

**AGREEMENT FOR SERVICES**  
**Intergovernmental**  
**122<sup>nd</sup> Ave Safety Upgrades: Sandy Blvd to Foster Rd**

**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," both herein referred to individually as "Party" and collectively as "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, a state agency may enter into agreements with units of local government for the performance of any or all functions and activities that state agency, its officers, or agents have the authority to perform.
2. Agency received Federal discretionary funds that originate for USDOT's Safe Streets For All funding program that will contribute to the 122<sup>nd</sup> Ave Safety Upgrades: Sandy Blvd to Foster Road project key number 23556.
3. Agency has requested that ODOT perform oversight and consultant services for the project during the following phases: Project Engineering (PE), Right of Way (ROW), Construction (CN), and Other (OTH).
4. Agency is responsible for costs associated with the work.

The Parties therefore agree as follows:

**TERMS OF AGREEMENT**

1. **Project.**

ODOT is authorized and willing to perform oversight and consultative services, as described in Exhibit A related to project key number 23556.

2. **Funding.**

The services will be financed at an estimated cost of \$85,000.00 in Agency funds. The estimate for the services is subject to change. Agency shall be responsible for any nonparticipating costs, and costs beyond the estimate.

3. **Exhibits Attached and Incorporated.**

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This Agreement includes the following exhibits, each of which is attached and incorporated into this Agreement by reference:

- Exhibit TCD –Terms, Conditions and Definitions
- Exhibit A – Statement of Work and Delivery Schedule
- Exhibit B – Compensation & Payment Provisions
- Exhibit C – RESERVED. N/A Insurance
- Exhibit D – RESERVED. N/A Special Terms & Conditions
- Exhibit E – RESERVED. N/A Americans with Disabilities Act (ADA) Compliance
- Exhibit F – Contact Information
- Exhibit G – Programmatic Attachment (if applicable)

4. **Order of Precedence.**

Unless a different order is required by law, this Agreement shall be interpreted in the following order of precedence:

- 1) This Agreement (including all amendments, if any) less all Exhibits, attachments and other documents and information incorporated into this Agreement;
- 2) Exhibit TCD;
- 3) Exhibit A;
- 4) All other Exhibits;
- 5) Any other attachments;
- 6) Any documents/information incorporated into this Agreement by reference.

This provision survives termination of the Agreement.

5. **Term of Agreement; Effective Date.** The term of this Agreement shall begin on the date all required signatures are obtained (“Effective Date”) and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the Effective Date, whichever is sooner.

6. **Termination.** This Agreement may be terminated by mutual written consent of all Parties.

a. 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:

- i. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance

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- 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.
- ii. If Agency fails to provide payment of its share of the cost of the Project.
- b. Any termination of this Agreement shall not extinguish or prejudice any rights or obligations accrued to the Parties prior to termination.
7. **Certification.** Each Party certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on its behalf, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind that Party.
  8. **No Substitutions or Assignments.** State shall not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without first obtaining the written consent of Agency. Agency's consent to any subcontract (or other delegation of duties) does not relieve State of any of its duties or obligations under this Agreement. This Agreement is binding upon and inures to the benefit of each of the Parties, and, except as otherwise provided, their permitted legal successors and assigns.
  9. **No Third Party Beneficiaries.** Agency and State are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement. This provision survives termination of the Agreement.
  10. **Waiver; Amendment.** 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. This provision survives termination of the Agreement.
  11. **Notice.** Except as otherwise expressly provided in this Agreement, all notices to be given relating to this Agreement must be given in writing by email, personal delivery, or postage prepaid mail, to a Party's Project Manager at the physical address or email address set forth in Exhibit F, or to such other addresses as either Party may indicate pursuant to this paragraph. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective when the

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sender receives confirmation of receipt from the recipient (not an auto-reply). Except as set forth above in this paragraph, the Parties may agree to provide operational notices such as delivery, acceptance or rejection of services or deliverables by email as may be mutually agreed in Exhibit A.

12. **Severability.** The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid. This provision survives termination of the Agreement.
13. **Counterparts.** This Agreement may be executed in several counterparts 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.
14. **Integration.** 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.

**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.

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This Project is in the 2024-2027 Statewide Transportation Improvement Program (STIP), (Key #23556) that was adopted by the Oregon Transportation Commission on July 13, 2023 (or subsequently by amendment to the STIP).

