

RESOLUTION NO. 2148

A RESOLUTION OF THE WILSONVILLE CITY COUNCIL APPROVING IMMEDIATE OPPORTUNITY FUND AGREEMENT BETWEEN THE STATE OF OREGON, ACTING BY AND THROUGH THE DEPARTMENT OF TRANSPORTATION, AND THE CITY OF WILSONVILLE TO SUPPORT ECONOMIC EXPANSION AND DEVELOPMENT OF THE WILSONVILLE LOCATED BOTTLING PLANT OF THE BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES D/B/A COCA-COLA BOTTLING COMPANY OF OREGON

WHEREAS, the Oregon Transportation Commission (OTC), at its July 15, 1988 meeting approved establishing an Immediate Opportunity Fund (IOF) to support primary economic development in Oregon through the construction and improvement of street and roads; and

WHEREAS, the proposed expansion of the workforce in Oregon of BCI Coca-Cola Company of Los Angeles dba Coca-Cola Bottling Company of Oregon including the expansion of its bottling plant in Wilsonville is the type of economic development which qualifies for IOF funds under the 2004 IOF revised guidelines; and

WHEREAS, the design and construction of the Wilsonville Road and I-5 interchange and road improvements as described in the Cooperative Improvement Agreement, No. 23, 581 dated June 3, 2008 between the State of Oregon and the City of Wilsonville, will directly support the proposed Coca-Cola bottling plant expansion and job creation by providing adequate streets and roads for the traffic generated by the development; and

WHEREAS, by authority granted in ORS 190.110, 366.572, and 366.576, the State of Oregon and the City may enter into cooperative agreements for the performance of work on the types of improvement projects referenced above with the allocation of costs and conditions mutually agreeable to the contracting parties.

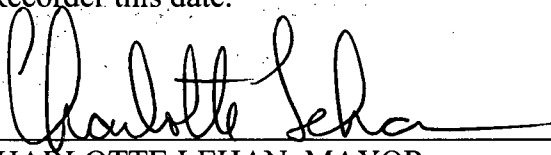
NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The Immediate Opportunity Fund Agreement, Coca-Cola Enterprises, between the State of Oregon, by and through its Department of Transportation, and the City of Wilsonville, a copy of which is marked Exhibit A, attached hereto and incorporated by reference as if fully set forth herein, is hereby approved by the Wilsonville City Council and the Mayor is


authorized to execute this Immediate Opportunity Fund Agreement on behalf of the City of Wilsonville.

2. This Resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 3rd day of November, 2008, and filed with the Wilsonville City Recorder this date.


CHARLOTTE LEHAN, MAYOR

ATTEST:


Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Lehan	Yes
Councilor Kirk	Yes
Councilor Knapp	Yes
Councilor Ripple	Yes
Councilor Núñez	Excused

IMMEDIATE OPPORTUNITY FUND AGREEMENT

Coca Cola Enterprises

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 WILSONVILLE, acting by and through its elected officials, hereinafter referred to as "Agency."

RECITALS

1. The Oregon Transportation Commission (OTC) at its July 15, 1988, meeting approved establishing an Immediate Opportunity Fund (IOF) to support primary economic development in Oregon through the construction and improvement of streets and roads. The OTC at its meeting on March 24, 2004, revised the guidelines for the use of this fund. IOF funds are limited to Type A) specific economic development projects that affirm job retention and job creation opportunities; and Type B) revitalization of business or industrial centers to support economic development and quality development objectives.
2. Pacific Highway (I-5) and the interchange including the on and off ramps at Exit 283, are a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission. Wilsonville Road is a part of the city street system under the jurisdiction and control of Agency.
3. By the authority granted in 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.
4. State and Agency entered into an MOU dated June 26, 2007 and Cooperative Improvement Agreement (CIA) No. 23,581 dated June 3, 2008, that describes the design and construction of the proposed improvements to the Wilsonville Road/I-5 Interchange and define additional funding available for the Project.

