



COPY

Resolution No. 2001-948

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH ODOT AND HOME DEPOT FOR INSTALLATION AND MAINTENANCE FOR THE HOME DEPOT TRAFFIC SIGNAL

WHEREAS, ORS 190.003 through 190.110 authorizes agencies to enter into intergovernmental agreement for the performance of any or all functions and activities that a party to the agreement has the authority to perform; and

WHEREAS, a traffic signal installation is required as part of the development of the Home Depot site; and

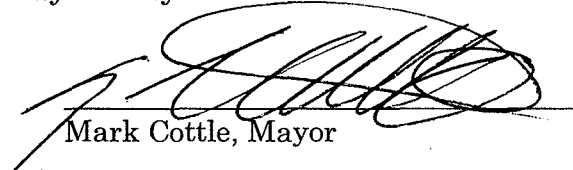
WHEREAS, Home Depot is funding the installation and maintenance of the traffic signal; and

WHEREAS, the city's role in the agreement is generally limited to assuming responsibility for some maintenance costs if the Home Depot driveway becomes a public street or Home Depot ceases to function at the site.

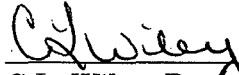
NOW, THEREFORE, THE CITY RESOLVES AS FOLLOWS:

The City Manager is authorized to enter into an Intergovernmental Agreement with the Oregon Department of Transportation (ODOT) and Home Depot, as shown in final draft form in Exhibit A, for installation and maintenance of a traffic signal at Highway 99W and the Home Depot entry.

Duly passed by the City Council this 8th day of May 2001.


Mark Cottle, Mayor

ATTEST:


C.L. Wiley, Recorder

Draft: 27 April, 2001

Misc. Contracts and Agreements
No. 18794

COOPERATIVE IMPROVEMENT AGREEMENT
Traffic Signal Installation
Pacific Hwy @ M.P. 14.69

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 "ODOT"; The City of Sherwood, a municipal corporation of the State of Oregon, acting by and through its City Officials, hereinafter referred to as "City"; and Home Depot, Inc., who is authorized to conduct business in the State of Oregon, hereinafter referred to as "Developer".

W I T N E S S E T H

RECITALS

1. Pacific Highway West (Hwy. 99W), is a part of the State Highway system under the jurisdiction and control of the Oregon Transportation Commission.
2. Pursuant to ORS 190.110, 366.770 and 366.775, ODOT 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.
3. Pursuant to ORS 810.210, ODOT 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 ODOT 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 ODOT, except with its written approval. Traffic signal work on project will conform to the current ODOT standards and specifications.
4. Pursuant to ORS 366.425, ODOT may accept deposits of money, or an irrevocable letter of credit from any person, County, City, district, firm, or corporation for the performance of work on any public highway within the State of Oregon. When said money or a letter of credit is deposited, ODOT shall proceed with the work it agreed to perform on the project. Money so deposited shall be disbursed for the purpose for which it was deposited.

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. The Project, addressed within these *Terms of Agreement*, is to be constructed by the Developer as part of the City's requirements imposed on the Developer. For the purpose of providing acceptable traffic circulation patterns on public highways, City has imposed conditions of development approval requiring full vehicle and pedestrian actuated traffic control signals and ODOT has required certain intersection/roadway improvements on Highway 99W at the Home Depot approach road (MP 14.69); 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.
2. The Developer shall pay all Project costs for all phases of this Project, at no expense to ODOT with the exception of ODOT maintenance responsibilities outlined under ODOT OBLIGATIONS, and at no expense to the City. The Developer shall also pay costs associated with City obtaining any necessary right-of-ways or easements. The total estimated cost for construction of this Project is \$450,000.
3. This agreement shall become effective upon its execution by all parties 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 Project shall be completed within one (1) calendar year following the date of execution of this agreement by all parties.

