

AMENDMENT NO. 01
COOPERATIVE IMPROVEMENT AND ABANDONMENT AGREEMENT
SW Canyon Court
City of Portland and Multnomah County

The State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as "ODOT," the City of Portland, a municipal corporation, acting by and through its Elected Officials, hereinafter referred to as "City," and Multnomah County, a Home Rule Political Subdivision of the State of Oregon, acting by and through its Board of Commissioners, hereinafter referred to as "County," entered into Cooperative Improvement and Abandonment Agreement No. 12082 on March 8, 1995. Said Agreement covered the construction of the Westside Corridor Project which entailed highway improvements in the Sunset Highway corridor and traffic management in conjunction with the Westside Light Rail work.

It has now been determined by ODOT, City and County that the Agreement referenced above, although remaining in full force and effect, shall be amended to clarify Project description, maintenance responsibilities, Project costs, and jurisdictional transfer limits for the purpose of completing jurisdictional transfers of Units A and B (described in ODOT OBLIGATIONS) of SW Canyon Court. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

Exhibit Modifications:

1. "EXHIBIT C-1" has been revised and shall be deleted in its entirety and replaced by "Revised EXHIBIT C1," attached hereto, and by this reference made a part hereof. All references to "Exhibit C1" shall hereinafter be referred to as "Revised Exhibit C1."
2. "Exhibit D1," "Exhibit D2" and "Exhibit D3" shall be deleted in their entirety and replaced with new exhibits labeled "MAINTENANCE RESPONSIBILITY" consisting of eight (8) sheets, specifically "Revised Exhibit D1," "Revised Exhibit D2" and "Revised Exhibit D3," and new exhibits labeled "D3A," "D3B," "D4," "D5" and "D6," which are attached hereto and by this reference made a part hereof. All references to "Exhibit D1," "Exhibit D2" and "Exhibit D3" shall hereinafter be referred to as "Revised Exhibit D1," "Revised D2" and "Revised Exhibit D3."
3. New Exhibits labeled "DRAINAGE AND UTILITIES" consisting of five (5) sheets, specifically sheets labeled "7D," "8C," "9D," "9H" and "10C," which are attached hereto and by this reference made a part hereof.
4. "Exhibit E1," "Exhibit E2," "Exhibit E3" and "Exhibit 4," shall be deleted in their entirety and replaced with new exhibits labeled "Revised Exhibit E1," "Revised Exhibit E2," "Revised Exhibit E3" and "Revised Exhibit E4" and an additional exhibit shall be added labeled "Exhibit E5," attached hereto and by this reference made a part hereof. All references to "Exhibit E1," "Exhibit E2," "Exhibit E3" and "Exhibit E4" shall hereinafter be referred to as "Revised Exhibit E1," "Revised Exhibit E2," "Revised Exhibit E3" and "Revised Exhibit E4."

RECITALS, paragraph 3, page 2, which reads:

3. By the authority granted in ORS 366.770 and 366.775, ODOT may enter into cooperative agreements with cities and counties 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.

Shall be deleted in its entirety and replaced with the following:

3. By the authority granted in 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.

RECITALS, paragraph 14, page 4, which reads:

14. All documents and publications referred to in this agreement can be obtained through ODOT's Region Office (9002 S.E. McLoughlin Blvd., Milwaukie, OR 97222).

Shall be deleted in its entirety and replaced with the following:

14. All documents and publications referred to in this Agreement can be obtained through ODOT's Region Office (123 N.W. Flanders St., Portland, OR. 97209).

Insert a new section, TERMS OF AGREEMENT, paragraphs 1 through 5, to read as follows:

1. ODOT maintains a State Route system and a U.S. Route system to assist the motoring public in their travels. Designated routes may be composed of both state highway and local roads. Designation and elimination of state routes are under authority of the Oregon Transportation Commission (OTC). U.S. Route designations are administered by the Special Committee on U.S. Route Numbering of the American Association of State Highway and Transportation Officials (AASHTO).
2. The National Highway System (NHS) was adopted by Congress as part of the National Highway System Designation Act of 1995. The Federal Highway Administration administers this program and must approve all changes in the system.
3. Because Units A and B (described in ODOT OBLIGATIONS) lie within the right of way boundaries of Sunset Highway, State Primary Highway No. 47, U.S. Route No. 26 (US 26), the Units are either on the NHS or were part of the federal aid primary system in existence on June 1, 1991 and continue to be subject to the requirements of 23 USC 131 and the Oregon Motorist Information Act, ORS 377.300 to 377.840 and 377.992, after transfer, and State retains authority to enforce those laws. In accordance with those laws, State is required to continue regulating outdoor advertising signs, which includes conducting surveillance along these highways. Oversight is the responsibility of the Outdoor Advertising Sign Program in the ODOT Right of Way Program Management Unit.

