

W.3.E.1.

AGENDA COVER MEMO

Memorandum Date: December 17, 2008
Order Date: January 7, 2009

TO: Board of County Commissioners
DEPARTMENT: Public Works / Waste Management Division
PRESENTED BY: Daniel Hurley

AGENDA ITEM TITLE: ORDER IN THE MATTER OF APPROVING AN INTERGOVERNMENTAL COOPERATIVE IMPROVEMENT AGREEMENT WITH THE STATE OF OREGON AND THE CITY OF EUGENE TO FACILITATE REPLACEMENT OF THE INTERSTATE-5 BRIDGE OVER THE WILLAMETTE RIVER AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE AGREEMENT

I. MOTION

MOVE APPROVAL OF APPROVING AN INTERGOVERNMENTAL COOPERATIVE IMPROVEMENT AGREEMENT WITH THE STATE OF OREGON AND THE CITY OF EUGENE TO FACILITATE REPLACEMENT OF THE INTERSTATE-5 BRIDGE OVER THE WILLAMETTE RIVER AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE AGREEMENT

II. AGENDA ITEM SUMMARY

The Board is being asked to approve an intergovernmental agreement with the State of Oregon, acting by and through its Department of Transportation, and the City of Eugene, acting by and through its Public Works, Parks and Open Space Division, to facilitate replacement of the Interstate-5 bridge over the Willamette River. The agreement will define the roles and responsibilities of the Parties regarding the State's temporary use of the Whilamut Natural Area (WNA) of Alton Baker Park for construction of the I-5 Bridge Project. Construction is expected to begin in 2009 with completion planned by the end of calendar year 2012. Use of the WNA will be for less than the entire construction period.

The term of the proposed Agreement shall begin on the date all required signatures and approvals are obtained and shall terminate three years following that date. The Parties intend to extend this Agreement as necessary to complete the project and will negotiate a possible amendment to extend the term of the Agreement through the date of completion of the Project and final payments of costs.

III. BACKGROUND/IMPLICATIONS OF ACTION

Interstate 5 (I-5) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Whilamut Natural Area of Alton Baker Park (WNA) is a part of the park system under the jurisdiction and control of the City of Eugene. A portion of the WNA (on the western side of I-5 and northerly side of the Willamette River) was previously owned by Lane County and used as the Day Island Sanitary Landfill. ODOT plans to use a portion of the WNA for temporary access and as a staging area for the I-5 Bridge Project.

Day Island Landfill was the County's primary sanitary landfill from 1963 through 1974. During this time, approximately 70 acres of gravel pits were filled with municipal and industrial solid waste. After the landfill was closed, this area became incorporated into the Alton Baker Park.

In 1993, the County authorized conveyance of the Central Section of East Alton Baker Park to the City of Eugene; authorized conveyance of the Eastgate Section of East Alton Baker Park to the City of Springfield; and entered into an intergovernmental agreement with the City of Eugene, City of Springfield, and the Willamalane Park and Recreation District for such conveyances (Board Order 93-2-17-10). The "Park IGA" recognized that portions of WNA had been a landfill and that generally Lane County would remain liable for that landfill, except where damages occurred as a result of negligence by the City of Eugene, or its agents. Possible existing environmental damage to this area remains the responsibility of County, except as identified in the proposed Agreement.

A. Policy Issues

Under the 1993 "Park IGA" referenced above, County is generally liable for all environmental damages related to the former landfill unless City of Eugene, or an agent of the City, takes certain actions which cause environmental damages. For purposes only of the State's use of WNA under the proposed Agreement, The State will be considered City's agent pursuant to the 1993 "Park IGA", thereby relieving County of liability for environmental damages caused by the State's actions. It is the intent of the proposed Agreement that to the extent that County is relieved of any liability for environmental damages to the extent caused by State's actions, State shall be liable for those environmental damages subject to the limitations set forth in Article XI, Section 7, of the Oregon Constitution and the Oregon Tort Claims Act.

