

RESOLUTION NO. 1757

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT WITH THE STATE OF OREGON (STATE) ACTING BY AND THROUGH THE OREGON DEPARTMENT OF TRANSPORTATION (ODOT), TO SIGN AN INTERGOVERNMENTAL AGREEMENT FOR THE CONSTRUCTION OF THE PROJECT KNOWN AS COFFEE CREEK CORRECTIONAL FACILITY INFRASTRUCUTRE PHASE 7.

WHEREAS, the City approved a motion at a regular meeting in June 2001, for fiscal year 2001-02 adopting an appropriation of \$5,535,594 for Prison Infrastructure and an appropriation of \$150,000 for Boones Ferry road improvements; and

WHEREAS, the City adopted Resolution No. 1754 on March 4, 2002 awarding the construction contract to Excell Excavation, Inc; and

WHEREAS, the Beaverton-Tualatin Highway, State Highway No. 141, also known as Boones Ferry Road, is apart of the State Highway system under the jurisdiction and control of the Oregon Transportation Commission; and

WHEREAS, the City is proposing to make certain improvements and install a signal on the Beaverton-Tualatin Highway at Day Street; and

WHEREAS, by the authority granted in ORS 190.110, 366.770, and 366.775, ODOT may enter into cooperative agreements with certain counties and cities 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; and

WHEREAS, by the authority granted in ORS 810.210, ODOT 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 ODOT 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 ODOT, except with its written approval. Traffic signal work on the Beaverton-Tualatin Highway at Day Street will conform to the current ODOT standards and specifications; and

WHEREAS, a draft of the Intergovernmental Agreement (IGA) for the construction of certain improvements along the Beaverton Tualatin Highway and operation of the signal on the

Beaverton-Tualatin Highway at Day Street, a copy of which as been marked Exhibit "A": attached hereto and incorporated by reference herein; and

WHEREAS, City staff has reviewed the IGA and suggested several grammatical changes and ODOT contract section needs to review and approve the changes for the final IGA document; and

WHEREAS, the suggested changes are minor in nature; and

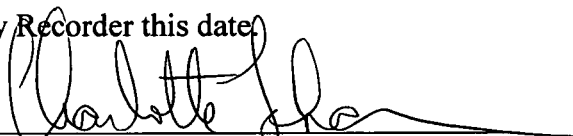
WHEREAS, there is a need to expedite the process to permit the planned construction of the Boones Ferry Road improvements to go forward; and

WHEREAS, ODOT has indicated that when the minor grammatical changes have been made and the Mayor has been authorized to sign the IGA, ODOT will issue the permit for construction in advance of ODOT and the State of Oregon signatures.

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

1. The City Council does hereby approve and authorize the Mayor to sign an IGA for the construction of the project known as Coffee Creek Correctional Facility Infrastructure Phase 7, between the City of Wilsonville and the State of Oregon, acting by and through its Department of Transportation, upon final approval by the City Attorney. A draft copy of the IGA, marked Exhibit "A", is attached hereto and incorporated herein.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 18th day of March 2002, and filed with the Wilsonville City Recorder this date.


CHARLOTTE LEHAN, MAYOR

ATTEST:


Sandra C. King, CMC, City Recorder

SUMMARY OF VOTES:

Mayor Lehan Yes
Councilor Helser Excused
Councilor Barton Yes
Councilor Holt Yes
Councilor Kirk Yes

**COOPERATIVE IMPROVEMENT/MAINTENANCE AGREEMENT
Beaverton- Tualatin Highway at Day Road**

This Agreement is made and entered into by and between The State of Oregon, by and through its Department of Transportation, hereinafter referred to as "ODOT"; and The City of Wilsonville, a municipal corporation of the State of Oregon, acting by and through its City Officials, hereinafter referred to as "City".

W I T N E S E T H

RECITALS

1. The Beaverton-Tualatin Highway, State Highway No. 141, is a part of the State Highway system under the jurisdiction and control of the Oregon Transportation Commission. Day Road is part of the city street system under the jurisdiction and control of the City of Wilsonville.
2. The City is proposing to make certain improvements and install a signal on the Beaverton-Tualatin Highway at Day Road.
3. By the authority granted in ORS 190.110, 366.770, and 366.775, ODOT may enter into cooperative agreements with certain counties and cities 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.
4. By the authority granted in ORS 810.210, ODOT 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 ODOT 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 ODOT, except with its written approval. Traffic signal work on PROJECT will conform to the current ODOT standards and specifications.
5. By the authority granted in ORS 366.425, ODOT may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm or corporation for the performance of work on any public highway within State. When said money or a letter of credit is deposited, ODOT shall proceed with the project. Money so deposited shall be disbursed for the purpose for which it was deposited.

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. The City proposes to construct certain roadway improvements and to install a traffic control signal and attached illumination at the intersection of Beaverton-Tualatin Highway and Day Road; hereinafter referred to as "PROJECT". The purpose of the improvements is to provide acceptable traffic circulation patterns on public highways and to provide access to a new prison constructed at this location.

Said roadway improvements include:

- Modification of the grade north of the proposed signal on the Beaverton-Tualatin Highway to improve sight distance.
- Construction of an additional northbound through lane and a northbound left turn lane on the Beaverton-Tualatin Highway.
- Construction of a southbound lane on the Beaverton-Tualatin Highway from Day Road to Pioneer Court.
- Construction of a sidewalk on the eastside of the Beaverton-Tualatin Highway.
- Construction of a left-turn and right turn lane on Day Rd.

The location of the PROJECT is approximately as shown on the sketch map attached hereto marked Exhibit A, and by this reference made a part hereof.

2. All phases of this project will be financed 100 percent with City funds at no expense to ODOT except for ODOT's maintenance responsibilities outlined under ODOT OBLIGATIONS. The total estimated cost of this project is \$ 700,000.
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 responsibilities for the useful life of the facilities constructed as part of the project. The project shall be completed within 2 calendar years following the date of final execution of this agreement by both parties.

ODOT OBLIGATIONS

1. ODOT hereby grants City, and/or its contractor, the right to enter onto and occupy ODOT right-of-way upon issuance of ODOT required permits, for the performance of necessary preliminary engineering and construction of the project.
2. ODOT's District Manager/or designee shall, at Project expense, issue the required permits, and review and concur with the project plans and specifications.
3. ODOT's Region Manager shall, at PROJECT expense, assign a Project Manager to provide material testing and technical inspection to insure ODOT standards are met, and to monitor the traffic signal and roadway work performed by the City, or its contractors, within the boundaries of the Beaverton-Tualatin Highway right-of-way. ODOT's Project Manager will provide general oversight of the roadwork, but the City shall perform all roadwork

technical inspections and contractor coordination. Said Project Manager for this PROJECT will be Sam Hunaidi, Region 1, District 2A.

4. ODOT's Traffic Engineer/or designee shall, at PROJECT expense, review and concur with all Project traffic signal design plans provided by City prior. to advertisement for construction bids.
5. ODOT's Roadway Engineer/or designee shall, at PROJECT expense, review and concur with all PROJECT plans and specifications provided by the City.

ODOT's Traffic Signal Services Unit shall, at PROJECT expense, perform the signal equipment environmental testing, field testing, and turn-on in accordance with the current ODOT procedures. ODOT's District Manager will request an advance deposit from the City in the amount of \$13,000. Said deposit being for reimbursement of ODOT's estimated costs for initial plan and specification review and PROJECT coordination.

6. ODOT shall compile accurate cost accounting records. City may requests a statement of costs to date at any time by submitting a written request. Upon completion of the PROJECT, ODOT shall either send to City a bill for the amount which, when added to City's advance deposit/s, will equal 100 percent of the total ODOT costs for PROJECT or ODOT will refund to City any portion of said advance deposit which is in excess of the total ODOT costs for the PROJECT.
7. ODOT shall, upon completion of the PROJECT, maintain the pavement surrounding the vehicle detector loops installed on the Beaverton-Tualatin Highway portion of the PROJECT in such a manner as to provide adequate protection for said detector loops, and shall adequately maintain the pavement markings and signing installed on ODOT right-of-way.
8. ODOT shall, upon satisfactory signal turn on, perform all required signal and newly installed illumination maintenance; provide power for said signals and illumination; develop the initial signal timing and retain complete jurisdiction and control of the timing established for operation of the traffic signals. ODOT shall receive and consider City's input on changes to facilitate signal operation. Maintenance of the PROJECT signals and illumination shall be 100 percent ODOT's cost responsibility. City shall be responsible for 100 percent of the power costs associated with the PROJECT traffic signal and illumination equipment. ODOT shall bill the City monthly for said power costs.

CITY OBLIGATIONS

1. City, or its consultants shall conduct the necessary field surveys, environmental studies, traffic investigations; acquire all necessary right-of-way; identify and obtain required permits; arrange for utility relocation or reconstruction, and perform all preliminary engineering and design work required to produce plans, specifications, and cost estimates.
2. City shall provide copies of the design to ODOT for review and concurrence prior to construction.

