RESOLUTION NO. ~~17 2008~~

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO ISSUE A CHECK TO UNION PACIFIC RAILROAD FOR $80,000 FOR CONCRETE PANEL INSERTS IN CONJUNCTION WITH THE OAK ST. AND 37TH AVE. RAILROAD CROSSING PROJECT.

WHEREAS, the railroad pedestrian crossing at Oak St. and 37th Ave. are substandard ; and

WHEREAS, the project was approved for funding in the 2007/2008 budget; and

WHEREAS, Union Pacific Railroad is the sole source for Railroad concrete panel inserts, and

WHEREAS, the concrete panel inserts are required by Union Pacific Railroad at pedestrian crossings;

NOW, THEREFORE, BE IT RESOLVED that the City of Milwaukie authorizes the City Manager to sign a check in the amount of $80,000 payable to Union Pacific Railroad

Introduced and adopted by the City Council on March 4, 2008.

This resolution is effective on March 4, 2008.

Susan Stone, Council President
~~James Bernard, Mayor~~ /
SUSAN STONE, COUNCIL PRESIDENT

ATTEST:

Pat DuVal

Pat DuVal, City Recorder

APPROVED AS TO FORM:
Ramis, Crew, & Corrigan, LLP

City Attorney

Document2 (Last revised)

INTERGOVERNMENTAL AGREEMENT
BETWEEN

CLACKAMAS COUNTY DEPARTMENT OF HUMAN RESOURCES
COMMUNITY DEVELOPMENT DIVISION
AND
THE CITY OF MILWAUKIE

I. Purpose

A. This Agreement is entered into between Clackamas County, acting by and through its Community Development Division (COUNTY) and the City of Milwaukie (CITY) for the cooperation of units of local government under the authority of ORS 190.010.

B. This Agreement provides for the design and construction of pedestrian improvements at the 37th Avenue and Oak Street railroad crossings in the City of Milwaukie. The railroad crossings have been found to be dangerous for pedestrians and constitute architectural barriers for some residents with disabilities. The railroad crossing lights create pinched shoulders, forcing foot traffic onto the street. The design and construction of these improvements are herein referred to as the PROJECT.

II. Scope of Responsibilities

A. Under this agreement the responsibilities of the CITY shall be as follows:

1. At the request of the COUNTY, the CITY shall provide all necessary supervisory and administrative support to assist the COUNTY with the completion of the PROJECT.

2. The CITY agrees to obtain necessary engineering design services and act as agent of the COUNTY for purposes of preparing and/or acquire plans and specifications, obtaining bids and contracting for all construction work.

3. To the extent necessary the CITY shall obtain any easements or approvals necessary to allow access onto private property. At the time of execution of this Agreement, it is believed that no access onto private property will be necessary; City shall identify the boundaries of the Project area and the engineer and Contractor shall be required to advise City of any need for access beyond the PROJECT area. Acquisition of any easement shall be obtained pursuant to the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA).

4. The CITY shall pay all systems development, plan review, and inspection fees and charges within its control.

5. The CITY shall operate and maintain the improvements for public purposes for their useful life subject to the limitations on the appropriation and expenditure of funds by the CITY as provided by Oregon Statute.

B. Under this agreement the responsibilities of the COUNTY will be as follows:

1. The COUNTY will receive written approval from the CITY prior to awarding any PROJECT contracts for design or construction, and any changes, modifications, or amendments as necessary to serve the public interest.

2. In such contracts the COUNTY will assume the rights and responsibilities of the owner of the project.

3. The COUNTY agrees to provide and administer available Community Development Block Grant (CDBG) funds granted by the U.S. Department of Housing and Urban Development (HUD) to finance the PROJECT.

4. The COUNTY shall conduct necessary environmental reviews described in 570.604 of the CDBG regulations for compliance with requirements of the CDBG program.

5. The COUNTY shall provide reasonable and necessary staff for administration of the PROJECT.

C. The COUNTY and CITY agree to jointly review and approve all design, material selection, and contract documents for the PROJECT.

III. Project Budget

A. The COUNTY will apply CDBG funds in the amount of 80% of the total cost of the PROJECT up to a maximum COUNTY contribution of $70,000. The obligations of the COUNTY are expressly subject to the COUNTY receiving funds from HUD for the PROJECT, and in no event shall the COUNTY'S financial contribution exceed the amount finally granted, released and approved by HUD for this project.

B. The CITY agrees to contribute the greater of:

1. Twenty percent (20%) of the total cost of the PROJECT, or

2. All costs for design and construction which exceed available CDBG funds budgeted for the PROJECT.

C. In the event the PROJECT can not be completed with available funds the COUNTY and CITY will jointly determine the priorities of the improvements to be made within funding limits.

D. In the event a construction contractor is entitled to payments for work completed after $70,000 in CDBG funds have been expended, the COUNTY shall request a transfer of funds from the CITY for the amount necessary to make such payments.

E. The CITY shall transfer all requested funds to the Community Development Division within fourteen (14) working days of the invoice by the COUNTY. All checks shall be made payable to Clackamas County and mailed to the following address:

Attn: Toni Hessevick
Clackamas County - Finance Office
2051 Kaen Road
Oregon City, OR 97045

IV. Liaison Responsibility

Brenda Schleining will act as liaison from the CITY for the PROJECT. Steve Kelly will act as liaison from the COUNTY.

V. Special Requirements

A. The COUNTY and CITY agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.

B. Public Contracting Requirements. To the extent applicable, the provisions of ORS 279B.220, 279B.225, 279B.230, and 279B.235 are incorporated by this reference as though fully set forth.

C. Relationship of Parties. Each party is an independent contractor with regard to the other party. Neither party is an agent or employee of the other. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.

D. Indemnification. Subject to the limits of the Oregon Tort Claims Act, each of the parties agrees to hold harmless and indemnify the others, and their elected and appointed officials, agents, and employees, from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising on account of personal injuries, death or damage to property caused by or resulting from their own acts or omissions or those of their officials, agents and employees provided however, that once the CITY purchases property

that meets the needs of their program (i.e. commercial or multi-use), it will assume all responsibility for claims made thereafter against the COUNTY or its officers, agents or employees pertaining to the design and construction of the Project, and will indemnify and defend them therefore.

E. Each party shall give the other immediate written notice of any action or suit filed or any claim made against the party which may result in litigation in any way related to this Agreement.

F. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents shall be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.

G. Access to Records. The COUNTY, the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the CITY which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcripts.

H. Debt Limitation. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Obligations of the COUNTY are also expressly subject to the COUNTY receiving funds from HUD for this project and in no event shall the COUNTY's financial contribution exceed the amount finally granted, released and approved by HUD for this project.

I. Conflict of Interest. No officer, employee, or agent of the CITY or COUNTY who exercises any functions or responsibilities in connection with the planning and carrying out of the Block Grant Program, or any other person who exercises any functions or responsibilities in connection with the program, shall have any personal financial interest, direct or indirect, in the use of the funds provided pursuant to this Agreement, and the Parties shall take appropriate steps to assure compliance. The Parties will insure that no contractor, subcontractor, contractor's employee or subcontractor's employee has or acquires any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services.

J. Insurance. The CITY will bear the risk of loss from fire, extended coverage, and will purchase and maintain property insurance on all affected CITY property. The CITY will bear the risk of loss from accidents coverable by owner's liability insurance and may, at its option, maintain such insurance. If applicable,

COMMISSION shall be required to maintain flood insurance. Each party agrees to maintain insurance, or self-insurance, in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.

K. Nondiscrimination. The CITY and the COUNTY agree to comply with all Federal, State, and local laws prohibiting discrimination of the basis of age, sex, marital status, race, creed, color, national origin, familial status, or the presence of any mental or physical handicap. These requirements are specified in ORS chapter 659; Section 109 of the Housing and Community Development Act of 1974; Civil Rights Act of 1964, Title VII; Fair Housing Amendments Act of 1988; Executive Order 11063; Executive Order 11246; and Section 3 of the Housing and Urban Development Act of 1968; all as amended; and the regulations promulgated thereunder.

L. Handicapped Accessibility. The CITY agrees that all improvements made under this Agreement shall comply with standards set for facility accessibility by handicapped persons required by the Architectural Barriers Act of 1968, as amended. Design standards for compliance are contained in 24 CFR 8.31-32 and the document entitled Uniform Federal Accessibility Standards published by HUD in April, 1988 as a joint effort with other Federal agencies.

M. Nonsubstituting for Local Funding. The CDBG funding made available under this Agreement shall not be utilized by the CITY to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of funds under this Agreement.

N. Evaluation. The CITY agrees to participate with the COUNTY in any evaluation project or performance report, as designed by the COUNTY or the appropriate Federal department, and to make available all information required by any such evaluation process.

O. Audits and Inspections. The CITY will ensure that the COUNTY, the Secretary of HUD, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to all books, accounts, records, reports, files, and other papers or property pertaining to the funds provided under this agreement for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

P. Acquisition. If completion of the project requires acquisition of any real property the parties agree to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended.

Q. Change of Use. The CITY agrees to comply with applicable change of use provisions contained in 24 CFR 570.505 (refer to Attachment A).

R. Reversion of Assets. Upon expiration or termination of this Agreement, the CITY shall transfer to County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Also for any real property under the CITY's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the CITY in the form of a loan) in excess of $25,000 shall ensure said real property is either:

1. Used to meet one of the National Objectives in CFR 570.208 for the term of this Agreement; or

2. Not used to meet on the National Objectives for the term of this Agreement, in which event the CITY shall pay to COUNTY an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

VI. Amendment

This Agreement may be amended at any time with the concurrence of both Parties. Amendments become a part of this Agreement only after the written amendment has been signed by both Parties.

VII. Term of Agreement

A. This Agreement becomes effective when it is signed by both Parties.

B. The Community Development Block Grant (CDBG) will close-out ten (10) years from completion of the PROJECT.

C. The term of this Agreement is a period beginning when it becomes effective and ending five (5) years CDBG close-out. VII. B. and C. combined for a total of fifteen (15) years.

D. This Agreement may be suspended or terminated prior to the expiration of its term by:

1. Written notice provided to the COUNTY from the CITY before any materials or services for improvements are procured, or;

2. Written notice provided by the COUNTY in accordance with 24 CFR 85.43, included as Attachment A, resulting from material failure by the CITY to comply with any term of this Agreement, or;

3. Mutual agreement by the COUNTY and CITY in accordance with 24 CFR 85.44.

D. Upon completion of improvements or upon termination of this Agreement, any unexpended balances of CDBG funds shall remain with the COUNTY.

CITY OF MILWAUKIE

Mike Swanson,
City Manager

Date

CLACKAMAS COUNTY

Chair: Bill Kennemer
Commissioner: Larry Sowa
Commissioner: Martha Schrader

Signing on Behalf of the Board.

Gary DiCenzo, Director
Department of Human Services

Date

ATTACHMENT A

Excerpt from 24 CFR Part 85

§85.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see §85.35).

§85.44 Termination for convenience.

Except as provided in §85.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §85.43 or paragraph (a) of this section.