

**INTERGOVERNMENTAL AGREEMENT
US 26 (Powell Blvd): SE 99th Ave – East City Limits
Funding for Water Line 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" or "ODOT," and the City of Portland Water Bureau, hereinafter referred to as "Agency" or "PWB," 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 or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. State is delivering a Project to widen a section of US 26 before transferring jurisdiction of the road to the City of Portland (the "Project"). The Project is in the Statewide Transportation Improvement Program (STIP) as Key Number 21178. State has hired a consultant to design the Project and the Project includes waterline relocation work that is required due to conflicting with the Project as well as work that is not required by the Project but that has been requested by the Agency.
3. Per Memorandum of Understanding No. 34265, ODOT hired the consultant to complete initial waterline investigation work, known as the Concept Phase. The total cost of the concept phase is \$411,000 and includes all ODOT and PWB staff time through June 14th, 2021, and all consultant work included in Contract Amendment #1.
4. Agency has agreed to contribute funding to the design of the relocation work and State has agreed to pay for Agency's design review of the relocation work. The purpose of this Agreement is to set forth the cost sharing between the Parties for the design of both types of waterline relocation work.
5. The Parties intend to enter into a separate agreement covering the Construction Phase of the relocation work.

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 complete all design work necessary to relocate certain waterlines along US 26 (the "Design Work"), also known as the "Design Phase." The location of the Project is shown in more detail in the attached Exhibit A, attached hereto and by this reference made a part hereof.

2. Waterline work IN CONFLICT with the Project is defined as work that is required because existing waterlines are in conflict with the Project and includes approximately 10,000 feet of waterline relocation. Design Phase costs are estimated to be \$1,600,000 which includes ODOT, Agency, and consultant fees necessary to reach complete Plans, Specifications, and Estimate for bidding. Costs for IN CONFLICT work will be funded per Section 4.b.i.. If the total cost exceeds the estimated amount, the Parties will amend this Agreement to accurately reflect each Party's respective payment responsibilities.
3. Waterline work NOT in conflict with the Project is defined as work that is not in direct conflict but is required to meet PWB standards as a result of changes by the Project. This includes approximately 5,000 feet of waterline relocation. This work is optional and PWB has asked State to include this work in the Project. Waterline relocation design work for waterline NOT in conflict with the Project will be funded 100% by the Agency, including Agency review costs, ODOT review costs, and consultant design costs. ODOT and consultant costs for this work that will be paid for by Agency is estimated at \$370,000.
4. Cost Sharing Agreement:
 - a. Concept Phase: Per the Memorandum of Understanding, all ODOT and PWB waterline initial design and review costs during the Concept Phase, prior to June 14, 2021, and consultant work included in contract amendment #1, will be shared equally between Agency and ODOT. The total cost of the Concept Phase is \$411,000. Agency shall pay ODOT \$126,500 to complete Agency's 50% share. Breakdown is as follows:
 - i. PWB costs were \$79,000.
 - ii. ODOT costs were \$42,000 for ODOT review and \$290,000 in consultant fees for a total of \$332,000
 - iii. Concept Phase Total = \$411,000
 - iv. 50% = \$205,500,
 - v. PWB responsibility is \$205,500 - \$79,000, or \$126,500. At the time this IGA is executed, PWB shall pay ODOT \$126,500 for PWB's share of Concept Phase work.
 - b. Design Phase, waterline relocation IN CONFLICT with the Project: All ODOT and PWB waterline design and review costs incurred on or after June 14, 2021 and consultant work included in contract amendment #3 that applies to the waterline work IN CONFLICT with the Project (approx. 10,000 ft) is estimated at \$1,600,000 (\$550,000 estimated Agency work, \$700,000 consultant, and \$350,000 estimated ODOT work) will be shared per (i) below.

