

**RESOLUTION NO. 1799**

**A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF OREGON, ACTING THROUGH ITS DEPARTMENT OF TRANSPORTATION (ODOT), TITLED "2001 OREGON TRANSPORTATION INVESTMENT ACT AGREEMENT", FOR THE PROJECT KNOWN AS THE BOECKMAN ROAD TO TOOZE ROAD CONNECTION PROJECT.**

WHEREAS, the 2001 Oregon Transportation Investment Act Program (OTIA) provides funding for preservation and modernization projects selected by the Oregon Transportation Commission, and;

WHEREAS, at its January 16, 2002 meeting, the Oregon Transportation Commission selected the Boeckman Road to Tooze Road Connection Project to be funded under the 2001 OTIA Program, and;

WHEREAS, authority is granted in ORS 190.110, 366.770 and 366.775, allowing state agencies to enter into cooperative agreements with counties, cities and units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.

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

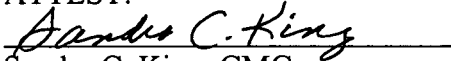
1. Subject to final approval of the City Attorney as to form, the Wilsonville City Council authorizes the Mayor to execute the intergovernmental agreement with the State of Oregon acting by and through its Department of Transportation titled "2001 Oregon Transportation Investment Act Agreement, Boeckman Road—Tooze Road Connection" as with terms in substantial conformance with Exhibit A, attached hereto.

2. This resolution is effective upon adoption.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof  
this 21<sup>st</sup> day of October, 2002, and filed with the Wilsonville City Recorder this same date.

  
\_\_\_\_\_  
CHARLOTTE LEHAN, MAYOR

ATTEST:

  
\_\_\_\_\_  
Sandra C. King, CMC  
City Recorder

SUMMARY OF VOTES:

Mayor Lehan -- Excused  
Council President Helser -- Yes  
Councilor Barton -- Yes  
Councilor Holt -- Yes  
Councilor Kirk -- Yes

**2001 OREGON TRANSPORTATION INVESTMENT ACT AGREEMENT  
Boeckman Road – Tooze Road Connection**

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT"; and CITY OF WILSONVILLE, Acting by and through its City Council, hereinafter referred to as "Agency".

**RECITALS**

1. The 2001 Oregon Transportation Investment Act Program, hereinafter referred to as the "2001 OTIA Program", provides funding for preservation and modernization projects chosen by the Oregon Transportation Commission.
2. The Oregon Transportation Commission selected the projects to be funded under the 2001 OTIA Program at its January 16, 2002 meeting. This selection included Agency's Boeckman Road to Tooze Road Connection Project, as described in Exhibit "A".
3. By the authority granted in ORS 190.110, 366.770 and 366.775, state agencies may enter into cooperative agreements with counties, cities, and units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.

**NOW THEREFORE**, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

**TERMS OF AGREEMENT**

1. Agency shall complete Preliminary Engineering & Design, Environmental Assessment, access management plan and acquisition of easements and Right-of-way for Boeckman to Tooze Road Connection, hereinafter known as "Project". A Project description and budget are shown on Exhibit "A", attached hereto and by this reference made a part hereof. A sketch map showing the location and approximate limits of the Project is shown on Exhibit "B", attached hereto and by this reference made a part hereof.
2. The total estimated cost of the Project is \$3,660,400. The budget is shown on Exhibit "A".
3. 2001 OTIA Program funds shall be limited to \$1,976,378 and are for the Access Management Plan, Preliminary Engineering & Design, Environmental Assessment, and partial acquisition of easements and Right-of-way. Construction will occur in a subsequent phase. ODOT has committed \$1,956,625 in federal funds available to ODOT, and Metro has committed \$1,956,625 in federal funds available to Metro, toward the future construction phase to be programmed in the 2004-2007 Statewide Transportation Improvement Program. An amendment

to this agreement shall be required prior to incurring costs applied to construction. As federal funds will be used for the construction the federal Standard Provisions shall apply to "all" project phases, and are attached hereto, marked Attachment 1, and by this reference made a part hereof. Agency is responsible for providing all project funds in excess of the OTIA and federal funds. The total cost for all phases, including construction is estimated to be \$15,693,003. The OTIA phases of the Project, as defined in Terms of Agreement, No. 1 above shall be completed no later than March 2004.

