

## RESOLUTION NO. 1801

### RESOLUTION ALLOWING MAYOR THALHOFER TO SIGN AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE OREGON DEPARTMENT OF TRANSPORTATION, MOTOR CARRIER TRANSPORTATION UNIT AND THE CITY OF TROUTDALE.

#### THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. It is necessary and desirable to endorse and adopt the Intergovernmental Agreement between the Oregon Department of Transportation and the City of Troutdale for the purpose of participating in the Commercial Vehicle, Driver and Cargo Inspection Program.

#### NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE


Section 1. That the Mayor is hereby authorized to sign attachment "A", an Intergovernmental Agreement between the Oregon Department of Transportation and the City of Troutdale.

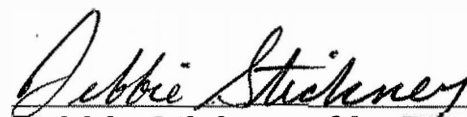
Section 2. This resolution shall take effect 30 days after it is signed.

YEAS: 7

NAYS: 0

ABSTAINED: 0

  
\_\_\_\_\_  
Paul Thalhofer, Mayor  
March 29, 2006  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Debbie Stickney, City Recorder  
Adopted: March 28, 2006

**INTERGOVERNMENTAL AGREEMENT  
Commercial Vehicle, Driver and Cargo Inspection**

THIS INTERGOVERNMENTAL AGREEMENT hereinafter referred to as "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 "ODOT," and the Troutdale POLICE DEPARTMENT, hereinafter referred to as "TPD."

**RECITALS**

1. By the authority granted in ORS 190.110, 283.110, and 825.250, state agencies may enter into Agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the Agreement, its officers or agents have the authority to perform.
2. As defined in ORS 825.250 (2), an "authorized representative" means a city, county or state employee who has been trained and certified by ODOT as a commercial vehicle inspector and who is employed either by ODOT or by an agency that has an agreement with ODOT to provide inspections of commercial vehicles, drivers, general cargo or hazardous materials.
3. TPD wishes to have a certain number of its employees become authorized representatives for purposes of ORS 825.250(2).

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

**TERMS OF AGREEMENT**

1. ODOT and TPD wish to enter into this Agreement in order to maximize the utilization of commercial vehicle, driver, and cargo inspection resources; to avoid duplication of effort; to expand the number of inspections performed; to advance uniformity of inspection; and to minimize delays in schedules incurred by industry inherent to this type of enforcement activity, hereinafter referred to as Project.
2. Each party will be responsible for their own costs associated with Project. ODOT's portion of costs for this Project shall not exceed \$1,000 in state funds. If additional funds are needed for ODOT to perform its functions, an amendment to this Agreement will be required to increase that amount.
3. ODOT and TPD agree that their authorized inspection representatives, certified as commercial vehicle inspectors by ODOT, under ORS 810.560, will implement inspection procedures in accordance with minimum standards contained herein.
4. The work shall begin on the date all required signatures are obtained and shall be completed no later than 10 years from the date of execution, on which date this Agreement automatically terminates unless extended by a fully executed amendment.

5. In order to advance international uniformity in the inspection of commercial motor vehicles, their drivers, and cargo, ODOT and TPD agree to enforce the North American Uniform Inspection Out-of-Service Criteria as authored and published by the:

Commercial Vehicle Safety Alliance

Part I - North American Uniform Inspection Driver  
Out-of-Service Criteria

Part II - North American Uniform Inspection Vehicle  
Out-of-Service Criteria

Part III - North American Uniform Inspection Hazardous  
Material Out-of-Service Criteria

6. The above standards are adopted into Oregon law by ODOT under Oregon Administrative Rules (OAR):

OAR 740-100-0090, Part I - Driver.

OAR 740-100-0070, Part II - Vehicle.

OAR 740-100-0080, Part III - Hazardous Materials.