4. Access control will continue to be maintained on Sunset Highway, US 26 and no access to said highway will be allowed from Units A or B. Access to Units A and B from local area streets and roads will be the responsibility of City.
5. This Agreement becomes effective on the date all required signatures are obtained and remains in effect for the purpose of ongoing maintenance (and power if applicable) responsibilities for the useful life of the facilities constructed as part of the PROJECT. The Project must be completed within twenty (20) calendar years following the effective date of this Agreement. ODOT shall pursue approval by the OTC or designee, and the actual transfer of property shall be accomplished by acceptance and recording of the Jurisdictional Transfer Document and Relinquishment Deed(s).

ODOT OBLIGATIONS, paragraph 5, page 5, which reads:

5. ODOT shall, as a PROJECT cost, reconstruct city streets and county roads (in the areas shown in the attached Exhibit 'C1' and Exhibit 'C2') to City and County standards and specifications as agreed to by City and County. ODOT shall also furnish and install traffic control devices, illumination poles and lamps in accordance with the City and County standards. City and County shall have final approval, within their respective jurisdictions, regarding street and road locations, raised medians, street light locations, and grade changes. ODOT may request design exceptions from City and County using established procedures.

Shall be deleted in its entirety and replaced with the following:

5. ODOT shall, as a PROJECT cost, reconstruct city streets and county roads (in the areas shown in the attached Revised Exhibit C1 and Exhibit C2) to City and County standards and specifications as agreed to by City and County. ODOT shall also furnish and install traffic control devices, illumination poles and lamps in accordance with the City and County standards. City and County shall have final approval, within their respective jurisdictions, regarding street and road locations, raised medians, street light locations, and grade changes. ODOT may request design exceptions from City and County using established procedures.

ODOT OBLIGATIONS, Paragraph 10, page 6, which reads:

10. ODOT shall, upon completion of the PROJECT, relinquish to the City or County all right-of-way and easements obtained or purchased in the name of the City or County. Proposed City, County, and ODOT jurisdiction is approximately as shown on Exhibit 'C1' and Exhibit 'C2', attached hereto and by this reference made a part hereof. Upon final decision of jurisdictions, a supplement to this agreement may be required.

Shall be deleted in its entirety and replaced with the following:

10. ODOT shall, upon completion of that portion of the PROJECT affecting the Sylvan Interchange, relinquish by Relinquishment Deed all "operating" right of way obtained or purchased on behalf of the City or County. ODOT acquired fee title to the land underlying certain streets and roads constructed or reconstructed by ODOT and will pass that title to the appropriate jurisdiction for use as public roadway. Should the land cease to be used for public roadway, title to the land will automatically revert to ODOT.

ODOT OBLIGATIONS, paragraph 11, page 6, which reads:

11. ODOT shall perform roadway, bike path, irrigation, and drainage maintenance within ODOT right-of-way limits which includes Sunset Highway, the bike path in areas where it separates from S.W. Canyon Court, the ramps leading to and from the Highland (Zoo) and Sylvan Interchanges, that section of roadway which crosses the Highland (Zoo) structure between the eastbound ramp terminal and S.W. Canyon Court, and all ODOT obtained "subsurface easements" for drainage and retaining wall tie-backs as shown on Exhibit 'D1', 'D2' and 'D3' attached hereto and by this reference made a part hereof.

Shall be deleted in its entirety and replaced with the following:

11. ODOT shall perform roadway, bike path, irrigation and drainage maintenance within ODOT right of way limits which includes Sunset Highway, the bike path in areas where it separates from S.W. Canyon Court, the ramps leading to and from the Highland (Zoo) and Sylvan Interchanges, that section of roadway which crosses the Highland (Zoo) structure between the eastbound ramp terminal and S.W. Canyon Court and all ODOT obtained "subsurface easements" for drainage and retaining wall tie-backs as shown on the Exhibits labeled "MAINTENANCE RESPONSIBILITY," including all of sheets labeled "Revised D1," "Revised Exhibit D2," "Revised Exhibit D3," "D3A," "D3B," "D 4," "D5" and "D6" and the Exhibits labeled "DRAINAGE AND UTILITIES", including all of sheets 7D, 8C, 9D," "9H" and 10C.

