

**INTERGOVERNMENTAL AGREEMENT
US26 (Powell Blvd): SE 99th Ave – East City Limits
Signal Pole Design Standards and Inspection**

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 elected officials, hereinafter referred to as "Agency" or "PBOT," each herein referred to individually as a "Party" and both referred to 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. US 26, also known as SE Powell Boulevard, is currently a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
3. State is currently engaged in the "US26 (Powell Blvd): SE 99th Ave – East City Limits" project, Key Number 21178. State will design and construct all elements of this project. State will transfer this section of US 26 to the city upon completion of construction of the project (at second note). At Agency's request, State is willing to design and construct signal poles within the project area to city standards provided that State receives payment from Agency in the amount agreed upon herein, and that Agency can provide staff resources to the State during construction at no cost to the State.

NOW, THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under Such authority, State and Agency agree that State shall design and construct the signal poles and mast arms on Powell Blvd between SE 99th Avenue and the eastern city limits to Agency standards, hereinafter the "Project." It will be delivered as part of State's US26 (Powell Blvd): SE 99th Ave – East City Limits project.
2. State and Agency agree to the timelines and responsibilities that will guide the signal design and construction work as set forth in Exhibit A, attached hereto and by this reference made a part hereof.

3. Agency shall grant State or others designated by State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement, including project design activities, construction, and maintenance.
4. State certifies that, at the time this Agreement is executed, sufficient funds are available and authorized for expenditure to finance the costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
5. In consideration for State's work on the Project, Agency shall pay to State \$60,000. Agency shall make such payment within forty-five (45) days of the execution of this Agreement.
6. Agency shall provide State with all available technical information necessary for State to complete the design of the Project, including, but not limited to, structural calculations for signal pole foundations and geo-technical analyses.
7. Agency shall provide certified inspection staff during construction at State's request. State shall give Agency notice as indicated in Exhibit A for each item. Agency staff time during construction will be at Agency's expense and will not be reimbursed by State under this or any other agreement. Key construction elements that require prompt Agency inspection include, but are not limited to:
 - Shop drawing review and pole Inspection prior to installation
 - Signal and mast arm inspection during installation
8. Any traffic signal items that PBOT determines do not need to be inspected by PBOT staff will follow ODOT inspection and ODOT will have the final approval of the construction item.
9. Agency shall provide staff representation at weekly construction meetings, if necessary. Meeting times and location will be determined at the start of the construction phase.
10. Agency will be responsible for all signal maintenance at the point in the project when the permanent signals are turned on outside those activities that are still the responsibility of the contractor to address. This includes all power, maintenance, operations, and repair costs beyond those caused by construction activities.
11. Agency will accept all liability for the signal poles and foundations once constructed, with the exception of construction errors and omissions. State will retain liability for construction errors or omissions for a period of one (1) year from construction completion, subject to the requirements and limitations included below in General Provisions, sections 4-6.

12. Agency agrees, as part of the consideration for this Agreement for State to follow Agency signal design standards, that the jurisdictional transfer from State to Agency of a portion of Powell Boulevard from I-205 to the eastern city limits will occur as soon as practicable upon issuing the 2nd Note (substantial construction completion of the Project). The details of the transfer from State to Agency will be outlined in a separate jurisdictional transfer agreement that will be completed prior to the issuing of 2nd note.
13. Should the jurisdictional transfer not occur for any reason, Agency agrees to maintain and operate the traffic signals, poles, and mast arms installed for this Project for the life of the traffic signals or until the traffic signals are changed to ODOT equipment, whichever occurs first. If the traffic signals are switched to ODOT signal poles and equipment, the cost to do so will be paid entirely by Agency.

14. **Americans with Disabilities Act Compliance:**

- a. When the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, the Parties shall:
- i. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended by the ADA Amendments Act of 2008 (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - ii. Follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
 - iii. At Project completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed, modified, upgraded, or improved as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<http://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>; an
- b. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
- a. Pedestrian access is maintained as required by the ADA,

- b. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - c. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
 - d. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - e. Applicable permitting and regulatory actions are consistent with ADA requirements.
- c. Maintenance obligations in this section shall survive termination of this Agreement.
15. 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.
16. Agency agrees to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement. 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.
17. 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.
18. Agency certifies and represents that each 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.

19. The term of this Agreement begins on the date all required signatures are obtained and terminates upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner. Maintenance responsibilities will survive the termination of this Agreement.
20. 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.

