

**AMENDMENT NUMBER 1
COOPERATIVE IMPROVEMENT AND
2003 OREGON TRANSPORTATION INVESTMENT ACT MODERANIZATION
PROGRAM AGREEMENT
Pacific Highway West at Hall Boulevard Intersection Improvements**

The **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "ODOT"; and Washington County, acting by and through its Board of Commissioners, hereinafter referred to as "COUNTY ", and City of Tigard, acting by and through its elected officials, hereinafter referred to as "CITY"; and collectively all hereinafter referred to as the "Parties," entered into Agreement 23,757 on February 19, 2010. Said Agreement covers the reconstruction of the intersection of 99W and Hall Boulevard and access management improvements to improve and enhance safety and capacity in the intersection area.

It has now been determined by the Parties that the Agreement referenced above shall be amended to increase the total cost of the Project and to revise the funding sources. The change in funding for the Project was approved and revised by the Oregon Transportation Commission (OTC) amending the Statewide Transportation Improvement Program (STIP) on January 1, 2010. Funding was transferred to this Project and other planned or existing projects that would improve traffic conditions in the various areas of a cancelled project. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

Exhibit A shall be deleted in its entirety and replaced with the attached Revised Exhibit A. All references to "Exhibit A" shall hereinafter be referred to as "Revised Exhibit A."

Insert new Exhibits B and C.

Insert new Recitals, Paragraphs 6, 7 and 8 to read as follows:

6. The 2003 Oregon Transportation Investment Act Program (OTIA), hereinafter referred to as the "2003 OTIA Modernization Program", provides funding for modernization projects chosen by the Oregon Transportation Commission.
7. In August 2005, the Oregon Transportation Commission approved the projects to be funded under the 2003 OTIA Modernization Program as part of the 2006-2009 Statewide Transportation Improvement Program (STIP) development process. The I-5 OR 99W Tualatin-Sherwood Connector was included in that STIP, but that project has now been cancelled, and a portion of that approved OTIA funding has been applied to this Project by OTC amendment as of January 1, 2010, as described in Exhibit A, attached hereto and by this reference made a part hereof.
8. The Oregon Transportation Commission approved this Project on the condition that an Access Management Plan is prepared in accordance with Oregon Administrative Rule 734-051.

Terms of Agreement, Paragraph 2, Page 1, which reads:

2. The Project total estimated cost is \$6,268,000. The budget is shown on Exhibit "A". The estimate for the total Project cost is subject to change. The COUNTY is contributing \$5,518,000 in funds through the COUNTY Major Streets Transportation Improvement Program. ODOT shall contribute an amount not to exceed \$750,000 in state funds for the preliminary engineering component of the Project. In addition, ODOT services at the cost of the Project, as further described in ODOT Obligations paragraphs 2 through 6, shall be withheld from ODOT's contribution. The total estimated cost of said ODOT review and technical services is \$30,000. The COUNTY shall be responsible for all Project costs to complete the Project beyond ODOT's contribution for the preliminary engineering component of the Project.

Shall be deleted in its entirety and replaced with the following:

2. The Project total estimated cost is \$7,150,000. The estimate for the total Project cost is subject to change. The budget is shown on Exhibit "A". The COUNTY is contributing up to \$400,000 in funds through the COUNTY Major Streets Transportation Improvement Program (MSTIP). ODOT shall contribute an amount not to exceed \$6,000,000 in OTIA III funds and \$750,000 in state funds for the Project. The 2003 OTIA Modernization Program funds are limited to \$6,000,000. Due to the timing of ODOT and the OTC making OTIA funding available to this Project ODOT agrees to retroactively reimburse COUNTY with a one-time payment to the COUNTY within thirty (30) days of receipt of proper documentation for OTIA III eligible project expenses occurring prior to April 1st, 2010. Future disbursements shall be as described in COUNTY Obligations, Paragraph 32 of this amendment.

In addition, ODOT will provide services at Project expense, as further described in ODOT Obligations paragraphs 2 through 6 and paragraph 8, the cost of these services shall be withheld from ODOT's state funds contribution. The total estimated cost of said ODOT review and technical services is \$30,000. The COUNTY shall be responsible for all Project costs to complete the Project beyond ODOT's contribution for the Project.

Terms of Agreement, Paragraph 3, Page 2, which reads:

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. The Project shall be completed within ten (10) calendar years following the date of final execution of this Agreement by both parties.

Shall be deleted in its entirety and replaced with the following:

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. The Project shall be completed according to the schedule outlined in COUNTY Obligations, Paragraph 31.