- i. For work that is IN CONFLICT, funding responsibility is based on three factors:
 1. If the water main was installed prior to becoming an ODOT right of way, funding is 100% ODOT
 2. If the PWB requests an asset that falls into number b.i.1. above be replaced with a larger size as a betterment, the PWB will pay the difference for costs related to the increase in size.
 3. If the water main was installed after becoming an ODOT right of way, funding is 100% PWB.
- ii. Based on review of the Concept Phase plans, ODOT and PWB estimate that the cumulative responsibility based on factors b.i.1-3 is a cost split of 80% ODOT and 20% PWB.
- iii. If the amount of work in any of the areas b.i.1-3 above result in a cumulative change to the cost split by more than 5%, ODOT or PWB may request to revise the cost split. Notification must be given to the other party in writing within 30 working days of discovery of a needed change.
- iv. Based on the Design Phase estimate of \$1,600,000, the PWB cost share of 20% is \$320,000 and the ODOT cost share of 80% is \$1,280,000.
- v. For this portion of the design and review work, total cost for Agency review time is estimated at \$550,000. If the total Agency cost exceeds \$550,000, an amendment to this agreement will be necessary along with justification of the additional cost. ODOT and Agency will need to review the justification and reach an agreement. If Agency does not reach out in advance of exceeding \$550,000 and request an updated agreement, agency will be solely responsible for any amount exceeding that.
- vi. Agency estimated review time at \$550,000 exceeds the estimated cost share of \$320,000 by \$230,000.
- vii. For this portion of the design and review work, if the total ODOT and Consultant fees exceed \$1,050,000 an amendment to this agreement will be necessary along with justification of the additional cost. ODOT and Agency will need to review the justification and reach an agreement. If ODOT does not reach out in advance of exceeding \$1,050,000 and request an updated agreement, ODOT will be solely responsible for any amount exceeding that.

- viii. PWB and ODOT agree to quarterly budget check-ins to confirm budget status.
 - ix. Full billing reconciliation will occur at Project bid let prior to Construction Phase. That will allow the ODOT, Agency, and Consultant costs to be compiled and then split accordingly: 80% (ODOT) and 20% (PWB). Payment for design portion due to either ODOT or the Agency will be due within 90 days of bid let.
- c. Design Phase, waterline relocation NOT in conflict with the Project: All ODOT and PWB waterline design and review costs incurred on and after June 14, 2021, and consultant work included in contract amendment #3 that applies to the waterline work NOT in conflict with the Project (approximately 5,000 ft) will be covered 100% by Agency. Full billing reconciliation will occur at Project bid let.
- i. For this portion of the design and review work, if the total ODOT and Consultant fees exceed \$370,000, an amendment to this agreement will be necessary along with justification of the additional cost. If design exceptions or additional consultant work is required for this portion of design, additional consultant work will be billed 100% to PWB.
5. Any additional waterline relocation design work added to the Project that is either non-reimbursable or not in conflict with the Project will be an additional cost to the Agency (funded 100% by Agency) in addition to the review time required by ODOT staff and ODOT's consultants.
6. Any additional waterline work added to the Project that is in conflict with the Project will be an additional cost shared as identified in 4.b.
7. Agency's share of construction costs will be determined at a later time.
8. The Parties agree that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, will be designed according to current ODOT Highway Design Manual standards. The Parties further agree that all Project sidewalks, curb ramps, and pedestrian-activated signals will be designed using ODOT Standard Drawings, and that the ODOT Design Exception process will be followed for any sidewalk, curb ramp, or pedestrian-activated signal that cannot be designed to the ODOT standards. The Project design will include temporary pedestrian routes through or around any work zone. All such temporary pedestrian routes will 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.

9. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Waterline Relocation and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.

AGENCY OBLIGATIONS

1. Agency shall pay State \$126,500 for Agency portion of Concept phase work after the execution of this Agreement and within thirty (30) days of receiving an invoice from ODOT.
2. Within 90 business days of bid let, work for the design phase will be reconciled and any amount due to ODOT after reconciliation will be paid to ODOT. Agency shall pay all amounts to which no dispute exists within 30 days of receiving invoice from ODOT. Reconciliation will follow Terms of Agreement Paragraph 4 Cost Sharing Agreement above.
3. Agency shall keep accurate accounting records, tracking staff time and whether time was spent on waterline relocation IN CONFLICT or NOT in conflict with the ODOT Project. Accounting records shall include staff name, rate, dates and hours worked, and task. Accounting records will be shared quarterly with ODOT.
 - a. For work during the concept phase (all work before June 14, 2021 and included in consultant contract amendment #1),
 - b. For all work involving waterline IN CONFLICT with the Project,
 - c. For work involving waterline design NOT in conflict with the Project, that work is not reimbursable, but accounting records are still needed for ODOT records.
4. Any additional design work added at the request of Agency that is NOT in conflict with the Project will be entirely at Agency's expense.
5. Agency shall comply with the design review response times set forth in the attached Exhibit C.
6. Agency shall perform its share of quality assurance and quality control as further set forth in the attached Exhibit D.
7. 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 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, 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. 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.
9. 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.
10. 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 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.
11. 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.
12. 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 the Waterline Relocation). Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.

