

**COOPERATIVE IMPROVEMENT and MAINTENANCE AGREEMENT
Transport Regional Arterial Traffic Control Enhancement Project**

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 “ODOT”; the City of Beaverton, acting by and through its elected officials, hereinafter referred to as “Beaverton;” the City of Gresham, acting by and through its elected officials, hereinafter referred to as “Gresham;” the City of Portland; acting by and through its elected officials, hereinafter referred to as “Portland;” Clackamas County, acting by and through its elected officials, hereinafter referred to as “Clackamas Co.,” Multnomah County acting by and through its elected officials, hereinafter referred to as “Multnomah Co.,” and Washington County, acting by and through its elected officials, hereinafter referred to as “Washington Co”, collectively all parties are hereinafter referred to as the “Parties”, or individually as “Party”. Under the “Obligations” portion of this Agreement, all Parties, other than ODOT, shall be referred to as “the other Parties”.

RECITALS

1. The signal corridors of Beaverton-Tigard Highway (OR 217), Cascade North Highway (OR 213N), Columbia River, Highway (I-84), East Portland Highway (I-205), Mt. Hood Highway (US26), Pacific Highway (I-5), Pacific Highway West (99W), Sandy Boulevard (OR 30), Scholls Ferry Road (OR 210), Sunset Highway (US 26), Tualatin Valley Highway/Canyon Road (OR 8), are part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). The cross streets and gateway streets to the aforementioned state highway signal corridors are part of city street systems and or county road systems under the jurisdiction and control of the other Parties to this Agreement.
2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, ODOT may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting Parties.
3. By the authority granted in ORS 810.210, ODOT is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where ODOT deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than ODOT, except with its written approval. Traffic signal work on this Project will conform to the current State standards and specifications.
4. The American Recovery and Reinvestment Act of 2009, hereinafter referred to as “ARRA”, provides funding for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization, for fiscal years 2009 and 2010.

ODOT, the Cities of Beaverton, Gresham, and Portland; and the Counties of Clackamas, Multnomah and Washington
Agreement No. 25725

5. The ARRA provides each state a sub-allocation of ARRA funds for cities, counties and metropolitan areas and an allocation for use in any area of the state.
6. ODOT is a member of TransPort, a regional advisory coordinating committee on Intelligent Transportation Systems (ITS). TransPort is a sub-committee of Metro's Transportation Policy Alternatives Committee. The membership of TransPort consists of the stakeholders from throughout Portland and Vancouver metropolitan areas that meet monthly to share information as well as coordinate and collaborate on ITS projects. The chair person at the time of the application for funding for this Project was the ODOT Region 1 Traffic Engineer.
7. ODOT, in collaboration with certain other members of TransPort took the lead in submitting and obtaining acceptance for the 2009 ARRA funding for a project identified as the "TransPort Regional Arterial Traffic Control Enhancement Project"; hereinafter referred to as "Project". As the Project funding had to be obligated by June 18, 2009, and Project work dealt with enhancing existing signals, the Parties expedited the design, review and construction process through existing signal and maintenance agreements. Construction of the Project would be performed by ODOT and by permits to ODOT from the other Parties for equipment installed on right of way other than ODOT's, with the affected permitting Party inspecting work performed on its own right of way. The intended procedure for accomplishing such extensive activities with so many other Parties and in a such a short timeframe was also memorialized by the participating Parties in a Letter of Intent, Region 1 # R1-00681, executed April, 29, 2009.

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, the Parties have agreed to the Project. The Project improves 277 traffic control systems on key arterial corridors across the Portland metropolitan region. The Project upgrades obsolete model 170 traffic controllers with 2070 controllers, which have advanced capabilities for traffic management, and use ODOT approved signal software. In addition, the Project includes certain cabinet upgrades, controller installation, minor communications upgrades, software programming and traffic signal retiming. The signal location of the Project activity is as shown on the list of affected signals attached hereto, marked Exhibit A, and by this reference made a part hereof. The purpose of this Agreement is to establish ownership and maintenance responsibilities for the upgraded traffic controllers and any other additional equipment or upgrade improvements for the successful use of the new traffic controllers, hereinafter referred to as "Project".
2. The Project is being funded with \$3,373,000 in American Recovery and Reinvestment Act (ARRA) of 2009 funds available to ODOT. The funding is for a fixed amount and if funding does not allow replacement of all the grant application locations, ODOT, under the Letter of Intent has agreed to work with the Parties in an effort to seek mutually agreed to Project cuts,

ODOT, the Cities of Beaverton, Gresham, and Portland; and the Counties of Clackamas, Multnomah and Washington
Agreement No. 25725

but final decisions, if needed, are to be made by ODOT. No ARRA funded invoices will be accepted and no ARRA funded payments will be made after September 30, 2015.

3. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years. The Project and final billing shall be completed before the ARRA required date of September 30, 2015, as stated in the prior paragraph.
4. There will be no right of way purchases, transfers or exchanges for this Project.

ODOT OBLIGATIONS

1. ODOT shall conduct the necessary preliminary engineering and design work required to produce and provide final specifications and cost estimates for the highway Project; identify and obtain all required permits; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid and contract documents; advertise for construction bid proposals; award all contracts; pay all contractor costs for equipment installed for the Project; provide technical inspection for equipment installed for the Project; provide project management services and other necessary functions for sole administration of the construction contract entered into for this Project.
2. ODOT shall, upon traffic signal turn on and proper operation, assume full ownership of the controller improvements on state highways and retain responsibility for the timing established for operation of such. Maintenance, signal timing, and power costs for signals under ODOT ownership shall continue as defined by existing Agreements between ODOT and other Parties. Maintenance, signal timing, power performed by other Parties by prior agreement shall continue as defined by those agreements.
3. ODOT allows reimbursement to any other Party or Parties whose staff have performed inspections, tests, and turn-ons of any ODOT-owned cabinets or where that other Party or Parties already perform signal equipment maintenance on behalf of ODOT with a stipulated reimbursement in place by contractual agreement. Said reimbursement is allowed to be charged to the Project under the provisions of the existing ODOT/other Party traffic signal maintenance agreement.
4. ODOT shall provide to Parties any and all design drawings, manufacturer or contractor's warranties, guarantees, operation manuals or similar items necessary to operate or maintain the physical improvements installed on any other Party's right of way.
5. ODOT's Project Manager for this Project is Bill Edmunson, 123 NW Flanders, Portland, OR, 97209, phone: 503-731-8501, email: william.e.edmunson@odot.state.or.us or assigned designee upon individual's absence. Other Parties Project Manager shall be notified in writing of any contact information changes during the term of this Agreement.

OTHER PARTIES OBLIGATIONS

1. The other Parties are responsible for the configuration and installation of the communications equipment within their own jurisdictions at their own expense. The other Parties may have had the aforementioned equipment within their jurisdictions installed by contractors, but agree that they remain responsible for the configuration and the installation of such contracted work. Final timing, installation of communication equipment and final turn on of Project equipment are the responsibility of the Party with roadway jurisdiction or the Party maintaining a roadway by previous agreement for the road authority.
2. The other Parties, upon completion of Project, shall accept ownership and control of those Project improvements and equipment connected with operation of their streets/roads included in the Project. From the point of acceptance, other Parties shall pay all future maintenance costs for such improvements. Existing maintenance and power cost sharing and obligations at the affected signal locations under Parties ownership shall continue as defined by existing Agreements.
3. Should a Party or Parties that have staff time related to inspection, test, and turn-on of any ODOT-owned cabinets, as allowed as stated in ODOT Obligations, Paragraph 2 where said Parties already perform signal equipment maintenance on behalf of ODOT, reimbursement is allowed to be charged to the Project under the provisions of the existing ODOT/other Party traffic signal maintenance agreement. Such affected other Party or Parties shall invoice ODOT in a format acceptable to ODOT and with an accompanying statement of work. Such Party or Parties shall keep accurate and complete accounting records and costs shall not exceed \$800 per signal.
4. The other Parties or their consultant's electrical inspectors shall possess a current State Certified Traffic Signal Inspector certificate, in order to inspect electrical installations on state highways. ODOT's District Permitting Office shall verify compliance with this requirement prior to construction.
5. The other Parties individually certify and represent that the individual(s) signing this Agreement have been authorized to enter into and execute this Agreement on behalf of their Party, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind other Parties.
6. Beaverton's Project Manager for this Project is Tu Ho, 4755 SW Griffith Drive, Beaverton, OR 97076, phone: 503-526-2426, email: bho@ci.beaverton.or.us or assigned designee upon individual's absence. ODOT's Project Manager shall be notified in writing of any contact information changes during the term of this Agreement.
7. Gresham's Project Manager for this Project is Jim Gelhar, 1333 NW Eastman Parkway, Gresham, 97030, phone: 503-618-2295, email: jim.gelhar@greshamoregon.gov or assigned designee upon individual's absence. ODOT's Project Manager shall be notified in writing of any contact information changes during the term of this Agreement.