**CITY OF PORTLAND**, by and through its  
Deputy City Administrator

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

By \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

Region 1 Manager

By \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

**LEGAL REVIEW APPROVAL (If required  
in Agency's process)**

By \_\_\_\_\_

By \_\_\_\_\_  
Agency Counsel

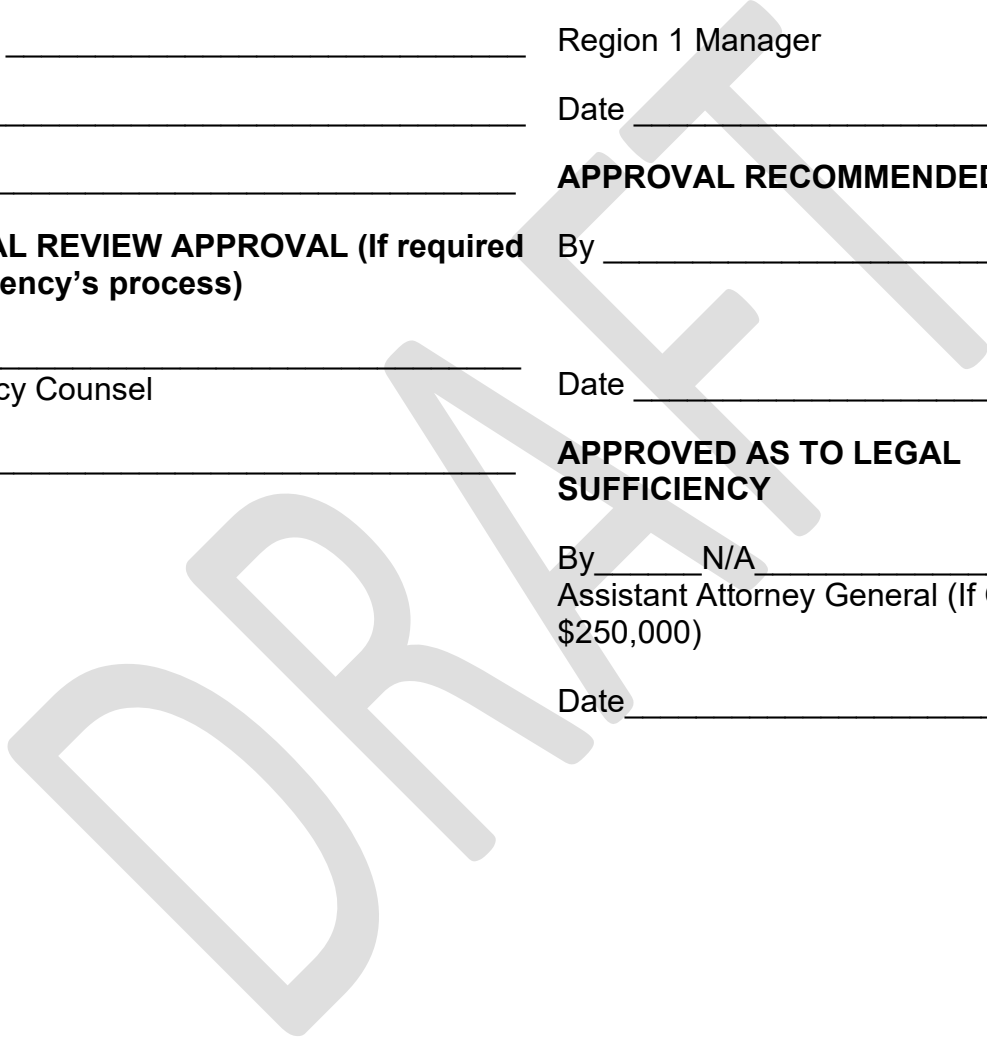
Date \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_ N/A \_\_\_\_\_  
Assistant Attorney General (If Over  
\$250,000)

Date \_\_\_\_\_



**EXHIBIT TCD – TERMS, CONDITIONS AND DEFINITIONS**

**THIRD PARTY CLAIMS:** The following paragraphs 1 through 4 shall survive termination of the Agreement.

1. 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.
2. 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.
3. 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.

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4. 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.

## **OREGONBUYS**

State (ODOT) shall, upon execution of this Agreement, enter the required data into its Electronic Procurement System, per ORS 190.115.

## **RECORDS**

The Parties acknowledge and agree 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 the Parties 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 completion of the Project and final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting party. This provision survives termination of the Agreement.

## **WORKERS COMPENSATION**

All employers, including the Agency and Agency's contractors, if any, that employ subject workers, as defined in ORS 656.027, who work under this Agreement in the State of Oregon shall comply with ORS [656.017](#) and shall provide the required Workers' Compensation Insurance coverage, unless such employers are exempt under ORS [656.126\(2\)](#). The coverage shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 for each accident. Agency shall ensure that each of its contractors complies with these requirements.

## **SUBCONTRACTOR REQUIREMENTS & INDEMNIFICATION**

1. 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 (Claims), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that State shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of State, be indemnified from and against all Claims caused or alleged to be caused by the contractor or subcontractor.

