

COOPERATIVE IMPROVEMENT (UTILITY) AGREEMENT
Project Name US26 (Powell Blvd): SE 99th Ave - East City Limits

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State" or "ODOT;" and the **City of Portland** acting by and through its **Bureau of Environmental Services**, and its elected officials, hereinafter referred to as "Agency" or "City," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. **US26** is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). **SE 99th Ave** is a part of the city street system under the jurisdiction and control of City.
2. By the authority granted in Oregon Revised Statutes (ORS) [190.110](#), [366.572](#) and [366.576](#), ODOT may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. ODOT, by ORS [366.220](#), is vested with complete jurisdiction and control over the roadways of other jurisdictions taken for state highway purposes. By the authority granted by ORS [373.020](#), the jurisdiction extends from curb to curb, or, if there is no regular established curb, then control extends over such portion of the right-of-way as may be utilized by ODOT for highway purposes.
4. By the authority granted in ORS [366.425](#), ODOT may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the state. When said money or a letter of credit is deposited, ODOT shall proceed with the project. Money so deposited shall be disbursed for the purpose for which it was deposited.
5. ODOT is conducting a project to widen US26 (Powell Blvd) between SE 99th Ave and East City Limits to three lanes (inclusive of a center turn lane) with sidewalks and buffered bike lanes or other enhanced bike facilities and to add enhanced pedestrian and bike crossings, hereinafter referred to as "ODOT's Project". ODOT's Project is intended to provide a safer continuous travel facility for multiple modes of travel and allow for a more connected neighborhood. While ODOT's Project is under construction, ODOT will use this opportunity to complete 47 manhole adjustments and installation of 1 curb manhole cover that are located within the ODOT Project area, hereinafter referred to as the "Manhole 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:

ODOT/BES
Agreement No. 73000-00010594

TERMS OF AGREEMENT

1. Under such authority, ODOT and City agree that ODOT or its contractor shall install City's non-reimbursable **47 manhole adjustments and installation of 1 curb manhole cover** as required to complete the Manhole Project. The location of the Manhole Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. The Manhole Project will be financed at an estimated cost of **\$61,500.00** in City funds. The estimate for the total Manhole Project cost is subject to change. City shall be responsible for all waterline associated work as described in Exhibit B, attached hereto, and by this reference made a part hereof.
3. City and ODOT shall coordinate Change Order(s) affecting the Utility's facilities. The fillable Contract Change Order, form 734-1169, is available at the following web site:

[Highway - Construction Section ODOT Construction Forms](#)
4. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Manhole Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.

CITY OBLIGATIONS

1. Subject to ODOT Obligations, Paragraph 1 herein, City grants ODOT the right to enter onto City right-of-way for the performance of duties as set forth in this Agreement.
2. City shall upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from ODOT, forward to ODOT an advance deposit or irrevocable letter of credit in the amount of **\$61,500.00** for the Manhole Project, said amount being equal to the estimated total cost for the work performed by ODOT at City's request under ODOT Obligations, paragraph 2. City agrees to make additional deposits as needed upon request from ODOT. Depending upon the timing of portions of the Manhole Project to which the advance deposit contributes, the advance deposit may be requested by ODOT prior to Preliminary Engineering, , or approximately 4-6 weeks prior to Manhole Project bid opening.
3. Subject to authorization by the Portland City Council and upon completion of the Manhole Project and receipt from ODOT of an itemized statement of the actual total cost of ODOT's participation for the Manhole Project, City shall pay any amount which, when added to City's advance deposit, will equal 100 percent of actual total ODOT costs for the Manhole Project. Any portion of said advance deposit which is in excess of ODOT's total costs will be refunded or released to City.
4. All City **manhole adjustments** and appurtenances installed by ODOT or its contractor will require inspections by City. City personnel will work directly with ODOT personnel. City shall not contact or communicate with ODOT's contractor without ODOT's

ODOT/BES

Agreement No. 73000-00010594

consent. City will provide all necessary documentation to ODOT. ODOT shall present to City any Contract Change Order for review and written approval by City.

5. City acknowledges and agrees that ODOT, 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 City 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 Manhole Project, if applicable), or a period equal to City's adopted record retention limit, but not less than 6 years. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.
6. Subject to ODOT Obligations, Paragraph 1 herein, Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) and ORS 105.760 to any and all changes of grade within City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the Manhole Project covered by the Agreement.
7. City's Project Manager for the Manhole Project is Jorge Villavicencio, PE (1120 SW 5th Ave, Room 613, Portland, OR 97204, Jorge.villavicencio@portlandoregon.gov, (503) 823-6597) or assigned designee upon individual's absence. City shall notify the other Party in writing of any contact information changes during the term of this Agreement.

ODOT OBLIGATIONS

1. ODOT, or its consultant, shall conduct the necessary field surveys, environmental studies, traffic investigations, preliminary engineering and design work required to produce and provide final plans, specifications and cost estimates for the Manhole Project; identify and obtain all required permits; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid and contract documents; advertise for construction bid proposals; award all contracts; pay all contractor costs, provide technical inspection, project management services and other necessary functions for sole administration of the construction contract entered into for the Manhole Project. Nothing in this Agreement is intended to, and does not waive any applicable federal, state, or local government laws or regulations, including but not limited to requirements to obtain permits from the Portland Bureau of Transportation.
2. ODOT shall, upon execution of the agreement, forward to City a letter of request for an advance deposit or irrevocable letter of credit in the amount of \$61,500.00 for payment of **48 manhole adjustment** facilities. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete Project.
3. Upon completion of the Project, ODOT shall either send to City a bill for the amount which, when added to City's advance deposit, will equal 100 percent of the total ODOT

ODOT/BES

Agreement No. 73000-00010594

costs for the Manhole Project or ODOT will refund to City any portion of said advance deposit which is in excess of the total ODOT costs for the Manhole Project.

4. ODOT 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.
5. All employers, including ODOT, 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. ODOT shall ensure that each of its contractors complies with these requirements.
6. ODOT 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, ODOT 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](#), as amended, 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.
7. ODOT's Project Manager for the Manhole Project is Nicole Frankl, State Utility Liaison, ODOT – Technical Services, 4040 Fairview Ind. Drive SE, MS#2 Salem OR 97302, 503-986-3658, utilityandrailprogra@odot.oregon.gov, or assigned designee upon individual's absence. ODOT 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 either Party upon thirty (30) days notice, in writing and delivered by certified mail or in person.
2. Either Party may terminate this Agreement effective upon delivery of written notice to the other Party, or at such later date as may be established by that Party, under any of the following conditions:
 - a. If the other Party fails to provide the services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If the other Party 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 the other Party

ODOT/BES

Agreement No. 73000-00010594

- fails to correct such failures within ten (10) days or such longer period as the other Party may authorize.
- c. If either Party fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow that Party, in the exercise of its reasonable administrative discretion, to continue to advance the Manhole Project or the terms 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 City 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 ODOT or City 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 ODOT is jointly liable with City (or would be if joined in the Third Party Claim), ODOT 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 City in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of City 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 ODOT on the one hand and of City 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. ODOT'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 ODOT had sole liability in the proceeding.
 6. With respect to a Third Party Claim for which City is jointly liable with ODOT (or would be if joined in the Third Party Claim), City 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 ODOT in such proportion as is appropriate to reflect the relative fault of City on the one hand and of ODOT on the

ODOT/BES

Agreement No. 73000-00010594

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 City on the one hand and of ODOT 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. City'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 ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.
10. Electronic Signatures. The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the Agreement and amendments, submitted or exchanged via email are "Electronic Signatures" under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. ODOT reserves the right at any time to require the submission of the hard copy originals of any documents.

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

ODOT/BES
Agreement No. 73000-00010594

CITY OF PORTLAND acting by and through
its **BUREAU OF ENVIRONMENTAL
SERVICES** and through its elected officials

By _____

Title _____

Date _____

STATE OF OREGON, by and through
its Department of Transportation

By _____
Region 1 Manager

Date _____

LEGAL REVIEW APPROVAL

By _____
City Legal Counsel

Date _____

City Contact:

Jorge Villavicencio, PE
1120 SW 5th Ave, Room 613
Portland, OR 97204
503-823-6597
Jorge.villavicencio@portlandoregon.gov

ODOT Contact:

Nicole Frankl
State Utility and Rail Liaison
ODOT – Technical Services
4040 Fairview Ind. Drive SE MS#2
Salem OR 97302
503-986-3658
utilityandrailprogral@odot.oregon.gov

EXHIBIT A – Manhole Project Location Map



ODOT/BES
 Agreement No. 73000-00010594

EXHIBIT B – Cost Estimate

Item Description	Item Code	Unit	Quantity	Estimated Unit Price	Cost
MINOR ADJUSTMENT OF MANHOLES	0490-0120000E	EACH	45	\$1,200.00	\$54,000.00
MAJOR ADJUSTMENT OF MANHOLES	0490-0121000E	EACH	2	\$2,500.00	\$5,000.00
INSTALL CURB MANHOLE COVER	1999-9Z90000E	EACH	1	\$2,500.00	\$2,500.00
Total					\$61,500.00

Cooperative Improvement Agreement Request Acceptance Memo

Project Name US26 (POWELL BLVD): SE 99TH AVE - EAST CITY LIMITS SEC.

Key # 21178 Contract # _____ EA/subjob _____

Portland BES facility qualifies for reimbursable status due to:
Other (Describe in Separate Attachment)

Portland BES facility does not qualify for reimbursable status and requests work to be added at utility expense

Per the Conflict Notification Letter sent on 3/15/21, Portland BES acknowledges the Conflict matrix to be accurate to our facility mapping and request that the relocation/adjustment of facility(ies) be included in the ODOT contract scheduled to be bid on

Work requested:

Valve adjustments: quantity _____ : Locations and cost in below table

Major Manhole adjustments: quantity ² _____ : Locations and cost in below table

Minor Manhole adjustments: quantity ⁴⁵ _____ : Locations and cost in below table

Other work shown in below table

Design work to also be included in ODOT contract

Design for above work to be done by and reimbursed to **Portland BES**

By signing, I understand the following:

- That by requesting this work be included in ODOT's contract, I am accepting risk to the utility facility.
- That I have no choice in the contractor selected by ODOT to do the work.
- That I cannot remove the work from the contract once the project has gone to bid.
- That I may inspect this work, however I must arrange my inspection through the ODOT Construction Office and shall communicate any issues to the ODOT Construction Office and will not communicate any issues directly to ODOT's contractor.
- At project 2nd Note (or sooner) I will be sent a form asking if the work that was completed is to my satisfaction.

Utility Representative Printed Name: Jorge Villavicencio, PE

Utility Representative Signature: _____

Date: 7/18/22 contact email: jorge.villavicencio@F contact phone number: 503-823-6597

Cooperative Improvement Agreement Request Acceptance Memo

Added Work Description	Engineering Station from ODOT Plan Set	Qty.	Unit Cost	Total Cost
<i>EXAMPLE</i>				
Minor Manhole Adjustment	"L" 150+75, 30' RT	1	\$500	\$500
<i>UTILITY TO FILL IN BELOW</i>				
Minor manhole adjustment	"PB3" 1049+46, 18' Rt	1	1200	1200
Minor manhole adjustment	"PB3" 1051+06, 15' Rt	1	1200	1200
Minor manhole adjustment	"PB3" 1052+48, 4' Rt	1	1200	1200
Minor manhole adjustment	"PB3" 1057+49, 13' Rt	1	1200	1200
Minor manhole adjustment	"PB3" 1062+49, 18' Rt	1	1200	1200
Install curb manhole cover	"PB3" 1062+49, 18' Rt	1	2500	2500
Major manhole adjustment	"PB3" 1065+49, 19' Rt	1	2500	2500
Minor manhole adjustment	"PB3" 1067+85, 19' Rt	1	1200	1200
Minor manhole adjustment	"PB3" 1068+41, 19' Rt	1	1200	1200
Minor manhole adjustment	"PB3" 1073+41, 19' Rt	1	1200	1200
Minor manhole adjustment	"PB3" 1076+19, 20' Rt	1	1200	1200
Minor manhole adjustment	"PB3" 1079+60, 19' Rt	1	1200	1200
Minor manhole adjustment	"PB3" 1081+45, 8' Rt	1	1200	1200
Minor manhole adjustment	"PB3" 1086+28, 8' Rt	1	1200	1200
Minor manhole adjustment	"PB3" 1088+09, 0'	1	1200	1200
Minor manhole adjustment	"PB3" 1091+32, 3' Lt	1	1200	1200
Minor manhole adjustment	"PB3" 1094+60, 0'	1	1200	1200
Minor manhole adjustment	"PB3" 1095+20, 2' Lt	1	1200	1200
Minor manhole adjustment	"PB3" 1097+97, 1' Lt	1	1200	1200
Minor manhole adjustment	"PB3" 1101+82, 0'	1	1200	1200
Minor manhole adjustment	"PB3" 1148+31, 5' Rt	1	1200	1200
Minor manhole adjustment	"PB3" 1153+29, 5' Rt	1	1200	1200
Minor manhole adjustment	"PB3" 1161+42, 6' Rt	1	1200	1200
Minor manhole adjustment	"PB3" 1164+42, 0'	1	1200	1200
Minor manhole adjustment	"PB3" 1166+67, 11' Rt	1	1200	1200
Minor manhole adjustment	"PB3" 1168+36, 13' Rt	1	1200	1200
Minor manhole adjustment	"PB3" 1171+62, 6' Rt	1	1200	1200
Minor manhole adjustment	"PB3" 1176+66, 4' Rt	1	1200	1200
Minor manhole adjustment	"PB3" 1181+63, 2' Rt	1	1200	1200
Minor manhole adjustment	"PB3" 1185+52, 2' Lt	1	1200	1200
Minor manhole adjustment	"PB3" 1187+63, 5' Lt	1	1200	1200
Minor manhole adjustment	"PB3" 1189+79, 5' Lt	1	1200	1200
Minor manhole adjustment	"PB3" 1193+18, 10' Lt	1	1200	1200
Minor manhole adjustment	"PB3" 1197+31, 3' Rt	1	1200	1200
<i>Total Cost =</i>				