13. 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.
14. Agency's Project Manager for this Project is Chris Chambers, Engineer II, Design, 503.865.6256, Christopher.Chambers@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 is responsible for completing the Design Work.
2. State is responsible for 50% of the work related to Concept Development and 80% of the design work related to waterline relocations IN CONFLICT with the Project. Within 90 business days of bid let, work for the Design Phase will be reconciled and any amount due PWB after reconciliation will be paid to PWB within forty five (45) days. Reconciliation will follow Terms of Agreement Paragraph 4. Cost Sharing Agreement and any other relevant Terms and Conditions, above.
3. ODOT and consultant shall keep accurate accounting records, tracking staff time and whether time was spent on waterline relocation IN CONFLICT or NOT in conflict with the Project. Accounting records shall include staff name, rate, dates and hours worked, and task. The following accounting records will be shared quarterly with PWB:
 - a. For work during the Concept Phase (all work before June 14, 2021, and included in the consultant's contract amendment #1),
 - b. For all work involving waterline IN CONFLICT with the Project, and
 - c. For work involving waterline design NOT in conflict with the Project.
4. State shall comply with the roles and responsibilities set forth in Exhibit C and Exhibit D.
5. State 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 Agency 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 State's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that Agency shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Agency, be indemnified by the contractor and subcontractor from and against any and all Claims.

6. Any such indemnification shall also provide that neither State's contractor and subcontractor nor any attorney engaged by State's contractor and subcontractor shall defend any claim in the name of the Agency, nor purport to act as legal representative of the Agency without the prior written consent of the City Attorney. Agency may, at any time at its election assume its own defense and settlement in the event that it determines that State's contractor is prohibited from defending the Agency, or that State's contractor is not adequately defending the Agency's interests, or that an important governmental principle is at issue or that it is in the best interests of the Agency to do so. Agency reserves all rights to pursue claims it may have against State's contractor if Agency elects to assume its own defense.
7. 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.
8. State's Project Manager for this Project is Jennifer Bachman, Resident Engineer – Consultant Projects, Jennifer.L.Bachman@odot.state.or.us, 503.853.5378, 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 provide payment of its share of the cost of the Project.
 - 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 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.

Signature Page to Follow

Agency/State
Agreement No. 34800/73000-00004186

This Project is in the 2021-2024 Statewide Transportation Improvement Program (STIP), (Key #21178) that was adopted by the Oregon Transportation Commission on July 15, 2020 (or subsequently by amendment to the STIP).

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 WATER BUREAU,
by and through its

By _____

Date _____

By _____

Date _____

APPROVED AS TO FORM

By _____

Date _____

Agency Contact:

Chris Chambers
1120 SW 5th Avenue, Suite 405
Portland, OR 97204
503.865.6256,
Christopher.Chambers@portlandoregon.gov

STATE OF OREGON, by and through
its Department of Transportation

By _____

Delivery & Operations Division
Administrator

Date _____

APPROVAL RECOMMENDED

By _____

Region 1 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Janet Borth _____

Assistant Attorney General

Date via email dated November 16, 2021

State Contact:

Jen Bachman
123 NW Flanders Street
Portland, OR 97209
503-853-5378
Jennifer.l.bachman@odot.state.or.us

