

ORDINANCE NO. 755

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY RECORDER OF THE CITY OF CANBY, OREGON, TO EXECUTE AN AGREEMENT WITH THE STATE OF OREGON, DEPARTMENT OF TRANSPORTATION, HIGHWAY DIVISION FOR IMPROVING A PORTION OF SOUTH ELM STREET IN THE CITY OF CANBY, OREGON; AN DECLARING AN EMERGENCY.

WHEREAS, it is in the public interest to improve streets within the corporate limits of the City of Canby; and

WHEREAS, the Canby City Council has determined that South Elm Street from S. W. Fourth Avenue to S. W. Thirteenth Avenue should be improved; and

WHEREAS, the State of Oregon by and through its Department of Transportation, Highway Division, is authorized by O.R.S. 366.770 and 366.775, to enter into cooperative agreements with cities for the performance of work, and

WHEREAS, the State of Oregon, by and through its Department of Transportation has proposed an intergovernmental agreement to be entered into between the Highway Division and the City of Canby;

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Mayor and City Recorder of the City of Canby, Oregon, are hereby authorized and directed to enter into an intergovernmental agreement with the State of Oregon, Department of Transportation, Highway Division for the improvement of South Elm Street from S. W. Fourth Avenue to S. W. Thirteenth Avenue.

Section 2. A copy of said agreement shall be attached hereto and become a part hereof.

Section 3. Inasmuch as it is necessary to proceed with the construction of this improvement as quickly as possible, an emergency is hereby declared to exist and this ordinance shall take effect immediately after final reading and enactment by the Canby City Council.

Submitted to the Council and read the first time at a regular meeting thereof on the 13th day of September, 1984, ordered posted in three (3) public and conspicuous places in the City for a period

of five (5) days as authorized by the Canby City Charter; and to come up for final reading and action by the Canby City Council at a special meeting thereof on the .3rd day of October , 1984, commencing at the hour of 7:30 o'clock p.m., at the Council's meeing chambers at the Canby City Hall, in Canby, Oregon.

Bud Atwood

Bud Atwood, Acting City Administrator

Passed on second and final reading by the Canby City Council at a regular meeting thereof on the 3rd day of October, 1984, by the following vote:

YEA 6 NAY 0 ABSTENTION _____

Michael L. Gabriion

Michael L. Gabriion, Mayor

ATTEST:

Marilyn K. Perkett

Marilyn K. Perkett, City Recorder

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

This project was approved by the State Highway Engineer on July 19, 1984 under delegated authority from the Oregon Transportation Commission.

The Oregon Transportation Commission, by a duly adopted delegation order, authorized the State Highway Engineer to sign this agreement for and on behalf of the Commission. Said authority is set forth in the Minutes of the Oregon Transportation Commission.

All except SPECIAL PROVISIONS, approved as to legal sufficiency on September 1, 1983 by Jack L. Sollis, Chief Counsel.

APPROVAL RECOMMENDED

By _____
Region Engineer

STATE OF OREGON, by and through
its Department of Transportation,
Highway Division