ODOT OBLIGATIONS, paragraph 12, page 6, which reads:

12. ODOT shall also maintain all landscaping within ODOT right-of-way limits, with the exception of the landscaped areas at the Highland (Zoo) Interchange which will be maintained by the City as shown on the attached Exhibit 'D1', 'D2' and 'D3'.

Shall be deleted in its entirety and replaced with the following:

12. ODOT shall also maintain all landscaping within ODOT right of way limits, with the exception of the landscaped areas at the Highland (Zoo) Interchange which will be maintained by City as shown on the Exhibit herein labeled "MAINTENANCE RESPONSIBILITY", including all of sheets D labeled "Revised Exhibit D1," Revised Exhibit D2," "Revised Exhibit D3," "D3A," "D3B," "D4," "D5" and "D6."

ODOT OBLIGATIONS, Paragraph 16, page 7, which reads:

16. ODOT shall, upon receipt of an itemized statement, reimburse City for expenses incurred as part of this PROJECT. The itemized statement shall include only those services and expenses attributable to ODOT improvements/City TMP work and exclude those for City street improvements or work related to the construction of Light Rail contract. Any overhead expenses attributable to the project shall not exceed 1.6 percent Expected City responsibilities and expenses are reflected on the attached list marked Exhibit 'E1', 'E2', 'E3' and 'E4', and by this reference made a part hereof. ODOT shall pay the City the balance due within 30 days of receipt of City billings. The City's estimated cost for these services over the duration of the PROJECT is \$520,249. ODOT's reimbursement will not exceed this

estimated amount unless agreed to and a supplement to this agreement is entered into by both City and ODOT.

Shall be deleted in its entirety and replaced with the following:

16. ODOT shall, upon receipt of an itemized statement, reimburse City for expenses incurred as part of this PROJECT. The itemized statement shall include only those services and expenses attributable to ODOT improvements/City TMP work and exclude those for City street improvements or work related to the construction of Light Rail contract. Any overhead expenses attributable to the PROJECT shall not exceed 1.6 percent. Expected City responsibilities and expenses are reflected on the attached list marked "Revised Exhibit E1," "Revised Exhibit E2," "Revised Exhibit E3," "Revised Exhibit E4" and new "Exhibit E5," and by this reference made a part hereof. ODOT shall pay the City the balance due within thirty (30) days of receipt of City billings. The City's estimated cost for these services over the duration of the PROJECT is \$1,002,695. ODOT and City acknowledge that the amount of \$520,249 (of the \$1,002,695) has already been paid to City as a portion of the total estimated cost for services. Final ODOT reimbursement will not exceed \$482,446, which represents the remaining balance of the total estimated charges, unless agreed to and an amendment to this agreement is entered into by both City and ODOT.
 - a. ODOT reimbursement for the remaining \$482,446 in City services for the PROJECT may be made through offsetting benefits toward future City projects or by cash payment. ODOT will have the option to explore means of providing reimbursement through various funding or project assistance measures.

ODOT OBLIGATIONS, Paragraph 17, page 7, which reads:

17. ODOT shall by resolution, formally eliminate Unit A as a portion of S.W. Canyon Court bordering the Sunset Highway, ODOT Highway No. 47, from the State highway system. Said resolution shall be initiated upon completion of the project. All right, title, and interest of ODOT in the unit, including maintenance, jurisdiction, and control of said portion shall pass to and vest in the County. Any right-of-way being transferred in which ODOT has any incidence of title shall be vested in County so long as used for public road purposes. If said right-of-way is no longer used for public road purposes, it shall automatically revert to ODOT. Unit A is indicated on the map attached hereto, marked Exhibit C1, and by this reference made a part hereof and is also described as follows:

All the land within the right-of-way boundaries of that portion of S.W. Canyon Court, north of the Sunset Highway which is State primary Highway No. 47, from its intersection with the Multnomah County Line (appx. M.P. 72.14) westerly to its intersection with S.W. Highland Parkway (appx. M.P. 71.76). All land within Unit A lies in Sections 5 & 6 of Township 1S, Range 1E, Willamette Meridian; Multnomah County, Oregon.

