

RESOLUTION NO. 72-2009

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN AMENDMENT NUMBER 01 TO THE LOGUS ROAD WALKWAY/BIKEWAY PROJECT AGREEMENT.

WHEREAS, The City has undertaken the Logus Road Improvement Project; and

WHEREAS, ODOT Walkway/Bikeway funds have contributed to the project as specified under ODOT Agreement No. 23859; and

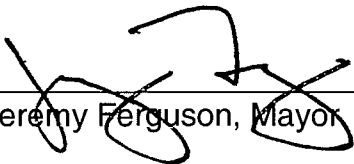
WHEREAS, ODOT has offered additional funds to pave gravel driveway approaches to Logus Road in the project area; and

WHEREAS, City Council believes that this offer will improve the safety of Logus Road and provide a benefit to Logus Road residents; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Milwaukie authorizes the Mayor to sign the agreement amendment attached as Exhibit 1.

Introduced and adopted by the City Council on November 17, 2009

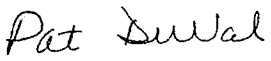
This resolution is effective on November 17, 2009



Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC



Pat DuVal, City Recorder



City Attorney

**AMENDMENT NUMBER 01
WALKWAY/BIKEWAY AGREEMENT
City of Milwaukie**

The **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "State," and the **City of Milwaukie**, acting by and through its elected officials, hereinafter referred to as "Agency," entered into an Agreement on March 27, 2007. Said Agreement covers the design and construction of sidewalks and streetscaping at SE Logus Road between SE Stanley Avenue and SE 49th Avenue.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to extend the termination date. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

TERMS OF AGREEMENT, Paragraph 2, page 2, which reads:

2. Agency has determined that the total cost of the Project is estimated to be \$758,700. State shall fund the Project in an amount not to exceed \$445,400. Agency's portion of the Project cost is \$313,000. Agency shall be responsible for any portion of the Project which is not covered by State funding.

Shall be deleted in its entirety and replaced with the following:

2. Agency has determined that the total cost of the Project is estimated to be \$793,700, including supplementary paving of gravel driveways within the Project limits to be bid separately for \$35,000. State shall fund the Project in an amount not to exceed \$480,400. Agency's portion of the Project cost is \$313,000. Agency shall be responsible for any portion of the Project which is not covered by State funding.

TERMS OF AGREEMENT, Paragraph 3, page 1, which reads:

3. The work is to begin upon execution of this Agreement by all parties and be completed no later than October 31, 2009. This Agreement shall terminate upon completion of construction and final payment, or five calendar years from date of final signature, whichever is sooner, unless extended by a fully executed amendment. Maintenance responsibilities shall survive any termination of this Agreement.

Shall be deleted in its entirety and replaced with the following:

3. The term of this Agreement shall begin on the date all required signatures are obtained. Construction shall be completed no later than December 31, 2010. This Agreement shall terminate upon completion of construction and final payment, unless extended by a fully executed amendment. Maintenance responsibilities shall survive any termination of this Agreement.

AGENCY OBLIGATIONS, Paragraph 10, page 3, which reads:

10. Agency shall be responsible for all costs not covered by State funding. State funding is limited to \$445,400.

Shall be deleted in its entirety and replaced with the following:

10. Agency shall be responsible for all costs not covered by State funding. State funding is limited to \$480,400.

STATE OBLIGATIONS, Paragraph 2, page 4, which reads:

2. Upon receipt of notification that the Agency is prepared to proceed with the development of Project, State shall provide to Agency an advance deposit in the sum of \$222,700, such amount being equal to 50 percent of the State's share of the estimated Project costs. Upon completion of Project, inspection and approval by State staff, and receipt from Agency of an itemized statement of the actual total cost of the Project, State shall deposit with Agency a final payment, the sum of \$222,700, such amount being equal to 50 percent of the State's share of the estimated Project costs. When added to the advance deposit, the final deposit will equal the State's share of the originally estimated cost of \$758,700. Should final Project costs exceed the original estimate, extra costs shall be borne by Agency; the maximum amount of State reimbursement is \$445,400. If final Project costs are less than original estimate, State shall deposit with Agency a final payment in an amount which, when added to the advance deposit, would equal the State's proportionate share of the originally estimated costs, based on percentage calculated using State share and local match.

Shall be deleted in its entirety and replaced with the following:

2. Upon receipt of notification that the Agency is prepared to proceed with the development of Project, State shall provide to Agency an advance deposit in the sum of \$222,700. Upon completion of Project, inspection and approval by State staff, and receipt from Agency of an itemized statement of the actual total cost of the Project, State shall deposit with Agency a final payment up to \$257,700. The final payment amount will equal 100% of the supplementary driveway paving costs, up to \$35,000 and 58.8% of the remaining Project costs, up to \$222,700. When added to the advance deposit, the final deposit will equal the State's share of the revised estimated cost of \$793,700. Should final Project costs exceed the revised estimate, extra costs shall be borne by Agency; the maximum amount of State reimbursement is \$480,400.

Agency/State
Agreement No. 23859-01

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

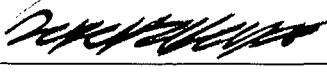
THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

The Oregon Transportation Commission on May 20, 2009, approved Delegation Order No. 3, which authorizes the Director and Deputy Director, Highways to approve and execute all agreements pertaining to OTC approved local grant program agreements for bicycle and pedestrian projects.

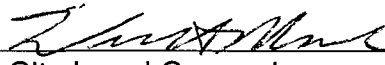
On July 7, 2005, the Director and Deputy Director, Highways approved Subdelegation Order No. 4, in which the Director and Deputy Director, Highways delegates authority to the Technical Services Manager/Chief Engineer to OTC approved local grant program agreements for bicycle and pedestrian projects.

Agency/State
Agreement No. 23859-01

City of Milwaukie, by and through its
elected officials

By 
Date 11/17/09

APPROVED AS TO FORM

By 
City Legal Counsel
Date 11/17/09

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General
Date _____

Agency Contact:
Alex Campbell
Resource & Economic Development
Specialist
6101 SE Johnson Creek Blvd
Milwaukie OR 97206
503-786-7608
campbella@ci.milwaukie.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Technical Services Manager / Chief
Engineer
Date _____

APPROVAL RECOMMENDED

By _____
Bicycle/Pedestrian Program Manager
Date _____