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 Agency fails to provide payment of its share of the cost of the Project.
 - d. 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.
 - e. 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. State's Project Manager for this Project is Jennifer Bachman, 123 NW Flanders Street, Portland, OR 97209, 503-853-5378, jennifer.l.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.
9. Agency's Project Manager for this Project is Dan Layden, 1120 SW 5th Avenue, Suite 800, Portland, OR 97204, 503-823-2804, Dan.Layden@portlandoregon.gov, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.
10. 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.
11. 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.

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

SIGNATURE PAGE TO FOLLOW

CITY OF PORTLAND, by and through its
elected officials

By _____

Date _____

By _____

Date _____

APPROVED AS TO FORM

By _____
Counsel

Date _____

Agency Contact:

Dan Layden
1120 SW 5th Avenue, Suite 800
Portland, OR 97204
503-823-2804
Dan.Layden@portlandoregon.gov

STATE OF OREGON, by and through
its Department of Transportation

By _____
Region 1 Manager

Date _____

APPROVAL RECOMMENDED

By _____
State Traffic/Roadway Engineer

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Matthew Shoop
Assistant Attorney General

Date via email dated December 10, 2020

State Contact:

Jennifer Bachman
123 NW Flanders Street
Portland, OR 97209
503-731-4851
Jennifer.l.bachman@odot.state.or.us

EXHIBIT A

Exhibit A

No.	Traffic Signal Activity	When is the activity performed?	Inspection Lead	Required Milestone for PBOT vs Courtesy check	Minimum Notice	Typical Notice	PBOT Primary Contact	PBOT Backup Contact	ODOT Contact	Remarks
1	Temporary traffic signal operations adjustments and General maintenance electrician assistance (3 PBOT maintained signals only) – For signals NOT yet impacted by construction	Throughout construction, as needed for the three signals maintained by PBOT.	ODOT/PBOT	Required - As Needed	1 week (needs to be 1-2 day response if issue is urgent)	1 to 2 weeks	Signal Shop	District Engineer	Region Traffic	Requires approved TCP Follow normal maintenance contract for reimbursement.
2	Maintenance During Construction – Temp Signals (3 PBOT maintained signals only)	Contractor responsible for maintenance during construction		Required - As Needed (if issue is outside of contractor capabilities)						Signal timing reimbursement by project if needed. Contractor should be the first in line to fix signal issues during construction.
3	Shop drawing review and pole Inspection prior to installation (ALL signals using PBOT poles)	Prior to installation	PBOT	Required	1 week		District Engineer	SSL Inspector	ODOT Project Coordinator/ Construction	
4	Pole & controller cabinet layout	After radii are laid out and pole and controller cabinet locations are staked	ODOT	courtesy check if requested	2 Working Days	3 Working Days	District Engineer	SSL Inspector	ODOT Project Coordinator/ Construction	
5	Pole footing drilled shaft	During drilled shaft excavation	ODOT	courtesy check if requested			None	None	ODOT Project Coordinator/ Construction	Requires CDSI certification
6	Signal pole footings, conduit in concrete, and conduit tie-ins	After forms, reinforcing, and conduits are in place but before concrete is poured	ODOT	courtesy check if requested	2 Working Days	3 to 5 Working Days	SSL Inspector	District Engineer	ODOT Project Coordinator/ Construction	
7	Other footings, conduit in concrete, and tie-ins	After forms, reinforcing, and conduits are in place but before concrete is poured	ODOT	courtesy check if requested	2 Working Days	3 to 5 Working Days	SSL Inspector	CIPM Inspector	ODOT Project Coordinator/ Construction	
8	Conduit, tie-ins, and trench backfill	During conduit installation, but before backfilling	ODOT	courtesy check if requested	2 Working Days	3 Working Days	SSL Inspector	CIPM Inspector	ODOT Project Coordinator/ Construction	

