

**DRAFT**

185031

**INTERGOVERNMENTAL AGREEMENT**  
Transit Signal Priority Equipment  
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 "ODOT," and the City of Portland, acting by and through its elected officials, hereinafter referred to as "CITY," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. The signal corridors of Northeast Portland Highway (US 30B) and Oswego Highway (OR 43) 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 under the jurisdiction and control of CITY.
2. By the authority granted in ORS 190.110 and 283.110, state agencies may enter into agreements with units of local government or other state agencies 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.
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 ODOT standards and specifications.
4. The CITY, as described in written agreements M.C.A. Numbers, 1181, 7469, numerous project agreements and 24,050 (currently in-process) and agreed to business procedures between the Parties, is responsible for the maintenance and operation of ODOT traffic control devices erected on the state highway within the City limits. Parties share the maintenance, operation and electrical costs equally for ODOT owned-interconnected signal intersections annually.

**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, ODOT wishes to retain the services of CITY to purchase and install signal control equipment (for receiving signal priority directions from

emergency and public transport vehicles) at key arterial intersections on the signal corridors of US30B and OR 43 and on certain agreed to CITY signals within the City limits, hereinafter referred to as "Project", and as listed on Exhibit A, attached hereto and by this reference made a part hereof. Payment for costs of purchase for the signal priority equipment shall not exceed a maximum amount of \$148,000 in state and federal funds available to ODOT. Said funding is to apply only to the purchase of such signal equipment. CITY currently maintains ODOT and CITY signals within the city limits as agreed to between the Parties by current signal maintenance agreements and procedures. Installation for the signals listed in the scope of this Project shall be by CITY forces during the normal scheduled maintenance. CITY shall be responsible for all costs for installation of the equipment for the signals listed in Exhibit A.

2. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance 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 shall be completed within three (3) calendar years following the date of final execution of this Agreement by both Parties.

#### CITY OBLIGATIONS

1. CITY shall perform the work described in Exhibit A.
2. CITY shall keep accurate cost accounting records. CITY shall prepare and submit monthly itemized, progress statements for installation of Project equipment directly to ODOT's Project Manager. Such statements will be in a form identifying the Project, the Agreement number, the invoice number or the account number or both, and will itemize all expenses for which reimbursement was made. Under no conditions shall ODOT's obligations exceed \$148,000.
3. CITY shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from ODOT.
4. CITY 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, CITY expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 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
5. CITY shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs 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.

6. Project equipment located on signals and right of way solely owned by City, as identified in Exhibit A, shall be owned, operated and maintained at City expense.
7. All employers, including CITY, 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 shall ensure that each of its contractors complies with these requirements.
8. CITY shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of CITY's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that ODOT shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the ODOT, be indemnified by the contractor and subcontractor from and against any and all Claims.
9. Any such indemnification shall also provide that neither CITY's contractor and subcontractor nor any attorney engaged by CITY's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that CITY's contractor is prohibited from defending the State of Oregon, or that CITY's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against CITY's contractor if the State of Oregon elects to assume its own defense.
10. CITY acknowledges and agrees that ODOT, 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 CITY 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 final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.

11. CITY certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of CITY, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind CITY.
12. City's Project Manager for this Project is Willie Rotich, ITS Engineer, 1120 SW 5<sup>th</sup> Room 800, Portland, Oregon 97204, 503-823-7679; [willie.rotich@portlandoregon.gov](mailto:willie.rotich@portlandoregon.gov) or assigned designee upon individual's absence. CITY shall notify the other Party in writing of any contact information changes during the term of this Agreement.

### STATE OBLIGATIONS

1. In consideration for the services performed, ODOT agrees to pay CITY within forty-five (45) days of execution of this Agreement a maximum amount of \$148,000 for the purchase of signal control equipment for Project. All installation costs shall be at CITY expense.
2. ODOT certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within ODOT's current appropriation or limitation of the current biennial budget.
3. Project equipment located on signals at shared interconnected locations on the state highway, as identified in Exhibit A, shall be owned by ODOT and operated and maintained by City consistent with current signal maintenance/operation agreements for such shared costs for signal operations.
4. ODOT's Project Manager for this Project is Dennis Mitchell, Region 1 ITS/Traffic Engineer, 123 NW Flanders Street, Portland, OR 97209-4012, 503-731-8218; [dennis.j.mitchell@odot.state.or.us](mailto:dennis.j.mitchell@odot.state.or.us), or assigned designee upon individual's absence. ODOT 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. ODOT may terminate this Agreement effective upon delivery of written notice to CITY, or at such later date as may be established by ODOT, under any of the following conditions:
  - a. If CITY fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If CITY 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.
- c. If CITY fails to provide payment of its share of the cost of the Project.
  - d. 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.
  - e. 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. 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 ODOT or CITY 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 ODOT is jointly liable with CITY (or would be if joined in the Third Party Claim), ODOT 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 in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of CITY 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 ODOT on the one hand and of CITY 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. ODOT'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 ODOT had sole liability in the proceeding.
  6. With respect to a Third Party Claim for which CITY is jointly liable with ODOT (or would be if joined in the Third Party Claim), CITY 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 ODOT in such proportion as is appropriate to reflect the relative fault of CITY on the one hand and of ODOT 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 on the one hand and of ODOT 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'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. CITY, as a recipient of federal funds, pursuant to this Agreement with the ODOT, shall assume sole liability for CITY's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon CITY's breach of any such conditions that requires the ODOT to return funds to the Federal Highway Administration, hold harmless and indemnify the ODOT for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of CITY, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
9. 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.
10. 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 ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT 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.

