shall include reimbursement for all expenses. Payment shall not exceed \$451,000. Travel expenses shall not be reimbursed.
2. State shall keep the public and businesses within Agency city limits informed of Project activities as part of its public outreach and communication responsibilities.



Agency/State  
Agreement No.

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 contact for this Agreement is Jennifer Bachman, 123 NW Flanders Street, Portland, OR 97209, 503.731.4851, Jennifer.I.bachman@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 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.
  - 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 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

Agency/State  
Agreement No.

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 exhibit constitute the entire agreement between the Parties on the subject matter herein. 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

Agency/State  
Agreement No.

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 #21178) that was adopted by the Oregon Transportation Commission on July 20, 2017 (or subsequently by amendment to the STIP).

**Signature Page to Follow**

Agency/State  
Agreement No.

**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  
elected officials

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO FORM**

By \_\_\_\_\_

Counsel

Date \_\_\_\_\_

**Agency Contact:**

Dan Layden

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_

Region 1 Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_

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

Date \_\_\_\_\_

**State Contact:**

Jennifer Bachman

123 NW Flanders Street

Portland, OR 97209

503.731.4851

Jennifer.l.bachman@odot.state.or.us

Agency/State  
Agreement No.

## **Exhibit A**

### **Description of Services Provided by Agency to State under this Agreement**

#### **A.1 General Terms**

This agreement covers reimbursement for Portland Bureau of Transportation staff labor for the Tasks listed below. Agency will designate a staff member to be the Project Manager (PM) for the Agency for this Project. The Agency Project Manager will be the contact person for the State Project Manager, they will attend the Project meetings, and will coordinate and compile all of the Agency comments on Project plans to be given to the State Project Manager in one package.

If review comments from the Agency are not submitted to the State in the timeline as defined in this Agreement, the State will proceed with design and will not address any comments the Agency may have on that submittal of plans or in subsequent plan sets.

All comment submittals from the Agency must be provided to the State in a comment log format as shown in Exhibit B. Plan sheets with redlines and comments may be submitted in addition for clarification, but the comments must be entered in the comment log to be considered. Agency shall submit one consolidated comment log to the State for each of the three plan reviews listed below.

#### **A.2 Project Description and Location Map**

[hold for map]

##### **US26 (Powell Blvd): SE 99<sup>th</sup> Ave – East City Limits**

The Project widens Powell Blvd to three lanes (including a center turn lane) with sidewalks and buffered bike lanes or other enhanced bike facilities. The Project also adds enhanced pedestrian and bike crossings.

The Design and Construction of this project is budgeted under Key # 21178. Approximate dates for the plan submittals are shown below. State will coordinate with Agency PM and provide 4 weeks' notice prior to each submittal. The exact dates of plan submittals to the Agency PM will be coordinated and set by the State PM in the coordination meetings. The dates listed in this Agreement are subject to change.

- Design Acceptance Package (DAP) (approx. 30% to 60%) Plans Submittal – June 2020
- Advance (approx. 90%) Plans & Specifications Submittal – Sept 2021
- Final (100%) Plans & Specifications Submittal – May, 2022



## **B. Services Provided by Agency**

### **Task 1: Attend and Participate in Project Coordination meetings**

Agency shall attend and participate in meetings with the State to discuss and resolve Project issues. These meetings are anticipated to occur starting at Project kick-off and at regular intervals to be determined by the Project Managers.

### **Task 2: Plans and Specifications Review**

The Plans and Specifications for the State contract are being prepared according to ODOT Standards unless State and Agency agree to Agency standards for specific project components.

#### **Task 2.1 Design Acceptance Package (DAP) Plans Review, including comment resolution**

Agency shall review and provide written comments on the DAP design plans. The DAP deliverable equates to approximately 30% to 60% design. A comment resolution meeting will be scheduled approximately 3 weeks from the package submittal to the Agency and comments are due to the State's consultant 3 business days prior to the comment resolution meeting.

#### **Task 2.2 Advance (approximately 90%) Plans and Specifications Review, including comment resolution**

Agency shall review and provide written comments on the Advanced (90%) plan set. A comment resolution meeting will be scheduled approximately 3 weeks from the package submittal to the Agency and comments are due to the State's consultant 3 business days prior to the comment resolution meeting.

#### **Task 2.3 Final Plans and Specifications Review, including comment resolution;**

The purpose of this review is to back check that there has been adequate resolution of prior comments received from the Agency. A meeting will be scheduled approximately 2 weeks from the review package submittal to the Agency to resolve pending comments. Comments are due to the State's consultant 3 business days prior to the comment resolution meeting.

**The following activities are *not* reimbursable expenses under this Agreement and are considered outside the scope of the Project:**

- Attendance at community meetings for public outreach
- Review, coordination, or inspection services during the construction phase of the Project.

Agency/State  
Agreement No.

## Exhibit B Example Comment Log

Comment Log for: US 26 (Powell Blvd) SE 95th Ave to East City Limits 21178 Key#: _____ Comments Due: _____						Phase: CPM Jennifer Bachman Designers: _____ Specs: _____		Issue Date Discussed	
No.	Reviewer's Name	Reviewer's Unit	Document (drawing/ estimate/spec)	Sheet # or spec section	Comment	Lead Discipline	Designer Responding		Action Taken
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									
24									
25									
26									