

RESOLUTION NO. 2709

A RESOLUTION OF THE CITY OF WILSONVILLE (CITY) AUTHORIZING AMENDMENT #01 OF LOCAL AGENCY AGREEMENT NO. 31056 WITH THE STATE OF OREGON, ACTING BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION (ODOT) REVISING THE TOTAL AMOUNT OF FEDERAL FUNDS AVAILABLE TO CONSTRUCT THE KINSMAN ROAD EXTENSION PROJECT (CAPITAL IMPROVEMENT PROJECT #4004).

WHEREAS, the City has planned and budgeted for the completion of Capital Improvement Project #4004, known as the Kinsman Road Extension: Barber St. to Boeckman Rd. project (the Project); and

WHEREAS, the City applied for and was selected to receive Federal Multimodal Transportation Enhance Program (MTEP) funds that ODOT administers for the Project; and

WHEREAS, the City applied for and was selected to receive Federal Aid Surface Transportation Program (STP) funds for preliminary engineering of the Project; and

WHEREAS, upon completion of the Project preliminary engineering work, \$584,952 of the Federal STP funds was unexpended; and

WHEREAS, the remaining Federal STP funds can be applied to the construction phase of the Project; and

WHEREAS, the City approved Intergovernmental Agreement (IGA) No. 935323 with Metro to exchange \$1.55 million in Federal Regional Flexible Funds Allocation (RFFA) awarded to the I-5 Pedestrian Bridge project (CIP #4202) with the Project local funding overmatch; and

WHEREAS, the exchanged Federal RFFA funds can be applied to the construction phase of the Project; and

WHEREAS, the City committed to applying the released Project local funding overmatch \$1.55 million to the I-5 Pedestrian and Bikeway Bridge project (CIP #4202) through Intergovernmental Agreement (IGA) #935323 with Metro (City of Wilsonville Resolution #2696); and

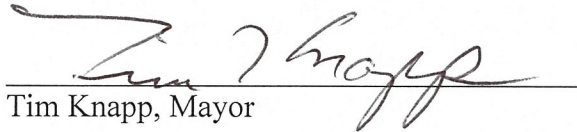
WHEREAS, the City is required to amend Local Agency Agreement No. 31056 with the Oregon Department of Transportation, attached hereto and incorporated herein as

Exhibit 1, to revise the total amount of Federal funds available for the construction phase of the Project.

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

1. The City Council does hereby approve and authorize the Mayor to sign Amendment #01 of Local Agency Agreement No. 31056 between the City of Wilsonville and the State of Oregon, acting by and through its Department of Transportation. A copy of Amendment #01 to Local Agency Agreement No. 31056 marked Exhibit "1" is attached hereto and incorporated herein.
2. This resolution becomes effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 15th day of October 2018, and filed with the Wilsonville City Recorder this date.


Tim Knapp, Mayor

ATTEST:


Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Yes
Councilor Lehan	Yes
Councilor Akervall	Yes

Attachments:

Exhibit 1 – Amendment #01 to Local Agency Agreement No. 31056

**AMENDMENT NUMBER 01
LOCAL AGENCY AGREEMENT
MULTIMODAL TRANSPORTATION ENHANCE PROGRAM (MTEP)
Kinsman Road: Boeckman Road to Barber Street**

This is Amendment No. 01 to the Agreement 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." The Parties entered into agreement 31056 on March 10, 2016.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to modify the funding and standard federal language.

1. **Effective Date.** This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.

2. **Amendment to Agreement.**

Insert new Exhibit B, Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting, attached hereto and by this reference made a part hereof.

RECITALS, Paragraph 4, page 1, which reads:

4. Agency has been awarded MTEP funding in the amount of \$2,230,000 in the 2015-2018 Statewide Transportation Improvement Program (STIP) for construction of the Kinsman Road extension, multi-use trail and possible wetland mitigation, as further defined herein and hereinafter referred to as "Project."

Shall be deleted in its entirety and replaced with the following:

4. Agency has been awarded MTEP funding in the amount of \$2,230,000 in the 2015-2018 Statewide Transportation Improvement Program (STIP) for construction of the Kinsman Road extension, multi-use trail and possible wetland mitigation, as further defined herein and hereinafter referred to as "Project." The Project was also selected as a part of the STP program and may include a combination of federal and state funds.

TERMS OF AGREEMENT Paragraphs 2 and 3, Page 3, which read:

2. The Project shall be conducted as a part of the Multimodal Transportation Enhance Program (MTEP) with funds provided under Title 23, United States Code and may include a combination of federal and state funds. The Total Project Cost is estimated at \$4,730,000, which is subject to change. MTEP federal and state funding for this Project shall be limited to \$2,230,000. Agency shall be responsible for all remaining costs, including the 10.27 percent match for all MTEP eligible costs, any non-participating costs, and all costs in excess of the available federal or state funds.

3. The funding ratio for this Project is 47.15% of MTEP funds to 52.85% Agency funds and applies to Project Underruns. The Funding Ratio does not apply in the case of Project overruns.

