



RESOLUTION 2024-027

APPROVING A GRANT AGREEMENT WITH THE STATE OF OREGON TO RECEIVE \$4 MILLION IN STATE LOTTERY FUNDS FOR THE HWY 99W PEDESTRIAN BRIDGE PROJECT

WHEREAS, the state legislature, through House Bill 5050 (2019) and House Bill 5534 (2021), authorized \$4 million in state lottery funds for a grade-separated crossing over the state highway and county roads between the YMCA and high school; and

WHEREAS, the City of Sherwood is delivering the pedestrian-bridge project on behalf-of and in-partnership with the Sherwood Urban Renewal Agency (URA) and construction is underway; and

WHEREAS, the City anticipates being able to submit reimbursement request for the entire \$4 million within the pending fiscal year, between July 1, 2024 and June 30, 2025; and

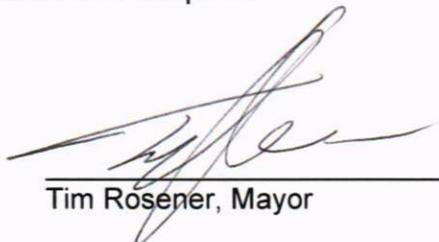
WHEREAS, City staff reviewed the Grant Agreement to ensure all information was current including City staff contact information, and recommends approval of the agreement with authority to execute granted to the City Manager Pro Tem.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The City Manager Pro Tem is hereby authorized to sign a Grant Agreement with the State of Oregon in a form substantially similar to the attached Exhibit 1, including amendments.

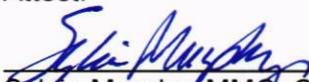
Section 2. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 7th day of May 2024.



Tim Rosener, Mayor

Attest:



Sylvia Murphy, MMC, City Recorder

GRANT AGREEMENT
OREGON DEPARTMENT OF TRANSPORTATION
HB 5534 (2021)
Oregon Laws 2021, chapter 682, section 17
Project Name: OR99W: Sunset & Elwer Pedestrian Crossing

This Grant Agreement ("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" or "ODOT", and **City of Sherwood**, acting by and through its Governing Body, ("Recipient"), both referred to individually or collectively as "Party" or "Parties."

0. Recitals

- a. Pursuant to Oregon Laws 2021, chapter 682, section 17 (HB 5534), the Oregon legislature authorized the issuance of lottery bonds in an amount that produces \$4 million in net proceeds for distribution by ODOT to Recipient for a pedestrian bridge across State Highway 99W at Sunset Boulevard, also known as the OR99W: Sunset & Elwer Pedestrian Crossing, as more particularly described in Exhibit A (the "Project").
 - b. The Project is part of the city street system under the jurisdiction and control of the Recipient. The construction and maintenance elements that cross OR99W, an ODOT facility, will be addressed in a separate Cooperative Improvement Agreement number 73000-00028858 between the Parties.
1. **Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law (the "Effective Date"). The availability of Grant Funds (as defined in Section 3) shall end three (3) years after the Effective Date (the "Availability Termination Date").
 2. **Agreement Documents.** This Agreement consists of this document and the following documents:
 - a. Exhibit A: **Project Description**
 - b. Exhibit B: **Recipient Requirements**
 - c. Exhibit C: **Subagreement Insurance Requirements**

Exhibits A, B and C are attached to this Agreement. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits; Exhibit A; Exhibit B; Exhibit C.

3. **Project Cost; Lottery Funds.** The total estimated Project cost is \$4,000,000. In accordance with the terms and conditions of this Agreement, ODOT shall provide Recipient funds in a total amount not to exceed \$4,000,000. Recipient will be responsible for all Project costs not covered by the Funds.

4. Project.

- a. **Use of Grant Funds.** The Grant Funds shall be used solely for the Project as defined in Recital (a) above and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless ODOT approves such changes by amendment pursuant to Section 4.c.
- b. **Eligible Costs.** Recipient may seek reimbursement for its actual costs to develop the Project, consistent with the terms of this Agreement (“Eligible Costs”).
 - i. Eligible Costs are actual costs of Recipient to the extent those costs are:
 - A. reasonable, necessary and directly used for the Project;
 - B. permitted by generally accepted accounting principles established by the Governmental Accounting Standards Board, as reasonably interpreted by the State, to be capitalized to an asset that is part of the Project; and
 - C. eligible or permitted uses of the Grant Funds under the Oregon Constitution, the statutes and laws of the state of Oregon, and this Agreement.
 - D. capital expenditures for federal income tax purposes within the meaning of Section 1.150-1(b) of the Internal Revenue Code of 1986, as amended, including any implementing regulations and any administrative or judicial interpretations, (the “Code”).
 - ii. Eligible Costs do NOT include:
 - A. operating and working capital or operating expenditures charged to the Project by Recipient;
 - B. loans or grants to be made to third parties;
 - C. any expenditures incurred before the Effective Date or after the Availability Termination Date;
 - D. costs associated with the Project that substantially deviate from Exhibit A, Project Description, unless such changes are approved by ODOT by amendment of this Agreement;
 - E. internal costs charged to the Project by Recipient or payments made to Related Parties. Related Parties shall mean, in reference to governmental units or 501(c)(3) organizations, members of the same controlled group within the meaning of Section 1.150-1(e) of the Code, and in reference to any person that is not a governmental unit or a 501(c)(3) organization, a related person as defined in Section 144(a)(3) of the Code;

- F. payment of principal due on interim financing for the Project unless the Recipient has received prior written consent of the Department of Administrative Services ("DAS"); or
- G. payment of interest due on interim financing for the Project.

c. Project Change Procedures.

- i. If Recipient anticipates a change in scope or Availability Termination Date, Recipient shall submit a written request to their ODOT Contact. The request for change must be submitted before the change occurs.
- ii. Recipient shall not proceed with any changes to scope or Availability Termination Date before the execution of an amendment to the Agreement executed in response to ODOT's approval of a Recipient's request for change. A request for change may be rejected at the sole discretion of ODOT.

5. Reimbursement Process

- a. ODOT shall reimburse Recipient for Eligible Costs up to the Grant Fund amount provided in **Section 3**. ODOT shall reimburse Eligible Costs within forty-five (45) days of ODOT's receipt and approval of a request for reimbursement from Recipient. Recipient must pay its contractors, consultants and vendors before submitting a request for reimbursement to ODOT for reimbursement.
- b. Each reimbursement request shall be submitted on letterhead to the ODOT Contact and include the Agreement number, the start and end date of the billing period, and itemize all expenses for which reimbursement is claimed.
- c. Upon ODOT's receipt of the final reimbursement request, ODOT will conduct a final on-site review of the Project. ODOT will withhold payment of the final reimbursement request until on-site review is conducted and the Project is approved by the ODOT Contact or designee.
- d. ODOT's obligation to disburse Grant Funds to Recipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
 - i. ODOT has received funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to make the disbursement;
 - ii. Recipient is in compliance with the terms of this Agreement; and
 - iii. Recipient's representations and warranties set forth in **Section 6** are true and correct on the date of disbursement.

e. Recovery of Grant Funds.

- i. Recovery of Mis-expended Funds. Any Grant Funds disbursed to Recipient under this Agreement that are expended in violation of one or more of the provisions of this Agreement ("Mis-expended Funds") must be returned to ODOT. Recipient shall return all Mis-expended Funds to ODOT no later than fifteen (15) days after ODOT's written demand for the same.
- ii. Recovery of Grant Funds upon Termination. If this Agreement is terminated under any of Sections 9.b.i., 9.b.ii., 9.b.iii. or 9(b)(vi), Recipient shall return to ODOT all Grant Funds disbursed to Recipient within 15 days after ODOT's written demand for the same.

6. Representations and Warranties of Recipient. Recipient represents and warrants to ODOT as follows:

- a. **Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.
- b. **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. **No Solicitation.** Recipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- d. **No Debarment.** Neither Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from any federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify ODOT immediately if it is debarred, suspended or otherwise excluded from any federally

assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.

- e. **Compliance with Oregon Taxes, Fees and Assessments.** Recipient is, to the best of the undersigned(s) knowledge, and for the useful life of the Project will remain, current on all applicable state and local taxes, fees and assessments.
- f. **Representations and Covenants Regarding the Tax-Exempt Status of Bonds.**
 - i. Recipient acknowledges that the State of Oregon issued certain bonds (the "Bonds") in part to fund this grant and that the interest paid on the Bonds is excludable from gross income for federal income tax purposes. Recipient further acknowledges that the uses of the Grant Funds and the Project by Recipient during the term of the Bonds may impact the tax-exempt status of the Bonds. Accordingly, Recipient agrees to comply with all applicable provisions of the Code necessary to protect the exclusion of interest on the Bonds from federal income taxation.
 - ii. Recipient shall not, without prior written consent of ODOT, permit more than five percent (5%) of the Project to be used in a "private use" by a "private person" (as defined in the Code) if such private use could result in the State of Oregon, receiving direct or indirect payments or revenues from the portion of the Project to be privately used.

This subsection 6.f. shall survive any expiration or termination of this Agreement.

The warranties set forth in this Section 6 are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

7. Records Maintenance and Access; Audit.

- a. **Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Recipient shall ensure that each of its subrecipients and subcontractors complies with these requirements. ODOT, the Secretary of State of the State of Oregon (the "Secretary") and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the Grant Funds, or the Project for the purpose of making audits and examinations. In addition, ODOT, the Secretary and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of ODOT and the Secretary to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment

purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.

- b. Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records, that are directly related to this Agreement, the funds or the Project until the date that is three (3) years following the later of the final maturity or earlier retirement of all of the Bonds funding the Grant (including the final maturity or redemption date of any obligations issued to refund the Bonds), or such longer period as may be required by other provisions of this Agreement or applicable law, following the Availability Termination Date. Because the Bonds were issued on May 4, 2022 as 20 year Lottery Revenue Bonds, Recipient should anticipate retaining project records until at least April 2046. It is recommended that the Recipient consult with ODOT before the final destruction of any Project records. If there are unresolved audit questions at the end of the period described in this section, Recipient shall retain the records until the questions are resolved.
- c. Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by ODOT under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit ODOT to verify how the Grant Funds were expended.

This Section 7 shall survive any expiration or termination of this Agreement.

8. Recipient Subagreements and Procurements

Recipient may enter into agreements with subrecipients, contractors or subcontractors (collectively, "subagreements") for performance of the Project. If Recipient enters into a contract for performance of work under this Agreement, Recipient agrees to comply with the following:

a. Subagreements.

- i. All subagreements must be in writing, executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
- ii. Recipient shall require all of its contractors performing work under this Agreement to name ODOT as a third-party beneficiary of Recipient's subagreement with the Contractor.
- iii. Recipient shall provide ODOT with a copy of any signed subagreement, as well as any other purchasing or contracting documentation, upon ODOT's request at any time. This paragraph shall survive expiration or termination of this Agreement.
- iv. Recipient must report to ODOT any material breach of a term or condition of a subagreement within ten (10) days of Recipient discovering the breach.

b. Subagreement Indemnity.

- i. Recipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless State of Oregon, the Oregon Transportation Commission and its members, the Department of Transportation, their officers, agents and employees from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Recipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that ODOT shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of ODOT, be indemnified by the other party to Recipient's subagreement(s) from and against any and all Claims.**
- ii. Any such indemnification shall also provide that neither Recipient's subrecipient(s), contractor(s) nor subcontractor(s), nor any attorney engaged by Recipient's subrecipient(s), contractor(s) nor subcontractor(s) shall defend any claim in the name of ODOT 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 may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient's subrecipient is prohibited from defending the State, or that Recipient's subrecipient is not adequately defending the State's interests, or that an important governmental principle is at issue or that it is in the best interests of the State to do so. The State reserves all rights to pursue claims it may have against Recipient's subrecipient if the State of Oregon elects to assume its own defense.

c. Subagreement Insurance.

- i. If the Project or Project work is on or along a state highway, Recipient shall require its contractor(s) to meet the minimum insurance requirements provided in Exhibit C. Recipient may specify insurance requirements of its contractor(s) above the minimum insurance requirements specified in Exhibit C. Recipient shall verify its contractor(s) meet the insurance requirements in Exhibit C.
- ii. Recipient shall determine insurance requirements, insurance types and amounts, as deemed appropriate based on the risk of the work outlined within the subagreement. Recipient shall specify insurance requirements and require its contractor(s) to meet the insurance requirements. Recipient shall obtain proof of the required insurance coverages, as applicable, from any contractor providing services related to the subagreement.

- iii. Recipient shall require its contractor(s) to require and verify that all subcontractors carry insurance coverage that the contractor(s) deems appropriate based on the risks of the subcontracted work.
- d. Recipient shall include provisions in each of its subagreements requiring its contractor(s) to comply with the indemnification and insurance requirements in Paragraph 8.b. and 8.c.
- e. Procurements. Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code, Oregon Revised Statute (ORS) 279 A, B, and C, and rules, ensuring that:
 - i. All applicable clauses required by federal statute, executive orders and their implementing regulations are included in each competitive procurement; and
 - ii. All procurement transactions are conducted in a manner providing full and open competition.
- f. **Self-Performing Work.** Recipient must receive prior approval from ODOT for any self-performing work.
- g. **Conflicts of Interest.**
 - i. Recipient's public officials shall comply with Oregon's government ethics laws, ORS 244.010 *et seq.*, as those laws may be subsequently amended, if applicable.

9. Termination

- a. **Mutual Termination.** This Agreement may be terminated by mutual written consent of the Parties.
- b. **Termination by ODOT.** ODOT may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by ODOT in such written notice, under any of the following circumstances:
 - i. If Recipient fails to perform the Project within the time specified in this Agreement, or any extension of such performance period;
 - ii. If Recipient takes any action pertaining to this Agreement without the approval of ODOT and which under the provisions of this Agreement would have required ODOT's approval;
 - iii. If Recipient fails to perform any of its other obligations under this Agreement, and that failure continues for a period of 10 calendar days after the date ODOT delivers Recipient written notice specifying such failure. ODOT may agree in writing to an

- extension of time if it determines Recipient instituted and has diligently pursued corrective action;
- iv. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement;
 - v. If Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
 - vi. If the Project would not produce results commensurate with the further expenditure of funds.
- c. **Termination by Either Party.** Either Party may terminate this Grant Agreement upon at least ten (10) days' notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Grant Agreement.
- d. **Rights upon Termination; Remedies.** Any termination of this Grant Agreement shall not prejudice any rights or obligations accrued before termination. The remedies set forth in this Grant Agreement are cumulative and are in addition to any other rights or remedies available at law or in equity.

10. GENERAL PROVISIONS

a. Contribution.

- i. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or Recipient with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
- ii. Except as otherwise provided in Paragraph 10.b. below, with respect to a Third Party Claim for which ODOT is jointly liable with Recipient (or would be if joined in the Third Party Claim), ODOT shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Recipient in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses,

judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of Recipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.

- iii. Except as otherwise provided in Paragraph 10.b. below, with respect to a Third Party Claim for which Recipient is jointly liable with ODOT (or would be if joined in the Third Party Claim), Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of ODOT on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

This Section 10.a. shall survive any expiration or termination of this Agreement.

- b. **Contract-related Indemnification.** Subject to any limitations imposed by State law and the Oregon Constitution, Recipient agrees to the following contract-related indemnification for all projects authorized under this Agreement: Where Recipient contracts for services or performs project management for a project, Recipient shall accept all responsibility, defend lawsuits, indemnify, and hold State harmless, for all contract-related claims and suits. This includes but is not limited to all contract claims or suits brought by any contractor, whether arising out of the contractor's work, Recipient's supervision of any individual project or contract, or Recipient's failure to comply with the terms of this Agreement. This Section 10.b. shall survive any expiration or termination of this Agreement.
- c. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.

- e. Duplicate Payment.** Recipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- f. No Third-Party Beneficiaries.** ODOT and Recipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.
- g. Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email or mailing the same, postage prepaid, to Recipient Contact or ODOT Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 10(g). Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.
- h. Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between ODOT (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- i. Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Recipient 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. Recipient agrees to comply with the requirements of ORS 366.514, Use of Highway Fund for footpaths and bicycle trails.

- j. Insurance; Workers' Compensation.** All employers, including Recipient, that employ subject workers who provide services 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. Employer's Liability insurance with coverage limits of not less than \$500,000 must be included. Recipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- k. Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of ODOT. Recipient has no right or authority to incur or create any obligation for or legally bind ODOT in any way. ODOT cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of ODOT, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- l. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- m. Counterparts.** This Agreement may be executed in two or more counterparts, each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- n. Integration and Waiver.** This Agreement, including all Exhibits, constitutes 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. The delay or 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. Recipient, by the signature below of its authorized representative, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.
- o. Electronic Signatures.** Signatures showing on PDF documents, including but not limited to PDF copies of the Agreement, Work Orders, and amendments, submitted or exchanged via email are "Electronic Signatures" under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. State reserves the right at any time to require the submission of the hard copy originals of any documents.

THE PARTIES, by execution of this Agreement, acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

Recipient, City of Sherwood, by and through its elected officials

By _____
(Legally designated representative)

Name _____
(printed)

Date _____

By _____

Name _____
(printed)

Date _____

**LEGAL REVIEW APPROVAL
(If required in Recipient's process)**

By _____
Recipient's Legal Counsel

Date _____

Recipient Contact:

Craig Sheldon
City Manager, Pro-Tem
22560 SW Pine St.
Sherwood, Oregon 97140
503-625-4200
Sheldonc@sherwoodoregon.gov

STATE OF OREGON, by and through its Department of Transportation

By _____
Delivery and Operations Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By email Sam Zeigler
Assistant Attorney General

Date: Jan. 22, 2024

State Contact:

Stephanie Turner
123 NW Flanders Street
Portland, Oregon 97209
503-964-0962
Stephanie.turner@odot.oregon.gov

EXHIBIT A

Project Description
Agreement No. 73000-00023169
Project Name: 99W Sunset / Elwer

A. PROJECT DESCRIPTION

The project consists of constructing a pedestrian bridge that crosses over Pacific Highway 99W (99W), SW Elwert Road, and SW Kruger Road to allow pedestrian access from the YMCA property on the east side of 99W to the Sherwood High School on the north side of SW Kruger Road.

The project includes an approximate 790 –foot-long by 14 foot-wide pedestrian bridge. As currently planned, the bridge will consist of five major bridge spans with lengths ranging from about 100 feet to 194 feet long, running from the west abutment on the north side of SW Kruger Road to Bent 5 on the east side of 99W that supports the bridge span over 99W. Four smaller spans ranging in length from 28 feet to 32 feet long are planned parallel to the east side of the YMCA building. Fills on the order of 18 feet and 12 feet tall will be required to raise grades for the west and east bridge approaches, respectively. Approach fills will be supported by the bridge abutment walls up to about 18 feet tall, along with additional site retaining walls up to about 9 feet tall planned along portions of the embankment slopes and/or embankment side slopes of 3H:1 (Horizontal to Vertical) or flatter. A stairway is proposed running parallel to the east side of 99W that will connect Bent 5 with 99W near the northwest corner of the YMCA building.

Recipient acknowledges that such Project improvements funded under this Agreement may trigger other Recipient responsibilities under the Americans with Disabilities Act. Recipient agrees that it is solely responsible for ensuring Americans with Disabilities Act compliance pursuant to Exhibit B, Recipient Requirements, Section

B. PROJECT KEY MILESTONES AND SCHEDULE

The Project has two (2) Key Milestone(s). Key Milestones are used for evaluating performance on the Project as described in the Agreement. Neither Key Milestone 1, Planning, design, permitting and land acquisition, nor Key Milestone 2, Project completion, can be changed without an amendment to the Agreement.

If Recipient anticipates either that Key Milestone 1 will require material changes or that Key Milestone 2 will be delayed by more than ninety (90) days, Recipient shall submit a Request for Change Order, as described in Section 4(c) of the Agreement, to SRTSPProgramMailbox@odot.state.or.us as soon as Recipient becomes aware of any possible change or delay. Recipient must submit the Request for Change Order before materially changing the project scope (Key Milestone 1) or delaying the Project completion (Key Milestone 2).

Table 1: Key Milestones

Key Milestone	Description	Estimated Due Date
1	Planning, design, permitting and land acquisition.	June 2024
2	Project completion (Project must be completed within 3 years of agreement execution.)	November 2025

EXHIBIT B
Recipient Requirements

1. Recipient shall comply with all applicable provisions of ORS 279C.800 to 279C.870 pertaining to prevailing wage rates and including, without limitation, that workers on the Project shall be paid not less than rates in accordance with ORS 279C.838 and 279C.840 pertaining to wage rates and ORS 279C.836 pertaining to having a public works bond filed with the Construction Contractors' Board.
2. Recipient shall notify ODOT's Contact in writing when any contact information changes during the Agreement.
3. Recipient shall, at its own expense, maintain and operate the Project upon completion and throughout the useful life of the Project at a minimum level that is consistent with normal depreciation or service demand or both. The Parties agree that the useful life of the Project is defined as twenty (20) years from its completion date (the "Project Useful Life"). For the useful life of the project, Recipient shall reinvest any proceeds from the sale of improvements in similar improvements. After the Project Useful Life, maintenance of the Project shall conform to any maintenance agreement in place between the Parties. If no maintenance agreement exists, ODOT will maintain that portion of the Project that is within its jurisdiction unless otherwise provided in Exhibit A to this Agreement.
4. Recipient shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. If the Project or any portion is destroyed, insurance proceeds will be paid to ODOT, unless Recipient has informed ODOT in writing that the insurance proceeds will be used to rebuild the Project.

5. Americans with Disabilities Act Compliance

- a. **State Highway:** For portions of the Project located on or along the State Highway System or a State-owned facility ("state highway"):
 - i. Recipient shall utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - ii. Recipient shall follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;

- iii. At Project completion, Recipient shall send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form and to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<https://www.oregon.gov/ODOT/ADA/Pages/asset-inspection.aspx>

- iv. Recipient shall promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by Recipient and prior to release of any Recipient contractor.
- v. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, disability organizations, and ODOT at least 10 days prior to the start of construction.

b. Local Roads: For portions of the Project located on Recipient roads or facilities that are not on or along a state highway:

- i. Recipient shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed and maintained in compliance with the ADA.
- ii. Recipient may follow its own processes or may use ODOT's processes for design, construction, or alteration of Project sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:

<https://www.oregon.gov/ODOT/ADA/Pages/asset-inspection.aspx>

Additional ODOT resources are available at the above-identified link. ODOT has made its forms, processes, and resources available for Recipient's use and convenience.

- iii. Recipient assumes sole responsibility for ensuring that the Project complies with the ADA, including when Recipient uses ODOT forms and processes. Recipient acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.

- iv. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations prior to the start of construction.
- c. Maintenance obligations in this Section 5 shall survive termination of this Agreement.

6. Work Performed within ODOT's Right of Way

- a. Prior to the commencement of work, Recipient shall obtain, or require its contractor to obtain, permission in writing from the appropriate ODOT District Office to work on or along the state highway. This Agreement does not provide permission to work on or along the state highway.
- b. ODOT may charge for review of work to be performed on or along the state highway. The estimated cost to Recipient will be determined by ODOT in advance and shall be subject to the approval of Recipient prior to the services being rendered.
- c. If the Project includes traffic control devices (see ODOT's Traffic Manual, Chapter 5, for a description of traffic control devices) on or along a state highway, Recipient shall, pursuant to Oregon Administrative Rule (OAR) 734-020-0430, obtain the approval of the State Traffic Engineer prior to design or construction of any traffic control device being installed.
- d. Recipient shall enter into a separate traffic signal agreement with ODOT to cover obligations for any traffic signal being installed on a state highway.
- e. Recipient shall ensure that its electrical inspectors possess a current State Certified Traffic Signal Inspector certificate before the inspectors inspect electrical installations on state highways. The ODOT's District Office shall verify compliance with this requirement before construction. The permit fee should also cover the State electrician's supplemental inspection.

7. General Standards

The Project shall be completed within industry standards and best practices to ensure that the functionality and serviceability of the Program's investment meets the intent of the application and the Program.

8. Land Use Decisions

- a. Recipient shall obtain all permits, "land use decisions" as that term is defined by ORS 197.015(1) (2020), and any other approvals necessary for Recipient to complete the

Project by the Project completion deadline identified in Exhibit A (each a "Land Use Decision" and collectively, "Land Use Decisions").

- b. If at any time before the Availability Termination Date identified in Section 1 of this Agreement ODOT concludes, in its sole discretion, that Recipient is unlikely to obtain one or more Land Use Decisions before the Availability Termination Date, ODOT may (i) suspend the further disbursement of Grant Funds upon written notice to Recipient (a "Disbursement Suspension") and (ii) exercise any of its other rights and remedies under this Agreement, including, without limitation, terminating the Agreement and recovering all Grant Funds previously disbursed to Recipient.
- c. If after a Disbursement Suspension ODOT concludes, in its sole discretion and based upon additional information or events, that Recipient is likely to timely obtain the Land Use Decision or Decisions that triggered the Disbursement Suspension, ODOT will recommence disbursing Grant Funds as otherwise provided in this Agreement.
- d. This Section 8 is in addition to, and not in lieu of, ODOT's rights and remedies under Section 5.e ("Recovery of Grant Funds") of this Agreement.

9. Website

Recipient shall provide ODOT a link to any website created about the Project identified in Exhibit A before any costs being considered eligible for reimbursement. Recipient shall notify the ODOT Contact in writing when the link changes during the term of this Grant Agreement.

EXHIBIT C
Subagreement Insurance Requirements

1. GENERAL.

- a. If the Project is on or along a state highway, Recipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, (each, a "contractor") to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to ODOT. Recipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Recipient permit work under a subagreement when Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which the Recipient is a Party.
- b. The insurance specified below is a minimum requirement that the contractor within the subagreement shall meet. Recipient may determine insurance types and amounts in excess to the minimum requirement as deemed appropriate based on the risks of the work outlined within the subagreement.
- c. Recipient shall require the contractor(s) to require that all of its subcontractors carry insurance coverage that the contractor deems appropriate based on the risks of the subcontracted work. Contractor shall obtain proof of the required insurance coverages, as applicable, from any subcontractor providing Services related to the Contract.

2. TYPES AND AMOUNTS.

- a. **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY.**
All employers, including the Recipient's contractors, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide Workers' Compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employer's Liability insurance with limits not less than \$500,000 each accident. The contractors shall require compliance with these requirements in each of their subcontractor contracts.

b. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability insurance shall be issued on an occurrence basis covering bodily injury, property damage, personal and advertising injury, products and completed operations, and contractual liability. When work to be performed includes operations or activity within 50 feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass or crossing, the contractor shall provide the Contractual Liability – Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy. Amounts below are a minimum requirement as determined by ODOT:

Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

c. AUTOMOBILE LIABILITY.

Automobile Liability insurance covering the contractor's business-related automobile use covering all owned, non-owned, or hired vehicles for bodily injury and property damage. Amount below is a minimum requirement as determined by ODOT:

Coverage shall be written with a combined single limit of not less than \$1,000,000.

d. EXCESS/UMBRELLA LIABILITY.

A combination of primary and Excess/Umbrella Liability insurance may be used to meet the required minimum limits of insurance. If any Excess/Umbrella Liability policies are in place, they must be provided on a true "follow form" or broader coverage basis, with coverage at least as broad as provided on the underlying insurance.

e. ADDITIONAL INSURED.

The Commercial General Liability insurance and Automobile Liability insurance must include the **"State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees"** as an **endorsed** Additional Insured but only with respect to the contractor's activities to be performed under the Subcontract. Coverage shall be primary and noncontributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations.

Excess/Umbrella Liability policies must endorse the **"State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees"** as an **endorsed** Additional Insured.

Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to the Recipient.

f. "TAIL" COVERAGE.

If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance or pollution liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of twenty-four (24) months following the later of : (i) the contractor's completion and Recipient's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing twenty-four (24) month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then the contractor may request and ODOT may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If ODOT approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

g. NOTICE OF CANCELLATION OR CHANGE.

The contractor or its insurer must provide thirty (30) days' written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

h. CERTIFICATE(S) OF INSURANCE.

Recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) **"State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees"** as an endorsed Additional Insured in regards to the Commercial General Liability and Automobile Liability policies and ii) that all liability insurance coverages shall be primary and noncontributory with any other insurance and self-insurance, with exception of Workers' Compensation/Employer's Liability.

The Recipient shall immediately notify ODOT of any change in insurance coverage.