



Resolution No. 2002-019

A RESOLUTION AUTHORIZING THE CITY TO ENTER INTO THE COOPERATIVE IMPROVEMENT AGREEMENT WITH THE OREGON DEPARTMENT OF TRANSPORTATION (ODOT) FOR THE MEINECKE/99W ROAD PROJECT

WHEREAS, construction of the Meinecke-99W intersection has been one of the city's highest priority transportation projects since the current Transportation Plan was adopted in 1990; and

WHEREAS, ODOT allocated \$6.0 million toward the Meinecke-99W project; and

WHEREAS, the City and ODOT have worked on preliminary and final design of this project since mid-2000; and

WHEREAS, the City is prepared to advertise the project for construction bids so that construction can begin in July 2002 and be completed in Spring 2003; and

WHEREAS, the *Cooperative Improvement Agreement* identifies ownership of the improvements and associated right-of-way upon project completion; and

WHEREAS, the *Cooperative Improvement Agreement* outlines how project construction will be funded and managed and must be signed by ODOT and the City prior to bid advertisement.

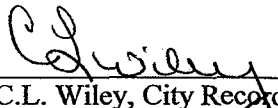
NOW, THEREFORE, THE CITY RESOLVES AS FOLLOWS:

Section 1. The City Manager is authorized to finalize and sign the *Cooperative Improvement Agreement Preliminary Engineering and Construction Finance Abandonment and Retention – Sherwood Access Management Bonding Project, Pacific Highway West (99W) @ Meinecke Road.*

Duly passed by the City Council this 14th day May of 2002.


Mark O. Cottle, Mayor

ATTEST:


C.L. Wiley, City Recorder

Resolution No. 2002-019

May 14, 2002

Page 1 of 1 with 1 Exhibit

**COOPERATIVE IMPROVEMENT AGREEMENT
PRELIMINARY ENGINEERING AND CONSTRUCTION FINANCE
ABANDONMENT AND RETENTION
Sherwood Access Management Bonding Project
Pacific Highway West (99W) @ Meinecke Road**

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"; CITY OF SHERWOOD, acting by and through its Elected Officials, hereinafter referred to as "City";

WITNESSETH

RECITALS

1. Pacific Highway West (99W) is a State highway and Cedar Creek Frontage Road (#091AX) is a frontage road under the jurisdiction and control of the Oregon Transportation Commission, and Meinecke Road, Handley Street, Smith Boulevard, North Sherwood Boulevard, Sunset Boulevard are all under the jurisdiction and control of the City of Sherwood.
2. By the authority granted in ORS 190.110, 366.770 and 366.775, ODOT may enter into cooperative agreements with the counties and cities 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.
3. By the authority granted in ORS 810.210, ODOT is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon State highways at places where ODOT deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than ODOT, except with its written approval. Traffic signal work on the project will conform to the current ODOT standards and specifications.
4. Pursuant to ORS 373.010, whenever the route of any State highway passes through the corporate limits of any city, State may locate, relocate, reroute, alter or change any routing when in its opinion the interests of the motoring public will be better served.
5. Pursuant to ORS 366.395, State may relinquish title to any of its property not needed by it for highway purposes to any other governmental body or political subdivision within the State of Oregon, subject to such restrictions, if any, imposed by deed or other legal instrument or otherwise imposed by State.

CITY OF SHERWOOD

6. By mutual agreement between the City and ODOT, ODOT proposes to eliminate from its jurisdiction and control a portion of Pacific Highway West (Highway No. 1W, Route 99W), otherwise known as Cedar Creek Frontage Road hereinafter designated as Unit A, as shown on the map attached hereto, marked Exhibit 'A' and by this reference made a part hereof. Unit A as hereinafter described, is needed for the service of persons living thereon or for a community served thereby. It is the purpose and plan of the parties hereto that Unit A be eliminated as a portion of Pacific Highway West and the state highway system; that the unit pass to and vest in the City of Sherwood; and that the City of Sherwood maintain the unit as a portion of its city street system as long as needed for the service of persons living thereon or a community served thereby.
7. ODOT and City entered into a Letter of Intent (LOI) dated May 14, 2001. Said LOI addressed responsibilities associated with the development and construction of the Sherwood Access Management Bonding Project.

