

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
WASHINGTON COUNTY AND THE CITY OF TIGARD**

**INSTALLATION OF INTELLIGENT TRANSPORTATION SYSTEM (“ITS”)  
UPPER BOONES FERRY/DURHAM RD SIGNALS**

THIS INTERGOVERNMENTAL AGREEMENT is entered into between Washington County, a political subdivision of the State of Oregon, acting by and through its elected officials, hereinafter referred to as “COUNTY”; and the City of Tigard, a municipal corporation, acting by and through its City Council, hereinafter referred to as “CITY,” jointly referred to as “PARTIES”.

**RECITALS**

1. WHEREAS, ORS 190.010 authorizes agencies to enter into intergovernmental agreements for the performance of any or all functions and activities that a party to the agreement has the authority to perform; and
2. WHEREAS, CITY has an approved and funded Metropolitan Transportation Improvement Project (MTIP) to design and construct signal improvements to SW Upper Boones Ferry Road, a City Arterial Street, and SW Durham Road, a City Arterial Street, from Interstate 5 to Highway 99W; and
3. WHEREAS, COUNTY maintains certain public infrastructure within the Rights-of-Way of SW Upper Boones Ferry Road and SW Durham Road by agreement with CITY; and
4. WHEREAS, CITY desires COUNTY to improve signal operation along SW Upper Boones Ferry Road and SW Durham Road; and
5. WHEREAS, PARTIES have determined it would serve the interests of the public, and result in considerable cost savings, for the COUNTY to manage, design and construct the signal improvements; and
6. WHEREAS, under such authority, it is the desire of the PARTIES to enter into such an Agreement to cooperate in the design and construction of the improvements to the traffic signal system along SW Upper Boones Ferry Road and SW Durham Road, with the allocation of responsibilities as detailed below; and
7. WHEREAS, it is the desire of PARTIES to enter into this agreement to allocate responsibilities for funding, design, and construction of all the above-described improvements.

## **AGREEMENT**

NOW, THEREFORE, the premise being in general as stated in the foregoing recitals, and in consideration of the terms, conditions and covenants as set forth below, the PARTIES hereto agree as follows:

### **1. PROJECT DESCRIPTION**

- 1.1 The project work within the City includes installation of a traffic signal control system connecting thirteen (13) traffic signals, two (2) rail crossings, one (1) crosswalk, and potentially school speed zone signage, hereinafter collectively referred to as "PROJECT" as shown generally on the attached Exhibit A.

### **2. COUNTY OBLIGATIONS**

- 2.1 Upon execution of this Agreement, COUNTY shall assign a Project Manager to be responsible for oversight of the PROJECT during the design, bidding and construction phase of the PROJECT and to provide timely coordination with CITY.
- 2.2 COUNTY shall perform, or cause to be performed, all actions necessary for the design and construction of the PROJECT including project management, design and construction engineering, regulatory and land use permits and approvals, public information, contract administration, and construction management. COUNTY shall coordinate and administer the design and construction contracts for the PROJECT.
- 2.3 COUNTY shall regularly and upon request, inform and notify the CITY, through the City assigned Project Manager, of PROJECT construction status and anticipated completion date.
- 2.4 COUNTY shall perform actions regarding compensation as set forth in Article 4 – Compensation.

### **3. CITY OBLIGATIONS**

- 3.1 Upon execution of this Agreement, CITY shall assign a Project Manager to be responsible for coordination of the PROJECT with COUNTY.
- 3.2 CITY shall provide timely review and comment on COUNTY design documents and timely response to other PROJECT information requests. COUNTY agrees to incorporate CITY comments that do not significantly impact PROJECT costs or schedule.
- 3.3 CITY will review PROJECT work and may provide inspection or testing at its own expense and may require additional and/or corrective work, at its own expense to complete the PROJECT if, in the CITY's judgment, it is in the public interest to do so and as may be necessary.
- 3.4 CITY shall coordinate and participate with COUNTY on any disagreements, disputes, delays or claims related to or as a result of the PROJECT.

3.5 CITY shall perform actions regarding compensation as set forth in Article 4 – Compensation.

#### 4. COMPENSATION

4.1 Estimated design costs are:

a. Intelligent Transportation System: Design	\$ 345,000
b. City of Tigard Match (10.27%)	\$ 39,487
c. Estimated Total Design Cost	\$ <u>384,487</u>

4.2 Estimated construction costs are:

a. Intelligent Transportation System: Construction	\$ 655,000
b. City of Tigard Match (10.27%)	\$ 74,967
c. Estimated Total Construction Cost	\$ <u>729,967</u>

4.3 Estimated Project costs are:

a. City of Tigard Match (10.27%)	\$ 114,454
b. Federal Highway Contribution	\$ 1,000,000
c. Estimated Total Project Cost	\$ <u>1,114,454</u>

4.4 CITY shall provide to COUNTY a 10.27% match for the PROJECT, as approved as part of the CITY's fiscal year 2014-2015. The CITY's match funds will be payable in one lump sum payment upon execution of this Agreement. The costs shall include, but are not limited to, design engineering and construction engineering consultant services, and County administrative costs.

