



CITY COUNCIL Staff Report

Meeting Date: 9/4/2024

To: The Honorable Mayor Hodson & City Council
Thru: Eileen Stein, City Administrator
From: Jerry Nelzen, Public Works Director
Agenda: Consider Ordinance No. 1631: An Ordinance Authorizing the City Administrator to Enter into a Cooperative Improvement Agreement Between the City of Canby and the State of Oregon (Oregon Department of Transportation) (*Second Reading*)
Goal: Plan A Transportation System That Eases the Impacts of Growth
Objective: N/A

Summary

City is designing and constructing a project to extend Walnut Street from its current terminus at SE 1st Avenue to intersect with OR 99E (“Walnut Street Extension”) The Parties desire to enter into this Agreement to cover a portion of the Walnut Street Extension that concerns the design, construction and ongoing maintenance of traffic control devices at the new intersection of OR 99E and Walnut Street and related frontage improvements. City is responsible for funding the Walnut Street Extension.

Background

The 2010 Transportation System Plan identified a new signalized intersection was needed to connect Highway 99E to the Pioneer Industrial Park, to relieve projected traffic restrictions. The original alignment of this new connection was an extension of Mulino Road to the existing Otto Road intersection.

Subsequently, in 2020, the Council adopted an amendment to the TSP that relocated the new connection approximately 600 feet north of Otto Road to better comply with ODOT requirements. Additionally, the new industrial collector alignment was an extension of Walnut Street, as opposed to Mulino Road.

The City has coordinated with all impacted property owners and in 2021 purchased the rights-of-way needed for this roadway improvement. The Transportation System Development Charge adopted in 2013 lists this industrial roadway connection in the SDC eligible Capital Improvement Plan, making the entire project eligible for SDC Improvement Fee funding.

The City published a formal request for Engineering proposals in February 2022, and selected the firm of Curran-McLeod, Inc., to provide the needed engineering services. Curran-McLeod, Inc. has been involved in all roadway improvements in the industrial park since 2000, with the most recent being completion of the signalized improvements at Sequoia and Hazell Dell.

Attachments

Ordinance No. 1631

Cooperative Improvement Agreement

Fiscal Impact

The estimated cost of work performed by ODOT pursuant to this Agreement is \$123,000, as detailed in State Obligations, paragraph 1. The estimate for the Project is subject to change. City shall not be liable for costs exceeding \$123,000 without first receiving from State a request for additional deposit.

Options

1. Approve Ordinance No. 1631 Authorizing the City Administrator to enter into a Cooperative Improvement Agreement between the City of Canby and the State of Oregon (Oregon Department of Transportation)
2. Deny approving Ordinance No. 1631 and give further instructions to staff.

Recommendation

It is recommended that City Council approve the contract with ODOT as presented.

Proposed Motion

“I move to adopt Ordinance No. 1631, An Ordinance Authorizing the City Administrator to enter into a Cooperative Improvement Agreement between the City of Canby and the State of Oregon (Oregon Department of Transportation).”

ORDINANCE NO. 1631

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A COOPERATIVE IMPROVEMENT AGREEMENT BETWEEN THE CITY OF CANBY AND THE STATE OF OREGON (OREGON DEPARTMENT OF TRANSPORTATION)

WHEREAS, the 2010 Transportation System Plan identified a new signalized intersection was needed to connect Highway 99E to the Pioneer Industrial Park, to relieve projected traffic restrictions;

WHEREAS, City is designing and constructing a project to extend Walnut Street from its current terminus at SE 1st Avenue to intersect with OR 99E (“Walnut Street Extension”);

WHEREAS, the estimated cost of work performed by ODOT pursuant to this Agreement is \$123,000; and

WHEREAS, this cooperative improvement agreement has been reviewed and approved through the city approval process and is believed to be in the best interest of the City to enter into a contract with ODOT.

NOW, THEREFORE, THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:

Section 1. The City Administrator is hereby authorized on behalf of the City to enter into a Cooperative Improvement Agreement with the State of Oregon. A copy of the Agreement is attached hereto as Exhibit “A.”

Section 2. The effective date of this Ordinance shall be October 4, 2024.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, August 21, 2024, ordered posted as required by the Canby City Charter; and scheduled for second reading on Wednesday, September 4, 2024, commencing at the hour of 7:00 PM in the Council Chambers located at 222 NE 2nd Avenue, 1st Floor Canby, Oregon.

Maya Benham, CMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 4th day of September 2024, by the following vote:

YEAS _____

NAYS _____

Brian Hodson
Mayor

ATTEST:

Maya Benham, CMC
City Recorder

**COOPERATIVE IMPROVEMENT AGREEMENT
OR 99E & Walnut Street Intersection**

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State" or "ODOT;" and the CITY OF CANBY acting by and through its elected officials, hereinafter referred to as "City" all herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. OR 99E is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Walnut Street is a part of the city's transportation system under the jurisdiction and control of the City.
2. By the authority granted in Oregon Revised Statutes (ORS) [190.110](#), 283.110, [366.572](#) and [366.576](#), State 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 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for their performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
4. By the authority granted in ORS 810.080 State has the authority to establish marked pedestrian crosswalks on its highway facilities.
5. By the authority granted in ORS 810.210, State 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 State 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 State, except with its written approval. Traffic signal work on this Project will conform to the current State standards and specifications.
6. City is designing and constructing a project to extend Walnut Street from its current terminus at SE 1st Avenue to intersect with OR 99E ("Walnut Street Extension") The Parties desire to enter into this Agreement to cover a portion of the Walnut Street Extension that concerns the design, construction and ongoing maintenance of traffic control devices at the new intersection of OR 99E and Walnut Street and related frontage improvements. City is responsible for funding the Walnut Street Extension.

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

TERMS OF AGREEMENT

1. For the purposes of this Agreement, the term "Project" means improvements at the intersection of Walnut Street and OR 99E, including a new signal at the intersection of OR 99E and Walnut Street, as well as frontage improvements on 99E adjacent to the new signal. As part of the City's Walnut Street Extension, the City will design and construct the Project. The location of the Project is approximately as shown on the map marked Exhibit A.
2. The Project will be financed entirely by City at an estimated cost of \$1,108,261.00. The estimated cost of work performed by ODOT pursuant to this Agreement is \$123,000, as detailed in State Obligations, paragraph 1. The estimate for the Project is subject to change. The City shall be responsible for the total Project cost, including the cost of ODOT's work.
3. This Agreement shall become effective on the date all required signatures are obtained and 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 from Project completion. The Project shall be completed within ten (10) calendar years following the date of final execution of this Agreement by both Parties.

CITY OBLIGATIONS

1. City shall upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from State, forward to State an advance deposit or irrevocable letter of credit in the amount of \$123,000, said amount being equal to the estimated total cost for the work performed by State as further described under State Obligations. City agrees to make additional deposits as needed upon request from State and mutually agreed to by both State and City.
2. Upon completion of the Project and receipt from State of an itemized statement of the actual total cost of State's participation for the Project, City shall pay any amount which, when added to City's advance deposit, will equal 100 percent of actual total mutually agreed State costs for the Project. Any portion of said advance deposit which is in excess of the State's total costs will be refunded or released to City within ninety (90) days of Project closeout. City shall not be liable for costs exceeding \$123,000 without first receiving from State a request for additional deposit accompanied by an itemized statement of expenditures and an estimated cost to complete Project and receiving City's approval, which City will not unreasonably withhold.
3. Upon completion of the Project, City shall be responsible for and pay to the power company 100 percent of the power costs for the traffic signal. City shall require the power company to send invoices directly to City.

4. City agrees that for all projects on the Oregon State Highway System or State-owned facility, for portions of the Project located within the Oregon State Highway System (state highway), any design element that does not meet ODOT Highway Design Manual design standards must be justified and documented by means of a design exception. City further agrees that for all projects on the National Highway System (NHS), regardless of funding source, any design element that does not meet American Association of State Highway and Transportation Officials (AASHTO) standards must be justified and documented by means of a design exception. State shall review any design exceptions on the Oregon State Highway System and retains authority for their approval.

5. Americans with Disabilities Act Compliance

a. For portions of the Project located on or along the Oregon State Highway System (state highway), when the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, City shall:

i. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;

ii. Follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan, and current ODOT Curb Ramp Inspection form; and

iii. At Project completion, send an ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed, modified, upgraded, or improved as part of the Project. The completed form is the documentation required from the City showing that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address: <https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>

iv. Promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by City and prior to release of any City contractor.

v. Ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include

accessibility features equal to or better than the features present in the existing pedestrian facility. City shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, disability organizations, and ODOT at least 10 days prior to the start of construction.

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

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

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>

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

- iii. City assumes sole responsibility for ensuring that the Project complies with the ADA, including when City uses ODOT forms and processes. City acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.
 - iv. City shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. City shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations prior to the start of construction.
- c. City shall ensure that any portions of the Project under City's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, City ensuring that:
- i. Pedestrian access is maintained as required by the ADA,

- ii. Any complaints received by City identifying sidewalks, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. City, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
 - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- d. Maintenance obligations in this section shall survive termination of this Agreement.
6. City 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 for the portions of the Project which are on City's right of way.
7. City, or its consultant's, electrical inspectors shall possess a current State Certified Traffic Signal Inspector certificate, in order to inspect electrical installations on state highways. The State District 2B Permitting Office shall verify compliance with this requirement prior to construction.
8. City shall provide to State electronic "as constructed" plans for work on state highways in 11 x 17 size in PDF form. If City redrafts the plans, done in Computer Aided Design and Drafting (CADD) or Microstation, to get the "as constructed" set, and they follow the most current version of the "Contract Plans Development Guide, Volume 1 Chapter 16" http://www.oregon.gov/State/HWY/ENGSERVICES/docs/dev_guide/vol_1/V1-16.pdf, City shall provide to State a Portable Document Format (PDF) file and a paper copy of the plan set.
9. City will be required to obtain the services of a registered professional engineer to oversee, accept, and document all construction procedures and certify proper construction was performed pursuant to the Project plan and permit. The registered professional engineer will be required to stamp the "As Constructed Plans" and ensure the Project meets State's required standards for the portions of the Project located on or along the Oregon State Highway System (state highway). Construction inspection for this Project will be completed by state-certified inspectors under the direction of the registered professional engineer overseeing the construction and paid for by City.

10. City has provided the Project preliminary and final plans and specifications to State's District 2B office for review and written concurrence, including review and concurrence from the Office of the State Traffic Engineer. All signal equipment must be inspected and tested by State's Traffic Systems Services Unit. Any changes to the final plans and specifications shall be provided to the State's District 2B office, which shall coordinate all such review and concurrence of revised plans. All review, inspection, and testing done by the State for the Project will be at City's expense.
11. City shall perform the services 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.
12. Agency, if a City, by execution of Agreement, gives its consent as required by ORS [373.030\(2\)](#) and ORS [105.760](#) to any and all changes of grade within Agency 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 this Agreement.
13. City acknowledges and agrees that State, the Oregon Secretary of State's Office, 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 (or completion of Project.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
14. City 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](#) incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, City expressly agrees to comply with (i) [Title VI of Civil Rights Act of 1964](#); (ii) [Title V and Section 504 of the Rehabilitation Act of 1973](#); (iii) the [Americans with Disabilities Act of 1990](#) and ORS [659A.142](#); (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
15. City shall construct the Project in accordance with the requirements of ORS 276.071 including the public contracting laws within ORS Chapters 279A, 279B and 279C.
16. If City chooses to assign its contracting responsibilities to a consultant or contractor, City shall inform the consultant or contractor of the requirements of ORS 276.071, to ensure that the public contracting laws within ORS Chapters 279A, 279B and 279C are followed.

17. City and its contractor shall follow the Oregon Locate Laws (ORS 757 and OAR 952).
18. City shall obtain all necessary permits, licenses, and approvals including land use permits, building permits, and engineering design review approval from State. In addition, City shall ensure that a utility permit issued by State District office is in place prior to installation of any utility service line installed with state highway right of way as part of the Project. City agrees to comply with all provisions of said permit(s), and reviews shall require its developers, contractors, subcontractors, or consultants performing such work to comply with such permit and review provisions.
19. If City enters into a contract with a third-party to complete the Project, in addition to all other City Obligations that apply when the City hires a contractor, City agrees to comply with the following:
 - a. Contracts:
 - i. All contracts must be in writing, executed by City, and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the contract. Use of a contract does not relieve City of its responsibilities under this Agreement.
 - ii. City shall require all of its contractors performing work under this Agreement to name State as a third-party beneficiary of the resulting contract with the contractor.
 - iii. City shall require its construction contractor to name the State as an additional or "dual" obligee on construction contractor's performance and payment bonds.
 - iv. City shall provide State with a copy of any signed contract upon request by State. This paragraph 19.a.iv shall survive expiration or termination of this Agreement.
 - v. City must report to State any material breach of a term or condition of a contract within ten (10) days of City discovering the breach.
 - b. Contract Indemnification:
 - i. To the fullest extent permitted by law, and except to the extent otherwise void under ORS 30.140, City shall require each of its contractors that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, the Oregon Transportation Commission, and the Oregon Department of Transportation and their respective officers, members, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever (hereinafter, referred to individually and collectively as "Claims") to the extent such Claims result from, arise out of, or relate to the activities or omissions of City's contractor, subcontractor(s), or their respective

officers, employees, or agents under the resulting contract or otherwise related to the Project.

- ii. Any such indemnification shall also provide that City's contractor shall ensure that neither City's contractor(s) or its subcontractor(s) nor any attorney engaged by any City contractor or subcontractor shall defend any claim in the name of the State of Oregon or any City of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that any City contractor or subcontractor is prohibited from defending the State of Oregon, or that any City contractor or subcontractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against City's contractor(s) and subcontractor(s) if the State of Oregon elects to assume its own defense.

c. Contract Insurance:

- i. City shall each require the other party or parties to each of its contracts, that are not units of local government as defined in ORS 190.003, to meet the minimum insurance requirements provided in Exhibit B, attached hereto and by this reference made a part hereof.
 - ii. City shall perform a risk assessment for the work to be performed under its contract(s) and determine insurance types and amounts as appropriate based on the risk of the work outlined within each contract, and shall each require its contractor(s) to carry such insurance, except that the required insurance types and amounts may not be less than those identified in Exhibit B. City may specify insurance requirements for its contractor(s) above the minimum insurance requirements specified in Exhibit B.
 - iii. City shall each obtain proof of the required insurance coverages, as applicable, from any contractor it hired to provide services related to the contract.
 - iv. City shall each require its contractor(s) to require and verify that all subcontractors carry insurance coverage that the contractor(s) deems appropriate based on the risk of the subcontracted work.
- d. City shall include provisions in each of its contracts requiring its contractors to comply with the indemnification and insurance requirements in subparagraphs b and c of this CITY OBLIGATIONS, Paragraph 19.
20. City grants State the right to enter onto City right of way for the performance of duties as set forth in this Agreement.

21. 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 highway project; identify and obtain all required permits; 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, provide technical inspection (other than inspections provided by State under State Obligations), project management services and other necessary functions for sole administration of the construction contract entered into for this Project.
22. City shall design and construct the Project in conformance with the current edition of the ODOT Highway Design Manual and the Oregon Standard Specifications for Construction in place at the time the work is conducted. City, or its contractor, understands the Project shall be designed and constructed to State standards and approved by State prior to advertisement for bid or construction of Project.
23. Plans are reviewed by State in general only and do not relieve City from completing the Project in a manner satisfactory to State. The State Project Manager may require field changes. When revisions are made in the field, City is responsible to provide "as constructed" drawings as described in City obligations, paragraph 21.
24. City shall provide on-site detention for storm water runoff that exceeds that of the undeveloped site, if mandated by downstream capacity limitations.
25. If any new stormwater system is connected to a State drainage system, the stormwater must be treated prior to discharge. All requests for connection to a State storm system must meet any requirements of the National Pollutant Discharge Elimination System (NPDES). This may include local jurisdiction approval of on-site water quality treatment facilities and/or development of an operation and maintenance plan for any on-site water quality treatment facility as determined by the local jurisdiction.
26. A storm drainage study stamped by an Oregon registered professional engineer is required prior to the start of Project work. The study must meet standards of the National Pollution Discharge Elimination Systems (NPDES) when a four inch pipe is inadequate to serve the developed area, development site is one acre or larger in size and directly or indirectly affects state facilities.
27. City, or its contractor, shall protect the Project area in accordance with the Manual on Uniform Traffic Control Devices and the Oregon Temporary Traffic Control Handbook in place at the time the work is conducted.
28. City shall notify the State District office at least 5 business days/weeks prior to performing work within state highway right of way to coordinate the work under this Agreement with other work occurring on the state highway.

29. City shall be responsible and liable for (1) investigating presence/absence of any legally protected or regulated environmental resource(s) in the action area; (2) determining any and all restrictions or requirements that relate to the proposed actions, and complying with such, including but not limited to those related to hazardous material(s), water quality constraints, wetlands, archeological or historic resource(s) state and federal threatened or endangered species, etc., if mandated by the funding agency, (3) complying with all federal, state, and local laws, and obtaining all required and necessary permits and approvals.
30. If City, or its contractors, impacts a legally protected/regulated resource, City shall be responsible for all costs associated with such impact, including, but not limited to all costs of mitigation and rehabilitation, and shall indemnify and hold State harmless for such impacts and be responsible and liable to the State for any associated costs for claims that State may have.
31. City shall not restrict travel on OR 99E during the hours of daylight, on weekends, or holidays; or between 5am to 9am and 5pm to 8pm Monday through Friday.
32. City is responsible for and ensures that all survey monuments recorded with a county and within or adjacent to the highway right of way shall be preserved in accordance with ORS 209.140 and 209.150. Any such monumentation that is damaged or removed during the course of the Project must be replaced in compliance with ORS Chapter 209 stipulations, the State Right of Way Monumentation Policy, and at City's own expense.
33. City is also responsible, at its own expense, for replacement of any additional State survey marks or other monumentation not recorded with a county that are damaged or removed during the course of the Project. In the event of such replacement, City shall contact State's Geometronics Unit for replacement procedures.
34. If additional right of way is acquired for state highway right of way purposes as a result of the Project, then a right of way monumentation survey is required as defined in ORS 209.150 and 209.155. City agrees to provide such a survey, at its own expense, following ORS Chapter 209 stipulations, State Right of Way Monumentation Policy, and State's Geometronics Unit review and approval, and to file the legal survey with the appropriate City Surveyor's office as required.
35. Agency agrees to relinquish to State any right of way acquired for state highway right of way purposes as a result of the Project.
36. In the event any portion of this Project affects railroad right of way, City shall be responsible for notifying the appropriate railroad company of the Project, the construction and approval of all required agreements and for all costs associated with railroad related tasks identified above.
37. City certifies and represent that the individual(s) signing this Agreement on its behalf has been authorized to enter into and execute this Agreement on its behalf, under the

direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind it.

38. City's Project Manager for this Project is Jerry Nelzen, 222 NE 2nd Avenue, P.O. Box 930, Canby, OR, 503-266-0759, nelzenj@canbyoregon.gov, or assigned designee upon individual's absence. City shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATION

1. State shall, upon execution of this Agreement, forward to City a letter of request for an advance deposit or irrevocable letter of credit in the amount of \$123,000 for payment of the work performed by State under this Agreement. State will review the Project plans, perform periodic inspection for internal documentation purposes, perform signal turn-on, timing, and testing for State owned or maintained signals. State agrees to not incur costs exceeding \$123,000 without first submitting to City a request for additional deposit accompanied by an itemized statement of expenditures and an estimated cost to complete Project and receiving City's approval.
2. Upon completion of the Project, State shall either send to City a bill for the amount which, when added to City's advance deposit, will equal 100 percent of the total state costs for Project or State will refund to City any portion of said advance deposit which is in excess of the total State costs for Project.
3. State shall, upon signal turn on and proper operation, perform all necessary maintenance of the Project traffic signal, control the timing established for operation of the traffic signal, and pay for maintenance costs, except electrical power, for the traffic signal.
4. State shall maintain standard white striping along OR 99E installed as part of the Project.
5. State grants authority to City to enter upon State right of way for the construction of this Project as provided in this Agreement upon State approval of Project plans and coordination with State District 2B Office.
6. City will provide notice to State when it believes all work is complete. Within fifteen days of notice from City that City believes all work is complete, State will perform the final inspection of the Project and notify City that it agrees all work is complete or give City written instruction regarding incomplete or unsatisfactory work. Upon request by City, State will promptly re-inspect the Project to confirm the incomplete or unsatisfactory work has been satisfactorily completed. State will issue a Final Acceptance notice to City when all work is inspected and accepted.
7. State 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.

8. State's Project Manager for this Project is Aref Bozorgnia, ODOT District 2B, 9200 SE Lawnfield Rd, Clackamas, OR 97015, 971-673-1268, aref.bozorgnia@odot.oregon.gov, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by any Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
2. State may terminate this Agreement effective upon delivery of written notice to City or at such later date as may be established by State, under any of the following conditions:
 - a. If City fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If City fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If City fails to provide payment for this Project, including payment to State for work performed by State.
 - 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 State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. All employers 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' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Each Party shall ensure that each of its contractors complies with these requirements.
5. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or

City with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

6. With respect to a Third Party Claim for which State is jointly liable with City (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by City in such proportion as is appropriate to reflect the relative fault of State on the one hand and of City on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of City on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
7. With respect to a Third Party Claim for which City is jointly liable with State (or would be if joined in the Third Party Claim), City shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of City on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of City on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. City's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
8. If City fails to maintain facilities in accordance with the terms of this Agreement, State, 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.
9. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

10. 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.
11. 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 State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.
12. **Electronic Signatures.** The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the Contract, Work Orders, and amendments, submitted or exchanged via email are “Electronic Signatures” under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. Agency reserves the right at any time to require the submission of the hard copy originals of any documents.

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

City/ODOT
Agreement No. 73000-00019655

CITY OF CANBY, by and through its elected officials

By _____

Date _____

By _____

Date _____

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

By _____
City's Counsel

Date _____

City Contact:

Jerry Nelzen
222 NE 2nd Avenue
P.O. Box 930
Canby, OR
503-266-0759
nelzenj@canbyoregon.gov

STATE OF OREGON, by and through
its Department of Transportation

By _____
Delivery and Operations Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Manager

Date _____

By _____
Region 1 Maintenance & Operations Manager

Date _____

By _____
District 2B Manager

Date _____

By _____
State Traffic Engineer

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By Stacy Posegate _____
Assistant Attorney General

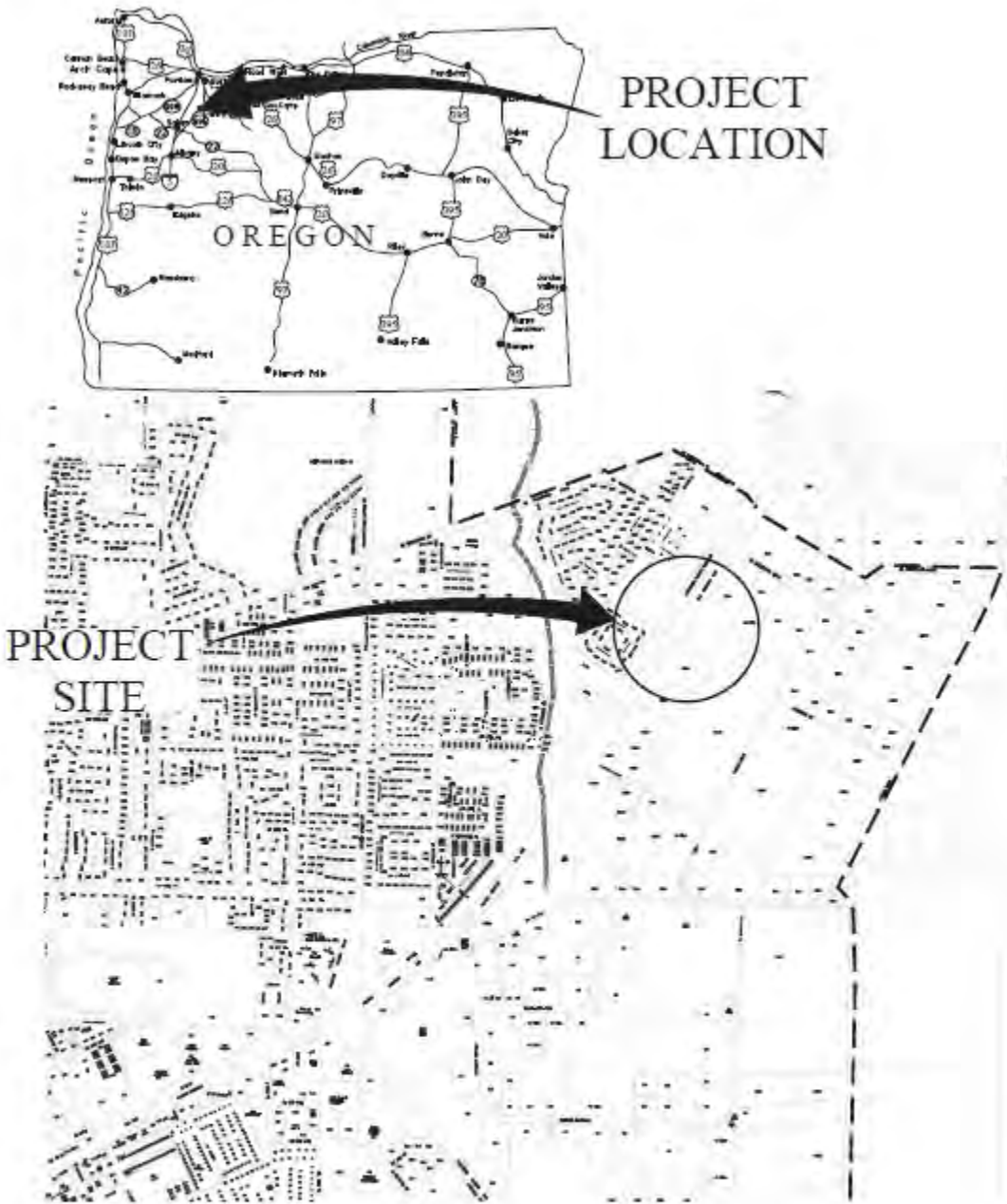
Date via email dated June 6, 2024

State Contact:

Aref Bozorgnia
9200 SE Lawnfield Rd
Clackamas, OR 97015
971-673-1268
Aref.bozorgnia@odot.oregon.gov

EXHIBIT A – Project Location Map

SEE NEXT PAGE



CITY OF CANBY

VICINITY MAP
SCALE: 1" = 1000'



EXHIBIT B

City Contract Insurance Requirements

1. GENERAL.

- a. City shall require, in its contracts with entities that are not units of local government as defined in ORS 190.003 (if any), that its contractors: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the contract commences, and ii) maintain the insurance in full force throughout the duration of the contract. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to City. City shall not authorize work to begin under the contract until the insurance is in full force. Thereafter, City shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. City shall incorporate appropriate provisions in the contract permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall City permit work under a contract when City is aware that the contractor is not in compliance with the insurance requirements. All references to "contractor" in this Exhibit B refer to City's contractor as identified in this Paragraph 1.a.
- b. The insurance specified below is a minimum requirement that City shall require its contractor to meet, and shall include such requirement in City's contract with its contractor. City may determine insurance types and amounts in excess of the minimum requirement as deemed appropriate based on the risks of the work outlined within the contract.
- c. City shall require each of its contractors to require that all of its subcontractors carry insurance coverage that the contractor deems appropriate based on the risks of the subcontracted work. Contractor shall obtain proof of the required insurance coverages, as applicable, from any subcontractor providing services related to the Contract.

2. TYPES AND AMOUNTS.

a. WORKERS COMPENSATION.

All employers, including City's contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide **Workers' Compensation Insurance** coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employer's Liability Insurance with limits not less than \$500,000 each accident. **Contractor shall require compliance with these requirements in each of its subcontractor contracts.**

b. PROFESSIONAL LIABILITY.

Architecture and Engineering (A&E) and Related Services: Professional Liability Insurance is required for A&E design services and A&E-related services, except that Professional Liability coverage may be waived by City for low-risk related services, such as public involvement or outreach.

General:

Professional liability insurance must cover damages caused by negligent acts, errors, or omissions of contractor and contractor's subcontractors, agents, officers, or employees related to the professional services to be provided under the contract.

Coverage shall be written with a per claim, incident, or occurrence limit, or the equivalent, of not less than **\$1,000,000** **\$2,000,000** **\$5,000,000**.

Annual aggregate limits shall not be less than **\$2,000,000** **\$4,000,000**
 \$10,000,000.

If this insurance is provided on a "claims made" basis, contractor shall maintain continuous claims made liability coverage or shall acquire tail coverage to continue the same coverage for a duration of at least **2 years**, unless **3 years** or **5 years** is specified, after completion of the contract or for the foregoing extended period beyond contract expiration or termination. Evidence of any required extended period coverage will be a condition of final payment under the contract.

c. COMMERCIAL GENERAL LIABILITY.

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

Coverage shall be written on an occurrence basis in an amount of not less than **\$1,000,000** **\$2,000,000** **\$5,000,000** per occurrence.

Annual aggregate limit shall not be less than **\$2,000,000** **\$4,000,000**
 \$10,000,000.

d. AUTOMOBILE LIABILITY.

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

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

This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability).

e. EXCESS/UMBRELLA LIABILITY.

A combination of primary and Excess/Umbrella Liability Insurance may be used to meet the required limits of insurance.

f. ADDITIONAL INSURED.

The liability insurance coverages, except Professional Liability or Workers' Compensation/Employer's Liability, if included, must endorse the "**State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents, and employees**" as an **endorsed** Additional Insured but only with respect to the contractor's activities to be performed under the contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

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

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

g. "TAIL" COVERAGE.

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

maintain “tail” coverage for the maximum time period that “tail” coverage is reasonably available in the marketplace.

3. NOTICE OF CANCELLATION OR CHANGE.

The contractor or its insurer must provide thirty (30) days’ written notice to City before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s). **City shall immediately notify State of any change in insurance coverage.**

4. CERTIFICATE(S) OF INSURANCE.

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