

RESOLUTION NO. 5236-15

RESOLUTION AUTHORIZING EXECUTION OF A COOPERATIVE
IMPROVEMENT MAINTENANCE AGREEMENT BETWEEN THE CITY OF
TUALATIN AND THE STATE OF OREGON FOR THE TUALATIN RIVER
GREENWAY GAP COMPLETION PROJECT

WHEREAS, the Tualatin River Greenway Gap Completion Project will extend the Tualatin River Greenway trail from the new Barngrover Street, along the Tualatin River, under Interstate 5, to the old RV Park of Portland property located on Nyberg Lane, a distance of about three-fourths of a mile; and

WHEREAS, on August 22, 2014, the Oregon Transportation Commission awarded the City of Tualatin a *ConnectOregon* V Grant in the amount of \$1,585,800 for the Tualatin River Greenway Gap Completion Project; and

WHEREAS, the Tualatin City Council authorized execution of an intergovernmental agreement between the City of Tualatin and the State of Oregon for the *ConnectOregon* V Grant in the amount of \$1,585,800 (Project No. 30601); and

WHEREAS, the intergovernmental agreement for the *ConnectOregon* V grant requires that the City enter into a Cooperative Improvement Maintenance Agreement covering the City's and State's obligations and General Provisions for the City to construct a shared use path, railing, lighting, and related facilities on the ODOT right of way and under the I-5 Tualatin River Bridge, Bridge Number 02376B.

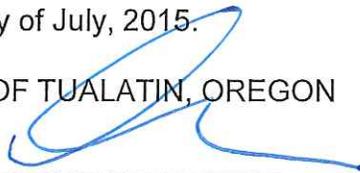
NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

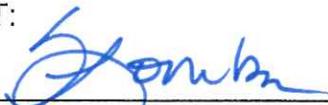
Section 1. The City Manager is authorized and instructed to execute a Cooperative Improvement Maintenance Agreement between the City of Tualatin and the State of Oregon.

Section 2. This resolution is effective upon adoption.

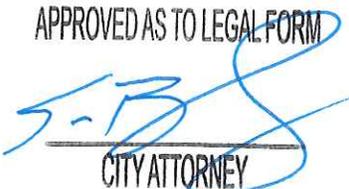
Adopted by the City Council this 13th day of July, 2015.

CITY OF TUALATIN, OREGON

BY 
Mayor

ATTEST:
BY 
City Recorder

APPROVED AS TO LEGAL FORM


CITY ATTORNEY

COOPERATIVE IMPROVEMENT MAINTENANCE AGREEMENT
Project Name: Tualatin River Greenway Trail Maintenance

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 Tualatin**, acting by and through its elected officials, hereinafter referred to as "Agency," both hereinafter referred to individually or collectively as "Party" or "Parties."

RECITALS

1. The Tualatin River Greenway Trail is under the jurisdiction and control of the City of Tualatin. The Tualatin River Greenway Trail is under the jurisdiction of ODOT under I-5 right of way.
2. By the authority granted in Oregon Revised Statutes (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.
3. State and Agency entered into Grant Agreement *ConnectOregon V*, Tualatin River Greenway Trail ("Project"), ODOT MCA030125 on December 29, 2014 which is hereby incorporated by reference and made part of this Agreement. Project consists of design and construction of a 10 to 12-foot-wide concrete and boardwalk, shared-use path approximately 0.77 miles long from Nyberg Lane to Barngrover Street. The Project includes a lighted paved path and railing under I-5 Tualatin River Bridge, Bridge Number 02376B, located at I-5 mile point 289.85; gateway features; trash receptacles; benches; interpretive signs and landscaping. The eastern terminus of the Project is along the Tualatin River near the eastern boundary of TAX Lot 2800, Map 2S 1 24A (Forest Rim Apartments) and the western terminus is Barngrover Street.
4. The purpose of this Agreement is to outline any maintenance and utility responsibilities pertaining to the Tualatin River Greenway Trail, located on State right of way, identified in Paragraph 3 above. The location of the Agency Project is as shown on the map attached hereto, marked Exhibit A – Tualatin River Greenway Trail, and by this reference made a part hereof.

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

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TERMS OF AGREEMENT

1. The Parties agree that per the *ConnectOregon* Grant Agreement No. 30125, Agency is responsible for ongoing utilities and maintenance of the Project outlined in Agency Obligations Paragraph 3 and the approved Project Plans.
2. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing utilities and maintenance responsibilities into perpetuity.

