

**RESOLUTION NO. 2108**

**A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE MAYOR TO EXECUTE A COOPERATIVE IMPROVEMENT AGREEMENT WITH THE STATE OF OREGON, ACTING BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION, FOR THE FUNDING, DESIGN AND CONSTRUCTION OF THE WILSONVILLE ROAD / I-5 INTERCHANGE PHASE 2 IMPROVEMENTS.**

WHEREAS, Ordinance No. 639 approved the 2007 Substantial Amendment to The Year 2000 Urban Renewal Plan (hereinafter "Plan"); and

WHEREAS, Wilsonville Road improvements are a project identified in Section 601.A.7 of the Plan; and

WHEREAS, the Wilsonville Road / I-5 Interchange (hereinafter "Interchange") is a project identified in Section 601.A.13 of the Plan; and

WHEREAS, Plan Table 1-2007: Maximum Indebtedness identified urban renewal financial participation in both improvements to Wilsonville Road and the Wilsonville Road / I-5 Interchange; and

WHEREAS, Resolution No. 2049 dated May 7, 2007, interpreted Comprehensive Plan concurrency policy implementing measures and anticipated execution of an agreement by May 2008 between the City and the State of Oregon to provide a plan and funding to construct sufficient capacity to trigger the City's four-year interchange concurrency policy; and

WHEREAS, the City and ODOT entered into a Memorandum of Understanding regarding the Wilsonville Road / I-5 Interchange dated June 25, 2007 in an effort to develop a solution to correct significant Interchange capacity; and

WHEREAS, the Cooperative Improvement Agreement identifies project elements subject to results of traffic modeling and availability of funds.

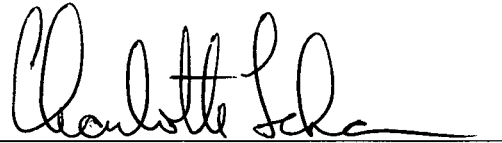
NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Council does hereby approve and authorize the Mayor to sign Cooperative Improvement Agreement No. 23,581 for funding, design and construction of the project known

as Wilsonville Road / I-5 Interchange Phase 2 Improvements, between the City of Wilsonville and the State of Oregon, acting by and through its Department of Transportation. A copy of Cooperative Improvement Agreement No. 23,581, marked Exhibit "A", is attached hereto and incorporated herein.


2. This Resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 2nd day of June, 2008, and filed with the Wilsonville City Recorder this date.



CHARLOTTE LEHAN, Mayor

ATTEST:

  
Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Lehan	Yes
Councilor Knapp	Yes
Councilor Kirk	Yes
Councilor Núñez	Yes
Councilor Ripple	Yes

List of Exhibits

Exhibit A ~ Cooperative Improvement Agreement No. 23,581

**COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT**

DATE: May 19, 2008  
TO: Honorable Mayor and Councilors  
FROM: C.J. Sylvester, Redevelopment Director  
SUBJECT: ODOT Agreement for Interchange Improvements

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**Recommendation:** Staff recommends Council adopt Resolution authorizing execution of an agreement with the State regarding improvements to the Wilsonville Road / I-5 Interchange.

**Background:** The City's history is one of working diligently to provide infrastructure in support of development. In May 2007, Resolution No. 2049 interpreted Comprehensive Plan concurrency policy implementing measures. For the last 12-months, this has allowed development projects south of Boeckman Road to proceed through the Stage II development approval process. However, issuance of building permits has been predicated on execution of an Agreement between the City and State to plan and fund capacity improvements at the Wilsonville Road / I-5 Interchange. The agreement before Council this evening meets the requirements of Resolution No. 2049 and the City's four-year interchange concurrency policy.

Once the results of the current interchange traffic modeling effort are analyzed in terms of trip capacity gain and specific design elements required to support future capacity, staff will return to City Council in work session to familiarize you with the project progress and status.

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C. J. Sylvester  
Redevelopment Director

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Date

**COOPERATIVE IMPROVEMENT AGREEMENT**  
**Wilsonville Road/ I-5 Interchange**

**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 the City of Wilsonville, acting by and through its elected officials, hereinafter referred to as "City," collectively hereinafter referred to as the "Parties."

**RECITALS**

1. Pacific Highway (I-5) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Wilsonville Road, Town Center Loop West, and Parkway Avenue are all a part of the City street system under the jurisdiction and control of the City. ODOT retains access control along Wilsonville Road from Boones Ferry Road to east of Parkway Avenue.
2. By the authority granted in ORS 190.110, 366.572 and 366.576, ODOT may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. By the authority granted in ORS 810.210, ODOT is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where ODOT deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than ODOT, except with its written approval. Traffic signal work on this Project will conform to the current ODOT standards and specifications.
4. By the authority granted in ORS 366.425, ODOT may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, ODOT shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
5. ODOT and City entered into an MOU dated June 26, 2007 in an effort to describe and ascertain the nature and extent of the proposed Wilsonville Road Interchange improvements as well as future responsibilities of the City and ODOT in the undertaking of the intended Wilsonville Road/I-5 Interchange improvements. Said MOU is attached hereto, marked Exhibit A , and hereinafter made a part hereof. City has provided an advance payment of \$500,000 for services to be performed by ODOT and consultants under this MOU.

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6. ODOT and City entered into Agreement No. 12740 dated December 16, 1994. Said agreement addressed Phase 1 of a multi phase project to address traffic circulation improvements to the I-5/Wilsonville Road interchange. ODOT and City also entered into Supplemental Agreement No. 1 to said agreement, dated June 30, 1998, to address a separate landscaping project performed by the City on I-5 in conjunction with the I-5/Wilsonville Road Interchange project; and Supplemental Agreement No. 2, dated November 1, 1999 to add additional areas of landscaping to the City's landscape project. All construction has been completed in accordance with said agreement and supplements and the terms of said agreement and supplements shall remain in full force and effect. Said agreement and supplements are attached hereto, marked Exhibits B, C, and D, and hereinafter made a part hereof.

**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. Under such authority, ODOT and City agree to design and construct proposed improvements of the Wilsonville Road/I-5 Interchange (Phase 2), hereinafter referred to as "Project". The City's obligation, in order to allow for continued development within the City in accordance with adopted master plan concurrency policies, is to maintain the required Level of Service (LOS) at the most probable used intersection. The City's anticipated Trip Capacity Gain, as shown in Exhibit E, attached hereto and hereinafter made a part hereof, is the basis for the City's financial commitment outlined in Terms of Agreement Paragraph 2 below. The City has further interests in providing improved freight mobility and high quality bicycle/pedestrian connections through the interchange area.
2. ODOT's priority is to maintain safe and efficient operation of the mainline I-5 highway.
3. Subject to the results of the previously agreed upon traffic modeling effort currently underway at City expense as well as Project constraints and availability of funds, the Project may include but is not limited to the following elements:
  - a. Northbound Exit Ramp: acquire right of way, lengthen and widen ramp to two-lanes and then four-lanes at the ramp terminus
  - b. Northbound Entrance Ramp: widen to two-lanes and lengthen ramp; realign and rebuild existing bicycle/pedestrian pathway east of the ramp, if required
  - c. Southbound Exit Ramp: Widen ramp to four-lanes at the ramp terminus
  - d. Southbound Entrance Ramp: Widen ramp to two-lanes and lengthen
  - e. Ramp meters

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- f. Enhanced six-lane section of Wilsonville Road including double left-turn-through lanes to both entrance ramps
  - g. Location of match lines to City project to be determined
  - h. Elevated and aesthetically enhanced bicycle/pedestrian pathway through the interchange area
  - i. Closure of access to Parkway Avenue from Wilsonville Road
  - j. Interchange Signal upgrades
  - k. Sight distance problem mitigated along Wilsonville Road.
  - l. Landscaping to be consistent with, or complementary to, the existing interchange landscaping. To the extent feasible, trees planted as part of the Interchange Phase 1 project shall be retained
  - m. To the maximum extent feasible, the design shall incorporate the preservation of the existing City monument signs. Replacement, modification or relocation of any City monument sign shall be a Project obligation
4. The Project will also include the development and adoption of an Interchange Area Management Plan (IAMP).
  5. It is understood by both Parties that the seeking of Project Design Exceptions in some instances will be necessary.
  6. The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit F, and by this reference made a part hereof.
  7. The funds available for the Project are estimated at \$20 million and are broken down as follows:
    - a. ODOT STIP           \$8.0 million
    - b. City SSSDCs        3.5 million   Must be used for LOS improvements
    - c. City Urban Renewal 6.0 million   Must be used for LOS improvements
    - d. City Urban Renewal 2.0 million   Must be used for bike/ped & architectural elements
    - e. City SSSDCs        .5 million   Already deposited w/ ODOT via MOUAvailable Total Funding: \$20 Million
  8. Additional Project funds are anticipated from two sources: (1) Surplus ODOT land sale, see ODOT Obligation #7, and (2) Immediate Opportunity Funds (IOF) for Coca-Cola expansion in Wilsonville, see Terms of Agreement #12.