B. Financial and/or Resource Considerations

The proposed agreement will obligate County staff to coordinate with the State to review, inspect the staging area, and haul road at least monthly during construction activities, and notify the State of any deficiencies, or failures to protect the soil cap over the landfill. Staffing for these obligations would come from the Waste Management Division of Public Works. The funding source for this staffing is the Waste Management Division Enterprise Fund. The Enterprise Fund is developed through the collection of

tipping fees.

C. Analysis

The Waste Management Division currently has sufficient staffing to accommodate the County obligations outlined in the proposed agreement. The proposed activities would be considered “post-closure care” and would fit within the proper use of funds for the Waste Management Enterprise Fund.

Replacement of the I-5 Bridge over the Willamette River is a critical infrastructure project for the State, the City of Springfield, the City of Eugene, and Lane County.

The State has determined that there is no feasible and prudent alternative to the temporary use of WNA for construction of the Project.

D. Alternatives/Options

The Board may approve the proposed Agreement as currently written, the Board may request modifications to the proposed Agreement, or the Board may decline to enter into an Agreement with the aforementioned Parties.

IV. TIMING/IMPLEMENTATION

If the Agreement is approved, it will subsequently be executed by the County Administrator. ODOT will continue planning for the bridge replacement, with construction expected to begin in 2009.

V. RECOMMENDATION

Waste Management Division staff recommend that the Agreement be approved and to delegate execution of the Agreement to the County Administrator.

VI. FOLLOW-UP

Upon approval of the Agreement, staff will prepare the necessary documents and deliver them to the County Administrator and to the associated Parties for execution.

VII. ATTACHMENTS

Proposed Intergovernmental Cooperative Improvement Agreement

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.

IN THE MATTER OF APPROVING AN INTERGOVERNMENTAL COOPERATIVE IMPROVEMENT AGREEMENT WITH THE STATE OF OREGON AND THE CITY OF EUGENE TO FACILITATE REPLACEMENT OF THE INTERSTATE-5 BRIDGE OVER THE WILLAMETTE RIVER AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE AGREEMENT.

WHEREAS, Lane County owned and operated the Day Island Sanitary Landfill from 1963 to 1974; and

WHEREAS, from 1974 until 1993, Lane County closed the landfill, and developed and managed the property for recreational purposes according to the 1973 Alton Baker Park Land Use Plan and the 1986 Alton Baker Park Master Plan; and

WHEREAS, Lane County transferred ownership of the Day Island Sanitary Landfill property to the City of Eugene in 1993, in accordance with the terms of an intergovernmental agreement between Lane County, the City of Eugene, the City of Springfield, and Willamalane Park and Recreation District (Alton Baker Park IGA); and

WHEREAS, under the Alton Baker Park IGA, Lane County remains potentially liable for environmental damages associated with the former landfill; and

WHEREAS, the State of Oregon, through its Department of Transportation, requires temporary use of the Day Island property as a staging area for construction of a replacement Interstate-5 Bridge over the Willamette River; and

WHEREAS, the state, the City of Eugene and Lane County desire to form an agreement to facilitate the Interstate-5 Bridge construction; and

WHEREAS, for purposes only of the State's use of the Day Island property under the proposed Agreement, the State will be considered the City of Eugene's agent pursuant to the 1993 Alton Baker Park IGA, thereby relieving County of liability for environmental damages caused by the State's actions, subject to the limitations set forth in Article XI, Section 7, of the Oregon Constitution and the Oregon Tort Claims Act; and

WHEREAS, the Oregon Department of Transportation has drafted an Intergovernmental Cooperative Improvement Agreement outlining County obligations to coordinate with the State to inspect the staging area and haul road at least monthly during construction activities, and notify the State of any deficiencies or failures to protect the soil cap over the landfill; and

NOW THEREFORE, IT IS HEREBY ORDERED, that Lane County approves an Intergovernmental Cooperative Improvement Agreement with the State of Oregon and the City of Eugene to facilitate replacement of the Interstate-5 Bridge over the Willamette River; and

IT IS FURTHER ORDERED, that the County Administrator is authorized to execute the Agreement.

