

# Intergovernmental Agreement

Metro Contract No. XXXXX

## Project:

THIS AGREEMENT is between **Metro**, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, and the City of Portland, referred to herein as "the City," located at 1120 SW 5th Avenue, Suite 800, Portland, OR 97204.

## Background

82nd Avenue is a defining roadway in Portland and is located in one of the most diverse areas of the state. Destinations like the Jade District and Montavilla make 82nd Avenue a citywide attraction for restaurants, shopping, and services. It is a regionally significant transportation corridor, hosting one of TriMet's busiest bus lines, serving 20,000 to 30,000 vehicle trips a day, and providing a critical north-south connection. A safe, well-functioning 82nd Avenue is important to both the City of Portland and the State.

The 82nd Avenue of today functions very differently than it did when it was built as a state highway. The construction of I-205 running parallel to the state highway shifted long-distance travel and commerce off 82nd Avenue. Today, most trips on 82nd are local and provide access to businesses and destinations. Managing 82nd Avenue with an eye towards the future and addressing safety, climate and equity outcomes is critical to supporting the ability of people and businesses in this corridor to thrive.

To ensure greater responsiveness to these needs, the City of Portland (the City) and Oregon Department of Transportation (ODOT) have agreed to transfer 82nd Avenue from State to City ownership. While key details are still being developed, funding has been secured, with \$80M allocated by the State legislature and an additional \$70M to be transferred from ODOT to the City. The City has committed to taking responsibility for the remaining \$35M needed to reach the cost of transfer.

Numerous past efforts have engaged the community and developed plans for 82nd Avenue. The most recent efforts include:

- 82nd Avenue of the Roses (ODOT Plan) – articulated near-term incremental investments to improve conditions on 82nd Avenue under ODOT ownership. Did not specify envisioned cross section.
- 82nd Avenue Plan (PBOT Plan) – developed list of near-term needs related to safety and access under ODOT ownership; set a right-of-way dedication aligned with the ultimate 90-foot width envisioned for the corridor. While this Plan was developed to continue movement towards ultimate jurisdictional transfer, it did not specify the envisioned cross section under City ownership and did not specify investments in transit or bicycle infrastructure.
- 82nd Ave Study: Understanding Barriers to Development (BPS Study)
- Regional Transportation Funding Measure – Metro-led effort developed an 82nd Avenue project to be funded by the measure that included a significant focus on safety and transit enhancements. This effort assumed that a jurisdictional transfer to the City would occur in tandem with these investments, however, it did not specify the envisioned cross section or determine which specific investments would be made. The measure, which did not pass, included funding for:
  - Additional crossings of 82nd Avenue
  - Signal and intersection upgrades for transit and safety improvements
  - A significant investment in transit, seeking to leverage Federal Transit Administration funding
  - Sidewalks and other safety investments
  - Pavement maintenance
  - Parallel and perpendicular neighborhood greenway investments
  - Community stabilization within the corridor

The work on 82nd Avenue to date has shown that there are extensive needs in at least four overarching investment areas:



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1. **Safety:** 82nd Avenue is a high crash corridor within the City of Portland for pedestrians, people biking, and people driving. Earlier this year, two pedestrians were killed just weeks apart on the same part of 82nd Avenue while trying to cross the street. 82nd Avenue lacks sufficient safe crossing opportunities and lighting, and it is difficult to safely access places along the corridor as a pedestrian, by bike, or on transit. In 2020, the Transportation Funding Measure identified over \$140M in safety needs.
2. **Transit:** The TriMet Bus Line 72 currently operates on 82nd Avenue connecting Clackamas Town Center to Northeast and North Portland. Transit service within the corridor experiences significant delay and travel time costs for transit dependent riders. This travel time cost disproportionately burdens low-income communities and people of color. The goals of providing enhanced transit in the Regional Transportation Plan focus on improving the speed and reliability of transit service to make it as efficient and accessible as using a private automobile. In 2020, the Transportation Funding Measure identified 82nd Avenue as the region's top priority for an investment in bus transit.
3. **State of good repair:** Since the construction of I-205, much basic maintenance on 82nd Avenue has been deferred. The pavement quality is poor to very poor. Most curb ramps are not accessible, and in some places, there is no sidewalk. Many signals are out of date and do not operate in alignment with today's needs. The stormwater system needs updates to function well. As a result, the street has a significant need for investments in pavement, signals, stormwater, and sidewalks, estimated at over \$100M.
4. **Equitable development:** Improved infrastructure, particularly a major transit investment, can provide a significant benefit to the surrounding communities, but needs to be paired with equitable development and community stabilization strategies to avoid displacement of local businesses and residents. There is a need for equitable development to ensure people and businesses can stay in place and thrive; to preserve and expand affordable housing; and to create economic opportunities to generate wealth within the community.