By _____
State Highway Engineer


Date _____

APPROVED AS TO
LEGAL SUFFICIENCY

BY _____
City Attorney

CITY OF CANBY
by and through its Elected Officials

By  _____
Mayor

By  _____
City Recorder

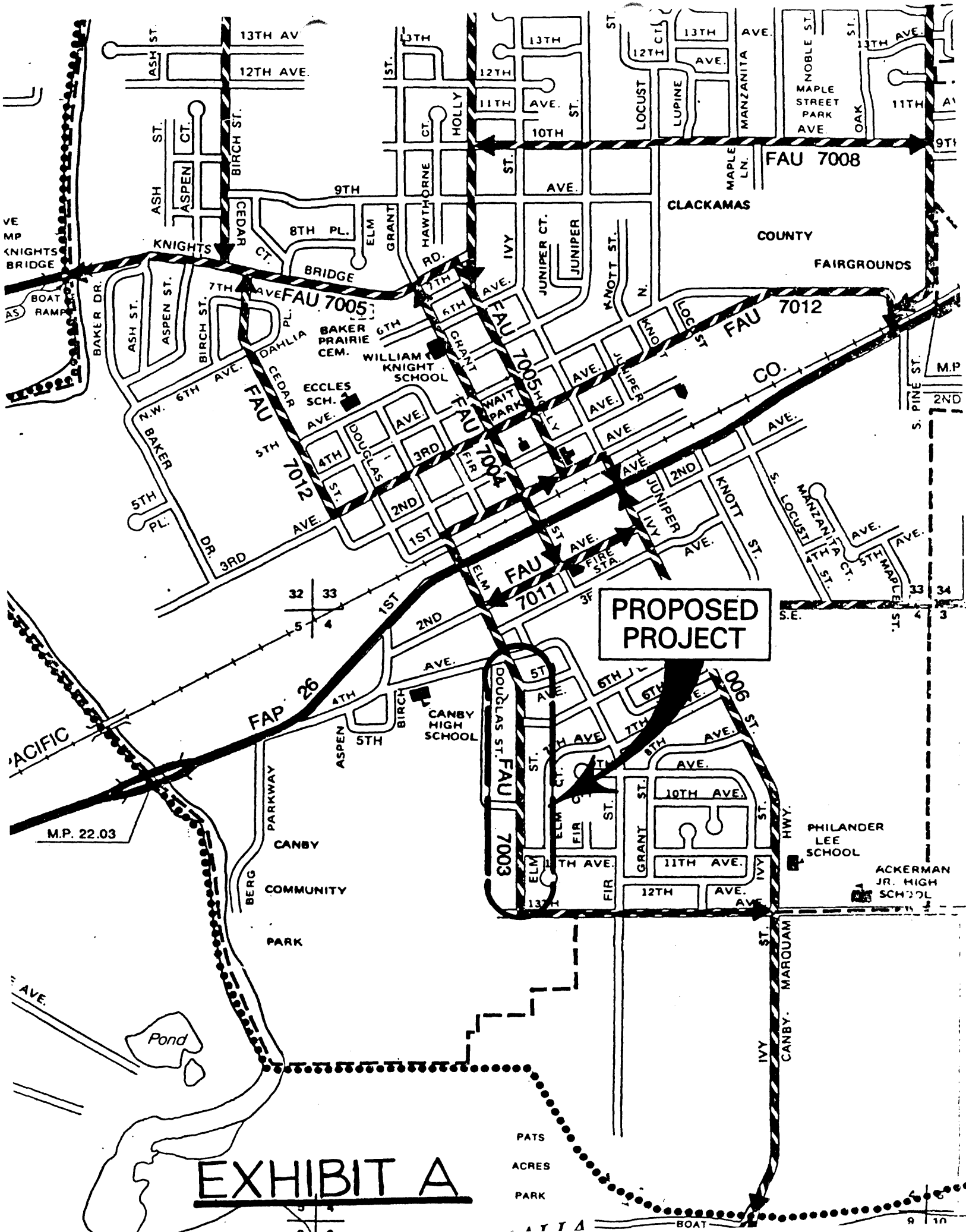


EXHIBIT A

PATS
ACRES
PARK

Approved: OSHD Staff
EDM:me
Revised: 8/23/84

Misc. Contracts & Agreements
No. 8213

LOCAL AGENCY AGREEMENT
FEDERAL AID URBAN PROJECT

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, Highway Division, hereinafter referred to as "State"; and the CITY OF CANBY, acting by and through its Elected Officials, hereinafter referred to as "Agency".

1. By the authority granted in ORS 366.770 and 366.775, the State may enter into cooperative agreements with the 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.

2. Under such authority, the State and the Agency plan and propose to IMPROVE SOUTH ELM STREET FROM S. W. 4th AVENUE TO S.W. 13th AVENUE, 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. The project shall be conducted in conformance with Title 23, United States Code, and the Oregon Action Plan. Said project shall be financed with Federal Aid Urban System funds with the State and City providing equal share of the required local match.

3. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2.

4. Agency shall adopt an ordinance authorizing its designated City Officials to enter into and execute this agreement, and the same shall be attached hereto and become part hereof.

ATTACHMENT NO. 2

STANDARD PROVISIONS

JOINT OBLIGATIONS:

PROJECT ADMINISTRATION

1. State is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this project, and the Agency hereby agrees that the State shall have full authority to carry out this administration. If requested by the Agency, the State will further act for the Agency in other matters pertaining to the project. The State and the Agency shall actively cooperate in fulfilling the requirements of the Oregon Action Plan. For all projects the State and the Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases of the project.