Adopted this 7th day of January, 2009.

APPROVED AS TO FORM

Date 12-31-08 Lane County



OFFICE OF LEGAL COUNSEL

Chair, Lane County Board of Commissioner

**INTERGOVERNMENTAL
COOPERATIVE IMPROVEMENT AGREEMENT**

I-5: Willamette River Bridge Bundle 220
Willamette River (Willamette River) Bridge #08329 Replacement
Lane County / City of Eugene

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;" CITY OF EUGENE, acting by and through its Public Works, Parks and Open Space Division, hereinafter referred to as "City;" and LANE COUNTY, acting by and through its Public Works, Waste Management Division, hereinafter referred to as "County," collectively hereinafter referred to as the "Parties."

RECITALS

1. Interstate 5 (I-5) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Whilamut Natural Area of Alton Baker Park (WNA) is a part of the city park system under the jurisdiction and control of City. A portion of the WNA (on the western side of I-5 and northerly side of the Willamette River) was previously used as Day Island sanitary landfill and possible existing environmental damage to this area remains the responsibility of County, except as identified below.
2. By the authority granted in 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. In 1993, Lane County, City of Eugene, City of Springfield, and Willamalane Park and Recreation District (Willamalane) entered into an Intergovernmental Agreement (Park IGA) related to WNA. The Park IGA transferred ownership of WNA from Lane County to City and Willamalane. The Park IGA recognized that portions of WNA had been a landfill and that generally Lane County would remain liable for that landfill, except where damages occurred as a result of negligence of City, or its agents.
4. The 2003 Oregon Transportation Investment Act (OTIA) Program, established pursuant to Section 10(1)(b) of 2003 Oregon Laws Ch. 618 provides funding for bridge replacement and repair projects chosen by the Oregon Transportation Commission.
5. State's OTIA I-5: Willamette River Bridge Bundle 220 project will replace the existing Willamette River Bridge (Bridge). A temporary detour bridge was installed just east of the existing I-5 alignment over the Willamette River in response to weight restrictions imposed on the Bridge. Hereinafter, all acts necessary to accomplish the replacement of the permanent Bridge and removal of the temporary I-5 detour bridge shall be

referred to as "Project". The location of the Project is shown on the sketch map marked Exhibit A, attached hereto and by this reference made a part hereof.

6. This Agreement will define the roles and responsibilities of the Parties regarding State's temporary use of WNA for construction of the Project. Construction is expected to begin in 2009 with completion planned by the end of calendar year 2012. Use of the WNA will be for less than the entire construction period.
7. This Agreement between State, County, and City is in addition to a separate Agreement that will be entered into between State, and Willamalane Park and Recreation District, which will define the roles and responsibilities of State's temporary impact to Eastgate Woodlands for Project construction.

NOW THEREFORE, it is agreed by and between the Parties hereto as follows:

DEFINITIONS

1. *Section 4(f)* - This means: "Section 4(f) of the U.S. Department of Transportation Act of 1966 (U.S. DOT Act)", which was enacted as a means of protecting publicly-owned public parks, recreation areas, and wildlife/waterfowl refuges as well as historic sites of local, state or national significance, from conversion to transportation uses. The provision states that the Secretary of the U.S. DOT may approve a transportation project requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge, or land from an historic site of national, state, or local significance (as determined by the federal, state, or local officials having jurisdiction over the park, recreation area, refuge or site) **only if**:

- There is no feasible and prudent alternative to using that land, and
- The program or project includes all possible planning to minimize harm to the Section 4(f) property, or
- The Section 4(f) use is *de minimis* as defined in 23 CFR 774.17.