Shall be deleted in its entirety and replaced with the following:

17. Upon adoption of a Resolution by the Oregon Transportation Commission or designee, providing for elimination of Unit A, as hereafter defined, as a portion of the state highway

system, and upon completion of that portion of the Westside Corridor Project affecting SW Canyon Court within the described area of Unit A, ODOT shall formally eliminate Unit A as a portion of the Sunset Highway, State Primary No. 47, U.S. 26, and the state highway system. Upon acceptance and recording of a Jurisdictional Transfer Document, all right, title and interest of ODOT including all maintenance, jurisdiction and control, shall pass to and vest in City. If said right of way is no longer used for public road purposes, it shall automatically revert to ODOT. Unit A is shown on Revised Exhibit C1, and is described as follows:

Unit A

All that portion of the right of way boundaries of the Sunset Highway No. 47, lying within Frontage Road No. 047CO (S.W. Canyon Court), as constructed, beginning at the beginning of State jurisdiction of said frontage road at mile point 71.76 of said frontage road; thence running Southeasterly along said frontage road to the Easterly line of THE HIGHLANDS, PLAT NO. 1, Multnomah County, Oregon at mile point 72.14 of said frontage road, said right of way boundaries lying in Sections 5 and 6, Township 1 South, Range 1 East W.M.

ODOT OBLIGATIONS, paragraph 18, page 7 and 8, which reads:

18. ODOT shall by resolution, formally eliminate Unit B as a portion of S.W. Canyon Court bordering the Sunset Highway, State primary Highway No. 47, from the State highway system. Said resolution shall be initiated upon completion of the project. All right, title, and interest of ODOT in the unit, including maintenance, jurisdiction, and control of said portion shall pass to and vest in the City. Any right-of-way being transferred in which ODOT has any incidence of title shall be vested in City so long as used for public road purposes. If said right-of-way is no longer used for public road purposes, it shall automatically revert to ODOT. Unit B is indicated on the map attached hereto, marked Exhibit 'C1', and by this reference made a part hereof and is also described as follows:

All the land within the right-of-way boundaries of that portion of S.W. Canyon Court, north of the Sunset Highway which is State primary Highway No. 47, from the Zoo Interchange (appx. M.P. 72.18) westerly to its intersection with the Multnomah County Line (appx. M.P. 72.14) All land with Unit B lies in Section 5 of Township 1S, range 1E, Willamette Meridian; Multnomah County, Oregon.

Shall be deleted in its entirety and replaced with the following:

18. Upon adoption of a Resolution by the Oregon Transportation Commission or designee, providing for elimination of Unit B, as hereafter defined, as a portion of the state highway system, and upon completion of that portion of the Westside Corridor Project affecting SW Canyon Court within the described area of Unit B. ODOT shall formally eliminate Unit B as a portion of the Sunset Highway, State primary Highway No. 47, U.S. 26, and the state highway system., Upon acceptance and recording of a Jurisdictional Transfer Document, all right, title and interest of ODOT including all maintenance, jurisdiction, and control, shall

pass to and vest in the City. If said right of way is no longer used for public road purposes, it shall automatically revert to ODOT. Unit B is shown on Revised Exhibit C1, and is described as follows:

Unit B

All that portion of the right of way boundaries of the Sunset Highway No. 47, lying within Frontage Road No. 047CO (S.W. Canyon Court), as constructed, beginning at the Easterly line of THE HIGHLANDS, PLAT NO. 1, Multnomah County, Oregon, at mile point 72.14 of said frontage road; thence Southeasterly along said frontage road to a line parallel with and 25.00 feet Northwesterly of the "K2" center line of S.W. Zoo Road, as constructed, at mile point 72.19 of said frontage road, said right of way boundaries lying in Section 5, Township 1 South, Range 1 East, W.M.

Insert new ODOT OBLIGATIONS, paragraphs 19 and 20, to read as follows:

19. ODOT shall maintain those portions of the subsurface drainage and utility lines notated as 'ODOT', lying within the Camelot-Sylvan Interchange (Phase 2) Section of Project, which are shown in detail on the Exhibits herein labeled "DRAINAGE AND UTILITIES," including all of sheets "7D," "8C," "9D," "9H" and "10C." Maintenance of the drainage and utility lines will be divided between ODOT and City as indicated on the aforementioned exhibit sheets.
20. ODOT shall be responsible for the removal of any damaged stone fascia from the landscape planters on the Sylvan Bridge and shall supply to the City replacement fascia that is pre-cut to field dimensions.

CITY OBLIGATIONS, paragraph 11, page 10, which reads:

11. City shall upon completion of PROJECT, maintain any portion of PROJECT which is within City right-of-way limits or as per City/County agreement dated December 23, 1971 and supplement dated July 1, 1984. Such maintenance includes the surface roadway that is associated with the Sylvan structure over Sunset Highway (unless final alignment selection falls within County jurisdiction outside of City limits) and that portion of S.W. Canyon Court transferred to the City with this agreement from the Zoo (Highland) Interchange to the County/City limits. City shall also continue to maintain the surface roadway that is associated with the S.W. Yamhill and Morrison structures over the Stadium Freeway where Tri-met will be constructing tracks for the light-rail. The roadway maintenance entails patching, striping, drainage, signing, snow removal, sanding, sweeping.

City maintenance responsibilities shall also include exterior and structural maintenance of all retaining walls constructed within City right-of-way and all landscape maintenance (including irrigation) upon the Sylvan structure crossing Sunset Highway, the Zoo Interchange (with the exception of the area currently maintained by Metro), and all areas north of the landslide wall along S.W. Canyon Court (see details on the attached Exhibit 'D1', 'D2' and 'D3'). City shall also maintain the bike lane along that portion included as part of S.W. Canyon Court.

Shall be deleted in its entirety and replaced with the following:

11. City shall, upon completion of PROJECT, maintain any portion of PROJECT which is within City right-of-way limits or as per City/County agreement dated December 23, 1971 and supplement dated July 1, 1984. Such maintenance includes the following features associated with the Sylvan structure over Sunset Highway:

- a. Asphalt roadway surface, to include grinding, paving, patching, sweeping, snow removal, striping and drainage. (Currently the roadway surface is concrete and will be maintenance responsibility of ODOT. If in the future the bridge deck is overlaid with asphalt concrete, surface maintenance shall revert to City.)
- b. Landscape planter walls including removal of graffiti, installation of anchor pins, installation of fascia and placement of mortar between fascia joints. (ODOT will remove damaged fascia and supply replacement fascia, pre-cut to field dimensions.)
- c. Maintain pedestrian benches including replacement and installation if necessary.
- d. Provide regular maintenance of drainage inlets and grates including removal of any potential obstruction to the free flow of surface water into drainage gates.
- e. Provide, install and maintain landscaping and irrigation (including power and water costs for irrigation) in bridge planters.
- f. Provide, install and maintain pedestrian lighting (including all power costs). Special pedestrian lighting will be provided per design plans.
- g. Provide, install and maintain landscaping and irrigation (including power and water costs for irrigation) for the traffic islands located in S.W. Skyline Boulevard north of the Sylvan structure and in S.W. Scholls Ferry Road south of the Sylvan structure.
- h. Maintain ornamental pilasters at both ends of the Sylvan structure including ornamental caps and plaques.

City shall also maintain the surface roadway associated with the S.W. Yamhill and Morrison structures over the Stadium Freeway where Tri-Met has constructed tracks for the light-rail. The roadway maintenance will include patching, striping, drainage, signing, snow removal, sanding and sweeping.

City maintenance responsibilities shall also include those areas identified as "City of Portland" and shown in detail on the attached Exhibit titled "MAINTENANCE RESPONSIBILITY," consisting of all the sheets labeled "Revised Exhibit D1," "Revised Exhibit D2," "Revised Exhibit D3" "D3A," "D3B," "D4," "D5" and "D6." City will provide exterior and structural maintenance of all retaining walls as well as landscaping, mowing, trimming and irrigation (including power and water costs for irrigation) of vegetated areas within City limits or additional areas of responsibility as City and County may agree. City shall maintain landscaping at the Zoo Interchange (with the exception of the area currently

maintained by Metro) and all areas north of the landslide wall along S.W. Canyon Court. City shall also maintain the bike path where the bike path is included as part of S.W. Canyon Court.

CITY OBLIGATIONS, paragraph 13, page 11, which reads:

13. City shall, upon PROJECT completion, maintain and operate all illumination as part of this PROJECT except for illumination on the Sunset Highway, all ramps and the Zoo (Highland) interchange structure, which will be ODOT's responsibility. This includes all illumination across the Sylvan structure (unless final structure alignment selection falls within County jurisdiction outside of City limits), and all illumination installed north of the westbound Sunset off-ramp to S.W. Canyon Court.

Shall be deleted in its entirety and replaced with the following:

13. City shall, upon PROJECT completion, maintain and operate all illumination (including power costs) installed as part of PROJECT except for illumination on the Sunset Highway, all ramps and the Zoo (Highland) Interchange structure, which will be ODOT's responsibility, including power costs. City shall maintain all highway and pedestrian illumination across the Sylvan structure and all illumination installed north of the westbound Sunset off-ramp and south of the eastbound Sunset off-ramp, including all power costs.

CITY OBLIGATIONS, Paragraph 16, page 11, which reads:

16. City agrees to accept all of ODOT's right, title and interest in Unit B; to accept jurisdiction and control over the unit; and to maintain the unit as a portion of its city street system as long as needed for the service of persons living thereon or a community served thereby. Any right-of-way being transferred in which ODOT has any title shall be vested in City so long as used for public road purposes. If said right-of-way is no longer used for public road purposes, it shall automatically revert to ODOT.

Shall be deleted in its entirety and replaced with the following:

16. City agrees to accept all of ODOT's right, title and interest in Units A and B; to accept jurisdiction and control over the units; and to maintain the units as portions of its city street system as long as needed for the service of persons living thereon or a community served thereby. Any right of way being transferred in which ODOT has any title shall be vested in City so long as used for public road purposes. If said right of way is no longer used for public road purposes, it shall automatically revert to ODOT. Unit A and Unit B are as described in ODOT Obligations, Paragraphs 17 and 18 and as indicated on the attached map marked "Revised Exhibit C1." For the sake of Interchange Management, City specifically agrees to retain access control to Unit A and Unit B as shown on Exhibit B1 to Cooperative Improvement and Abandonment Agreement 12082.

Insert new CITY OBLIGATIONS, paragraphs 20 and 21 to read as follows:

20. City shall accept all right, title and interest in the "operating" right of way obtained or purchased on behalf of the City. ODOT acquired fee title to the land underlying certain

streets constructed or reconstructed by ODOT within City jurisdiction, and will pass that title to City for use as public roadway. No "excess" right of way which may have been acquired by ODOT will be transferred. Transfer of operating right of way will be by separate Relinquishment Deed. Should the land cease to be used for public roadway, title to the land will automatically revert to ODOT.

21. City shall maintain those portions of the subsurface drainage and utility lines notated as 'City of Portland', lying within the Camelot-Sylvan Interchange (Phase 2) Section of Project, which are shown in detail on the Exhibits herein labeled "DRAINAGE AND UTILITIES," including all sheets 7D, 8C, 9D, 9H and 10C. Maintenance of the drainage and utility lines will be divided between ODOT and City as indicated on the aforesaid exhibit sheets.

COUNTY OBLIGATIONS, paragraph 2, page 12, which reads:

2. County hereby grants ODOT the right to enter onto and occupy county right-of-way for the performance of road construction and installation of traffic signal and illumination equipment including vehicle detector loops, and for ODOT's maintenance of landslide wall tie-backs and drainage facilities on ODOT-obtained subsurface easements north of S.W. Canyon Court as shown on the attached Exhibit 'D1', 'D2' and 'D3'.

Shall be deleted in its entirety and replaced with the following:

2. County hereby grants ODOT the right to enter onto and occupy county right-of-way for the performance of road construction and installation of traffic signal and illumination equipment including vehicle detector loops, and for ODOT's maintenance of landslide wall tie-backs and drainage facilities on ODOT-obtained subsurface easements north of S.W. Canyon Court as shown on the attached Revised Exhibit D1, Revised Exhibit D2, Revised Exhibit D3, D3A, D3B, D4, D5 and D6.

COUNTY OBLIGATIONS, paragraph 8, shall be deleted in its entirety and shall be identified as RESERVED.

COUNTY OBLIGATIONS, paragraph 9, page 13, which reads:

9. County agrees, upon completion of the roadway transfer, to be responsible for all maintenance (currently contracted to City as per City/County agreement) of the transferred portion of S.W. Canyon Court as well as maintaining all landscaping along S.W. Canyon Court as shown on Exhibit 'D1', 'D2' and 'D3' and described in City Obligations No. 11.

Shall be deleted in its entirety and replaced with the following:

9. County acknowledges its underlying responsibility for maintenance of those portions of road lying within County jurisdiction. It is understood, however, that County and City have entered into a maintenance agreement whereby City will accept road maintenance obligations from County. Based on that understanding and for the sake of simplicity, the Exhibit labeled "MAINTENANCE RESPONSIBILITY" consisting of all sheets "Revised Exhibits D1," "Revised Exhibit D2," "Revised Exhibit D3," "D3A," "D3B," "D4," "D5" and "D6,"

attached hereto, mark the areas of maintenance responsibility only as "ODOT Maintenance" and "City Maintenance."

Insert new COUNTY OBLIGATIONS, paragraph 12, to read as follows:

12. ODOT acquired fee title to certain real property underlying those certain roads constructed or reconstructed by ODOT within the County jurisdiction area. ODOT knows of no preexisting hazardous material or waste release of said real property. County shall accept the transfer of road jurisdiction authority from ODOT over the real property obtained or purchased on behalf of the County. No "excess" right of way which may have been acquired by ODOT will be transferred. Transfer of road jurisdiction authority will be by separate Relinquishment Deed. Should the land cease to be used for public roadway, all right, title and interest to the land will automatically revert to ODOT.

Insert new GENERAL PROVISIONS, paragraphs 12 through 14, to read as follows:

12. The Parties shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless each other, their officers and employees from any and all claims, suits, and liabilities which may occur in their respective performance of this Project.
13. Notwithstanding the foregoing defense obligations under the Paragraph above, no Party nor any attorney engaged by any Party(s) shall defend any claim in the name of the any Party(s) or any agency/department/division of such other Party(s), nor purport to act as legal representative of the any Party(s) or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of any such other Party(s). Each Party may, at anytime at its election assume its own defense and settlement in the event that it determines that the other Party(s) is/are prohibited from defending it, or other Party(s) is/are not adequately defending its interests, or that an important governmental principle is at issue or that it is in the best interests of the Party(s) to do so. Each Party reserves all rights to pursue any claims it may have against the other Parties if it elects to assume its own defense.
14. City and County each certify and represent that the individual(s)(representing their agencies) signing this Agreement have been authorized to enter into and execute this Agreement on behalf of City and County, under the direction or approval of their governing bodies, commissions, boards, officers, members or representatives, and to legally bind City and County.

This Amendment 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 Amendment so executed shall constitute an original.

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.

ODOT/City of Portland/Multnomah County
Agreement No. 12082-01

MULTNOMAH COUNTY, by and through its elected
officials

By _____
Jeff Cogen, Chair
Board of County Commissioners
Date _____

APPROVED AS TO LEGAL SUFFICIENCY
HENRY H. LAZENBY, JR., COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON
By /s/Matthew O. Ryan
Assistant County Attorney

Date July 7, 2011

CITY OF PORTLAND, by and through its elected
officials

By _____
Mayor

Date _____

By _____
Auditor

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
City Counsel

Date _____

City Contact:

Brett Kesterson, P.E. Senior Engineer
City of Portland – Transportation Engineering &
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1120 SW 5th Ave, Suite 800
Portland, OR 97204
503-823-7163
brett.kesterson@portlandoregon.gov

County Contact:

Brian Vincent, County Engineer - Road Engineering &
Operations Manager
Multnomah County – Road Engineering
1620 SE 190th Ave.
Portland, OR 97233
503-988-3321 X29642
brian.s.vincent@co.multnomah.or.us

STATE OF OREGON, by and through its
Department of Transportation

By _____
Highway Division Manager

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief Engineer

Date _____

By _____
State Right of Way Manager

Date _____

By _____
Region 1 Manager

Date _____

By _____
Region 1 Right of Way Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

ODOT Contact:

Eileen Breedlove, Project Manager
ODOT – Region 1
123 NW Flanders St.
Portland, OR. 97209
503-731-8433
eileen.p.breedlove@odot.state.or.us