

RESOLUTION NO. 07-015

A RESOLUTION AUTHORIZING THE EXECUTION OF AN
INTERGOVERNMENTAL AGREEMENT WITH THE OREGON
DEPARTMENT OF TRANSPORTATION CONCERNING THE WM3,
INC. PROJECT

WHEREAS, on July 10, 2006, the City Council adopted General Ordinance No. 06-1269 which approved a proposed zone change and comprehensive plan amendment for a 67.2 acre parcel, requested by WM3, Inc.; and

WHEREAS, the Oregon Department of Transportation appealed the City's decision to the Land Use Board of Appeals, which appeal was assigned the case number 2006-136; and

WHEREAS, the City, ODOT and WM3, Inc. have been working towards a settlement agreement of the pending LUBA appeal, and a settlement agreement was presented to the Oregon Highway Transportation Commission on November 15, 2006, at which time the Commission took action to amend the Oregon Highway Plan to lower the Volume to Capacity Ratio from .85 to .75 for the Chenoweth Interchange ramp intersections with River Road at Interstate 84; and

WHEREAS, the terms of the proposed settlement agreement were adopted as part of General Ordinance No. 06-1273, passed by the City Council on November 13, 2006;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF THE DALLES ORDAINS
AS FOLLOWS:


Section 1. Execution Authorized. The Mayor, City Clerk, and City Attorney are authorized to execute the intergovernmental agreement between the City, ODOT, and WM3, Inc., a copy of which is attached hereto as Exhibit "A".

Section 2. Effective Date. This Resolution shall be considered effective as of February 26, 2007.

PASSED AND ADOPTED THIS 26TH DAY OF FEBRUARY, 2007.

Voting Yes, Councilor: Kovacich, Broehl, Dick, Wood
Voting No, Councilor: None
Absent, Councilor: Wilcox
Abstaining, Councilor: None

AND APPROVED BY THE MAYOR THIS 26TH DAY OF FEBRUARY, 2007.



Robb Van Cleave, Mayor

Attest:



Julie Krueger, MMC, City Clerk

INTERGOVERNMENTAL AGREEMENT
Settlement Agreement
City of The Dalles; WM3, Inc.

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 "ODOT"; the City of The Dalles, acting by and through its elected officials, hereinafter referred to as "City"; and WM3, Inc., an Oregon corporation, acting by and through its corporate officers, hereinafter referred to as "WM3", collectively referred to hereinafter as the "Parties".

RECITALS

1. By the authority granted in ORS 190.110, state agencies may enter into agreements with units of local government 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. By the authority granted in ORS 184.618 and 190.220, the Oregon Department of Transportation has the authority to plan for transportation facilities and to enter into settlement agreements.
3. By the authority of ORS 227.090 and 190.010, local jurisdictions have the authority to plan for transportation facilities and to enter into settlement agreements.
4. Interstate 84 (I-84) and US 30 are part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). In 1997 the State invested \$12 million to construct the Chenoweth Interchange at Exit 82 to provide access from I-84 to the west side of the City to allow access to the Port of The Dalles and the Discovery Center.
5. WM3 proposed to change the zoning designation and comprehensive plan designation for an approximate 67.2 acre parcel, referred to hereinafter as "Parcel", from industrial use to commercial/light industrial use. The location of the Parcel is depicted in Exhibit "A" attached hereto and by this reference made a part hereof.
6. On July 10, 2006, the City Council for the City adopted Ordinance No 06-1269 and found that the WM3 proposed zone change and comprehensive plan designation change would have a significant effect under OAR 660-012-0060 and approved the request to change the zone and comprehensive plan designations with conditions. ODOT appealed the decision to the Land Use Board of Appeals (LUBA) No 2006-136. Both ODOT and the City agreed to suspend the proceedings until March 30, 2007 in an effort to reach a settlement.

EXHIBIT "A"

7. The Parties agreed that it is to their mutual benefit to settle LUBA No. 2006-136 and reached a settlement agreement which was presented to the OTC on November 15, 2006. At that meeting the OTC also held a public hearing and took action to amend the Oregon Highway Plan (OHP) to lower the Volume-to-Capacity (V/C) Ratio from .85 to .75 for the Chenoweth Interchange ramp intersections with River Road at Interstate 84.

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the Parties hereto, in order to settle the matter, as follows:

TERMS OF AGREEMENT

1. The Parties agree that:
 - (A) All traffic impact analyses shall apply a 20-year planning horizon. The traffic impact analyses will consider traffic impacts to the Chenoweth Interchange, Webber Street Interchange and U.S. 30, and adjacent local streets.
 - (B) The performance standards established in the 1999 OHP do not apply to the Chenoweth Interchange ramp intersections at River Road. Instead the performance standard of a V/C ratio of .75 will be applied to the Chenoweth Interchange ramp intersections at River Road.
 - (C) Capacity at the Chenoweth Interchange will be reserved to allow existing undeveloped industrial lands to develop out during the planning period. ODOT will reserve this capacity by amending the OHP to establish a performance standard of a V/C ratio of .75 for the Chenoweth Interchange ramp intersections at River Road.
 - (D) Funding to pay for improvements to the interchange will be established upon the completion and adoption of an Interchange Area Management Plan (IAMP) for the Chenoweth Interchange. The IAMP is being developed because ODOT recently constructed the interchange at a public cost of approximately \$12 million and made improvements to the Webber Street Interchange at a cost of \$4 million to support the development of the currently undeveloped land zoned for industrial use located adjacent to the Chenoweth Interchange, generally defined as the Study Area as shown in Exhibit A. The City and ODOT wish to manage the area to support needed economic growth over the next 25-30 years. The Parties recognize that the Chenoweth Interchange does not have unlimited capacity. Development of certain types of land use could exhaust that capacity and curtail development of key economic development opportunities associated with the industrial lands without substantial and costly improvements to the transportation infrastructure.
2. The City and ODOT agree that the cost of any future capacity increasing improvements to the transportation infrastructure identified in the Interchange Area

Management Plan (IAMP), including the Chenoweth Interchange, U.S. 30 and Webber Street Interchange, due to increased traffic caused by City approved discretionary zoning changes in the study area will be born by the City.

3. Accordingly, the City and ODOT agree to develop an IAMP for the Study Area around the Interchange. This planning process will be funded by ODOT at a cost of approximately \$300,000 and will commence approximately July, 2007. The purpose of the plan is to identify land use management strategies, short term and long term transportation improvements, access management, and funding strategies to pay for any identified improvements. It is the intent of the Parties that the IAMP planning efforts will result in policies, ordinances, and other provisions that will be adopted into the City of The Dalles Transportation System Plan, Comprehensive Plan, and facility plan that will be adopted by the OTC and may amend the Oregon Highway Plan.
4. Until the IAMP provisions are adopted by the City, the City agrees that it will not consider comprehensive plan or zone amendments, or modifications to its industrial zone designation that would be applied to the area within the study area for the IAMP.
5. The City has issued a letter to ODOT stating that changing the performance standard of the Chenoweth Interchange ramp intersections at River Road to a V/C ratio of .75 is compatible with its acknowledged comprehensive plan. These performance standards will remain until the IAMP is complete and the OTC takes action to amend it. It is the understanding of the Parties that during the IAMP planning process this performance standard will be evaluated and adjusted to meet the planning objectives of the City and meet minimum highway performance standards.
6. ODOT has amended the OHP to change the performance standard of the Chenoweth Interchange to a V/C ratio of .75.
7. WM3 Inc., shall not oppose or appeal the amendment to change the performance standard at the Chenoweth Interchange.
8. ODOT and the City shall enter into an Agreement by July 2007 to develop an IAMP for the Chenoweth Interchange consistent with the clarifications identified in Terms of Agreement Paragraph 1 Condition (D).
9. WM3, Inc. will voluntarily place property covenants on the remaining 42 acres of the 67 acres, which will prohibit "non-industrial" development of that portion of the property until the IAMP is adopted by the City or until July 1, 2010 whichever is sooner. Until the IAMP is adopted by the City, the City will provide ODOT with notice and opportunity to participate in any site plan review applications submitted within the IAMP study area as shown in Exhibit A.

10. ODOT shall withdraw its appeal of LUBA No.2006-136 when the covenants are placed upon the deed and legally recorded, and this Agreement is finalized.
11. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of the Parties.
2. ODOT may terminate this Agreement, upon delivery of written notice to the City, if the 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 ODOT is prohibited from paying for such work from any planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. The Parties agree to promptly execute and deliver documents necessary to effectuate this Agreement.
5. This Agreement shall be binding on the successors and assigns of WM3.
6. 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.
7. 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.

SIGNATURE PAGE TO FOLLOW

City/ODOT/WM3
Agreement No. 23886

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

The Oregon Transportation Commission approved this Project on April 25, 2007 and delegated the Deputy Director, Highways to approve and sign agreements relating to this Project.

CITY OF THE DALLES, by and through its
elected officials

By _____
Mayor

Date _____

By _____
City Recorder

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
City Counsel

Date _____

WM3, Inc. by and through its corporate
officers

By _____

Title _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
WM3, Inc. Legal Counsel

Date _____

STATE OF OREGON, by and through
its Department of Transportation

By _____
Deputy Director, Highways

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager

Date _____

By _____
Region 4 Manager

Date _____

By _____
Region 4 Tech Center Manager

Date _____

By _____
Region 4 Program & Planning Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date: _____

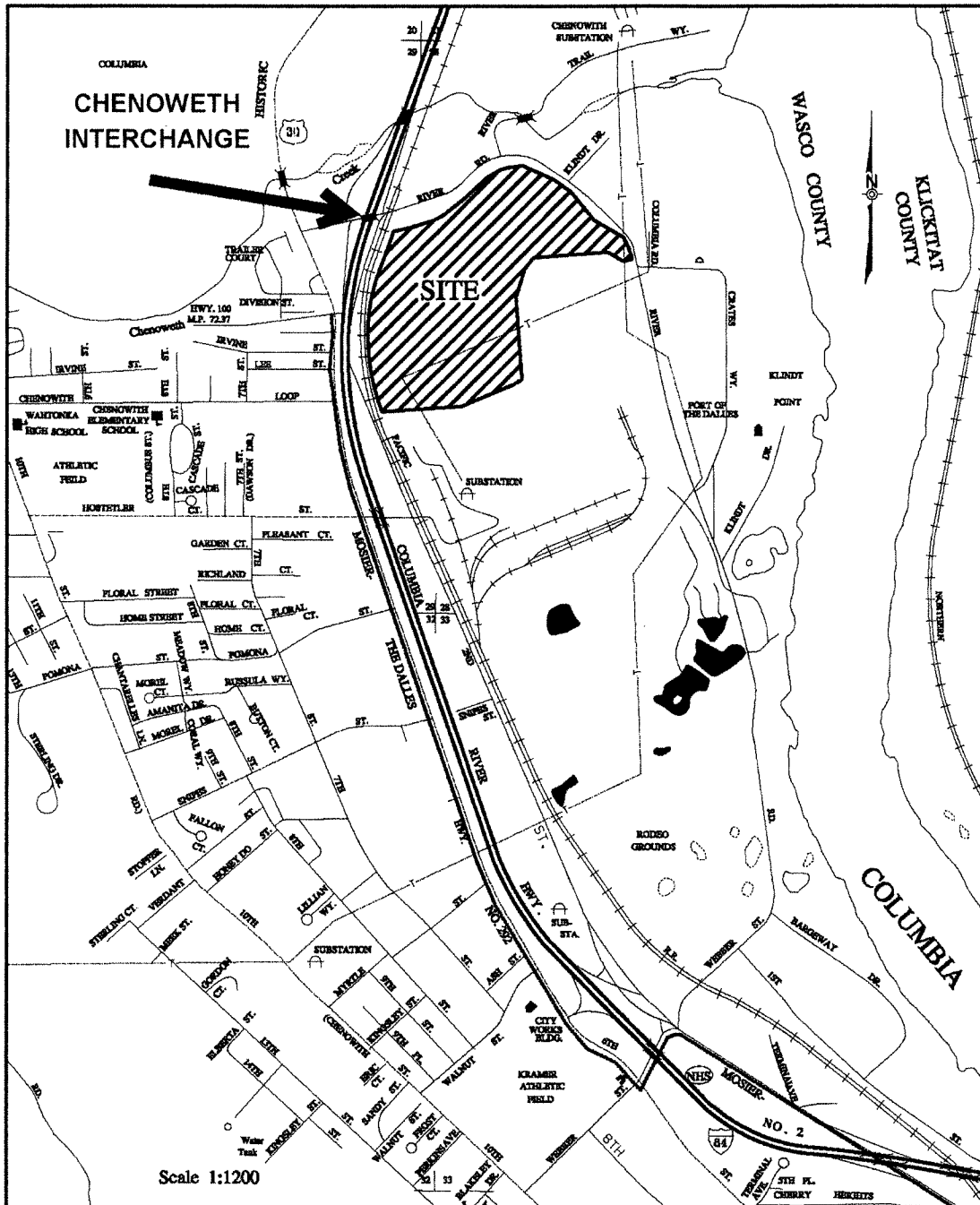
City/ODOT/WM3
Agreement No. 23886

AGENCY CONTACT

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City of The Dalles
313 Court Street
The Dalles, OR 97058

WM3, Inc.
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Foster, Peachey & Young
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The Dalles, OR 97058

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SHOPPING CENTER
T.I.S.
THE DALLES, OREGON

EXHIBIT A