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. Agency, in cooperation with State, proposes to make roadway improvements near the existing site of BCI Coca Cola Company of Los Angeles Inc. D/B/A Coca Cola Bottling Company of Oregon formerly known as Coca Cola Bottling Company in Wilsonville that meets the IOF criteria. The improvements may include, but are not limited to, widening Wilsonville Road to add capacity by increasing the length of left turn lanes and adding an additional lane for through/left turn both eastbound and westbound; modifying existing

signalization to coincide with roadway improvements; lengthening, widening and improving the freeway ramps for additional stacking, acceleration and deceleration, hereinafter referred to as "Project". 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. The Oregon Economic and Community Development Department (OECD) recommends use of Immediate Opportunity Funds for this Project. State agrees to provide Immediate Opportunity Funds not to exceed \$500,000 to help finance the road construction portion of this Project. Agency and/or others will provide the remaining Project funding as described in CIA No. 23,581.
3. Agency has entered into an agreement with BCI Coca Cola Bottling Company of Los Angeles D/B/A Coca-Cola Bottling Company of Oregon which provides for Agency to act on BCI Coca Cola Bottling Company of Los Angeles D/B/A Coca-Cola Bottling Company of Oregon's behalf for purposes of compliance with this Agreement. Any approval or authority necessary to be exercised by BCI Coca Cola Bottling Company of Los Angeles D/B/A Coca-Cola Bottling Company of Oregon for purposes of this Project is given to Agency pursuant to said agreement. Agency may also enter into separate Agreements with other entities and agencies to provide for funding necessary to meet the funding requirements of the Project.
4. This Agreement is effective on the date all required signatures are obtained and shall terminate upon completion of the Project and receipt of documentation of filled and created positions outlined under Agency obligations.

STATE OBLIGATIONS

1. State, or its consultant, as described in CIA No. 23,581, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; obtain all required permits; arrange for all utility relocations or reconstruction; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid documents; provide Project management services, and other necessary functions for sole administration of the contract.
2. State shall lay out and paint the necessary lane lines and erect the required directional and traffic control signing for the Project.
3. Once design is underway, State shall make available to the I-5 Wilsonville Interchange Project, (Key #15108) a lump sum payment in the amount of \$500,000 as the IOF portion of the Project, consistent with Agency obligations no. 1. Per CIA No. 23,581 these IOF funds shall be used for Level of Service (LOS) improvements per the Agency's concurrency standards.
4. State shall advertise and award all contracts, and pay all contractor costs. Within two (2) years after the Agreement execution date, unless granted an extension by State, State Agency

shall award a contract for construction of Project. Construction must be substantially complete within four (4) years of the Agreement date. If either time limit expires State and Agency shall review circumstances and modify or terminate this agreement.

5. State shall, at its own expense, assign a liaison person to monitor the Agency's Program obligations and the use of IOF funding for the Project.
6. State's IOF contact for this Project is Akin Owosekun, Address: 123 NW Flanders, Portland, OR 97209, Phone (503) 731-3397, email Akin.O.Owosekun@odot.state.or.us, or an individual designated by the Region 1 Manager in the event of the unavailability of the aforementioned individual.

AGENCY OBLIGATIONS

1. Agency shall make a formal request for the IOF funds consistent with the IOF criteria and as directed in the December 28, 2007 letter from Director Garrett, which is attached hereto, marked "Exhibit B," and by this reference made a part hereof.
2. Agency ensures that State's contribution of an amount not to exceed \$500,000 of Immediate Opportunity Funds will be applied to the design and construction of the Project. Agency and State shall be responsible for funding the remaining Project costs as described in CIA No. 23,581.
3. Agency agrees that State road standards or state approved design exceptions thereto shall be used for that portion within State rights-of-way.
4. Agency shall, upon completion of the Project and at its own expense, maintain and operate their portion of the Project at a minimum level that is consistent with normal depreciation and/or service demand as stated in CIA No. 23,581. Agency maintenance responsibilities shall survive termination of this Agreement and upon completion of Project and submission of documentation under Agency Obligation 10, Job Growth Assessment.
5. Job Growth Assessment

Because the purpose of the Immediate Opportunity Fund Type A project is to promote job growth, State wishes to assess its investment.

