

March 31, 1992

✓ City of Newberg
Dept. of Public Works
414 East First Street
Newberg, Oregon 97132

Fred Meyer, Inc.
Riverside Center, Suite 500
5100 SW Macadam Avenue
Portland, OR 97201-3831

FILE CODE:
AGR

Attention: Duane R. Cole
City Recorder

Attached for your records is a copy of an agreement covering preliminary engineering, construction, and traffic signal installation at Pacific Highway West and Springbrook Street.

We have retained a copy of this agreement for the Transportation Commission's files.



Fran Neavoll
COMMISSION SERVICES

FKN/11s

Attachment



Transportation Building
Salem, OR 97310

November 19, 1991

Misc. Contracts & Agreements
No. 10858

COOPERATIVE IMPROVEMENT AGREEMENT
PRELIMINARY ENGINEERING AND CONSTRUCTION FINANCE

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, Highway Division, hereinafter referred to as "State"; THE CITY OF NEWBERG, a municipal corporation of the State of Oregon, acting by and through its City Officials, hereinafter referred to as "City"; and FRED MEYER, INC., who is authorized to conduct business in the State of Oregon, acting by and through its Company Officials, hereinafter referred to as "Company".

W I T N E S S E T H

RECITALS

1. For the purpose of providing acceptable traffic circulation patterns on public highways and roads in the vicinity of a development on property owned by Company; State, City, and Company plan and propose to add a deceleration lane along Pacific Highway West for traffic entering Fred Meyer shopping complex; add curbs and sidewalks; rebuild the existing signal at Springbrook Street to an 8-phase signal and interconnect it to a new signal which will be located at the intersection of a new City street approximately 1300 feet East of Springbrook Street at its intersection with Pacific Highway West, hereinafter referred to as "project". The 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. Project will be financed 100 percent by Company.
2. By the authority granted in ORS 366.425, State may accept deposits of money, or an irrevocable letter of credit, from any 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, the State shall proceed with the project. Money so deposited shall be disbursed for the purpose for which it was deposited.
3. By the authority granted in ORS 810.210, State is authorized to determine the character or type of traffic control signals to be used, and to place or erect them upon State highways at places where State deems necessary for the safe and expeditious control

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of traffic. No traffic control signals shall be erected or maintained upon any State highway by any authority other than State, except with its written approval. Traffic signal work on the project shall conform to the current State standards and specifications.

4. By the authority granted in ORS 366.770 and 366.775, State may enter into cooperative agreements with the counties and cities 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.

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

STATE OBLIGATIONS

1. State shall review and approve all roadway and traffic signal plans and specifications prior to advertisement for construction bids; inspect the construction of the project to insure all work on the project conforms to current State standards, and perform the signal equipment testing and turn-on.
2. State shall, upon signal turn-on and proper operation, perform all necessary maintenance of the traffic signals and pay for all maintenance costs at no expense to City or Company. State shall retain complete jurisdiction and control of the timing established for operation of the traffic signals.
3. State shall paint the necessary lane lines upon completion of Company Obligation number 4.
4. State shall compile accurate cost accounting records. Company may request a statement of State costs to date at anytime by submitting a written request. When the actual total State costs of the traffic signal portion of project have been computed, State shall furnish Company with an itemized statement of said final costs, including preliminary and construction engineering, and all contingency items attributable to the project.

COMPANY OBLIGATIONS

1. Company shall, as a project expense, conduct the necessary traffic investigations; identify and obtain the required permits; arrange for relocation or adjustment of any conflicting

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utility facilities; perform all design work required to produce plans, specifications and cost estimates for the traffic signals in the project; advertise for bid proposals; award all contracts and furnish all construction engineering; provide material testing and technical inspection, except as identified in State Obligations No. 1; and furnish all project manager services for administration of the contract. The traffic signal installation may be accomplished by the use of State forces, by contract or by any combination of these methods, as Company and State shall mutually elect.

2. Company shall provide the necessary right-of-way and easements for any required roadwork, and for installation and maintenance of the traffic signal equipment, including advanced detector loops. Company shall furnish all related right-of-way maps and descriptions for said right-of-way.

3. Company shall be responsible for all roadwork required and shall obtain State approval before work commences.

4. Company shall lay out the necessary lane lines and channelization, and erect the required directional and traffic control signing for the project.

