



M. BARBARA CARTMILL  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
DEVELOPMENT SERVICES BUILDING  
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

November 9, 2016

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement No. 31262 with  
Oregon Department of Transportation (ODOT) for the  
Curve Advisory Reporting System (CARS) Partnership

<b>Purpose/Outcomes</b>	This agreement allows the County to use the Rieker CARS hardware and software analysis package to evaluate curve warning signs on approximately 900 miles of County roadways to reduce fatal and serious injury road departure crashes, and to comply with Federal requirements for updated and consistent curve warnings.
<b>Dollar Amount and Fiscal Impact</b>	Overall Project Cost Estimate (statewide): \$275,000 ODOT funds: \$125,000 Other Local Agencies (cities and counties): \$141,000 County contribution: \$9000
<b>Funding Source</b>	County Road Funds
<b>Duration</b>	Execution until completion of the project or June 30, 2019, whichever is sooner
<b>Previous Board Action</b>	None
<b>Strategic Plan Alignment</b>	1. This curve warning improvements resulting from this project will reduce fatal and serious injury crashes in Clackamas County roadways. 2. This project is consistent with County's safety action plan and Drive to Zero safety program.
<b>Contact Person</b>	Christian Snuffin, Project Manager 503-742-4716

**BACKGROUND:**

This is an intergovernmental agreement between Clackamas County and ODOT that allows the County to use ODOT-owned equipment and software (CARS) for up to three years. The cost to the County will be \$9000. County staff will use the equipment in the field to collect data on approximately 900 miles of County roadways. County staff will use the CARS software to analyze field data to determine appropriate advisory speeds on each curve, and will then develop plans to install new signs or update existing signs.

This project is needed to comply with Federal standards provided in the Manual on Uniform Traffic Control Devices (MUTCD). Consistent curve warning sign installations have been shown to reduce road departure crashes, and the project improvements are expected to reduce fatal and serious injury crashes associated with road departure crashes on County roads. The MUTCD mandates that curve warning upgrades are completed by December 31, 2019.

This agreement has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff recommends that the Board of County Commissioners approve the attached Intergovernmental Agreement with ODOT for the Curve Advisory Reporting System Partnership as listed in the agreement.

Respectfully submitted,

Mike Bezner  
Assistant Director

**INTERGOVERNMENTAL AGREEMENT  
CURVE ADVISORY REPORTING SYSTEM (CARS) PARTNERSHIP  
CLACKAMAS COUNTY**

**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;" and Clackamas County, 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. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. The 2009 Manual of Uniform Traffic Control Devices (MUTCD) targeted high crash locations, including crashes on curves, by enhancing the curve warning signing requirements with the addition of a ball banking table and new requirements for curve warning signing and warning chevrons. ODOT commissioned the Oregon State University to perform a study which confirmed the inconsistent nature of curve warning signing in Oregon, both on state highways and local roads. MUTCD requires curve warning signing upgrades be completed by the end of 2019. In addition, Moving Ahead for Progress in the 21 Century (MAP21) increased safety funding focused on reducing fatal and serious injury crashes on all roads in the state using low cost systemic measures.
3. The Rieker Curve Advisory Reporting System (CARS) tool allows ball bank curve evaluations to be completed very efficiently and in a much safer fashion than the old ways of doing ball banking to set proper advisory speeds on curves. CARS is a much safer field data collection method and has cut field data gathering time as much as 80% as used on state highways.
4. ODOT purchased the rights to use CARS software on our state highway systems and has been successful in its use for several months. ODOT will also utilize CARS on local roadways that will require curve warning evaluations. In some cases, under the All Roads Transportation Safety (ARTS) program, ODOT Traffic Investigators may conduct the curve evaluations on local roadways, in other cases Agency or consultants may collect the data. This will greatly improve the consistency and uniformity of practice in the curve warning signing across state highways and local roadways. Under CARS software safety and efficiency will be improved since the investigator can drive the entire corridor in one direction and again in the other direction, rather than logging each curve one at a time with three (3) separate passes each in direction on each curve. In addition this expanded access would ensure consistent evaluations across jurisdictions leading to uniform signing, better meeting driver expectations and demonstrate collaboration with Local Agencies.

5. The estimated cost of purchasing the use of CARS for 15,000 miles of non-state highways and roads is \$150,000 for three (3) years and includes the cost of five (5) additional units. ODOT has negotiated a reduced price of \$10.00 per mile of road analysis, with Rieker agreeing to sell three (3) years of access to the CARS analysis package. The total cost for this effort is estimated at \$275,000. Access to CARS software expires June 2018.

