

City of Sherwood, Oregon

Resolution No. 98-728

A RESOLUTION ENTERING INTO A LOCAL AGENCY AGREEMENT ENHANCEMENT PROGRAM PROJECT KNOWN AS THE CEDAR CREEK GREENWAY TRAIL, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, by the authority of ORS 190.110, 366.770, and 366.775, the State may enter into cooperative agreements with cities for certain types of improvement projects; and

WHEREAS, under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Oregon is required to set aside federal funds for projects to address transportation enhancement activities; and

WHEREAS, the City of Sherwood proposes to use Enhancement funds to construct pedestrian paths from Stella Olsen Park to the City library, the Senior Center, and several arterial roadways; and

WHEREAS, Enhancement funds are limited to \$83,000 for the project known as the Cedar Creek Greenway Trail and the City of Sherwood will match federal funds and pay any portion of the project not covered by federal funds.

NOW, THEREFORE, THE CITY RESOLVES AS FOLLOWS:

Section 1. Approval and Adoption: That the City of Sherwood approve and adopt the Local Agency Agreement Enhancement Program Project (Cedar Creek Greenway Trail) attached hereto as Exhibit A, and enter into an agreement with ODOT.

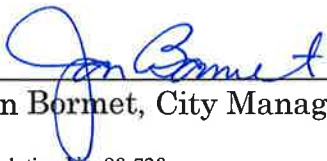
Section 2. Effective Date: This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 10th day of February 1998.

ATTEST:



Ron Tobias, Mayor



Jon Bormet, City Manager-Recorder

Misc. Contracts & Agreements
No. 13,225

**LOCAL AGENCY AGREEMENT
ENHANCEMENT PROGRAM PROJECT
Cedar Creek Greenway Trail**

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 CITY OF SHERWOOD, a municipal corporation of the State of Oregon, acting by and through its City Officials, hereinafter referred to as "Agency".

1. By the authority granted in ORS 190.110, 366.770 and 366.775, State may enter into cooperative agreements with counties, cities or units of local government 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 provisions of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Oregon is required to set aside federal funds for projects to address transportation enhancement activities.
3. Under said provisions, Agency plans and proposes to use Enhancement funds to construct an off street system of pedestrian by-ways connecting several arterial roadways (Cedar Creek Greenway Trail), 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.
4. The project shall be conducted as a part of the Enhancement Program under Title 23, United States Code, and the Oregon Action Plan. The Enhancement Funds are limited to \$83,000. Agency shall be responsible for the match for the federal funds and any portion of the project which is not covered by federal funding.
5. 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.

Key #07256

M C & A No. 13,225
CITY OF SHERWOOD

6. Agency shall enter into and execute this agreement during a duly authorized session of its City Officials.

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 Oregon Transportation Commission on October 15, 1997 as part of the 1998-2001 Statewide Transportation Improvement Program.

On December 17, 1997 the Transportation Commission approved Subdelegation Order No. 2, in which the Director grants authority to the Region Manager to approve and execute agreements for projects included in the Statewide Transportation Improvement Program.

STATE OF OREGON , By and through its
Department of Transportation

By _____
Region 1 Manager

Date _____

CITY OF SHERWOOD, By and through
its Elected Officials

By _____
Mayor

By _____
Recorder

Date _____

APPROVED AS TO
LEGAL SUFFICIENCY

By _____
City Counsel

EXHIBIT B

ACKNOWLEDGMENT OF FEDERAL ASSISTANCE

The property and assets under the jurisdiction of the City of Sherwood were improved with assistance from the United States Government, through Local Agency Agreement No. 13,225 between the City of Sherwood and the Oregon Department of Transportation dated _____, 1995. Such assistance was provided to the City of Sherwood in reimbursement of costs associated with the construction of an off street system of pedestrian by-ways connecting several arterial roadways.

The use and disposition of said property is subject to the terms of the above noted agreement, copies of which may be obtained from the Director, Oregon Department of Transportation, and is also subject to 49 CFR Part 18 which may be obtained from the Federal Highway Administration, U.S. Department of Transportation, 400 7th Street, S.W., Washington D.C. 20590.

