

RESOLUTION No. 2011-2951

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A COOPERATIVE IMPROVEMENT AGREEMENT WITH THE STATE OF OREGON THAT PROVIDES A MARKED CROSSWALK ACROSS HIGHWAY 219 AT THE EVEREST ROAD INTERSECTION WITH A SOLAR POWERED PEDESTRIAN ACTIVATED FLASHING BEACON AND ILLUMINATION IMPROVEMENTS

RECITALS:

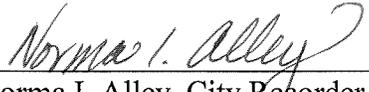
1. There was a pedestrian fatality at the Highway 219 and Everest Road intersection on November 8, 2010. This tragedy brought the City and the Oregon Department of Transportation (ODOT) together to find ways to improve the pedestrian safety through this highway intersection.
2. ODOT agreed with the City to install a marked crosswalk at this intersection and had their funding authorized on November 24, 2010 that provides \$140,000 for the construction of a marked crosswalk with a modified concrete landing and a solar powered pedestrian activated flashing beacon at each end of the proposed crosswalk across Highway 219. The City agreed to partner with ODOT and contribute \$4,000 for the streetlight improvement at this intersection.
3. ODOT formed a design team rapidly and held the first coordination meeting with City staff on December 6, 2010.
4. On April 28, 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 work with Portland General Electric (PGE) for the installation of a new streetlight with a pole, and to increase the illumination of three existing streetlights at the intersection in the summer of 2011. The entire project according to ODOT will be complete by October 2011.

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: June 7, 2011.

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



Norma I. Alley, City Recorder

ATTEST by the Mayor this 9th day of June 2011.



Bob Andrews, Mayor

LEGISLATIVE HISTORY

By and through _____ Committee at ____ / ____ / ____ meeting. Or, None.
(committee name) (date) (check if applicable)

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Misc. Contracts and Agreements
No. 27309

COOPERATIVE IMPROVEMENT AGREEMENT
Oregon Route 219 at Everest Road
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 elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties".

RECITALS

1. Oregon Route 219 (OR 219) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Everest Road is a part of the city street system under the jurisdiction and control of Agency.
2. By the authority granted in Oregon Revised Statute (ORS) [366.514](#), funds received from the State Highway Trust Fund are to be expended by the State and the various counties and cities for the establishment of footpaths and bicycle trails. For purposes of [Article IX, Section 3\(a\)](#), of the Oregon Constitution, the establishment and maintenance of such footpaths and bicycle trails are for highway, road, and street purposes when constructed within the public right of way.
3. By the authority granted in 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.
4. State established a Bicycle and Pedestrian Program fund in the Statewide Transportation Improvement Program (STIP) to meet the minimum requirement of 1 percent requirement of State Highway funds to be spent on pedestrian and bicycle facilities. The 10-13 STIP programs \$22.3 million for the Bicycle and Pedestrian Program, allocated to three (3) programs: Grants, Sidewalk Improvement Programs and Quick Fixes.
5. State, by ORS, is vested with complete jurisdiction and control over the roadways of other jurisdictions taken for state highway purposes. By the authority granted by ORS 373.020, the jurisdiction extends from curb to curb, or, if there is no regular established curb, then control extends over such portion of the right of way as may be utilized by State for highway purposes. Responsibility for and jurisdiction over all other portions of city street remains with the Agency.

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6. By the authority granted in ORS 810.080 State has the authority to establish marked pedestrian crosswalks on its highway facilities.
7. 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:

TERMS OF AGREEMENT

1. Under such authority, State and Agency agree to design and construct a crosswalk, modified concrete landing, install a solar powered pedestrian activated flashing beacon, and install signs, hereinafter referred to as "Project." An additional element to the Project includes Agency updating illumination within the Project area, hereinafter referred to as "Illumination Improvements". The location of the Project and Illumination Improvements is approximately as shown on the map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. The Project and Illumination Improvements will be financed at an estimated cost of \$144,000 in state and Agency funds. State funds for the Project will be limited to \$140,000. Agency funds for the Illumination Improvements will be limited to \$4,000. The estimate for the total Project and Illumination Improvement project costs are subject to change.
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 and power responsibilities for the useful life of the facilities constructed as part of the Project and Illumination Improvements. The useful life is defined as ten (10) calendar years. The Project shall be completed within one (1) calendar year following the date of final execution of this Agreement by both Parties.

AGENCY OBLIGATIONS

1. Agency shall be responsible for and pay to the power company 100 percent of the power costs for the Illumination Improvements. Agency shall require the power company to send invoices directly to Agency.
2. Agency shall maintain the Illumination Improvements installed as part of the Project.

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3. Agency shall be responsible for all costs of the Illumination Improvements currently estimated at \$4,000.
4. All employers, including Agency, 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. Agency shall ensure that each of its contractors complies with these requirements.
5. Agency 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. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) and ORS 105.760 to any and all changes of grade within the Agency limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the Project covered by the Agreement.
7. Agency shall obtain a permit to "Occupy or Perform Operations upon a State Highway" from assigned State District 3 Project Manager as well as land use permits, building permits, and engineering design review approval from State. Agency agrees to comply with all provisions of said permit(s), and shall require its developers, contractors, subcontractors, or consultants performing such work to comply with such permit and review provisions.
8. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
9. 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, commission, board, officers, members or representatives, and to legally bind Agency.
10. Agency's Project Manager for this Project is Paul Chiu, P.E., Senior Engineer, Newberg Public Works/Engineering Department, 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.

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STATE OBLIGATIONS

1. State shall conduct the necessary field surveys, prepare plans and contract documents, advertise for bid proposals, award all contracts, and supervise construction of the Project.
2. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
3. State shall be responsible for all costs of the Project currently estimated at \$140,000.
4. State grants authority to Agency to enter upon State right of way for the construction of this Project as provided for in miscellaneous permit to be issued by State District 3 Office.
5. State's Project Manager for this Project is Jim Cook, Area 3 Project Leader, 885 Airport Road SE, Building P, Salem, Oregon 97301-4788; telephone (503) 986-2865; Email james.d.cook@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. 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

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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 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

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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. If Agency fails to maintain facilities in accordance with the terms of this Agreement, State, at its option, may maintain the facility and bill Agency, seek an injunction to enforce the duties and obligations of this Agreement or take any other action allowed by law.
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 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.

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.

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On August 2, 2005, the Director, Deputy Director, Highways and Chief Engineer approved Subdelegation Order No. 5, in which the Director, Deputy Director, Highways and Chief Engineer delegate authority to the Region Managers to approve and sign intergovernmental agreements over \$75,000 up to a maximum of \$500,000 when the work is related to a project included in the Statewide Transportation Improvement Program (STIP) or in other system plans approved by the Oregon Transportation Commission or in a line item in the legislatively adopted biennial budget.

CITY OF NEWBERG, by and through its designated officials

By _____

Date _____

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Counsel

Date _____

Agency Contact:

Paul Chiu, P.E.
Newberg Public Works/Engineering
PO Box 970
Newberg, Oregon 97132
Paul.chiu@newbergoregon.gov

State Contact:

Jim Cook
Area 3 Project Leader
885 Airport Road SE, Building P
Salem, Oregon 97301-4788
(503) 986-2865
James.d.cook@odot.state.or.us

STATE OF OREGON, by and through its Department of Transportation

By _____

Region 2 Manager

Date _____

APPROVAL RECOMMENDED

By _____
District 3 Manager

Date _____

By _____
Pedestrian and Bicycle Program
Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

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EXHIBIT A – Project Location Map



OR 219 @ Everest Road
Mile Point 20.805

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