



City of Canby

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Canby, OR 97013 www.canbyoregon.gov

MEMORANDUM

TO: *Honorable Mayor Hodson and City Council*
FROM: *Jennifer Cline, Public Works Director*
DATE: *August 15, 2018*
THROUGH: *Rick Robinson, City Administrator*

Issue: The City of Canby, Public Works budgeted to complete a transportation improvement project to reconstruct the northeast corner of the intersection of North Elm Street and OR 99E to improve traffic flow and business access to the Industrial Park. This project is part of a larger project to implement a rail corridor “Quiet Zone” at S Elm Street, S Grant Street and S Ivy Street. This staff report is to request Council’s approval all terms and conditions of the State of Oregon Immediate Opportunity Fund (IOF) agreement are finalized and is ready for execution by the City.

Recommendation: *Staff recommends the Council approves Ordinance No. 1492*

Fiscal Impact: The project is estimated to cost \$275,903.00 and the State of Oregon will provide fifty percent of the total cost of the project up to a maximum of \$137,951.00

Recommended: Pass Ordinance No. 1492

Motion: **“I move to approve Ordinance AN ORDINANCE AUTHORIZING THE MAYOR AND/OR CITY ADMINISTRATOR TO EXECUTE AN IMMEDIATE OPPORTUNITY FUND AGREEMENT WITH THE STATE OF OREGON DEPARTMENT OF TRANSPORTATION FOR THE RECONSTRUCTION OF THE INTERSECTION OF NORTH ELM STREET AND OR-99E IN AN AMOUNT NOT TO EXCEED \$137,951.00; AND DECLARING AN EMERGENCY to come up for second reading on September 5, 2018.”**

Attachments:

- Ordinance No. 1492 and Business Oregon Letter
- Ordinance No. 1492 Exhibit A – Immediate Opportunity Fund Agreement OR99E (Pacific Highway East) at S Elm St (Canby)



September 18, 2017

Matthew Garrett, Director
Oregon Department of Transportation
355 Capitol Street N.E., Room 135
Salem, OR 97301-3871

RE: Immediate Opportunity Fund (IOF) Request – \$137,951 (Type B)
Northeast corner of N. Elm Street, Canby, OR
City of Canby

Dear Mr. Garrett,

The Oregon Business Development Department (Business Oregon) and the Oregon Department of Transportation (ODOT) have worked closely with the City of Canby to expand development opportunities in the city. In order to improve transportation flow and business access, the turning radius at the northeast corner of N. Elm Street needs to be improved.

Background

The City of Canby has been proactively working to revitalize its industrial and business centers through careful planning and financial investments. Efficient truck movement within and through Canby plays a vital role in maintaining and developing Canby's economic base due to the significance of the city's industrial areas and the use of OR 99E as a key freight corridor for the region. There are approximately 120 trucks per day entering and exiting the Northwest Industrial Park area off N. Elm Street. Currently, trucks needing to access the industrial area must either swing out into the other lane of traffic or run up over the existing American with Disabilities Act curb and sidewalk to make the turn from OR 99E onto N. Elm Street.

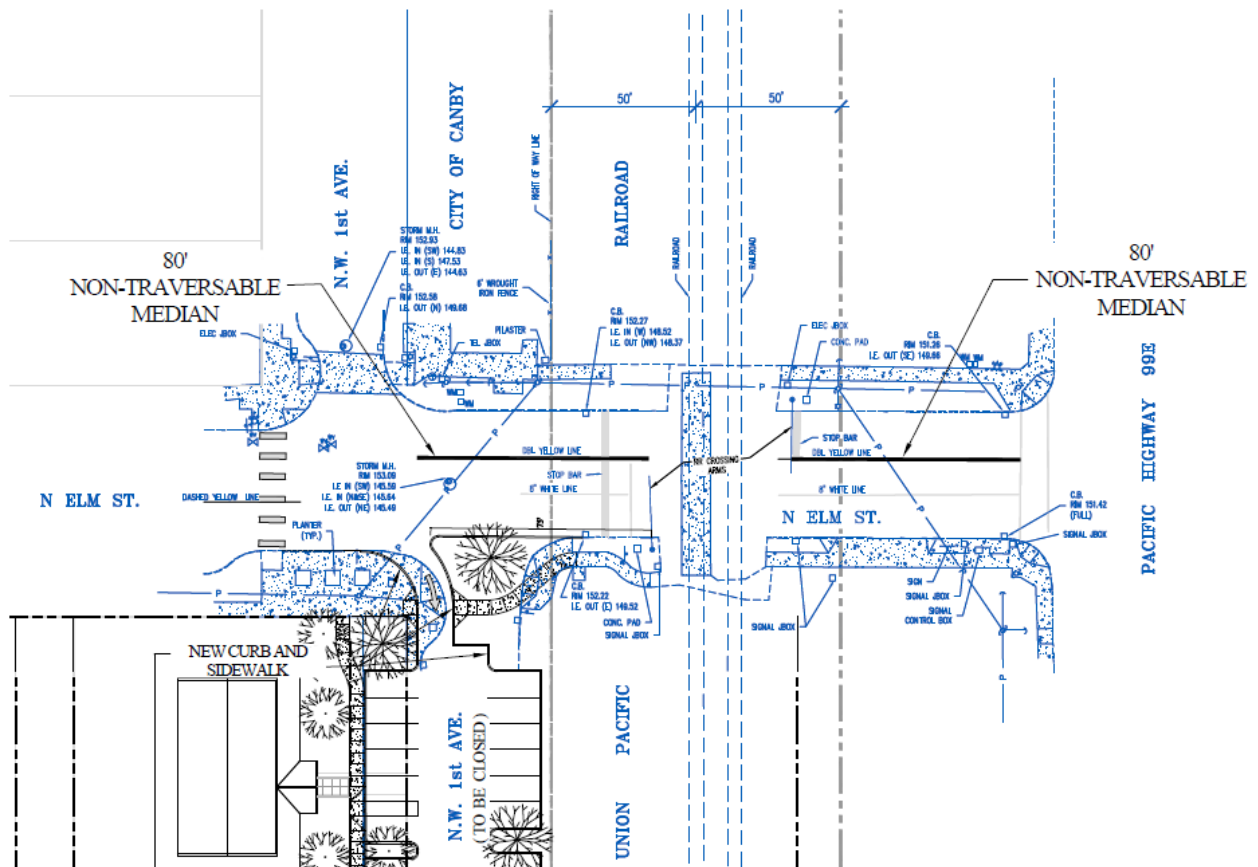
OR 99E and the Union Pacific Railroad bisect Canby, creating both opportunities and challenges for economic development. Canby has eight at-grade public railroad crossings within the urban growth boundary, with seven abutting business and industrial concerns. Throughout planning efforts, the noise generated by the 30 trains per day was identified as a major problem for commerce. Every adopted plan has noted the need for the City of Canby to pursue a Quiet Zone designation.

A Quiet Zone is a section of a rail line that contains one or more consecutive public crossings at which locomotive horns are not routinely sounded. To obtain approval for the Quiet Zone, the City needs to install a median on N. Elm Street.

The improved street and designated truck route will provide safer and more direct access to the Northwest Industrial Park. Additionally, the Quiet Zone designation will enhance the development opportunities in the city.

Project

The project will include reconstructing the N. Elm Street turning radius to better accommodate industrial truck trailers and will allow the City of Canby to implement the required Quiet Zone improvements.



N. ELM ST. RR CROSSING MEDIAN IMPROVEMENTS



Budget Summary

A summary of the budget for the project, with basic road specifications, is as follows:

BID ITEM NUMBER	ITEM	UNIT	QUANTITY	UNIT COST	ITEM COST
0200	MOBILIZATION AND TRAFFIC CONTROL				
0210-0100000A	MOBILIZATION	LS	0.1	\$86,343.57	\$8,634
0225-0101000A	TEMPORARY WORK ZONE TRAFFIC CONTROL, COMPLETE	LS	0.2	\$71,952.97	\$14,391
0280	EROSION CONTROL				
0280-0100000A	EROSION CONTROL	LS	1	\$1,000.00	\$1,000
0290-0100000A	POLLUTION CONTROL PLAN	LS	1	\$500.00	\$500
0300	ROADWORK				
0305-0100000A	CONSTRUCTION SURVEY WORK	LS	2	\$1,000.00	\$2,000
0330-0105000K	GENERAL EXCAVATION	CUYD	25	\$40.00	\$1,000
0400	DRAINAGE AND SEWERS				
0445-035012AF	12 INCH STORM SEWER PIPE, 5 FT DEPTH	FOOT	40	\$125.00	\$5,000
0470-0304000E	CONCRETE INLETS, TYPE CG-1	EACH	2	\$2,000.00	\$4,000
0500	BRIDGES				
0600	BASES				
0700	WEARING SURFACES				
0730-0100000M	EMULSIFIED ASPHALT FOR TACK COAT	TON	-	\$550.00	\$0
0745-0402000M	LEVEL 4, 1/2 INCH ACP	TON	24.56	\$100.00	\$2,456
0745-0640100M	PG 70-22ER ASPHALT IN ACP	TON	1.44904	\$550.00	\$797
0759-0100000F	CONCRETE CURBS	FOOT	80	\$20.00	\$1,600
0759-0128000J	CONCRETE WALKS	SOFT	360	\$10.00	\$3,600
0759-0154000E	EXTRA FOR NEW SIDEWALK RAMPS	EACH	2	\$5,000.00	\$10,000
0800	PERMANENT TRAFFIC SAFETY AND GUIDANCE DEVICES				
0900	PERMANENT TRAFFIC CONTROL AND ILLUMINATION SYSTEMS				
1000	RIGHT OF WAY DEVELOPMENT AND CONTROL				
8000	OTHER				
8000-9Z90001	Hydrant relocation	UNIT	1		\$10,000
8000-9Z90002	ped poles	UNIT			\$30,000
	BID ITEMS SUBTOTAL				\$94,978
	CONTINGENCIES (3.5% min. at Final Plans)			25%	\$23,744
	CONSTRUCTION ENGINEERING				\$80,000.00
	ANTICIPATED ITEMS (Confirm Anticipated Items with Area Manager)	LS	1		\$0
	ANTICIPATED ITEM - PUBLIC OUTREACH	LS	1		\$10,000
	ANTICIPATED ITEM - ESCALATION	LS	1		\$0
	ANTICIPATED ITEM - SMOOTHNESS BONUS OR STATISTICAL BONUS	LS	1		\$0
	TOTAL CONSTRUCTION COST				\$208,722
	PRELIMINARY ENGINEERING	LS	1	25%	\$52,181
	UTILITY REIMBURSEMENTS	LS	1		\$0
	RIGHT OF WAY ESTIMATE (Request Est. from Right of Way)	LS	1	\$15,000.00	\$15,000
	TOTAL ESTIMATE				\$275,903

Immediate Opportunity Fund Program Type

This project falls under the category of Type B: Benefits in terms of a revitalized business district or industrial center through the construction of road improvements.

How the Project Meets Immediate Opportunity Fund Criteria

- The project will result in a revitalized business district and industrial park, which will increase opportunities for the properties in the City of Canby to be developed and redeveloped, and create jobs in Canby, Oregon.
- The road improvements will be in the public right-of-way and will be owned and maintained by the City of Canby.
- The road improvements will serve general transportation needs and conform to access management policies.
- The IOF grant represents 50 percent of the estimated cost for the road improvements, with the City of Canby providing the remaining funds necessary to complete the road improvements (\$137,951).
- The road improvement project and the development meet all necessary land use and environmental requirements. Permits for the project and development are in the process of being obtained and there are no known issues that would prevent issuance of the permits.
- The project is consistent with the regional priorities for community and economic development developed by the relevant Regional Solutions Advisory Committee.

This project has been reviewed by the Business Oregon Regional Development Officer with the ODOT Region 1 Manager, the City of Canby, and the Metro Regional Solutions Team.

Business Oregon recommends an IOF award of \$137,951 to the City of Canby to construct the improvements described above which will allow Canby to reduce traffic congestion, increase safety, improve access to the Northwest Industrial Park and Canby's Pioneer Industrial Park, and activate redevelopment of its downtown main street into a vibrant commercial district.

I look forward to working with you on this important project to advance Oregon's economy.

Sincerely,



Chris Harder
Director

C: Rian Windsheimer, Region 1 Manager, ODOT
Chris Cummings, Assistant Director, Business Oregon
Bryan Guiney, Regional Development Officer, Business Oregon

ORDINANCE NO. 1492

AN ORDINANCE AUTHORIZING THE MAYOR AND/OR CITY ADMINISTRATOR TO EXECUTE AN IMMEDIATE OPPORTUNITY FUND AGREEMENT WITH THE STATE OF OREGON DEPARTMENT OF TRANSPORTATION FOR THE RECONSTRUCTION OF THE INTERSECTION OF NORTH ELM STREET AND OR-99E IN AN AMOUNT NOT TO EXCEED \$137,951.00; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby wishes to reconstruct the northeast corner of the intersection of North Elm Street and OR 99E to improve transportation flow and business access to the Industrial Park; and

WHEREAS, The State of Oregon has an Immediate Opportunity Fund (IOF) to support primary economic development in Oregon through the construction and improvement of streets and roads; and

WHEREAS, the project is estimated to cost \$275,903.00 and the State of Oregon will provide fifty percent of the total cost of the project up to a maximum of \$137,951.00; and

WHEREAS, all terms and conditions of the agreement are finalized and the IOF agreement is ready for execution by the City; and

WHEREAS, the City Council has determined that it is in the best interest of the City to enter into the proposed IOF agreement.

NOW, THEREFORE, CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Mayor and/or City Administrator are hereby authorized and directed to make, execute, and declare in the name of the City of Canby and on its behalf, an agreement with the State of Oregon Department of Transportation which is attached hereto as "Exhibit A".

Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to complete this project as soon as possible, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, August 15, 2018, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on Wednesday, September 5, 2018, commencing at the hour of 7:00 p.m. in the Council Meeting Chambers located at 222 NW 2nd Avenue, 1st Floor, Canby, Oregon.

Kimberly Scheafer, MMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 5th day of September 2018, by the following vote:

YEAS _____

NAYS _____

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

**IMMEDIATE OPPORTUNITY FUND AGREEMENT
OR99E (Pacific Highway East) at S Elm St (Canby)**

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 "Agency," each herein referred to individually as a "Party" and collectively as the "Parties."

RECITALS

1. The Oregon Transportation Commission ("OTC") at its July 15, 1988, meeting approved establishing an Immediate Opportunity Fund ("IOF") to support primary economic development in Oregon through the construction and improvement of streets and roads. The OTC, at its meeting on March 19, 2015, revised the guidelines for the use of this fund. IOF funds are limited to: Type A) specific economic development projects that affirm job retention and job creation opportunities; Type B) revitalization of business or industrial centers to support economic development; Type C) preparation of Oregon certified project-ready industrial sites; and Type D) preparation of regionally significant industrial areas.
2. Agency desires to reconstruct the northeast corner of the intersection of OR-99E and North Elm Street (the "Project"). The Project will improve transportation flow and business access to Agency's Northwest Industrial Park and open additional redevelopment opportunities in Agency's downtown district.
3. The Oregon Business Development Department recommended use of Type B IOF funds for use on the Project via letter dated September 18, 2017. The OTC approved Type B IOF funds for use on the Project on November 17, 2017.
4. OR 99E is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission. North Elm Street is a part of the city street system under the jurisdiction and control of Agency.
5. By the authority granted in Oregon Revised Statute (ORS) 190.110, 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.
6. 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.

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

TERMS OF AGREEMENT

1. Agency shall design and construct the Project. The Project consists of relocating a hydrant and pedestrian signal pole and reconstructing a portion of sidewalk to improve the turning radius at North Elm Street. The location of the Project is set forth in Exhibit A, attached hereto and by this reference made a part hereof.
2. The total cost of the Project is estimated to be \$275,903, which is subject to change. State shall provide IOF funds to pay for fifty percent of the total cost of the Project up to a maximum of \$137,951. Agency is responsible for all remaining costs of the Project, including all costs in excess of the total estimated cost.
3. The Parties shall ensure that the Project meets all applicable IOF criteria set forth in the Immediate Opportunity Fund Policy Guidelines as revised by the OTC on March 19, 2015, available at: <http://www.oregon.gov/gov/admin/regional-solutions/Documents/Mid-Valley/4.3.15.MidValley.IOF.Guidelines.pdf>
4. This Agreement does not affect the existing maintenance obligations of the Parties on those streets affected by the Project.
5. This Agreement is effective as of the date all required signatures are obtained and terminates upon completion of the Project or ten (10) calendar years, whichever is sooner.

STATE OBLIGATIONS

1. State shall assign, at its own expense, a Project Manager to monitor Agency's work on the Project. State shall review all environmental documents, Project plans, specifications, and cost estimates prepared by Agency or Agency's consultants within twenty (20) working days of submittal by Agency and before advertisement of construction bids. State's Project Manager shall within twenty (20) working days review all monthly invoices submitted by Agency for reimbursement
2. State's Project Manager will arrange for a final inspection of the Project upon notification from Agency of Project completion. State, in its sole discretion, shall determine if the Project has been completed in a satisfactory manner.
3. Upon the start of construction of the Project, State shall, as soon as practically possible and within thirty (30) days following receipt of approved monthly itemized invoices, reimburse Agency for fifty percent (50%) of the eligible Project construction costs incurred until the total of \$137,951 of approved IOF funds has been paid to Agency or until the Project is completed, whichever occurs first. Eligible Project costs are those costs State deems necessary for Agency's completion of the Project's preliminary engineering, right of way acquisition, and construction. Agency

shall be responsible for all remaining Project costs. Travel expenses will not be reimbursed.

4. State certifies that, at the time this Agreement is executed, sufficient funds are available and authorized for expenditure to finance the costs of this Project.
5. State certifies and represents that the individual signing this Agreement has been authorized to enter into and execute this Agreement on behalf of State, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind State.
6. State's Project Manager for this Project is Matt Freitag, 123 NW Flanders Street, Portland, OR 97209, (503) 731-4851, matthew.d.freitag@odot.state.or.us, 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.

AGENCY OBLIGATIONS

1. Agency shall deliver the Project according to the terms of this Agreement.
2. Agency or its consultant shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; obtain all required permits; arrange for all utility relocations or reconstruction; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid documents; and provide Project management services and other necessary functions for sole administration of the contract.
3. Agency shall advertise and award all contracts and pay all contractor costs. Agency shall award a contract for construction of the Project within two (2) years of the effective date of this Agreement, unless granted a written extension by State. Construction must be completed within five (5) years of the effective date of this Agreement.
4. Agency shall submit to State's assigned Project Manager all environmental documents and Project plans, specifications and cost estimates before advertisement for construction bids.
5. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
6. Agency shall use State road standards for those portions of the Project within State rights-of-way.
7. Agency or its consultant shall acquire all necessary right of way in accordance with and in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the ODOT Right of Way Manual. Certification of right of way acquisition work must be made by the Agency (or on behalf of its consultant) doing the work. If Agency acquires the right of

way, they shall provide a letter from Agency's legal counsel certifying that 1) the right of way needed for the Project has been obtained and 2) right of way acquisition has been completed in accordance with the right of way requirements contained in this Agreement. The certification form shall be routed through the State Region 1 Right of Way Office for co-signature and possible audit. If Agency elects to have State perform right of way functions, a separate agreement shall be executed between Agency and State right of way, referencing this Agreement number.

8. If Agency enters into a construction contract for performance of work on the Project, then Agency will require its contractor to provide the following:
 - a. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under the resulting contract.
 - b. Contractor and Agency shall name State as a third party beneficiary of the resulting contract.
 - c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than \$2,000,000 for each job site or location. Each annual aggregate limit will not be less than \$4,000,000.
 - d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than \$1,000,000.
 - e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees as Additional Insured but only with respect to Contractor's activities to be performed under the resulting contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.
 - f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance

coverage(s) without thirty (30) days written notice from Contractor's or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.

9. Agency shall keep accurate cost accounting records. Agency shall prepare and submit monthly itemized progress reports and invoices for construction directly to State's Project Manager for review and approval. Such invoices will be in a form identifying the Project, the agreement number, the invoice number or the account number or both, and will itemize all expenses for which reimbursement is claimed. Travel expenses will not be reimbursed.
10. All employers, including Agency, 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. State and Agency shall ensure that each of its subcontractors complies with these requirements.
11. Agency agrees that should any environmental or land-use issues arise at any time during the development or construction of the Project, State may, at its discretion and when exercised in good faith, withhold payment until it is satisfied that the issue has been resolved. Agency shall submit to State any change orders that substantially change the plans and specifications or the submitted scope of work as approved by the OTC and as identified in this Agreement.
12. Agency shall provide to State electronic copies of the permanent mylar "as constructed" plans for work on state highways.
13. Agency shall require its contractor(s) and subcontractor(s) 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, Oregon Transportation Commission and its members, Oregon Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260 (Claims), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that State shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of State, be indemnified from and against all Claims caused or alleged to be caused by the contractor or subcontractor.
14. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The

State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor 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 Agency's contractor if the State of Oregon elects to assume its own defense

15. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of Agency that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts. Agency shall retain and keep all files and records for a minimum of six (6) years after completion of the Project.
16. Agency 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, Agency 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.
17. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from State.
18. Agency certifies and represents that the individuals signing this Agreement have been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
19. Agency's Project Manager for this Project is Jennifer Cline, Public Works Director, PO Box 930, 1470 Territorial Road, Canby, OR 97013, (503) 266-0780, clinej@canbyoregon.gov, or assigned designee upon individual's absence. Agency 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 mutual written consent of both Parties.
2. State may terminate this Agreement, effective upon delivery of written notice to Agency or at such later date as may be established by State, under any of the following conditions:

- a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. 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.
 - f. If Agency fails to award a construction contract or complete the project according to the terms set forth in Agency Obligations paragraph 4.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. **Americans with Disabilities Act Compliance:**
- a. 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, the Parties 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, modification, upgrade, or construction of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
 - iii. At Project completion, send a completed 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 to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<https://www.oregon.gov/ODOT/Construction/Pages/Forms.aspx>

- b. Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Agency 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 at least 10 days prior to the start of construction.
 - c. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
 - i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Any repairs or removal of obstructions needed to maintain Project features in compliance with the ADA requirements that were in effect at the time of Project construction are completed by Agency or abutting property owner pursuant to applicable local code provisions,
 - 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.
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 Agency 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 Agency (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 Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency 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 Agency 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 Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency 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 Agency 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 Agency 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. Agency'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. 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.
9. Agency agrees to refund to State all Immediate Opportunity Funds expended by State in connection with this Project if this Agreement is terminated for any reason prior to completion of Project. Agency shall make such refund to State within three (3) months from the date of the termination of the Agreement.

10. State and Agency agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
11. 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.
12. 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.

Signature Page to Follow

Agency/State
Agreement No. 32599

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.

This Project is in the 2018-2021 Statewide Transportation Improvement Program (STIP), (key number 21309) that was adopted by the Oregon Transportation Commission on July 20, 2017 (or subsequently by amendment to the STIP).

CITY OF CANBY, by and through its elected officials

By _____

Date _____

By _____

Date _____

APPROVED AS TO FORM

By _____
Agency Counsel

Date _____

Agency Contact:

Jennifer Cline, Public Works Director
PO Box 930
1470 Territorial Road
Canby, OR 97013
503.266.0780
clinej@canbyoregon.gov

STATE OF OREGON, by and through its Department of Transportation

By _____
Region 1 Manager

Date _____

APPROVAL RECOMMENDED

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By Jennifer O'Brien via email dated 7/26/18

State Contact:

Matt Freitag, Consultant Project Manager
123 NW Flanders Street
Portland, OR 97209
503.731.4851
matthew.d.Freitag@odot.state.or.us

EXHIBIT A – Project Location Map

Exhibit A

Project Location

