



RESOLUTION 2015-087

AUTHORIZING THE CITY MANAGER TO EXECUTE AN IGA WITH WASHINGTON COUNTY FOR THE KRUGER/ELWERT INTERSECTION PROJECT

WHEREAS, in February 2012, the City requested that Washington County Coordinating Committee (WCCC) recommend the Kruger/Elwert Intersection project be included in the Major Streets Transportation Improvement (MSTIP) 3d project funding list; and

WHEREAS, the Kruger/Elwert Intersection project was (and is) identified in the City's Transportation System Plan (TSP) as having mobility and safety issues, and involved three separate jurisdictional agencies, specifically, the State of Oregon DOT, Washington County DLUT (COUNTY), and the City of Sherwood (CITY); and

WHEREAS, the Kruger/Elwert Intersection project is listed in the City's current TSP projects listing (D22, Short Term Priority), the 2035 Regional Transportation System Plan (RTP Project #10680), and the Washington County 2008 TIF Base Report (Table IV.1, "Kruger/Elwert/Highway 99"); and

WHEREAS, the construction of the intersection project will correct for identified operational deficiencies and improve traffic flow and safety; and

WHEREAS, the importance of the project to the community is such that the CITY expended \$1.3 million in purchasing property necessary to locate the intersection improvements; and

WHEREAS, the County Board of Commissioners placed the Kruger/Elwert Intersection project on the MSTIP-3d project list and allocated the necessary funding; and

WHEREAS, while Kruger and Elwert Roads are under the jurisdictional control of COUNTY, portions of the roads are in the city and will impact city owned property and properties within the city limits; and


WHEREAS, in order to ensure a clear understanding of each jurisdictions role and responsibilities in the design and construction of this project, an Intergovernmental Agreement (IGA) has been developed with input from COUNTY and CITY staff and legal counsel. (see attached EXHIBIT A).

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

Section 1. That the City Manager is authorized to execute the Intergovernmental Agreement (IGA) with COUNTY for the design and construction of the Kruger/Elwert Intersection project (see attached Exhibit A).

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

Duly passed by the City Council this 17th day of November, 2015.


Krisanna Clark, Mayor

Attest:


Sylvia Murphy, MMC, City Recorder

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT BETWEEN WASHINGTON COUNTY AND THE CITY OF SHERWOOD FOR TRANSPORTATION IMPROVEMENTS RELATED TO THE ELWERT-KRUGER INTERSECTION PROJECT

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into between Washington County, a political subdivision of the State of Oregon, acting by and through its elected officials, hereinafter referred to as "COUNTY"; and the City of Sherwood, a municipal corporation, acting by and through its City Council, hereinafter referred to as "CITY," collectively referred to as the "Parties".

RECITALS

1. WHEREAS, ORS 190.010 authorizes agencies to enter into intergovernmental agreements for the performance of any or all functions and activities that a party to the agreement has the authority to perform; and
2. WHEREAS, Washington County has an approved and funded Major Streets Transportation Improvement Program (MSTIP) project to construct road improvements to and realign SW Elwert Road (a County Rural Arterial Road) and SW Kruger Road (a County Rural Local Road); and
3. WHEREAS, SW Elwert Road runs along the boundary between the CITY limits and COUNTY jurisdiction and the project area includes areas under CITY and COUNTY jurisdiction; and
4. WHEREAS, CITY recognizes COUNTY jurisdiction over COUNTY owned and operated roads and defers all decision making to COUNTY as road authority over COUNTY roads within CITY limits; and
5. WHEREAS, this project is listed as a project with committed funding in the CITY Transportation System Plan (TSP); and
6. WHEREAS, CITY has no land use process established for road improvement projects that are identified in the adopted TSP; and
7. WHEREAS, the CITY desires COUNTY to design and construct the road improvement project; and
8. WHEREAS, under such authority, it is the mutual desire of the COUNTY and CITY to enter into an Agreement to cooperate in the planning, design and construction of the improvements, with the allocation of responsibilities as detailed below.

EXHIBIT A

AGREEMENT

NOW, THEREFORE, the premise being in general as stated in the foregoing recitals, and in consideration of the terms, conditions and covenants as set forth below, the Parties hereto agree as follows:

1. PROJECT DESCRIPTION AND PROJECT PLANNING

- 1.1 The COUNTY road project improvements will include: construction of a roundabout with connecting roadways to existing roads, road realignment and widening, curbs, sidewalks, bike lanes, street lighting, drainage, landscaping, traffic control, water quality improvements and all necessary permitting on SW Elwert Road and SW Kruger Road, hereinafter "ROAD PROJECT" as shown generally on the attached Exhibit A.
- 1.2 The CITY has no transportation land use process for County roads within City limits. The CITY expressly defers to COUNTY authority over COUNTY's own road and the land use process utilized by the COUNTY. To the extent the ROAD PROJECT is upon CITY roads or CITY property, CITY agrees that COUNTY shall be the planning authority for said roads or property. The process of implementing the COUNTY land use provisions for the road improvements for both CITY and COUNTY is hereinafter referred to as the "PROJECT LAND USE PROCESS."
- 1.3 The ROAD PROJECT and PROJECT LAND USE PROCESS are referred to herein as the "PROJECT".

2. COUNTY OBLIGATIONS

- 2.1 COUNTY shall, upon execution of this Agreement, assign a Project Manager to be responsible for coordination of PROJECT with CITY.
- 2.2 COUNTY shall exercise its transportation planning authority over planning, design, and construction of the PROJECT.
- 2.3 COUNTY shall perform, or cause to be performed, all actions necessary for the design and construction of the PROJECT including project management, design and construction engineering, right-of-way acquisition, easement acquisition, regulatory and land use permits and approvals, public information, contract administration, inspection and construction management. COUNTY shall coordinate the design of, advertise for, award, and administer the construction contract for the PROJECT.
- 2.4 COUNTY shall provide CITY with the opportunity for design review of 50% design development and final plans prior to bidding. COUNTY shall conduct

EXHIBIT A

comment review with CITY at the 50% design development and final plan review period. COUNTY agrees to consider CITY comments that do not significantly impact PROJECT costs and/or schedule.

3. CITY OBLIGATIONS

- 3.1 CITY shall, upon execution of this Agreement, assign a city project manager to be responsible for coordination of PROJECT with COUNTY and to participate in the design process including public open houses.
- 3.2 CITY shall dedicate to COUNTY any reasonably necessary right-of-way or ancillary easements from any CITY-owned property for the ROAD PROJECT. Additionally, CITY shall grant access to COUNTY to construct the ROAD PROJECT in any applicable easements of record that were granted to (controlled by) CITY. These easements shall be provided to COUNTY at no cost to COUNTY.
- 3.3 CITY shall participate in the PROJECT LAND USE PROCESS in a manner including but not limited to, submission of written or oral testimony during the COUNTY's public hearing(s), particularly on matters related to COUNTY road authority, consistency between CITY and COUNTY land use planning and regulations, and CITY's deferral to COUNTY's transportation planning process.

4. COMPENSATION

- 4.1 There will be no exchange of compensation between CITY and COUNTY for PROJECT services rendered by either party. COUNTY and CITY shall each be responsible for their own costs in carrying out their respective obligations under this Agreement.

5. GENERAL PROVISIONS

5.1 LAWS OF OREGON

The parties shall comply with all applicable laws and regulations regarding the handling and expenditure of public funds. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon. All relevant provisions required by ORS Chapter 279A and 279C to be included in public contracts are incorporated and made a part of this Agreement as if fully set forth herein.

EXHIBIT A

5.2 DEFAULT

Time is of the essence in the performance of this Agreement. Either party shall be deemed to be in default if it fails to comply with any provisions of this Agreement. The non-defaulting party shall provide the other party with written notice of default and allow thirty (30) days within which to cure the default.

5.3 INDEMNIFICATION

This Agreement is for the benefit of the parties only. Each party agrees to indemnify and hold harmless the other party, and its officers, employees, and agents, from and against all claims, demands and causes of actions and suits of any kind or nature for personal injury, death or damage to property on account of or arising out of services performed, the omissions of services or in any way resulting from the negligent or wrongful acts or omissions of the indemnifying party and its officers, employees and agents. To the extent applicable, the above indemnification is subject to and shall not exceed the limits of liability of the Oregon Tort Claims Act (ORS 30.260 through 30.300). In addition, each party shall be solely responsible for any contract claims, delay damages or similar items arising from or caused by the action or inaction of the party under this Agreement.

5.4 MODIFICATION OF AGREEMENT

No waiver, consent, modification or change of terms of this Agreement is binding unless in writing and signed by both parties.

5.5 DISPUTE RESOLUTION

The parties shall attempt to informally resolve any dispute concerning any party's performance or decisions under this Agreement, or regarding the terms, conditions or meaning of this Agreement. A neutral third party may be used if the parties agree to facilitate these negotiations. In the event of an impasse in the resolution of any dispute, the issue shall be submitted to the governing bodies of both parties for a recommendation or resolution.

5.6 REMEDIES

Subject to the provisions in paragraph 5.5, any party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Washington County Circuit Court. The parties, by signature of their authorized representatives below, consent to the personal jurisdiction of that court.

In the event of any controversy or claim arising out of or relating to this agreement, or the breach thereof, the Parties may use all available remedies. In the event of mediation or arbitration, the costs shall be shared

EXHIBIT A

equally by the Parties to the dispute. Each party shall be responsible for its own costs and attorney fees for any claim, action suit or proceeding, including any appeal.

5.7 EXCUSED PERFORMANCE

In addition to the specific provisions of this Agreement, performance by any party shall not be in default where delays or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control to the party to be excused.

5.8 SEVERABILITY

If any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the Agreement will not be affected or impaired in any way.

5.9 INTEGRATION

This Agreement is the entire agreement of the parties on its subject and supersedes any prior discussions or agreements regarding the same subject.

6. TERMS OF AGREEMENT

- 6.1 The term of the Agreement shall be from the date of execution until the completion of the PROJECT, but not to exceed five (5) years.
- 6.2 This Agreement may be amended or extended for periods of up to one (1) year by mutual consent of the parties. It may be canceled or terminated for any reason by either party. Termination or cancellation shall be effective thirty (30) days after written notice to the other party, or at such time as the parties may otherwise agree. The parties shall, in good faith, agree to such reasonable provisions for closeout of the PROJECT. The CITY's adoption and agreement to the COUNTY's PROJECT LAND USE PROCESS shall survive the termination or expiration of this Agreement.

EXHIBIT A

IN WITNESS WHEREOF, the parties hereto acknowledge that they understand the terms and conditions of this Agreement and agree to be bound to those terms and conditions.

CITY OF SHERWOOD, OREGON

WASHINGTON COUNTY, OREGON

MAYOR

CHAIR, BOARD OF COUNTY
COMMISSIONERS

DATE: _____

DATE: _____

ATTEST:

CITY RECORDER

RECORDING SECRETARY

APPROVED AS TO FORM:

APPROVED AS TO FORM:

CITY ATTORNEY

COUNTY COUNSEL

EXHIBIT A

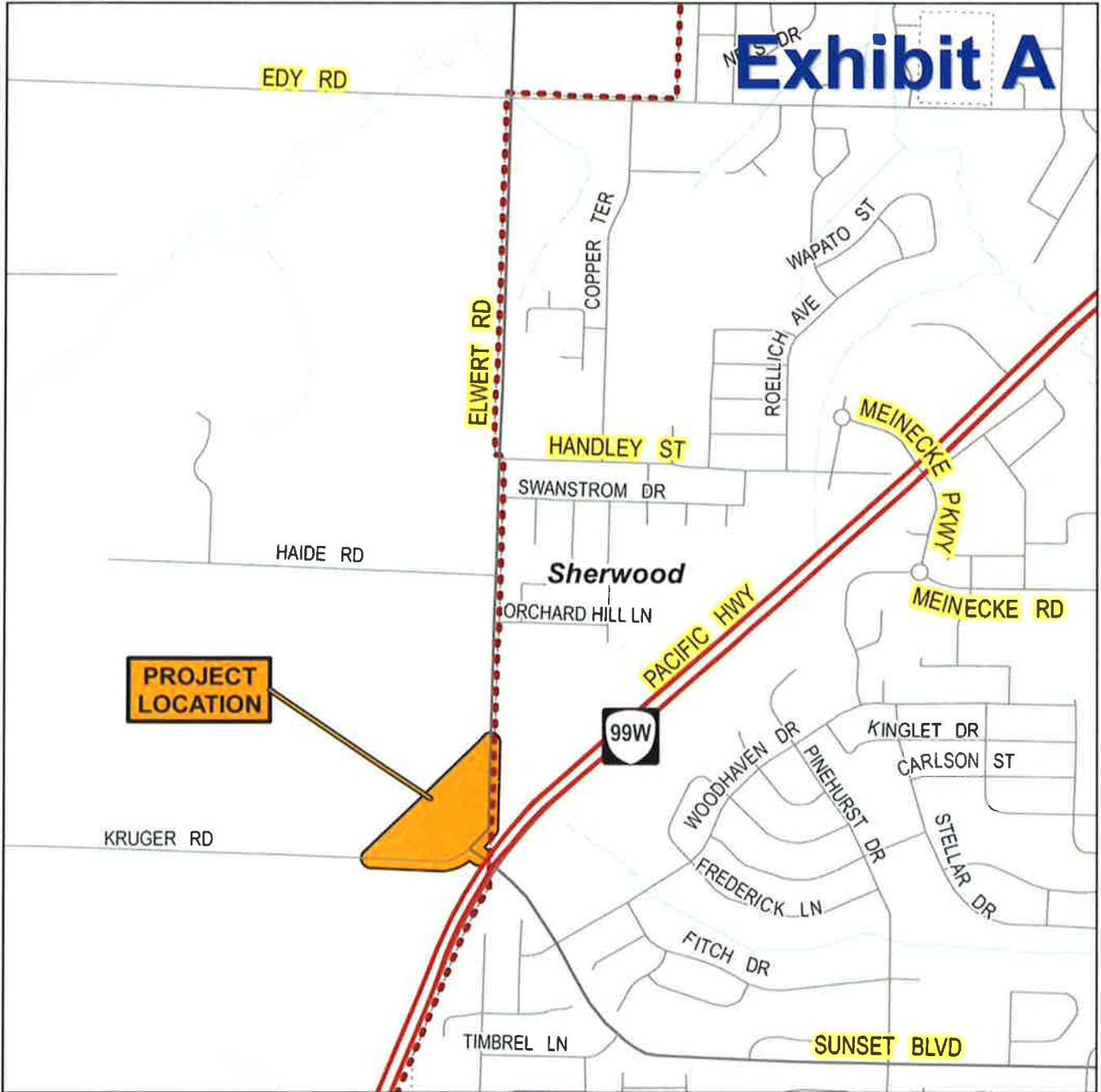


Exhibit A

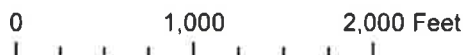
PROJECT LOCATION

SW ELWERT ROAD AT SW KRUGER ROAD INTERSECTION IMPROVEMENTS

WASHINGTON COUNTY
OREGON
Department of Land Use & Transportation
Engineering and Construction Services Division
Capital Project Management

-  Project Location
-  Highways
-  Major Roads
-  Minor Roads
-  Private Roads
-  Cities
-  Urban Growth Bdy.
-  County Boundary
-  Rivers / Lakes
Streams

For more information, contact:
Pat Oakes, Senior Project Manager
Main: 503-846-7800
patrick_oakes@co.washington.or.us
www.wc-roads.com



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Map Date: July 28, 2015