By : _____

Title : _____

SUBSCRIBED and SWORN to before me this ____ day of _____, 19__

NOTARY PUBLIC FOR OREGON

My commission expires : _____

ATTACHMENT No. 1 TO AGREEMENT # 13,225
SPECIAL PROVISIONS

1. The parties agree that this agreement shall become null and void if the funds for this project are not obligated for construction within two calendar years after the date of FHWA approval.
2. Agency, or its consultant shall, conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right-of-way; perform all right-of-way monumentation; obtain all required permits; arrange for all utility relocations or reconstruction; perform all construction engineering, including all required materials testing and quality documentation; and prepare necessary documentation to allow State to make all contractor payments.
3. State and Agency agree that minimum design standards shall be recommended AASHTO Standards and the 1992 Oregon Bike Plan, unless otherwise requested by Agency and approved by State.
4. State and Agency agree that right-of-way activities shall be in accord with the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended.
5. If Agency hires a consultant, Agency agrees to follow State's adopted procedures for selection and hiring of consultants. All consultant billings shall be initially reviewed, approved as appropriate and paid by Agency. Billings shall then be submitted to State for reimbursement to Agency.
6. Agency guarantees the availability of funding in an amount required to fully fund the project. Agency further guarantees that adequate funds are available prior to advertisement for bids to accommodate 110 percent of the engineer's estimate.
7. Agency shall, at own expense, maintain and operate the project upon completion at a minimum level that is consistent with normal depreciation and/or service demand.
8. Agency shall maintain and account for the federal and/or state financial interest in project property and assets.

9. Agency shall, upon completion of project and as a condition to this agreement, complete and file with the appropriate County Clerk, an Acknowledgment of Federal Assistance, which is attached hereto as Exhibit B, and by this reference is made a part hereof. Agency shall provide confirmation of this filing by forwarding to the Region 1 Manager a conformed copy of the recorded Exhibit B. By means of said acknowledgment, a lien shall be established against said property and assets subject to the satisfaction of Agency's financial obligations, the continued use of said property for public purposes and the maintenance of the facility or service at a level consistent with normal depreciation and/or demand. State's interest in said property is proportional to the federal and state participation in project.

Misc. Contracts & Agreement
No. 13,225

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 Agency hereby agrees that State shall have full authority to carry out this administration. If requested by Agency, State will further act for the Agency in other matters pertaining to the project. State and Agency shall actively cooperate in fulfilling the requirements of the Oregon Action Plan. State and Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases for all projects.

Any project that uses federal funds, in project development, is subject to PS&E review and approval by FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

P.E. & CONSTRUCTION ENGINEERING

2. Preliminary and construction engineering may be performed by State, Agency, or others. If Agency, or others, perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a consultant to perform any of the work covered by this agreement, Agency and Consultant shall enter into an agreement describing the work to be performed and the method of payment. State shall concur in the agreement prior to the beginning of any work. No reimbursement shall be made using federal-aid funds for any costs incurred by such Consultant prior to receiving authorization from State to proceed.

On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency agrees to accept all responsibility for and defend lawsuits involving tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

REQUIRED STATEMENT FOR USDOT FINANCIAL
ASSISTANCE AGREEMENT:

3. If as a condition of assistance the Agency has submitted and the U.S. Department of Transportation has approved a Minority Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into this financial assistance agreement by reference. That 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 Agency 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 Agency to obtain future U.S. Department of Transportation financial assistance.

The Agency 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 49 CFR, Parts 23 and 90, Audits of State and Local Governments; Title 41, USC, Anti-Kickback Act; Title 23, USC, Federal-Aid Highway Act; 42 USC, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1987; provisions of Federal-Aid Policy Guide (FAPG), Title 23 Code of Federal Regulations (23 CFR) 1.11, 710, and 140; 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 ON ANY ACTIVITY IN WHICH FEDERAL-AID PARTICIPATION IS DESIRED UNTIL SUCH APPROVAL HAS BEEN OBTAINED. The program shall include services to be provided by State, Agency or others. State shall notify 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 State, Agency or others, and shall furnish Agency with a copy of such cost estimate.

FINANCE

7. State shall, in the first instance, pay all reimbursable costs of the project, submit all claims for federal-aid participation to the FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date, at anytime, by submitting a written request. When the actual total cost of the project has been computed, State shall furnish Agency with an itemized statement of such final costs.