P.E. & CONSTRUCTION ENGINEERING

2. Preliminary and construction engineering may be performed by the State, the Agency or others. If the Agency, or others, perform the engineering, the State will monitor the work for conformance with FHWA rules and regulations. In the event that the Agency elects to engage the services of a consultant to perform any of the work covered by this agreement, no reimbursement shall be made using Federal-Aid funds for any costs incurred by such consultant prior to receiving written authorization from the State to proceed. Any such consultant shall be selected using procedures acceptable to the State and the FHWA, and an agreement prepared describing the work to be performed and the method of payment.

REQUIRED STATEMENT FOR USDOT FINANCIAL ASSISTANCE AGREEMENT:

3. If as a condition of assistance the recipient has submitted and the U.S. Department of Transportation has approved a minority business enterprise affirmative action program which the recipient agrees to carry out, this program is incorporated into this financial assistance agreement by reference. This program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of this financial assistance agreement. Upon notification to the recipient of its failure to carry out the approved program, the U.S. Department of Transportation shall impose such sanctions as noted in Title 49, Code of Federal Regulations, Part 23, Subpart E, which sanctions may include termination of the agreement or other measures that may affect the ability of the recipient to obtain future U.S. Department of Transportation financial assistance.

The recipient further agrees to comply with all applicable Civil Rights Laws, Rules and Regulations, including Section 504 of the Rehabilitation Act of 1973 and the Vietnam Era Veterans' Readjustment Act.

4. The parties hereto agree and understand that they will comply with all applicable statutes and regulations, including but not limited to: Title 6, USC, Civil Rights Act; Title 49 CFR, Part 23; Title 18, USC, Anti-Kickback Act; Title 23, USC, Federal-Aid Highway Act; Titles 2 and 3 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; provisions of 23 CFR 1.11 and FHPM 1-4-5 (23 CFR 140.7); and the Oregon Action Plan.

STATE OBLIGATIONS:

PROGRAM REQUEST

5. State shall submit a program to the FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and construction work for the project. NO WORK SHALL PROCEED UNTIL SUCH APPROVAL HAS BEEN OBTAINED. The program shall include services to be provided by the State, the Agency or others. The State shall notify the Agency in writing when authorization to proceed has been received from the FHWA. Major responsibility for the various phases of the project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations, and the Oregon Action Plan.

AUTHORITY FOR SURVEY

6. State shall prepare an Authority for Survey which will itemize the estimate of cost for preliminary engineering services to be provided by the State, the Agency or others, and shall furnish the Agency with a copy of such cost estimate.

FINANCE

7. State shall, in the first instance, pay all reimburseable costs of the project, submit all claims for federal-aid participation to the FHWA in the normal manner, compile accurate cost accounting records and furnish the Agency with an itemized statement of actual costs to date at the end of each State Fiscal Year. When the actual total cost of the project has been computed, the State shall furnish the Agency with an itemized statement of such final costs.

PROJECT ACTIVITIES

8. State shall, if the work is performed by the Agency or others, review and process or approve all environmental statements, preliminary plans, specifications and cost estimates, prepare the contract and bidding documents, advertise for bid proposals, award all contracts and, upon award of a construction contract, perform all necessary laboratory testing of materials, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the project. The actual cost of laboratory testing services provided by the State will be charged to the project construction engineering cost account number (prefix) and will be included in the total cost of the project.

FREE BRIDGE DESIGN

9. State shall, as provided in ORS 366.155(k), prepare plans and specifications for bridges and culverts (structure portion only) at no expense to the counties.

AGENCY OBLIGATIONS:

FINANCE

10. Agency shall, prior to proceeding with each phase of work covered by this agreement, forward to the State an advance deposit in the amount of 100 percent of the difference between the estimated total cost of such work and the amount anticipated to be contributed by the State and the FHWA. In the event that cost overruns are identified during the course of the project, the State may request additional deposits. When the actual total cost of the project has been computed, an adjustment will be made in the Agency local matching share of costs. In the event that the Agency elects to perform certain phases of the work with its own forces, no advance deposit will be requested for such work. No advance deposit for services to be provided by the State will be requested if the local matching share is less than \$2,500.