In order to better implement and maintain the standards and agreements contained in this Agreement, in the State of Oregon agreement with the Commercial Vehicle Safety Alliance (CVSA), and to effectively administer the applicable terms and conditions contained under Title IV of the Transportation Equity Act of the 21<sup>st</sup> Century (the Act), ODOT and TPD further agree:

**ODOT agrees, at no cost to TPD, as follows:**

1. Train and/or retrain inspection resources employed by TPD when such training or retraining is mutually agreed to by parties to this Agreement; test and certify inspectors in accordance with agreements between ODOT, Oregon Department of Public Safety Standards and Training, and, as applicable, CVSA.
2. Supply vehicle and driver out-of-service stickers.
3. Supply monitoring service relative to inspection write-up techniques and violations recorded; inspection procedures, application of Motor Carrier Safety Regulations and Out-of-Service Criteria required by the Federal MCSAP and ORS 810.560.
4. Pursuant to the Governor's directive, function as the lead agency for purposes of administering Oregon's participation in the Transportation Equity Act for the 21<sup>st</sup> Century and to the maximum extent possible coordinate commercial vehicle and driver enforcement activities between all certified and participatory agencies.
5. The Manager of Field Motor Carrier Safety Enforcement at the Motor Carrier Transportation Division, will be the Department's contact person for purposes of administering this Agreement, phone (503) 373-1979.

**The TPD agrees, at no cost to ODOT, as follows:**

1. Ensure that all personnel who engage in the inspection of commercial motor vehicles and their drivers are trained and certified by ODOT pursuant to ORS 810.560.
2. As a matter of general policy, inspection levels shall be defined by ODOT.
3. Inspections may be initiated only after a traffic stop, size and weight enforcement stop, or when an out-of-service defect is detected during the normal duty activities of a certified inspector.
4. No inspection activity shall take place at a motor carrier's terminal unless such inspection has been authorized by ODOT.
5. When performing inspections as described herein, said inspections shall be documented on forms provided by ODOT. Whenever possible, inspections shall be conducted electronically using ASPEN™ software provided by ODOT.
6. Completed inspection documents shall be forwarded to ODOT within five (5) days of the date of inspection for processing and final compliance.

**GENERAL PROVISIONS**

1. Both parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, the parties expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
2. Both parties shall perform the service under this Agreement as independent contractors and shall be exclusively responsible for all costs and expenses related to their 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.
3. All employers, including TPD, 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. TPD shall ensure that each of its subcontractors complies with these requirements.
4. To the extent permitted by Article XI, Section 7 and Section 10 of the Oregon Constitution and by the Oregon Tort Claims Act, each party shall indemnify, within the limits of the Tort Claims Act, the other party against liability for damage to life or property arising from the indemnifying party's own activities under this agreement, provided that a party will not be required to indemnify the other party for any such liability arising out of the wrongful acts of employees or agents of that other party.

5. Notwithstanding the foregoing defense obligations under paragraph 4 above, neither party nor any attorney engaged by either party shall defend any claim in the name of the other party or any agency/department/division of such other party, nor purport to act as legal representative of the other party or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of such other party. Each party may, at any time at its election assume its own defense and settlement in the event that it determines that the other party is prohibited from defending it, or that other party is not adequately defending its interests, or that an important governmental principle is at issue or that it is in the best interests of the party to do so. Each party reserves all rights to pursue any claims it may have against the other if it elects to assume its own defense.
6. This Agreement is effective on the date all required signatures are obtained and shall remain in effect until one of the parties desires to terminate it by providing written notice to the other party not less than sixty (60) days prior to the date of termination. In addition, in the event of the following conditions or events, this Agreement shall terminate upon delivery of written notice by either party, or at such later date as may be established by such party:
  - a. If the other party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If the other party 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 ODOT fails to correct such failures within 10 days or such longer period as ODOT may authorize.
  - c. If either party fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow either party, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this agreement.
  - d. 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 if either party is prohibited from paying for such work from the planned funding source.
7. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.
8. By the signature herein, ODOT and TPD certify compliance with the terms and conditions contained in this Agreement.
9. This Agreement constitutes 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 ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

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

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

On November 10, 2004, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates authority to Division Administrators to approve and sign agreements up to \$75,000 when the work is related to a project included in a line item in the biennial budget approved by the Director.

Pursuant to a Letter of Authority dated December 8, 2005, the Administrator of the Motor Carrier Transportation Division authorized the Field Motor Carrier Safety Enforcement Manager to approve and execute agreements for the FHWA MCSAP Program.

**CITY OF TROUTDALE, by and through its  
Police Department**

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

By *Paul Thalhofer*  
Authorizing Signature

By *Ron Jones*  
Ron Jones, Manager  
Field Motor Carrier Safety Enforcement

Date April 28, 2006

Date 5/5/06