

CA 17-1078

COOPERATIVE IMPROVEMENT AGREEMENT
Between
City of Portland and Washington County
SW Barnes Road Variable Message Sign

THIS AGREEMENT is made and entered into by and between the CITY OF PORTLAND, acting by and through its Bureau of Transportation, hereinafter referred to as "PBOT"; and Washington County, acting by and through its elected officials, hereinafter referred to as "County," both herein referred to individually or collectively as "Party" or "Parties".

RECITALS

1. Due to inclement weather during the winter months affecting County roads, the Parties recognize the need for Variable Message Signs (VMS) to inform the traveling public about road conditions and possible road closures due to snow, ice, slides, or other conditions; and,
2. PBOT has requested the use of County right-of way to construct and maintain up to one (1) VMS on roads subject to the jurisdiction and control of the County; and,
3. The County desires to allow use of County right-of-way for the construction and maintenance of up to one VMS which will be funded and owned by the PBOT; and,
4. It is the mutual desire of PBOT and County to enter this Agreement to cooperate with each other for PBOT to obtain the use of County right-of-way, including access permissions to enter County right-of-way for construction of the VMS, and to establish ownership and assign obligations for the construction, maintenance, operation and removal of the VMS, with the allocation of responsibilities as detailed below;

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

AGREEMENT

1. City of Portland and County agree that PBOT shall fund and construct, maintain and retain ownership of up to one (1) Variable Message Sign (VMS) on SW Barnes Road near the intersection of SW Barnes Road and SW Viewmont Drive, as described in the table attached hereto, marked as Exhibit A and by this reference made a part hereof. The VMS at this location is hereinafter referred to as "Project."

PBOT OBLIGATIONS

1. PBOT, or its consultant, shall conduct all necessary work including but not limited to field surveys, environmental studies, traffic investigations, preliminary engineering and design work required to produce and provide final plans, specifications and cost estimates for the 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, provide technical inspection, project management services and other necessary functions for sole administration of the construction contract entered into for this Project. PBOT shall cause its construction or installation contractor to name County as an additional insured on all liability insurance policies pertaining to the work.
2. The Project will be designed to meet applicable PBOT standards and County road standards. In case of discrepancy between these standards, the County shall determine all road standard issues on County Roads.
3. PBOT shall be responsible for all costs associated with construction, installation, operation and maintenance of the Project. Maintenance shall include any work within the immediate right-of-way area necessary for the proper functioning of the Project and shall include vegetation control needed to maintain sight distance associated with the Project.
4. The Project will be financed at an estimated cost of \$67,000 in PBOT funds. The estimate for the total Project cost is subject to change. PBOT shall be responsible for any Project costs beyond the estimate.
5. PBOT shall apply for and obtain a Right-of-Way Permit from County's Road Operations and Maintenance Division prior to constructing or installing the Project and prior to removal of the Project. PBOT shall comply with all conditions of the Right-of-Way Permit, including providing the County at least seventy-two (72) hours' notice prior to any work at the site other than an emergency response. Work performed in the County right-of-way on an emergency basis shall be reported to County as soon as possible but no later than one (1) business day following the response.
6. PBOT's Project Manager and County's Project Manager or designees, shall meet within thirty (30) calendar days following signature of this Agreement to review PBOT's draft designs and locations for the Project and the County's code, road standards, and permitting processes applicable to the Project. The purpose of the meeting is to determine the feasibility of PBOT's Project. PBOT shall provide available information regarding the Project at this meeting, including size, location, and any appurtenances. The City agrees to consider and incorporate County comments on the draft designs to the extent reasonable and practicable.

7. Should it be needed for construction, and in the event that the County and PBOT cannot find a location for the Project that does not require relocation, PBOT shall request that County cause to be relocated or reconstructed, all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements for the portions of the Project which are on County right-of-way.
8. PBOT shall retain ownership of the Project identified in Exhibit A upon satisfactory completion of Project construction and VMS turn-on. The VMS system shall be available for multi-use, including County messaging. PBOT will monitor all messages posted onto the VMS system, regardless of the source of message posting, at all times.
9. PBOT shall allow County to attach and maintain road and weather information system equipment (RWIS) to the VMS unless attaching such equipment would interfere with the function or maintenance of the VMS.
10. PBOT certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within PBOT's current budget.
11. PBOT shall comply with all utility locating requirements in statutes and administrative rules in connection with installation and removal of VMS signs. In particular, PBOT shall contact the appropriate utility notification center prior to any excavation work associated with the VMS signs and PBOT shall provide, or cause to have provided, utility locate marks associated with their underground facilities.
12. PBOT shall be responsible for all initial utility costs associated with the installation of the Project including, but not limited to, power and telecommunications. PBOT shall be responsible for all ongoing telecommunications bills necessary for the operation of the VMS. Once the Project is complete, PBOT shall require the electricity provider to send invoices directly to the County.
13. If PBOT or County determines for any reason that the Project should be removed, PBOT shall obtain a County Right-of-Way Permit for such work and shall remove the Project and related facilities at its own expense. PBOT shall restore the County road right-of-way to a condition equal or better to its condition prior to installation of the Project.
14. PBOT shall be responsible for the risk of loss or damage to the Project.
15. PBOT's Project Manager for this Project is Willie Rotich, PBOT, 1120 SW 5th, Room 800, Portland, OR 97204, 503-823-7679, willie.rotich@portlandoregon.gov, or

assigned designee upon individual's absence. PBOT shall notify the other Party in writing of any contact information changes during the term of this Agreement.