2. *Section 6(f)* - This means: "Section 6(f) of the Land and Water Conservation Fund (Public Law 88-578)", which established a federal matching assistance program which pays half the planning, acquisition, and development cost of outdoor recreation sites and facilities to state and local governments. Section 6(f) prohibits the conversion of property acquired or developed with these grants to a non-recreational purpose without the approval of the Department of Interior's National Park Service (NPS).

TERMS OF AGREEMENT

1. City agrees to State's temporary use of certain property known as WNA for temporary access and staging of State's Project. State's temporary access to and through WNA will be allowed through North Walnut Road, and temporary parking will be allowed at the lot adjacent to the entrance to the road, referred to as Lot #9, as shown on the attached Exhibit A with limitations as outlined in Exhibit B, Section 5.
2. In consideration for State's use of WNA, State agrees to perform certain restorative activities and to abide by specific use of said properties. The activities to be achieved by the Parties in carrying out this Agreement are set out in Exhibit B which is attached hereto and by this reference made a part hereof.
3. Under the 1993 Park IGA referenced above, County is generally liable for all environmental damages related to the former landfill unless City, or an agent of City, takes certain actions which cause environmental damages. For purposes only of State's use of WNA under this Agreement, State will be considered City's agent pursuant to the 1993 Park IGA, thereby relieving County of liability for environmental damages caused by State's actions. It is the intent of this Agreement that to the extent that County is relieved of any liability for environmental damages to the extent caused by State's actions, State shall be liable for those environmental damages subject to the limitations set forth in Article XI, Section 7, of the Oregon Constitution and the Oregon Tort Claims Act.
4. State shall be responsible for all Project costs.
5. The term of this Agreement shall begin on the date all required signatures and approvals are obtained and shall terminate three years following that date. The Parties intend to extend this Agreement as necessary to complete the project and will negotiate a possible amendment to extend the term of the Agreement through the date of completion of the Project and final payments of costs. The indemnity provisions in this Agreement, including Paragraph 3, and the plant maintenance and noxious weed monitoring of the Project defined herein shall survive termination of the Agreement.
6. The Parties' specific obligations under this Agreement are described below:
 - 6.1 County Obligations
 - 6.1.1 The Central Section of WNA was previously used as a landfill. County acknowledges that the landfill is responsibility of the County. It is the intent of County and City that all such responsibility remain with County, except as provided

with respect to damages caused by the negligence of State acting as City's agent pursuant to Paragraph 3 of this Agreement.

6.1.2 County represents that this Agreement is signed by personnel authorized to do so on behalf of County.

6.1.3 County hereby grants State and its contractor(s) the right to work over the former Day Island landfill sections identified on Exhibit A as Walnut Place (haul road, and Staging area for the performance of field work and Project construction), as well as future maintenance, mitigation activities, and monitoring of the work performed for Project.

6.1.4 County's contact person for this Agreement is Daniel M. Hurley, PE, Lane County Public Works, Waste Management Division, or assigned designee upon individual's absence.

6.1.5 County will coordinate with State to review, inspect the staging area, and haul road at least monthly during construction activities, and notify State of any deficiencies, or failures to protect the soil cap over the landfill.

6.2 City Obligations

6.2.1 City shall perform the obligations associated with City as described in Exhibit B.

6.2.2 City shall meet with State no less than once every two months to coordinate planning, design, construction, and implementation of Project as it relates to the use of WNA.

6.2.3 City shall review and respond in a timely manner to any plans and specifications required under this Agreement to be submitted by State to City.

6.2.4 City represents that this Agreement is signed by personnel authorized to do so on behalf of City.

6.2.5 City hereby grants State and its contractor(s) the right to enter onto WNA, for the performance of field work and Project construction, as well as future maintenance and monitoring of the work performed for Project.

6.2.6 City's Project Manager for this Agreement is Johnny Medlin, Director, Eugene PW-POS, 1820 Roosevelt Blvd. Eugene, OR 97402, (541) 682-4800, or assigned designee upon that individual's absence.