PROJECT ACTIVITIES

8. State shall, if the work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids. State shall prepare 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 State will be charged to the project construction engineering expenditure account and will be included in the total cost of the project.

FREE BRIDGE DESIGN

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

RIGHT-OF-WAY

10. State is responsible for acquisition of the necessary right-of-way and easements for construction and maintenance of the project. Agency may request to perform the acquisition functions, subject to execution of a written agreement. State

shall review all right-of-way activities engaged in by Agency to assure compliance with applicable laws and regulations.

If any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations which are in effect at the time of disposition. Reimbursement to State of the required proportionate share of the fair market value may be required.

AGENCY OBLIGATIONS

FINANCE

11. Agency shall, prior to the commencement of the preliminary engineering and right-of-way acquisition phases, deposit with State its estimated share of each phase.

Agency's share of construction will be deposited in two parts. The initial deposit will represent 65 percent of the Agency's share, based on the engineer's estimate, and will be requested three weeks prior to opening bids on the project. Upon award of the contract, the balance of the applicant's share will be requested.

Collection of advance deposits amounting to less than \$2,500 for the P.E. and R/W phase of the project will be postponed until collectively the amount exceeds \$2,500 or until the collection of the advance deposit for construction is required.

Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option of which may be a deposit in the Local Government Investment Pool accompanied by an Irrevocable Limited Power of Attorney), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State.

12. Agency shall present properly certified bills for 100 percent of actual costs incurred by Agency on behalf of the project directly to State's Liaison Person for review and approval. Such bills shall be in a form acceptable to 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 Agency must be approved by State's Liaison Person prior to presentation to Highway Division Accounting for payment. Agency's actual costs eligible for federal-aid participation shall be those allowable under the provisions of FAPG, 23 CFR 1.11, 710, and 140. Final billings shall be submitted to State for

processing within six months from date that costs were incurred. Partial billing (progress payment) shall be submitted to State within three months from date that costs incurred.

13. The costs records and accounts pertaining to the work covered by this agreement are to be kept available for inspection by representatives of 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. For real property and equipment, the retention period starts from the date of disposition (49 CFR 18.42).

This agreement is subject to the provisions of the Single Audit Act of 1984 (49 CFR, Part 90) as stated in Circular A-128 of the United States Office of Management and Budget.

PROJECT CANCELLATION

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

DELAYED STARTING DATE

* 15. In the event that right-of-way acquisition for, or actual construction of the facility for which this preliminary engineering is undertaken is not started by the close of the TENTH FISCAL YEAR following the fiscal year in which this agreement is executed, State may request reimbursement of the sum or sums of Federal-Aid funds disbursed to Agency under the terms of this agreement.

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 FAPG, 23 CFR 645A, shall be included in the total project costs and participation; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility adjustments in areas lying within jurisdiction of State and, if State is performing the preliminary engineering. Agency may request State to arrange for utility adjustments lying within Agency jurisdiction, acting on behalf of Agency.

Agency shall, five weeks prior to the opening of construction bid proposals, furnish State with an estimate of cost for eligible reimbursable utility relocations, based on the plans for the project. Agency shall notify State's 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. Design Standards for all projects shall meet the requirements of the Intermodal Surface Transportation Efficiency Act of 1991. In addition, all projects on the Oregon State Highway System shall be in compliance to Standards specified in the current ODOT Highway Design Manual and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the project shall be in substantial compliance with the most current Oregon Standard Specifications for Highway Construction.

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 State shall not subject 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 Agency's failure to comply with the terms of this agreement.

MAINTENANCE RESPONSIBILITIES

* 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 State and the FHWA.

WORKERS' COMPENSATION COVERAGE

21. The contractor, its subcontractors, if any, and all employers working under this (Agreement/Contract) 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.

LOBBYING RESTRICTIONS

22. Agency certifies by signing this agreement that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- * Paragraphs 15, 16, and 20 are not applicable to any local agency on state highway projects.