COUNTY OBLIGATIONS

1. County grants PBOT the use of County right-of-way for the Project listed in Exhibit A for the purposes described by this Agreement. County also grants PBOT, or its contractor, the right to enter onto County right-of-way for construction, installation, hook-up, and ongoing maintenance to assure the continuing operation of the Project. The right to enter and use County right-of-way shall commence upon issuance of a County Right-of-Way Permit approving PBOT's proposed design and location for the Project and appurtenances.
2. PBOT's Project Manager and County's Project Manager or designees shall meet within thirty (30) calendar days following signature of this Agreement to review PBOT's draft designs and locations for the Project and the County's code, road standards, and permitting processes applicable to the Project. The purpose of the meeting is to determine the feasibility of PBOT's Project. County shall advise PBOT whether the Project as proposed appears to be feasible or if changes in size, location, or other factors will be needed to obtain County permits.
3. County shall share in the usage and operation of the Project as part of a multi-use system. County shall submit all messages to be activated on the VMS system to City of Portland Traffic Operation Center (TOC). All use and operation of VMS system shall follow PBOT Policy.
4. County shall endeavor to notify PBOT Project Manager as soon as practicable of any damage, vandalism or other occurrence that threatens the Projects integrity or operation upon discovery of such events.
5. County shall, if requested by PBOT and consistent with County's authority under ORS 758.010, direct the relocation or reconstruction of all privately or publicly owned utility conduits, lines, poles, mains, pipes and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements for the portions of the Project which are on County right-of-way. Such obligation shall arise only in the event that an alternative suitable location or design, which does not require relocation, cannot be identified and deemed agreeable to PBOT and County. In addition, County's obligation under this paragraph shall be deemed fulfilled upon County making the applicable request. The City acknowledges that the County shall not be liable or held at fault for any Project delay due to relocation of any utility.
6. County shall maintain the right-of-way areas around the Project to the same standard as other similar County arterial roads.

7. If County determines for any reason that the Project should be removed, County shall provide PBOT with no less than thirty (30) days written notice for the removal of the Project. Upon removal of the Project, PBOT shall restore the County road right-of-way to a condition equal or better to its condition prior to installation of the VMS sign.
8. County certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of County, under the direction or approval of its governing body, commission, board, officers, members or representatives and to legally bind County.
9. County shall be responsible for all ongoing electricity costs associated with the operation of the VMS as well as the County traffic signal and any future RWIS equipment. County shall be responsible for all ongoing telecommunications bills necessary for the operation of the traffic signal and any future RWIS equipment.
10. County's Project Manager for this Project is Aaron Clodfelter, Washington County, 1400 SW Walnut Street, MS-51, Hillsboro, OR 97123, 503-846-7632, aaron_clodfelter@co.washington.or.us, or assigned designee upon individual's absence. County shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.
2. Parties may terminate this Agreement effective upon delivery of written notice to the other Party or at such later date as may be established in the written notice, 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. Upon the convenience of either Party.

In the event of termination under this provision, the Parties agree to cooperate in good faith to wind up any obligations under this Agreement as reasonably required.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against PBOT or County with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to

the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

5. With respect to a Third Party Claim for which PBOT is jointly liable with County (or would be if joined in the Third Party Claim), PBOT 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 County in such proportion as is appropriate to reflect the relative fault of PBOT on the one hand and of County 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 PBOT on the one hand and of County 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. PBOT'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 PBOT had sole liability in the proceeding.
6. With respect to a Third Party Claim for which County is jointly liable with PBOT (or would be if joined in the Third Party Claim), County 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 PBOT in such proportion as is appropriate to reflect the relative fault of County on the one hand and of PBOT 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 County on the one hand and of PBOT 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. County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
7. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
8. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

9. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance and power responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years. Project construction shall be completed within three (3) calendar years following the date of final execution of this Agreement by both Parties.

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 either Party to enforce any provision of this Agreement shall not constitute a waiver by either Party of that or any other provision.

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.

This Project is the SW Barnes Road VMS installation.


WASHINGTON COUNTY, by and through its elected officials

By  Rob Massar

Title Asst. County Administrator

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By 
Title Assistant County Counsel
Date 9/11/17

CITY OF PORTLAND, by and through the Portland Bureau of Transportation (PBOT)

By _____

Title _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By APPROVED AS TO FORM


Title 
Date 10/13/17
CITY ATTORNEY

EXHIBIT A**Location of Variable Message Sign:**

Official Location	Roadway	Latitude,	Longitude
SW Barnes Rd & SW Viewmont Dr	SW Barnes Road	45.5159523	-122.7478446