

RESOLUTION No. 2011-2971

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A COOPERATIVE IMPROVEMENT AGREEMENT WITH THE STATE OF OREGON TO INSTALL TWO PROGRAMMABLE SOLAR-POWERED SCHOOL ZONE FLASHING BEACONS ALONG HIGHWAY 219

RECITALS:

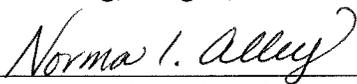
1. The City of Newberg promotes pedestrian and traffic safety in school zones by raising awareness of safe driving speeds on streets adjacent to schools. One of the tools is to install flashing beacons that operate when children arrive at or leaving school.
2. The flashing beacons provide an effective visual reminder for speed compliance in school zones.
3. ODOT agreed to install the flashing beacons for the city at an estimated cost of \$20,000 through an advance deposit and reimbursement process. The work is fully funded by the city.
4. On August 5, 2011, ODOT transmitted a Cooperative Improvement Agreement to the City that requires Council approval prior to signing. The agreement is shown in Exhibit "A" which is attached and by this reference incorporated.
5. City will provide staff support and coordination with ODOT for the installation of the school zone flashing beacons and the related work. The entire project should be completed within six (6) calendar months or sooner upon execution of the IGA.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

The Newberg City Council hereby authorizes the city manager to execute the Cooperative Improvement Agreement with ODOT, shown in the attached Exhibit "A", which is hereby adopted and by this reference incorporated.

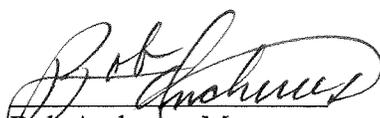
➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: September 7, 2011.

ADOPTED by the City Council of the City of Newberg, Oregon, this 6th day of September.



Norma I. Alley, City Recorder

ATTEST by the Mayor this 8th day of September 2011.



Bob Andrews, Mayor

**EXHIBIT "A" TO
RESOLUTION NO. 2011-2971**

Misc. Contracts and Agreements
No. 27936

**Oregon Department of Transportation
COOPERATIVE IMPROVEMENT AGREEMENT**
Oregon Route 219 (Hillsboro-Silverton Highway)
School Zone Safety Improvements (M.P. 19.33 and M.P. 19.47)
City of Newberg

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 the CITY OF NEWBERG, acting by and through its designated officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties".

RECITALS

1. Oregon Route 219 (Hillsboro-Silverton Highway), is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC), and is routed through the corporate limits of the City of Newberg. OR 219 is also known within the limits of this Project as North College Street.
2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, State 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, State 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 State 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 State, except with its written approval. Traffic signal work on this Project will conform to the current State standards and specifications.
4. In accordance with ORS 811.106, a flashing light used as a traffic control device to indicate that children may be within a school zone may be operated only at times when children are scheduled to arrive at or leave the school.
5. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.

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

EXHIBIT "A" TO RESOLUTION NO. 2011-2971

*City of Newberg / State of Oregon – Dept. of Transportation
Agreement No. 27936*

TERMS OF AGREEMENT

1. Under such authority, State and Agency agree to install programmable solar-powered flashing beacons and "School Zone Speed 20 When Flashing" signs located on state right of way at M.P. 19.33 and M.P. 19.47 (25 feet south of Columbia Drive and 200 feet south of Pinehurst Drive), hereinafter referred to as "Project". The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. The Project will be financed at an estimated cost of \$20,000 in Agency funds. The estimate for the total Project cost is subject to change. Agency shall be responsible for any justifiable Project costs beyond the estimate.
3. 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 six (6) calendar months, or sooner, following the date of final execution of this Agreement by both Parties.

AGENCY OBLIGATIONS

1. Agency shall be responsible for all costs associated with construction and installation of the Project. The Project shall be financed with Agency funds.
2. Agency shall, upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from State, forward to State an advance deposit or irrevocable letter of credit in the amount of \$20,000 for the Project, said amount being equal to the estimated total cost for the work performed by State at Agency's request under State Obligations, Paragraph 1. Agency agrees to make additional deposits as needed upon request from State.
3. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of the current annual fiscal budget.
4. Upon completion of the Project and receipt from State of an itemized statement of the actual total cost of State's participation for the Project, Agency shall pay any amount which, when added to Agency's advance deposit, will equal 100 percent of actual total State costs for the Project. Any portion of said advance deposit which is in excess of the State's total costs will be refunded or released to Agency.
5. Agency acknowledges and agrees that State, 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 Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and

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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 State.

6. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, council, commission, board, officers, members or representatives, and to legally bind Agency.
7. Agency's Project Manager for this Project is Paul Chiu, P.E, Senior Engineer, City of Newberg Public Works Engineering, PO Box 970, Newberg, Oregon 97132; telephone (503) 554-1751; email: paul.chiu@newbergoregon.gov, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. At the request of Agency, State shall install programmable solar-powered flashing beacons and "School Zone Speed 20 When Flashing" signs on state right of way at M.P. 19.33 and M.P. 19.47 (25 feet south of Columbia Drive and 200 feet south of Pinehurst Drive)
2. State shall, upon execution of the agreement, forward to Agency a letter of request for an advance deposit or irrevocable letter of credit in the amount of \$20,000 for payment of the purchase and installation of solar-powered flashing beacons and school zone safety signs. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete Project.
3. State shall be responsible for illumination, signing, inspection, turn-on and flashing beacon timing.
4. State shall, at its own expense, maintain the flashing beacons and signs installed as part of this Project.
5. Upon completion of the Project, State shall either send to Agency a bill for the amount which, when added to Agency's advance deposit, will equal 100 percent of the total state costs for Project or State will refund to Agency any portion of said advance deposit which is in excess of the total State costs for Project.
6. State's Project Manager for this Project is Angela Kargel, P.E., Region 2 Traffic Engineer, 455 Airport Road SE, Building A, Salem, Oregon 97301-4989; telephone (503) 986-2656; email: angela.j.kargel@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.

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JOINT OBLIGATIONS

1. State and Agency agree that State shall maintain the flashing beacons and signs installed as part of this Project as long as they are needed for the service of the school zone safety. If said beacons and signs are no longer used for their intended purpose, State may remove them from their Project location. Flashing beacons and signs installed as part of this Project shall remain under the ownership of Agency.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency 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 Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, 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 State 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 State or Agency 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

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- 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 State is jointly liable with Agency (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 Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency 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 Agency 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.
 6. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency 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 Agency 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 Agency 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. Agency'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 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

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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 their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

CITY OF NEWBERG, by and through its designated officials

By _____
Mayor

Date _____

By _____
City Manager

Date _____

APPROVED AS TO LEGAL FORM

By _____
City Legal Counsel

Date _____

Agency Contact:

Paul Chiu, P.E., Senior Engineer
City of Newberg Public Works Engineering
PO Box 970
Newberg, OR 97132
Phone: (503) 554-1751
Email: paul.chiu@newbergoregon.gov