AGENCY OBLIGATIONS

1. Agency will permit State access along path from outside State I-5 right of way to reach the area under the Tualatin River Bridge for normal maintenance operations and emergency response, including but not limited to hazardous material spills, and flood damage.
2. Agency shall, upon completion of the Project, assume 100 percent of maintenance costs associated with the Project.
3. Agency shall be required to obtain a utility permit for installation of conduit and associated electrical items.
4. Agency shall, at its own expense, maintain and operate Project upon completion and throughout the useful life of Project at a minimum level that is consistent with normal depreciation or service demand or both. State and Agency agree that the useful life of Project is defined as twenty (20) years.
5. Agency shall maintain all items identified in Exhibit B – Maintenance Detail, and by this reference made a part hereof. Agency shall ensure the Project area has proper security methods in place to ensure the multi-use trail is safe and available for long term use by the public.
6. Agency shall ensure that the tasks associated with the maintenance activities referred to in Agency Obligations, Paragraph 3 above are maintained at a minimum using State Standards for Maintenance.
7. Agency shall provide to State's *ConnectOregon* Program Manager, a copy of this Agreement with State for the portion of the Project located on State right of way. State will not release the final retainage reimbursement pursuant to Paragraph 6.c.ii, of the *ConnectOregon V* Grant Agreement until State's *ConnectOregon* Program Manager receives a copy of this Agreement.
8. Agency shall ensure it does not proceed with construction bid process or construction of the Project until State provides its review and concurrence of the Project and issues Notice to Proceed to Agency.

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9. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs for maintenance and utilities of the Project within Agency's current appropriation or limitation of its budget. Agency shall not be indebted or liable for any obligation created by this Agreement in excess of the debt limitation of Article XI, Section 10, of the Oregon Constitution.
10. 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.
11. Agency Contact for this Project is Paul Hennon, Community Services Director, 8515 SW Tualatin Road, Tualatin, OR 97062-7092, 503.691.3060, phennon@ci.tualatin.or.us or assigned designee upon his absence. Agency shall notify State in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State grants Agency the right to enter onto State right of way for the performance of Agency duties as set forth in this Agreement. If necessary State will close the path to protect the public or accommodate work operations. In emergency or urgent situations closures may occur without notice.
2. State shall provide review of the Project and upon completion of the review and concurrence of the Project State shall issue a Notice to Proceed to Agency.
3. State's Project Manager for this Agreement is Justin Shoemaker, Project Development Liaison, Region 1 Project Services, 123 NW Flanders Street, Portland, OR 9720, (503)731-8486, Email: justin.d.shoemaker@odot.state.or.us or assigned designee upon his 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 either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
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 Parties fail to provide services called for by this Agreement within the time specified herein or any extension thereof.

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- b. If Agency fails to perform any of the other provisions of this Agreement, or so fail to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fail to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. 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 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.
6. 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

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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.

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. 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.
9. Except as otherwise provided in the Agreement, 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.

SIGNATURE PAGE TO FOLLOW

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CITY OF TUALATIN, acting by and through
its elected officials

By *[Signature]*
City Manager

Date _____

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By *[Signature]*
Counsel

Date 7/13/2015

Agency Contact:

Paul Hennon, Community Services Director
City of Tualatin
8515 SW Tualatin Road
Tualatin OR 97062-7092
Phone: 503-691-3060
Fax: 503-691-9786
phenon@ci.tualatin.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Manager

Date _____

By _____
District 2B Manager

Date _____

By _____
Region 1 Project Services Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By *[Signature]*
Assistant Attorney General

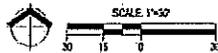
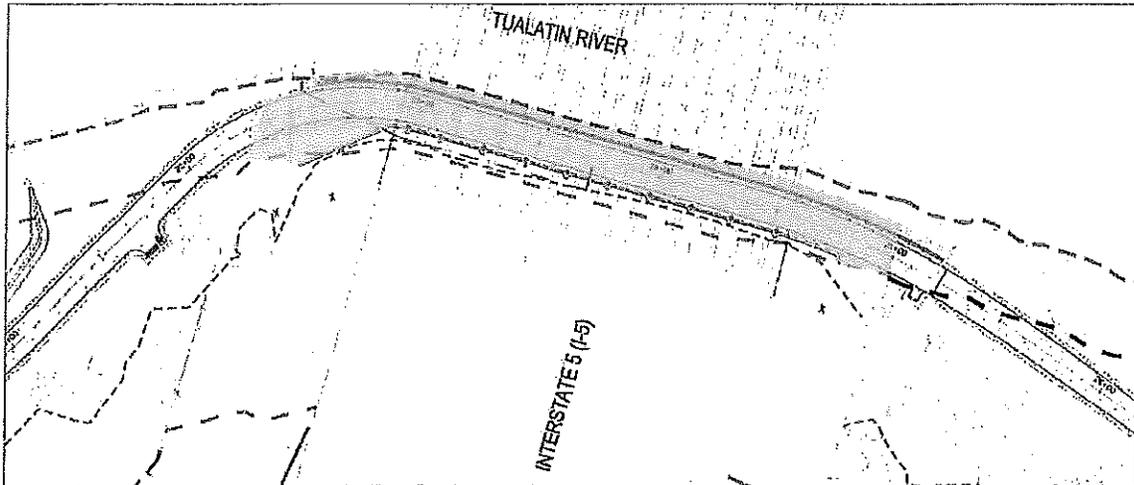
Date 6/19/2015

State Contact:

Justin Shoemaker
Project Development Liaison
Region 1 Project Services
123 NW Flanders Street
Portland, OR 97209
(503)731-8486
justin.d.shoemaker@odot.state.or.us

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EXHIBIT A –Tualatin River Greenway Trail



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EXHIBIT B – MAINTENANCE DETAIL

Graffiti / Vandalism:

1. Agency will be responsible for all features identified as Agency maintained area as shown on Exhibit A – Tualatin River Greenway Trail.
2. State maintains all features that lie outside of the horizontal limits of the Agency maintained area as shown on Exhibit A. State will meet its responsibility to remove graffiti within time limits that fit its overall maintenance schedule.
3. Agency may request approval to remove graffiti at Agency's cost if Agency desires removal in a shorter time frame than State schedules allow.