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. For the purpose of providing acceptable traffic circulation patterns on public highways, City plans and proposes to realign and signalize the intersection of 99W and Meinecke Rd./Handley St.; reconnect the new intersection to the two city streets (Meinecke and Handley); provide and extend access control from 99W and the new intersection to the Meinecke Road and Handley Street planned and proposed roundabouts, except for an access control reservation at planned and proposed driveway along the southerly side of Meinecke as shown in the contract plans; close the existing median crossovers along 99W between North Sherwood Blvd. and Sunset Blvd.; assist ODOT in their evaluation of private and public access locations along 99W between North Sherwood Boulevard and Sunset Blvd. for consideration of combining, closing, and/or relocating and reconnecting; hereinafter referred to as "Project". The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit B, and by this reference made a part hereof.
2. This project will provide access control along 99W between North Sherwood Blvd. and Sunset Road. Access control criteria will be evaluated under OAR 374-051, the 1999 Oregon Highway Plan and City of Sherwood's Transportation System Plan (TSP).
3. The available funds to design, purchase ~~right~~ right-of-way and construct this project are \$6,000,000. The Preliminary Engineering phase of the project is

almost complete and was funded 100% with City funds. All other phases of this project up to \$6,000,000 will be funded by ODOT with State bonded funds. Any expenses over that amount will be at the expense of the City. City's power cost responsibilities for the Project traffic signal and illumination are outlined under CITY OBLIGATIONS.

4. This agreement shall become effective upon execution of this agreement by all parties and shall remain in effect for the purpose of ongoing maintenance responsibilities for the useful life of the facilities constructed as part of the project. The project shall be completed by ~~June~~ April 30, 2003, with final billings and all payments made by June 30, 2003, following final execution of this agreement by both parties.

ODOT OBLIGATIONS

1. ODOT hereby grants City the right to enter onto and occupy ODOT right-of-way upon issuance of ODOT required permits, for the performance of necessary preliminary engineering and construction of the project.
2. ODOT's District Manager or designee shall, at project expense, issue the required permits, and review and concur with the project plans and specifications prior to advertisement for construction bids.
3. ODOT's Region Manager shall, at project expense, assign a Project Manager to ~~insure~~ ensure ODOT standards are met through the City's inspection and testing program, and to monitor the traffic signal and roadway work performed by the City, or its contractors, within the boundaries of ODOT right-of-way. The City or its contractors will be responsible for material testing according to ODOT's policies and standards, ODOT's Project Manager's office will review material selection and test reports to insure adherence to ODOT's plans and specifications. ODOT's Project Manager will provide general oversight of the roadwork, but the City's consultant shall perform all roadwork technical inspections and contractor coordination to correct any deficient work. (Said ODOT Project Manager for the Project will be Mohamad Sahli).
4. ODOT's Traffic Engineer (or designee) shall, at project expense, review and concur with all traffic signal design plans provided by City.
5. ODOT's Traffic Signal Services Manager or designee shall, at project expense, perform the signal equipment environmental testing, field testing, and turn-on in accordance with the current ODOT procedures.

6. ODOT shall keep accurate cost accounting records. City may request a statement of costs at any time by submitting a written request to ODOT.
7. ODOT's Project Manager shall, upon receipt of monthly statements of cost from City, reimburse the City for all approved project costs. Said ODOT reimbursements shall be made within 30 days of receipt of City's monthly statements of cost. Under no conditions shall ODOT's total obligation exceed \$6,000,000, including all City and ODOT expenses.
8. ODOT shall, upon completion of the project and at its own expense shall adequately maintain the pavement markings, pavement, shoulders, and signing installed on ODOT right-of-way.
9. ODOT shall, upon satisfactory signal turn on, assume full ownership of the newly constructed signal equipment and shall provide all signal and attached illumination maintenance at its own expense. ODOT shall also provide power for said signal and illumination and will bill City semi-annually for 50% of the power costs.
10. ODOT shall, at project expense, acquire all right-of-way, including condemnations and easements (both permanent and temporary construction) necessary to construct the Project. It is further agreed that both parties will strictly follow the rules, policies, and procedures of the "Uniform Relocation and Real Property Acquisition Policy Act of 1970" as amended, ORS 281.060, ORS 35.346, State of Oregon ~~Right~~ Right-of-of-Way Manual, and Federal Highway Administration Federal Aid Policy Guide. If it is determined that additional ~~right-of-of-way~~ is needed, outside of the project limits, the City shall bear all costs associated with appraising and acquiring said right-of-way and easements. City and ODOT shall enter into a separate ~~Right~~ Right-of-of-Way agreement prior to the onset of any additional property acquisition.
11. ODOT shall, upon completion of the project, transfer ownership of ~~right-right-of -~~ way for Meinecke Road, Handley Street, and Smith Road ~~and other right of ways,~~ which fall outside of Pacific Highway West highway (99W) right-right-of-of-way, to the City, as shown on the map attached hereto marked Exhibit D and by this reference made a part hereof. Any properties acquired by ODOT outside the identified ~~right-right-of-of-way~~ for the project shall remain the property of ODOT.
12. ODOT shall, upon execution of this agreement, complete the resolutions necessary to complete the terms of this agreement, to formally eliminate Unit A as a portion of Pacific Highway West and the state highway system. All right, title, and interest of ODOT/~~State~~ in Unit A shall pass to and vest in the City of Sherwood so long as used for public road purposes, except ODOT shall retain