The needs on 82nd Avenue are significant and span transportation, land use, and community-based equitable development. As such, the effort to invest in 82nd Avenue must take a multi-pronged, multi-agency approach, including three concurrent and inter-related efforts:

1. **Civic Corridor Transportation Project Development:** The goal of this PBOT-led effort is to develop a series of projects to advance 82nd Avenue as a Civic Corridor under City of Portland ownership, determine the cross section and street geometry, and identify an implementation approach to invest the allocated funding in a way that:
  - a. Moves towards the Civic Corridor vision
  - b. Aligns with PBOT's strategic plan and transportation system plan
  - c. Supports equitable community development and stabilization, and
  - d. Advances our shared regional priority of a major investment in transit on 82nd Avenue
  - e. Identifies a project in which to invest the \$80M in ARPA funding by the end of 2022
2. **Transit/BRT Planning:** Metro will initiate a transit planning effort to consider a bus transit investment and operation approaches that include and serve 82nd Avenue within the City of Portland. This effort will involve Clackamas County in addition to the City of Portland. It will provide a focused study of the enhanced transit bus service in the corridor and will consider the use of electric articulated buses. This not only will help advance fleet electrification within the region, but will support the adoption of higher capacity electric buses and the potential to develop a larger market for higher capacity electric buses nationally.
3. **Equitable Development:** Partners will develop a strategy for equitable development and community stabilization in communities surrounding 82nd Avenue.

The purpose of this Agreement is to facilitate funding of the City of Portland's initial work on 82<sup>nd</sup> Avenue. This work will include early project development for funded safety and access improvements; existing conditions including safety needs, development of a decision making and public involvement strategy; and early work to develop roadway conceptual designs to provide varying degrees of transit priority.

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## 1. Term

The term of this Agreement will be from August 1, 2021 through June 30, 2023, unless terminated or extended as provided in this Agreement.

## 2. Scope of Work

The City must perform work on the activities specified in the attached "Exhibit A – Scope of Work" which is incorporated into this Agreement by this reference as if set forth in full. To the extent that the Scope of Work contains additional Agreement provisions or waives any provision in the body of this Agreement, the Scope of Work controls.

## 3. Changes to Scope of Work

The City and Metro may modify the Scope of Work, upon mutual agreement.

## 4. Conditions

As the City performs work in alignment with the Scope of Work (with internal staff or using flex-serve contractors), the City will coordinate with Metro and TriMet in scoping work related to tasks that Metro and/or TriMet will ultimately be leading. Work on these tasks will be identified and scoped with the purpose of informing the City's decision-making on street design and investment of the \$80M in ARPA funding by the end of 2022.

## 5. Compensation

The total Agreement amount is not to exceed \$500,000. Metro will reimburse the City only for work completed on the Project during the term of the Agreement.

## 6. Payment

Metro will reimburse the City on a monthly basis for expenses incurred. Eligible expenses include staff time, any indirect expenses and payments to contractors for work on the Project.

## 7. Excess Funds

If the City fails to start or complete the Project, or completes the Project without expending all of the funds, any remaining funds for the Project will be retained by Metro.

## 8. Right to Withhold payments

Metro will have the right to withhold payments due to the City such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage or claim which may result from the City's performance or failure to perform under this Agreement or the failure of the City to make proper payment to any suppliers or subcontractors.

## 9. Funding Recognition

The City must recognize Metro and use Metro's logo in any publications, media presentations, or other presentations referencing the Project produced by or at the direction of the City, including, without limitation, any on-site signage.



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## 10. Records Maintenance

The City must maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles ("GAAP"). In addition, the City must maintain any other records pertinent to this Agreement in such a manner as to clearly document the City's performance. The City must retain and keep accessible all such fiscal records, books, documents, timesheets, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

## 11. No Third Party Beneficiary

Except as set forth herein, this Agreement is between the Parties and creates no third-party beneficiaries. Nothing in this Agreement gives or will be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its term.

## 12. Indemnity

Subject to the conditions and limitations of Article XI, Section 9, of the Oregon Constitution and by the Oregon Tort Claims Act, the City hereby agrees to indemnify and hold harmless Metro and its elected officials, officers, agents, and employees from and against any and all liability, damage, action, costs, loss, claims, and expenses (including attorney fees) arising out of the activities of the City in performance of this Agreement.

