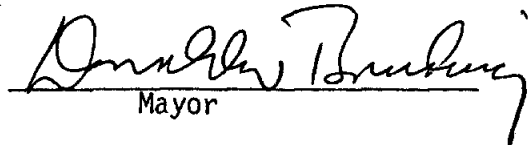


RESOLUTION NO. 2362

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that the Mayor and City Recorder be authorized to sign agreements for the reconstruction of Lyon and Ellsworth Streets from Ninth Avenue to the Willamette River to include storm drainage, 47% of the costs of the storm drainage to be paid by the City in an amount not to exceed \$350,000; such funds are to be paid from the City's sewer separation account.

DATED this 3rd day of November, 1982.



Mayor

ATTEST:




City Recorder

MCH:pf
10/8/82

Misc. Contracts & Agreements
No. 1605

CONSTRUCTION-FINANCE AGREEMENT
COOPERATIVE IMPROVEMENT PROJECT

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, Highway Division, hereinafter referred to as "State"; and the CITY OF ALBANY, a municipal corporation of the State of Oregon, acting by and through its designated City Officials, hereinafter referred to as "City".

W I T N E S S E T H

RECITALS

1. For the purpose of furthering the development of a highway system adapted in all particulars to the needs of the people of the State of Oregon, State and City cooperatively plan and propose to construct improvements to the Lyons and Ellsworth Streets (Albany) Section of the Albany - Corvallis Highway, State Primary Highway No. 31, hereinafter referred to as "project".
2. By the authority granted in ORS 366.770 and 366.775, State may enter into cooperative agreements with the various counties and cities 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 the City, in their judgement, have determined that responsibility for the actual total cost of the storm drainage improvement work shall be shared by the State and the City on the basis of 53 percent by the State and 47 percent by the City, with the City participation limited to a total sum of \$350,000.
4. By the authority granted in ORS 373.020, (1) complete jurisdiction and control of streets taken over by the State is vested in State and extends from curb to curb or such portion of the right-of-way utilized for highway purposes. Responsibility for and jurisdiction over all other portions of the street or road remains in the City; (2) Cities retain the right to grant the privilege to open the surface of any such street or road, but any damage shall be promptly repaired by City at its sole expense; (3) Cities retain the right to grant franchises over, beneath and upon the street, but the State may utilize any storm sewers thereon or thereunder without cost; (4) nothing in this Act relieves any public

utility from maintenance and repair or any other obligation required by it under a franchise granted by City.

5. In recognition of the mutual benefits which will accrue to the residents of the State of Oregon and the City of Albany by reason of this project, and to promote the safety and welfare of the public in general, the State and the City hereby pledge complete cooperation, each with the other, in order to accomplish effectively those things set forth and agreed to in this agreement.

6. This agreement is intended to supercede and take precedence over that certain State-City Agreement, dated December 8, 1954, concerning Lyons and Ellsworth Streets. The aforementioned agreement shall become null and void and have no further force or effect upon execution of this agreement.

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

STATE OBLIGATIONS

1. State shall conduct the necessary field surveys, soils investigations and environmental studies, obtain the necessary right-of-way and easements, identify and obtain all permits, perform all preliminary engineering and design work required to produce plans, specifications and estimates, advertise for construction bid proposals, award all contracts, furnish all construction engineering, material testing, technical inspection and project manager services for administration of the contract and, upon completion of construction, perform all necessary maintenance operations on that portion of the project lying within state highway jurisdiction.

2. State shall pay all costs of the project which are in excess of the agreed maximum City participation in the amount of \$350,000.

3. State shall, without cost to City, relocate or cause to be relocated all existing privately-owned utility conduits, lines, poles, mains, pipes and other such facilities that are located on private property where such relocation is necessary to conform said utilities or facilities to the plans for the project.

4. State shall, upon receipt from City of an itemized statement in triplicate of such expenses, reimburse City for the reasonable expenses incurred by City in relocating or extending any City-owned utility conduits, lines, poles, mains, pipes and other such facilities located within a public right-of-way, upon City-owned property, or on private property under City easement, where such relocation or extension is necessary to conform said facilities to the plans for the project; except that in the event such facilities are located within or upon the right-of-way of a state highway under a permit issued by the Oregon Transportation Commission under condition that the permittee will bear the cost of any

relocation, the expense of relocating or extending such facilities shall be borne by the City.