ODOT OBLIGATIONS

1. ODOT hereby grants City and Developer the right to enter onto and occupy ODOT right-of-way upon issuance of ODOT required permits, for the performance of necessary construction of the Project.
2. ODOT's District Manager/or designee shall, at Project expense, issue the required permits, and review and concur with the Project plans and specifications.
3. ODOT's Region Manager shall, at Project expense, assign a Project Manager to provide material testing and technical inspection to insure ODOT standards are met, and to monitor the traffic signal work and roadway improvements performed by the Developer, or its contractor, within the boundaries of the Highway 99W right-of-way. ODOT's Project Manager will provide general oversight of the work, but the Developer or its appointed agent shall perform all work, technical inspections and contractor coordination. Said Project Manager for the Project will be Joel McCarroll, District 2A.
4. ODOT's Traffic Engineer/or designee shall, at Project expense, review and concur with all Project signal design plans prior to advertisement for construction bids.
5. ODOT's Region 1 Electrical Crew shall, at Project expense, perform the signal testing, equipment environmental testing, field testing, and turn-on in accordance with the current ODOT procedures.

6. ODOT's District Manager has received from City (through Developer) an advance deposit of \$13,000 for payment of ODOT estimated costs described above. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete Project services.
7. ODOT shall keep accurate cost accounting records. City/Developer may request a statement of costs at any time by submitting a written request to ODOT. Upon completion of the Project, ODOT shall either send Developer an invoice for the amount, which when added to its advance deposit will equal 100 percent of the total ODOT costs for Project, or ODOT will refund to Developer any portion of said advance deposit that is in excess of the total ODOT costs for the Project.
8. ODOT shall, upon completion of the Project, maintain the pavement surrounding the vehicle detector loops installed on the Highway 99W portion of the Project in such a manner as to provide adequate protection for said detector loops, and shall adequately maintain the pavement markings and signing installed within ODOT right-of-way.
9. ODOT shall, upon satisfactory signal turn on, perform, all required maintenance for the newly installed traffic control signal. Maintenance of said signal shall be 100 percent Developer's cost responsibility. Upon completion of the project, maintenance costs for said signal shall be 100 percent Developer's cost responsibility. ODOT shall bill Developer for 100 percent of the power costs. ODOT will bill the Developer at the completion of any maintenance work. If Home Depot's approach road is made a public right-of-way by the City, then ODOT will be responsible for maintenance of the signal, including cost.
10. ODOT shall initially provide power for said signal (at Project expense); develop the initial signal timing and retain complete jurisdiction and control of the timing established for operation of the traffic signals. Upon completion of the project, power costs for said signal shall be 100 percent Developer's cost responsibility. ODOT shall bill Developer semi-annually for 100 percent of the power costs.
11. ODOT shall, upon request from City/Developer, provide current copies and updates to the State of Oregon Right of Way Manual, and Federal Highway Administration Federal Aid Policy Guide.

DEVELOPER OBLIGATIONS

1. This agreement is conditioned upon the Developer obtaining a permit to "Occupy or Perform Operations upon a State Highway". The Developer, its contractors, subcontractors, or consultants performing such work shall comply with all provisions of said permit.
2. Developer shall, at its own expense, cause or conduct the necessary field surveys, traffic investigations; identify and obtain required permits; arrange for utility relocation or

reconstruction, and perform all preliminary engineering and design work required to produce plans, specifications, and cost estimates, except for the preliminary engineering work performed by ODOT as outlined under ODOT OBLIGATIONS; advertise for bid proposals; award all contracts; pay all contractor costs, and furnish all construction engineering and Project Manager services for administration of the contract.

3. Developer shall, prior to its award of the contract, provide 4 sets of the Project preliminary and final plans and specifications to ODOT's District 2A office for review and concurrence by ODOT's District Office, Region and Salem Traffic Sections, and Salem Roadway section. ODOT's prior written approval is necessary before Developer's advertisement for construction bid proposals.
4. Developer shall, at its own expense, cause the Project to be designed and constructed in accordance with ODOT standards, the current Oregon Bicycle and Pedestrian Plan, and the Oregon Action Plan.
5. Developer shall construct the Project in accordance with the requirements of ORS 276.071 including the public contracting laws within ORS Chapter 279.
6. Upon completion of the Project and receipt from ODOT of an itemized statement of the actual total cost of ODOT's services, Developer shall pay, any amount which, when added to the previous advance deposits, will equal 100 percent of ODOT's actual total costs of services provided for the Project. Any portion of the advance deposits which are in excess of the total actual cost of services provided by ODOT will be refunded or released to Developer within 6 months of signal turn on.
7. Developer shall require its contractor to obtain and keep in effect during the term of the contract, Comprehensive or Commercial General Liability insurance covering bodily injury and property damage. This insurance shall include personal injury coverage, contractual liability coverage for the indemnity provided under this agreement and products/completed operations liability. Combined single limit per occurrence shall not be less than \$1,000,000 or the equivalent. Each annual aggregate limit shall not be less than \$2,000,000, when applicable. The certificate of insurance shall include the City of Banks, the State of Oregon, the Transportation Commission and its members, the Department of Transportation, officers and employees as additional insured. The Developer shall provide a copy of the certification to ODOT prior to construction of the Project. The insurance coverage shall not be amended, altered, modified or cancelled insofar as the coverage contemplated herein is concerned without at least 30 days prior written notice.
8. The Developer shall, at Project expense, lay out and paint the necessary lane lines and erect the required directional and traffic control signing on the Project.
9. Developer shall ensure that all Project right-of-way monumentation will be conducted in conformance with ORS 209.150.