Insert new Terms of Agreement, Paragraphs 4 and 5, to read as follows:

4. The funds available under the 2003 OTIA Modernization Program are State Highway Funds. To be eligible for reimbursement under the 2003 OTIA Modernization Program, expenditures must comply with the requirements of Article IX, Section 3a of the Oregon Constitution.
5. COUNTY and ODOT have a joint obligation to ensure timely expenditure of 2003 OTIA Modernization Program monies and to comply with the provisions of the bonds that finance the 2003 OTIA Modernization Program.

COUNTY Obligation, Paragraph 28, Page 6, which reads:

28. COUNTY's Project Manager for this Project is Daniel Erpenbach, 1400 SW Walnut Street, MS 18, Hillsboro, Oregon 97123-5625, phone: 503-846-7877, email: daniel-erpenbach@washington.or.us, or assigned designee upon individual's absence.

Shall be deleted in its entirety and replaced with the following:

28. COUNTY's Project Manager for this Project is Daniel Erpenbach, 1400 SW Walnut Street, MS 18, Hillsboro, Oregon 97123-5625, phone: 503-846-7877, email: daniel-erpenbach@washington.or.us, or assigned designee upon individual's absence.

Insert new COUNTY Obligations Paragraphs for OTIA Program Requirements, Paragraphs 29 to 39,

29. COUNTY, or its consultant, shall submit to its governing body for consideration of adoption those policies, actions, or other measures specified in the Access Management Plan as may be needed to amend its Transportation System Plan, Comprehensive Plan, or other land use codes.
30. The Project shall be developed in conformance with COUNTY's standards. If COUNTY has not adopted standards of its own, the Project shall be developed in conformance with the current edition of *A Policy on Geometric Design of Highways and Streets* by the American Association of State Highway and Transportation Officials (AASHTO).

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31. COUNTY shall provide ODOT with sufficient information to complete a Project prospectus to ensure ODOT can track the Project using ODOT's reporting systems.
- a. COUNTY shall submit documentation to ODOT's Project Liaison that shows that COUNTY has met the Project key milestones. The Project key milestones, dates, and required documentation are shown below:
 - i. Planning documents listed in COUNTY Obligations, Paragraph 29 above: *December 2010*
 - ii. Anticipated Bid Let Date Quarter/Year: *March 8, 2010*
 - iii. Documentation: **Copies of the bid results including awarded bid amount and awarded contractor name.**
 - iv. Contract Award: *April 6, 2010*
 - v. Documentation: **Notice to contractor regarding award of contract.**
 - vi. Construction Completion: *December 17, 2010*
 - vii. Documentation: **A letter from COUNTY indicating that all required construction work is satisfactorily completed and open to traffic. *December 17, 2010***
 - viii. Project Completion: *December 17, 2011*
 - ix. Documentation: **Letter from COUNTY indicating that the Project is complete and accompanied by COUNTY's final billing to ODOT. Include final accounting of all funds expended –vs– budgeted.**
 - b. If the COUNTY does not meet a Project milestone date within three (3) months of the date specified in COUNTY Obligations, Paragraph 31.a., reimbursement of COUNTY's Project expense, may, at the discretion of ODOT, be changed to one-half of the rate specified in ODOT's Obligation's, Paragraph 16.a., until such time as the milestone has been completed and the Project is back on schedule.
 - c. Immediately upon missing a milestone date, COUNTY and ODOT shall establish a Project review team including COUNTY's Project Liaison and ODOT's Project Liaison, at a minimum, and may include such other members as are deemed necessary. The Project review team shall determine (a) if failure to complete the milestone in question will jeopardize successful completion of Project, (b) what steps must be taken by COUNTY to ensure successful completion of Project, and (c) revise the Project schedule, if changes are required.