4.5 CITY and COUNTY understand that the design and construction costs outlined above are estimates and are used to determine project budgets and estimated payment amounts used within this Agreement. Notwithstanding, the estimate costs shown above, final costs payable by the CITY to COUNTY will be based on the actual contract amounts. However, in no event shall the CITY be obligated to pay to COUNTY more than \$114,454 for PROJECT costs. Any additional costs associated with the PROJECT incurred by the County and/or its contractor above the match funds, including without limitation, any cost overruns, shall be borne by the COUNTY or COUNTY's contractor. Payments made by the CITY to the COUNTY related to this PROJECT shall be based on actual design invoices, actual bid prices, construction quantities and non-construction costs.

4.6 Within ninety (90) days after the completion of the construction contract, the COUNTY shall provide the CITY with a final statement of PROJECT WORK and bill the CITY for any remaining costs in excess of the payments already made, or refund any excess match funds to the CITY.

- 4.7 Upon the completion of the construction and completion of Record Drawings, the COUNTY shall deliver one electronic copy and one set of reproducible Record Drawings to the CITY, for their files.

## **5. GENERAL PROVISIONS**

### **5.1 LAWS OF OREGON**

The parties shall comply with all applicable laws and regulations regarding the handling and expenditure of public funds. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon. All relevant provisions required by ORS Chapter 279A and 279C to be included in public contracts are incorporated and made a part of this Agreement as if fully set forth herein.

### **5.2 DEFAULT**

Time is of essence in the performance of the Agreement. Either party shall be deemed to be in default if it fails to comply with any provisions of this Agreement. The non-defaulting party shall provide the other party with written notice of default and allow thirty (30) days within which to cure the defect.

### **5.3 INDEMNIFICATION**

This Agreement is for the benefit of the parties only. Each party agrees to indemnify and hold harmless the other party, and its officers, employees, and agents, from and against all claims, demands and causes of actions and suits of any kind or nature for personal injury, death or damage to property on account of or arising out of services performed, the omissions of services or in any way resulting from the negligent or wrongful acts or omissions of the indemnifying party and its officers, employees and agents. To the extent applicable, the above indemnification is subject to and shall not exceed the limits of liability of the Oregon Tort Claims Act (ORS 30.260 through 30.300). In addition, each party shall be solely responsible for any contract claims, delay damages or similar items arising from or caused by the action or inaction of the party under this agreement.

### **5.4 MODIFICATION OF AGREEMENT**

No waiver, consent, modification or change of terms of this Agreement shall be binding unless in writing and signed by both parties.

### **5.5 DISPUTE RESOLUTION**

The parties shall attempt to informally resolve any dispute concerning any party's performance or decisions under this Agreement, or regarding the terms, conditions or meaning of this Agreement. A neutral third party may be used if the parties agree to facilitate these negotiations, with the parties sharing equally in the cost of a neutral third party. In the event of an impasse in the resolution of any dispute, the issue shall be submitted to the governing bodies of both parties for a recommendation or resolution.

## 5.6 REMEDIES

Subject to the provisions in paragraph 5.5, any party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Washington County Circuit Court. The parties, by signature of their authorized representatives below, consent to the personal jurisdiction of that court.

## 5.7 EXCUSED PERFORMANCE

In addition to the specific provisions of this Agreement, performance by any party shall not be in default where delays or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control to the party to be excused.

## 5.8 SEVERABILITY

If any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the Agreement will not be affected or impaired in any way.

## 5.9 INTEGRATION

This Agreement is the entire agreement of the parties on its subject and supersedes any prior discussions or agreements regarding the same subject.

**6. TERMS OF AGREEMENT**

- 6.1 The term of the Agreement shall be from the date of execution until the completion of the PROJECT, but not to exceed five (5) years.
- 6.2 This Agreement may be amended or extended for periods of up to one (1) year by mutual consent of the parties. It may be canceled or terminated for any reason by either party. Termination or cancellation shall be effective thirty (30) days after written notice to the other party, or at such time as the parties may otherwise agree. The parties shall, in good faith, agree to such reasonable provisions for winding up the PROJECT and paying for any additional costs as necessary.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year hereinafter written.