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9. If Project costs are to exceed the available funding, ODOT and City agree to decide how to reduce the Project scope to stay in budget, or come up with additional funds and amend the Agreement accordingly. Outstanding scope or budget issues must be resolved prior to submittal of Plans, Specifications, and Estimate (PS&E) to Salem (including an amendment to this Agreement indicating how any construction overruns are to be resolved) or Project will be pulled from the letting schedule. Project may be rescheduled for a later letting if agreement is reached and an amendment addressing these issues is executed. However, if an agreement is not reached and an amendment executed as of ten calendar years from date of execution of this Agreement, then this Agreement will automatically terminate, and be rendered null and void.
10. This Agreement shall become effective on the date all required signatures are obtained and shall terminate if Project is not completed within ten (10) calendar years following the date of execution. If the Project is constructed, this Agreement shall remain in effect for the purpose of ongoing maintenance and power responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years. The Project shall be substantially complete within 4 calendar years following the date of final execution of this Agreement by both Parties.
11. ODOT and City agree, after execution of this Agreement and subject to the results of the traffic modeling effort, to mutually develop a milestone schedule that effectively meets the project completion schedule and is acceptable by both Parties. See Exhibit G, attached hereto and hereinafter made a part hereof, for sample schedule.
12. A letter from ODOT Director Matthew L. Garrett to City Mayor Charlotte Lehan, dated December 28, 2007, concerning a Type A -- Immediate Opportunity Funds (IOF) grant in the amount of \$500,000 for improvements at the Interstate 5/Wilsonville Road Interchange is attached hereto, as Exhibit H, and incorporated hereby. These IOF funds offset Coca-Cola's street SDC obligation to City and must be used for Level of Service improvements as part of the Project. These funds are subject to a separate/subsequent Immediate Opportunity Fund Agreement between ODOT and City and can be applied to this Project upon an amendment to this Agreement (No. 23,581). These IOF funds are the only proposed additional City contributions available toward design and construction of this Project.

**ODOT OBLIGATIONS**

1. ODOT grants authority to City to enter upon ODOT right-of-way for the performance of duties as set forth in this Agreement and as provided for in miscellaneous permit to be issued by ODOT District 2A Office.

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2. ODOT, or its consultant, in collaboration with the City, shall conduct the necessary field surveys, environmental studies, traffic investigations, preliminary engineering and design work required to produce and provide final plans, specifications and cost estimates for the Project; identify and obtain all required local, state, and federal studies and permits; acquire all necessary right-of-way; arrange for all utility relocations; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid and contract documents; advertise for construction bid proposals; award all contracts; pay all contractor costs, and provide technical inspection, project management services and other necessary functions for sole administration of the construction contract entered into for this Project.
3. ODOT shall, upon execution of this Agreement, forward to City a letter of request for an advance deposit to be made to the City's Local Government Investment Pool (LGIP) along with permission and account information for ODOT to draw from the City's LGIP account. The first advance deposit shall be in the amount of \$1 Million for City's share of the Project estimated design cost. Requests for additional deposits for construction and other authorized activities shall be accompanied by an itemized statement of expenditures and an estimated cost to complete Project.
4. ODOT shall, as withdrawals are made from the City's LGIP, provide monthly detailed accounting statements to the City. Said withdrawals shall not exceed the City's monthly share of expenses described in this Agreement.
5. Upon completion of the Project, ODOT shall either send to City a bill for the amount which, when added to City's advance deposit(s), will equal 100 percent of the total cost for City's share of the project or ODOT will refund to City any portion of said advance deposit which is in excess of the City's share of the actual cost for the Project.
6. ODOT agrees to work with City to develop and adopt an IAMP prior to construction of the Project.
7. ODOT agrees to offer to sell to the City all non-project related surplus ODOT-owned parcels remaining after right-of-way dedication located along Wilsonville Road, south of the proposed Wilsonville Road right-of-way and west of proposed interchange ramp. Said surplus properties are from the right of way acquisitions during the first Wilsonville Road Interchange Improvements that took place under Agreement No.12740. ODOT will hire an appraiser from its list of approved appraisers to value the property based upon its highest and best use. ODOT's Right of Way Appraisal Review Unit will prepare an Appraisal Review of valuation, establishing the Fair Market Value of the property. The purchase price in the offer to sell will be the Fair Market Value established by such Appraisal Review. The proceeds from this surplus land sale are the only proposed additional ODOT contributions available toward design and construction of this Project.



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8. The City will continue to operate their signals at Lower Boones Ferry Road/Wilsonville Road and Town Center Loop/Wilsonville Road and ODOT shall continue to operate the signals at the ramp terminals. ODOT and City shall concur on implementation and maintenance of system timing plans along Wilsonville Road including City and ODOT traffic signals, including allowing and maintaining communications systems between City and ODOT traffic signals. Safety considerations resulting from potential backups of northbound and southbound off ramps onto I-5 shall be the primary consideration of all timing of traffic signals along Wilsonville Road which affects these backups.
9. ODOT agrees that the portions of land acquired by ODOT for the construction of City street and bike/ped facilities shall be formally relinquished by deed to the City upon completion of the Project. If said land was acquired with any portion of State or Federal funds, then said constructed facilities will be formally relinquished by deed to the City upon completion of the Project so long as used for the purposes that they were constructed. If for any reason said facilities are no longer used for the purposes that they were constructed, the land shall automatically revert back to ODOT.
10. If Project related right of way is purchased by ODOT utilizing City funds, ODOT agrees (if not already purchased in the City's name) to relinquish any excess property to the City upon completion of the Project. If Project right of way is purchased utilizing joint funding, ODOT agrees that any excess property be relinquished to the City so long as used for public roadway purposes. Any excess property obtained for the Project utilizing only ODOT contributed funds shall remain in ODOT's name.
11. ODOT shall continue to post the speed limit for Wilsonville Road within the interchange influence area at 25 MPH.
12. 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 the current biennial budget.
13. ODOT certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of ODOT, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind ODOT.
14. ODOT acknowledges and agrees that City, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers and records of ODOT which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for cost of copies is reimbursable by City.

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15. ODOT shall, upon completion of the Project, be responsible for the structural integrity of the elevated bike/ped path. The City will perform routine maintenance of said structure.
16. ODOT agrees to include the following in its Project design considerations:
  - a. To be consistent with, or complementary to, the existing interchange landscaping. To the extent feasible, trees planted as part of the Interchange Phase 1 shall be retained.
  - b. To preserve, to the maximum extent feasible, the existing City monument signs. Replacement, modification or relocation of any City monument sign shall be a Project obligation.
  - c. To retain and preserve the grove of Douglas Fir trees located immediately west of the southbound entrance ramp.
  - d. ODOT agrees to also include these considerations in the contract specifications and also to notify Project contractors of said preservations.
17. ODOT's Project Manager for this Project is Matt Freitag, Project Manager, 123 NW Flanders St., Portland, OR 97209; Phone: 503-731-4851, or assigned designee upon individual's absence.

**CITY OBLIGATIONS**

1. City grants ODOT, its contractors and subcontractors, the right to enter onto City right-of-way for the performance of duties as set forth in this Agreement.
2. City certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement.
3. City by execution of Agreement, and subject to approval by the City Engineer of the final construction plans, gives its consent as required by ORS 373.030(2) and ORS 105.760 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 closures of streets intersecting the highway subject to the mutually agreed upon conditions of the IAMP, if any there be in connection with or arising out of the Project covered by this Agreement.
4. City shall upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from ODOT, forward an advance deposit to the City's Local Government Investment Pool (LGIP) along with permission and account information for ODOT to draw from the City's LGIP account in the amount of \$1 Million for the City's share of Project design costs. City agrees to make additional deposits for its share of other Project activities as needed upon receipt of an ODOT request for additional deposits for construction or other

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authorized activities accompanied by an itemized statement of expenditures and an estimated cost to complete.