4. This agreement shall become effective on the date all required signatures are obtained and shall be completed according to the schedule outlined in Paragraph 4, Agency Obligations. Only work begun after the effective date of this agreement is eligible for reimbursement with OTIA funds.

5. The funds available under the 2001 OTIA Program are State Highway Funds. To be eligible for reimbursement under the 2001 OTIA Program, expenditures must comply with the requirements of Article IX, Section 3a of the Oregon Constitution.

6. Agency and ODOT have a joint obligation to ensure timely expenditure of 2001 OTIA Program monies and comply with the provisions of the bonds that finance the 2001 OTIA Program.

#### **AGENCY OBLIGATIONS**

1. Agency, or its consultant, shall conduct the necessary engineering and design work required to produce final plans, specifications and cost estimates and the access management plan; obtain all easements and right-of-way, if any, required for Project in compliance with ORS 281.060, ORS 35.346, and the State of Oregon Right of Way Manual; obtain all required permits, including, but not limited to land use, regulatory/environmental and local; arrange for all utility relocations or reconstruction, if any, required for Project in compliance with the standards in Agency Obligations, Paragraph 13; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid documents; advertise and award all contracts; provide Project management services; and other necessary functions for administration of the contract.

2. The Project shall be developed in conformance with recommended AASHTO standards as stated in the Standard Provisions, paragraph 37. Agency agrees and understands that a mutual review of the construction plans shall be conducted prior to advertisement for construction bid proposals, and that ODOT's and FHWA's written approval is necessary before such advertisement. Agency further agrees to reimburse ODOT for ODOT's plan review, technical inspection, and monitoring services for the Project. The cost estimate for said ODOT review is \$20,000.

3. Agency shall provide ODOT with sufficient information to complete a project prospectus so that ODOT can track Project using ODOT's automated management system.

4. a. Agency shall submit documentation to ODOT's Project Liaison that shows that Agency has met Project key milestones. The Project key milestones, dates, and required documentation are shown below:

**Environmental: October 31, 2003**

Documentation: Letter from Agency documenting that the milestone has been met.

**Right of Way Acquisition: May 31, 2004**

Documentation: Letter from Agency's legal counsel certifying that 1) the right of way acquisition work has been completed in accordance with these guidelines and 2) the right-of-way needed for the Project has been obtained.

**Permits: October 31, 2003**

Documentation: Letter from Agency indicating that all Permits have been obtained.

**Final Plans / Biddable Engineering Documents: May 31, 2004**

Documentation: A copy of completed Project plans, specifications and cost estimates.

- b. If the Agency does not meet a Project milestone date within one month of the date specified in Agency Obligations, Paragraph 4.a, reimbursement of Agency's Project expense shall be changed to one-half of the rate specified in ODOT's Obligation's, Paragraph 1, until such time as the Project has completed the milestone and Project is back on schedule.
  - c. Immediately upon missing a milestone date, Agency and ODOT shall establish a project review team including Agency's Project Liaison and ODOT's Project Liaison, at a minimum, and may include such other members as are deemed necessary. The project review team shall determine (a) if failure to complete the milestone in question will jeopardize successful completion of Project, (b) what steps must be taken by Agency to ensure successful completion of Project, and (c) revise the Project schedule, if changes are required.
  - d. In the event that the Project schedule itemized in Agency Obligations 4.a. is revised pursuant to Agency Obligation 4.c, the Agency's Project Liaison and ODOT's Project Liaison shall reduce the revision to writing. The Agency's Project Liaison and ODOT's Project Liaison shall incorporate the revised schedule into the intergovernmental agreement by entering into a formal amendment to this agreement
  - e. When the Project is back on schedule according to the milestones set out in Agency Obligations 4.a., including a revised schedule adopted by formal amendment, Agency shall receive any funds withheld by ODOT under the provisions of Paragraph 1.b. of ODOT's Obligations.
5. Agency shall present invoices for the eligible, actual costs incurred by Agency on behalf of the Project directly to ODOT's Project Liaison for review and approval. Such invoices shall be submitted in the form as shown on Exhibit "C", OTIA Progress Billing, attached hereto and by this reference made a part hereof. Invoices will identify the Project and agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not greater than one month, based on actual expenses incurred, and must clearly specify the percentage of completion of the Project.