- a. Therefore, within six (6) months after completion of the Project, Agency shall provide to State documentation from BCI Coca Cola Bottling Company of Los Angeles D/B/A Coca-Cola Bottling Company of Oregon the number of full-time equivalent positions (FTE) that have been retained and the number of new FTE positions created and filled by the expansion of Coca-Cola Enterprises at one or more of BCI Coca Cola Bottling Company of Los Angeles D/B/A Coca Cola Bottling Company of Oregon, Wilsonville, Tualatin or any other Portland-Metro facilities for a two-year period (consisting of eight (8) consecutive calendar quarters' that begins no earlier than October 1, 2008 and ends no

later than December 31, 2013 (such two year period referred to as the "Maintenance Period"). For purposes of this section, BCI Coca Cola Bottling Company of Los Angeles D/B/A Coca Cola Bottling Company of Oregon may designate any single set of eight consecutive quarters between October 1, 2008 and December 31, 2013 as the maintenance period. If such documentation cannot be provided within the above stated time limit, shall audit payroll records of BCI Coca Cola Bottling Company of Los Angeles D/B/A Coca Cola Bottling Company of Oregon records and establish the number of jobs retained and created.

- b. The targeted number of retained positions and new FTE positions is the number listed in the Oregon Department of Economic and Community Development proposal letter, which is presented to State's Director and approved by the Oregon Transportation Commission. "New FTE positions" shall mean new positions created, filled and remaining on the payroll for at least one year and hired after February 5, 2008. There shall be 301 retained positions and 45 new positions in accordance with referenced letter.
 - c. The verification documentation shall be a letter on company letterhead signed by an official of BCI Coca Cola Bottling Company of Los Angeles D/B/A Coca-Cola Bottling Company of Oregon duly authorized to represent BCI Coca Cola Bottling Company of Los Angeles D/B/A Coca-Cola Bottling Company of Oregon certifying the number of FTE positions retained and new FTE positions filled. The State, through State, OECD or the Secretary of State Audits Division, shall have the right to audit the payroll records of Coca-Cola Bottling Company of Oregon in order to confirm information in the letter.
 - d. If the documentation shows a deficiency in the number of FTE positions, Agency shall reimburse State on a pro-rated basis. The formula for the pro-rated amount of IOF funds paid to Agency will be an amount equal to the number of actual retained and created FTE positions divided by the number of projected retained and created FTE positions multiplied by total IOF funds available. Reimbursement will be the amount actually distributed less the pro-rated amount.
 - e. Reimbursements resulting from a failure to provide audit information or failure to meet job target goals shall be paid within three (3) months after the above stated time limit.
6. All said reimbursements shall include interest equal in rate for the Highway Trust Fund at the Treasury established on the date of execution of this Agreement. Interest shall accrue from the date of the first withdrawal from the Highway Trust Fund at the State Treasury.
- a. Agency may wish to enter into a separate agreement with BCI Coca Cola Bottling Company of Los Angeles D/B/A Coca-Cola Bottling Company of Oregon to address pay back of Agency reimbursements to State resulting from Coca-Cola Enterprises' failure to provide documentation or failure to meet job target goals.
 - b. At Agency's request and upon consultation with Oregon Economic and Community Development Department, State may grant a time extension on the reimbursement or a

time extension to provide additional job growth.

7. Agency and State acknowledge and agree that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of either Party that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts. Each Party shall retain and keep all files and records for a minimum of three (3) years after completion of the Project.
8. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from State.
9. Agency shall enter into and execute this Agreement during a regular, duly authorized session of its City Council.

JOINT OBLIGATIONS

1. State, Agency or its consultant shall acquire all necessary rights-of-way according to the obligations set forth in CIA No. 23,581.
2. 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. Agency shall ensure that each of its subcontractors complies with these requirements.
3. State and Agency agree that each shall be responsible for the appropriate power and maintenance as stated in CIA No. 23,581.
4. State and Agency 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 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, Agency 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 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.