5. Upon completion of the Project and receipt from ODOT of an itemized statement of the actual total cost of Project costs, City shall pay any amount which, when added to City's advance deposit, will equal City's total costs for the Project as identified in this Agreement. Any portion of said advance deposit which is in excess of the City's share of the total costs will be refunded or released to City.
6. City agrees to not unduly withhold its approval for required relocation of an City-owned and maintained facilities affected by this Project.
7. City shall, upon completion of the Project and at its own expense, continue to be responsible for the maintenance of Wilsonville Road within the interchange influence area, including all sweeping, signing, striping, cleaning of storm drain inlets, landscaping (including all water and power costs for irrigation), and shall be responsible for all routine maintenance of the elevated bike/ped pathway and any incorporated artwork provided by the City. City is aware that a permit from ODOT's District 2A office prior to performing any work on ODOT right of way is required, with the exception of the interchange area landscaping which is covered by Agreement No.12740 Amendments No. 1 and 2.
8. City agrees to work with ODOT to develop and adopt an Interchange Area Management Plan (IAMP) prior to construction of the Project. The City has initiated this work effort at City expense.
9. City agrees to honor ODOT's access control and management along Wilsonville Road within the access control limits of I-5, as per the ODOT OAR 734-51 Access Management Spacing Standards, unless proposed changes are agreed to by ODOT under the provisions of OAR 734-51. No grants of access will be allowed without following the proper ODOT process.
10. The City will continue to operate their signals at Lower Boones Ferry Road/Wilsonville Road and Town Center Loop/Wilsonville Road and ODOT shall continue to operate the signals at the ramp terminals. The City and ODOT shall concur on implementation and maintenance of system timing plans along Wilsonville Road including City and ODOT traffic signals including allowing and maintaining communications systems between City and ODOT traffic signals. Safety considerations resulting from potential backups of northbound and southbound off ramps onto I-5 shall be the primary consideration of all timing of traffic signals along Wilsonville Road which affects these backups.
11. All employers, including City, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers'

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Compensation coverage unless such employers are exempt under ORS 656.126. City shall ensure that each of its subcontractors complies with these requirements.

12. City certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of City, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind City.
13. City acknowledges and agrees that ODOT, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of City which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.
14. City shall adopt a resolution authorizing its designated city officials to enter into and execute this Agreement.
15. City's Project Manager for this Project is Michael A. Stone, City Engineer, City of Wilsonville, 29799 SW Town Center Loop East, Wilsonville, OR 97070, Phone 503-570-1565 or assigned designee upon individuals absence.

**GENERAL PROVISIONS**

1. Both Parties agree the existing trees within the interchange area are to be preserved to the maximum extent feasible.
2. Both Parties agree that all traffic signal and illumination maintenance and power responsibilities shall remain as stated in Agreement No. 12740 aside from actual operation which is addressed further in ODOT and City Obligations.
3. This Agreement may be terminated by mutual written consent of both Parties
4. Either Party may terminate this Agreement effective upon delivery of written notice to the other Party, or at such later date as may be established, under any of the following conditions:
  - a. If the other Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If the other Party fails to perform any of the 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 the other Party fails to correct such failures within ten (10) days or such longer period as the noticing Party may authorize.

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- c. If the other Party fails to provide payment of its share of the cost of the Project.
5. ODOT may terminate this Agreement effective upon delivery of written notice to the City, or at such later date as may be established, under any of the following conditions:
  - a. 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.
  - b. 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 ODOT is prohibited from paying for such work from the planned funding source.
6. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
7. If City fails to maintain facilities in accordance with the terms of this Agreement, ODOT, at its option, may maintain the facility and bill City, seek an injunction to enforce the duties and obligations of this Agreement or take any other action allowed by law.
8. Both parties shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless each other, their officers and employees from any and all claims, suits, and liabilities which may occur in their respective performance of this Project.
9. Notwithstanding the foregoing defense obligations under the paragraph above, neither party nor any attorney engaged by either party shall defend any claim in the name of the other party or any agency/department/division of such other party, nor purport to act as legal representative of the other party or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of such other party. Each party may, at anytime at its election assume its own defense and settlement in the event that it determines that the other party is prohibited from defending it, or that other party is not adequately defending it's interests, or that an important governmental principle is at issue or that it is in the best interests of the party to do so. Each party reserves all rights to pursue any claims it may have against the other if it elects to assume its own defense.
10. Both Parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270

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incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, The Parties expressly agree 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.

11. The Parties agree that ODOT will be acquiring the right of way for the Project. However, if for any reason the City should acquire any right of way for the Project, then the City, or its consultant, shall acquire all right of way pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the ODOT Right of Way Manual and a separate Right of Way Services Agreement may be required to be executed by both Parties setting forth the responsibilities and right of way activities to be accomplished by each Party. A Right of Way Services Agreement will be constructed prior to any acquisition.
12. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
13. 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 ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

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

This Project is in the 2008-2011 Statewide Transportation Improvement Program, (Key #15108) that was approved by the Oregon Transportation Commission on November 14, 2007.

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

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On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways; to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission such as the Oregon Traffic Safety Performance Plan, or in a line item in the biennial budget approved by the Director.

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**CITY OF WILSONVILLE**, by and through its  
elected officials

By \_\_\_\_\_  
City Mayor

Date \_\_\_\_\_

By \_\_\_\_\_  
City Recorder

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
City Attorney

Date \_\_\_\_\_

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Deputy Director, Highways

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Technical Services Manager/Chief  
Engineer

Date \_\_\_\_\_

By \_\_\_\_\_  
State Right of Way Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
State Traffic Engineer

Date \_\_\_\_\_

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

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

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

Date: \_\_\_\_\_



## Exhibit A

R1-000662

### MEMORANDUM OF UNDERSTANDING WILSONVILLE ROAD I-5 INTERCHANGE

This Memorandum of Understanding (MOU) 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 the City of Wilsonville, acting by and through its elected officials, hereinafter referred to as "City"; for the purpose of developing a solution to correct significant capacity deficiencies that exist with the Wilsonville Road I-5 Interchange.

#### Purpose

The purpose of this MOU is to describe and ascertain future responsibilities of the City and ODOT in the undertaking of this intended future project development effort. Development in the City is currently limited by interchange capacity and travel along the interstate is compromised by inadequate ramp configuration.

#### Objective

The specific objective of this intended project effort is to develop a solution to the Wilsonville Road I-5 Interchange deficiencies with details to be agreed upon and included as part of a subsequent "Cooperative Improvement Agreement" between City and ODOT and to have a construction contract ready for letting in the federal fiscal year 2009.

#### City Intentions

1. City intends to contribute a minimum of \$3.5 million toward the project in addition to the \$3.5 million previously paid by the City under that Immediate Opportunity Fund Agreement, M.C.&A. No. 12,740, executed December 16, 1994 between the City and ODOT for Phase I interchange improvements.
2. As a part of the \$3.5 million project contribution and upon execution of this MOU, City intends to make necessary funds not to exceed \$500,000.00 available for early ODOT intended project work efforts including:
  - (a) survey to supplement existing survey documentation;
  - (b) right-of-way efforts necessary to determine remainder of excess parcels south of Wilsonville Road and west of the interchange;
  - (c) excess parcels appraised valuation, if determined to be 'surplus';
  - (d) ODOT staff efforts toward Project Development, including developing a work order contract for consultant services; and
  - (e) evaluation of existing environmental assessment and determination of process required for project to proceed.

3. City intends to deposit said necessary funds in an account with the State of Oregon Investment Pool and execute required Irrevocable Limited Power of Attorney to negotiate transfers to ODOT.

#### ODOT Intentions

1. ODOT intends to diligently pursue the work efforts identified in 2(a) – (e) above upon deposit of City funds.
2. ODOT intends to contribute a minimum of \$8 million toward the project, subject to STIP approval by the Oregon Transportation Commission ("OTC") in Fall 2007.
3. ODOT intends to manage the design, permitting, coordination with affected agencies, and construction of the intended project and related contracts.
4. ODOT intends to collaborate with City on developing design solution to interchange deficiencies.
5. ODOT, its consultants and contractor, intend to work collaboratively with City consultants and contractor on contiguous and related city design and construction efforts.
6. ODOT intends to expedite the intended project development process to the extent possible.

#### Understandings

The City and ODOT have a common understanding that the following may occur within the intended project parameters:

1. ODOT intends to continue to manage the signal timing at the interchange.
2. Subject to approval by State Traffic Engineer and FHWA authorities, it is the intent that the posted speed limit for Wilsonville Road within the interchange influence area will remain 25 MPH, but for safety purposes the design speed will be 35 MPH. ODOT standard process for establishing posted and design speed will be followed.
3. ODOT and City intend to review direct access from Parkway Avenue to Wilsonville Road for possible modification or elimination as documented in ODOT/City Agreement No. 12740.
4. It is intended that Wilsonville Road will be comprised of a 6-lane cross-section as a part of this phase of the project.
5. It is intended that the vertical clearance will be improved, pending approval by the state mobility committee.


6. ODOT and City intend to consider all efforts to correct the vertical curve on Wilsonville Road within the interchange influence area to meet ODOT standards.

7. To the extent feasible, the design solution should protect existing natural resources.

8. ODOT intends to seek a STIP & RTP amendment by the OTC in June 2007 to add project preliminary engineering to the current STIP and RTP and to a design contract referenced in 2(d) under City obligations. At that same time, City and ODOT intend to execute a Cooperative Improvement Agreement addressing these efforts.