6. Agency shall be responsible for any and all costs of Project which are not covered by OTIA funds, including costs of the Project when the maximum amount of OTIA funds obligated under this Agreement have been expended.

7. Agency agrees to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this agreement, including, without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, which hereby are incorporated by reference.

8. Agency shall perform the service under this agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.

9. Agency, its subcontractors, if any, and all employers working under this agreement are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers, unless such employers are exempt under ORS 656.126. Agency shall ensure that each of its contractors complies with these requirements.

10. Agency will maintain the improvements made as a result of the Project at the same level as other similar facilities owned by Agency.

11. Agency agrees that the Project will be on the public right-of-way and will serve general transportation needs.

12. Utility relocation or reconstruction may or may not be an eligible Project expense according to the following standard:

- a. The expense is an eligible expense if the owner of the utility facility possesses a property right for its location on the public right of way.
- b. The expense is not an eligible expense if the owner of the utility facility does not possess a property right for its location, but the facility exists on the public right of way solely under the permission of the Agency or other road authority, whether that permission is expressed or implied, and whether written or oral.

13. Agency certifies, at the time this agreement is executed, that sufficient funds will be available and authorized for expenditure to finance costs of this agreement within Agency's appropriation or budget limitation. Agency further agrees that they will only submit invoices to ODOT for reimbursement on work that has been performed and paid for by Agency.

14. Agency shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless the State of Oregon, Oregon Transportation Commission and its members, 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 Agency, its consultant, its contractor, its officers, subcontractors, agents, or employees under this agreement.

15. Agency's Project Liaison for this agreement is: **Mike Stone**, City of Wilsonville 30000 SW Town Center Loop E, Wilsonville, Oregon 97070. Phone (503) 682-4960. Agency's Project Liaison is granted the authority to enter into and execute formal amendments to this agreement when revisions to the Project schedule are deemed necessary by the project review team.

16. Agency shall place signs that identify Project as "*Another Project Funded by 2001 Oregon Transportation Investment Act*" (ODOT approved design). Agency may affix additional signage that identifies local funds used for the Project.

17. Agency agrees that it will call attention to the Project and help make it visible to the public.

18. Agency agrees to provide progress information and photographs in a suitable format for posting on the OTIA web site maintained by ODOT and to provide appropriate links from Agency's web sites to the OTIA web site.

19. Agency agrees to comply with the conditions for Project approval adopted by the Oregon Transportation Commission, as set out in Exhibit A, Special Conditions, which is attached and made part of this Agreement.

#### ODOT OBLIGATIONS

1.
  - a. ODOT shall reimburse Agency 100 % of eligible, actual costs incurred under this agreement, up to the maximum amount of OTIA funds committed for the Project specified in Terms of Agreement, Paragraph 3, provided that Agency is meeting the Project milestones set out in Agency Obligations, Paragraph 4. a. Under no conditions shall ODOT's total obligation exceed \$1,976,625, including all expenses.
  - b. In the event that Agency has not met a Project milestone, ODOT shall change its rate of reimbursement to Agency to be one-half of the rate specified in Paragraph 1.a. until such time as Project is back on schedule.
  - c. When the Project is back on schedule, according to the milestones set out in Agency Obligations 4.a., including a revised schedule adopted by formal amendment per Agency Obligations 4.d., ODOT shall pay Agency any funds withheld by ODOT under the provisions of Paragraph 1.b. of ODOT's Obligations.
  - d. ODOT agrees to comply with the provisions of ORS 293.462 with regard to timely payment.
  - e. ODOT agrees to review and issue the necessary permits in a timely manner for work within ODOT right-of-way.
2. ODOT certifies, at the time this agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this agreement within ODOT's current appropriation or limitation of current biennial budget.