Fencing:

1. Agency shall be responsible for costs to repair to damage arising from vandalism, flooding and Agency operations.
2. State shall own and control fencing installed within its right of way as part of this Project.
3. State shall own and control the unauthorized personnel prevention fencing installed under the I-5 structure within State right of way.

Vegetation Control / Landscaping:

1. Agency is responsible for vegetation control and landscaping within the horizontal limits of Agency maintained area as shown on Exhibit A.

Drainage:

1. Agency shall control surface drainage within the horizontal limits of Agency maintained area as shown on Exhibit A to the extent needed to ensure that State facilities are protected from damage.
2. Agency shall maintain the 12" drainage pipe located at the southwest outfall and ensure it remains functional at all times. If State determines that the pipe needs to be repaired or replaced, including capacity, Agency will be responsible for all costs to restore any length of the shared use path required to complete the pipe work.
3. Agency shall maintain the inlet and outlet ditches for 12" pipe described in paragraph 2 within the horizontal limits of the Agency maintained area as shown

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on Exhibit A to the extent needed to maintain flows and control damage across the shared used path.

4. If State determines that the I-5 bridge downspout and associated drain pipes need to be repaired or replaced, including capacity, Agency will be responsible for all costs to restore any length of the shared used path required to complete the pipe work.

Constructed Path Facilities:

1. All facilities built to support the construction of the shared use path and located within the horizontal limits of the Agency maintained area as shown on Exhibit A will be owned and maintained by the Agency, unless specified by Exhibit B. These Agency owned facilities will be allowed on State right of way by the Agreement.
2. If Agency's facilities need to be disturbed or removed by State under normal, emergency operations or improvements projects, Agency will be responsible for costs to relocate and reconstruct these Agency owned facilities. These facilities include but are not limited to the following; path surfacing materials, surfacing treatments, rip rap, concrete walls, pedestrian railing, landscaping, lighting, benches, signs and trash receptacles.

Path Closures:

2. For normal operations, State shall work with Agency to provide advance notice of path closures. In emergency or urgent situations, closures can occur without advance notice.
3. Emergency situations for the protection of the public may include but are not limited to hazardous materials spill cleanup and flood damage repairs.

Hazardous Materials Spills:

"Hazardous Materials" is defined for purposes of this Agreement as any substance:

- (i) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; and without limitation includes gasoline, diesel fuel and other petroleum hydrocarbons (other than petroleum products used for construction and ongoing maintenance); or
- (ii) which is or becomes defined as a "hazardous waste", "hazardous substance", pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response

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Compensation and Liability Act (42 USC 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 USC 6901 et seq.); or

(iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of Oregon, or any political subdivision thereof; or

(iv) hazardous material is understood to include human waste, sharps, maintenance vehicle spills and the like.

Agency agrees to immediately notify State's District 2B upon becoming aware of: (1) any leak, spill, release or disposal of any Hazardous Materials which occurs on, under, or adjacent to the Project, or any threat of or reasonable suspicion of any of the same as a result of the activities of Agency; and/or (2) any notice or communication from a governmental agency or any other person directed to Agency or any other person relating to such Hazardous Materials on, under, or adjacent to the Property or any violation of any federal, state, or local laws, regulations or ordinances with respect to the Property or activities on the Property.

In the event of a leak, spill, or release of such Hazardous Materials on the Project, unless caused by actions of State, or motoring public on I-5, Agency shall, at its own expense, immediately undertake all emergency response necessary to contain, clean-up, and remove the Hazardous Materials, and shall undertake within a reasonable time all investigatory, remedial and removal action necessary or appropriate to ensure that any contamination by the Hazardous Materials is eliminated. Agency shall also provide State with a final report stating that Property has been remediated to the satisfaction of the Oregon Department of Environmental Quality.

The obligations of Agency stated in this section shall continue for as long as Agency occupies the Project area under the terms of this Agreement, and shall continue thereafter for the Hazardous Materials deposited during Agency's occupation of the Project area.

1. Any replacement or reconstruction of Agency owned facilities due to hazardous materials spills is the responsibility of the Agency.

River Flooding:

1. The shared use path is located within the 100 year flood plain. Protection and repairs of State I-5 facilities due to river flooding will take precedent over Agency shared use path facilities. State will attempt to avoid damage to Agency facilities

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but will take all actions necessary to maintain State I-5 facilities to the extent needed to keep I-5 open and functioning.

2. Agency will be responsible for post flood repairs to the shared use path facilities.

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