3. City shall, upon ODOT's written review and concurrence of final plans, prepare the contract and bidding documents, advertise for construction bid proposals, award all contracts, pay all contractor costs, furnish all construction engineering, field testing of materials, technical inspection (except as provided for in ODOT OBLIGATIONS) and project manager services for administration of the contract.
4. If City chooses to assign its contracting responsibilities to a consultant or contractor, the City shall inform the consultant or contractor of the requirements of ORS 276.071 to ensure that the public contracting laws within ORS Chapter 279 are followed.
5. The City will forward an advance deposit in the amount of \$13,000 to ODOT's District 2A office. Said amount being equal to the estimated cost of ODOT provided review of plans, specifications, and PROJECT coordination.
6. City agrees upon receipt of request from ODOT, to forward ODOT an additional advance deposit in the amount of \$13,000. Said amount being equal to the estimated total cost of additional ODOT provided review of plans and specifications; PROJECT monitoring; technical inspection, and signal testing and turn-on for the PROJECT (as further described in ODOT OBLIGATIONS). In the event ODOT costs exceed City's combined deposits during the course of the PROJECT, ODOT may request additional deposits.
7. Upon completion of the PROJECT, ownership of PROJECT traffic signal and illumination equipment shall automatically transfer to ODOT, and upon receipt from ODOT of an itemized statement of the actual total cost of ODOT's services, City shall pay any amount which, when added to City's advance deposits, will equal 100 percent of ODOT's actual total costs of services provided for the PROJECT. Any portion of City's advance deposits which are in excess of the total actual cost of services provided by ODOT will be refunded or released to City.
8. City shall design and construct to ODOT standards and conform to the Oregon Action Plan.
9. City agrees to obtain necessary permits and to comply with all provisions of ODOT issued permits to "Occupy or Perform Operations Upon a State Highway" and to also obtain the necessary Road Approach Permit from ODOT's District 2A office for all public roads and private approach connections to the highway. The City agrees to comply with all provisions of said permit, and shall require its contractors, subcontractors, or consultants performing such work to comply with such provisions.
10. City, by separate agreement with the Oregon Department of Corrections and ODOT, agrees to notify and obtain permission from all private property owners prior to construction of the PROJECT.
11. City shall require its contractor or consultant to obtain and keep in effect during the term of the contract, Comprehensive or Commercial General Liability insurance covering bodily injury and property damage. This insurance shall include personal injury coverage; contractual liability coverage for the indemnity provided under this agreement and products/completed operations liability. Combined single limit per occurrence shall not

be less than \$1,000,000 or the equivalent. Each annual aggregate limit shall not be less than \$2,000,000, when applicable. The certificate of insurance shall include the State of Oregon, Transportation Commission and its members, the Department of Transportation, officers and employees as additional insured. City shall provide a copy of the certification to ODOT prior to construction of the PROJECT. The insurance coverage shall not be amended, altered, modified or cancelled insofar as the coverage contemplated herein is concerned without at least 30 days prior written notice.

12. City, by separate agreement with the Oregon Department of Corrections and ODOT, shall acquire all necessary right-of-way and/or easements (both permanent and temporary construction) in accordance with the rules, policies and procedures of the "Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970" as amended, ORS 281.060, State of Oregon Right of Way Manual, and Federal Highway Administration Federal Aid Policy Guide. City, by separate agreement with the Oregon Department of Corrections and ODOT, shall bear all costs associated with appraising and acquiring said right-of-way and easements. and should contact Region Right-of-Way Office for right-of-way advice.
13. Any right-of-way obtained by the City within or abutting to ODOT's jurisdiction may be obtained in the name of ODOT, or in the name of the City, and then relinquished by deed to ODOT upon completion of the PROJECT. City shall also provide a copy of a right-of-way map to cover any property or permanent easements to be conveyed to ODOT.
14. City is responsible for and insures that all PROJECT right-of-way monumentation will be conducted in conformance with ORS 209.150.
15. City shall, at PROJECT expense, lay out and paint the necessary lane lines and erect the required directional and traffic control signing on the PROJECT.
16. City shall maintain the pavement surrounding the vehicle detector loops installed in City streets in such a manner as to provide adequate protection for said detector loops, and shall adequately maintain the pavement markings and signing installed in accordance with the plans and specifications.
17. City shall, upon completion of the PROJECT, and upon receipt of ODOT's monthly billing, reimburse ODOT for 100 percent of the power costs associated with the PROJECT.
18. City acknowledges and agrees that ODOT, 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 City which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after completion of PROJECT. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.