## 13. Termination for Cause

1. Subject to the notice provisions set forth in Section 2 below, Metro may terminate this Agreement, in full or in part, at any time during the term of the Agreement if Metro reasonably determines that the City has failed to comply with any provision of this Agreement and is therefore in default.
2. Before terminating this Agreement in accordance with Section 1 above, Metro will provide the City with written notice that describes the reason(s) that Metro has concluded that the City is in default and includes a description of the steps that the City must take to cure the default. From the date that such notice of default is received by the City, the City will have 30 days to cure the default. If the default is of such a nature that it cannot reasonably be cured within 30 days, the City will have such additional time as required to cure the default, as long as it is acting in a reasonable manner and in good faith to cure the default. In the event the City does not cure the default within the 30-day period, Metro may terminate all or any part of this Agreement, effective on any date that Metro chooses following the 30-day period. Metro will notify the City in writing of the effective date of the termination.
3. The City will be liable to Metro for all reasonable costs and damages incurred by Metro as a result of and in documentation of the default. Following such termination, should Metro later determine or a court find that the City was not in default or that the default was excusable (e.g. due to a labor strike, fire, flood, or other event that was not the fault of, or was beyond the control of, the City) this Agreement will be reinstated or the parties may agree to treat the termination as a joint termination for convenience.

## 14. Joint Termination for Convenience

Metro and the City may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision will be effective only upon the mutual, written termination agreement signed by both Metro and the City.



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## 15. Dispute Resolution

This Agreement is to be construed according to the laws of the State of Oregon. The City and Metro shall negotiate in good faith to resolve any dispute arising out of this Agreement. If the Parties are unable to resolve any dispute within fourteen (14) calendar days, the Parties shall attempt to settle any dispute through mediation. The Parties shall attempt to agree on a single mediator. The cost of mediation will be shared equally. If the parties agree on a mediator, the mediation must be held within 60 days of selection of the mediator unless the Parties otherwise agree. If the Parties cannot agree on a mediator, or the matter is not settled during mediation, the Parties will have all other remedies available at law or in equity.

## 16. State and Local Law Compliance

The City must comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement. The City must comply with the State of Oregon requirements for crossing an interstate highway.

## 17. Discrimination Prohibited

No recipient or proposed recipient of any services or other assistance under the provisions of this Agreement or any program related to this Agreement may be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this Agreement on the grounds of race, color, or national origin, 42 U.S.C. §2000d (Title VI), or on the grounds of religion, sex, ancestry, age, or disability as that term is defined in the Americans with Disabilities Act. For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the City receiving funds pursuant to this Agreement.

## 18. Notice of Project Risk

The City, must inform Metro immediately of any actual or potential problems or defects that present potential risk to the project moving forward.

## 19. Independent Contractor Status

The City is an independent Contractor for all purposes and is entitled only to the compensation provided for in this Agreement. Under no circumstances will the City be considered an employee of Metro. The City must provide all tools or equipment necessary to carry out this Agreement, and will exercise complete control in achieving the results specified in the Scope of Work.

The City is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement.

## 20. Notice and Parties Representatives

The parties must address any notices permitted or required by this Agreement to the other party's representative(s) as set forth below and will be deemed received (a) on the date they are personally delivered, (b) on the date they are sent via facsimile, or (c) on the third day after they are deposited in the United States mail, postage fully prepaid, by certified mail return receipt requested. Either party may change its representative(s) and the contact information for its representative(s) by providing written notice to the appropriate Designated Representative identified below.

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The City's Designated Representative and contact information:

Karla Kingsley  
Portland Bureau of Transportation  
1120 SW 5<sup>th</sup> Ave, Suite 800  
Portland, OR 97204

Metro's Designated Representatives:

Elizabeth Mros-O'Hara  
Metro Regional Center  
600 N.E. Grand Ave.  
Portland, OR 97223  
with copy to:  
Metro Attorney  
600 N.E. Grand Ave.

## 21. Assignment

The City may not assign or transfer this Agreement without written permission from Metro.

## 22. Choice of Law

The situs of this Agreement is Portland, Oregon. Any litigation over this Agreement will be governed by the laws of the State of Oregon and will be conducted in the Circuit Court of the State of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

## 23. No Waiver of Claims

The failure to enforce any provision of this Agreement does not constitute a waiver by Metro of that or any other provision.

## 24. Modification

Notwithstanding and succeeding any and all prior agreements or practices, this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing, signed by both parties.

