



Home of the Tualatin River National Wildlife Refuge

RESOLUTION 2021-093

AUTHORIZING THE CITY MANAGER TO SIGN A SIGNAL MAINTENANCE AGREEMENT WITH ODOT FOR NON-STANDARD TRAFFIC SIGNAL EQUIPMENT AND LUMINARIES

WHEREAS, Washington County is working on a project to widen Tualatin-Sherwood Road and Roy Rogers Road from Chicken Creek to Teton Road and as part of that project will be making changes to the lighting at the intersection at Tualatin-Sherwood 99W; and

WHEREAS, the City of Sherwood has expressed a desire for lighting along this road improvement project to be black powder coated for visual consistency and aesthetics; and

WHEREAS, the intersection and lighting is regulated by the Oregon Department of Transportation (ODOT); and

WHEREAS, ODOT has indicated that when non-standard equipment is located within their facility, it will be only approved if a maintenance agreement is entered into to ensure they are not responsible for maintenance of non-standard equipment; and

WHEREAS, the black powder coating on the lighting equipment is non-standard.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The City Council authorizes the City Manager to sign a signal maintenance agreement with ODOT for non-standard traffic signal equipment and luminaries in a form substantially similar to the attached Exhibit 1.

Section 2. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 2nd of November, 2021.


Keith Mays, Mayor

Attest:


Sylvia Murphy, MMC, City Recorder

**SIGNAL MAINTENANCE AGREEMENT
OR 99W at Tualatin Sherwood Rd/Roy Rogers Rd
City of Sherwood**

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;" and the CITY OF SHERWOOD, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties".

RECITALS

1. OR 99W is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission. Tualatin Sherwood Rd/Roy Rogers Rd is a part of the Washington County street system under the jurisdiction and control of the county. The signal at the intersection of OR 99W and Tualatin Sherwood Rd/Roy Rogers Rd is owned and maintained by State.
2. By the authority granted in Oregon Revised Statute (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. 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, except that certain traffic signal equipment and luminaires will have a non-standard black powder coating finish at the request of Agency.
4. State and Agency have determined that it is both to their mutual benefit and to the general public's benefit if they jointly utilize State and Agency maintenance resources.

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, State and Agency enter into this Agreement to identify the maintenance responsibilities for the traffic signal (Signal) at the intersection of OR

Agency/State
Agreement No. 73000-00004494

99W and Tualatin Sherwood Rd/Roy Rogers Rd. The location of the Signal is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.

2. This Agreement shall become effective upon installation and final acceptance of the traffic signal equipment and luminaires by ODOT and shall remain in effect for the purpose of ongoing maintenance for the useful life twenty (20) years of the facilities. Maintenance responsibilities shall survive any termination of this Agreement.

AGENCY OBLIGATIONS

1. Agency shall be responsible for and perform 100 percent of the maintenance associated with the non-standard black coating on the traffic signal equipment, and will keep coatings in a good state of repair. Agency shall not be responsible for any maintenance of coatings covered by manufacturer or contractor warranty.
2. Agency shall be responsible for and perform all maintenance associated with the black coatings on the two luminaires installed along with the Signal at the northwest and southeast corners of the intersection of OR99W and SW Roy Rogers Road/SW Tualatin-Sherwood Road. Agency shall not be responsible for any maintenance of coatings covered by manufacturer or contractor warranty.
3. All employers, including Agency, 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. Agency shall ensure that each of its contractors complies with these requirements.
4. Agency acknowledges and agrees that State, 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 Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after completion of Project. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
5. Agency's contact for this Agreement is Craig Sheldon, Public Works Director, 22560 SW Pine Street, Sherwood, OR 97140, 503-625-2310, sheldonc@sherwoodoregon.gov, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State shall be responsible for and perform 100 percent of the maintenance of the

traffic signal system including, but not limited to, timing, electrical costs, vehicle detection, and signal illumination. State shall not be responsible for the non-standard coatings of the signal poles and luminaires identified in this Agreement.

2. State's contact for this Agreement is the Ted Miller, 123 NW Flanders Street, Portland, OR 97209, 503-731-8559, Theodore.c.miller@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party 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 both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency 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 State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Agreement.
 - 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. Agency may terminate this Agreement effective upon delivery of written notice to State, or at such later date as may be established by Agency, under any of the following conditions:
 - a. If State fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If State fails to provide payment of its share of the cost of the

Agreement.

- c. If Agency fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow Agency, 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 Agency is prohibited from paying for such work from the planned funding source.
4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.
5. 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, Both Parties expressly agrees 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.
6. 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 or Agency 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.
7. With respect to a Third Party Claim for which the State is jointly liable with Agency (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 Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency 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 Agency

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.

8. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency 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 Agency 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 Agency 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. Agency'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.
9. 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.
10. 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.
11. 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.

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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.