5. State shall, in the first instance, pay all costs of the project, submit all claims for federal-aid participation to the Federal Highway Administration in the normal manner, compile accurate cost accounting records and, when the actual total cost of the construction phase of the project has been computed, furnish City with an itemized statement of said costs. In no event shall City participation exceed the total sum of \$350,000.

CITY OBLIGATIONS

1. City shall, within 20 days following the opening of construction bid proposals, forward to the State an advance deposit in the amount of 47 percent of the estimated total cost of the storm drainage improvement work. When the actual total cost of the storm drainage portion of the project has been computed, an adjustment will be made in the City share of such costs. In no event shall the City participation exceed the total sum of \$350,000 for the storm drainage improvements.

2. City shall, as its own initial cost and upon request by State, relocate or extend those City-owned utility facilities described in paragraph 4 under THINGS TO BE DONE BY STATE, subject to reimbursement as therein provided. City shall comply with the regulations of the Department of Transportation relative to nondiscrimination in federal-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as Regulations), which are herein incorporated by reference and made a part of this agreement. Civil Rights Assurances must be included in all utility relocation contracts where Federal funds are involved and the City does not perform the relocation work with its own forces. This would usually occur when the City enters into a contract or agreement with a contractor to perform all or a portion of the work.

3. City shall, upon request by State and without cost to State, relocate or cause to be relocated, all City-owned utility conduits, lines, poles, mains, pipes and other such facilities not located within a public right-of-way, upon City-owned property, or on private property under City easement, where such relocation is necessary to conform said facilities to the plans for the project.

4. City shall, without cost to the State, relocate or cause to be relocated, all City-owned utility conduits, lines, poles, mains, pipes and other such facilities located within or upon the right-of-way of a state highway under a permit issued by the Oregon Transportation Commission upon condition that the permittee will bear the cost of any relocation.

5. City shall, upon request by State and without cost to State, locate or cause to be relocated all privately-owned utility conduits, lines, poles, mains, pipes and other such facilities located within the limits of City on public streets or ways where such relocation is necessary to conform said utilities or facilities to the plans for the project. To this end City shall exercise all its municipal powers, including the legislative power, to require relocation of such utilities or facilities.

6. After State has requested City to move any of the above-mentioned City-owned utilities or facilities, City shall notify the State project manager prior to proceeding with the relocation work on such utilities or facilities in order that the relocation work can be properly coordinated with the other work on the project.

7. City shall allow State project managers and/or inspectors to inspect any relocation of utility facilities described in paragraphs 2 and 3 in order to determine whether said utilities have been relocated in accordance with the plans for the project.

8. City hereby grants the State the right to enter upon and occupy certain city street right-of-way and city-owned property for the purpose of improving the storm drainage system. Upon completion of the project, the City shall accept ownership and shall assume responsibility for all maintenance necessary for operation of the storm drainage system.

9. City hereby grants the State the right to utilize the City storm drainage system, without cost, to establish the highway surface drainage not to exceed design capacity.

10. City, by execution of this agreement, does hereby consent, as required by ORS 373.030(2), to any changes of grade if any there be, in connection with or arising out of the construction of the project within the City limits.

11. City shall adopt a resolution authorizing its City Officials to enter into and execute this agreement, and the same shall be attached hereto and become a part hereof.

GENERAL PROVISIONS

1. The parties hereto agree and understand that they will comply with all applicable Federal and State statutes and regulations, including, but not limited to: Title 6, U.S.C., Civil Rights Act; Title 18, U.S.C., Anti-Kickback Act; Title 23, U.S.C., Federal Aid Highway Act; and Titles 2 and 3 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written. City has acted in this matter pursuant to Resolution No. _____, adopted by its City Council on the _____ day of _____, 1982.

This project was approved by the Oregon Transportation Commission on January 19, 1982 as a part of the Six-Year Highway Improvement Program (page 12).

The Oregon Transportation Commission, by a duly adopted delegated order, authorized the State Highway Engineer to sign this agreement for and on behalf of the Commission. Said authority is set forth in the Minutes of the Oregon Transportation Commission.

APPROVAL RECOMMENDED

By _____
Region Engineer

STATE OF OREGON, by and through
its Department of Transportation,
Highway Division

By _____
State Highway Engineer

Date _____

CITY OF ALBANY, by and through
its City Officials

By Donald W. Brudney
Mayor

By [Signature]
City Recorder