

**RESOLUTION No. 12/13-8**  
**City of Dayton, Oregon**

**Title:** *A Resolution Authorizing the Mayor and City Manager to Sign Amendment Number 01 for the 2011 Special City Allotment Agreement for Street Improvements on Fourth Street from Alder Street to Mill Street*

**WHEREAS**, the City of Dayton has entered into a grant contract with the State of Oregon, acting by and through its Department of Transportation, for improvements on Fourth Street from Alder Street to Mill Street; and

**WHEREAS** the City of Dayton wishes to extend the expiration date and update the language in the contract, allowing additional time to complete the project;

**The City of Dayton resolves as follows:**

- 1) **THAT** the Mayor and City Manager are hereby authorized to execute Amendment Number 01 for the 2011 Special City Allotment Agreement attached hereto as Exhibit A; and
- 2) **THAT** this resolution shall become effective immediately upon adoption.

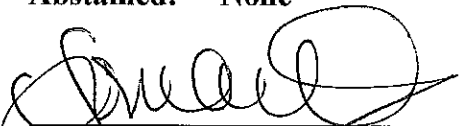
**ADOPTED** this 4<sup>th</sup> day of **September 2012**.

**In Favor:**     **Bixler, Blackburn, Frank, Utt, White, Wytoski**

**Opposed:**     **None**

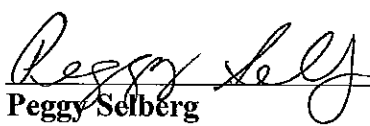
**Absent:**       **Evers**

**Abstained:**   **None**

  
\_\_\_\_\_  
**Jolie White, Mayor**

10/16/12  
\_\_\_\_\_  
**Date Signed**

**ATTEST:**

  
\_\_\_\_\_  
**Peggy Selberg**  
**City Recorder**

9/4/2012  
\_\_\_\_\_  
**Date of Enactment**

**ATTACHMENT: Exhibit A**

**AMENDMENT NUMBER 01**  
**2011 SPECIAL CITY ALLOTMENT AGREEMENT**  
Fourth Street: Alder Street to Mill Street  
City of Dayton

The **STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as "State;" and the **CITY OF DAYTON**, acting by and through its designated officials, hereinafter referred to as "Agency;" entered into an Agreement on February 9, 2011. Said Agreement covers the installation of a storm sewer system, sidewalks, curbs, and a new three inch (3") asphalt pavement overlay.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to extend the expiration date and update language. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

**TERMS OF AGREEMENT, Paragraph 5, Page 2, which reads:**

5. The term of this Agreement will begin upon execution and will terminate two (2) years following the date of final execution unless extended by an executed amendment.

**Shall be deleted in its entirety and replaced with the following:**

5. The terms of this Agreement will begin upon execution and will terminate on February 9, 2015, unless extended by an executed amendment.

**Insert new AGENCY OBLIGATIONS, Paragraphs 14 and 15 to read as follows:**

14. 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, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State be indemnified by the contractor and subcontractor from and against any and all Claims.
15. 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 anytime 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'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.

This Amendment 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 Amendment so executed shall constitute an original.

**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 OF DAYTON**, by and through its designated officials

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

Date \_\_\_\_\_

By \_\_\_\_\_  
City Manager

Date \_\_\_\_\_

**Agency Contact:**

Christy Ellis, City Manager  
City of Dayton  
PO Box 339  
Dayton, OR 97114  
Phone: (503) 864-2221  
Email: [cellis@ci.dayton.or.us](mailto:cellis@ci.dayton.or.us)

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

By \_\_\_\_\_  
Region 2 Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 2 Planning and Development  
Manager

Date \_\_\_\_\_

**State Contact:**

John W. Johnson, Local Agency Liaison  
ODOT, Region 2  
455 Airport Road SE, Bldg. B  
Salem, OR 97301  
Phone: (503) 986-5834  
Email: [john.w.johnson@odot.state.or.us](mailto:john.w.johnson@odot.state.or.us)

**Oregon Department of Transportation**  
**2011 SPECIAL CITY ALLOTMENT AGREEMENT**  
Fourth Street: Alder Street to Mill Street  
City of Dayton

**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," and CITY OF DAYTON, acting by and through its designated officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. Fourth Street is part of the city street system under the jurisdiction and control of Agency.
2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.800 and 366.805, there has been withdrawn from State Highway Funds appropriated for allocation to cities of the State of Oregon the sum of \$500,000 and an additional \$500,000 available to the Oregon Department of Transportation from the State Highway Fund. These sums have been set up in a separate account to be administered by the Oregon Department of Transportation. The \$1,000,000 shall be allotted each year by the Oregon Transportation Commission for use upon city streets that are not a part of the state highway system, that are within cities with populations of 5,000 or fewer persons, and that are inadequate for the capacity they serve or are in a condition detrimental to safety. No one project can receive more than \$25,000.

**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. By the authority granted in ORS 366.805(2), Agency has requested monies from this account for the installation of a storm sewer system, sidewalks, curbs, and a new 3" asphalt pavement overlay, hereinafter referred to as "Project." The total estimated cost of this Project is \$112,000. The location of the Project is approximately as shown on the map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. State has considered Agency's request for the Project and has determined that this Project is eligible for funding under the Special City Allotment (SCA) Program.
3. The Parties hereto mutually agree and understand that the cost of the Project will be paid for with SCA funds and by Agency as follows: SCA funds will pay for eligible Project costs up to an amount not to exceed \$25,000, and Agency shall pay any costs

in excess of \$25,000. State shall issue payments after January 1, 2011. Only work begun after the effective date of this Agreement is eligible for reimbursement with SCA funds.

4. Documented cost of preliminary engineering and construction engineering services performed by the Agency, or the Agency's consultant, are eligible Project costs.
5. The term of this Agreement will begin upon execution and will terminate two (2) years following the date of final execution unless extended by an executed amendment.

#### **AGENCY OBLIGATIONS**

1. Agency shall provide all rights of way for the Project at its sole expense. The acquisition of real property must comply with current Oregon law, including, but not limited to ORS Chapter 35.
2. Agency shall relocate or reconstruct, or cause to be relocated or reconstructed, all privately or publicly owned utility conduits, lines, poles, mains, pipes and all other 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 of the Project.
3. Agency shall prepare, or cause to be prepared, the plans and specifications for the Project, advertise the Project, contract the work, perform the construction engineering, and make the necessary contract payments.
4. Agency shall, during the course of the work, accumulate and retain documentation of all Project costs.
5. Upon completion of the Project, Agency shall certify to State that the Project is complete and in substantial conformance with the plans and controlling specifications. Agency shall submit an invoice for the remaining cost of the Project which, when added to the amount previously advanced by State, shall not exceed the actual total cost of the Project or \$25,000, whichever is less.
6. Upon completion of the Project, Agency shall provide maintenance at its sole expense.
7. Agency understands those streets or portions of streets upon which SCA funds have been expended, are not eligible for additional SCA funds for a period of ten (10) years following the approval for such funds.
8. Agency understands that if the Project is canceled by Agency, or not completed within the time requirements or in accordance with the terms of this Agreement, after Agency has received the advance of one-half (50 percent) of the estimated cost of the

Project or \$12,500, whichever is less, Agency shall immediately repay to State the full amount of the advance.

9. 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. Agency shall ensure that each of its subcontractors complies with these requirements.
10. 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.
11. 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 the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
12. Agency certifies and represents that the individual(s) signing this Agreement has 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.
13. Agency's contact for this Project is Christy Ellis, City Manager, City of Dayton, PO Box 339, Dayton, Oregon 97114, phone (503) 864-2221, email: [cellis@ci.dayton.or.us](mailto:cellis@ci.dayton.or.us), or assigned designee upon individual's absence. Agency shall notify State in writing of any contact information changes during the term of this Agreement.

## **STATE OBLIGATIONS**

1. State shall administer the funds in the SCA account in the following manner:
  - a. After January 1, 2011, at Agency's request, State may, upon execution of this Agreement and concurrence on the plans and specifications, forward

to the Agency an advanced deposit equal to one-half (50 percent) of the estimated cost of the Project, not to exceed \$12,500.

- b. State shall, upon satisfactory final inspection by State and certification of acceptance of work by the Agency, accompanied by documentation of all Project costs, made final payment to Agency. Total payments to Agency, including advance deposit payment, shall not exceed a total of \$25,000.
2. State's contact for this Project is John Johnson ("JJ"), Local Agency Liaison, Highway Division, Region 2 Local Programs, 455 Airport Road SE, Building B, Salem, Oregon 97301-5395, phone (503) 986-5834, email: [john.w.johnson@odot.state.or.us](mailto:john.w.johnson@odot.state.or.us), or assigned designee upon individual's absence. State shall notify Agency 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 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.
  - 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. 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.

5. With respect to a Third Party Claim for which the State is jointly liable with the Agency (or would be if joined in the Third Party Claim), the 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 the Agency in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the 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 the State on the one hand and of the 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. The 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 the State had sole liability in the proceeding.
6. With respect to a Third Party Claim for which the Agency is jointly liable with the State (or would be if joined in the Third Party Claim), the 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 the State in such proportion as is appropriate to reflect the relative fault of the Agency on the one hand and of the 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 the Agency on the one hand and of the 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. The Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
7. 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.



8. Agency maintenance responsibilities shall survive termination of this Agreement if Project is completed and accepted.
9. 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.
10. 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.

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

The 2011 funding for the SCA Program (Key No. 15119) was approved by the Transportation Commission on September 22, 2010 as a part of the 2010-2013 Statewide Transportation Improvement Program (STIP).

The Project was approved on November 19, 2010 by the Program and Funding Services Manager.

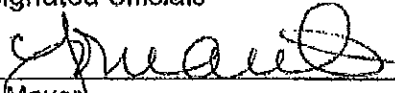
The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

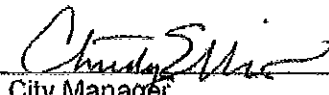
*Signature page to follow*

City of Dayton / State of Oregon – Dept. of Transportation  
Agreement No. 27169

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 2, in which day-to-day authority is delegated to the Region Managers for their respective regions, which includes the authority to approve and sign agreements up to \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

**CITY OF DAYTON**, by and through its  
designated officials

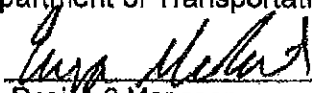
By   
Mayor  
Date 1/25/11

By   
City Manager  
Date 1/25/11


**Agency Contact:**

Christy Ellis, City Manager  
City of Dayton  
PO Box 339  
Dayton, OR 97114  
Phone: (503) 864-2221  
Email: [cellis@ci.dayton.or.us](mailto:cellis@ci.dayton.or.us)

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

By   
Region 2 Manager  
Date 2/9/11

By   
Region 2 Project Delivery Manager  
Date 2-8-11

By   
Region 2 Planning and Development  
Manager  
Date 2-8-11

**State Contact:**

John Johnson, Local Agency Liaison  
ODOT, Highway Division, Region 2  
455 Airport Road SE, Bldg. B  
Salem, OR 97301-5395  
Phone: (503) 986-5834  
Email: [john.w.johnson@odot.state.or.us](mailto:john.w.johnson@odot.state.or.us)