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- d. In the event that the Project schedule outlined in COUNTY Obligations, Paragraph 31.a. is revised pursuant to COUNTY Obligation, Paragraph 31.c., the COUNTY's Project Liaison and ODOT's Project Liaison shall incorporate the revised schedule into this Agreement through a formal amendment to this Agreement.
 - e. When the Project is back on schedule according to the milestones set out in COUNTY Obligations, Paragraph 31.a., including a revised schedule adopted by formal amendment, COUNTY shall receive any funds withheld by ODOT under the provisions of ODOT's Obligations, Paragraph 16.b.
32. COUNTY shall present invoices for the eligible, actual costs incurred by COUNTY on behalf of the Project directly to ODOT's Project Liaison for review and approval. Such invoices shall be submitted in the form as shown on Exhibit "C", OTIA III Progress Billing Form, attached hereto and by this reference made a part hereof. Invoices will identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods no greater than one (1) month, based on actual expenses incurred, and must clearly specify the percentage of completion of the Project.
33. COUNTY shall submit a billing at the time COUNTY documents that Construction Completion, as set out in COUNTY Obligations, Paragraph 31, is complete. The billing will indicate total Project costs incurred to date, whether there are unresolved claims, and the anticipated timeline for resolving claims and closing the Project.
34. Utility relocation or reconstruction may or may not be an eligible Project expense according to the following standard:
- a. The expense is an eligible expense if the owner of the utility facility possesses a property right for its location on the public right of way.
 - b. The expense is not an eligible expense if the owner of the utility facility does not possess a property right for its location, but the facility exists on the public right of way solely under the permission of the COUNTY or other road authority, whether that permission is expressed or implied, and whether written or oral.
35. COUNTY shall place signs that identify Project as "Another Project Funded by 2003 Oregon Transportation Investment Act" (ODOT approved design). COUNTY may affix additional signage that identifies local funds used for the Project.
36. COUNTY agrees that it will call attention to the Project and help make it visible to the public.

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37. COUNTY agrees to provide to ODOT, progress information and photographs in a suitable format for posting on the 2003 OTIA Modernization Program web site maintained by ODOT and to provide appropriate links from COUNTY's web sites to the OTIA web site.
38. COUNTY agrees to comply with the conditions for Project approval adopted by the Oregon Transportation Commission, as set out in Exhibit B, Special Conditions, which is attached hereto and made part of this Agreement.
39. COUNTY agrees to work cooperatively with ODOT in developing an Access Management Plan that complies with the requirements of OAR 734-051. The COUNTY agrees that the spacing standards and deviation criteria specified in OAR 734-051 or the local Transportation System Plan, whichever is more restrictive, will be applied to the Project.

ODOT Obligation, Paragraph 7, Page 8, which reads:

7. ODOT's total contribution for the Project shall not exceed \$750,000. Upon execution of this Agreement, and receipt of a letter of request from the COUNTY, ODOT shall pay \$750,000 for the Project (minus the amount described in the paragraphs above and below for various ODOT services), said amount being equal to the ODOT contribution to the Project.

Shall be deleted in its entirety and replaced with the following:

7. ODOT's total contribution for the Project shall not exceed \$6,000,000 in OTIA Funds and \$750,000 in state funds. Upon execution of this Agreement, and receipt of a letter of request from the COUNTY, ODOT shall pay \$750,000 for the Project (minus the amount described in the paragraphs above and below for various ODOT services), said amount being equal to the ODOT state funds contribution to the Project.

Insert new ODOT Obligations, Paragraphs for OTIA Program Requirements, ODOT, Obligations Paragraphs 16 to 21,

- 16a. ODOT shall reimburse COUNTY at actual costs incurred up to the maximum amount of 2003 OTIA Modernization Program funds committed for the Project specified in Terms of Agreement, Paragraph 2, provided that COUNTY is meeting the Project milestones set out in COUNTY Obligations, Paragraph 31.a. ODOT shall contribute an amount not to exceed \$6,000,000 in 2003 OTIA Modernization Program (OTIA III) funds and not to exceed \$750,000 in other state funds for the Project. When reimbursement is requested, COUNTY shall submit Exhibit C, the OTIA III Progress Billing Form.
- b. In the event that COUNTY has not met a Project milestone, ODOT shall, at its sole discretion, change its rate of reimbursement to COUNTY to one-half of the rate specified in Paragraph 16.a. until such time as Project is back on schedule.

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- c. When the Project is back on schedule, according to the milestones set out in COUNTY Obligations, Paragraph 31.a., including a revised schedule adopted by formal amendment per COUNTY Obligations, Paragraph 31.d., ODOT shall pay COUNTY any funds withheld by ODOT under the provisions of ODOT Obligations, Paragraph 16.b.
 - d. ODOT agrees to comply with the provisions of ORS 293.462 with regard to timely payment.
17. 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 current biennial budget.

ODOT's Liaison shall:

- a. Receive any notices provided by COUNTY under this Agreement.
 - b. Review and process for payment, all eligible, actual Project costs incurred within thirty (30) days of the date of receipt of COUNTY's invoices by ODOT.
 - c. Advise COUNTY, at COUNTY's request, on matters affecting the Project.
18. ODOT shall review the documentation provided by COUNTY to ensure that the Project undertaken by COUNTY is the Project approved by the Oregon Transportation Commission at its January 2010 meeting.
19. ODOT shall not be required to approve COUNTY's selection of contractors, right of way purchase, or engineering design documents, except as the Project design affects the state highway system or as required by the conditions of approval adopted by the Oregon Transportation Commission.
20. ODOT shall maintain a web site for the 2003 OTIA Modernization Program listing Project status and accomplishment information for COUNTY's Project.
21. ODOT shall, through its staff and consultants, prepare the Access Management Plan and identify those policies, actions, or other measures in the Access Management Plan that need adoption by the COUNTY's governing body as amendments to the COUNTY's Transportation System Plan (TSP), Comprehensive Plan, or other land use codes and ordinances. The Access Management Plan will apply spacing standards and deviation criteria in accordance with OAR 734-051 or the local TSP, whichever is more restrictive.