Shall be deleted in its entirety and replaced with the following:

2. The total Project cost is estimated at \$13,451,301.60 which is subject to change and includes \$4,069,100 for utility relocation and replacement as agreed to in Agreement Number 31109 KN 14429 (2016). Federal funds for this Project for the Construction phase shall be limited to \$4,364,952. Agency shall be responsible for all remaining costs, including the 10.27 percent match for all eligible costs, any non-participating costs, and all costs in excess of the federal or state funds. Any unused federal or state funds will be retained by State, and will not be available for use by Agency for this Agreement or any other projects. "Total Project Cost" means the estimated cost to complete the entire Project, and includes any federal funds, state funds, local matching funds, and any other funds.

3. Federal funds under this Agreement are provided under Title 23, United States Code.

TERMS OF AGREEMENT, Paragraphs 4 and 5, Page 3 shall be deleted in their entirety and shall be identified as RESERVED.

TERMS OF AGREEMENT Paragraph 16, Page 4, which reads:

16 a. Information required by 2 CFR 200.331(a), except for (xiii) Indirect cost rate, shall be contained in the USDOT FHWA Federal Aid Project Agreement for this Project, a copy of which shall be provided by ODOT to Agency with the Notice to Proceed.

b. The indirect cost rate for this project at the time the agreement is written is zero percent.

Shall be deleted in its entirety and replaced with the following:

16. Indirect Cost Rate:

a. As required by 2 CFR 200.331(a)(4), the indirect cost rate for this Project at the time the Agreement is written is 0%. This rate may change during the term of this Agreement upon notice to State and State's subsequent written approval.

b. If the approved rate changes during the term of this Agreement, Agency shall invoice State using the current indirect cost rates on file with State at the time the work is performed. If Agency does not have approved indirect cost rates on file with State at the time the work is performed, Agency shall invoice State using a zero percent (0%) rate.

TERMS OF AGREEMENT, Paragraph 23, page 6, which reads:

23. State's Contact for this Agreement is Kelly Brooks, Region 1 Enhance Program Manager or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

Shall be deleted in its entirety and replaced with the following:

23. State's contact for this Agreement is Mahasti Hastings, Region 1 Local Agency Liaison, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

Insert new TERMS OF AGREEMENT, Paragraph 25-28 to read as follows:

25. By signing this Agreement, Agency agrees to comply with the provisions of the Federal Funding Accountability and Transparency Act (FFATA) and is subject to the following award terms: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>. If, in the preceding fiscal year, Agency received more than 80% of its gross revenues from the federal government, those federal funds exceed \$25,000,000 annually, and the public does not have access to information about the compensation of executives through reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986, Agency shall report the total compensation and names of its top five executives to State. Agency shall report said information to State within 14 calendar days of execution of this Agreement and annually thereafter, utilizing the FFATA form attached hereto as Exhibit "B".

26. Agency shall ensure compliance with the Cargo Preference Act and implementing regulations (46 CFR Part 381) for use of United States flag ocean vessels transporting materials or equipment acquired specifically for the Project. Strict compliance is required, including but not limited to the clauses in 46 CFR 381.7(a) and (b) which are incorporated by reference. Agency shall also include this requirement in all contracts and ensure that contractors include the requirement in their subcontracts.

27. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Oregon Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260 (Claims), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that State shall, in all instances, except to the extent Claims arise solely from the negligent or willful acts or omissions of State, be indemnified from and against all Claims caused or alleged to be caused by the contractor or subcontractor.

28. Americans with Disabilities Act Compliance:

- a. When the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, the Parties shall:
 - i. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended by the ADA Amendments Act of 2008 (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - ii. Follow ODOT's processes for design, modification, upgrade, or construction of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
 - iii. At Project completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed, modified, upgraded, or improved as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/HwyConstForms1.aspx>; and
- b. State shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. State shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the start of construction.
- c. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
 - i. Pedestrian access is maintained as required by the ADA,

- ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Any repairs or removal of obstructions needed to maintain Project features in compliance with the ADA requirements that were in effect at the time of Project construction are completed by Agency or abutting property owner pursuant to applicable local code provisions,
 - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
 - vi. Maintenance obligations in this section shall survive termination of this Agreement.
3. **Counterparts.** This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
4. **Original Agreement.** Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. Agency certifies that the representations, warranties and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

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.

This Project is in the 2015-2018 Statewide Transportation Improvement Program (STIP), (Key #14429) that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently approved by amendment to the STIP).

CITY OF WILSONVILLE, by and
through its elected officials

By _____

Date _____

By _____

Date _____

**LEGAL REVIEW APPROVAL (If
required in Agency's process)**

By _____
Agency Counsel

Date _____

Agency Contact:

Zachary Weigel
29799 SW Town Center Loop
Wilsonville, OR 97070
503-570-1565
weigel@ci.wilsonville.or.us

State Contact:

Mahasti Hastings
123 NW Flanders Street
Portland, OR 97209
503-731-8595
Mahasti.v.hastings@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Bonnie Heitsch
Assistant Attorney General

Date: via email dated September 21, 2018