

MEMORANDUM

TO: Mayor and City Council

FROM: Faye Stewart, Acting City Manager, Public Works & Development Director

SUBJECT: APPROVAL OF THE SIGNAL MAINTENANCE AGREEMENT BETWEEN OREGON DEPARTMENT OF TRANSPORTATION AND THE CITY OF COTTAGE GROVE

DATE: April 3, 2024

Background

For the past 10 years the City of Cottage Grove has contracted with the Oregon Department of Transportation (ODOT) to perform maintenance and repairs to the City's traffic control signals located on Main Street at 5th, 6th, 14th, 16th Streets, River Road, Gateway Blvd, and on Thornton Lane at Mosby Creek and Row River Roads.

ODOT is requesting Council approve Agreement No. 73000-00026762 allowing ODOT to continue providing traffic signal maintenance and repairs for an additional 10 years through 2034. The agreement limits the per year maintenance cost to no more than \$6,500 per signal. ODOT must notify the City if a signal expenditure exceeds the \$6,500 limit ODOT and seek City approval of the expenditure before performing the work. The City paid ODOT a total of \$3,058.52 in fiscal year 2022-23 for signal maintenance.

Recommendation

The City Council approve ODOT Signal Maintenance Agreement No. 73000-00026762 and authorize the City Manager to execute the agreement.

Cost

The cost of the signal maintenance shall not exceed \$6,500.00 per signal per year with a total not to exceed \$455,000.00 for all City signals during the term of the agreement. The Street Maintenance Fund pays for the yearly signal maintenance.



Faye Stewart, Acting City Manager

**SIGNAL MAINTENANCE AGREEMENT
CITY OF COTTAGE GROVE**

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" or "ODOT;" and the CITY OF COTTAGE GROVE, 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. Main Street, Fifth Street, Sixth Street, 14th Street, 16th Street, Gateway Boulevard, River Road, Mosby Creek Road, Thornton Road, and Row River Road are part of the city street system under the jurisdiction and control of Agency.
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. 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. State and Agency enter into this Agreement to identify the maintenance and operation responsibilities for the traffic signals (Signals), illumination maintenance, signal loop detection maintenance, timing, networking, network security and controller operations for the Signals belonging to Agency, as shown in the chart marked Exhibit A, attached hereto and by this reference made a part of this Agreement.
2. The total cost of the maintenance and timing shall not exceed \$6500.00 per signal, per calendar year. The total not to exceed amount for all signals during the term of this Agreement is \$455,000.00. Said cost is subject to review for inflation, and any changes shall be by an amendment, signed by both Parties. Maintenance does not include repairs performed on an emergency basis or as a result of a construction project and are not included under this Agreement.
3. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance and power responsibilities for the useful life ten (10) years of the facilities.

AGENCY OBLIGATIONS

1. Agency shall pay 100 percent of the electrical energy costs associated with the Signals and all operational equipment. Agency shall have the power company send bills directly to Agency.
2. Agency shall be responsible for all pavement markings and signs associated with the Signals.
3. Agency shall, upon receipt of an invoice from State for costs associated with Signals, reimburse State for said costs. Agency shall remit payment within 30 days of receipt of invoice to State's Project Manager.
4. Agency grants State the right to enter onto Agency right of way for performance of duties as set forth in this Agreement.
5. 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.
6. 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.
7. Agency's Project Manager for this Project is Shauna Neigh, Project Coordinator, City of Cottage Grove, 400 East Main Street, Cottage Grove, Oregon 97424; telephone: (541) 767-4153; email: engassistant@cottagegrove.org, 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 perform all electrical maintenance for the Signals and signal operation at Agency's expense. This includes electrical devices/equipment, vehicle and pedestrian indications, detection, signal controller, signal interconnect, controller network security and intersection illumination attached to the signal structure. State shall submit monthly invoices to Agency for Signal maintenance work performed under this Agreement. Invoices shall be sent to Agency's Project Manager.
2. State shall conduct the following work on the Signal on an as-needed basis, with no need for preauthorization from Agency:

- a. Emergency repair of any identified safety issues and equipment failures;
 - b. Analysis and troubleshooting problems;
 - c. Routine Signal and signal controller maintenance; routine Signal and signal controller testing and evaluation (similar to what State would do for State-owned signals).
3. State shall conduct emergency repairs on illumination and other electrical installations on an as-needed basis, with no need for preauthorization from Agency.
 4. State shall immediately notify Agency's Project Manager if the cost for any one repair is more than \$6,500.00.
 5. State shall perform the following work on the Signal when requested by Agency:
 - a. Modifications to Signal equipment;
 - b. Signal equipment testing (beyond routine testing);
 - c. Equipment upgrades;
 - d. Signal timing modifications;
 - e. Other Signal work as needed.
 6. State shall perform annual preventive maintenance inspections of Signal equipment.
 7. State's Project Manager for this Project is the William Kelso Region 2 Electrical Manager, 455 Airport Road SE, Building B, Salem, Oregon 97301; telephone: (503) 602-2897; email: William.J.Kelso@odot.oregon.gov, 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. Americans with Disabilities Act Compliance:

- a. The Parties agree that all work performed by either Party under this Agreement ("Work") shall comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA").
- b. Scope of Work:
 - i. The scope of the Work performed under this Agreement is limited to maintenance activities and shall not include alteration, upgrade, or construction of sidewalks or curb ramps, or installation of pedestrian activated signals.

- ii. If Work to be performed by either Party includes an alteration under the ADA as set forth in ODOT Maintenance Operational Notices MG 144-03 or MG100-107 ("Alteration"), and thereby triggers additional modifications to the facility in order to comply with the ADA ("ADA Modifications"), and if the ADA Modifications cannot reasonably be included in the Work, then the Work falls outside the scope of this Agreement. The Parties may enter into a separate agreement for performance of such work and ADA Modifications. Whether specific Work may include an Alteration shall be determined by the Party responsible for performing the Work.
- c. **For Work performed by ODOT under this Agreement, the Parties shall:**
- i. Utilize ODOT standards, including but not limited to ODOT Maintenance Operational Notices MG 100-107 ("MG 100-107"), MG144-03 ("MG144-03"), and MG Activities-2 ("MG Activities-2"), to ensure that the Work complies with the ADA, and
 - ii. Follow ODOT's processes for modification or upgrade of pedestrian-activated signals and performance of any ADA Modification, including but not limited to MG 144-03 and MG 100-107.
- d. RESERVED
- e. Agency reaffirms its commitment to provide an accessible ADA-compliant transportation system and ensure that any feature or part of a feature that was addressed as part of the Work ("Feature"), including ADA Modifications, that falls under Agency's jurisdiction, is maintained in compliance with the ADA throughout the useful life of the Feature. This includes, but is not limited to, Agency ensuring that:
- i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
 - iv. Any future alterations during the useful life of the Feature complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.

City of Cottage Grove/ODOT
Agreement No. 73000-00026762

- f. Maintenance obligations in Subsection e above shall survive termination of this Agreement.
2. This Agreement may be terminated by mutual written consent of both Parties.
 3. 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.
 4. 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 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.
 - c. 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.

5. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.
6. 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, as amended, 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.
7. 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.
8. 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.
9. 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,

finer 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.

10. 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.
11. 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.
12. 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.
13. Electronic Signatures. The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the Agreement and amendments, submitted or exchanged via email are "Electronic Signatures" under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. State reserves the right at any time to require the submission of the hard copy originals of any documents.

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.

Signature Page Follows

CITY OF COTTAGE GROVE, by and
through its elected officials

By _____
Title:

By _____
Title:

Date _____

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

By _____
Agency's Legal Counsel

Date _____

Agency Contact

Shauna Neigh, Project Coordinator
City of Cottage Grove
400 East Main Street
Cottage Grove, Oregon 97424
(541) 767-4153
engassistant@cottagegrove.org

State Contact

Region 2 Electrical Manager
455 Airport Road SE, Building B
Salem, Oregon 97301
(503) 554-1751
William.J.Kelso@odot.oregon.gov

STATE OF OREGON, by and through
its Department of Transportation

By _____
Region 2 Manager

Date _____

APPROVAL RECOMMENDED

By _____
Region 2 Maintenance and Operations
Manager

Date _____

By _____
Region 2 Electrical Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Karen Clevering, via email
Assistant Attorney General

Date 03/18/24, email retained in file

EXHIBIT A

The traffic signals listed in the table below are part of Agency's city street system under the jurisdiction and control of the Agency. State shall perform maintenance, timing on all Signals, maintenance of illumination, and operational responsibilities at the intersections listed below.

Agency-owned Traffic Signals, Signal Illumination and operations

LOCATION	MAINTENANCE COSTS	POWER COSTS
1. 16 th Street at Main	Agency – 100%	Agency – 100%
2. 14 th Street at Main	Agency – 100%	Agency – 100%
3. Gateway at Main	Agency – 100%	Agency – 100%
4. River Road at Main	Agency – 100	Agency – 100%
5. 5 th /6 th at Main	Agency – 100%	Agency – 100%
6. Mosby Creek Road at Thornton Road	Agency – 100%	Agency – 100%
7. Row River Road at Thornton Road	Agency – 100%	Agency – 100%