6.2.7 City agrees that State's temporary and limited occupancy of the WNA under this Agreement, including the mitigation measures to be enacted, constitutes a *de*

minimis impact to Alton Baker Park and, as such, does not adversely affect the features, attributes, or activities that qualify the property for protection under Section 4(f).

6.3 State Obligations

6.3.1 State, or its consultant, shall conduct the necessary field surveys, environmental studies, traffic investigations, preliminary engineering and design work required to produce and provide final plans, specifications and cost estimates for the Project; identify and obtain all required permits; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid and contract documents; advertise for construction bid proposals; award all contracts; pay all contractor costs, provide technical inspection, project management services and other necessary functions for sole administration of construction contracts entered into for Project.

6.3.2 State shall be responsible for all costs associated with the Project.

6.3.3 State shall perform the work associated with State as described in Exhibit B.

6.3.4 State shall meet with City no less than once every two months to coordinate planning, design, construction, and mitigation measures of Project as it relates to use of WNA.

6.3.5 State shall implement measures specified in the FHWA approved version of the *I-5 Willamette River Bridge Revised Environmental Assessment*, as well as those itemized in Exhibit B, for the avoidance, minimization, and mitigation of impacts of the Project to WNA and park activities.

6.3.6 WNA is subject to use restrictions stated in Section 6(f). The length of the planned temporary occupancy of WNA is a conversion under Section 6(f) and requires State to provide replacement property due to recreational lands affected by State's Project. State shall provide replacement property to be identified in a separate agreement between State and City to satisfy Section 6(f) requirements to the satisfaction of Oregon State Parks and Recreation and the National Park Service.

6.3.7 The Parties agree that State's temporary and limited occupancy of the WNA under this Agreement, including the mitigation measures to be enacted, does not constitute a conversion from park use to transportation uses under Section 4(f) constitutes a de-minimis impact to Alton Baker Park and, as such, does not adversely affect the features, attributes, or activities that qualify the property for protection under Section 4(f).

6.3.8 State shall develop a plan to maintain the covering soil cap placed over the former Day Island sanitary landfill, where the proposed construction staging of Project is located. The plan shall be subject to County's review and approval. By implementing the plan, the State will be responsible to maintain and protect the soil cap, and make any repairs deemed necessary upon notice by any of the Parties, to ensure its continued integrity and continuity.

6.3.9 State's Project Manager for this Project is Richard Upton, PE, Major Projects Unit Manager, Major Projects Branch, 680 Cottage Street NE, Salem, Oregon 97301-2412, phone (503) 986-4469, or assigned designee upon that individual's absence.

6.4 Joint Obligations

6.4.1 The Parties agree to work cooperatively with the Whilamut Natural Area Citizen Planning Committee, Willamalane, and the surrounding communities to minimize impacts, maintain uses, and restore and enhance affected areas to WNA.

6.4.2 The Parties acknowledge and agree 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 the Parties 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 completion of Project. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable to State.

6.4.3 To the extent permitted by Article XI, Section 7 of the Oregon Constitution (with respect to State) and Article XI, Section 10 of the Oregon Constitution (with respect to City and County) and by the Oregon Tort Claims Act (with respect to State, City and County), each Party shall indemnify each other Party against liability for damage to life or property arising from the indemnifying Party's own activities under this Agreement, provided that a Party will not be required to indemnify any other Party for any such liability arising out of the wrongful acts of employees or agents of that other Party.

6.4.4 Notwithstanding the foregoing defense obligations under paragraph 6.4.3 above, no Party nor any attorney engaged by any Party shall defend any claim in the name of the either of the other Parties or any agency, department or division of such other Parties, nor purport to act as legal representative of either of the other Parties or any of their agencies, departments, or divisions, without the prior written consent of the legal counsel of any such other Parties. Each Party may, at anytime at its election assume its own defense and settlement in the event that it determines that the other Parties are prohibited from defending it, or the other Parties are not

adequately defending its interests, or that an important governmental principle is at issue or that it is in the best interests of the Party to do so. Each Party reserves all rights to pursue any claims it may have against the other Parties.