General Provisions, Paragraph 2c, Page 8, which reads:

- c. ODOT fails to correct such failures within ten (10) days or such longer period as ODOT may authorize.

Shall be deleted in its entirety and replaced with the following:

- c. If COUNTY or CITY fail to correct such failures within ten (10) days or such longer period as ODOT may authorize.

Insert new General Provisions, Paragraph 2e, to read as follows:

- e. If the COUNTY fails to implement policies, actions, or other measures identified in the Access Management Plan under its authority and jurisdiction in a timely manner.

Insert new General Provisions, Paragraph 12, to read as follows:

- 12. If ODOT terminates this Agreement for action by COUNTY due to the reasons described in General Provisions, Paragraph 2 “a” or “b” or “c” “f” above, COUNTY must reimburse ODOT for all OTIA III funds expended. If COUNTY fails to reimburse ODOT, ODOT may withhold COUNTY’s proportional share of State Highway Fund distribution necessary to reimburse ODOT for costs incurred by such COUNTY breach.

Insert new General Provisions, Paragraph 13, to read as follows:

- 13. ODOT and CITY agree to work cooperatively on the application of the Access Management Plan that complies with the requirements of OAR 734-051. The ODOT and CITY agree that the spacing standards and deviation criteria specified in OAR 734-051 or the local Transportation System Plan, whichever is more restrictive, will be applied to the Project.

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

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

This Project is amended into the 2008-2011 Statewide Transportation Improvement Program, (Key #15473) that was approved by the Oregon Transportation Commission on January 1, 2010.

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 September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways; Deputy Director to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission or in a line item in the biennial budget approved by the Director.