19. Upon completion of the PROJECT, City shall submit two sets of "As Constructed" drawings to ODOT's Region Traffic Section. One set shall be half size mylars. The second set shall be half size (11"x 17") prints, and one additional half size set (11"x17") to district 2A.
20. City hereby grants ODOT the right to enter into and occupy City street right-of-way for the performance of necessary maintenance of the traffic signal and illumination equipment, including vehicle detector loops.
21. City, its construction contractor, subcontractor, if any and all employers working under this agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers compensation coverage for all their subject workers.
22. City shall comply with all federal, state, and local laws, regulation, executive orders and ordinances applicable to the work under this agreement, including without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, which hereby are incorporated by reference. Without limiting the generality of the foregoing, the City expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659,425; (iv) all regulations and administrative rules established pursuant to foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
23. City shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless the State of Oregon, the Oregon Transportation Commission and its members, Department of Transportation, its officers and employees from any and all claims, suits, and liabilities which may occur in the performance of this PROJECT.
24. City shall authorize execution of this agreement during a regularly convened session of its City Council.

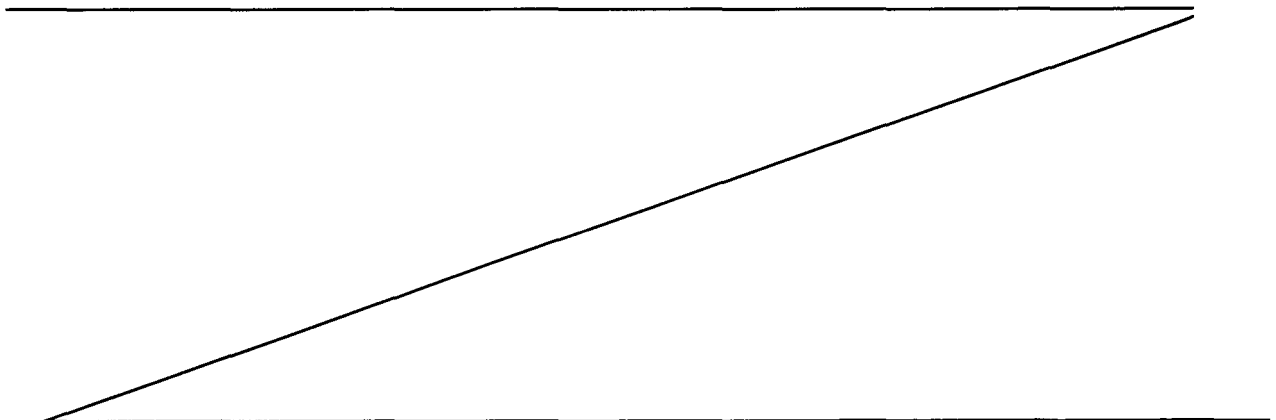
GENERAL PROVISIONS

1. ODOT and City agree and understand that a mutual review of the PROJECT plans and specifications will be conducted prior to advertisement for construction bid proposals, and that ODOT's prior written approval is necessary before such advertisement.
2. This agreement may be terminated by mutual written consent of both parties.

ODOT may terminate this agreement effective upon delivery of written notice to City, or at such later date as may be established by ODOT, under any of the following conditions:

- a) If City fails to provide services called for by this agreement within the time specified herein or any extension thereof.

- b) If City 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 10 days or such longer period as ODOT may authorize.
 - c) If City fails to provide payment of \$13,000 upon receipt of a letter of request from ODOT.
 - d) If federal or state laws, regulations or guidelines are modified or interpreted in such a way that the work under this agreement is prohibited.
3. Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.
4. ODOT retains the right to remove or reconfigure any of the PROJECT improvements located on ODOT right-of-way as necessary for maintenance, operation, construction or reconstruction of its highway facilities. In this event, ODOT agrees to notify City of such intentions at least 180 days prior to such action. ODOT may unilaterally terminate this agreement upon such notice, or ODOT and City may agree to supplement, modify or amend this agreement, as may be required by such action to address modified responsibilities.
5. 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.



IN WITNESS WHEREOF the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

The Oregon Transportation Commission on March 18, 1999, approved Subdelegation Order No. 2, which the Director grants authority to the Exec. Deputy Director/Chief Engineer to approve and execute agreements over \$75,000 when the work is related to a project as a line item in the approved biennial budget.

APPROVAL RECOMMENDED

BY _____
Region 1 Manager

Date _____

BY _____
State Traffic Engineer

Date _____

**APPROVED AS TO
LEGAL SUFFICIENCY**

BY _____
Asst. Attorney General

DATE _____

**APPROVED AS TO
LEGAL SUFFICIENCY**

BY _____
City Attorney

DATE _____

STATE OF OREGON, by and through
its Department of Transportation

BY _____
Exec. Dep. Dir./Chief Eng.

DATE _____

THE CITY OF WILSONVILLE, by and
through its Elected Officials

BY _____
Mayor

BY _____
City Recorder

DATE _____

The City of Wilsonville
Billing Address:
30000 Town Center Loop E
Wilsonville, OR. 97070