10. Upon completion of the Project by Developer and upon approval by ODOT, the Developer shall cause the transfer of ownership of traffic signal equipment to ODOT.
11. Upon completion of the Project, the Developer shall submit three sets of "As Constructed" drawings, two to ODOT's Region Traffic Section and one to District 2A. One set shall be full size mylars. The remaining sets may be half size (11"x 17") prints. All sets will be submitted to the following address: ODOT, District 2A office, 5440 SW Westgate Dr., Suite 350, Portland, OR. 97221.
12. Developer acknowledges and agrees that ODOT, the Secretary of State's office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Developer that are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after completion of Project. Copies of applicable records shall be made available upon request. Payment for costs of copies shall be reimbursed by the requesting party .
13. The Developer, its construction contractor, subcontractor, 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.
14. Developer shall comply with all federal, state, and local laws, regulation, executive orders and ordinances applicable to the work under this agreement, including without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, which hereby are incorporated by reference. Without limiting the generality of the foregoing, the parties expressly agree to comply with (I) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659,425; (iv) all regulations and administrative rules established pursuant to foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
15. The Developer shall indemnify, defend, save, and hold harmless the State of Oregon, the Oregon Transportation Commission and its members, Department of Transportation and City of Sherwood, their officers and employees from any and all claims, suits, and liabilities which may occur in the performance of this Project.
16. The Developer shall maintain the pavement surrounding the vehicle detector loops installed on the Home Depot approach road 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 current ODOT standards.
17. The Developer shall, upon completion of the Project, and upon receipt of ODOT's billing, semi-annually reimburse ODOT for 100 percent of the cost to provide power for the newly installed traffic signal

18. Upon completion of the project, maintenance costs for said signal shall be 100 percent Developer's cost responsibility. ODOT shall bill Developer for 100 percent of the power costs. ODOT will bill the Developer at the completion of any maintenance work
19. Developer hereby grants ODOT the right to enter onto and occupy the Home Depot's approach road for the purpose of providing any necessary maintenance, inspection and testing of the vehicle detector loops and associated equipment located on Home Depot's approach road.

CITY OBLIGATIONS

1. City (through the Developer) has forwarded to ODOT's District 2A Office an advance deposit in the amount of \$13,000. Said amount being equal to the estimated total cost of ODOT provided review of plans and specifications, Project monitoring, technical inspection, and traffic signal testing and turn-on for the Project (as further described in ODOT OBLIGATIONS).
2. City shall, if necessary and at Project expense, acquire all necessary right-of-way and/or easements (both permanent and temporary construction) in accordance with the relevant rules, policies and procedures of the "Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970" as amended, ORS 281.060, State of Oregon Right of Way Manual, and Federal Highway Administration Federal Aid Policy Guide. City, shall pay or cause to be paid all costs associated with appraising and acquiring said right-of-way and easements and should contact Region Right-of-Way Office for right-of-way advice and approval to record deeds and easements.
3. Any right-of-way obtained by the City necessary for the Project and abutting to ODOT's property will be obtained in the name of the City, by prior agreement between City and Washington County, and then transferred by deed to ODOT simultaneously with the signal. Recorded deeds and easements and R/W map shall be sent to ODOT's Right-of-way Section Headquarters in Salem for permanent record filing.
4. City shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save and hold harmless the State of Oregon, the Oregon Transportation Commission and its members, Department of Transportation, its officers and employees from any and all claims, suits, and liabilities which result from the fault of the City or its agents occurring in the performance of this Project.
5. City shall assume responsibility for pavement maintenance around the vehicle detector loops and semi-annually reimburse ODOT for power costs in the event that Home Depot's approach road is made a public right-of-way by the City or the Home Depot ceases to operate at this location. If in the event that Home Depot's approach road is made a public

right-of-way by the City and the traffic signal is modified or replaced then this agreement shall be amended to provide that the party or parties who acquire an ownership interest in the right-of-way undertake the obligation to pay the power costs of the signal and the pavement maintenance around the loops.

