

**COOPERATIVE IMPROVEMENT AGREEMENT
2003 OREGON TRANSPORTATION INVESTMENT ACT MODERNIZATION and
SURFACE TRANSPORTATION PROGRAM – Urban
OR 99W: Gaarde/McDonald Intersection Improvements**

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," Washington County, acting by and through its Board of County Commissioners, hereinafter referred to as "County," and the City of Tigard, acting by and through its elected officials, hereinafter referred to as "City," all herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. OR 99W (Pacific Highway West) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). SW Gaarde and SW McDonald streets are a part of the city street system under the jurisdiction and control of City.
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. State, by ORS 366.220, 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 a city street remains with the City.
4. By the authority granted in ORS 810.080 State has the authority to establish marked pedestrian crosswalks on its highway facilities.
5. 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.
6. 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.

7. 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.
8. 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 project was included in said STIP, but that project has now been canceled, and a portion of that approved OTIA funding, in the amount of \$1,000,000, has been applied to the OR 99W: Gaarde/McDonald Intersection Improvements Project, as described in Exhibit A, attached hereto and by this reference made a part hereof.
9. On June 25, 2010, State and City entered into Intergovernmental Agreement No. 26,629 to conduct a Joint Planning Study for the 99W/SW Gaarde Street SW McDonald Street Intersection. Any unused OTIA funds remaining from planning phase shall be moved to the design and right of way phase under this Agreement. The anticipated amount of remaining OTIA funds is \$944,630.
10. State and City entered into Cooperative Improvement Agreement No. 10,688 on June 28, 1991 that covers maintenance responsibilities for the same project area as this Agreement. Agreement No. 10,688 is hereby superseded and shall be considered null and void. All maintenance responsibilities covering the project area shall be governed by this Agreement.

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, the Parties agree to State's modernization and intersection improvements to OR 99W at SW Gaarde Street and SW McDonald Street, hereinafter referred to as "Project". A Project description, budget and 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. The Project may include, but is not limited to, the following elements:
 - a. Replacing the signal at the intersection of OR 99W and SW Gaarde Street and SW McDonald Street;
 - b. Widening OR 99W within the project limits;
 - c. Widening SW Gaarde and SW McDonald streets within the project limits;

- d. Purchasing right of way sufficient to accommodate the widened streets;
and
 - e. Modifying, combining, and removing accesses within the project limits.
2. The Project is estimated to cost \$9,444,630. Due to the uncertainty of cost estimates, the Parties agree to finance the Project at \$9,450,000. Funding will come from the following funding sources: \$944,630 from the 2003 OTIA Modernization Program; \$3,000,000 from the Surface Transportation Program; \$1,500,000 from City and up to \$4,000,000 from County funds. The estimate for the total Project cost is subject to change. City shall be responsible for any nonparticipating costs, and Project costs beyond the State, County, and federal money that is being contributed pursuant to paragraphs 3 and 4 below.
3. County agrees to contribute up to \$4,000,000 of County funds in two or more separate deposits, subject to full contribution of State, Federal, and City funds. County has no other obligations under this Agreement, other than contribution of County funds to State for Project purposes. County funds may only be applied to the following:
 - a. Performance of preliminary engineering, construction engineering, and right of way work for the Project (up to \$2,000,000).
 - b. Project construction costs (up to \$2,000,000).
4. Upon completion of Plans, Specifications, and Estimate (PS&E) review by State Region 1 staff, State shall determine the estimated Project construction cost. State shall next determine the amount of federal, state, and city funds available for project construction, and the amount of County funds that, when combined with other available funds, would be required to complete construction. County's deposits will not exceed a total of \$4,000,000 and will only be used in the amounts and for the purposes specified to complete Project items listed in TERMS OF AGREEMENT, Paragraphs 3a – 3b above. County will have an opportunity to review the estimate in advance of depositing any additional funds on top of the initial deposit as per COUNTY OBLIGATIONS Paragraph 1.
5. Part of this Project will be funded with 2003 OTIA Modernization Program funds in the amount of \$1,000,000. The remaining 2003 OTIA Modernization Program funds which are estimated to be \$944,630, after completion of Planning Phase (see Intergovernmental Agreement No. 26,629), are to be used for the preliminary engineering and right of way phases.
6. Part of this Project will be funded with Federal-Aid Surface Transportation Program (STP) Program funds under Title 23, United States Code. STP urban funds for this Project will be limited to \$3,000,000. The Project will be financed with STP funds at the maximum allowable federal participation amount, with City funds providing the match amount of \$343,363 and any non-participating amount, including all costs in

excess of the available federal funds. STP funds are available for all phases of this Project.