## 25. Severability

If any clause, sentence or any other portion of the terms and conditions of this Grant Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

## 26. Authority

The representatives signing on behalf of the Parties certify they are duly authorized by the Party for whom they sign to make this Agreement.

## 27. Further Assurances



**Metro**

600 NE Grand Ave.  
Portland, OR 97232-2736

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Each of the Parties shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent and agreements of the Parties hereto.

## **28. Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which will constitute one and the same instrument.

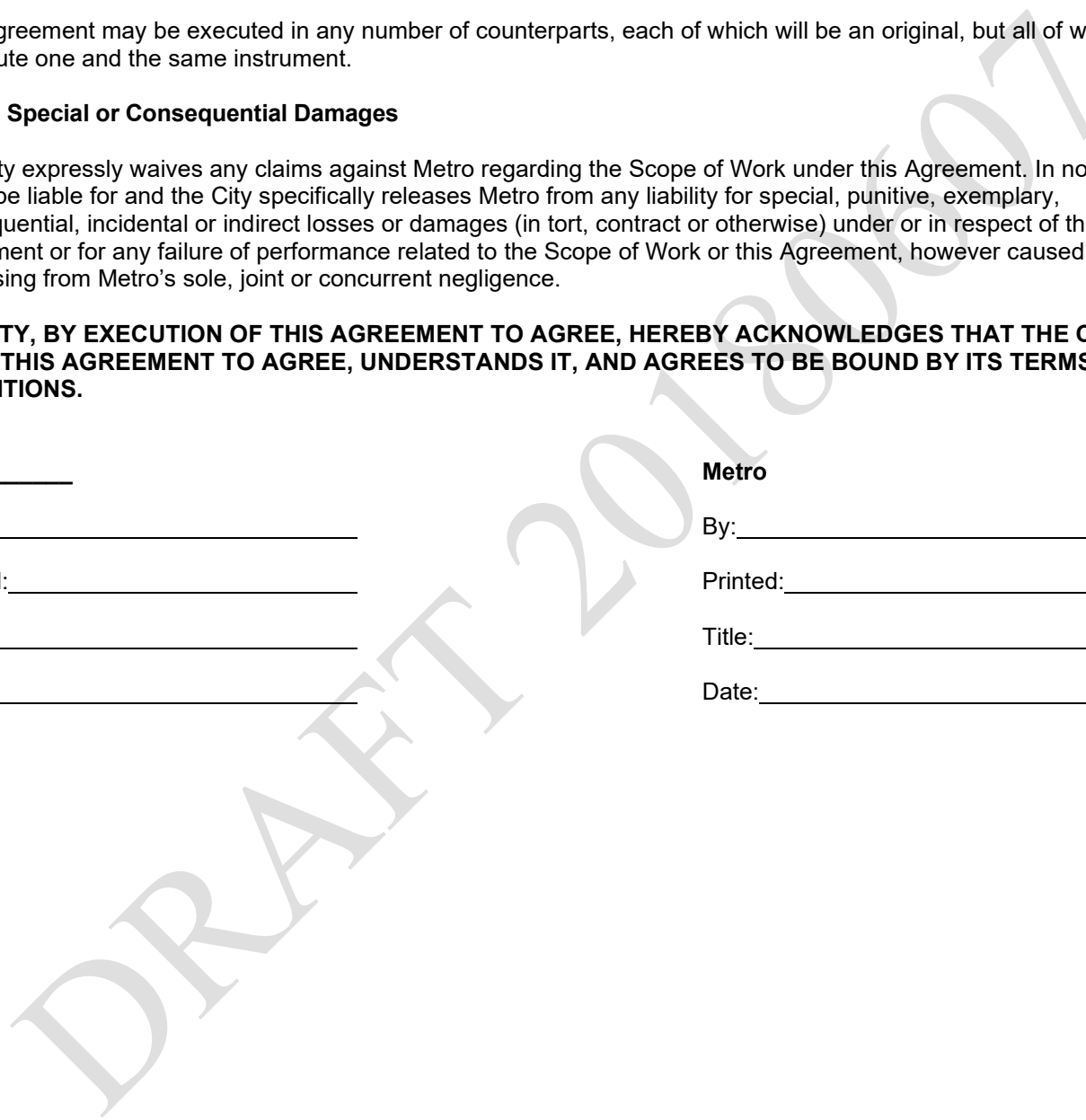
## **29. No Special or Consequential Damages**

The City expressly waives any claims against Metro regarding the Scope of Work under this Agreement. In no event will Metro be liable for and the City specifically releases Metro from any liability for special, punitive, exemplary, consequential, incidental or indirect losses or damages (in tort, contract or otherwise) under or in respect of this Agreement or for any failure of performance related to the Scope of Work or this Agreement, however caused, whether or not arising from Metro's sole, joint or concurrent negligence.

