

**COOPERATIVE MAINTENANCE AGREEMENT  
Fence Bolt Maintenance Along OR99E  
Oregon City**

**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 OREGON CITY, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually as a "Party" and collectively as the "Parties."

**RECITALS**

1. OR99E is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
2. By the authority granted in Oregon Revised Statutes (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. The Parties have determined that the maintenance responsibility line between State and Agency along the McLoughlin Promenade is the edge of the bluff. State is responsible for maintenance along the vertical face of the bluff and Agency for maintenance along the horizontal surface at the top of the bluff.
4. State is currently constructing the "OR99E: Rockfall – Oregon City Tunnel to Old Canemah Park" rockfall mitigation project (key number 18769) (the "Rockfall Mitigation Project"). As part of the Rockfall Mitigation Project, State anticipates the need to install rock bolting anchors to secure loose boulders along the rock face. As the rock bolting anchors are typically 10 feet in length, they may extend into Agency property.
5. In 1995, State completed the "Oregon City – Coalca Sec Pacific Highway East" project, which installed the mesh fencing and associated anchoring system along OR99E that the Parties have agreed is necessary for the safety of the traveling public.
6. Such mesh fencing requires State to maintain anchors and related equipment within Agency's maintenance jurisdiction at the top of the cliff face above OR99E.
7. State and Agency are entering into this Agreement to set forth their understanding that as part of Agency's maintenance responsibility at the top of the bluff, Agency shall grant State the right to install and maintain such equipment and the right to have anchoring for both the mesh fencing and rock bolts extend on to Agency's maintenance jurisdiction.

**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 is responsible for maintaining the anchor bolts and related equipment that are part of State's mesh fencing system. The location of the equipment that is subject to this Agreement is set forth in the attached Exhibit A.
2. Agency grants State the right to enter onto Agency property as State deems necessary for State to maintain all equipment related to the mesh fencing system.
3. If, as part of this Agreement, State installs equipment on property belonging to a person or entity other than Agency, Agency shall make all reasonable efforts to ensure that State can access, install, and maintain such equipment in accordance with the terms of this Agreement.
4. Any work or access to the mesh fencing system along the McLoughlin Promenade shall protect the historic McLoughlin Promenade Wall. If State damages this wall in the course of performing the maintenance set forth under this Agreement, State shall be responsible for repairing any damage to the wall directly caused by State's work.
5. This Agreement becomes effective upon the date all required signatures are obtained and remains in effect for twenty (20) calendar years unless otherwise terminated by the parties. Upon the expiration of the twenty year term, the Agreement shall be automatically renewed for successive one (1) year terms unless and until either Party provides written notice to the other Party of its intent to terminate the contract at least sixty (60) days before the end of the applicable term.
6. 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.
7. This Agreement may be terminated by mutual written consent of both Parties.
8. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
9. 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.

10. With respect to a Third Party Claim for which 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.
11. 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.
12. 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.
13. 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.

14. Agency certifies and represents that each individual signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
15. Agency's contact for this Agreement is John Lewis, PE, Public Works Director, PO Box 3040, 625 Center Street, Oregon City, OR 97045, 503.496.1545, [jmlewis@orc.org](mailto:jmlewis@orc.org). Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.
16. State's contact for this Agreement is Cory Hamilton, District 2B Manager, 9200 SE Lawnfield Rd, Clackamas, OR 97209, 971.7673.6215, [cory.d.hamilton@odot.state.or.us](mailto:cory.d.hamilton@odot.state.or.us). State shall notify the other Party in writing of any contact information changes during the term of this Agreement.
17. 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.

**Signature Page to Follow**

Agency/State  
Agreement No. 32784

**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 OREGON CITY**, by and through its  
elected officials

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO FORM**

By \_\_\_\_\_

Date \_\_\_\_\_

**Agency Contact:**

John M. Lewis, PE  
Public Works Director  
P.O. Box 3040  
625 Center Street  
Oregon City, OR 97045  
503.496.1545  
jmlewis@orccity.org

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

By \_\_\_\_\_  
Region 1 Maintenance and Operations  
Manager

Date \_\_\_\_\_

**State Contact:**

Cory Hamilton, District 2B Manager  
9200 SE Lawnfield Rd  
Clackamas, OR 97015  
971.673.6215  
cory.d.hamilton@odot.state.or.us



# Exhibit A - Project Location Map



The City of Oregon City makes no representations, express or implied, as to the accuracy, completeness and timeliness of the information displayed. This map is not suitable for legal, engineering, or surveying purposes. Notification of any errors is appreciated.



0 200 400 Feet

1 inch = 200 feet

City of Oregon City  
P.O. Box 3040  
625 Center St  
Oregon City, OR 97045  
503-657-0891 phone  
503-657-6629 fax  
[www.orcity.org](http://www.orcity.org)



Plot date: June 27, 2018  
Plot name: Hwy 99 Rockfall Protection - 8.5x11P - 20180627.pdf  
Map name: Hwy 99 Rockfall Protection - 8.5x11P.mxd