CITY/ODOT

Agreement No. 28,097

185031

This Project is in the 2010-2013 Statewide Transportation Improvement Program, (Key #17876) that was approved by the Oregon Transportation Commission on December 16, 2010 (or subsequently approved by amendment to the STIP).

SIGNATURES TO FOLLOW

**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:**

Willie Rotich  
ITS Engineer  
1120 SW 5<sup>th</sup> Room 800  
Portland OR 97204  
503-823-7679  
[Willie.rotich@portlandoregon.gov](mailto:Willie.rotich@portlandoregon.gov)

**ODOT Contact:**

Dennis Mitchell  
Region 1 ITS/Traffic Engineer  
123 NW Flanders Street  
Portland, OR 97209-4012  
503-731-8218  
[dennis.j.mitchell@odot.state.or.us](mailto:dennis.j.mitchell@odot.state.or.us)

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

By \_\_\_\_\_  
Active Transportation Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Technical Services Manager/Chief Engineer

Date \_\_\_\_\_  
State Traffic Engineer

By \_\_\_\_\_  
Region1 Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 1 ITS/Traffic  
Engineer

Date \_\_\_\_\_



**EXHIBIT A – SCOPE, SCHEDULE AND BUDGET**

**EXHIBIT A**

**LIST OF INTERSECTIONS NEEDING OPTICOM**

INTERSECTION NAME	JURISDICTION	764	762	138 Cable	Receivers
1 Macadam at Hamilton	ODOT	1		1000	4
2 Macadam at Boundary	ODOT	1		1000	4
3 Macadam at Pendleton	ODOT	1		1000	4
4 Macadam at Nebraska	ODOT	1		1000	4
5 Macadam at Nevada	ODOT	1		1000	4
6 Macadam at Taylor's Ferry	ODOT	1		1000	4
7 Macadam at Sellwood	ODOT	1		1000	4
8 Lombard at Fenwick	ODOT	1		1000	4
9 Lombard at Delaware	ODOT	1		1000	4
10 Lombard at Drummond	ODOT		1	1000	4
11 Lombard at Hodge	ODOT		1	1000	4
12 Lombard at Stanford	ODOT		1	1000	4
13 Lombard at Buchannon	ODOT		1	1000	4
14 Richmond at Jersey	CITY OF PORTLAND		1	1000	4
15 Foster at 78th	CITY OF PORTLAND	1		1000	4
16 Sandy at 138th	CITY OF PORTLAND	1		1000	4
17 Airport Way at 138th	CITY OF PORTLAND	1		1000	4
18 Airport Way at 122nd	CITY OF PORTLAND	1		1000	4
19 Barbur Blvd at Hooker	CITY OF PORTLAND		1	1000	4
20 Sandy at 41st	CITY OF PORTLAND	1		1000	4
21 Sandy at 50th	CITY OF PORTLAND		1	1000	4
22 Sandy at 56th	CITY OF PORTLAND		1	1000	4
23 Columbia Blvd at I5 Ramp	CITY OF PORTLAND	1		1000	4
24 Columbia @ Tyndall & Argyle	CITY OF PORTLAND	1		1000	4
25 Columbia at Chautaugua	CITY OF PORTLAND	1		1000	4
26 Tacoma at 17th	CITY OF PORTLAND	1		1000	4
27 Bertha at Vermont	CITY OF PORTLAND	1		1000	4
28 Columbia at Portsmouth	CITY OF PORTLAND	1		1000	4
29 Holgate at 122nd	CITY OF PORTLAND	1		1000	4
30 Foster at 128th	CITY OF PORTLAND	1		1000	5
		22	6	30000	121

Item	Unit Cost	Quantity	Total Cost
138 Cable / cost per foot	\$ 0.41	31998	\$13,119.18
Span Wire Clips	\$ 10.00	140	\$1,400.00
722 Detector	\$ 456.50	129	\$68,888.50
2 Channel Phase selector (762)	\$ 1,758.75	8	\$14,070.00
4 Channel Phase selector (764)	\$ 2,751.00	22	\$60,522.00
			<b>\$147,999.68</b>

