

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF WILSONVILLE AND CLACKAMAS COUNTY RELATING TO THE STAFFORD-65TH-ELIGSEN ROUNDABOUT PROJECT

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is entered into between the City of Wilsonville, an Oregon municipal corporation (“City”), and Clackamas County, a political subdivision of the state of Oregon (“County”), collectively referred to as the “Parties” and each a “Party.”

RECITALS

- A. This Agreement is entered into pursuant to ORS 190.010, which confers authority on local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreements, its officers or agencies have authority to perform.
- B. The intersection at SW Stafford Road, SW 65th Avenue, SW Elligsen Road (“the Stafford/65th/Elligsen Intersection”) serves the communities of the County, the City, and Washington County in providing critical connectivity in the area, as shown on Exhibit ‘A’, attached hereto.
- C. The Parties plan to design improvements to the Stafford/65th/Elligsen Intersection, consisting of a new roundabout, adding bike lanes along the intersection approaches, replacement of the Boeckman Creek culvert with a fish passable culvert, new stormwater management facilities, and other associated improvements (the “Project”).
- D. The Parties desire to provide the basis for a cooperative working relationship for the purpose of providing design, right of way acquisition, and construction as part of the Project.
- E. The Parties have determined it is in the public interest to cooperate in the planning and execution of the Project.

AGREEMENT

Now, therefore, based on the foregoing, the Parties agree as follows:

- 1. **Term.** This Agreement becomes effective as of the last date of signature by a Party indicated below. Unless terminated earlier pursuant to Section 5 of this Agreement, this Agreement will expire upon the completion of each and every obligation of the Parties set forth in this Agreement, or by December 31, 2031, whichever is sooner.
- 2. **City Obligations.**
 - a. **Review of Relevant Project Documents.** The City will review the plans, estimates, and specifications for materials and workmanship to be used in the County’s procurement materials and contracts for work associated with the Project. The City’s review shall be reasonable timely.
 - b. **Project Schedule.** Except as otherwise provided in this Agreement, neither Party may be held liable for failure to adhere to the schedule where that Party proceeds with reasonable diligence and in good faith to advance the Project.

- c. Management of Project. The City will name a City project manager (the “City PM”) to coordinate reviews and communications with the County. The City PM will work to resolve any dispute with the County PM (defined below).
- d. Project Coordination. The City PM shall coordinate in the design, bidding, and public right-of-way acquisition of the Project, and assist the County when necessary to provide timely responses to requests for information. The City will have input in the selection of the design consultant. The City will provide timely engineering review, comments, information or approval, as required to the County or to the County’s consultant for purposes of fulfilling the purpose of this Agreement. County or County’s consultant will make all reasonable efforts to incorporate City comments and/or proposed revisions into the design documents.
- e. Payment Obligations. Except as provided in Section 3(e), the City will be responsible for all City staff time costs associated with the Project. The City also agrees to reimburse the County \$1,000,000 for the City’s share of the Project. The City will pay the County within 30 days of the receipt of the County’s invoice to the City (payment schedule shown below under County Obligations).

3. County Obligations.

- a. Contracting and Permitting. The County will contract for consultant services for design work, permitting and land use entitlements. The County will select the design consultant with input from the City. The County will manage design work, permitting and land use entitlements. The County will review and be the approving authority for any design exceptions for the Project including any ADA design exceptions. The County will acquire the right of way necessary to complete the Project. Prior to bid, the County will provide the City with plans, estimates, and specifications for materials and workmanship to be used in the County’s procurement materials and contracts for work associated with the Project.
- b. Existing Temporary Traffic Signal. County will accept, own, operate, and maintain the existing temporary traffic signal upon City issuance of substantial completion for the City’s Boeckman Road Corridor Project, estimated to occur on August 27, 2025. County will include removal of the temporary traffic signal as a project expense in the construction contract and will own all equipment once it is salvaged or designated for disposal.
- c. Project Schedule. Except as otherwise provided in this Agreement, neither Party may be held liable for failure to adhere to the schedule where that Party proceeds with reasonable diligence and in good faith to advance the Project.
- d. Management of the Project. The County will manage the Project, and will timely administer the associated engineering, design and

construction contracts. The County will manage the right-of-way process and utilize County templates and processes in acquiring rights of way for the Project.

The County is responsible for the procurement of consultants and contractors under ORS 279C as necessary for the design and right of way activities described in this Agreement, including but not limited to architects, engineers, surveyors and other consultants, subject to coordination with the City under Section 2.d above.

- e. Project Cost. The County shall be responsible for all Project costs except those outlined under Section 2.e above.
- f. Invoice Obligations. The County will invoice the City twice during the project. One invoice will be sent for \$250,000 when Project plans are ready for construction bidding. The second invoice will be sent for \$750,000 once construction contract payments exceed 50% of the total construction contract value.

4. Dispute Resolution and Termination.

- a. In the event of a dispute arising under the terms of this Agreement that is not resolved by the City PM and the County PM, the City Engineer and County Department of Transportation Assistant Director shall attempt to resolve the dispute. In the event this does not resolve the dispute, the City Community Development Director and County Department of Transportation Director shall attempt to resolve the dispute. In the event the dispute cannot be resolved, either Party may pursue any legal or equitable claims to which that Party may be entitled.
- b. The Parties may terminate this Agreement at any time by mutual written agreement.
- c. Either the City or the County may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's desire to mutually terminate. If the breaching Party has not entirely cured the breach within ten (10) days of deemed or actual receipt of the notice, then the non-breaching Party may terminate the Agreement at any time thereafter by giving written notice of termination to the other Party stating the effective date of the termination; provided however, if the default is of such a nature that it cannot be completely remedied within such 10-day period, this provision shall be complied with if the breaching Party begins correction of the default within the 10-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.
- d. The City or the County shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed

a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.

- e. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project.
- f. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

5. Indemnification.

- a. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to person or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents or its subcontractors or anyone over which the County has a right to control.
- b. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

6. Party Contacts.

- a. Zach Weigel or their designee will act as project manager for the City for the Project.

Contact Information:

Zach Weigel
City of Wilsonville
29799 SW Town Center Loop East
Wilsonville, OR 97070
(503) 570-1565
weigel@ci.wilsonville.or.us

- b. Joel Howie or his designee will act as project manager for County for the Project.

Contact Information:

Joel Howie
Clackamas County
150 Beaver Creek Road
Oregon City OR 97045
(503) 742-4658
JHowie@clackamas.us

- c. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

7. General Provisions.

- a. **Oregon Law and Forum.** This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- b. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
- c. **Non-Exclusive Rights and Remedies.** Except as otherwise provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- d. **Record and Fiscal Control System.** All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
- e. **Access to Records.** The Parties acknowledge and agree that each Party shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three (3) years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.
- f. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated. Any provisions herein which would conflict with law are deemed inoperative to that extent.

- g. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- h. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. 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 either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- i. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- j. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- k. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the County or the City.
- l. **No Assignment.** No party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.
- m. **Nonwaiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement, the County is specifically not obligating itself, or any other governmental entity with respect to any discretionary governmental action relating to the Project or any associated development, operation and use of the improvements to be constructed on the Project Area, including, but not limited to,

condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental approvals that are or may be required.

- n. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, 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.
- o. **Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.
- p. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

City of Wilsonville

Tootie Smith
Chair, Board of County Commissioners

Bryan Cosgrove
City Manager

Date

Date