STATE OF OREGON, by and through its Department of Transportation

By _____
Region 2 Manager

Date _____

APPROVAL RECOMMENDED

By _____
Region 2 Maintenance & Operations
Manager

Date _____

By _____
District 3 Manager

Date _____

By _____
State Traffic Engineer

Date _____

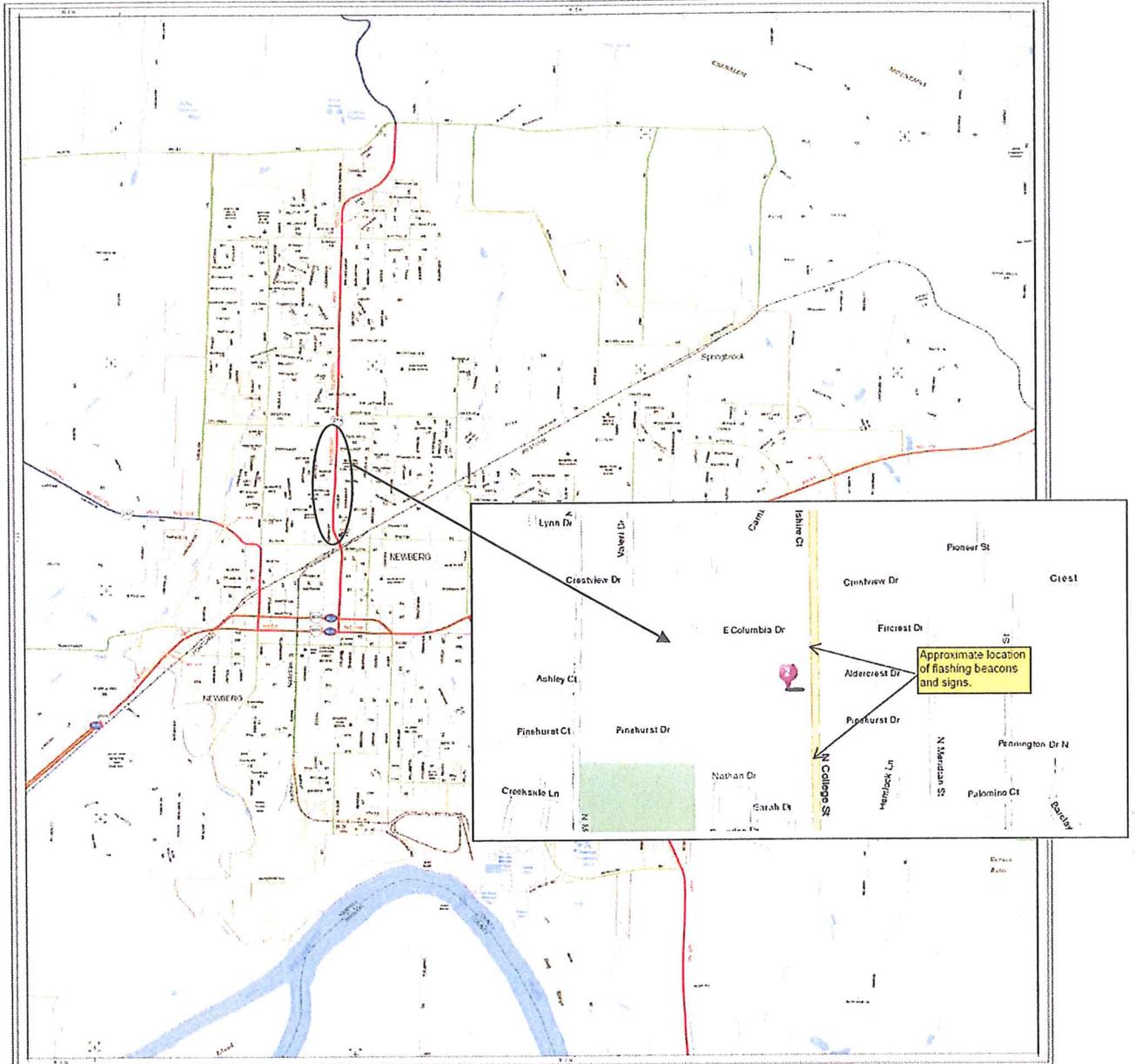
State Contact:

Angela Kargel, P.E., Traffic Engineer
ODOT, Highway Division, Region 2
455 Airport Road SE, Bldg. A
Salem, OR 97301-4989
Phone: (503) 986-2656
Email: angela.j.kargel@odot.state.or.us

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EXHIBIT A Project Location Map



<p>LEGEND</p> <p>ROADS</p> <ul style="list-style-type: none"> Interstate State Route County Road City Street Local Road Private Road Unimproved Road Right-of-Way Utility Right-of-Way Water Right-of-Way Other Right-of-Way 	<p>UTILITIES</p> <ul style="list-style-type: none"> Water Sewer Gas Electric Telecom Other 	<p>Other Symbols</p> <ul style="list-style-type: none"> Public Building Religious Building Government Building Commercial Building Industrial Building Residential Building Public Utility Water Tower Well Spring Stream River Lake Canal Ditch Drainage Other 	<p>Published By</p> <p>Scale</p> <p>1" = 200'</p> <p>0 100 200 300 400 500 600 700 800 900 1000 Feet</p> <p>0 100 200 300 400 500 600 700 800 900 1000 Meters</p>	<p>NEWBERG Population 29,150</p> <p>T3S R23W W6</p>	<p>OREGON TRANSPORTATION MAP Showing Functional Classification of Roads City of NEWBERG</p> <p>YAMHILL COUNTY 2009</p>
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