

RESOLUTION No. 2008-2812

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO
NEGOTIATE AND ENTER INTO A CONTRACT WITH THE STATE
OF OREGON REGARDING GRANT FUNDS IN THE AMOUNT UP TO
\$286,191 FOR IMPROVEMENTS TO SECOND STREET BETWEEN
HIGHWAY 219 TO SPRINGBROOK ROAD**

RECITALS:

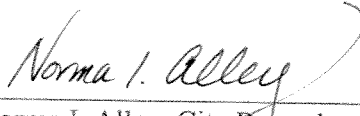
1. In 2007, Climax Portable Machine Tools announced that they were planning a major expansion. The company expansion included a significant increase to the physical size of their facility from 24,000 square feet to 38,000 square feet. The estimated value of the investment in the new facility and machinery was approximately \$5 million. The company also expected to expand their workforce 50% within the next 5 years, adding approximately 50 new employees (average annual base wage is \$48,000.00, plus profit sharing and benefits). Since this announcement, Climax has recently completed the expansion of their facility.
2. Climax is located at 2712 E. Second Street. This section of Second Street (between Highway 219 and Springbrook Road) is under Yamhill County jurisdiction and is in poor condition. Currently, the two-lane road is developed to rural standards (e.g. no curbs, gutters, sidewalks, or street trees). At the time of their announced expansion plans, Climax expressed to the City that the current condition of the road is having a negative economic impact on the company. In response to this concern, city staff contacted officials of the State of Oregon to explore ways to correct this problem.
3. On September 11, 2007, the Oregon Transportation Commission considered the City of Newberg's grant application in the amount of up to \$286,191.00 for the proposed Second Street improvements. The grant funds will cover one-half of the planning-level estimate of \$572,383.00 (construction costs only, including a 30% contingency).
4. Exhibit "A", which is attached and incorporated herein, is a draft contract between the City of Newberg and the State of Oregon regarding the Second Street improvement grant funds.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

The City of Newberg authorizes authorizing the city manager to negotiate and enter into a contract with the State of Oregon regarding grant funds in the amount up to \$286,191.00 for improvements to Second Street between Highway 219 to Springbrook Road.

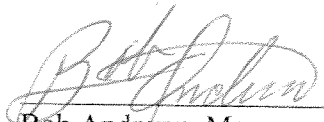
- **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: October 21, 2008.

ADOPTED by the City Council of the City of Newberg, Oregon, this 20th day of October, 2008.



Norma I. Alley, City Recorder

ATTEST by the Mayor this 23rd day of October, 2008.



Bob Andrews, Mayor

September 9, 2008

Misc. Contracts & Agreements
No. 24,621

**IMMEDIATE OPPORTUNITY FUND AGREEMENT
Second Street Improvement
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 "State"; and the CITY OF NEWBERG, acting by and through its elected officials, hereinafter referred to as "Agency", collectively referred to as "Parties."

RECITALS

1. The Oregon Transportation Commission (OTC) at its July 15, 1988, meeting approved establishing an Immediate Opportunity Fund (IOF) to support primary economic development in Oregon through the construction and improvement of streets and roads. The OTC, at its meeting on October 10, 2006, revised the guidelines for the use of this fund. IOF funds are limited to Type A) specific economic development projects that affirm job retention and job creation opportunities; Type B) revitalization of business or industrial centers to support economic development and quality development objectives, and Type C) preparation of Oregon certified project-ready industrial sites.
2. OR 219, is a part of the state highway system under the jurisdiction and control of the OTC. Second Street is a part of the city street system under the jurisdiction and control of Agency.
3. By the authority granted in ORS 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments 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.

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 agrees to construct roadway improvements near the Climax Portable Machine Tools factory that meets the IOF criteria. The improvements will consist of two travel lanes, two bike lanes, curbs and gutters, five foot sidewalks, storm sewers, and lighting to bring the roadway up to Agency standards in support of the business expansion, 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.

2. The Oregon Economic and Community Development Department (OECDD) recommends use of Immediate Opportunity Funds for this Project. State agrees to provide Immediate Opportunity Funds not to exceed \$286,191 to help finance the preliminary engineering and construction portions of this Project. Agency and/or others will provide the remaining Project funding.
3. This Agreement is effective on the date all required signatures are obtained and shall terminate upon completion of the Project and receipt of documentation of created and filled positions outlined under Agency obligations or five (5) years, whichever occur first.

STATE OBLIGATIONS

1. State shall, at its own expense, assign a liaison person to monitor work performed. State shall review all environmental documents, Project plans, specifications, and cost estimates prepared by Agency or its consultants within twenty (20) working days of submittal by Agency and before advertisement of construction bids.
2. Once preliminary engineering/construction is under way, and approved monthly itemized invoices have been received, State shall reimburse Agency for 50 percent of the eligible Project costs incurred within 45 days. State shall reimburse Agency until the total of \$286,191 of Immediate Opportunity Funds have been paid, or until Project is completed, whichever comes first.
3. State's Project Manager for this Project is McGregor Lynde, Region 2 STIP Coordinator, 455 Airport Road, Building B, Salem, Oregon 97301-5395. Phone (503) 986-2651, or an individual designated by the Region Manager in the event of the unavailability of the aforementioned individual.

AGENCY OBLIGATIONS

1. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications using Agency standards 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.
2. Agency shall advertise and award all contracts, and pay all contractor costs. Within two (2) years after the Agreement execution date, unless granted an extension by State, Agency shall award a contract for construction of Project. Construction must be completed within five (5) years of the Agreement date. If either time limit expires, this Agreement shall terminate immediately with all Parties.

3. Agency ensures that State's contribution of 50 percent of the actual road construction costs not to exceed \$286,191 will be applied to preliminary engineering and construction only. Agency shall be responsible for funding the remaining Project costs.
4. Agency shall submit to the assigned State Project Manager all environmental documents, Project plans, scope of work, specifications and cost estimates before advertisement for construction bids.
5. Agency shall lay out and paint the necessary lane lines and erect the required directional and traffic control signing for the Project.
6. Agency shall be responsible for 100 percent of electrical energy costs associated with the lighting installed as a part of this Project. The power company shall send power bills directly to Agency.
7. Agency agrees that State road standards shall be used for that portion within State rights of way.
8. Agency agrees and understands that Agency will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual if right-of-way acquisition is necessary.
9. Agency or its consultant shall acquire all necessary rights-of-way according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual. Certification of right of way acquisition work must be made by the Agency (or on behalf of its consultant) doing the work. If Agency acquires the right of way, they shall provide a letter from Agency's legal counsel certifying that 1) the right of way needed for the Project has been obtained and 2) right of way acquisition has been completed in accordance with the right of way requirements contained in this Agreement. The certification form shall be routed through the State Region 2 Right of Way Office for co-signature and possible audit. If Agency elects to have State perform right of way functions, a separate agreement shall be executed between Agency and State Right of Way, referencing this Agreement number.
10. Agency shall require contractor to obtain and keep in effect during the term of the contract Comprehensive or Commercial General Liability Insurance covering bodily injury and property damage. This insurance shall include personal injury coverage, contractual liability coverage for the indemnity provided under this agreement and products/completed operations liability. Combined single limit per occurrence shall not be less than \$1,000,000 or the equivalent. Each annual aggregate limit shall not be less than \$2,000,000 when applicable. The certificate of insurance shall include the State of Oregon, Transportation Commission and its members, Department of Transportation, officers and employees as additional insured. Agency shall provide

a copy of the certificate to State prior to construction of the project. The insurance coverage shall not be amended, altered, modified or cancelled insofar as the coverage contemplated herein is concerned without at least thirty (30) days prior written notice.

11. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Agency shall ensure that each of its subcontractors complies with these requirements.
12. Agency shall keep accurate cost accounting records. Agency shall prepare and submit monthly itemized, progress billings for construction directly to State's Region Liaison Person for review and approval. Such billings shall be in a form acceptable to State and documented in an easily verified manner.
13. Agency shall upon Project completion, submission of documentation under Agency Obligations 20, Job Growth Assessment, and at its own expense, maintain and operate the Project at a minimum level that is consistent with normal depreciation and/or service demand. Maintenance responsibilities shall survive termination of this Agreement.
14. Agency agrees that should any environmental or land-use issues arise at any time during the development or construction of the Project, State may, at its discretion and when exercised in good faith, suspend payments until it is satisfied that the issue has been resolved. However, Agency may use its own funds to continue the Project and shall be reimbursed by State as provided for in this Agreement once State is satisfied that the issue has been resolved.
15. Agency shall submit to State any change orders that substantially change the plans and specifications or the submitted scope of work or to the improvements listed in Terms of Agreement, Paragraph 1.
16. Agency shall provide to State permanent mylar "as constructed" plans for work on state highways.
17. 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.
18. Notwithstanding the foregoing defense obligations under the Paragraph above, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act

as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Agency if the State of Oregon elects to assume its own defense.

19. Job Growth Assessment

Because the purpose of the Immediate Opportunity Fund Type A project is to promote job growth, State wishes to assess its investment.

- a. Therefore, upon approval of the Project by the OTC and up to five (5) years from execution of the Agreement, Agency shall provide to State documentation from Climax Portable Machine Tools that 49 full-time equivalent new FTE positions created and filled by the expansion of Climax Portable Machine Tools. If such documentation cannot be provided within the above stated time limit, Agency shall reimburse State all Immediate Opportunity Funds distributed to Agency as outlined below.
- b. The targeted number of new FTE positions is the number listed in the OECDD proposal letter, which is presented to State's Director and approved by the OTC. "New FTE positions" shall mean new positions created, filled and remaining on the payroll for at least one (1) year.
- c. The verification documentation shall be a letter on company letterhead signed by an official of Climax Portable Machine Tools duly authorized to represent Climax Portable Machine Tools certifying the number of new FTE positions. The State, through State, OECDD or the Secretary of State Audits Division, shall have the right to audit the payroll records of Climax Portable Machine Tools in order to confirm information in the letter.
- d. If the documentation shows a deficiency in the number of FTE positions, Agency shall reimburse State on a pro-rated basis. The formula for the pro-rated amount of IOF funds paid to Agency will be an amount equal to the number of actual FTE positions divided by the number of projected FTE positions multiplied by total IOF funds available. Reimbursement will be the amount actually distributed less the pro-rated amount.
- e. Reimbursements resulting from a failure to provide job documentation or failure to meet job target goals shall be paid within three (3) months after the above stated time limit.

20. All said reimbursements shall include interest equal in rate for the Highway Trust Fund at the Treasury established on the date of execution of this Agreement. Interest shall accrue from the date of the first withdrawal from the Highway Trust Fund at the State Treasury.
- a. Agency may wish to enter into a separate agreement with Climax Portable Machine Tools to address pay back of Agency reimbursements to State resulting from Climax Portable Machine Tools failure to provide documentation or failure to meet job target goals.
 - b. At Agency's request and upon consultation with OECDD, State may grant a time extension on the reimbursement or a time extension to provide additional job growth.
21. 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 such fiscal records and other books, documents, papers, plans and writings of Agency that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts. Agency shall retain and keep all files and records for a minimum of six (6) years after completion of the Project.
23. 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.
22. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from State.
23. Agency shall enter into and execute this Agreement during a regular, duly authorized session of its City Council meeting.
24. Agency's Project manager is Paul Chiu, Senior Engineer, PO Box 970, Newberg, Oregon 97132, Phone (503) 554-1751, or an individual designated by the Manager in the event of the unavailability of the aforementioned individual.

GENERAL PROVISIONS

1. State and Agency grant authority to each other to enter onto its respective right of way for construction and Project monitoring.

2. Termination

- a. Parties Right to Terminate for Convenience. This Agreement may be terminated at any time by mutual written consent of the Parties.
- b. State's Right to Terminate for Convenience. State may, at its sole discretion, terminate this Agreement, in whole or in part, upon thirty (30) days' written notice to Agency.
- c. State's Right to Terminate for Cause. State may terminate, in whole or in part, immediately upon notice to Agency, or at such later date as State may establish in such notice, upon the occurrence of any of the following events:
 - i. If 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.
 - ii. 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 State is prohibited from paying for such work from the planned funding source;
 - iii. If Agency fails to provide its share of the cost of the Project.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties before termination.
4. Agency agrees to refund to State all Immediate Opportunity Funds paid to Agency in connection with this Project if this Agreement is terminated for any reason prior to completion of Project and receipt of job assessment documentation. Refund to State shall be within 3 (three) months from termination date.
5. 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.
6. 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

City of Newberg/ODOT
Agreement No. 24,621

of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

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

This Project is in the Statewide Transportation Improvement Program, (Key #15676) that was approved by the Oregon Transportation Commission on September 12, 2007 (or subsequently approved by amendment to the STIP).

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

Signature Page to Follow

On August 2, 2005, the Director, Deputy Director, Highways and Chief Engineer approved Subdelegation Order No. 5, in which the Director, Deputy Director, Highways and Chief Engineer delegate authority to the Region Managers to approve and sign intergovernmental Agreements over \$75,000 up to a maximum of \$500,000 when the work is related to a project included in the Statewide Transportation Improvement Program (STIP) or in a line item in the legislatively adopted biennial budget.