access rights to Pacific Highway West (99W). If said right-of-way is no longer used for public road purposes, it shall automatically revert to ODOT/State. Unit A is described as follows:

Unit A

All that portion of the Southeasterly 18.288 meters of the Pacific Highway West No. 1W, Route 99W ~~right-right-of-of-way~~, lying Northeasterly of MP F15.835, opposite Engineer's Station "LN" 13+317.203 on the center line of the Northbound lane of the Pacific Highway West, said milepoint also being on the Northwesterly extension of the Southwesterly line of Smith Road; and Southwesterly of MP F15.71, opposite Engineer's Station "LN" 13+126.599 on said Northbound lane center line, said milepoint being the Northeasterly terminus of the Cedar Creek Frontage Road and lying in Section 30, Township 2 South, Range 1 West, W.M., Washington County, Oregon.

13. 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.

CITY OBLIGATIONS

1. City shall, at project expense, identify and obtain required permits; arrange for utility relocation or reconstruction, and perform all final design work required to produce plans, specifications, and cost estimates, except for the work performed by ODOT as outlined under ODOT OBLIGATIONS.
2. City shall, at project expense, prior to the advertisement of the project, provide 4 sets of the final plans and specifications to ODOT's Project Leader for review and concurrence by ODOT's District Office, Region and Salem Traffic Sections, and Salem Roadway section. ODOT's prior written approval is necessary before City's advertisement for construction bid proposals.
3. City shall, upon ODOT's review and concurrence of final plans, and at project expense, prepare the contract and bidding documents, advertise for construction bid proposals, award all contracts, pay all contractor costs, furnish all construction engineering, field testing of materials, technical inspection (except as provided for in ODOT OBLIGATIONS) and project manager services for administration of the contract.
4. The City shall construct the project in accordance with the requirements of ORS 276.071 including the public contracting laws within ORS Chapter 279.

5. City shall design and construct to ODOT standards ~~and conform to the Oregon Action Plan~~. Upon completion of the project by City and upon approval by ODOT, the City shall transfer ownership of traffic signal equipment to ODOT.
6. City agrees to comply with all provisions of ODOT issued permits and shall require its contractors, subcontractors, or consultants performing such work to comply with such provisions.
7. City shall keep accurate cost accounting records. ODOT may request a statement of costs at any time by submitting a written request to City. Upon completion of the Project, City shall send ODOT a final invoice for the ~~total contract amount~~ project costs, which when added to ODOT's previous payments will equal 100 percent of the total costs for Project. Total reimbursement will not exceed \$6,000,000.
8. City shall require its 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, the Department of Transportation, officers and employees as additional insured. City shall provide a copy of the certificate to ODOT within 20 days of notification of Intent to Award the project. The insurance coverage shall not be amended, altered, modified or cancelled insofar as the coverage contemplated herein is concerned without at least 30 days prior written notice.
9. City shall bear all costs associated with appraising and acquiring any additional right-of-way and easements, which are located outside of the project limits. City and ODOT may, if applicable, enter into a separate ~~Right-Right-of-of-Way~~ Right-of-Way agreement prior to the onset of any property acquisition adjacent to ODOT ~~right-of-of-way~~ right-of-way.
10. City is responsible for and insures that all project right-of-way monumentation will be conducted in conformance with ORS 209.
11. City shall, at project expense, lay out and paint the necessary lane lines and erect the required directional and traffic control signing on the project, according to the approved striping and signing plan.