3. ODOT's Project Liaison for this agreement is: Naveen Chandra, 123 NW Flanders, Portland Or. 97209 (503-731-4851). ODOT's Liaison shall:
  - a. Receive any notices provided by Agency under this agreement.
  - b. Review and process for payment all eligible, actual Project costs incurred within 30 days of the date of receipt of Agency's invoices by ODOT.
  - c. Advise Agency at Agency's request on matters affecting the Project.
  - d. ODOT's Project Liaison is granted the authority to enter into and execute formal amendments to this agreement when revisions to the Project schedule are deemed necessary by the project review team.
4. ODOT shall review the documentation provided by Agency to ensure that the Project undertaken by Agency is the Project approved by the Oregon Transportation Commission at its January 16, 2002 meeting.
5. ODOT shall, at Project expense, review and concur with the plans and specifications for the Project, prior to advertisement for construction bid proposals.
6. ODOT shall not be required to approve Agency's selection of consultants or contractors, right-of-way purchase, except as the Project design affects the state highway system or as required by the conditions of approval adopted by the Oregon Transportation Commission.
7. ODOT shall maintain a web site for the 2001 OTIA Program listing Project status and accomplishment information for Agency's Project.

#### **GENERAL PROVISIONS**

1. This agreement may be terminated by mutual consent of both parties.
2. ODOT may terminate this agreement effective upon delivery of written notice to Agency, or at such later date as may be established by ODOT, under any of the following conditions:
  - a. If Agency fails to provide services called for by this agreement within the time specified herein or any extension thereof.
  - b. If Agency fails to perform any of the other provisions of this agreement or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from ODOT fails to correct such failures within 10 days or such longer period as ODOT may authorize.
  - c. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the agreement.
  - d. If Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the work under this agreement is prohibited or if ODOT is prohibited from paying for such work from the planned funding source.

If ODOT terminates this agreement for the reasons described in General Provisions, Paragraph 2., "a" or "b" above, Agency must reimburse ODOT for all Oregon Transportation Investment Act funds expended. If Agency fails to reimburse ODOT, ODOT may withhold



Agency's proportional share of State Highway Fund distribution necessary to reimburse ODOT for costs incurred by such Agency breach.

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

3. Agency acknowledges and agrees that ODOT, the Secretary of State's Office of the State of Oregon, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts during the course of the Project and for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.

4. 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.

**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 approved this Project on January 16, 2002.

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.

The Director on January 31, 2002, approved Sub delegation Order No. 2, which grants authority to the Deputy Director for the Oregon Transportation Investment Act to approve and execute agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program, in the Oregon Transportation Investment Act project list, or in the approved biennial budget.

APPROVAL RECOMMENDED

STATE OF OREGON, by and through  
Its Department of Transportation

By \_\_\_\_\_  
Region 1 Manager

By \_\_\_\_\_  
Deputy Director for Oregon Transportation  
Investment Act

Date \_\_\_\_\_

Date \_\_\_\_\_

APPROVED AS TO LEGAL  
SUFFICIENCY

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

APPROVED AS TO LEGAL  
SUFFICIENCY

By \_\_\_\_\_  
Agency Attorney

Date \_\_\_\_\_

CITY OF WILSONVILLE, By and  
through its Elected Officials

By *Charlotte Lehan*  
Charlotte Lehan, Mayor

By *Sandra C. King*  
Sandra C. King, City Recorder

Date *October 22, 2002*

RETURN AGREEMENT TO AGENCY:

Contact: Mike Stone

Address: C/O City of Wilsonville  
30000 SW Town Center Loop E  
Wilsonville, Oregon 97070

**EXHIBIT A**  
**PROJECT DESCRIPTION**  
**CITY OF WILSONVILLE**  
**BOECKMAN ROAD TO TOOZE ROAD CONNECTION**

Extend Boeckman Road from 95<sup>th</sup> Avenue to the intersection of 110<sup>th</sup> Avenue and Tooze Road. Reconstruct Tooze Road from 110<sup>th</sup> Avenue to Grahams Ferry Road. The project will include a travel lane in each direction, left turn lanes at intersections and major driveways, bicycle lanes, and sidewalks. The project also includes a bridge, storm sewer system, culverts, traffic signals, railroad crossing, landscaping, wetland mitigation, utility installation, water line installation and illumination.