11. Agency shall present properly certified bills for 100 percent of actual costs incurred by the Agency on behalf of the project directly to the State Liaison Person for review and approval. Such bills shall be in a form acceptable to the State and documented in such a manner as to be easily verified. Billings shall be presented for periods of not less than one month duration, based on actual expenses to date. All billings received from the Agency must be approved by the State Liaison Person prior to presentation to the Highway Division Accounting Office for payment. The Agency's actual costs eligible for federal-aid participation shall be those allowable under the provisions of 23 CFR 1.11 and FHPM 1-4-5 (23 CFR 140.7).

12. The cost records and accounts pertaining to the work covered by this agreement are to be kept available for inspection by representatives of the State and the FHWA for a period of three (3) years following the date of final payment. Copies of such records and accounts shall be made available upon request.

PROJECT CANCELLATION

13. Agency agrees that should the project be cancelled or terminated for any reason prior to its completion, the Agency shall reimburse the State for any costs that have been incurred by the State on behalf of the project.

DELAYED STARTING DATE

14. In the event that right-of-way acquisition for, or actual construction of the facility for which this preliminary engineering is under-

taken is not started by the close of the FIFTH FISCAL YEAR following the fiscal year in which this agreement is executed, the State may request reimbursement of the sum or sums of Federal-Aid funds disbursed to the Agency under the terms of this agreement.

RIGHT OF WAY

15. Agency shall be responsible for acquisition of the necessary right-of-way and easements for construction and maintenance of the project. The State shall review all right-of-way activities engaged in by the Agency to assure compliance with applicable laws and regulations. The Agency may request the State to perform the acquisition functions, subject to execution of a Right-of-Way Services Agreement. If any real property purchased with federal-aid participation is no longer needed for right-of-way, or other public purposes, the disposition of such property shall be subject to applicable rules and regulations which are in effect at the time of disposition. Reimbursement to the State of the required proportionate share of the fair market value may be required.

UTILITIES

16. Agency shall relocate or cause to be relocated, all utility conduits, lines, poles, mains, pipes and such other facilities where such relocation is necessary in order to conform said utilities and facilities with the plans and ultimate requirements of the project. Only those utility relocations which are eligible for federal-aid participation under the Federal-Aid Highway Program Manual, Volume 1, Chapter 4, Section 4, shall be included in the total project costs and participation; all other utility relocations shall be at the sole expense of the Agency, or others. The State will arrange for utility adjustments in areas lying within jurisdiction of the State and, if the State is performing the preliminary engineering, the Agency may request the State to arrange for utility adjustments lying within Agency jurisdiction, acting on behalf of the Agency.

Agency shall, five weeks prior to the opening of construction bid proposals, furnish the State with an estimate of cost for eligible reimbursable utility relocations, based on the plans for the project. The Agency shall notify the State Liaison Person prior to proceeding with any utility relocation work in order that the work may be properly coordinated into the project and receive the proper authorization.

CONSTRUCTION

17. Construction plans shall be in conformance with standard practices of the State for plans prepared by its own staff, and shall be developed in accordance with the design standards published by AASHTO which pertain to the type of facility proposed. The latest design standards adopted by AASHTO shall govern the design of highway bridges and related structures. All specifications for the project shall be in substantial compliance with the "Oregon Standard Specifications for Highway Construction".

ATTACHMENT NO. 1

SPECIAL PROVISIONS

1. STATE shall, as a federal-aid participating preliminary engineering function, conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations and hydraulic studies, identify and obtain all required permits, and perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates.
2. STATE shall, upon award of a construction contract, furnish all construction engineering, field testing of materials, technical inspection and project manager services for administration of the contract. The State shall obtain "Record Samples" at specified intervals for testing in the State Materials Laboratory in Salem.
3. AGENCY shall conform with requirements of the Oregon Action Plan, and if necessary shall appoint and direct the activities of a Citizens Advisory Committee and Technical Advisory Committee, conduct any required public hearings and recommend the preferred alternative.
4. AGENCY shall provide the necessary right-of-way, which is anticipated to be donated.

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GRADE CHANGE LIABILITY

18. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.

Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by the State shall not subject the State to liability under ORS 105.760 for change of grade.

CONTRACTOR CLAIMS

19. Agency shall provide legal defense against all claims brought by the contractor, or others, resulting from the Agency's failure to comply with the terms of this agreement.

20. Agency shall, upon completion of construction, thereafter maintain and operate the project at its own cost and expense, and in a manner satisfactory to the State and the FHWA.