

CITY OF COOS BAY URBAN RENEWAL AGENCY
Agenda Staff Report

MEETING DATE	AGENDA ITEM NUMBER
July 18, 2017	

TO: Chair Kramer and Board Members

FROM: Jim Hossley, Public Works and Community Development Director *JH*

THROUGH: Rodger Craddock, City Manager *rc*

ISSUE: Approve Intergovernmental Agreement with ODOT for City Entrance Streetscapes

SUMMARY:

The streetscape improvements proposed for HWY 101 are predominantly within the Oregon Department of Transportation (ODOT) right-of-way. In order to install and maintain the proposed streetscape improvements, the City must enter into an Intergovernmental Agreement (IGA) with ODOT.

ACTION REQUESTED:

Approve the IGA and authorize the City Manager to sign the agreement.

BACKGROUND:

The streetscape improvements proposed for HWY 101 are predominantly within the Oregon Department of Transportation (ODOT) right-of-way. In order to install and maintain the proposed streetscape improvements, the City must enter into an IGA with ODOT.

The agreement will be good for 20 years and outlines the terms for which the City can use the ODOT right-of-way. Per the agreement, the City is responsible for all maintenance of the streetscape improvements and all costs associated with the same.

BUDGET IMPLICATIONS:

None, however the agreement requires the City to maintain the streetscapes at its expense.

**INTERGOVERNMENTAL AGREEMENT
US 101 Couplet Landscaping**

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

RECITALS

1. 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.
2. Oregon Coast Highway, No. 9 (US 101), is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission.

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 Agency agree that Agency shall perform all landscaping maintenance and assume all responsibility for the irrigation system and water costs for the US 101 Couplet Landscaping, hereinafter referred to as "Project." The location of the Project is approximately as shown on the sketch maps attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. Agency shall be responsible for all Project costs under this Agreement.
3. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance (and power if applicable) responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years. The Project shall be completed within ten (10) calendar years following the date of final execution of this Agreement by both Parties.
4. Agency's tasks associated with the maintenance responsibilities referred to above are as defined in the current editions of the Oregon Department of Transportation Maintenance Field Operations Manual, Maintenance Management System (MMS) Manual, and the Routine Road Maintenance Water Quality and Habitat Guide, Best Management Practices Manual which are herein incorporated by reference and located at the following address:
<http://www.oregon.gov/ODOT/HWY/OOM/Pages/publications.aspx>

AGENCY OBLIGATIONS

1. Agency shall be responsible for all Project costs under this Agreement.
2. Agency shall develop a Landscape Plan for the Project. Agency shall collaborate with State to review and approve the Landscape Plan prior to the Project.
3. Agency shall not make major changes to the Landscape Plan without obtaining prior approval from the State's District 7 Office.
4. Agency shall be responsible for the cost and responsibility of ongoing general maintenance of the Project, including but not limited to all labor, equipment, materials, trash removal, plant control and replacement of dead or dying material, weeding and pest control, and repairs due to traffic accidents, vandalism, etc.
5. Agency shall be responsible for 100 percent of water costs associated with the Project. Agency shall require the water company to send invoices directly to Agency. Agency shall be responsible for 100 percent of the irrigation system (to include all materials, parts, supplies, services and maintenance). Agency shall also be responsible for replacement due to theft, vandalism or accidents.
6. Agency shall be responsible for selecting the proper equipment for its needs and inspecting the equipment prior to its use.
7. Agency shall furnish fuel, maintenance, and insurance for equipment used for the Project.
8. Agency shall permit the equipment to be used for the performance of duties as set forth in this Agreement, to be used only by properly trained and supervised operators and shall be responsible for equipment repairs. In addition, Agency shall be responsible for storage of its equipment used for the Project.
9. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from State.
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 shall perform the 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.

12. 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. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.
13. 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, 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.
14. 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, or that Agency's contractor is not adequately 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.
15. 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 the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
16. 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

Agency/State
Agreement No. 32243

the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.

17. Agency's Project Manager for this Project is Randy Dixon, Operations Administrator, 500 Central Avenue, Coos Bay, OR 97420, 541-269-1181, rdixon@coosbay.org, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State shall collaborate with Agency to review and approve the Landscape Plan prior to the Project.
2. State grants Agency the authority to enter State right of way for the maintenance of the Project as outlined in this Agreement.
3. State's Project Manager for this Project is Chris Hunter, Assistant District 7 Manager, 3500 NW Stewart Parkway, Roseburg, OR 97470, 541-957-3689, chris.hunter@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. State and Agency agree that in the event, Agency should discontinue maintenance and operation of the Project or otherwise terminate this Agreement, State shall have the option to remove the Project at Agency's expense.
2. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
3. 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 Agency fails to provide payment of its share of the cost of the Project.
 - 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.

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 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.
6. 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.
7. 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 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.

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 COOS BAY, by and through its
elected officials

STATE OF OREGON, by and through
its Department of Transportation

Agency/State
Agreement No. 32243

By _____

Date _____

By _____

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Counsel

Date _____

Agency Contact:

Randy Dixon
Operations Administrator
500 Central Avenue
Coos Bay, OR 97420
541-269-1181
rdixon@coosbay.org

State Contact:

Chris Hunter
Assistant District 7 Manager
3500 NW Stewart Parkway
Roseburg, OR 97470
541-957-3689
Chris.hunter@odot.state.or.us

By _____
Region 3 Manager

Date _____

APPROVAL RECOMMENDED

By _____
District 7 Manager

Date _____

EXHIBIT A



VICINITY MAP

NORTH GATEWAY



SOUTH GATEWAY