ODOT, the Cities of Beaverton, Gresham, and Portland; and the Counties of Clackamas, Multnomah and Washington
Agreement No. 25725

8. Portland's Project Manager for this Project is Willie Rotich, 1120 SW 5th Avenue, Room 800, Portland, OR 97204, phone: 503-823-7679, email: Willie.rotich@pdxtrans.org or assigned designee upon individual's absence. ODOT's Project Manager shall be notified in writing of any contact information changes during the term of this Agreement.
9. Clackamas Co's Project Manager for this Project is Bikram Raghubansh, 150 Beaver Creek Road, Oregon City, OR 97045, phone: 503-742-4706, email: bikramrag@co.clackamas.or.us or assigned designee upon individual's absence. ODOT's Project Manager shall be notified in writing of any contact information changes during the term of this Agreement.
10. Multnomah Co's Project Manager for this Project is Brian Vincent, 1620 SE 190th Avenue, Portland, OR 97233, phone: 503-988-5050 x29642, email: brian.s.vincent@co.multnomah.or.us or assigned designee upon individual's absence. ODOT's Project Manager shall be notified in writing of any contact information changes during the term of this Agreement.
11. Washington Co's Project Manager for this Project is John Irwin, 1400 SW Walnut Street, Hillsboro, OR 97123, phone: 503.846.7948, email: john_irwin@co.washington.or.us or assigned designee upon individual's absence. ODOT's Project Manager shall be notified 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 all Parties.
2. ODOT may terminate this Agreement as to one or more Other Parties effective upon delivery of written notice to other Party or Parties, or at such later date as may be established by ODOT, under any of the following conditions:
 - a. If any Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If any Party fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from ODOT fail to correct such failures within ten (10) days or such longer period as ODOT may authorize.
 - c. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.

ODOT, the Cities of Beaverton, Gresham, and Portland; and the Counties of Clackamas, Multnomah and Washington
Agreement No. 25725

- 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 ODOT is prohibited from paying for such work from the planned funding source.
3. Other Party or Parties may terminate this Agreement, as to that Party or Parties, effective upon delivery of written notice to ODOT, or at such later date as may be established by other Party or Parties, under any of the following conditions:
 - a. If ODOT fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If ODOT 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 ODOT fails to correct such failures within ten (10) days or such longer period as ODOT may authorize.
4. Termination of this Agreement as to any Party or Parties other than ODOT, shall not terminate this Agreement as to the remaining Parties. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. If other Party or Parties fail to maintain facilities in accordance with the terms of this Agreement or existing signal agreements pertaining to this Agreement, ODOT, at its option, may maintain the facility and bill the responsible Party, seek an injunction to enforce the duties and obligations of this Agreement or take any other action allowed by law.
6. All employers, including other Parties, 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. All Parties shall ensure that each of their subcontractors complies with these requirements.
7. All Parties shall perform the service under this Agreement as independent contractors and shall be exclusively responsible for all costs and expenses related to their 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.
8. All Parties acknowledge and agree that State of Oregon, 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 all 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. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting Party or Parties.

ODOT, the Cities of Beaverton, Gresham, and Portland; and the Counties of Clackamas, Multnomah and Washington
Agreement No. 25725

9. All 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, or actions of any nature arising out of activities of the indemnifying Party, its officers, employees or agents in their respective performance under this Agreement. Nothing in this Paragraph shall be deemed to increase the Other Parties' liability for claims beyond the amounts stated for such entities in the Oregon Tort Claims Act, ORS 30.260 to 30.300, for 'local public bodies'.
10. Notwithstanding the foregoing defense obligations under the paragraph above, no other Party, nor any attorney engaged by any other Party shall defend any claim in the name of another Party, nor purport to act as legal representative of another Party, without the prior written consent of the legal counsel of such other Party. Each Party may, at anytime at its election assume its own defense and settlement in the event that it determines that any other Party is prohibited from defending it, or that any other Party is not adequately defending it's interests, or that an important governmental principle is at issue or that it is in the best interests of the Party to do so. Each Party reserves all rights to pursue any claims it may have against any other Party if it elects to assume its own defense.
11. The Special Provisions for the construction contract (Contract) work between the other Parties and its construction contractor(s) (Contractor) for this Project shall include the following stipulations:
 - a. Contractor shall indemnify ODOT and the other Parties and name ODOT and other Parties as third Party beneficiaries of the resulting contract.
 - b. Contractor shall indemnify, defend and hold harmless the other Parties and ODOT and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, sub-contractors, or agents under this Contract.
 - c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to ODOT and other Parties. This insurance shall include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage shall be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence shall not be less than \$ 1,000,000 for each job site or location. Each annual aggregate limit shall not be less than \$ 2,000,000.
 - d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in

ODOT, the Cities of Beaverton, Gresham, and Portland; and the Counties of Clackamas, Multnomah and Washington
Agreement No. 25725

combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence shall not be less than \$1,000,000.