It is recognized by both parties that this MOU is a non-binding representation of the intention to agree to perform in a partnership as described in the above definition of roles. Therefore, by signing this MOU, both parties acknowledge their intent to provide services as outlined above and, prior to award of a contract, the undersigned agree to finalize and present to the Oregon Department of Transportation Deputy Director and the City of Wilsonville City Council for their consideration and approval, a "Cooperative Improvement Agreement" for the intended solution project.

CITY OF WILSONVILLE

By:   
Michael S. Bowers  
Community Development Director

Date: 6/26/2007

OREGON DEPARTMENT OF  
TRANSPORTATION

By:   
Jason Tell  
ODOT Region 1 Manager

Date: 6/19/07

## Exhibit B

### COOPERATIVE IMPROVEMENT AND IMMEDIATE OPPORTUNITY FUND AGREEMENT

# 12740

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 the "ODOT," and THE CITY OF WILSONVILLE, a municipal corporation of the State of Oregon, acting by and through its City Council, hereinafter referred to as "City."

#### WITNESSETH

#### RECITALS

1. The Pacific Highway or Interstate 5 is part of the State highway system under the jurisdiction and control of the Oregon Transportation Commission. Wilsonville Road (previously known as Market Road No. 12) is a part of the City street system, under the jurisdiction and control of the City.
2. By the authority granted in ORS 366.770, and 366.775, ODOT may enter into a cooperative agreement with the Counties and Cities for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. The Oregon Transportation Commission at its July 15, 1988, meeting approved establishing an Immediate Opportunity Fund. The purpose of the Immediate Opportunity Fund is to support specific economic development in Oregon through the construction or improvements of roads. Funding is reserved for cases where there is an actual transportation problem to be solved and where the location decision for economic development hinges on an immediate commitment of road construction resources.
4. By the authority granted in ORS 366.425, ODOT may accept deposits of money, or an irrevocable letter of credit, from any county, city, person, firm or corporation for the performance of work on any public highway within ODOT. When said money or a letter of credit is deposited, ODOT shall proceed with the project. Money so deposited shall be disbursed for the purpose for which it was deposited.
5. A two phase project is proposed to improve circulation patterns around Interstate 5 and Wilsonville Road and in the vicinity of the future site for Thrifty Payless, Inc.

## Exhibit B

M.C. & A. NO. 12740  
CITY OF WILSONVILLE

headquarters. The improvements will enable the economic retention of Pay Less Drug Stores Northwest, Inc. and the continued establishment of this headquarters. The City and ODOT plan and propose the following public improvements as Phase I of the Wilsonville Interchange Project:

- A) Replace and lengthen the existing I-5 structures overcrossing Wilsonville Road to provide for the improvements of Wilsonville Road outlined in (B) below.
- B) Reconstruct and widen Wilsonville Road between Town Center Loop West and Boones Ferry Road to provide six vehicular travel lanes (under the structure), illumination, sidewalks and bikeways. Once past the freeway ramp terminals, the reconstruction will match existing roadway dimensions. An additional vehicular lane for right turn only from Wilsonville Road westbound onto Boones Ferry Road will be provided in ODOT's design and right-of-way acquisition, however, construction and right-of-way costs thereof shall be at the City's expense.
- C) Replace vehicular and pedestrian actuated traffic control signals at the southbound and northbound ramp terminals with interconnect, fire pre-emption systems, and street crosswalk illumination. Construct ramp meters on north and southbound entrance ramps to I-5.
- D) Reconstruct and widen the existing turn storage lanes for vehicular traffic exiting and entering Interstate 5.
- E) Acquire the necessary right of way for this project, inclusive of relocation.

All the above referenced improvements, which meet the Immediate Opportunity Fund criteria, will be collectively hereinafter referred to as "project" and Phase I of the Wilsonville Interchange. Phase 2 improvements are as of yet undetermined and are not included in this document. Phase 2 will be covered in a separate agreement. The location of the Phase 1 project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part thereof.

6. The total cost for preliminary engineering, construction and right-of-way for the project is estimated at \$7,350,000 (not including the yet unestimated costs for right-of-way and construction for the additional vehicular right-turn-only lane from Wilsonville Road to Boones Ferry Road). The Oregon Economic Development Department has recommended use of Immediate Opportunity Funds for this project. ODOT's contribution of Immediate Opportunity Funds will not exceed \$1 million.

## Exhibit B

M.C. & A. NO. 12740  
CITY OF WILSONVILLE

ODOT shall also contribute \$3,250,000 of funds programmed for future work on the Wilsonville Interchange.

The City shall contribute \$3 million in cash (local funds) plus that portion of the right-of-way for the Boones Ferry Road/Wilsonville Interchange reconstruction adjacent to the property commonly known as the Burger King and Chili's development property, which is valued for these purposes at \$100,000. City shall also be responsible for all construction and right-of-way costs for the additional vehicular travel lane for right turn only described in paragraph 5B above (the cost of which has not yet been determined and is not included in the total estimated project cost of \$7.35 million). City agrees to the cost allocations and credits as herein described.

The City's share shall be considered its sole contribution toward this project and the future Phase 2 up to a total combined \$31 million in the 2-phase improvements. If Phase 1 project costs should exceed a total amount of \$7,350,000 (plus construction and right-of-way costs for the additional travel lane described above) the additional costs will be borne by ODOT, unless such costs were the result of additions to the project requested in writing by the City and, in that event be borne by the City. If the costs should not exceed \$7,350,000, any savings shall be credited to ODOT.

7. By the authority granted in ORS 810.210, ODOT is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon State highways at places where ODOT deems it necessary for the safe and expeditious control of traffic. No traffic control signals shall be erected or maintained upon any State highway by any authority other than ODOT, except with its prior written approval or agreement. Traffic signal work within ODOT right-of-way in association with the project herein described shall conform to the current State standards and specifications.
8. ODOT and City entered into an agreement No. 8006 on January 4, 1984 for the installation and maintenance of traffic control signals and illumination at I-5 ramp terminals connecting with Wilsonville Road. Although remaining in full force and effect, the maintenance and power responsibility will be restated in this agreement.

NOW, THEREFORE, the premises being in general as stated in the foregoing RECITALS, it is agreed by and between the parties hereto that the specific responsibilities of ODOT and City will be as follows:

## Exhibit B

M.C. & A. NO. 12740  
CITY OF WILSONVILLE

### CITY OBLIGATIONS

1. The City hereby grants ODOT the exclusive right to enter onto and occupy City right-of-way around the Interstate 5/Wilsonville Road Interchange for the performance of the preliminary engineering, surveying, inspection, construction and installation and maintenance of the improvements as outlined herein associated with the project.
2. The City shall promptly review and approve the project plans and specifications, and promptly issue necessary City required permits (at no expense to project or ODOT).
3. The City shall prior to ODOT advertising for bids, forward to ODOT \$3 million plus construction and right-of-way costs for the additional right turn only lane. No bid advertisement shall occur until said deposit has been received by ODOT.
4. In addition to contributing \$3 million to the project, City shall acquire that portion of the right-of-way for the Boones Ferry Road and Wilsonville Road Intersection Reconstruction from the property commonly known as the Burger King and Chili's Restaurant development property which is east of and adjacent to Boones Ferry Road. The acquisition by the City of this right-of-way shall meet the City's contribution of \$100,000.
5. City shall, upon receipt of billings from ODOT, reimburse ODOT for 100 percent of all expenses incurred by ODOT to obtain right-of-way for and construct the additional vehicular travel lane (right turn only) on westbound Wilsonville Road from the southbound off-ramp terminal and Lower Boones Ferry Road.
6. The City shall maintain the pavement surrounding the vehicle detector loops installed in City street right-of-way in such a manner as to provide adequate protection for said detector loops, and adequately maintain the pavement markings and signing installed on City street right-of-way in accordance with the plans and specifications.
7. City shall, upon completion of the project, continue to maintain all roadway and right-of-way within its jurisdiction and control at its own expense including all traffic signals and illumination beyond the Wilsonville interchange access control limits.
8. City shall, upon completion of the project, continue to be responsible for 100 percent of the electrical power on the traffic signals located at the north and southbound ramp terminals of the interchange.

## Exhibit B

M.C. & A. NO. 12740  
CITY OF WILSONVILLE

9. The City, by execution of this agreement, does hereby give its consent as required by ORS 373.030(2) to any and all changes of grade within the city limits, if any there be, in connection with or arising out of the project covered by this agreement.
10. The City shall authorize execution of this agreement during a regularly or specially convened public session of its City Council.
11. In the event the City requests in writing additions to the project, the City shall pay the cost of any such additions.

### ODOT OBLIGATIONS

1. Except as otherwise specifically set forth under City's Obligations, paragraph 4 above, ODOT shall acquire in its name all necessary right-of-way and/or easements (both permanent and temporary construction) in accordance with State Right of Way Manual. All costs associated with the acquisition of right-of-way and easements shall apply to the State's contribution towards the project costs listed in Recital No. 6 above. Upon completion of the project, any roadway right-of-way purchased by ODOT (in ODOT's name), lying within City's jurisdiction and control shall be relinquished to the City. Relinquishments shall be addressed in a separate agreement.
2. ODOT shall conduct the necessary field surveys, environmental studies, traffic investigations, obtain all required permits; arrange for utility relocation or reconstruction, and perform all preliminary and final engineering and design work required to produce final plans, specifications, and cost estimates.
3. ODOT shall, upon City's review of final plans, prepare the contract and bidding documents, advertise for construction, award all contracts, pay all contractor costs, furnish all construction engineering, field testing of materials, routine and technical inspection and project manager services for administration of the project.
4. ODOT shall maintain the pavement surrounding the vehicle detector loops installed in ODOT Highway right-of-way in such a manner as to provide adequate protection for said detector loops, and shall adequately maintain the pavement markings and signing installed in accordance with the plans and specifications.



## Exhibit B

M.C. & A. NO. 12740  
CITY OF WILSONVILLE

5. ODOT shall, upon project completion, remain responsible for maintaining all roadway within its jurisdiction of the project and shall perform and bear all costs associated with signal and ramp meter maintenance and operation of the north and southbound ramp terminals, all illumination installed within the interchange access control limits, and any traffic signal interconnects related to the project. ODOT shall retain complete control of the timing established for operation of the traffic signals within their jurisdiction. ODOT shall receive and consider City's input on changes to facilitate signal operation.
6. ODOT shall, prior to advertising for bids, request City to forward their portion of the project costs to ODOT.
7. ODOT shall compile accurate cost accounting records and furnish City with an itemized statement of said final costs. City may request a statement of costs to date at any time by submitting a written request.
8. ODOT agrees that this project is essential to the timely and orderly provision for safe and congestion free traffic circulation within the City. As such, both the City and ODOT agree time is of the essence. ODOT shall, to the best of its abilities, request construction bids for the project in order for the start of construction to be scheduled on or before October 1, 1996.

### GENERAL PROVISIONS

1. ODOT and City agree and understand that a mutual review of the project plans and specifications will be conducted prior to ODOT's advertisement for construction bid proposals.
2. ODOT standards shall be used when designing and constructing any portion of the project within ODOT right-of-way.
3. ODOT and the City recognize that the construction scheduling of the North Wilsonville / Stafford Interchange could effect the selection of the detour route for the project and specific routes may or may not create subsequent road damage from excess truck travel, the costs of repair of which the parties may wish to allocate. Therefore, the parties agree to delay entering into a mutually acceptable traffic detour routing agreement, including, but not limited to trucks, west of I-5 heading northbound until more information on construction schedule of both interchanges is available. However, the parties agree to work toward such an

## Exhibit B

M.C. & A. NO. 12740  
CITY OF WILSONVILLE

agreement and have it in place on or before the start of construction of Phase I of the project.

4. ODOT and City agree that upon completion of the project, the access at Wilsonville Road and Parkway Avenue will have been reconstructed as a right-in/right-out only and will remain as such until an alternative access is provided by the City. At which time, direct access from Parkway Avenue to Wilsonville Road will be reviewed by the City and ODOT for possible modification or elimination.
5. ODOT and City recognize that as of the date of this agreement, all design ideas for the project are conceptual and there may be a need to enter into a supplement to this agreement once design becomes final.
6. The contractor, its subcontractor, 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.

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IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as the day and year hereinafter written.

Exhibit B

M.C. & A. NO. 12740  
CITY OF WILSONVILLE

The Oregon Transportation Commission approved on March 16, 1994 using \$1,000,000 of Immediate Opportunity Funds and on July 20, 1994, approved Phase I of the Wilsonville Interchange (Project) as part of the 1995-1998 Statewide Transportation Improvement Program (page 25). By a duly adopted Delegation Order No. 35C, paragraph 1, authorized the State Highway Engineer to sign this agreement for and on behalf of the Commission.

APPROVAL RECOMMENDED

STATE OF OREGON, by and through its Department of Transportation

By Harold Lasky for BRUCE WARDNER  
Region Manager

By Kenneth E. Under  
Chief Engineer/State Hwy. Engineer

By [Signature]  
Traffic Engineer

Date 12-16-94

APPROVED AS TO LEGAL SUFFICIENCY

THE CITY OF WILSONVILLE, by and through its Elected Officials

By [Signature]  
Asst. Attorney General

By [Signature] for Jerry Kinross  
Mayor Council President Charlotte Lehan

Date: 12/16/94

APPROVED AS TO LEGAL SUFFICIENCY

Attest: [Signature]  
City Recorder

By [Signature]  
City Attorney

Date 11-2-94

## Exhibit C

Misc. Contracts & Agreements  
No. 12740

### SUPPLEMENTAL AGREEMENT NO. 1

~~Wilsonville Interchange~~  
~~Landscaping Contract~~  
Pacific Highway (I-5)

THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT"; and THE CITY OF WILSONVILLE, hereinafter referred to as "CITY" entered into Agreement No. 12740 on December 16, 1994. Said agreement covers roles and responsibilities for the design and construction of Phase 1 of the Wilsonville Interchange.

It has now been determined by ODOT and CITY that the agreement referenced above, although remaining in full force and effect, shall be amended by this Supplement No. 1 in order to include provisions for a separate but concurrent landscaping project to be administered by the CITY. Therefore the above mentioned agreement shall be amended to include the following:

**RECITALS** - Paragraph 9 and 10 shall be added as follows:

- "9 CITY plans and proposes to award a separate landscaping contract on ODOT right-of-way of I-5 in conjunction with Phase 1 of the Wilsonville Interchange project. The location of the landscaping work is approximately as shown on the sketch map attached hereto, marked Exhibit B, and by this reference made a part hereof. Said landscaping work shall be designed, advertised, awarded, and administered by the CITY at its own expense and at no cost to ODOT.
10. This amendment shall become effective upon execution of this supplemental agreement by all parties and shall remain in effect for the purpose of ongoing maintenance responsibilities for the useful life of the facilities constructed as part of the project. The landscaping contract shall be completed within one (1) calendar year following the date of final execution of this amendment by both parties."

**CITY OBLIGATIONS** - The following paragraphs shall be added:

- "12. CITY shall, at its own expense, design; obtain all required permits; arrange for the relocation or adjustment of any utility facilities which may be in conflict with plans; advertise for construction; and upon award of the contract, furnish all construction engineering, provide all technical inspection (except as provided for in ODOT OBLIGATIONS No. 10) and project manager services for administration of the CITY's separate landscaping contract on I-5 as shown on the attached Exhibit B."

## Exhibit C

M. C. & A. No. 12740  
Supplemental Agreement No. 1

13. CITY shall design and construct the project according to ODOT and Federal standards.
14. CITY shall, prior to award of its separate landscaping contract, submit plans and specifications to ODOT's assigned Project Engineer for review and approval. No contract shall be awarded that is not keeping with the plans and specifications reviewed and approved by ODOT.
15. CITY agrees to comply with all provisions of ODOT issued permits and shall require its contractors, subcontractors, or consultants performing such work to comply with such provisions.
16. CITY shall, upon execution of this supplemental agreement and a letter of request from ODOT, forward to ODOT an advance deposit or irrevocable letter of credit in the amount of \$5,000 for payment of ODOT's costs outlined under ODOT Obligations. CITY agrees to make additional deposits as needed upon request from ODOT.
17. Upon completion of the project and receipt from ODOT of an itemized statement, CITY shall pay any remaining costs which will equal 100 percent of the actual total ODOT costs for project. Any portion of said advance deposit(s) which is in excess of total ODOT costs will be refunded to CITY.
18. CITY acknowledges and agrees that ODOT and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of CITY that are pertinent to this supplemental agreement to perform examinations and audits and make excerpts and transcripts. CITY shall retain and keep all files and records for a minimum of three (3) years after completion of the project.
19. CITY agrees to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this supplemental agreement, including, without limitation, the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, which hereby are incorporated by reference. Without limiting the generality of the foregoing, CITY expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

## Exhibit C

M. C. & A. No. 12740  
Supplemental Agreement No. 1

20. CITY shall require its contractor to obtain and keep in affect during the term of the contract Comprehensive or Commercial General Liability Insurance covering bodily injury and property damage. This insurance shall include personal injury coverage, contractual liability coverage for the indemnity provided under this supplemental agreement and products/completed operations liability. Combined single limit per occurrence shall not be less than \$1,000,000, or the equivalent. Each annual aggregate limit shall not be less than \$1,000,000, when applicable. The certificate of insurance shall include the State of Oregon, Transportation Commission and its members, Department of Transportation, officers and employees, as additional insured. CITY shall provide a copy of the certificate to ODOT prior to construction of the project. The insurance coverage shall not be amended, altered, modified, or canceled insofar as the coverage contemplated herein is concerned without at least 30 days prior written notice.
21. CITY 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, Department of Transportation, its officers and employees from any and all claims, suits, and liabilities which may occur in the performance of this project.
22. CITY shall, upon completion of CITY's said separate contract, and at its own expense, be fully responsible for all maintenance of said landscaping."

**ODOT OBLIGATIONS** The following paragraphs shall be added:

- "9. ODOT's District Manager shall, at no expense to the CITY, issue the necessary permits required to begin construction of CITY's separate landscaping contract on ODOT right-of-way.
10. ODOT's Region Manager shall assign a Project Manager for the plan review and periodic and final inspection of the CITY's separate landscaping contract at CITY's expense. ODOT'S final inspection shall be completed within 30 days of substantial completion.
11. ODOT shall, upon execution of this supplemental agreement, forward to CITY a letter of request for an advance deposit or irrevocable letter of credit in the amount of \$5,000 for payment of ODOT's expenses as outlined under ODOT Obligations. Additional deposits, if any, shall be made as needed upon request from ODOT. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete project.

## Exhibit C

M. C. & A. No. 12740  
Supplemental Agreement No. 1

12. ODOT shall compile accurate cost accounting records. CITY may request a statement of ODOT's costs to date at any time by submitting a written request. When the actual total ODOT cost of ODOT services has been computed, ODOT shall furnish CITY with an itemized statement of said final costs within 30 days of CITY's substantial completion and will either bill from remaining costs or refund to CITY any portion of said advance deposit which is in excess of the total ODOT costs for project.
13. ODOT hereby grants CITY permission to enter onto ODOT right-of-way, upon issuance of ODOT required permits, for the purpose of constructing and maintaining landscaping on ODOT right-of-way on I-5."

**GENERAL PROVISIONS** The following paragraphs shall be added:

- "7. If CITY fails to maintain landscaping in accordance with the terms of this supplemental agreement, ODOT, at its option, may maintain and bill CITY, seek an injunction to enforce the duties and obligations of this supplemental agreement, or take any other action allowed by law.
8. This supplemental agreement may be terminated by mutual consent of both parties.  
  
ODOT may terminate this supplemental agreement effective upon delivery of written notice to CITY, or at such later date as may be established by ODOT, under any of the following conditions, but not limited to these conditions.
  - a. If CITY fails to provide services called for by this supplemental agreement within the time specified herein or any extension thereof.
  - b. If CITY fails to perform any of the other provisions of this supplemental agreement, or so fails to pursue the work as to endanger performance of this supplemental agreement in accordance with its terms, and after receipt of written notice from ODOT fails to correct such failures within 10 days or such longer period as ODOT may authorize.
  - c. If CITY fails to provide payment of \$5,000 as ODOT's cost of the project upon receipt of a letter of request from ODOT.

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

Exhibit C

M. C. & A. No. 12740  
Supplemental Agreement No. 1

- 9. This supplemental 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 the agreement. No waiver, consent, modification or change of terms of this supplemental 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 changes if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT to enforce any provision of this supplemental agreement shall not constitute a waiver by ODOT 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 on February 18, 1998, approved Subdelegation Order No. 2, in which the Director grants authority to the Branch and Region Managers to approve and execute agreements for day to day operations.

APPROVAL RECOMMENDED:

BY W. B. D.  
Project Delivery Mgr.

Date 5-13-98

STATE OF OREGON

By and through its Dept. of  
Transportation

By King Kim An. K. L.  
Region 1 Manager

Date 6-17-98

REVIEWED FOR ODOT:

BY J. H. H.  
Asst. Attorney General

Date 6/30/98

CITY OF WILSONVILLE

By and through its elected officials

By Charlotte Selva  
Mayor

APPROVED AS TO FORM:

By Michael E. Kullhoff  
City Attorney

Date 6/2/98

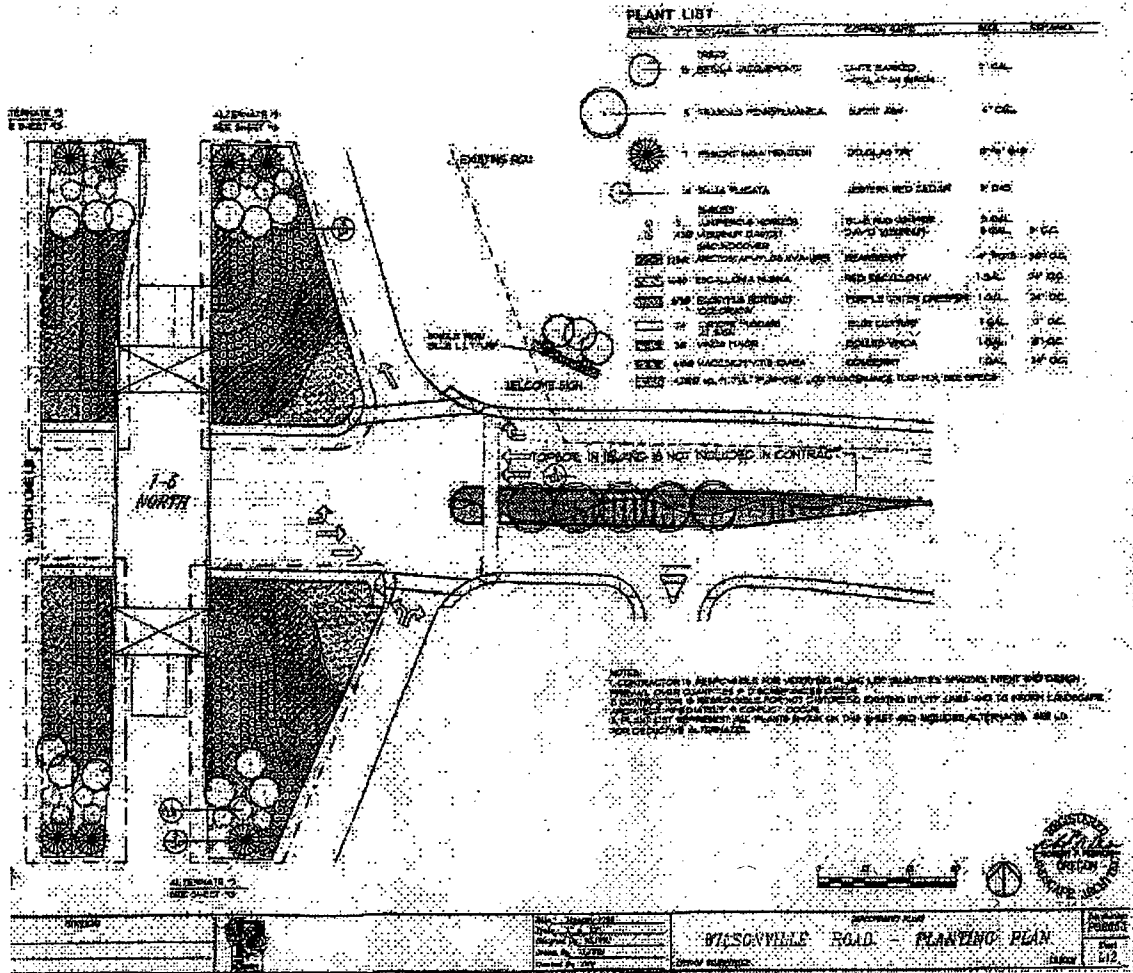
By Arden C. King  
Recorder

Date June 3, 1998





Exhibit C



## Exhibit D

Misc. Contracts & Agreements  
No. 12740

**SUPPLEMENTAL AGREEMENT NO. 2**  
**Wilsonville Interchange**  
**Landscaping Contract**  
**Pacific Highway (I-5)**

THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT"; and THE CITY OF WILSONVILLE, hereinafter referred to as "CITY" entered into Agreement No. 12740 on December 16, 1994. Said agreement covers roles and responsibilities for the design and construction of Phase 1 of the Wilsonville Interchange. CITY and ODOT also entered into a Supplemental Agreement No. 1 on June 30, 1998. Said supplement included provisions for a separate but concurrent landscaping project administered by the CITY.

It has now been determined by ODOT and CITY that the agreement and supplement referenced above, although remaining in full force and effect, shall be amended by this Supplemental Agreement No. 2 in order to include additional areas of landscaping on ODOT's facilities administered by the CITY. Therefore the above mentioned agreement and supplement shall be amended to include the following:

**RECITALS** - Paragraph 9 which reads:

"9 CITY plans and proposes to award a separate landscaping contract on ODOT right-of-way of I-5 in conjunction with Phase 1 of the Wilsonville Interchange project. The location of the landscaping work is approximately as shown on the sketch map attached hereto, marked Exhibit B, and by this reference made a part hereof. Said landscaping work shall be designed, advertised, awarded, and administered by the CITY at its own expense and at no cost to ODOT."

**Shall be amended to read:**

"9 CITY plans and proposes to award a separate landscaping contract on ODOT right-of-way of I-5 in conjunction with Phase 1 of the Wilsonville Interchange project. The location of the landscaping work is approximately as shown on the sketch maps attached hereto, marked Exhibits B and C, and by this reference made a part hereof. Said landscaping work shall be designed, advertised, awarded, and administered by the CITY at its own expense and at no cost to ODOT."

## Exhibit D

M. C. & A. No. 12740  
Supplemental Agreement No. 2

**RECITALS – Paragraph 10 which reads:**

"10. This amendment shall become effective upon execution of this supplemental agreement by all parties and shall remain in effect for the purpose of ongoing maintenance responsibilities for the useful life of the facilities constructed as part of the project. The landscaping contract shall be completed within one (1) calendar year following the date of final execution of this amendment by both parties."

**Shall be amended to read:**

"10. This amendment shall become effective upon execution of this supplemental agreement by all parties and shall remain in effect for the purpose of ongoing maintenance responsibilities for the useful life of the facilities constructed as part of the project. The landscaping contract shall be completed within one (1) calendar year following the date of final execution of this supplemental agreement No. 2 by both parties."

**CITY OBLIGATIONS – Paragraph 12 which reads:**

"12. CITY shall, at its own expense, design; obtain all required permits; arrange for the relocation or adjustment of any utility facilities which may be in conflict with plans; advertise for construction; and upon award of the contract, furnish all construction engineering, provide all technical inspection (except as provided for in ODOT OBLIGATIONS No. 10) and project manager services for administration of the CITY's separate landscaping contract on I-5 as shown on the attached Exhibit B."

**Shall be amended to read:**

"12. CITY shall, at its own expense, design; obtain all required permits; arrange for the relocation or adjustment of any utility facilities which may be in conflict with plans; advertise for construction; and upon award of the contract, furnish all construction engineering, provide all technical inspection (except as provided for in ODOT OBLIGATIONS No. 10) and project manager services for administration of the CITY's separate landscaping contract on I-5 as shown on the attached Exhibits B and C."

**IN WITNESS WHEREOF**, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

Exhibit D

M. C. & A. No. 12740  
Supplemental Agreement No. 2

The Oregon Transportation Commission on March 18, 1999, approved Subdelegation Order No. 2, in which the Director grants authority to the Region Manager to approve and execute agreements for day to day operations.

APPROVAL RECOMMENDED:

BY Maya West  
Project Delivery Mgr.  
Date 10/6/99

STATE OF OREGON  
By and through its Dept. of  
Transportation

By Kay Van Antkil  
Region 1 Manager  
Date 10-6-99

REVIEWED FOR ODOT:

BY John H. Johnson  
Asst. Attorney General  
Date 11/1/99

CITY OF WILSONVILLE  
By and through its elected officials

By Wendell Johnson  
Mayor

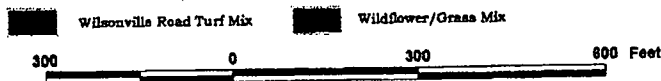
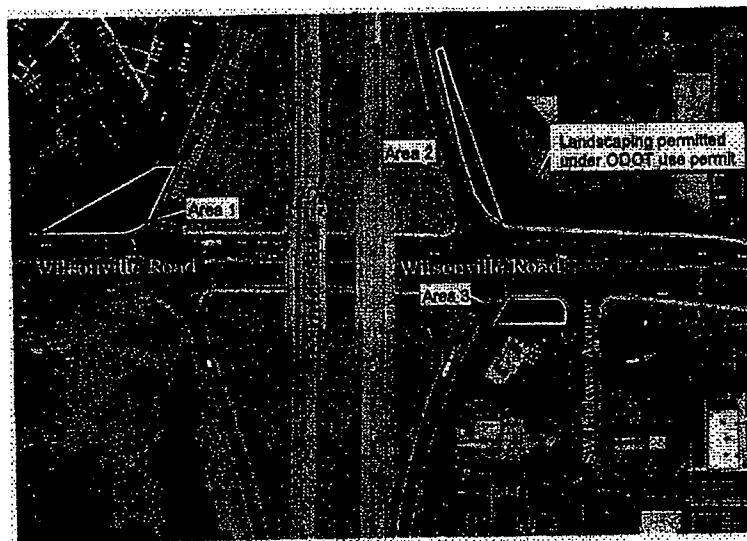
APPROVED AS TO FORM:

By Michael E. Kahlhoff  
City Attorney  
Date 9/30/99

By Andrea C. King  
Recorder

Date Oct 1, 1999

# Wilsonville Road R-O-W Site Plan



August 10, 1999

Scale 1" = 150'



Exhibit C  
Page 1 of 2

Exhibit D

## Exhibit D

Exhibit C  
Page 2 of 2

### ADDITIONAL LANDSCAPE PROGRAM FOR THE WILSONVILLE ROAD/I-5 INTERCHANGE

Exhibit C, Page 1 of 2 identifies areas for additional landscaping around the Wilsonville Road/I-5 interchange. Following is a summary of the proposed work:

#### AREA 1

This area would be comprised of a low maintenance, drought tolerant turf mix, as used elsewhere in the interchange project (see Exhibit B of Supplemental Agreement No. 1, CFO No. 12740).

#### AREA 2

This area is proposed to be landscaped with an extension of the plant material palette that is found between the northbound travel lanes of the interstate, and the northbound on-ramp (reference Exhibit B of Supplemental Agreement No. 1, CFO No. 12740). Four materials will be used: low maintenance turf mix, wildflower/grass seed mix (Hobbs & Hopkins Pro Time #710-PDX Plus), bearberry, and David viburnum.

The City currently has a Use Permit Agreement with ODOT (file numbers 17515, 18095, and 31286) to landscape the right-of-way immediately east of Exhibit C's Area 2. Proposed for this eastern area is a combination of Exhibit B plant materials and a hardy native plant palette that would complement the interchange as well as the surrounding development. Proposed plant material includes Area 2 materials as well as red maple street trees, Doug-fir, vine maple, big leaf maple, rhododendron, Oregon grape, salal, huckleberry and bearberry. A large portion of the area near Wilsonville Road will be seeded with a low maintenance drought tolerant turf seed mix as identified for Area 1.

#### AREA 3

This area will also be seeded with Pro Time #710-PDX Plus, with vine maple, Oregon grape, and other native plant materials as noted above.

#### CONTACT

CHRIS NEAMTZU, PARKS PLANNER  
503 682-4960

BH477-06

**Exhibit E**

**Projected Transportation Trip Capacity Gain**

Existing condition (Boeckman Road complete)	5045
Interchange Improvements with enhanced 6-lane Wilsonville Road & LOS "E"	+2405
Trips committed under assumption \$3.5 million re-striping project was proceeding	(-702)
Net additional trips available when interchange IGA executed between City and ODOT	+1703

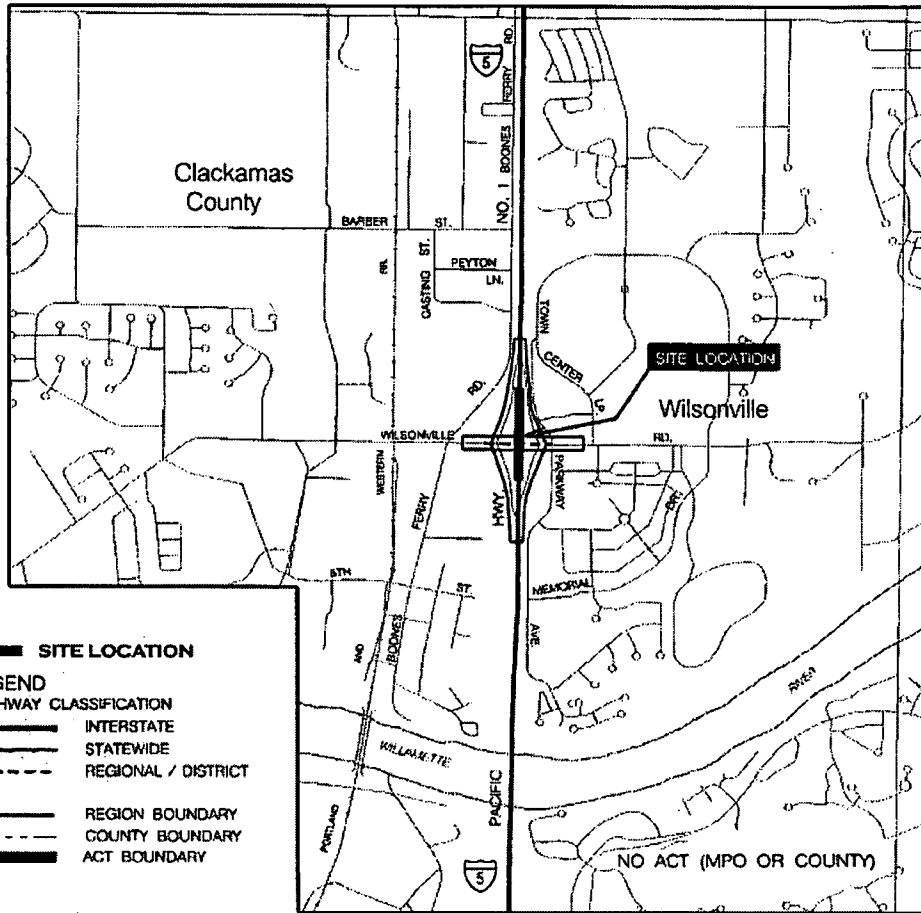
City/ODOT IGA



Exhibit F

STIP PROJECT LOCATION

ODOT REGION 1



- SITE LOCATION
- LEGEND**
- STATE HIGHWAY CLASSIFICATION**
- INTERSTATE
  - STATEWIDE
  - - -** REGIONAL / DISTRICT
- REGION BOUNDARY**
- REGION BOUNDARY
  - - -** COUNTY BOUNDARY
  - ACT BOUNDARY

I-5: WILSONVILLE INTERCHANGE  
KEY NO. 15108

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

0 SCALE 2000 FEET  
SPECIAL PROJECT # 2057  
DECEMBER 2007

### Exhibit G

ID	Task Name	Duration	Start	Finish	2009				2010				2011				2012			
					Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1
1	<b>I-5 @ Wilsonville Rd Interchange</b>	<b>1460 edays</b>	<b>Mon 6/2/08</b>	<b>Fri 6/1/12</b>	<b>I-5 @ Wilsonville Rd Interchange</b>															
2	PROJECT START	0 edays	Mon 6/2/08	Mon 6/2/08	◀▶															
3	PROJECT INITIATION PHASE	90 edays	Mon 6/2/08	Sun 8/31/08	PROJECT INITIATION PHASE															
4	DESIGN ACCEPTANCE PHASE	180 edays	Sun 8/31/08	Fri 2/27/09	DESIGN ACCEPTANCE PHASE															
5	RIGHT OF WAY	365 edays	Fri 2/27/09	Sat 2/27/10	365 edays RIGHT OF WAY															
6	PERMITS AND CLEARANCES	365 edays	Fri 2/27/09	Sat 2/27/10	365 edays PERMITS AND CLEARANCES															
7	FINAL DESIGN	365 edays	Fri 2/27/09	Sat 2/27/10	365 edays FINAL DESIGN															
8	PS&E SUBMITTAL PHASE	40 edays	Sat 2/27/10	Thu 4/8/10	40 edays PS&E SUBMITTAL PHASE															
9	CONSTRUCTION	785 edays	Thu 4/8/10	Fri 6/1/12	785 edays CONSTRUCTION															
10	PROJECT COMPLETE	0 edays	Fri 6/1/12	Fri 6/1/12																

Exhibit H



**Oregon**

Theodore R. Kulongoski, Governor

Department of Transportation  
Office of the Director  
Rm 135  
355 Capitol St. NE  
Salem, Oregon 97301-3871

December 28, 2007

FILE CODE:

The Honorable Charlotte Lehan,  
Mayor, City of Wilsonville  
29799 Southwest Town Center Loop E  
Wilsonville, OR 97070

Dear Mayor Lehan:

I am writing as a follow up to the December Oregon Transportation Commission meeting and to re-affirm my commitment of \$500,000 in Type A – Immediate Opportunity Funds (IOF) for Improvements at the Interstate 5 / Wilsonville Road Interchange.

The Oregon Transportation Commission supports the City's request. The transportation improvements at the Interstate 5 / Wilsonville Road Interchange will not take place this fiscal year; therefore the City will need to make a formal request for the \$500,000, consistent with the December 12<sup>th</sup>, 2007 proposal and IOF funding criteria, when the project is ready for construction. \*

The Oregon Department of Transportation is excited about Coca-Cola Enterprise's interest in retaining and expanding its facility in Wilsonville. Such an investment helps enhance the economic vitality of the State of Oregon and the livability of its citizens.

Matthew L. Garrett  
Director

cc: Bob Repine – OECDD  
Bev Thacker, OECDD  
John Rakowitz, OECDD  
Danielle Cowan, City of Wilsonville  
Jason Tell, ODOT – Region 1  
Rian Windsheimer, ODOT – Region 1  
Akin Owosekun, ODOT – Region 1

Synopsis of ODOT change to Agreement 23581 between May 28<sup>th</sup>, 2008 and June 2, 2008\*:

1. Removal of the reference to IAMP in the "General Project Description in Recitals #3" and added it as a stand alone Recital that development and adoption of an IAMP is to be included as part of the Project.
2. Revised Recital #9 to better address Project cost overruns including in the event that overruns occur "after" construction. The language now reads as follows:

If Project costs are to exceed the available funding, ODOT and City agree to decide how to reduce the Project scope to stay in budget, or come up with additional funds and amend the Agreement accordingly. Outstanding scope or budget issues must be resolved prior to submittal of Plans, Specifications, and Estimate (PS&E) to Salem (including an amendment to this Agreement indicating how any construction overruns are to be resolved) or Project will be pulled from the letting schedule. Project may be rescheduled for a later letting if agreement is reached and an amendment addressing these issues is executed. However, if an agreement is not reached and an amendment executed as of ten calendar years from date of execution of this Agreement, then this Agreement will automatically terminate, and be rendered null and void.

3. Clarification on appraisal process in ODOT #7 as requested by DOJ as follows:

ODOT agrees to offer to sell to the City all non-project related surplus ODOT-owned parcels remaining after right-of-way dedication located along Wilsonville Road, south of the proposed Wilsonville Road right-of-way and west of proposed interchange ramp. Said surplus properties are from the right of way acquisitions during the first Wilsonville Road Interchange Improvements that took place under Agreement No.12740. ODOT will hire an appraiser from its list of approved appraisers to value the property based upon its highest and best use. ODOT's Right of Way Appraisal Review Unit will prepare an Appraisal Review of valuation, establishing the Fair Market Value of the property. The purchase price in the offer to sell will be the Fair Market Value established by such Appraisal Review. The proceeds from this surplus land sale are the only proposed additional ODOT contributions available toward design and construction of this Project.

4. Modification to ODOT #4 to clarify reversionary language and when it would apply. It now reads as follows:

"ODOT agrees that the portions of land acquired by ODOT for the construction of City street and bike/ped facilities shall be formally relinquished to the City upon completion of the Project. If said land was acquired with any portion of State or Federal funds, the said constructed facilities will be formally relinquished to the

\* ODOT's R/W section has not yet completed their review and some changes may still occur:

City upon completion of the Project so long as used for the purposes that it was constructed. If for any reason said facilities are no longer used for the purposes that it was constructed, the land shall automatically revert back to ODOT."

5. The final edit was to change the last two reasons for termination in General Provisions #4 had to be ODOT and not "either party" as per DOJ.
6. Added a sentence to GP #11 as follows:

"The Parties agree that ODOT will be acquiring the right of way for the Project. However, if for any reason the City should acquire any right of way for the Project, then the City, or its consultant, shall acquire all right of way pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the ODOT Right of Way Manual and a separate Right of Way Services Agreement may be required to be executed by both Parties setting forth the responsibilities and right of way activities to be accomplished by each Party. A Right of Way Services Agreement will be constructed prior to any acquisition."

\* ODOT's R/W section has not yet completed their review and some changes may still occur:

**Sylvester, C.J.**

---

**From:** SMITH Michelle L \* ODOT [Michelle.L.SMITH@odot.state.or.us]  
**Sent:** Monday, June 02, 2008 4:45 PM  
**To:** Sylvester, C.J.  
**Attachments:** 23581 Wilsonville Interchange\_odotrevs\_2jun08 add'l comments from trish.doc

Hi CJ,

Just an updated draft. The additional edits are as follows:

1. Paragraph 8 of Terms of Agreement are not referencing the correct paragraphs. The reference to paragraph 8 should be paragraph 7, and the reference to paragraph 11 should be to Paragraph 12.
2. Missing the "e" in the word "the", line 8, paragraph 7 of ODOT Obs.
3. Double period in line three, paragraph 9, ODOT obs.
4. Paragraph 14 of ODOT obs, changed the word "incumbent" to "reimbursable by"
5. ODOT obligations paragraph #9, relinquished to City "by deed" was added in two places.

That's it so far. I still do not have the green light but I have asked that we have no further edits unless really necessary.

mls