5. Company shall, upon receipt of a fully executed copy of this agreement, forward to State an advance deposit in the amount of \$10,000.00, said amount being equal to the estimated total cost of review of project plans and specifications, construction inspection, and signal inspection and testing for the project.

6. Upon completion of the project and receipt from State of an itemized statement of the actual total cost of State participation in the project, Company shall pay any amount which, when added to Company's advance deposits, will equal 100 percent of the actual total State costs of the project, including preliminary and construction engineering, and all contingency items attributable to the project. Any portion of said advance deposits which is in excess of the total actual cost will be refunded or released to Company.

CITY OBLIGATIONS

1. City shall provide signal power and, upon signal turn-on and proper operation, pay for 100 percent of the power costs associated with the operation of the project traffic signals.

2. City shall, upon project completion, maintain and assume all responsibility of the new city street, and the new curbs and sidewalks installed along the project.

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3. City, by execution of this agreement, does hereby give its consent as required by ORS 373.030 (2) to any and all changes of grade within the city limits, if any there be, in connection with or arising out of the project covered by this agreement.

4. 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, and shall adequately maintain the pavement markings and signing installed in accordance with the plans and specifications.

5. City shall be responsible for and maintain the Pollution/Flow Control Manhole located at the southeast corner of the intersection of Pacific Highway West and Springbrook Road.

6. City hereby grants State and Company the right to enter into and occupy city street right-of-way for the installation of, and the performance of necessary maintenance for the traffic signal equipment, including vehicle detector loops.

7. City shall enter into and execute this agreement during a duly authorized session of its City Council.

GENERAL PROVISIONS

1. State, City, and Company agree and understand that a mutual review of the project plans and specifications will be conducted prior to advertisement for construction bid proposals, and that written approval by State must be obtained prior to such advertisement.

2. Subject to the limitations of the Oregon Constitution and statutes; City, Company, and State each shall be solely responsible for any loss or injury caused to third parties arising from City's, Company's, or State's own acts or omissions under this agreement, and City, Company, or State shall defend, hold harmless and indemnify the other parties to this agreement with respect to any claim, litigation to liability arising from City's, Company's, or State's own acts or omissions under this agreement.

3. The Contractor, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.

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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, by a duly adopted delegation order, authorized the State Highway Engineer to sign this agreement for and on behalf of the Commission. Said authority has been further delegated to the Traffic Engineer pursuant to Subdelegation Order HWY-4 paragraph 3.

APPROVAL RECOMMENDED

By Kenneth E. Husby
Region Engineer

STATE OF OREGON, by and through
its Department of Transportation,
Highway Division

By Daryl A. Stitt
Traffic Engineer

Date 3-19-92

APPROVED AS TO
LEGAL SUFFICIENCY

By Dale R. Johnson
Asst. Attorney General

Date 3/5/92

THE CITY OF NEWBERG, by authority of Resolution
by and through its City Officials No. 91-1668

By Elvira Hall
Mayor

By Thane R. Cole
City Recorder and City Manager

Date 2-12-92

FRED MEYER, INC.,
by and through its
Company Officials

By Mahmud D.