**The CITY, BY EXECUTION OF THIS AGREEMENT TO AGREE, HEREBY ACKNOWLEDGES THAT THE CITY HAS READ THIS AGREEMENT TO AGREE, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

\_\_\_\_\_  
By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Metro**  
By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



# Exhibit A – Scope of Work

Metro Contract No. XXXXX

Project Title: 82<sup>nd</sup> Avenue Project Development Start Up Tasks**Project Purpose:**

The project will advance work to improve safety, access, transit performance and asset condition on 82<sup>nd</sup> Avenue. The project outcome will be a project charter and schedule; existing conditions including safety needs; development of a decision making and public involvement strategy; and early work to develop roadway conceptual designs to provide varying degrees of transit priority.

**Budget:** Project managers will agree on the budget allocation before commencing the work. The project has multiple funding sources and the team will work together to ensure this work and other tasks not included in this scope of work are completed as efficiently as possible.

**Invoices:** The City of Portland will submit to Metro on a monthly basis reimbursement invoices detailing with reasonable particularity the work performed under this Agreement. Metro will pay the City the balance due not later than thirty (30) days after receipt of a proper invoice, inclusive of the date the invoice was received. Invoices must be supported by current time sheets, supporting documentation for other costs included in the invoice, and a summary of activities performed for each month, or any other documentation reasonably required by Metro. The Project Managers will review the invoices against the Project budget to provide real time cost tracking and budget management. All invoices must be submitted to Metro at the following address:

Metro Accounts Payable  
 600 N.E. Grand Avenue  
 Portland, OR 97232-2736 or  
 Metroaccountspayable@oregonmetro.gov

The City will proceed with the project as follows:

Task	Deliverable	General Start and End Date
<b>1</b>	<b>Project Initiation</b>	<b>August 2021- December 2021</b>
1.1	Integrated work approach – develop an integrated scope of work for the corridor investment including identifying tasks for completion by Metro, TriMet and the City.	
1.2	Kick off meeting – ½ day workshop with project team to share initial information, develop goals for the early work and establish communication protocols.	
<b>2</b>	<b>Decision making and engagement strategy</b>	<b>October 2021- February 2022</b>
2.1	Project charter and decision making structure – develop a project partner charter and a decision making structure for the Civic Corridor Project Development Plan.	
2.2	Engagement strategy – develop a high level engagement strategy with a proposed community engagement structure to support decision making (e.g. committee structure or alternative approach), stakeholder and demographic analysis, and decision milestones, and an analysis of engagement needs at each decision milestone. This task will include stakeholder interviews to inform the strategy. This will not be a complete public involvement plan that would include specific outreach strategies and schedules but will provide the basis for detailed public involvement plans for project milestones.	
2.3	Branding and graphic look– develop a branding plan for the project including a graphic look that can be used to span the life of the project. This will require	



# Exhibit A – Scope of Work

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	working with the City, Metro and TriMet to develop a shared approach to branding.	
<b>3</b>	<b>Existing Conditions and Safety Assessment</b>	<b>September 2021-March 2022</b>
3.1	Existing Conditions and Plan/Policy Review	
3.2	Safety Assessment	
3.3	Summary report – prepare a summary report of existing conditions, plan and policy review, and safety analysis that can be used to engage public stakeholders in understanding the corridor context and needs.	
<b>4</b>	<b>Project Development</b>	<b>September 2021-June 2022</b>
4.1	Street design alternatives– building from past work in the 82 <sup>nd</sup> Ave Plan, 82 <sup>nd</sup> Avenue of Roses Plan and Regional Investment Measure corridor development, develop a series of alternative street design cross section that include a variety of transit priority treatments. The alternatives will include a discussion of how well each cross section and conceptual plan meets a variety of land use and transportation system needs.	
4.2	Project development – PBOT has agreed to develop 6-10 additional or enhanced crossings with initial state investment on 82 <sup>nd</sup> Avenue. Complete project development to confirm crossing location and conceptual design on some of these crossings.	
<b>5</b>	<b>Scope Closeout</b>	<b>June 2022-June 2023</b>
5.1	Closeout – Hold meetings or prepare documentation to closeout this phase of the project and handoff the project to subsequent work teams.	
5.2	Files and reports – prepare files and reporting to meet Metro requirements.	