SIGNATURE PAGE TO FOLLOW

**Washington County, by and through its Board
of Commissioners**

By _____
Chair

Date _____

By _____
Recorder

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
COUNTY Counsel

Date _____

**CITY of Tigard, by and through its elected
officials**

By _____
Mayor

Date _____

By _____
Recorder

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
CITY Counsel

Date _____

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

By _____
Deputy Director, Highways

Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Manager

Date _____

By _____
Technical Services Manager/Chief Engineer

Date _____

By _____
District 2A Manager

Date _____

By _____
State Traffic Engineer

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date: _____

**M.C. & A No. 23757
REVISED EXHIBIT A**

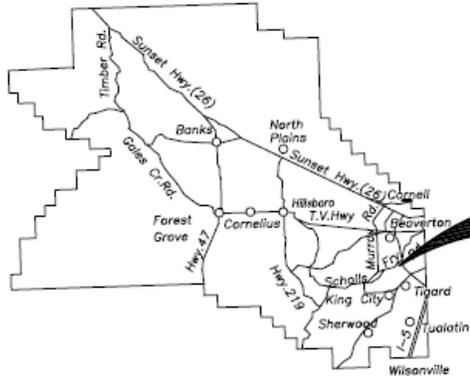
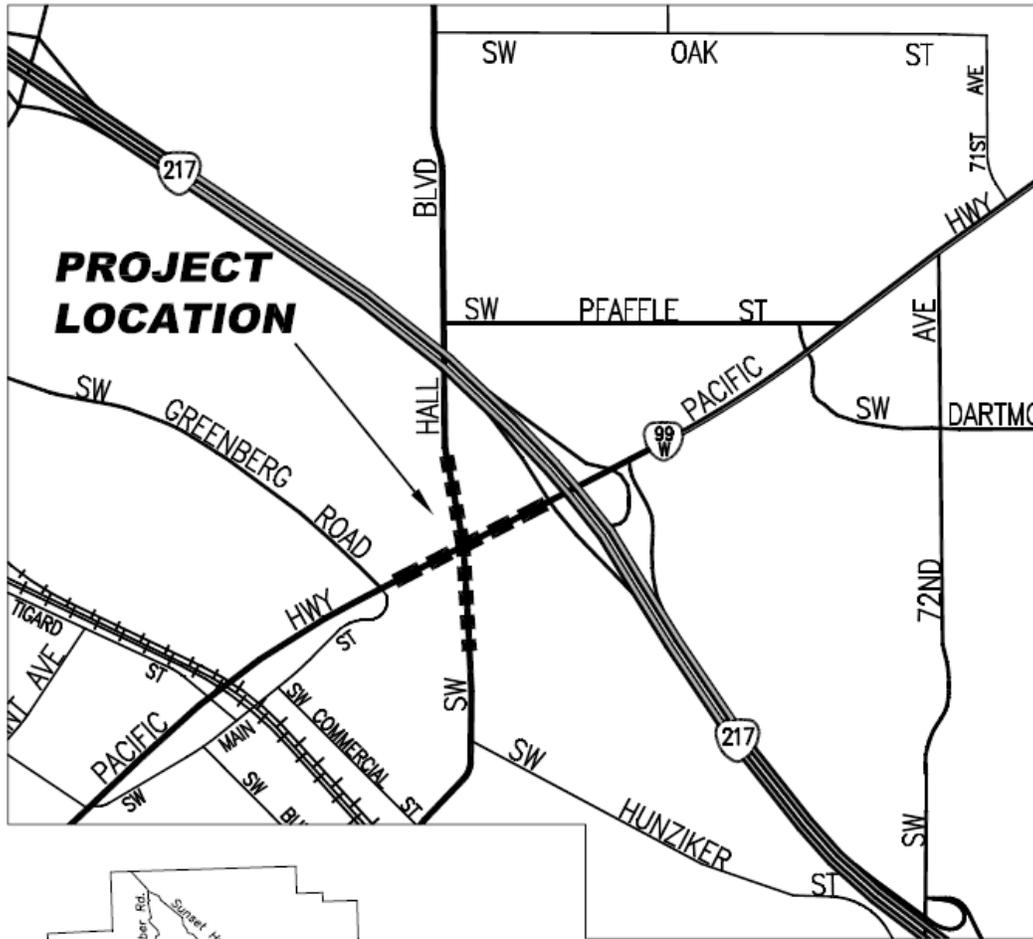
**PROJECT DESCRIPTION
Washington County and City of Tigard
Pacific Highway West at Hall Boulevard Intersection Improvements**

Project improves the safety and capacity of the existing 99W and SW Hall Boulevard and includes pedestrian safety amenities.

Project Cost Estimate		Project Financing		
Preliminary engineering & design	\$1,287,000	COUNTY Contribution	\$ 400,000	
Right of way purchase	\$2,502,500			6%
Construction	\$3,360,500	OTIA	\$6,000,000	84%
Total	\$7,150,000	State Funding	\$ 750,000	10%
		Total	\$7,150,000	100%

M.C. & A No. 23757
 REVISED EXHIBIT A

**SW HALL BOULEVARD /
 HIGHWAY 99W INTERSECTION**



PROJECT
 LOCATION



VICINITY MAP

SW HALL BOULEVARD / HIGHWAY 99W INTERSECTION
 PROJECT NO. 2523

DEPARTMENT OF LAND USE &
 TRANSPORTATION
 CAPITAL PROJECT
 MANAGEMENT
 BY DATE
 DRAWN: MJM 6/07



**M.C. & A No. 23757
EXHIBIT B**

**SPECIAL CONDITIONS
Washington County and City of Tigard
Pacific Highway West at Hall Boulevard Intersection Improvements**

The OTC approved Projects for funding under OTIA III subject to certain conditions:

Project requires some right of way acquisition.

Project will address access management in the vicinity.

M.C. & A No. 23757
Washington County and City of Tigard
Pacific Highway West at Hall Boulevard Intersection Improvements

EXHIBIT C
Oregon Transportation Investment Act III (OTIA)
Progress Billing Form

Agency: _____
 Project: _____
 Agreement No: _____
 Billing Period: _____ to _____

	Costs Incurred This Period	Costs Billed Previously	Total Cost To Date	Participation Rate	Total Amount Claimed	Prior Total Claimed	Amount Claimed This Period	Percent Complete This Phase
Planning								
Engineering Design								
Right of Way								
Construction								
Total								

Submission of this request certifies that, in accordance with the laws of the State of Oregon and under the conditions of approval for the Project identified above, actual costs claimed have been incurred and are eligible pursuant to the Intergovernmental Agreement between Agency and State. Also, no other claims have been presented to, or payment made by, the State of Oregon for those costs claimed for reimbursement.

Agency Project Liaison

Date
 (for State use)

I have reviewed the above Project and related costs and, in my opinion, subject to audit, the costs reflect the progress to date and are eligible for reimbursement in the amount of \$_____.

State Project Liaison

Date