Title VP/Treasurer

Date 2/26/92

APPROVED AS TO
LEGAL SUFFICIENCY

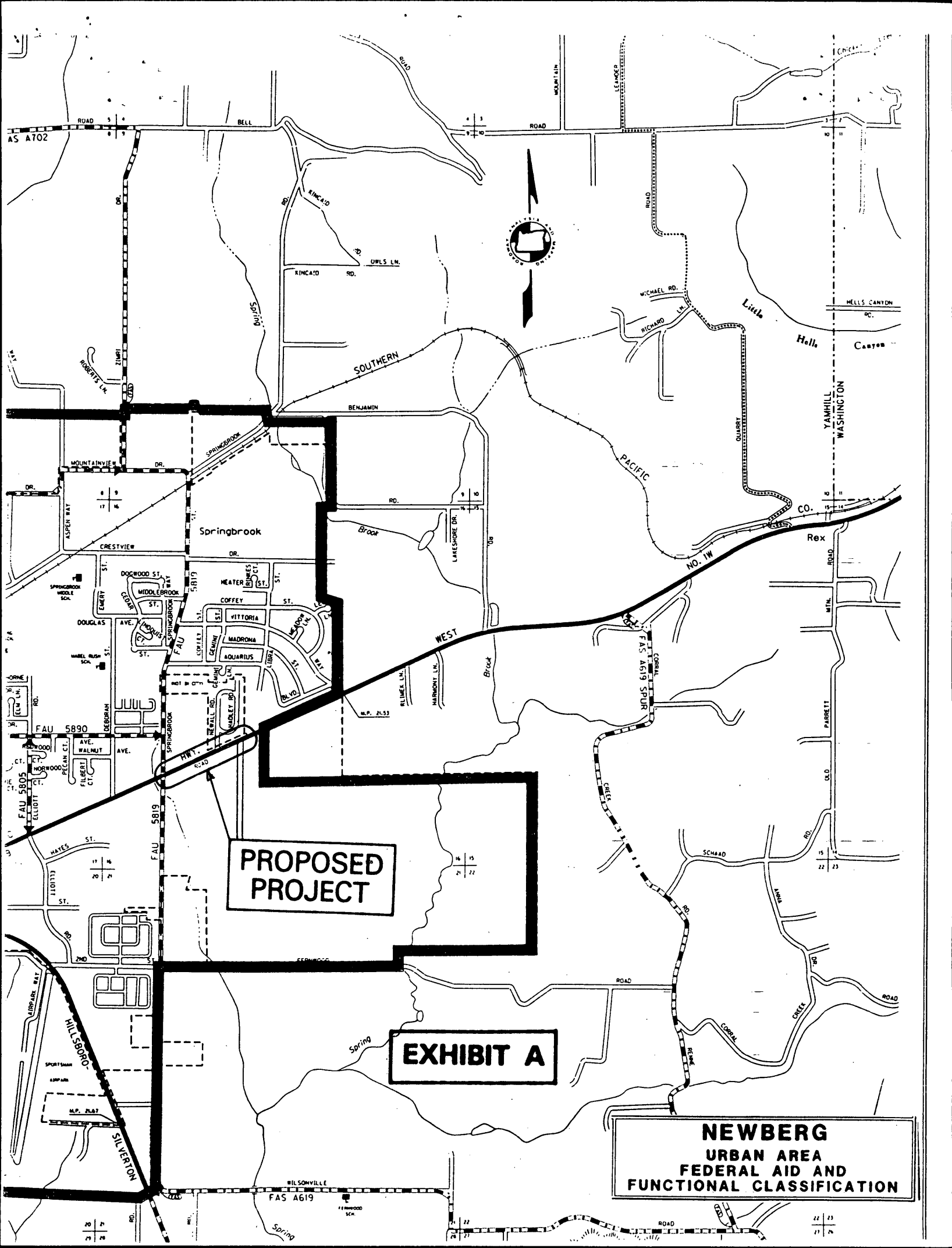
By _____
City Attorney

FRED MEYER, INC.
Billing Address:

Fred Meyer, Inc.
Riverside Center, Suite 500
5100 SW Macadam Avenue
Portland, OR 97201-3831

THE CITY OF NEWBERG
Address:

City of Newberg,
Dept. of Public Works
414 East First Street
Newberg, Oregon 97132



RESOLUTION NO. 91-1668

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE ON BEHALF OF THE CITY OF NEWBERG THE COOPERATIVE IMPROVEMENT AGREEMENT AND PRELIMINARY ENGINEERING AND CONSTRUCTION FINANCE CONCERNING THE BUILDING OF THE FRED MEYER STORE ON HWY. 99W.

RECITALS:

1. The State of Oregon Department of Transportation, the City of Newberg and Fred Meyer, Inc. need to enter into a COOPERATIVE IMPROVEMENT AGREEMENT AND PRELIMINARY ENGINEERING AND CONSTRUCTION FINANCE in order to do some construction work concerning the building of the Fred Meyer store on Hwy. 99W and Springbrook Road.
2. The State has sent a rough draft of the Agreement and the City has points and wish to make alterations to that Agreement.
3. The City Manager is in a position to negotiate those changes on behalf of the City of Newberg.

NOW, THEREFORE, be in resolved by the Newberg City Council as follows:

1. The City Council of the City of Newberg delegates to the City Manager the authority to negotiate, approve and execute on behalf of the City of Newberg, the COOPERATIVE IMPROVEMENT AGREEMENT AND PRELIMINARY ENGINEERING AND CONSTRUCTION FINANCE Agreement between the State of Oregon Department of Transportation, Fred Meyer, Inc. and the City of Newberg.
2. The City Attorney of the City of Newberg shall approve the Agreement for legal sufficiency.

ADOPTED this 2nd day of December, 1991.


Duane R. Cole
City Recorder