Project Cost Estimate			Project Financing	
Preliminary engineering & Design	\$		Agency Contribution	\$ 1,683,775
*1,215,000 Environmental	\$		OTIA	\$ 1,976,625
275,000			Total	\$ 3,660,400
Right-of-way purchase	\$	2,170,400		
Total	\$	3,660,400		

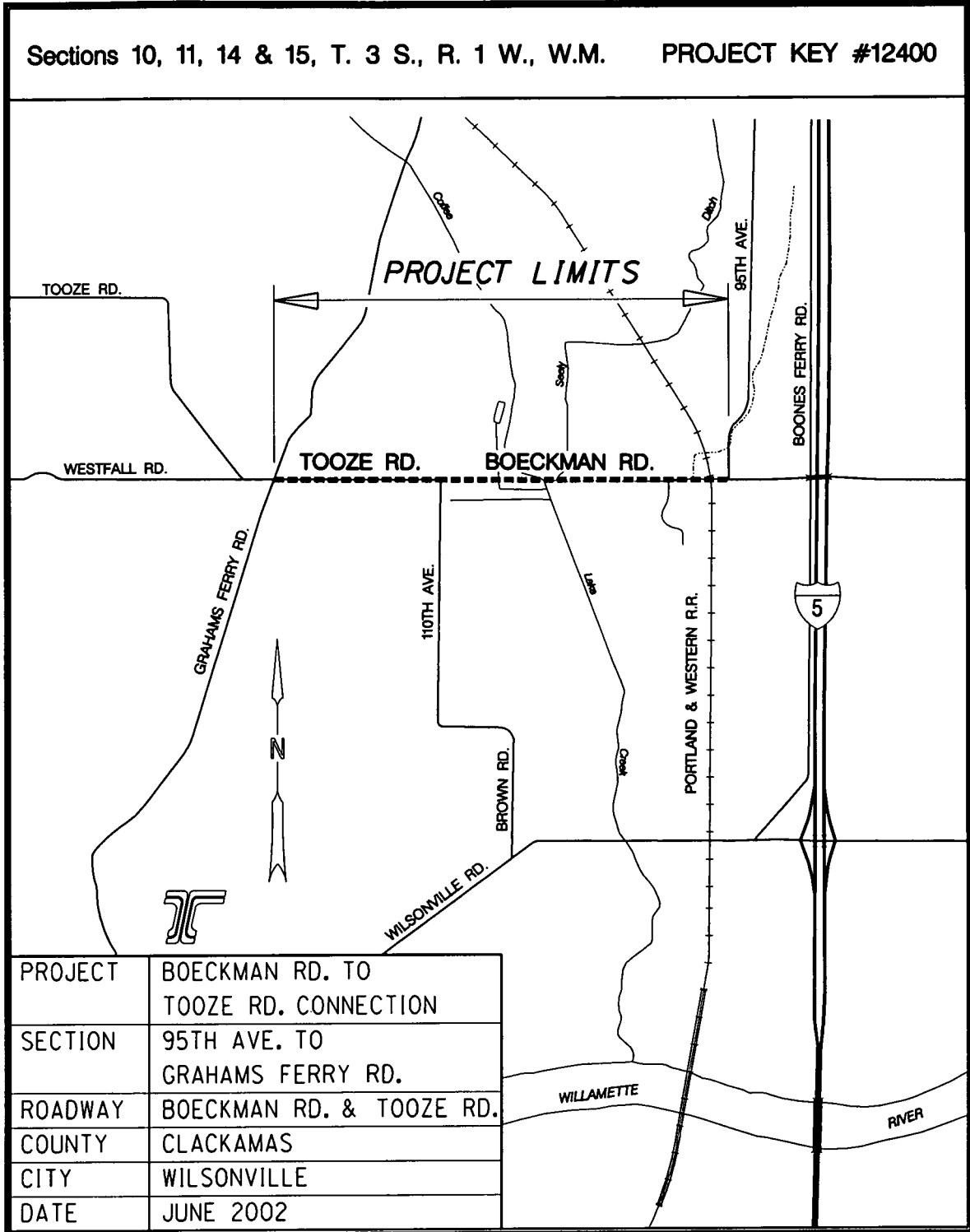
\* Includes Access Management Plan.

**SPECIAL CONDITIONS**

**The Oregon Transportation Commission approved Projects for funding under OTIA subject to certain conditions:**

1. Complete an environmental assessment that analyzes Boeckman Road/Tooze Road.
2. The City of Wilsonville shall develop an access management plan for the project consistent with the Oregon Highway Plan. The City of Wilsonville shall adopt the access management plan as part of a legally binding, enforceable intergovernmental agreement between the City of Wilsonville and ODOT. The intergovernmental agreement shall include the following elements:
  - If the agreement is to be terminated that the City of Wilsonville give notice to ODOT in advance of a public hearing on the matter and that the public hearing be held prior to the expiration of the agreement.
  - Changes or termination of the agreement in advance of expiration shall require formal affirmative action by the Oregon Transportation Commission and the City of Wilsonville.
  - The agreement can expire if the City of Wilsonville includes the access management plan in its Transportation System Plan.
  - The access management plan will apply appropriate access spacing standards as found in the 1999 Oregon Highway Plan or in the local Transportation System Plan (whichever is more restrictive).

**EXHIBIT B**  
 Project Location Map  
 CITY OF WILSONVILLE  
 BOECKMAN ROAD TO TOOZE ROAD CONNECTION



**EXHIBIT C**  
**Oregon Transportation Investment Act (OTIA)**  
**Progress Billing**  
**(form)**

Agency: CITY OF WILSONVILLE  
 Project: BOECKMAN ROAD TO TOOZE ROAD CONNECTION  
 Agreement No.: 19,519  
 Billing Period: \_\_\_\_\_ to \_\_\_\_\_

	Costs Incurred This Period	Costs Billed Previously	Total Cost To Date	Participation Rate	Total Amount Claimed	Prior Total Claimed	Amount Claimed This Period	Percent Complete This Phase
Planning								
Engineering Design								
Right of Way								
Construction								
Total								

Submission of this request certifies that, in accordance with the laws of the State of Oregon and under the conditions of approval for the project identified above, actual costs claimed have been incurred and are eligible pursuant to the Intergovernmental Agreement between Agency and the Oregon Department of Transportation. Also, no other claims have been presented to, or payment made by, the State of Oregon for those costs claimed for reimbursement.

\_\_\_\_\_  
 Agency Project Liaison

\_\_\_\_\_  
 Date

(For ODOT use)

I have reviewed the above project and related costs and, in my opinion, subject to audit, the costs reflect the progress to date and are eligible for reimbursement in the amount of \$\_\_\_\_\_.

\_\_\_\_\_  
 ODOT Project Liaison

\_\_\_\_\_  
 Date

**ATTACHMENT NO. 2**  
**STANDARD PROVISIONS**  
**JOINT OBLIGATIONS**  
**PROJECT ADMINISTRATION**

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, 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. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. 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 of the project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting for FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

**PRELIMINARY & CONSTRUCTION ENGINEERING**

3. State, Agency, or others may perform preliminary and construction engineering. 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 personal service consultant to perform any work covered by this agreement, Agency and Consultant shall enter into a State reviewed and approved personal service contract process and resulting contract document. State must concur in the contract prior to beginning any work. State's personal service contracting process and resulting contract document will follow Title 23 Code of Federal Regulations (CFR) 172, Title 49 CFR 18, ORS 279.051, the current State Administrative Rules and ODOT Personal Services Contracting Procedures as approved by the Federal Highway Administration (FHWA). Such personal service contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. Subcontracts shall contain all required provisions of Agency as outlined in the agreement. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or its consultant prior to receiving authorization from State to proceed. Any amendments to such contract(s) also require State's approval.
4. 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, subject to any limitations imposed by State law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all 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**

5. If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program, which the Agency agrees to carry out, this affirmative action program is incorporated into the 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 the financial assistance agreement. Upon notification to the Agency of its failure to carry out the approved program, the US Department of Transportation shall impose such sanctions as noted in Title 49, Code of Federal Regulations, Part 26, which sanctions may include termination of the agreement or other measures that may affect the ability of the Agency to obtain future US Department of Transportation financial assistance.
6. **DBE Obligations.** State and its contractor agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The Agency shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure by the Agency to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as ODOT deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this contract.

7. The Agency further agrees to comply with all applicable civil rights laws, rules and regulations, including Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
8. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, incorporated herein by reference and made a part hereof; Title 49 CFR, Parts 26 and 90, Audits of State and Local Governments; 49 CFR Parts 18 and 24; 23 CFR Part 771; Title 41, USC, Anti-Kickback Act; Title 23, USC, Federal-Aid Highway Act; 42 USC, Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended; 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  
PROJECT FUNDING REQUEST**

9. State shall submit a project-funding request to the FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or 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.

**FINANCE**

10. 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 any time 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 final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the project expenditure account(s) and will be included in the total cost of the project.

**PROJECT ACTIVITIES**

11. State shall, if the preliminary engineering 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.
12. The party responsible for performing preliminary engineering for the project shall, as part of its preliminary engineering costs, obtain all project related permits necessary for the construction of said project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
13. State shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts.
14. Upon State's award of a construction contract, State shall perform independent assurance testing in accordance with State and FHWA Standards, 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.



15. The State shall, as a project expense, assign a liaison person to provide project monitoring as needed throughout all phases of project activities (preliminary engineering, right-of-way acquisition, and construction). The liaison shall process reimbursement for federal participation costs.

### **RIGHT-OF-WAY**

16. State is responsible for proper acquisition of the necessary right-of-way and easements for construction and maintenance of the project. Agency may perform acquisition of the necessary right-of-way and easements for construction and maintenance of the project, provided Agency (or Agency's consultant) are qualified to do such work as required by the ODOT Right of Way Manual and have obtained prior approval from ODOT Region Right of Way office to do such work.
17. Regardless of who acquires or performs any of the right-of-way activities, a right-of-way services agreement shall be created by ODOT Region Right of Way office setting forth the responsibilities and activities to be accomplished by each party. State shall always be responsible for requesting project funding, coordinating certification of the right-of-way, and providing oversight and monitoring. Funding authorization requests for federal right-of-way funds must be sent through the Region Right of Way offices on all projects. All projects must have right-of-way certification coordinated through Region Right of Way offices (even for projects where no federal funds were used for right-of-way, but federal funds were used elsewhere on the project). Agency should contact the Region Right of Way office for additional information or clarification.
18. State shall review all right-of-way activities engaged in by Agency to assure compliance with applicable laws and regulations. Agency agrees that right-of-way activities shall be in accord with the Uniform Relocation Assistance & Real Property Acquisition Policy Act of 1970, as amended, ORS 281.060 and ORS Chapter 35, FHWA Federal Aid Policy Guide, State's Right of Way Manual and the Code of Federal Regulations, Title 23, Part 710 and Title 49, Part 24.
19. 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 and FHWA of the required proportionate shares of the fair market value may be required.
20. Agency insures that all project right-of-way monumentation will be conducted in conformance with ORS 209.150.
21. State and Agency grant each other authority to enter onto the other's right-of-way for the performance of the project.

**AGENCY OBLIGATIONS**  
**FINANCE**

22. Federal funds shall be applied toward project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement.
23. Agency's estimated share and advance deposit.
- A. Agency shall, prior to commencement of the preliminary engineering and/or right-of-way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from the State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
  - B. Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the bid. Any additional balance of the deposit, based on the actual bid must be received within 45 days of receipt of written notification by the State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within 45 days of receipt by the State of the project sponsor's written request.
  - C. Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
  - D. Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.
24. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which the FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If the State approves processes, procedures, or contract administration outside the *Local Agency Guidelines*, that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.

25. Costs incurred by the State and Agency for services performed in connection with any phase of the project shall be charged to the project, unless otherwise mutually agreed upon.
26. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear 100 percent of all costs as of the date of cancellation. If the State was the sole cause of the cancellation, the State shall bear 100 percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all development costs, whether incurred by the State or Agency, either directly or through contract services, and the State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
27. The requirements stated in the Single Audit Act must be followed by those local governments receiving \$300,000 or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "Office of Management and Budget Circular A-133", requires local governments to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which the local agency participates. The cost of this audit can be partially prorated to the federal program.
28. Additional deposits, if any, shall be made as needed upon request from the State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the project.
29. Agency shall present invoices 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 invoices shall identify the project and agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. 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 payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of FAPG, 23CFR 1.11, 710, and 140. Final billings shall be submitted to State for processing within three months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering 2) last payment for right-of-way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three months from date that costs are incurred. Final billings submitted after the three months may not be eligible for reimbursement.
30. The cost records and accounts pertaining to 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 voucher to FHWA. 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).
31. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:

a) That right-of-way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the federal-aid funds were authorized;

b) That right-of-way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right-of-way acquisition.

c) That construction proceeds after the project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).

32. Agency shall maintain all project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.

#### **RAILROADS**

33. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through the appropriate Region contact or Railroad & Utility Engineer. Only those costs allowable under 23 CFR 646B & 23 CFR 140I, shall be included in the total project costs; all other costs associated with railroad work will be at the sole expense of the Agency, or others. Agency may request State, in writing, to provide railroad coordination and negotiations. However, the State is under no obligation to agree to perform said duties.

#### **UTILITIES**

34. Agency shall cause to be relocated or reconstructed, all privately or publicly-owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the project in order to conform the utilities and other facilities with the plans and the 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; all other utility relocations shall be at the sole expense of the Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than 21 weeks prior to bid let date. However, the State is under no obligation to agree to perform said duties.

35. Agency shall follow established State utility relocation policy and procedures. The policy and procedures are available through the appropriate Region Utility Specialist or ODOT Right of Way Section's Railroad and Utility Coordinator.

## STANDARDS

36. Design standards for all projects on the National Highway System (NHS) and 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".
37. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "Oregon Bicycle and Pedestrian Plan", unless otherwise requested by Agency and approved by State.
38. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".
39. All plans and specifications shall be developed in general conformance with the current "Contract Road Plans Guide" and the current "Standard Specifications" and/or guidelines provided.
40. The standard unit of measurement for all aspects of the project will be System International (SI) Units (metric). This includes, but is not limited to, right-of-way, environmental documents, plans and specifications, and utilities.

## GRADE CHANGE LIABILITY

41. 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.
42. 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.
43. Agency, if a City, by execution of agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the project covered by the agreement.

## CONTRACTOR CLAIMS

44. Agency shall, to the extent permitted by State law, indemnify, hold harmless and provide legal defense for the State against all claims brought by the contractor, or others resulting from Agency's failure to comply with the terms of this agreement.

## MAINTENANCE RESPONSIBILITIES

45. 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

46. Agency, its subcontractors, if any, and all employers working under this agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers, unless such employers are exempt under ORS 656.126. Agency shall ensure that each of its contractors complies with these requirements.

## LOBBYING RESTRICTIONS

47. Agency certifies by signing the 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 sub awards at all tiers (including sub grants, and contracts and subcontracts under grants, sub grants, loans, and cooperative agreements) which exceed \$100,000, and that all such sub recipients 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, US 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 34, 35, and 45 are not applicable to any local agency on state highway projects.