Oregon

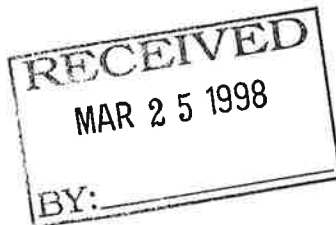
John A. Kitzhaber, M.D., Governor

COPY

Department of Transportation
Transportation Building
Salem, OR 97310

FILE CODE:

March 16, 1998



City of Sherwood
Attn: Larry Cole
90 NW Park Street
Sherwood OR 97140

AGR

Enclosed for your records is a fully executed copy of an agreement to construct the Cedar Creek Greenway Trail.

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

Fran Neavoll, Agreement Specialist
Construction Contracts Unit
Project Support Section

Enclosure

FN:ct

LOCAL AGENCY AGREEMENT
ENHANCEMENT PROGRAM PROJECT
Cedar Creek Greenway Trail

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3. Under said provisions, Agency plans and proposes to use Enhancement funds to construct an off street system of pedestrian by-ways connecting several arterial roadways (Cedar Creek Greenway Trail), 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.
4. The project shall be conducted as a part of the Enhancement Program under Title 23, United States Code, and the Oregon Action Plan. The Enhancement Funds are limited to \$83,000. Agency shall be responsible for the match for the federal funds and any portion of the project which is not covered by federal funding.
5. 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.

M C & A No. 13,225
CITY OF SHERWOOD

6. Agency shall enter into and execute this agreement during a duly authorized session of its City Officials.

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 Oregon Transportation Commission on October 15, 1997 as part of the 1998-2001 Statewide Transportation Improvement Program.

On December 17, 1997 the Transportation Commission approved Subdelegation Order No. 2, in which the Director grants authority to the Region Manager to approve and execute agreements for projects included in the Statewide Transportation Improvement Program.

STATE OF OREGON , By and through its
Department of Transportation

By *Kay Van Suckel*
Region 1 Manager

Date 2-26-98

CITY OF SHERWOOD, By and through
its Elected Officials

By *Ron [Signature]*
Mayor

APPROVED AS TO
LEGAL SUFFICIENCY







By *[Signature]*
City Counsel

By *[Signature]*
Recorder



Date 2.17.98

LEGEND








COMMUNITY FACILITIES

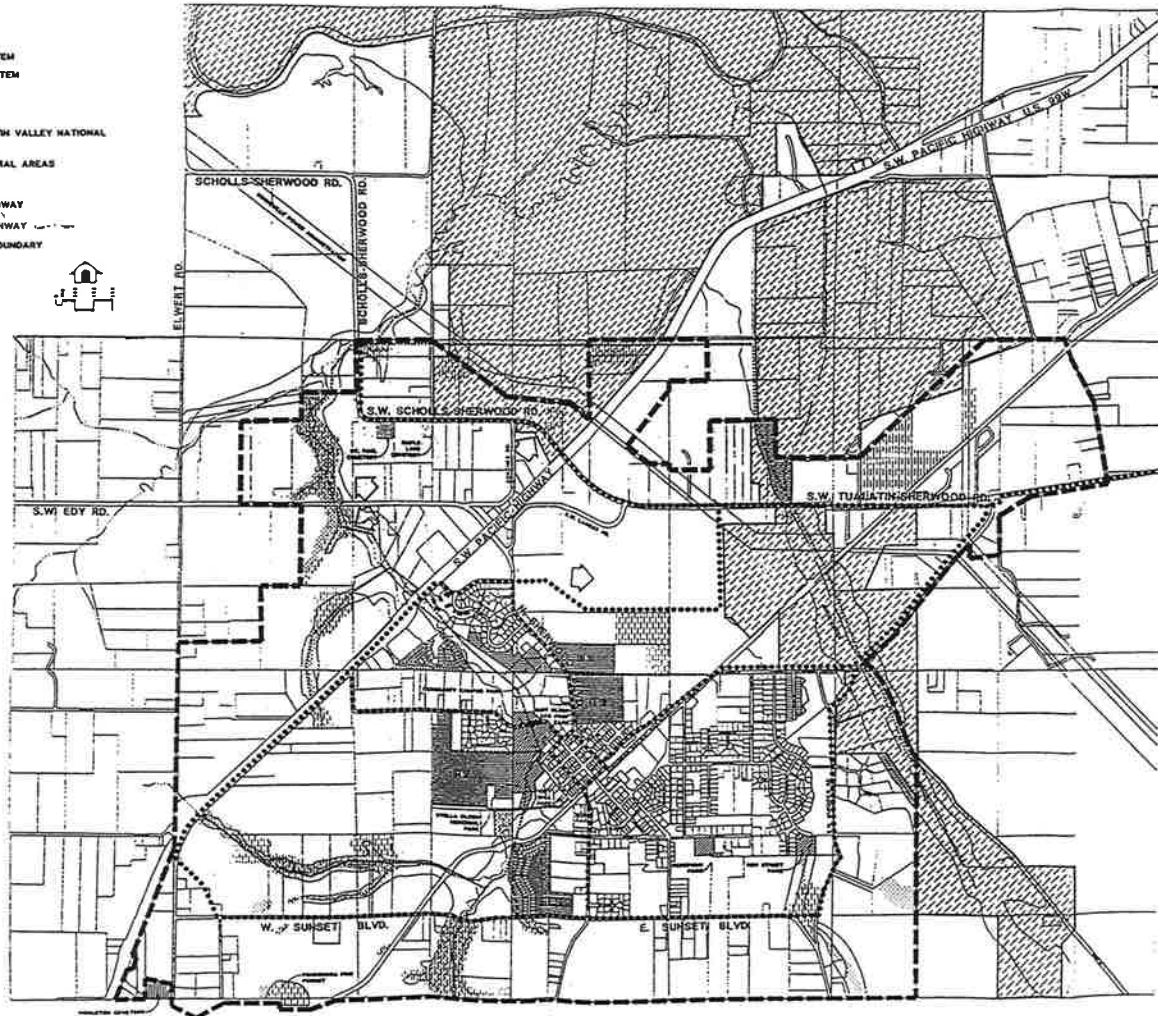
-  ELEMENTARY SCHOOL  FUTURE ELEMENTARY SCHOOL
-  INTERMEDIATE SCHOOL
-  HIGH SCHOOL
-  CITY PARK
-  OTHER