7. The federal funding for this Project is contingent upon approval by the Federal Highway Administration (FHWA). Any work performed outside the scope of work will be considered nonparticipating and paid for at City expense.
8. State considers City a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.
9. 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.
10. City and State 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.
11. If Project costs are to exceed the available funding at Plans, Specifications, and Estimate (PS&E), State and City agree to decide how to reduce the Project scope to stay in budget, or come up with additional funds and amend the Agreement accordingly. Outstanding scope or budget issues must be resolved prior to submittal of PS&E to Salem or Project will be pulled from the bid letting schedule.
12. 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 ten (10) calendar years following the date of final execution of this Agreement by all Parties.

STATE OBLIGATIONS

1. State, or its consultant, in collaboration with the City, shall conduct the necessary 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 local, state, and federal studies and permits; acquire all necessary easements and right of way; arrange for all utility relocations; perform or acquire all access modifications; 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, and provide technical inspection, project management services and other necessary functions for sole administration of the construction contract entered into for this Project.

2. State shall, upon execution of this Agreement, forward to City a letter of request for an advance deposit to be made to the City's Local Government Investment Pool (LGIP) along with permission and account information for State to draw from the City's LGIP account. The first advance deposit shall be in the amount of \$250,000. Requests for additional deposits for other authorized activities shall be accompanied by an itemized statement of expenditures and an estimated cost to complete Project.
3. State shall, as withdrawals are made from the City's LGIP, provide monthly detailed accounting statements to the City. Said withdrawals shall not exceed the City's monthly share of expenses described in this Agreement.
4. State shall, upon execution of this Agreement, forward to County a letter of request for an advance deposit to be made to the County's LGIP along with permission and account information for State to draw from the County's LGIP account. The first advance deposit shall be in the amount of \$2,000,000. State shall use these funds solely for preliminary engineering and construction engineering. Upon State determination that the Project is ready for construction bidding, State may request additional deposits from County for Project construction costs, in an amount determined under Terms of Agreement Paragraph 4. Any State request for funds shall be accompanied by an itemized statement of Project expenditures and an estimated cost to complete Project. County's contribution for all Project tasks will not exceed \$4,000,000. Any unused County funds left at the end of the Project will be refunded to the County.
5. Upon completion of the Project, State shall either send to City a bill for the amount which, when added to City's advance deposit(s), will equal 100 percent of the total cost for City's share of the Project or State will refund to City any portion of said advance deposit which is in excess of City's share of the actual cost for the Project.
6. The State, at its expense, shall continue to operate and maintain the signals at OR 99W. State and City shall concur on implementation and maintenance of system timing plans along OR 99W including City and State traffic signals, including allowing and maintaining communications systems between City and State traffic signals.
7. State agrees that the portions of land acquired by State for the construction of City street facilities shall be formally relinquished by deed to the City upon completion of the Project. If said land was acquired with any portion of State or federal funds, then said constructed facilities will be formally relinquished by deed to the City upon completion of the Project so long as used for the purposes that they were constructed. If for any reason said facilities are no longer used for the purposes that they were constructed, the land shall automatically revert back to State.
8. If Project related right of way is purchased by State utilizing City funds, State agrees (if not already purchased in the City's name) to relinquish any excess property to the City upon completion of the Project. If Project right of way is purchased utilizing joint funding, State agrees that any excess property be relinquished to the City so long as

used for public roadway purposes. Any excess property obtained for the Project utilizing only State contributed funds shall remain in State's name.

9. State shall maintain the asphaltic concrete pavement surrounding the vehicle detector loops installed in OR 99W streets in such a manner as to provide adequate protection for said detector loops.
10. State shall maintain the OR 99W roadway from curb to curb as well as any stormwater facilities located on State right of way adjacent to OR 99W.
11. State shall 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 OR 99W.
12. All employers, including State and 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.
13. 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.
14. State's Project Manager for this Project is Matt Freitag, 123 NW Flanders Street, Portland, OR, 97209, 503-731-4851, matthew.d.freitag@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

CITY OBLIGATIONS

1. City grants State, its contractors and subcontractors, the right to enter onto City right of way for the performance of duties as set forth in this Agreement.
2. City shall upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from State, forward an advance deposit to the City's LGIP along with permission and account information for State to draw from the City's LGIP account in the amount of \$250,000 for the City's share of Project design costs. City agrees to make additional deposits for its share of other Project activities as needed upon receipt of a State request for additional deposits for construction or other authorized activities accompanied by an itemized statement of expenditures and an estimated cost to complete.

