

**INTERGOVERNMENTAL AGREEMENT**  
**US 26 (Powell Blvd): SE 99<sup>th</sup> Ave – East City Limits**  
**Bureau of Environmental Services Work**

**THIS INTERGOVERNMENTAL AGREEMENT (“IGA” or “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 Bureau of Environmental Services, hereinafter referred to as "Agency" or "BES," 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.
3. Per Memorandum of Understanding No. 73000-00004263, the Parties intend to collaborate to design and Agency will fund certain stormwater improvements that go beyond the ODOT standards.
4. Agency has agreed to contribute funding to the design of stormwater improvements that exceed the ODOT standards for stormwater design. The purpose of this Agreement is to set forth the cost sharing between the Parties for the design and construction of the additional stormwater 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 and construction of stormwater improvements for the Project. 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. The elements of the Project in this Agreement are specifically the stormwater improvements further listed below and, for the purposes of this Agreement, are divided into the Design Phase and Construction Phase.
  - a. Add sump systems at:

- i. 1095+50 to 1101+30 (approximately east of SE 118<sup>th</sup> to west of SE 120<sup>th</sup>)
    - ii. 1148+00 to 1152+00 (approximately SE 138<sup>th</sup> to west of SE 140<sup>th</sup>)
  - b. Add additional sumps to reduce the number of inlets chained together, as well as increase the pipe slopes between the inlets and manholes to increase the flow rate for increased sediment transport at:
    - i. 1062+40 to 1068+10 (approximately 300 ft east of 104<sup>th</sup> to SE 108<sup>th</sup>)
    - ii. 1171+20 to 1175+90 (approximately west of SE 147<sup>th</sup> to west of SE 148<sup>th</sup>)
    - iii. 1178+40 to 1181+90 (approximately east of 148<sup>th</sup> to east of SE 150<sup>th</sup>)
    - iv. 1195+70 to 1201+50 (approximately SE 156<sup>th</sup> to east of SE 157<sup>th</sup>)
    - v. 1216+80 to 1220+60 (approximately east of SE 162<sup>nd</sup> to east of SE 164<sup>th</sup>)
    - vi. 1225+00 to 1229+80 (approximately east of SE 166<sup>th</sup> to 300 ft east of SE Naegili Ave)
2. If the total cost exceeds the estimated amount, the Parties will amend this Agreement to accurately reflect each Party's respective payment responsibilities.
3. This work is optional and BES has asked State to include this work in the Project. The Design Phase and Construction Phase for this additional work will be funded 100% by the Agency, including Agency review costs, ODOT review costs, and consultant design costs.
4. Cost Sharing Agreement:
  - a. Design Phase: BES agrees to pay ODOT for the agreed upon estimated design cost of the additional stormwater elements as requested by BES. The agreed upon design amount is \$45,000. This amount includes the design fees for ODOT and consultant. ODOT will not pay BES for review time on this added stormwater work. BES review will be covered by Agency budget separate from this IGA.
  - b. Construction Phase: The estimated construction cost of the additional stormwater elements as requested by BES is \$450,000. BES agrees to pay ODOT \$450,000 prior to the initiation of the construction phase of the project. Construction costs for the added stormwater elements as requested and prioritized by BES and incidental construction costs including but not limited to: flagging, inspection, construction engineering,

and mobilization, will be tracked during the project. If costs are less than \$450,000 at the conclusion of the work, BES will be reimbursed based on actual costs. Similarly, if costs increase over \$450,000 for the requested work, BES will be responsible for the additional amount in full.

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

## **AGENCY OBLIGATIONS**

1. Agency shall, upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from State, forward to State an advance deposit or irrevocable letter of credit in the amount of \$45,000 for the agreed upon estimated design costs for the design portion of this work after the execution of this Agreement and within thirty (30) days of receiving an invoice from ODOT. Agency agrees to make additional deposits as needed upon request from State if construction of the requested stormwater elements exceeds \$450,000. Depending on timing of portions of the Project to which the advance deposit contributes, it may be requested by State prior to Preliminary Engineering, purchase of right of way, or approximately 4-6 weeks prior to Project bid opening.
2. Agency shall perform its share of quality assurance and quality control reviewing the additional stormwater design work.
3. 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.
4. 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.
5. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than

\$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.

6. Agency shall 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.
7. 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.
8. 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 stormwater improvements under this Agreement). Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
9. Agency certifies and represents that the individual signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
10. Agency's Project Manager for this Project is Dave Nunamaker, 1120 SW 5<sup>th</sup> Ave #100, Portland, OR 97204, [Dave.Nunamaker@portlandoregon.gov](mailto:Dave.Nunamaker@portlandoregon.gov), 503-823-7266, or assigned designee upon that 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 delivering the Project. Under this Agreement, State shall also be responsible for designing and constructing the additional stormwater improvements as requested by Agency.
2. State shall, upon execution of the agreement, forward to Agency a letter of request for an advance deposit or irrevocable letter of credit in the amount of \$45,000 for payment of improvements for the Project. 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, State shall either send to Agency a bill for the amount which, when added to Agency's advance deposit, will equal 100 percent of the total state costs for Project or State will refund to Agency any portion of said advance deposit which is in excess of the total State costs for Project.
4. 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.
5. 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.
6. 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.
7. State's Project Manager for this Project is Jennifer Bachman, Resident Engineer – Consultant Projects, Jennifer.L.Bachman@odot.oregon.gov, 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. 73000-00006185

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**, by and through its  
**BUREAU OF ENVIRONMENTAL SERVICES**

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO FORM**

By \_\_\_\_\_  
Approved as to form  
by *Eric Shaffner*

Date 4/27/22  
for the City Attorney

**Agency Contact:**

Dave Nunamaker  
1120 SW 5<sup>th</sup> Ave, #100  
Portland, OR 97204  
[Dave.Nunamaker@portlandoregon.gov](mailto:Dave.Nunamaker@portlandoregon.gov)  
503-823-7266

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

By \_\_\_\_\_  
Region 1 Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Area Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By Herbert Lovejoy  
Assistant Attorney General

Date via email dated March 28, 2022

**State Contact:**

Jen Bachman  
123 NW Flanders Street  
Portland, OR 97209  
503-853-5378  
[Jennifer.l.bachman@odot.oregon.gov](mailto:Jennifer.l.bachman@odot.oregon.gov)



EXHIBIT A