12. City shall, upon completion of the project, submit three sets of "As Constructed" drawings to ODOT's Region Traffic Section and to ODOT's District 2A office. One set shall be half size (11" x 17") mylars. The other two sets shall be half size (11"x 17") prints.
13. City shall adequately maintain the pavement markings, pavement, drainage and signing installed in City street ~~right~~ right-of-way.
14. City shall, upon completion of this project, maintain landscaping in the project area at its own expense.
15. City shall, upon completion of this project, maintain the water quality facilities installed, on both City and ODOT right of way, for this project, at its own expense.
16. City shall, upon completion of the project, semi-annually reimburse ODOT, as billed, for 50 percent of all project traffic signal power costs, including intersection illumination.
17. City 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 City or its contractors that are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after completion of Project. Copies of applicable records shall be made available upon request. Payment for costs of copies shall be reimbursed by the requesting party.
18. City agrees to accept all of ODOT/~~State's~~'s right, title, and interest in Unit A (further described in ODOT OBLIGATIONS); to accept jurisdiction and control over the unit; and to maintain the unit as a portion of its city street system as long as needed for the service of persons living thereon or a community served thereby (including all traffic signals and illumination). Any right-of-way being transferred in which ODOT/~~State~~ has any title shall be vested in City so long as used for public road purposes. If said right-of-way is no longer used for public road purposes, it shall automatically revert to ODOT/~~State~~. Said jurisdictional transfer shall be completed through a Resolution written by ODOT (upon execution of this agreement) and approved by the Oregon Transportation Commission.
19. City shall authorize execution of this agreement during a regularly convened session of its elected City officials.
20. City shall work with local citizen groups to mitigate noise impacts that could occur due to construction of this project.

21. City certifies, at the time this agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this agreement within City's current appropriation or limitation of the current budget.

GENERAL OBLIGATIONS

1. City, its construction contractor, subcontractors, 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, unless such employers are exempt under ORS 656.126. City shall ensure that each of its contractors complies with these requirements.
2. City shall comply with all federal, state, and local laws, regulation, 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, the City 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 foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
3. City and its contractors 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, and the Oregon Department of Transportation and its officers and employees, from all claims, suits or actions of any nature arising out of activities of City, its consultants, contractors, subcontractors, officers, agents or employees under this Agreement. ODOT shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless City, its officers and employees, from all claims, suits or actions of any nature arising out of activities of ODOT, its consultants, contractors, officers, subcontractors, agents or employees under this agreement.
4. ODOT and City agree and understand that a mutual review of the project plans and specifications will be conducted prior to advertisement for construction bid proposals.
5. This agreement may be terminated by mutual written consent of all parties.

6. ODOT may terminate this agreement effective upon delivery of written notice to City, or at such later date as may be established by ODOT, under any of the following conditions:
- a) If City fails to provide services called for by this agreement within the time specified herein ~~or any extension thereof~~.
 - b) If City 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 City fails to provide payment of deposits upon receipt of a letter of request from ODOT.
 - d) If federal or state laws, regulations or guidelines are modified or interpreted in such a way that the work under this agreement is prohibited.

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

7. This agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this agreement shall not constitute a waiver by that party of that or any other provision.
8. The properties described above as Unit A are relinquished and transferred subject, however, to the rights of any utilities located within said properties and further subject to the rights of the owners of said existing facilities, if any there be, to operate, reconstruct, and maintain their utility facilities presently located within said properties.

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 January 16, 2002, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

On January 31, 2002, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates authority to the Executive Deputy Director for Highways to approve and execute agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

APPROVAL RECOMMENDED

BY _____
Area Manager

DATE _____

BY _____
Region 1 Manager

DATE _____

**APPROVED AS TO
LEGAL SUFFICIENCY**

BY _____
Asst. Attorney General

STATE OF OREGON, by and through
its Department of Transportation

BY _____
Exec. Deputy Director

DATE _____

CITY OF SHERWOOD
by and through its Elected Officials

BY _____
City Manager

DATE _____

DATE _____

**APPROVED AS TO
LEGAL SUFFICIENCY**

BY _____
City Attorney

DATE _____

Comments from Dale Hormann:

3. Gen Pro. #6: Should we have a reimbursement provision, i.e., in the event the agreement is terminated because of Gen Pro #6 a or b, then City shall reimburse ODOT any state funds? And then latching on to Highway Funds if they don't reimburse. I do wonder if some of the protections now used in OTIA agreements shouldn't be considered here, such as the reimbursement provision. In addition, the time line is SO tight, should consideration be given to the milestone type of process used in OTIA. I question a \$6M project in less than a year for a relatively small city such as Sherwood.

From Tamira: