



Oregon

John A. Kitzhaber, M.D., Governor

Department of Transportation

Transportation Building

355 Capitol St. NE

Salem Oregon 97301

CITY OF NEWBERG
CITY RECORDER INDEX NO. 1818

FILE CODE:



March 26, 2001

City of Newberg
Attention: Duane Cole, City Recorder
PO Box 970
Newberg, OR 97132

Enclosed for your records is a fully executed copy of Local Street Network agreement number 18851. This agreement covers the Mountainview Drive Extension Project.

We have retained a fully executed copy of this agreement for the Department of Transportation's files.

Rob Heyman, Agreement Specialist
Construction Contracts Unit
Roadway Engineering Section

Enclosure

RH:ws



January 11, 2001

Misc. Contracts & Agreements
No. 18,851

**LOCAL STREET NETWORKS FUND AGREEMENT
Mountainview Drive, City of Newberg**

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"; and THE CITY OF NEWBERG, acting by and through its designated officials, hereinafter referred to as "Agency".

RECITALS

1. The Local Street Networks Program, hereinafter referred to as the "LSN Program", provides state financial assistance to local jurisdictions to develop, enhance and maintain improvements on the local transportation system when other sources of local financial support for street and road projects are unavailable or insufficient and the project will benefit ODOT facilities.
2. The 1999 Oregon State Legislature allocated \$30,000,000 for the LSN Program. Funding for the Program comes from state bonds financed by Highway Fund revenues which will be expended during the 1999-2001 biennium.
3. The policy guidelines for this funding program were approved by the Oregon Transportation Commission on March 8, 2000.
4. By the authority granted in ORS 190.110, 366.770 and 366.775, state agencies may enter into cooperative agreements with counties, cities, and 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.

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 proposes to make roadway improvements that meet the LSN Program fund criteria. The improvements shall consist of constructing the missing link on Mountainview Drive between OR 219 and Springbrook Avenue in the City of Newberg, hereinafter referred to as "Project". A sketch map showing the location and approximate limits of the Project is shown on Exhibit "A", attached hereto and by this reference made a part hereof.
2. The total estimated cost of the Project is \$2,200,000. The budget is shown on Exhibit "B", attached hereto and by this reference made a part hereof.

3. LSN funds shall be limited to \$900,000. Agency shall be responsible for all costs in excess of the LSN Program funded amount.
4. The work shall begin on the date all required signatures are obtained and shall be completed no later than November 30, 2002. The final billing must be submitted within 60 days after the completion date, at which time this agreement automatically terminates. Agency shall be responsible for reimbursement of all LSN funds if the Project is not completed by November 30, 2002.

AGENCY OBLIGATIONS

1. Agency, or its consultant, 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.

Agency Projects will be developed in conformance with the 1994 AASHTO A Policy on Geometric Design of Highways and Streets.

2. Agency shall advertise and award all contracts and pay all contractor costs. Construction must be completed by November 30, 2002, and final invoicing must be sent to ODOT within 60 days of the completion date.
3. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to ODOT's Project liaison for review and approval. Such invoices shall be in a form identifying the Project and agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one month duration, based on actual expenses incurred. Under no conditions shall ODOT's obligations exceed \$900,000, including all expenses.
4. Agency agrees to 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 279.312, 279.314, 279.316, 279.320 and 279.555, which hereby are incorporated by reference. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (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.
5. 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 the work under this agreement including, but not limited to, retirement

contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.

6. Agency shall demonstrate how it will manage accesses to Mountainview Drive so as to preserve the capacity of the improvement, or shall within 18 months of the date of this agreement, adopt measures that will preserve the improvement's traffic capacity.
7. Agency shall, in cooperation with Yamhill County, prior to the start of construction of the Newberg-Dundee Transportation Improvement Project prepare a "Northside Road Alternative Study". The Study shall include policies to manage land uses around any future intersection of Mountainview Drive with Highway 99W in such a manner as to preserve the intersection's capacity and assure compact urban development within the Agency's urban growth boundary.
8. Agency, its subcontractors, if any, and all employers working under this agreement are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.
9. Agency agrees to provide 30 days advance notice to ODOT of any land use decisions that may affect the Project or adversely affect the state highway system.
10. Agency agrees to provide a maintenance level for the local-system improvement that will ensure the continued benefit to the state highway system.
11. Agency agrees that the Project will be on the public right-of-way and will serve general transportation needs. Agency shall acquire all right-of-way before Project construction.
12. Agency agrees and understands that Agency will comply with the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, ORS 281.060 and ORS Chapter 35, if right-of-way acquisition is necessary.
13. Agency or its consultant shall acquire all necessary rights-of-way according to State Right of Way Manual, Chapter 13, Policy 13.200. Agency's right-of-way consultant selection must be approved by the ODOT Region 2 Right of Way office prior to work being performed. Certification of right-of-way acquisition work must be made by the Agency (or on behalf of its consultant) doing the work. The certification form shall be routed through the Region 2 Right of Way Office for co-signature and possible audit.
14. Agency agrees that the Project and any associated development shall meet all necessary land use and environmental requirements and have obtained all necessary permits prior to advertisement for construction bids.
15. Agency shall submit to the assigned ODOT Liaison Person all Project plans, specifications and cost estimates 45 days before advertisement for construction bids.
16. Agency shall submit any change orders to ODOT for approval before proceeding with work.

17. Agency agrees to adhere to LSN Program guidelines dated March 8, 2000, and approved by the OTC on the same date. Said guidelines are incorporated herein by reference and by this reference made part hereof.
18. Agency certifies, at the time this agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this agreement within Agency's current appropriations or limitation of the current biennial budget.
19. Agency shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Oregon Department of Transportation and its officers and employees, from all claims, suits or actions of any nature arising out of activities of Agency, its consultant, its contractor, its officers, subcontractors, agents, or employees under this agreement.

ODOT OBLIGATIONS

1. ODOT shall reimburse Agency for 100% of eligible, actual costs incurred up to a total maximum amount not to exceed \$900,000. Said maximum amount shall include reimbursement for all expenses. Travel expenses shall not be reimbursed.
2. ODOT certifies, at the time this agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this agreement within ODOT's current appropriation or limitation of current biennial budget. Funds available for reimbursement on or after July 1, 2001, are contingent upon the legislatively approved budget of ODOT.
3. ODOT shall, as a Project expense, assign a liaison person to monitor work performed. ODOT's Project liaison shall submit all Project plans, specifications and cost estimates upon receipt to Terry Wheeler, ODOT Local Program Manager, 355 Capitol Street NE, Room 222, Salem, OR 97301-3871, telephone number (503) 986-3789. The Local Program Manager shall obtain ODOT Technical Services approval of the submittal 30 days before advertisement for construction bids. For Projects involving Federal Funds, ODOT shall advertise and award the contract if the Agency is not a Certified Agency for administration of contracts involving Federal Funds.
4. ODOT's Project liaison will review and process for payment 100% of all eligible, actual Project costs within 30 days of receipt of Agency's invoices.
5. ODOT's Project liaison for this agreement is the ODOT Mid-Willamette Valley Area Manager, 455 Airport Rd, Bldg. A, Salem, Oregon 97301-5397, telephone (503) 986-2884.

GENERAL PROVISIONS

1. This agreement may be terminated by mutual consent of both parties.

ODOT may terminate this agreement effective upon delivery of written notice to Agency, or at such later date as may be established by ODOT, under any of the following conditions:

- a. If Agency fails to provide services called for by this agreement within the time specified herein or any extension thereof.
- b. If Agency fails to perform any of the other provisions of this agreement or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from ODOT fails to correct such failures within 10 days or such longer period as ODOT may authorize.
- c. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the agreement.
- d. If 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 if ODOT is prohibited from paying for such work from the planned funding source.

If ODOT terminates this agreement for the reasons described in "a" or "b" above, Agency must reimburse ODOT for all LNS funds expended.

Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

2. Agency acknowledges and agrees that ODOT, the Secretary of State's Office of the State of Oregon, 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 three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.
3. 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.

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

The Oregon Transportation Commission on October 11, 2000, approved this Project as a part of the 2000-2003 Statewide Transportation Improvement Program, Key No. 11749.

The Oregon Transportation Commission on March 18, 1999, approved Subdelegation Order No. 2 in which the Director grants authority to the Executive Deputy Director/Chief Engineer to approve and execute agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

STATE OF OREGON, by and through
its Department of Transportation

By Thomas D. Kelley
Executive Deputy Director/Chief Engineer

Date 3/20/01

APPROVAL RECOMMENDED

By Thomas J. Lauer
Region 2 Engineer

Date March 2, 2001

APPROVED AS TO LEGAL
SUFFICIENCY

By John H. Waldman
Assistant Attorney General

Date 3/19/01

CITY OF NEWBERG, by and through its
designated officials

By Thane R. Cole

Title City Manager

By M. J. Dupont

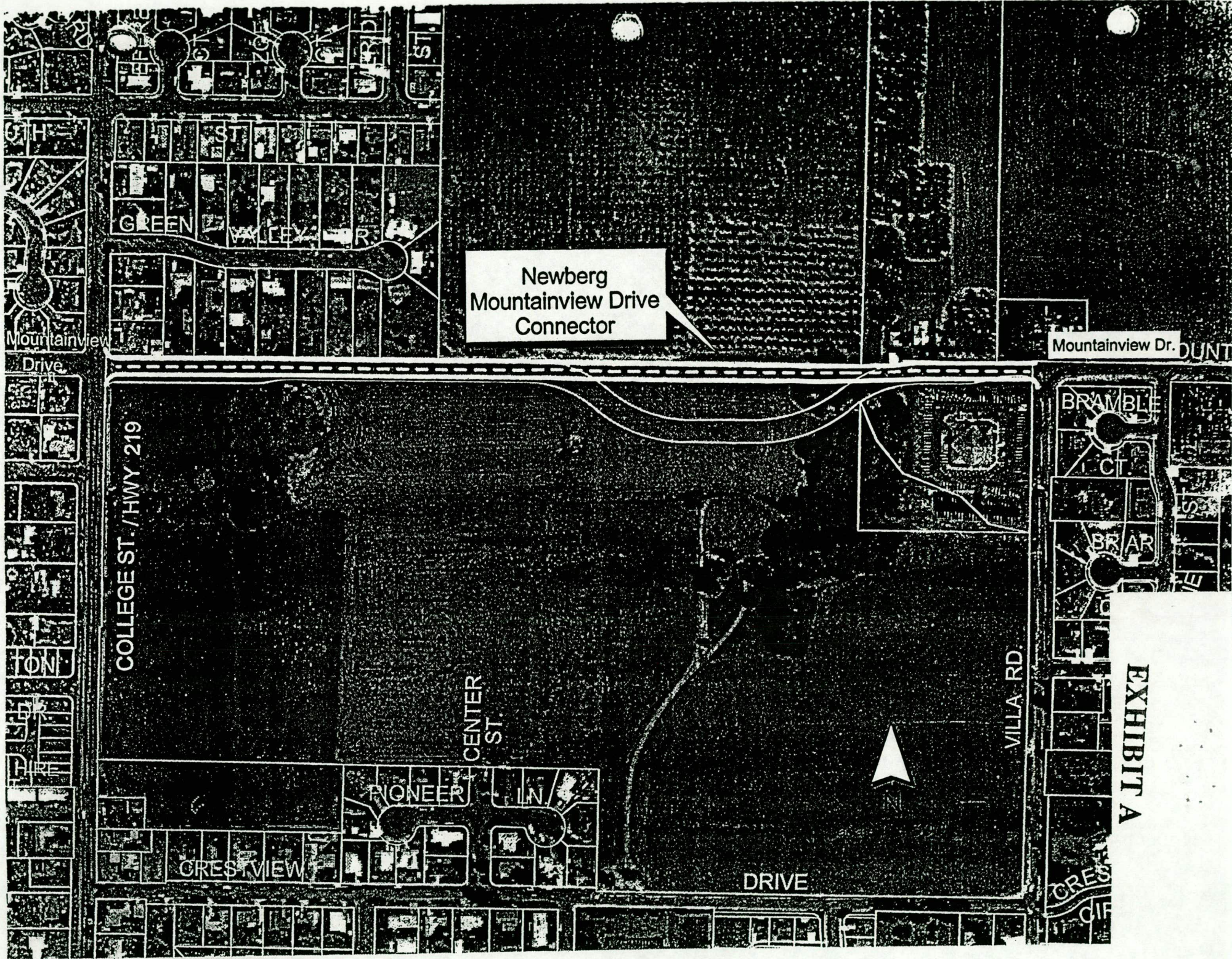
Title COMMUNITY DEV'T DIRECTOR

Date 02/22/01

APPROVED AS TO LEGAL
SUFFICIENCY

By [Signature]
City Legal Counsel

Date 2/23/01



Newberg
Mountainview Drive
Connector

Mountainview Dr.

EXHIBIT A

Local Street Network
Mountainview Drive Connector
City of Newberg

EXHIBIT B

Project Expense Category	Estimated Amounts	
<i>Preliminary Engineering</i>	\$	100,000.00
<i>Environmental</i>	\$	50,000.00
<i>Right-of-Way Acquisition</i>	\$	740,000.00
<i>Construction</i>	\$	860,000.00
<i>Contingency</i>	\$	300,000.00
<i>Other (Utilities)</i>	\$	100,000.00
<i>Other (Utility Design)</i>	\$	50,000.00
 Total Project Costs	 \$	 2,200,000.00
 TOTAL LSN FUNDS	 \$	 900,000.00