

INTERGOVERNMENTAL AGREEMENT
between
THE OREGON DEPARTMENT OF TRANSPORTATION (ODOT)
and
OREGON CITY
for
WILLAMETTE FALLS LEGACY PROJECT TRANSPORTATION IMPROVEMENTS

THIS INTERGOVERNMENTAL 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 Oregon City, 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 and 283.110, state agencies and other entities organized and existing under statute may enter into agreements with units of local government or other state agencies 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. OR99E is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
3. ODOT's 2015-2018 Statewide Transportation Improvement Program (STIP Key # 18759) includes a Railroad Tunnel Illumination project on OR99E within the limits of the city of Oregon City (hereinafter "ODOT Project"). It is anticipated that the ODOT Project will be completed within the 2017- 2018 construction schedule. The ODOT Project will be financed at an estimated cost of \$1,940,000.
4. Agency intends to construct, or assure construction of, three projects in the vicinity of the ODOT project associated with the redevelopment of the former Blue Heron mill site as the Willamette Falls Legacy Project (hereinafter "WFLP"). All three projects are for the purpose of improving public access to the WFLP and improving the performance of OR99E and surrounding local streets. The location of each project is as shown on the map attached hereto, marked Exhibit A, and by this reference made a part hereof. The three projects are hereinafter sometimes referred to as "Agency Projects." The projects are part of the WFLP Master Plan.
5. Agency's Projects are as follows:
 - a. A project to install Intelligent Transportation Systems (ITS) on OR99E designed to warn northbound traffic approaching the OR99E Railroad Tunnel of hazardous conditions ahead, hereinafter referred to as "Agency Project A".

- b. A project to prohibit north bound left turns from OR99E to Main Street and modify the right turn geometry from 99E to Railroad Avenue to allow space for turning traffic to slow and maneuver outside the travel lanes on a curve with limited sight distance, hereinafter referred to as "Agency Project B".
 - c. A project to install a pork-chop or raised median as part of the construction of an intersection at Water Avenue/OR 99E, to prevent unsafe movements and reinforce right-in, right-out access at that location, hereinafter referred to as "Agency Project C".
6. ODOT and Agency acknowledge that congestion and queuing on OR99E is a problem in the downtown area and that it will increase as a result of development in the WFLP. Agency's Projects are vital for enhancing the safety of the traveling public within the vicinity of the WFLP.
7. ODOT and Agency recognize that the ODOT Project and Agency Project A are similar in nature and are located such that cost saving may be achieved if the ODOT Project and Agency Project A are designed and constructed together.

TERMS OF AGREEMENT

1. As set forth in more detail below, Agency and ODOT agree to collaborate in the design and construction of the ODOT Project and Agency Project A as one project (hereinafter sometimes referred to as the "Combined Project.").
2. The estimate for the total cost of the ODOT Project, \$1,940,000, as identified in the STIP is subject to change. ODOT shall be responsible for any nonparticipating costs, and costs of the ODOT Project beyond the estimate. Agency shall contribute additional funds toward Agency Project A as described in this Agreement. It is anticipated that Agency Project A can be designed and constructed within the cost estimate for the ODOT Project together with Agency's contribution of up to \$500,000, as described in Agency Obligations, Paragraph 1. In the event the Combined Project cannot be constructed within the estimated Combined Project budget, ODOT and Agency shall examine alternatives for a reduced scope of Agency Project A and/or reevaluate funding obligations. If ODOT and Agency agree on changes to Agency Project A scope or funding obligations, then an amendment to this Agreement will be entered into to reflect such changes. If such agreement cannot be reached, ODOT at its sole discretion shall determine whether the scope of Agency Project A must be modified to meet the Combined Project budget or to commit additional funds to the Combined Project.
3. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of both the ODOT Project and Agency Project A and final payment, or ten (10) calendar years, whichever is sooner.

AGENCY OBLIGATIONS

1. If costs for Agency Project A and the ODOT Project exceed the \$1,940,000 programmed in the STIP budget, Agency shall contribute additional funds of up to \$250,000 for the additional costs. Agency has imposed a condition on the development of the WFLP. The condition requires the developer to contribute up to \$250,000 towards the cost of Agency Projects, should certain conditions be met. If the conditions are met and the developer of the WFLP makes the required contribution, the Agency shall contribute the WFLP developer's contribution up to \$250,000 for the additional costs, in addition to Agency's contribution addressed in the first sentence of this paragraph. Agency's contribution (from whatever source) shall include reimbursement for all expenses, except travel expenses. Agency shall pay ODOT within forty-five (45) days of final Agency approval of the completed Agency Project A.
2. Agency Project A may require placement of the ITS systems on Agency right of way. If so, Agency will either donate right of way to ODOT for this purpose through a Quit Claim Deed, or otherwise authorize installation of the ITS system on Agency right of way.
3. Completion of Agency Project B and Agency Project C are an integral part of vital safety improvements necessitated by the WFLP, and Agency's completion of said projects is part of the consideration of this Agreement. Agency, at its sole cost and expense, shall do all things necessary for the completion of said projects within the time-frames set forth below, unless the WFLP is not developed. .
4. Agency shall design and acquire right of way for Agency Project B prior to completion and opening of the Riverwalk or within three (3) years of the plan amendment from General Industrial to Mixed Use Downtown (November 5, 2017), whichever comes first.
5. Agency agrees to complete construction of Agency Project B prior to issuing a certificate of occupancy for approved development at the WFLP site with estimated trip generation to the site surpassing 140 peak hour trips per day.
6. Agency shall construct Agency Project C concurrent with construction of Water Avenue/OR 99E intersection, approved in the WFLP Master Plan.
7. Prior to the commencement of construction of each of Agency Project B and Agency Project C, Agency shall obtain a miscellaneous permit to occupy ODOT right of way through the ODOT District 2B Office.
8. Agency shall cause to be relocated or reconstructed all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of Agency Project B in order to conform the utilities and other facilities with the plans

and the ultimate requirements for the portions of Agency Project C which are on Agency's right of way.

9. Agency will partner with ODOT to conduct a multimodal safety audit subsequent to construction of Agency Projects A, B, and C if either Party determines as part of a detailed development plan review for the WFLP that significant safety issues remain or will result from the WFLP. Agency will contribute up to \$60,000 (2014 dollars) for the cost of the safety audit, should one be required. This contribution is in addition to the additional contributions described in Agency Obligations, Paragraph 1. Agency and ODOT will jointly review the safety audit findings and develop an implementation strategy for high priority improvements.
10. Agency shall notify ODOT of the estimated number of motor vehicle trips generated by each phase of WFLP at least thirty (30) days prior to the first evidentiary hearing of any required land use proceeding for the WFLP. Agency shall use the Institute of Traffic Engineers Trip Generation Manual for the trip generation source, unless Agency and ODOT agree to an adjustment.
11. Agency shall obtain ODOT concurrence for any phase of the WFLP that would result in the total estimated peak hour trips generated from the area to exceed 700. If at that time, additional safety measures are required, Agency will work with ODOT to assure appropriate safety countermeasures are provided.
12. Agency certifies and represents that the individual(s) signing this Agreement have 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.
13. Agency acknowledges that its responsibility for the Combined Project may be up to \$500,000 consistent with Agency Obligations, Paragraph 1, with potentially an additional \$60,000 for a safety audit.
14. Agency's Project Manager for Project A, B, and C is John Lewis, Public Works Director, 503-657-8241, (jmlewis@orcity.org), or assigned designee upon individual's absence. Agency will notify the other Party in writing of any contact information changes during the term of this Agreement.

ODOT OBLIGATIONS

1. ODOT shall design and construct Agency Project A in conjunction with the ODOT Project.
2. ODOT will keep accurate cost accounting records for Agency Project A. If the Combined Project costs for the ODOT Project and Agency Project A exceed \$1,940,000. ODOT will prepare and submit an invoice for any excess costs of the Combined Project directly to Agency's Project Manager for review and approval. The

Agency's contribution shall only be required after the full expenditure of the amount programmed in the STIP budget. The invoice required under this provision will be in a form identifying the Combined Project, the Agreement number, the invoice number or the account number or both, and will itemize all expenses for which reimbursement is claimed. Under no conditions shall Agency's obligations exceed the financial commitment described under Agency Obligations, Paragraph 1.

3. ODOT shall perform the service under this Agreement relative to the Combined Project as an independent contractor and will 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.
4. Subsequent to completion of Agency Project A, ODOT will be responsible for maintenance and 100 percent of power costs associated Project A and require the power company to send invoices directly to ODOT.
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. For Project A, ODOT, or its consultant, will conduct the necessary field surveys, environmental studies, traffic investigations, preliminary engineering and design work required to produce and provide final plans, specifications and cost estimates; identify and obtain all required permits; perform all construction engineering, including all required materials testing and quality documentation; acquire right-of-way, if necessary; prepare all bid and contract documents; advertise for construction bid proposals; award all contracts; pay all contractor costs, provide technical inspection, project management services and other necessary functions for sole administration of the construction contract entered into for this project.
7. ODOT will cause to be relocated or reconstructed, all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of Project A in order to conform the utilities and other facilities with the plans and the ultimate requirements for the portions of Project A which are on OR99E.
8. ODOT's Project Manager for Project A is Kyle Crate, Project Leader, 503-731-8496, kyle.w.crate@odot.state.or.us, or assigned designee upon individual's absence. ODOT will 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. 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 provide payment of its share of the cost of the Combined Project.
 - b. If Agency fails to construct Agency Project B and C as required by this Agreement.
 - 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 ODOT 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. 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.
5. 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.

6. 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.
7. 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. The Parties acknowledge and agree that ODOT, 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 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 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. The Parties shall comply with all federal, ODOT, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS [279C.505](#), [279C.515](#), [279C.520](#), [279C.530](#) 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 ODOT civil rights and rehabilitation statutes, rules and regulations.
9. All employers that employ subject workers who work under this Agreement in the ODOT 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. The Parties shall ensure that each of its contractors complies with these requirements.

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

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 TO FOLLOW

The ODOT Project is in the 2015-2018 Statewide Transportation Improvement Program, (Key #18759) that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently approved by amendment to the STIP).

Oregon City, by and through its elected officials

By _____

Date _____

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Counsel

Date _____

Agency Contact:

John Lewis, Public Works Director
625 Center St., Oregon City, OR 97045
503-496-1545
jmlewis@orcity.org

ODOT Contact:

Kelly Brooks
Oregon Department of Transportation
Region 1
123 NW Flanders St.
Portland, OR 97221
503-731-3087
kelly.s.brooks@odot.state.or.us

STATE OF OREGON, by and through its Department of Transportation

By _____
Rian Windsheimer, Region 1 Manager

Date _____

APPROVAL RECOMMENDED

By _____
Kelly Brooks, Interim ODOT Region 1
Policy and Development Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

EXHIBIT A—Willamette Falls Legacy Project Area Map