PATHS/TRAILS

-  "ON STREET" SYSTEM
-  "OFF STREET" SYSTEM

OPEN SPACE

-  PROPOSED TUALATIN VALLEY NATIONAL WILDLIFE REFUGE
-  SIGNIFICANT NATURAL AREAS
-  WETLANDS
-  FLOODPLAIN/GREENWAY
-  CITY OWNED GREENWAY
-  URBAN GROWTH BOUNDARY
-  VIEWS



**CEDAR CREEK
GREENWAY TRAIL
SHERWOOD, OREGON**

EXHIBIT 'A'



**PARKS AND
OPEN SPACE
MASTER PLAN**



DAVID EVANS AND ASSOCIATES, INC.
CORPORAL, ENVIRONMENTAL, PLANNING, LANDSCAPE ARCHITECTS
200 S.W. CORNETT AVENUE - PORTLAND, OREGON 97201 (503) 233-4444

EXHIBIT B

ACKNOWLEDGMENT OF FEDERAL ASSISTANCE

The property and assets under the jurisdiction of the City of Sherwood were improved with assistance from the United States Government, through Local Agency Agreement No. 13,225 between the City of Sherwood and the Oregon Department of Transportation dated _____, 1995. Such assistance was provided to the City of Sherwood in reimbursement of costs associated with the construction of an off street system of pedestrian by-ways connecting several arterial roadways.

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By : _____

Title : _____

SUBSCRIBED and SWORN to before me this ____ day of _____, 19__

NOTARY PUBLIC FOR OREGON

My commission expires : _____

ATTACHMENT No. 1 TO AGREEMENT # 13,225
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2. Agency, or its consultant shall, conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right-of-way; perform all right-of-way monumentation; obtain all required permits; arrange for all utility relocations or reconstruction; perform all construction engineering, including all required materials testing and quality documentation; and prepare necessary documentation to allow State to make all contractor payments.
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Page 2 of Special Provisions

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Misc. Contracts & Agreement
No. 13,225

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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 ON ANY ACTIVITY IN WHICH FEDERAL-AID PARTICIPATION IS DESIRED UNTIL SUCH APPROVAL HAS BEEN OBTAINED. The program shall include services to be provided by State, Agency or others. State shall notify 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 State, Agency or others, and shall furnish Agency with a copy of such cost estimate.