3. Upon completion of the Project and receipt from State of an itemized statement of the actual total cost of Project costs, City shall pay any amount which, when added to City's advance deposit, will equal City's total costs for the Project as identified in this Agreement. Any portion of said advance deposit which is in excess of the City's share of the total costs will be refunded or released to City.
4. City shall be responsible for 100 percent of power costs associated with all illumination installed as a part of this Project. City shall require the power company to send invoices directly to City.
5. City shall be responsible for and pay to the power company 100 percent of electricity costs for the signal equipment. City shall require the power company to send invoices directly to City.
6. City shall maintain the asphaltic concrete pavement surrounding the vehicle detector loops installed in the city streets in such a manner as to provide adequate protection for said detector loops. City shall also properly maintain the pavement markings and signing installed on city streets as part of the Project
7. City will maintain all street lighting, landscaping features, and street trees added in between the curbs or in medians as a part of the Project.
8. 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.
9. 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 City 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.
10. 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.
11. City's Project Manager for this Project is Michael Stone, City Engineer, 13125 SW Hall Blvd, Tigard OR 97223, 503-718-2759, mstone@tigard-or.gov, or assigned designee upon individual's absence. City shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

COUNTY OBLIGATIONS

1. County shall upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from State, forward an advance deposit to the County's LGIP in the amount of \$2,000,000 along with permission and account information for State to draw from the County's LGIP account. County agrees to make additional deposits up to \$2,000,000 for Project costs, in the amounts and for the purposes specified in TERMS OF AGREEMENT Paragraphs 3a – 3b, up to a total contribution not to exceed \$4,000,000 total as needed for authorized activities upon receipt of a State request for additional deposits accompanied by an itemized statement of Project expenditures to date and an estimated cost to complete including the contributions of all other Parties.
2. County certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance County stated funding obligations under this Agreement within County's current appropriation or limitation of its current biennial budget.
3. 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.
4. County's Project Manager for this project is Gary Stockhoff, County Engineer, 1400 SW Walnut Street, MS 18, Hillsboro, OR 97123-5625, gary_stockhoff@co.washington.or.us, and 503-846-7820 or assigned designee upon individual's absence. County shall notify the other Parties 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 the Parties.
2. State may terminate this Agreement effective upon delivery of written notice to City and County, or at such later date as may be established by State, under any of the following conditions:
 - a. If City or County fail to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If City or County fail 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 City or County fail 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, County, 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 State is jointly liable with City or County (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 City or County in such proportion as is appropriate to reflect the relative fault of State on the one hand and of City or 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 State on the one hand and of City or 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. 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 City or County is jointly liable with State (or would be if joined in the Third Party Claim), City or 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 State in such proportion as is appropriate to reflect the relative fault of City or County 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 City or County 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. City's or 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. If City fails to maintain facilities in accordance with the terms of this Agreement, State, at its option, may maintain the facility and bill City, 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.

This Project is in the 2012-2015 Statewide Transportation Improvement Program, Key #16968 that was approved by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

SIGNATURE PAGE TO FOLLOW

County/City/State
Agreement No. 28161

CITY OF TIGARD, by and through its
elected officials

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By

Counsel

Date _____

Washington County, by and through its
Board of County Commissioners

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By

County Counsel

Date _____

City Contact:

Michael Stone, City Engineer
13125 SW Hall Blvd
Tigard, OR 97223
503-718-2759
mstone@tigard-or.gov

County Contact:

Gary Stockhoff
County Engineer
1400 SW Walnut Street, MS 18
Hillsboro, OR 97123-5625
503-846-7820
gary_stockhoff@co.washington.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____

Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____

State Right of Way Manager

Date _____

By _____

Region 1 Manager

Date _____

By _____

State Traffic Engineer

Date _____

By _____

Region 1 Right of Way Manager

Date _____

By _____

District 2B Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____

Assistant Attorney General

Date _____

State Contact:

Matt Freitag
123 NW Flanders Street
Portland OR 97209
503-731-4851
matthew.d.freitag@odot.state.or.us

**EXHIBIT A
 PROJECT DESCRIPTION
 City of Tigard
 Washington County
 OR 99W: Gaarde/McDonald Intersection Improvements**

The City of Tigard proposed, and the Oregon Transportation Commission has endorsed, a Federal Transportation Reauthorization Request to improve safety and capacity of this heavily congested intersection of Highway 99W. Considering the fact that the new arterials proposed for addressing traffic demand from 99W to I-5 are likely a number of years away, it is important that the existing route function as safely and efficiently as possible. The planned improvements include improved bicycle, pedestrian and transit connections, access management, improved capacity and additional turn-lanes.

Project Cost Estimate		Project Financing	
Preliminary engineering & design	\$1,300,000	City Contribution	\$1,500,000
Right of way purchase	\$3,000,000	County Contribution up to	\$4,000,000
Construction	\$4,800,000	STP (including match)	\$3,000,000
Total	\$9,100,000	OTIA	\$944,630
		Total	\$9,444,630

EXHIBIT A Project Location Map

