

INTERGOVERNMENTAL AGREEMENT
Continuous Operations Variance Permit Authorization
City of Portland

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;" and City of Portland, acting by and through its elected officials, hereinafter referred to as "City Of Portland," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in 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. Under ORS 818 the State administers a variance permit program that allows use of the roads of this state for travel by oversize/overweight vehicles and loads. The permit program includes Oversize/Overweight Continuous Operations Variance Permits (OS/OW COVP).
3. Under ORS 818.205, a OS/OW COVP authorizes oversize and overweight vehicles and loads to maintain continuous travel on specific routes over State highways, City Of Portland roads and city streets, thereby allowing the permit holder to obtain a single OS/OW COVP with travel authorizations in multiple jurisdictions for the same movement from the State or a City Of Portland. The State has adopted rules that establish the fees for OS/OW COVP in OAR 734-070-0140.
4. In order to simplify and expedite the issuance of the permits, City Of Portland desires State to issue OS/OW COVPs that authorize use of roads under City Of Portland jurisdiction for travel by oversize/overweight vehicles and loads.
5. State desires to issue OS/OW COVPs that authorize use of roads under City Of Portland jurisdiction for travel by oversize/overweight vehicles and loads according to the terms of this Agreement.

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. City Of Portland grants State, and State's authorized agents, authority to issue OS/OW COVPs for travel over roads which are under the jurisdiction of City Of Portland, in accordance with the terms of this Agreement. This Agreement

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addresses only issuance of OS/OW COVPs by State for travel over roads which are under the jurisdiction of City Of Portland. State is not authorized to issue any other type of oversize/overweight variance permit under this Agreement. .

2. This Agreement becomes effective upon the date all required signatures are obtained and shall automatically **terminate ten (10) years** from the date of execution, unless extended by a fully executed amendment.
3. Each Party will be responsible for their own costs associated with this Agreement.

CITY OF PORTLAND OBLIGATIONS

1. City Of Portland shall provide State with a list of the roads under City Of Portland jurisdiction on which travel by oversize/overweight vehicles and loads is permitted. The list shall include the maximum weights allowable for the road or road segment, and allowable dimensions, based on vertical and horizontal clearances, for the road or road segment. City Of Portland shall provide State written notice of changes in authorized roads at least four (4) weeks prior to the change.
2. City Of Portland certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of City Of Portland, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind City Of Portland.
3. City Of Portland's Contact for this Agreement is: Matthew Machado, Portland Bureau of Transportation, 1120SW 5th Ave, Room 1302, Portland OR 97204-1912, Phone: 503-823-5223, Email matthew.machado@portlandoregon.gov. City shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State shall issue OS/OW COVPs only for travel over specified City Of Portland roads.
2. State shall collect the fee established in OAR 734-070-0140 for both the State and City Of Portland. The City Of Portland fee shall be forwarded to the City Of Portland for each OS/OW COVP issued through this Agreement on a monthly basis.
3. Unless otherwise directed by City Of Portland in writing, State shall, in issuing the OS/OW COVPs, stipulate the same general and special provisions for City Of Portland roads as it does for state highways. The routes and maximum weights and dimensions which may be specified in OS/OW COVPs for City Of Portland roads shall be those set forth on the list provided to the State under Paragraph 1 of City Of Portland Obligations unless modified by the City Of Portland in writing pursuant to this paragraph

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4. State's Contact for this Agreement is: Christy Jordan, Over-Dimension Permit Manage/Freight Mobility Coordinator, ODOT - Motor Carrier Transportation Division, 3930 Fairview Industrial Dr. SE, Salem OR, 97302, 503-378-6192, christy.a.jordan@odot.state.or.us., or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. The Parties certify, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within their current appropriation or limitation of current biennial budget.
2. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
3. The Parties may terminate this Agreement effective upon delivery of written notice to either Party, or at such later date as may be established by the Parties, under any of the following conditions:
 - a. If either Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If either 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 State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If either Party fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow either Party, 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 if either Party is prohibited from paying for such work from the planned funding source.
4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. Both 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 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, City Of Portland expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the

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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.

6. Both Parties shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all cost 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.
7. All employers 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. City Of Portland shall ensure that each of its contractors complies with these requirements.
8. 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 City Of Portland 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.
9. With respect to a Third Party Claim for which State is jointly liable with City Of Portland (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 City Of Portland in such proportion as is appropriate to reflect the relative fault of State on the one hand and of City Of Portland 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 City Of Portland 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.

10. With respect to a Third Party Claim for which City Of Portland is jointly liable with State (or would be if joined in the Third Party Claim), City Of Portland 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 City Of Portland 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 City Of Portland 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. City Of Portland'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.
11. 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.
12. 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.
13. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that its signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

Signature Page to Follow

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City Of Portland, by and through its
elected officials

By _____

Date _____

By _____

Date _____

By _____

Date _____

**APPROVED FOR LEGAL
SUFFICIENCY**

By _____

City Of Portland Counsel

Date _____

City Of Portland Contact:

Matthew Machado
Portland Bureau of Transportation
1120 SW 5th Ave. Room 1302
Portland OR 97204-1912
Phone: (503) 823- 5223
Matthew.machado@portland Oregon.gov

State Contact:

Christy Jordan, Over-Dimension Permit Manager/Freight Mobility Coordinator
ODOT – Motor Carrier Transportation Division
3930 Fairview Industrial Dr. SE
Salem, OR 97302
503-378-6192
Christy.a.jordan@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____

Division Administrator, Motor Carrier
Transportation Division

Date _____

APPROVAL RECOMMENDED

By _____

Motor Carrier Services Section Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Mark F. Schumock via email

Assistant Attorney General (If Over
\$150,000)

Date February 6, 2017