6. City shall authorize execution of this agreement during a regularly convened session of its City Council.

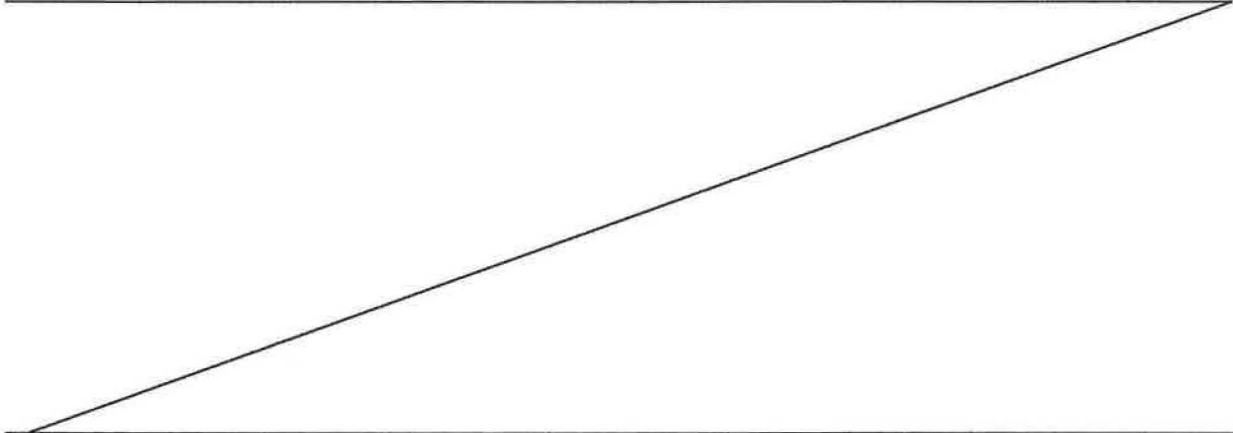
GENERAL PROVISIONS

1. ODOT, City, and Developer agree and understand that a mutual review of the Project plans and specifications will be conducted prior to advertisement and that the aforementioned permits will be obtained from ODOT prior to construction of the improvements.
2. This agreement may be terminated by mutual written consent of all parties.
3. ODOT may terminate this agreement effective upon delivery of written notice to City and Developer, or at such later date as may be established by ODOT, under any of the following conditions:
 - a. If City/Developer fails to provide services called for by this agreement within the time specified herein or any extension thereof.
 - b. If City fails/Developer 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 Developer fails to provide payment of deposits upon receipt of a letter of request from ODOT.
 - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that the work under this agreement is prohibited.

Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

4. 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 either party to enforce any provision of this agreement shall not constitute a waiver by that party 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 March 18, 1999, approved Subdelegation Order No. 2, which the Director grants authority to the Exec. Deputy Director/Chief Engineer to approve and execute agreements over \$75,000 when the work is related to a project as a line item in the approved biennial budget.

APPROVAL RECOMMENDED

BY _____
Region 1 Manager

DATE _____

BY _____
Dist. 2A Manager

DATE _____

REVIEWED FOR ODOT

BY _____
Asst. Attorney General

STATE OF OREGON, by and through
its Department of Transportation

BY _____
Exec. Dep. Dir./Chief Eng

DATE _____

THE CITY OF SHERWOOD,
through its Elected Officials

BY _____
Mayor

BY _____
City Recorder

DATE _____

M. C. & A. No. 18794
THE CITY OF SHERWOOD
HOME DEPOT, INC.

DATE _____

**APPROVED AS TO
LEGAL SUFFICIENCY**

BY _____
City Attorney

DATE _____

HOME DEPOT, INC.

BY _____

TITLE _____

Date _____

Home Depot, Inc. billing address: