

**RESOLUTION 12/13-12
CITY OF DAYTON, OREGON**

Title: A Resolution Authorizing the City Manager to Enter into an Intergovernmental Agreement with ODOT to Conduct Riparian Mitigation within Alderman Park

WHEREAS, construction of the Newberg-Dundee Bypass will have physical impacts on natural resources regulated by federal, state, and local agencies; and

WHEREAS, Oregon Department of Transportation (ODOT) must satisfy its mitigation requirements for riparian and wetland impacts; and

WHEREAS, the City of Dayton wishes to cooperatively work on a mitigation plan for riparian impacts associated with the construction of the Newberg-Dundee Bypass; and

WHEREAS, the City of Dayton has identified Alderman Park as a location suited for mitigation;

The City of Dayton resolves as follows:

- 1) **THAT** the City Manager is authorized to execute the IGA Agreement No. 28771, attached hereto as Exhibit A and by this reference made a part hereof, on behalf of the City which will be bound by its terms; and

- 2) **THAT** this resolution shall become effective immediately upon adoption.

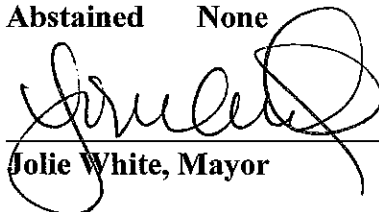
ADOPTED this 5th day of November 2012.

In Favor **Bixler, Blackburn, Evers, Utt, White, Wytoski**

Opposed **None**

Absent **Frank**

Abstained **None**

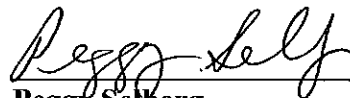


Jolie White, Mayor

11/11/13

Date of Signing

ATTESTED BY:



**Peggy Selberg
City Recorder**

11/5/2012

Date of Enactment

EXHIBIT A

Misc. Contracts and Agreements
No. 28771

**Oregon Department of Transportation
INTERGOVERNMENTAL AGREEMENT**

Oregon Route 18: Newberg-Dundee Bypass (Phase 1) Mitigation
Alderman Park
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 the CITY OF DAYTON, acting by and through its designated officials, hereinafter referred to as "City," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. The property to be used for the project described in this Agreement is part of Alderman Park, a city park under the jurisdiction and control of City.
2. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
3. The Newberg-Dundee Bypass (Phase 1) project is located near the Oregon Route 99W (OR 99W) corridor, where the highway passes through the City of Newberg and the City of Dundee in eastern Yamhill County. The project will provide an alternate route for local commuter and freight traffic around the congestion in Dundee and south Newberg, reducing the number of vehicles using OR 99W. Phase 1 of the project is expected to construct a two-lane highway from Oregon Route 219 (OR 219) southeast of Newberg to OR 99W southwest of Dundee.
4. Construction projects undertaken by the State often have physical impacts on natural resources regulated by federal, state, and local agencies. These agencies typically require the replacement of impacted natural resource (such as wetlands and vegetated corridors) in the form of similar resources in a process called "mitigation."
5. The Newberg-Dundee Bypass project will be constructed, in part, with federal funds. Since the State is the recipient of the federal funds, as well as the proponent of the project, the State is tasked with the responsibility of ensuring that the project satisfies its mitigation requirements for riparian and wetland impacts. State and City, through this Agreement, will define the terms and obligations to allow State to conduct riparian mitigation in City's Alderman Park on approximately 0.5 acres of park land for riparian impacts of the project which involves a proposed bridge over the Yamhill River next to Alderman Park.

Key No. 17099

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. Under such authority, State and City agree to cooperatively work on a mitigation plan for riparian impacts associated with the construction of the Newberg-Dundee Bypass, hereinafter referred to as "Project." Specifically, the plan will cover, but is not limited to the mitigation for riparian impacts for the proposed bridge over the Yamhill River next to Alderman Park; preparation of invasive plant removal and riparian planting plans; removal of invasive species; purchasing plant materials; planting the riparian area; and conducting the monitoring and maintenance phase of the mitigation area for approximately five (5) years. The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.
2. Under such authority, State and City agree to coordinate placement of trails and other park amenities and incorporate them into the overall Alderman Park mitigation/park plan. State is not obligated to fund park amenities.
3. The Project will be financed at an estimated cost of \$35,000 in State funds. The estimate for the total Project cost is subject to change. State shall be responsible for Project costs beyond the estimate.
4. The Parties may revisit this Agreement as certain Project tasks, as identified in "Exhibit B," attached hereto and made a part hereof, are reached and at the request of either Party to this Agreement. The Project Tasks include: a) complete preliminary Project design prior to permit application; b) apply for and obtain permits; c) complete Project design, including the construction plans, prior to bid; d) complete Project construction, including "as built"; e) post-construction monitoring; and f) complete the post construction five (5) year monitoring period.
5. The Project described herein will be coordinated with and advertised for bid with mitigation work to be conducted at the Chehalem Parks and Recreation Department Property site, as further described in Intergovernmental Agreement No. 28770.
6. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance for the mitigation performed as part of the Project. The Project shall be completed within ten (10) calendar years following the date of final execution of this Agreement by both Parties. This Agreement may be modified by an executed amendment, as agreed upon by the Parties.

CITY OBLIGATIONS

1. City agrees to coordinate with State on a mitigation plan for riparian impacts associated with the construction of the Newberg-Dundee Bypass, utilizing property in City-owned Alderman Park.
2. City grants authority to State to use property within Alderman Park during the performance of the Project, as shall be provided for in a temporary access easement issued by City.
3. Upon completion and acceptance by resource agencies that State has successfully met the criteria for the mitigation, City agrees to maintain the Project at its own expense and maintain it as a natural area.
4. City shall perform any service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
5. All employers, including City, 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. City shall ensure that each of its contractors complies with these requirements.
6. City acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of City which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after completion of Project. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
7. City certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of City, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind City.
8. City's Project Manager for this Project is Christy Ellis, City Manager, City of Dayton, 416 Ferry Street, P.O. Box 339, Dayton, Oregon 97114; phone: (503) 864-2221; email: cellis@ci.dayton.or.us, or assigned designee upon individual's absence. City shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State agrees to coordinate with City on a mitigation plan for riparian impacts associated with the construction of the Newberg-Dundee Bypass, utilizing property in City-owned Alderman Park.
2. State is responsible for all Project costs associated with the mitigation of riparian impacts of the Newberg-Dundee Bypass for a proposed bridge across Yamhill River next to Alderman Park.
3. State shall obtain a temporary access easement to occupy City right of way through the City's Public Works Department prior to the commencement of construction.
4. State shall perform the work described in Exhibit B.
5. State 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 City 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 State's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that City shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of City, be indemnified by the contractor and subcontractor from and against any and all Claims.
6. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
7. State's Project Manager for this Project is Rod Thompson, Senior Environmental Project Manager, ODOT, Region 2, 455 Airport Road SE, Building B, Salem, Oregon 97301-5395; phone: (503) 986-2690; email: rodney.thompson@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.

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 City, or at such later date as may be established by State, under any of the following conditions:

- a. If City fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If City fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If 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. City may terminate this Agreement effective upon delivery of written notice to State, or at such later date as may be established by State, If State fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
 5. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or City with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
 6. With respect to a Third Party Claim for which State is jointly liable with City (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by City in such proportion as is appropriate to reflect the relative fault of State on the one hand and of City on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of City on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the

circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

7. With respect to a Third Party Claim for which City is jointly liable with State (or would be if joined in the Third Party Claim), City shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of City on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of City on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. City's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
8. 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. 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 their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

City of Dayton / State of Oregon – Dept. of Transportation
Agreement No. 28771

CITY OF DAYTON, by and through its
designated officials

By Christy Ellis Whister
City Manager

Date 11/28/12

By N/A
Public Works Director

Date _____

APPROVED AS TO LEGAL FORM

By N/A
City Legal Counsel

Date _____

City Contact:
Christy Ellis, City Manager
City of Dayton
416 Ferry Street
P.O. Box 339
Dayton, OR 97114
Phone: (503) 864-2221
Email: cellis@ci.dayton.or.us

STATE OF OREGON, by and through
its Department of Transportation

By Sonny P.A. Chickering
Region 2 Manager

Date 12-24-12

APPROVAL RECOMMENDED

By [Signature]
Area 8 Manager

Date 12/20/12

State Contact:
Rod Thompson, Sr. Environmental Proj. Mgr.
ODOT, Region 2
455 Airport Road SE, Bldg. B
Salem, OR 97301-5395
Phone: (503) 986-2690
Email: rodney.thompson@odot.state.or.us

EXHIBIT A

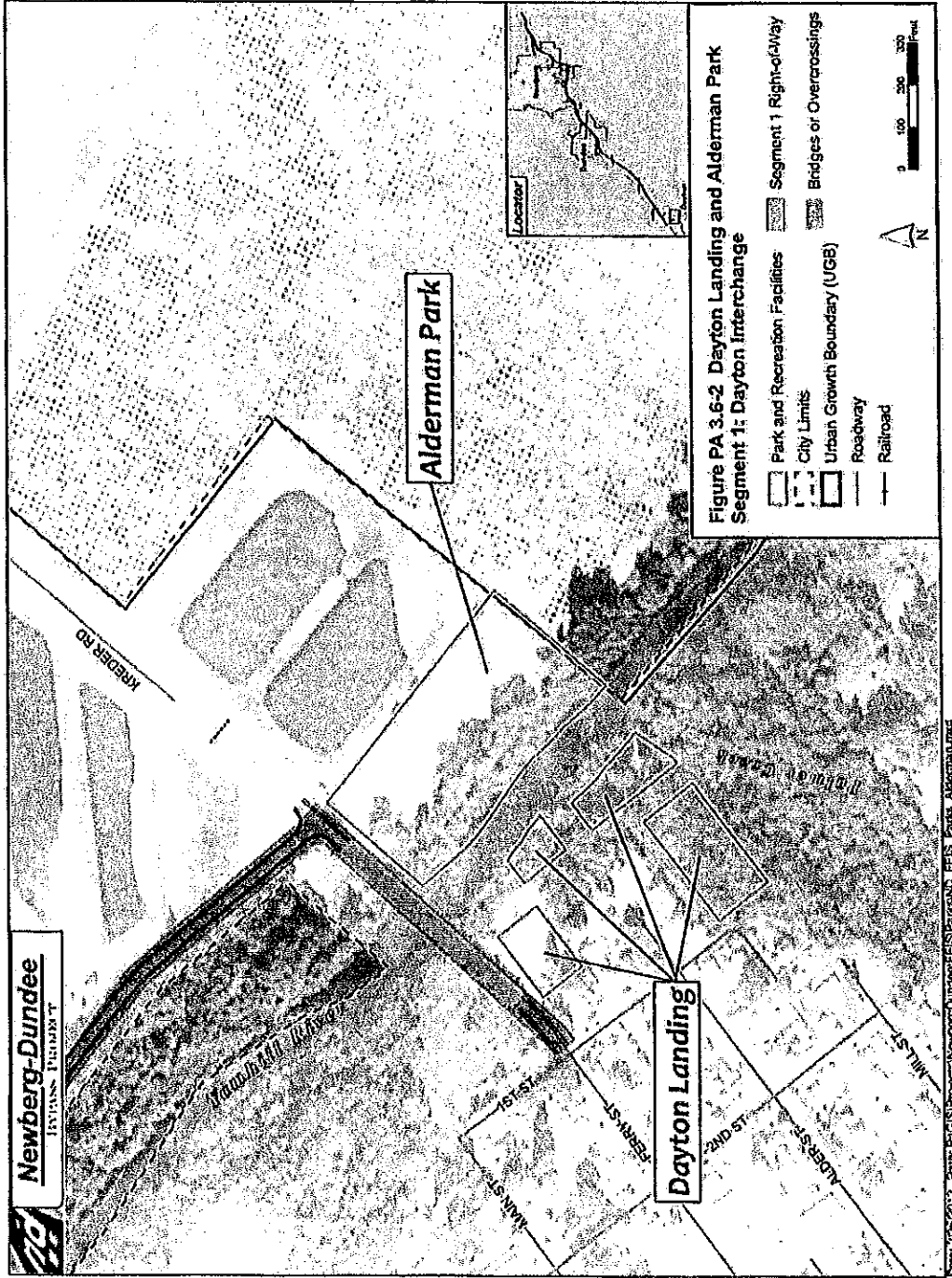


EXHIBIT B
Project Tasks and Time Line

	Milestone Description	Completion Date
1	Preliminary Design of Riparian Mitigation Plan	December 2012
2	Preliminary Riparian Mitigation Plan Included in Permit	December 2012
3	Final Riparian Mitigation Plan	March 2013*
4	Invasive Plant Removal	Summer/Fall 2014
5	Erosion Control and Planting	Summer/Fall 2014
6	Monitoring and Maintenance	2015-2019

*Note – The reason for delay between Final Riparian Mitigation Plan and the actual on-the-ground work is due to this project being bid together with mitigation work on the Chehalem Parks and Recreation Department Property (CPRD). The CPRD Property mitigation is much larger and more complex and the final mitigation plans will likely not be done until mid-late summer of 2013, therefore pushing the work on both of these sites into the 2014 construction season.