CITY OF SHERWOOD, by and through its
elected officials

By _____
City Manager

Date _____

**LEGAL REVIEW APPROVAL (If required in
Agency's process)**

By Josh Soper

Date 10/25/2021

Agency Contact

Craig Sheldon
Public Works Director
22560 SW Pine Street
Sherwood, OR 97140
503-625-2310
sheldonc@sherwoodoregon.gov

State Contact

Ted Miller
123 NW Flanders Street
Portland, OR 97209
503-731-8559
Theodore.c.miller@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Region 1 Maintenance and Operations
Manager

Date _____

APPROVAL RECOMMENDED

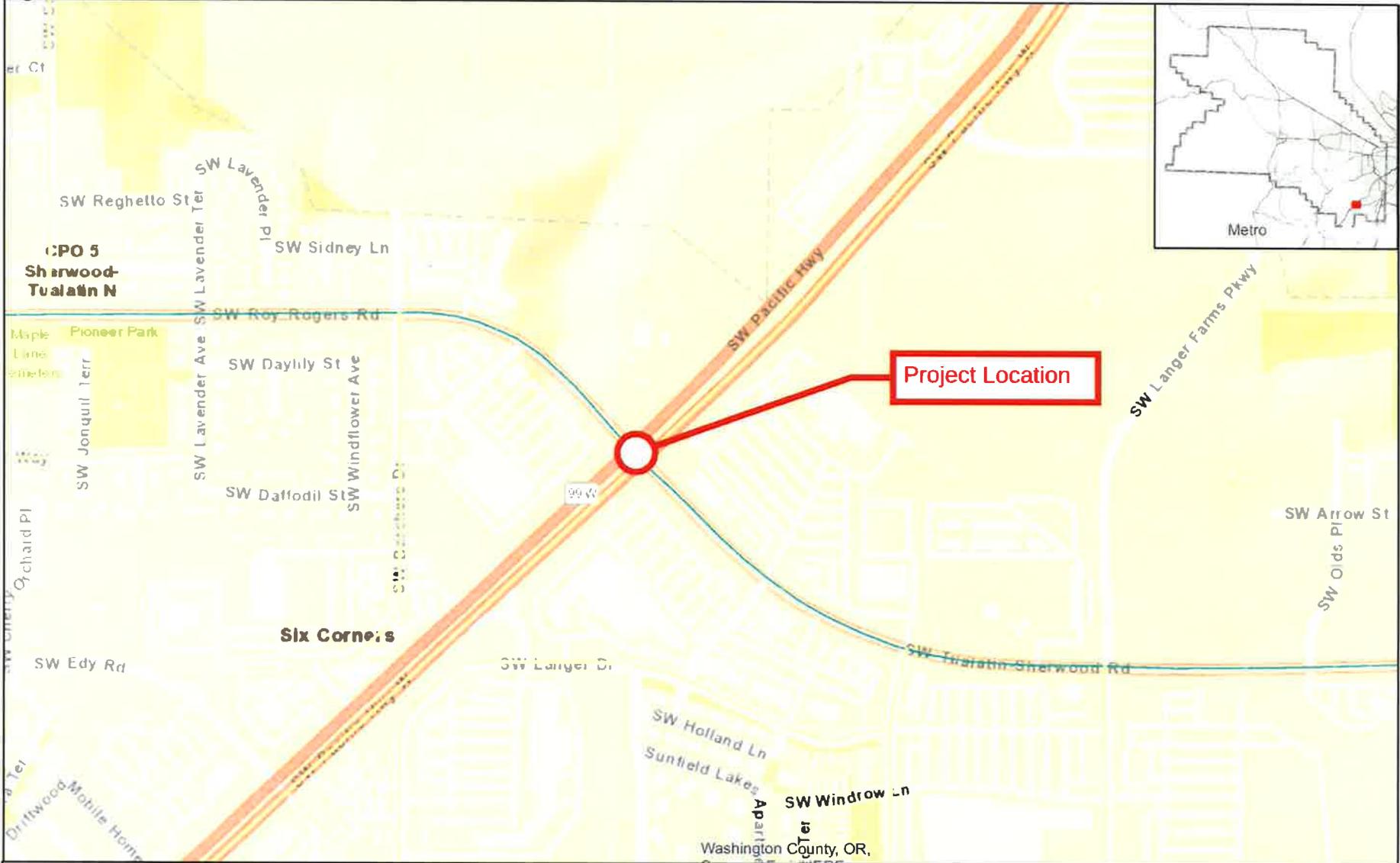
By _____

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By N/A
Assistant Attorney General (If Over
\$150,000)

Date _____



Disclaimer: This map is for informational purposes and may not have been prepared for or suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.



Washington County
 Department of Land Use & Transportation
 Operations & Maintenance Division
 (503) 846-ROAD

Resolution 2021-093, EXH 1

EXHIBIT A



October 22, 2021