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2. Any such indemnification shall also provide that neither Agency's contractor or subcontractor nor any attorney engaged by Agency's contractor or 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 or subcontractor is prohibited from defending the State of Oregon, or that Agency's contractor or subcontractor 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 or subcontractor if the State of Oregon elects to assume its own defense.
3. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from State.

### **RIGHT OF ENTRY**

1. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.

### **COMPLIANCE WITH LAW**

Agency shall 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, 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. For those portions of the Project performed within the State of Oregon, Agency shall require its contractors to comply with the laws of the State of Oregon.

### **OWNERSHIP OF WORK PRODUCT**

1. Definitions. As used in this Agreement, the following terms have the meanings set forth below:
  - a. "Agency Intellectual Property" means any intellectual property owned by Agency and developed independently from the work under this Agreement.
  - b. "Third Party Intellectual Property" means any intellectual property owned by an entity other than State or Agency.



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- c. "Work Product" means every invention, discovery, work of authorship, trade secret, report, tangible or intangible item, or any other deliverables that Agency delivers or is required to deliver pursuant to this Agreement.
2. New Works. All Work Product created by State under this Agreement, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of Agency.
3. License Grant to State. Agency hereby grants to State an irrevocable, non-exclusive, perpetual, royalty-free license to use, make, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Work Product, and to authorize others to do the same on State's behalf.
4. Third Party Intellectual Property. To the extent Agency has the authority, Agency shall sublicense or pass through to State all Third Party Intellectual Property. Agency represents and warrants that it has provided written disclosure to State of all Third Party Intellectual Property that must be independently licensed by State to fully enjoy the benefit of the Work Product. If Agency failed to provide such written disclosure, Agency shall secure on the State's behalf and in the name of the State, an irrevocable, non-exclusive, perpetual, royalty-free license to use, make, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on State's behalf.
5. This provision survives termination of the Agreement.

### REMEDIES

1. State default.
  - a. In the event State is in default under this Agreement, Agency may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (i) termination of this Agreement, (ii) reducing or withholding payment for work or deliverables that State has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (iii) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, including for interest within the limits of ORS 293.462, and (iv) exercise of its right of recovery of overpayments under this Agreement or setoff, or both.
  - b. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
2. Agency default.

Exhibit A

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- a. In the event Agency is in default under this Agreement or in the event Agency terminates this Agreement, State's sole remedy will be:
    - i. For work compensable at a stated rate: A claim for unpaid invoices for work completed according to the requirements and acceptance criteria of this Agreement and for authorized expenses incurred and interest within the limits of ORS 293.462, less any claims Agency has against State.
    - ii. For deliverable-based work: A claim for the sum designated for completing the deliverable multiplied by the percentage of work completed and accepted by State, plus authorized expenses incurred, and interest within the limits of ORS 293.462, less previous amounts paid for the deliverable and any claims Agency has against State.
  - b. In no event will Agency be liable to State for any expenses related to termination of this Agreement, including attorney fees. If previous amounts paid to State exceed the amount due to State, State shall promptly pay any excess to Agency.
3. The rights and remedies set forth in this Agreement are not intended to be exhaustive and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies at law or in equity.
  4. This provision survives termination of the Agreement.

**EXHIBIT A**  
**STATEMENT OF WORK AND DELIVERABLE SCHEDULE**  
**PROJECT: 122<sup>nd</sup> Ave Safety Upgrades: Sandy Blvd to Foster Rd**  
**PROJECT DESCRIPTION and OVERVIEW of SERVICES**

Agency will deliver the project which includes safety improvements along SE 122nd Avenue between SE Foster Road and NE Sandy Boulevard in the City of Portland. See attached map. The project is anticipated to include the following or similar improvements:

1. Between SE Foster Road to SE Rhone Street:
  - a. Reducing the number of motor vehicle travel lanes from five to three and working with community and stakeholders to determine how to use the additional space to comprehensively improve safety. This could include removal of pavement, modification of curbs, and/or addition of trees.
  - b. Repaving 122nd Avenue between SE Foster Road and SE Schiller Street and upgrading curb ramps to ADA standards.
  - c. Adding approximately seven new, unsignalized, crossings.
  - d. Converting the signalized intersection at SE 122nd Avenue and SE Harold Street into a roundabout
  - e. Improving the intersection of SE Foster Avenue and SE 122<sup>nd</sup> Avenue
  - f. Improving select bus stops
2. From SE Powell Boulevard to NE Sandy Boulevard:
  - a. Making civil and signal modifications to the intersections of 122nd Avenue and other arterials such as: SE Powell Boulevard, SE Division Street, E Burnside Street, and NE Glisan Street.
  - b. Making traffic signal upgrades at all signalized intersections. Modifications will include installing or modifying existing pushbuttons to meet ADA, replacing signal controllers, adding detection, and/or adding new right-turn and bicycle signal heads.
  - c. Removing the existing parking lanes and converting this space to protected bicycle facilities.
  - d. Making improvements to bus stops at high priority locations.
  - e. Filling gaps in lighting between NE San Rafael Street and NE Sandy Boulevard.
3. For the entire project area:
  - a. Signing and striping
  - b. Tree trimming, removal and/or planting, as needed
  - c. Stormwater upgrades, as needed

**1. State Responsibilities**

State will provide project oversight and consultation, and other services related to Environmental work, Right of Way, Utility relocation, and project coordination as stated in number 3. below.

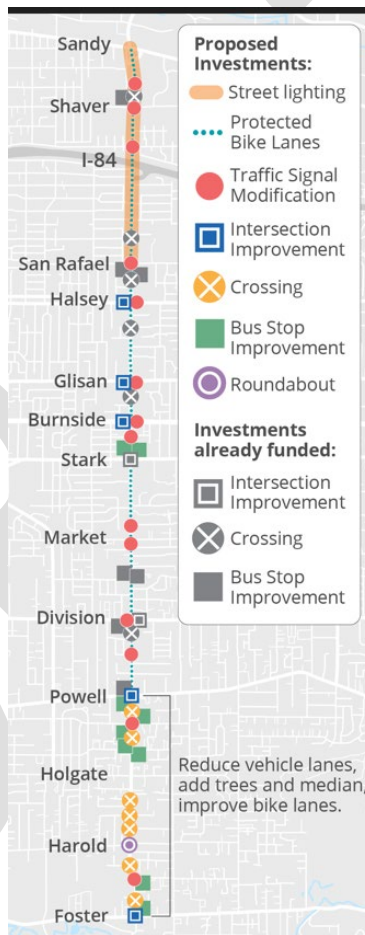
**2. Agency Responsibilities**

Agency shall pay State for services estimated in the amount of \$85,000. The estimate for services is subject to change, Agency is responsible for all costs beyond the estimate.

**3. Estimate for Services**

<u>Service</u>	<u>Lump Sum Estimate</u>
Environmental	\$55,000
Right of Way	\$20,000
Utility Relocation	\$5,000
Local Agency Liaison Coordination	\$5,000
<b>TOTAL</b>	<b>\$85,000</b>

**PROJECT LOCATION MAP**



## EXHIBIT B - COMPENSATION AND PAYMENT PROVISIONS

### AGENCY OBLIGATIONS

1. In consideration for the services performed under this Agreement, Agency agrees to reimburse State for Eligible Costs within forty-five (45) days of receipt and approval by Agency of monthly Project invoices. Agency agrees to pay State a maximum amount of \$85,000.00. Said maximum amount shall include reimbursement for all expenses. Travel expenses shall be reimbursed to State in accordance with the current State of Oregon Department of Administrative Services' rates, available at <http://www.oregon.gov/das/Financial/Acctng/Pages/Travel.aspx>.
2. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of current biennial budget.

### STATE OBLIGATIONS

1. State shall present invoices for 100 percent of Eligible Costs incurred by State on behalf of the Project directly to Agency's project manager for review and approval.
  - a. Such invoices shall be in a form identifying the Project and agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one month duration, based on actual expenses incurred.
  - b. Eligible Costs are reasonable and necessary actual costs incurred by the State in performance of the Project.
  - c. Travel expenses shall be reimbursed to Agency in accordance with the current State of Oregon Department of Administrative Services' rates, available at <http://www.oregon.gov/das/Financial/Acctng/Pages/Travel.aspx>.

**EXHIBIT C – INSURANCE**

**RESERVED.**

DRAFT

**EXHIBIT D - SPECIAL TERMS AND CONDITIONS**

**RESERVED.**

DRAFT

**EXHIBIT E - AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE**

**RESERVED.**

DRAFT



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### EXHIBIT F - CONTACT INFORMATION

1. **The Parties Contact Information is as follows:**

**a. State's Contact:**

State's Project Manager for this Agreement is:

<b>Name:</b>	Mark Hardeman
<b>Address:</b>	123 NW Flanders Street Portland, Oregon 97209
<b>Ph:</b>	503-731-8486
<b>E-mail:</b>	<a href="mailto:Mark.Hardeman@odot.oregon.gov">Mark.Hardeman@odot.oregon.gov</a>

**b. Agency Contacts:**

Agency's Project Manager for this Agreement is:

<b>Name:</b>	Bryan Poole
<b>Address:</b>	1120 SW Fifth Ave., Suite 1331 Portland, Oregon 97204
<b>Ph:</b>	971-469-3644 cell
<b>E-mail:</b>	<a href="mailto:Bryan.poole@portlandoregon.gov">Bryan.poole@portlandoregon.gov</a>

Either Party may change the Project Manager designation during the term of this Agreement by promptly sending written notice (e-mail acceptable) to the other Party, with a copy to ODOT Procurement Office.