CITY OF NEWBERG, by and through its
elected officials

By _____
Title _____

Date _____

By _____
Title _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Agency Counsel

Date _____

Agency Contact:

Paul Chiu
Senior Engineer
City of Newberg
PO Box 970
Newberg, Oregon 97132

State Contact:

McGregor Lynde
Region 2 STIP Coordinator
455 Airport Road, Building B
Salem, Oregon 97301-5395

STATE OF OREGON, by and
through its Department of
Transportation

By _____
Region 2 Manager

Date _____

APPROVAL RECOMMENDED

By _____
Region 2 Planning and Development
Manager

Date _____

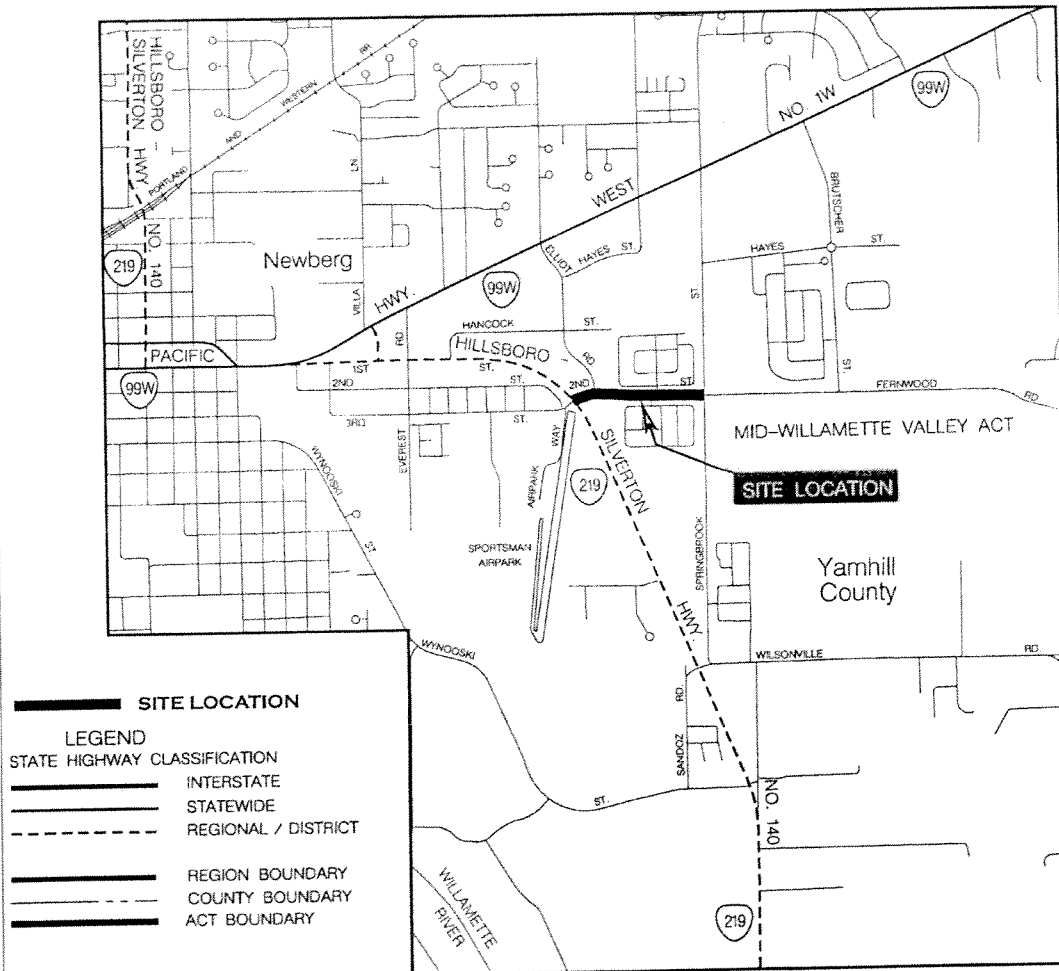
**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

IMMEDIATE OPPORTUNITY FUND PROJECT LOCATION

ODOT REGION 2



SECOND STREET IMPROVEMENTS, CITY OF NEWBERG
CLIMAX PORTABLE MACHINE TOOLS, INC.

"This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information."

SCALE 0 0.5 MILES
SPECIAL PROJECT # 2023
AUGUST 2007

PRODUCED BY ODOT - GIS UNIT - (503)986-3154