GENERAL PROVISIONS

1. State and Agency grant authority to each other to enter onto its respective right-of-way for construction and Project monitoring.
2. Termination

- a. Parties Right to Terminate for Convenience. This Agreement may be terminated at any time by mutual written consent of the parties.
 - b. State's Right to Terminate for Cause. State may terminate, in whole or in part, immediately upon notice to Agency, or at such later date as State may establish in such notice, upon the occurrence of any of the following events:
 - i. 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.
 - ii. 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;
 - iii. Agency fails to provide its share of the cost of the Project.
 - C. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties before termination.
3. Agency agrees to refund to State all Immediate Opportunity Funds paid to Agency in connection with this Project if this Agreement is terminated for any reason prior to completion of Project and receipt of job assessment documentation except for prior rights or obligations accrued before termination. Refund to State shall be within six (6) months from termination date.
 4. 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.
 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 State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.
 6. Both parties shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless each other, their officers and employees from any and all claims, suites, and liabilities which may occur in their respective performance of this project.

7. Notwithstanding the foregoing defense obligations under the paragraph above, neither party nor any attorney engaged by either party shall defend any claim in the name of the other party or any agency/department/division of such other party, nor purport to act as legal representative of the other party or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of such other party. Each party may, at any time at its election assume its own defense and settlement in the event that it determines that the other party is prohibited from defending it, or that party is not adequately defending its interests, or that an important governmental principle is at issue or that it is in the best interests of the party to do so. Each party reserves all rights to pursue any claims it may have against the other if it elects to assume its own defense.

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

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

On November 10, 2004, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates to the Deputy Director, Highways the authority to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission or in a line item in the biennial budget approved by the Director.

CITY OF WILSONVILLE, by and through its elected officials

By _____
Mayor

Date _____

By _____
Recorder

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Agency Counsel

Date _____

Agency Contact:
Michael S. Bowers
29799 SW Town Center Loop E
Wilsonville, OR 97070
503-570-1546

STATE OF OREGON, by and through its Department of Transportation

By _____
Deputy Director, Highways

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief Engineer

Date _____

By _____
Region 1 Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date: _____

State Contact:
Akin Owosekun
123 NW Flanders
Portland, OR 97209
503-731-3397

COMMUNITY DEVELOPMENT
STAFF REPORT

Date: October 28, 2008
To: Honorable Mayor, Councilors, and City Manager
From: Eldon R. Johansen, Special Projects Manager
Subject: Approval of an Immediate Opportunity Fund Agreement between ODOT and the City of Wilsonville and Approval of an Economic Development Agreement between BCI Coca Cola Bottling Company of Los Angeles, Incorporated and the City of Wilsonville

Recommendation:

That Council approves Resolution No. 2148 approving and authorizing the Mayor to sign an Immediate Opportunity Fund Agreement between ODOT and the City of Wilsonville and approve Resolution No. 2147 approving and authorizing the Mayor to sign an Economic Development Agreement between BCI Coca Cola Bottling Company of Los Angeles, Incorporated and the City of Wilsonville.

Discussion:

BCI Coca Bottling Company of Los Angeles, Incorporated D/B/A Coca Cola Bottling Company of Oregon is expanding its production and warehouse facilities in the city of Wilsonville. This will result in the retention of 301 full time positions and the creation of 45 full time positions within the Coca Cola, Wilsonville, Tualatin or other Portland/Metro facilities. ODOT has agreed to provide \$500,000 in Immediate Opportunity Funds for this project and the City is agreeing to provide street systems development charge credits up to \$500,000 for the reduction in City funding requirements for the Interchange. The Immediate Opportunity Fund Agreement describes the agreement between ODOT and the City.

The City is essentially a pass through agent for this use of Immediate Opportunity Funds in that we receive the funds towards our share of the Interchange improvements and provide a reduction in SDC's for Coca Cola. The purpose of the Economic Development from the City perspective is to ensure that Coca Cola provides the required information in support of the Immediate Opportunity Fund Agreement and that the City does not inherit any liability if the Immediate Opportunity Fund Agreement should be cancelled.

The Economic Development Agreement is written in general terms with regards to water and sewer systems development charges. The Coca Cola Bottling Company of Oregon will pay water systems development charges based on their estimate of water use. The Bottling Company had previously paid for additional wastewater capacity for the Wilsonville facility. After the plant has been expanded the plant and the City will review the water consumption records and the wastewater records as compared to projections and if necessary the Bottling Company will pay the increased SDC's or the City will refund SDC's should the estimates be higher than anticipated.

Eldon R. Johansen
Special Projects Manager

ERJ/bgs

Cc: Subject File
Staff Report File