**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. ODOT and Agency have determined that it is to their mutual benefit and to the general public's benefit if they jointly share the costs of the CARS software analysis package to evaluate approximately 900 miles of Agency's roadway, hereinafter referred to as "Project".

Agency's share of the Project will be financed with a lump sum in the amount of \$9,000 in funds available to Agency. This amount is based on the average breakout of shared usage for all participating agencies.

2. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon Project completion and final payment or June 30, 2019 whichever is sooner, unless extended by a fully executed amendment.

### **AGENCY OBLIGATIONS**

1. Agency shall upon execution of this Agreement and receipt of a letter of request from ODOT, provide a lump sum payment of \$9,000 for the Project. ODOT will be responsible for any expenses beyond the \$9,000.
2. Agency may utilize the CARS software analysis package on approximately 900 miles of Agency's county roads that will require curve warning evaluations.
3. Agency grants ODOT the right to enter onto Agency right of way for the performance of any duties set forth in this Agreement.
4. Agency certifies and represents that the individual(s) 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.
5. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of its budget.

6. Agency's Project Manager for this Project is Joseph Marek, P.E., PTOE, Traffic Engineering Supervisor, 150 Beaver Creek Road, Oregon City, Oregon 97045-4302. Phone (503) 742-4705, Email: joem@co.clackamas.or.us, 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.

## **ODOT OBLIGATIONS**

1. ODOT shall, upon execution of this Agreement, forward to Agency a letter of request for the lump payment in the amount of \$9,000 for payment of its share the costs of the CARS software analysis package.
2. ODOT will be the primary technical support for all users during this Project.
3. ODOT will provide Agency access to the CARS data collection equipment for the period of time necessary for Agency to conduct data collection on approximately 900 miles of Agency's roadways.
4. ODOT will ensure that Agency has access to the Rieker CARS analysis package through June 2018.
5. ODOT certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within ODOT's current appropriation or limitation of the current biennial budget.
6. ODOT's Project Manager for this Project is Michael Kimlinger, PE, 4040 Fairview Industrial Drive SE, Salem, OR 97302, 503-986-3583, michael.j.kimlinger@odot.state.or.us, or assigned designee upon individual's absence. ODOT 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 either Party upon one hundred days (120 days' notice, in writing and delivered by certified mail or in person.
2. ODOT may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by ODOT, under any of the following conditions:
  - a. 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 ODOT fails to correct such failures within ten (10) days or such longer period as ODOT may authorize.
  - b. If Agency fails to provide payment of its share of the cost of the Project.

- c. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, 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 ODOT is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. The 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, the Parties expressly agree 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.
5. The Parties shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
6. All employers 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. Both Parties shall ensure that each of its contractors complies with these requirements.
7. The Parties acknowledge and agree that either Party, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Parties 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 final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting Party.

8. 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 ODOT 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.
9. With respect to a Third Party Claim for which ODOT is jointly liable with Agency (or would be if joined in the Third Party Claim), ODOT 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 ODOT 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 ODOT 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. ODOT'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 ODOT had sole liability in the proceeding.
10. With respect to a Third Party Claim for which Agency is jointly liable with ODOT (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 ODOT in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of ODOT 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 ODOT 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.
11. 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.

12. 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.
13. This Agreement constitutes 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 ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

**SIGNATURE PAGE TO FOLLOW**

Agency/ODOT  
Agreement No. 31262

**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.

**Clackamas County**, by and through its  
County Commissioners

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_

Counsel

Date \_\_\_\_\_

**Agency Contact:**

Joseph Marek, P.E., PTOE, Traffic  
Engineering Supervisor  
Clackamas County  
150 Beaver Creek Road  
Oregon City, OR 97045-4302  
(503) 742-4705  
[joem@co.clackamas.or.us](mailto:joem@co.clackamas.or.us)

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

By \_\_\_\_\_

Technical Services Manager/Chief  
Engineer

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_

Traffic/Roadway Section Manager

Date \_\_\_\_\_

**ODOT Contact:**

Michael Kimlinger, PE  
4040 Fairview Industrial Drive SE  
Salem, OR 97302  
503-986-3583  
[michael.j.kimlinger@odot.state.or.us](mailto:michael.j.kimlinger@odot.state.or.us)