FINANCE

7. State shall, in the first instance, pay all reimbursable costs of the project, submit all claims for federal-aid participation to the FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date, at anytime, by submitting a written request. When the actual total cost of the project has been computed, State shall furnish Agency with an itemized statement of such final costs.

PROJECT ACTIVITIES

8. State shall, if the work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids. State shall prepare 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 State will be charged to the project construction engineering expenditure account and will be included in the total cost of the project.

FREE BRIDGE DESIGN

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

RIGHT-OF-WAY

10. State is responsible for acquisition of the necessary right-of-way and easements for construction and maintenance of the project. Agency may request to perform the acquisition functions, subject to execution of a written agreement. State

shall review all right-of-way activities engaged in by Agency to assure compliance with applicable laws and regulations.

If any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations which are in effect at the time of disposition. Reimbursement to State of the required proportionate share of the fair market value may be required.

AGENCY OBLIGATIONS

FINANCE

11. Agency shall, prior to the commencement of the preliminary engineering and right-of-way acquisition phases, deposit with State its estimated share of each phase.

Agency's share of construction will be deposited in two parts. The initial deposit will represent 65 percent of the Agency's share, based on the engineer's estimate, and will be requested three weeks prior to opening bids on the project. Upon award of the contract, the balance of the applicant's share will be requested.

Collection of advance deposits amounting to less than \$2,500 for the P.E. and R/W phase of the project will be postponed until collectively the amount exceeds \$2,500 or until the collection of the advance deposit for construction is required.

Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option of which may be a deposit in the Local Government Investment Pool accompanied by an Irrevocable Limited Power of Attorney), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State.

12. Agency shall present properly certified bills for 100 percent of actual costs incurred by Agency on behalf of the project directly to State's Liaison Person for review and approval. Such bills shall be in a form acceptable to 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 Agency must be approved by State's Liaison Person prior to presentation to Highway Division Accounting for payment. Agency's actual costs eligible for federal-aid participation shall be those allowable under the provisions of FAPG, 23 CFR 1.11, 710, and 140. Final billings shall be submitted to State for

processing within six months from date that costs were incurred. Partial billing (progress payment) shall be submitted to State within three months from date that costs incurred.

13. The costs records and accounts pertaining to the work covered by this agreement are to be kept available for inspection by representatives of 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. For real property and equipment, the retention period starts from the date of disposition (49 CFR 18.42).

This agreement is subject to the provisions of the Single Audit Act of 1984 (49 CFR, Part 90) as stated in Circular A-128 of the United States Office of Management and Budget.

PROJECT CANCELLATION

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

DELAYED STARTING DATE

* 15. In the event that right-of-way acquisition for, or actual construction of the facility for which this preliminary engineering is undertaken is not started by the close of the TENTH FISCAL YEAR following the fiscal year in which this agreement is executed, State may request reimbursement of the sum or sums of Federal-Aid funds disbursed to Agency under the terms of this agreement.

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 FAPG, 23 CFR 645A, shall be included in the total project costs and participation; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility adjustments in areas lying within jurisdiction of State and, if State is performing the preliminary engineering. Agency may request State to arrange for utility adjustments lying within Agency jurisdiction, acting on behalf of Agency.

Agency shall, five weeks prior to the opening of construction bid proposals, furnish State with an estimate of cost for eligible reimbursable utility relocations, based on the plans for the project. Agency shall notify State's 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. Design Standards for all projects shall meet the requirements of the Intermodal Surface Transportation Efficiency Act of 1991. In addition, all projects on the Oregon State Highway System shall be in compliance to Standards specified in the current ODOT Highway Design Manual and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the project shall be in substantial compliance with the most current Oregon Standard Specifications for Highway Construction.

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 State shall not subject 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 Agency's failure to comply with the terms of this agreement.

MAINTENANCE RESPONSIBILITIES

* 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 State and the FHWA.

WORKERS' COMPENSATION COVERAGE

21. The contractor, its subcontractors, if any, and all employers working under this (Agreement/Contract) 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.

LOBBYING RESTRICTIONS

22. Agency certifies by signing this agreement that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- * Paragraphs 15, 16, and 20 are not applicable to any local agency on state highway projects.