- e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the Contract shall include ODOT and other Parties and its divisions, officers and employees as Additional Insured but only with respect to the Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
 - f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to ODOT and other Parties. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract.
- 12. Parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, all Parties expressly agree 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.
 - 13. Parties shall construct the Project in accordance with the requirements of ORS 276.071 including the public contracting laws within ORS Chapters 279A, 279B and 279C.
 - 14. If other Party or Parties choose to assign their contracting responsibilities to a consultant or contractor, the other Parties shall inform their consultant or contractor of the requirements of ORS 276.071, to ensure that the public contracting laws within ORS Chapters 279A, 279B and 279C are followed.
 - 15. 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.
 - 16. 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 any Party unless in writing and signed by all Parties and all necessary approvals have been obtained. Such waiver, consent, modification

ODOT, the Cities of Beaverton, Gresham, and Portland; and the Counties of Clackamas, Multnomah and Washington
Agreement No. 25725

or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

IN WITNESS WHEREOF, the Parties, by execution of this Agreement, hereby individually acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2008-20011 Statewide Transportation Improvement Program, (Key #16604) that was approved by the Oregon Transportation Commission on November 14, 2007.

The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways; to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission such as the Oregon Traffic Safety Performance Plan, or in a line item in the biennial budget approved by the Director.

SIGNATURE PAGES TO FOLLOW

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Agreement No. 25725*

City of Beaverton, by and through its elected officials

By _____
Mayor

Date _____

By _____
Recorder

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
City of Beaverton Counsel

Date _____

Date _____

City of Beaverton Contact:

Tu Ho
4755 SW Griffith Drive
Beaverton, OR 97076
Phone: 503-526-2426
Email: bho@ci.beaverton.or.us

STATE OF OREGON, by and through its Department of Transportation

By _____
Deputy Director, Highways

Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Manager

Date _____

By _____
Technical Services Manager, Chief Engineer

Date _____
State Traffic Engineer

By _____
Region 1 Traffic Engineer

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date: _____

ODOT Contact:

Bill Edmunson
123 NW Flanders
Portland, OR, 97209
Phone: 503-731-8501
Email: william.e.edmunson@odot.state.or.us

*ODOT, the Cities of Beaverton, Gresham, and Portland; and the Counties of Clackamas, Multnomah and Washington
Agreement No. 25725*

Accepted by City of Gresham

By _____
City Manager

Date _____

By _____
Recorder

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Gresham City Attorney

City of Gresham Contact:

Jim Gelhar
1333 NW Eastman Parkway
Gresham, OR 97030
Phone: 503-618-2295
Email: jim.gelhar@greshamoregon.gov

City of Portland, by and through its elected officials

By _____
Mayor

Date _____

By _____
Auditor

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
City of Portland Counsel

City of Portland Contact:

Willie Rotich
1120 SW 5th Avenue, Room 800
Portland, OR 97204
Phone: 503-823-7679
Email: Willie.rotich@pdxtrans.org

*ODOT, the Cities of Beaverton, Gresham, and Portland; and the Counties of Clackamas, Multnomah and Washington
Agreement No. 25725*

Clackamas County, by and through its elected officials

By _____
Chair

Date _____

By _____
Recorder

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Clackamas County Counsel

Clackamas County Contact:

Bikram Raghubansh
150 Beavercreek Road
Oregon City, OR 97045
Phone: 503-742-4706
Email: bikramrag@co.clackamas.or.us

Multnomah County, by and through its elected officials

By _____
Chair

Date _____

By _____
Recorder

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Multnomah County Counsel

Multnomah County Contact:

Brian Vincent
620 SE 190th Avenue
Portland, OR 97233
Phone: 503-988-5050 x29642
Email: Brian.s.vincent@co.multnomah.or.us

*ODOT, the Cities of Beaverton, Gresham, and Portland; and the Counties of Clackamas, Multnomah and Washington
Agreement No. 25725*

Washington County, by and through its elected officials

By _____
Chair

Date _____

By _____
Recorder

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Washington County Counsel

Washington County Contact:

John Irwin
1400 SW Walnut Street
Hillsboro, OR 97123
Phone: 503.846.7948
Email: john_irwin@co.washington.or.us