

ORDINANCE NO. 1567

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO AGREEMENT #34634 WITH ODOT FOR 99E BUS STOP IMPROVEMENTS IN THE CITY OF CANBY.

WHEREAS, the City of Canby/Canby Area Transit (CAT) wish to add bus shelters and seating to 10 stops with 6 along 99E; and

WHEREAS, CAT received grant contract no.34228 from ODOT – Rail and Public Transit Division for \$266,900 in 5339 Capital funds to provide a portion of the funding to purchase and install 9 shelters and 10 benches with a match rate of 25%; and

WHEREAS, the estimated total cost of the project is \$375,000; and

WHEREAS, the grant funds including match and additional funds for the proposed project are included in the adopted budget for fiscal year 2021/22 for the City of Canby; and

WHEREAS, the project will work in conjunction with ODOT and the O99E project; and

WHEREAS, the IGA provides that the City of Canby will provide an initial sum of \$161,503 to begin the project; and

WHEREAS, the IGA provides that any amount which, when added to Agency's advance deposit, will equal 100 percent of actual total State costs for the Project will be paid by the City; and

WHEREAS, the City will purchase and install the shelters and benches; and

WHEREAS, ODOT will provide site and sidewalk improvements in accordance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended; and

WHEREAS, the city agrees to take over maintenance of the shelters upon completion of the project.

NOW, THEREFORE, THE CITY OF CANBY ORDAINS AS FOLLOWS:

1. The City Administrator is hereby authorized and directed to make, execute and declare in the name of the City of Canby (Canby Area Transit) and on its behalf, Intergovernmental Agreement No. 34634 with the Oregon State Department of Transportation:

- Provide the initial funding of \$161,503 for six bus stop improvements along 99E for the quoted amount of One hundred sixty one thousand, five hundred and three dollars (\$161,503).
- Provide any amount which, when added to Agency's advance deposit, will equal 100 percent of actual total State costs for the Project.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, January 19, 2022 and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, February 2, 2022 commencing at the hour of 7:30 PM in the Council Meeting Chambers located at 222 NE 2nd Avenue, 1st Floor in Canby, Oregon.


Melissa Bisset

Melissa Bisset, CMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 2nd of February 2, 2022 by the following vote:

YEAS 6

NAYS 0



Brian Hodson
Mayor

ATTEST:

Melissa Bisset

Melissa Bisset, CMC
City Recorder

AFFIDAVIT OF POSTING

STATE OF OREGON)

County of Clackamas)

CITY OF CANBY)

ss:

I, Melissa Bisset, being first duly sworn, depose and say that I am the City Recorder for the City of Canby, Clackamas County, Oregon, a City duly incorporated under and by virtue of the laws of the State of Oregon.

That on the 19th day of January, 2022 the Council for said City of Canby held a Regular City Council Meeting, at which meeting Ordinance No. 1567 was read for the first time and passed by the vote of said Council and was then and there ordered posted in at least three (3) public and conspicuous places in said City for a period of five (5) days prior to the second reading and final vote on said Ordinance, as provided in Section 2 of Chapter 8 of the Charter of the City of Canby, and

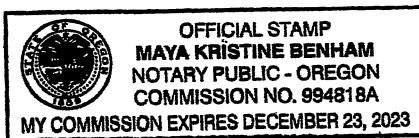
Thereafter, on the 20th day of January, 2022, I personally posted said Ordinance in the following three (3) conspicuous places, all within the said City of Canby, to wit:

1. Canby Civic Building
2. Canby Post Office
3. City of Canby Web Page

That since said posting on the date aforesaid, the said Ordinance will remain posted in the said three (3) public and conspicuous places continuously for the period of more than five (5) days and until the very 2nd day of February, 2022.

Melissa Bisset
Melissa Bisset, City Recorder

Subscribed and sworn to before me this 23rd day of February, 2022.



Maya Kristine Benham
Notary Public for Oregon
My Commission Expires: 12/23/2023

INTERGOVERNMENTAL AGREEMENT
Funding Contribution: OR99E SW Berg Parkway (Canby)

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 CANBY, acting by and through its elected officials, hereinafter referred to as "Agency," each herein referred to individually as a "Party" and collectively as the "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (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. State is currently engaged in the "OR99E: MP 20.35 – SW Berg Pkwy" project (the "OR99E Work") Key Number 18775.
3. Agency received federal grant money to construct ten transit stops within city limits. Six of these transit stops are within the boundaries of the OR99E Work.
4. The Parties agree that folding the design, pad construction, and right of way acquisition of these six transit stops into the OR99E Work will lead to increased efficiency and cost savings.
5. The purpose of this Agreement is to set forth the terms by which Agency will pay State for State to design, construct the pads for, and acquire necessary right of way for the six transit stops within the bounds of the OR99E Work.

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. State shall complete the design of, acquire all necessary right of way for, and construct the pads for six transit stops located in the City of Canby (the "Project"). The transit stops are set forth in more detail in the attached Exhibit A.
2. In consideration of State's work on the Project, Agency shall, upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from State, forward to State an advance deposit or irrevocable letter of credit in the amount of \$161,503. Agency shall make such payment within thirty (30) days of receipt of written request from State.

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3. Upon completion of the Project and receipt from State of an itemized statement of the actual total cost of State's work on the Project, Agency shall pay any amount which, when added to Agency's advance deposit, will equal 100 percent of actual total State costs for the Project. Any portion of the advance deposit which is in excess of State's total costs will be refunded or released to Agency.
4. Agency is responsible, at its own expense, for furnishing and installation of the transit stops shelters and benches as part of the Project. Once the transit stops are constructed, Agency is responsible for all costs associated with maintenance of the transit stops.
5. Agency certifies that sufficient funds are available and authorized for expenditure to pay State for the services rendered under this Agreement.
6. The term of this Agreement begins on the date all required signatures are obtained and terminates upon completion of the Project or ten years following the date all required signatures are obtained, whichever is sooner.
7. 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.
8. Agency shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform work under this Agreement, including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
9. This Agreement may be terminated by mutual written consent of both Parties.
10. State may terminate this Agreement, effective upon delivery of written notice to Agency or at such later date as may be established by State, under any of the following conditions:
 - a. Agency fails to provide payment to State as set forth in this Agreement within the time specified herein or any extension thereof;
 - b. 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;

- c. 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.

11. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

12. 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 (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, construction, or alteration 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 and to State's Project Manager for each curb ramp constructed or altered 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:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>

- b. 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,

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- iii. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
 - 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.
- c. Maintenance obligations in this section shall survive termination of this Agreement.
13. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
14. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
15. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such

- proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
16. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
 17. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
 18. State's Project Manager for this Project is Robert DeVassie, Project Manager, 123 NW Flanders Street, Portland, OR 97209, 503-731-4996, robert.j.devassie@odot.state.or.us, 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.
 19. Agency's Project Manager for this Project is Jerry Nelzen, Operations Supervisor, 1470 NE Territorial Road PO Box 930, Canby, OR 97013, 503-266-0759, nelzenj@canbyoregon.gov, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.
 20. Agency certifies and represents that the individuals signing this Agreement are authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, and to legally bind Agency.
 21. 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.
 22. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or

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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.

Signature Page to Follow

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This Project is in the 2021-2024 Statewide Transportation Improvement Program (STIP), (Key #18775) that was adopted by the Oregon Transportation Commission on July 15, 2020 (or subsequently approved by amendment to the STIP).

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.

CITY OF CANBY, by and through its elected officials

By 

Date 3/2/22

By _____

Date _____

APPROVED AS TO FORM

By 

Date 3/2/22

Agency Contact:

Jerry Nelzen, Operations Supervisor
1470 NE Territorial Rd PO Box 930
Canby, OR 97013
503-266-0759
nelzenj@canbyoregon.gov

STATE OF OREGON, by and through its Department of Transportation

By _____
Region 1 Manager

Date _____

APPROVAL RECOMMENDED

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By Serena Hewitt
Assistant Attorney General

Date via email dated October 29, 2021

State Contact:

Robert DeVassie, Project Manager
123 NW Flanders Street
Portland, OR 97209
503-731-4996
robert.j.devassie@odot.state.or.us



EXHIBIT A