No.	Traffic Signal Activity	When is the activity performed?	Inspection Lead	Required Milestone for PBOT vs Courtesy check	Minimum Notice	Typical Notice	PBOT Primary Contact	PBOT Backup Contact	ODOT Contact	Remarks
9	Electrical service inspection	After service cabinet has been installed	ODOT	Required City Staff		As per the permit	Electrical permitting agency	None	None	Per Bureau of Development Services
10	Loop layout (if loops are installed)	After crosswalks and stop bars laid out but before pavement markings installed or saw cutting work begins	ODOT	courtesy check if requested	2 Working Days	3 Working Days	District Engineer	SSL Inspector	ODOT Project Coordinator/ Construction	
11	Loop testing (if loops are installed)	During installation test per 00990.43(b)(5) and furnish report upon request	ODOT	courtesy check if requested	2 Working Days	3 to 5 Working Days	District Engineer	SSL Inspector	ODOT Project Coordinator/ Construction	
12	Radar detection configuration (Not reimbursable for 3 signals currently maintained by ODOT)	After pavement markings and radar equipment installed	PBOT	Required	1 week		Signal Shop	District Engineer	ODOT Project Coordinator/ Construction	May also need ODOT signal timer present PBOT reimbursement available for this activity for 3 currently maintained PBOT signals.
13	Signal Foundation Inspection	During foundation, drilling, formation, and pouring	ODOT	courtesy check if requested						
14	Signal Pole and Mast Arm Installation (ALL signals)	Right after foundation installation	PBOT	Required	2 Working Days		District Engineer	SSL Inspector	ODOT Project Coordinator/ Construction	Making sure that nuts and bolts are tightened to PBOT specs (base plate, where mast connects to flange plate, and luminaire if applicable)
15	Pre-signal turn-on combine with Signal Field Testing (Not reimbursable for 3 signals currently maintained by ODOT)	Within 1 week of completion	PBOT	Required	1 week	1 to 2 weeks	Signal Shop & District Engineer	None	ODOT Project Coordinator/ Construction	** PBOT reimbursement available for this activity for 3 currently maintained PBOT signals.
16	Interconnect cable testing	At anticipated completion of all terminations	ODOT	n/a	1 week		ITS Communications	Signal Shop	TSSU Manager - Jason Shaddox	
17	Traffic signal turn-on (Not reimbursable for 3 signals currently maintained by ODOT)	Within 1 week of completion of corrections	PBOT	Required	1 week	1 to 2 weeks	Signal Shop & District Engineer	None	ODOT Project Coordinator/ Construction	** PBOT reimbursement available for this activity for 3 currently maintained PBOT signals.
18	Permanent traffic signal operations changes	This activity would take place AFTER signal turn-on	PBOT	Required	1 week		Signal Shop	District Engineer	ODOT Project Coordinator/ Construction	Requires approved signal plans After turn-on the intent is for PBOT to take responsibility for signal maintenance, so this would not be

No.	Traffic Signal Activity	When is the activity performed?	Inspection Lead	Required Milestone for PBOT vs Courtesy check	Minimum Notice	Typical Notice	PBOT Primary Contact	PBOT Backup Contact	ODOT Contact	Remarks
										reimbursable.
19	Punch list (Not reimbursable for 3 signals currently maintained by ODOT)	After traffic signal is operational	ODOT	Required (but not the lead)	1 week		SSL Inspector	Signal Shop	ODOT Project Coordinator/ Construction	*** PBOT reimbursement available for this activity for 3 currently maintained PBOT signals.
20	Final inspection (Not reimbursable for 3 signals currently maintained by ODOT)	After punch list items have been completed	ODOT	Required (but not the lead)	2 business days	3 to 5 days	SSL Inspector	Signal Shop	ODOT Project Coordinator/ Construction	*** PBOT reimbursement available for this activity for 3 currently maintained PBOT signals.

Key

Orange highlighted cells = Required PBOT activities that are NOT reimbursable from ODOT (specific to the use of PBOT signal poles)

Yellow highlighted cells = Required PBOT activities that are NOT reimbursable from ODOT at the 3 locations with ODOT maintained signals (but reimbursable for locations of 3 PBOT maintained signals per regular maintenance agreement)

Blue highlighted cells = Required PBOT activities that follow regular interagency maintenance agreement guidelines

* General maintenance electrician assist request for traffic signal related work requires:
1. Project information with project number or related SAP cost code
2. Field foreman name and contact information
3. Specific date, time, and duration needed for maintenance electrician assistance
4. Specific corner, traffic approach, and signal operation needed to safely operate the intersection per construction specifications and approved construction traffic control
5. Copy of traffic control plan (TCP) approved by PBOT Traffic Engineers if work will alter signal operations. Apply for TCP at least two weeks prior to requesting electrician assistance
Note: If ODOT takes operational control of all traffic signals during construction then we do not expect any need for PBOT electrician assistance.

** If primary and backup contacts are unavailable, then defer role to ODOT construction team except for:
1. Pre-signal turn-on and field testing
2. Traffic signal turn-on

*** PBOT punch list and final inspections to be concurrent with ODOT's inspections