**CITY OF TIGARD, OREGON**

**WASHINGTON COUNTY, OREGON**

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CHAIR, BOARD OF COUNTY  
COMMISSIONERS

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CITY RECORDER

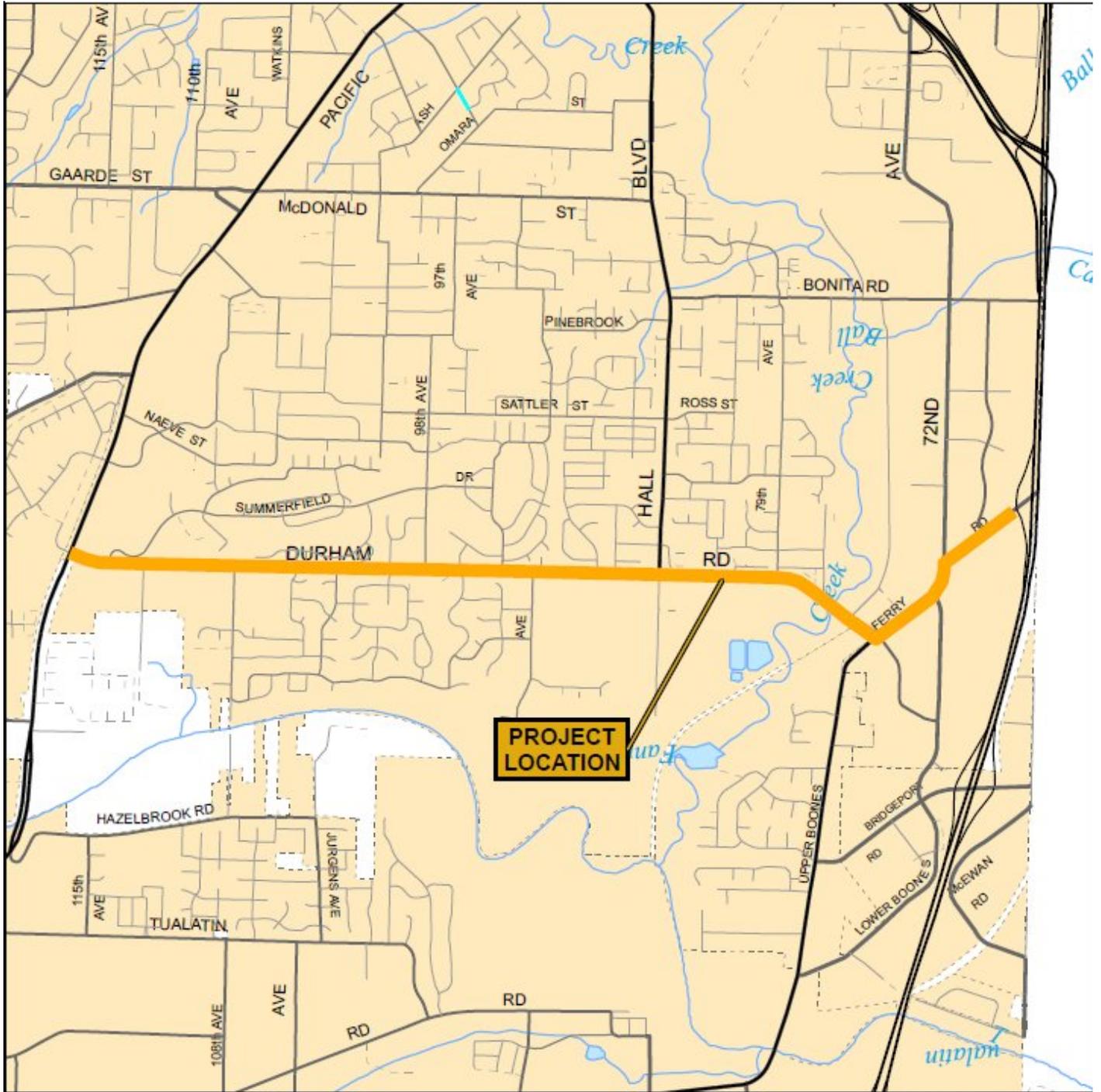
\_\_\_\_\_  
RECORDING SECRETARY

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

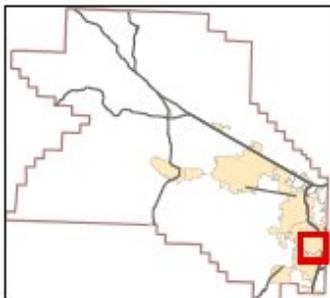
\_\_\_\_\_  
COUNTY COUNSEL



## UPPER BOONES FERRY RD / DURHAM RD PACIFIC HWY 99W TO US HWY 5

### LEGEND

- PROJECT LOCATION
- HIGHWAYS
- MAJOR ROADS
- MINOR ROADS
- RAILROADS
- CITIES
- LAKES
- RIVERS & STREAMS



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Drawn by: RRR  
 Map Date: March 5, 2014



### SCALE

Feet  
 0 375 750 1,500