EXHIBIT A

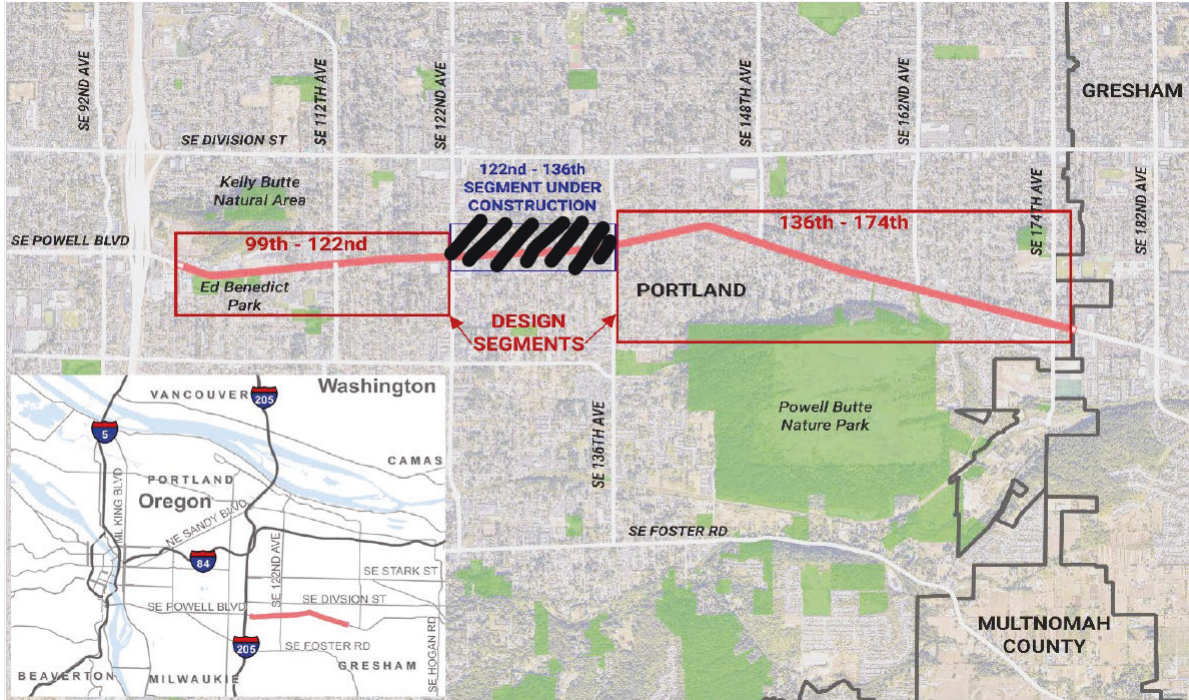


Exhibit B

Cost Share and Invoicing

Concept Phase:

	Concept Phase - Final Costs
ODOT	\$ 42,000
HDR	\$ 290,000
PWB	\$ 79,000
Totals	\$ 411,000
Cost Split	50/50
ODOT's Responsibility	\$ 205,500
Less Cost ODOT incurred	\$ 332,000
Amount PWB Owes ODOT	\$ 126,500
PWB's Responsibility	\$ 205,500
Less Cost PWB incurred	\$ 79,000
Net Amount ODOT Owes PWB	\$ (126,500)

Design Phase – waterline work IN CONFLICT with Project: 80/20 split

	Full Design to PSE (ESTIMATED Costs)
ODOT	\$ 350,000
HDR	\$ 700,000
PWB	\$ 550,000
Totals	\$ 1,600,000
Cost Split	80/20
ODOT's Responsibility (80%)	\$ 1,280,000
Less Cost ODOT incurred	\$ 1,050,000
Amount PWB Owes ODOT	\$ (230,000)
PWB's Responsibility (20%)	\$ 320,000
Less Cost PWB incurred	\$ 550,000
Net Amount ODOT Owes PWB	\$ 230,000

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Design Phase – waterline work NOT in conflict with Project: 100% PWB

	Total Estimated Costs
ODOT	\$ 120,000
HDR	\$ 250,000
PWB	\$ 267,000
Total	\$ 637,000
Net amount PWB Owes ODOT	\$ 370,000

Exhibit C

Notification and Response Time Responsibilities

Agency shall complete each of the following design review tasks within the respective timeline:

- Design questions, emails, phone coordination – 3 business days or less, one week if involve Conduit 3.
- Reports/memos - 2 weeks
- Design Exceptions – 2 weeks
- Preliminary Plans - 3 weeks
- Advance Plans - 3 weeks
- Final Plans - 2 weeks
- Holiday periods (weeks) are excluded: Thanksgiving, Christmas

Exhibit D

Quality Assurance and Quality Control Responsibilities

Activity/Design element	ODOT QAQC	PWB QAQC
Waterline specs	Yes	Yes
Waterline engineering design	Yes (review for conflicts with ODOT design elements)	Yes
Waterline earthquake design	No	Yes
Other waterline specialty design elements	No	Yes
Waterline alignment	Yes (review for conflicts with ODOT design elements)	Yes
Waterline constructability	Yes	Yes
Waterline construction phasing	Yes	Yes
Waterline trenching details	Yes	Yes
Traffic control related to waterline work	Yes	Yes
Waterline maintenance design/specs/issues	No	Yes
All other non-waterline related elements	Yes	No