7. General Provisions

7.1. Any Party may terminate this Agreement immediately, or if any cure period is stated below, following expiration of the cure period, upon delivery of written notice to the other Parties, under any of the following conditions:

- a. If any Party fails to meet its obligations called for by this Agreement within the time specified herein or any extension thereof, and such failure is not cured within 30 days of delivery of the notice.**
- b. If any Party fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and such failure is not cured within 30 days of delivery of the notice.**
- c. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow that party, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.**
- 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 either party is prohibited from paying for such work from the planned funding source.**

7.2 In the event of default, any Party not in default may exercise all remedies available at law or under this Agreement against the defaulting Party(ies). Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7.3 The Parties hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be effected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provisions held to be invalid.

7.4 This Agreement may be executed in several counterparts 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.

7.5 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 Parties to enforce any provision of this Agreement shall not constitute a waiver by Parties of that or any other provision.

7.6 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.

IN WITNESS WHEREOF, the Parties hereto have set their hands as of the day and year hereinafter written.

The Project is in the 2006-2009 Statewide Transportation Improvement Program (STIP), (Key #14259) that was approved by the Oregon Transportation Commission on August 17, 2005 (or subsequently approved by amendment to the STIP).

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

Signature page to follow

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways, to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

LANE COUNTY, by and through its designated officials

By _____
County Administrator

Date _____

APPROVED AS TO FORM

By _____
County Legal Counsel

Date _____

CITY OF EUGENE, by and through its designated officials

By _____
City Manager

Date _____

APPROVED AS TO FORM

By _____
City Legal Counsel

Date _____

STATE OF OREGON, acting by and through its Department of Transportation

By _____
Deputy Director, Highways

Date _____

APPROVAL RECOMMENDED

By _____
Agency Project Manager

Date _____

By _____
Major Projects Branch Manager

Date _____

APPROVED

By: Keith Jones (by email)
Assistant Attorney General

Date: December 11, 2008

EXHIBIT B

**I-5: Willamette River Bridge Replacement
City of Eugene / Lane County**

1. State, County, and City shall meet no less than once every two months to coordinate planning, design, construction, and execution of work in WNA for the I-5: Willamette River Bridge Bundle 220 project.
2. State shall provide a single point of contact to the City for regular communications and raising concerns.
3. At its own expense, State shall repair North Walnut Road, and contractor access as necessary to allow construction equipment and vehicle access. If necessary, short sections of pipe may be placed across roadway to allow for leveling and continued existing drainage. Drawings and specifications of proposed repair to North Walnut Road, and contractor access will be provided to City for review and approval prior to work. North Walnut Road will be used for transport access only and not for any staging purposes. No work or transportation will be allowed outside the current roadbed except contractor staging area, contractor access, and Project related improvements within WNA and identified on Exhibit B.
4. There shall be no disturbances by State, or its contractor, of the existing landfill cover/fill-cap with the exception of what is necessary for grinding, scraping, and repaving of any North Walnut Road reconstruction after Project completion. Disturbance to the landfill cover shall be avoided by importing fill rather than grading and excavation in WNA.
5. State will require its contractor to allow only those vehicles necessary for construction and trades people to access WNA along North Walnut Road. All non-essential, personal vehicles will be parked in Lot #9 (owned by City), located northwesterly of the gated access, and contractor shuttles will be provided for workers. Lot #9 will not be available for parking to construction personnel on University of Oregon football game days. Parking of vehicles is not allowed along North Walnut Road. At all times a minimum of 10 spaces shall be reserved and available for park users. These spaces shall be signed as "parking for park users" throughout the duration of Project construction.
6. State shall require its contractor to control access to North Walnut Road at all times. The gate at the entrance to the road will be locked when road is not in use. An onsite security person shall be stationed at the gate at all times during work activities to ensure only authorized vehicles are admitted.
7. State shall have the bridge on North Walnut Road checked to ensure its load capacity prior to commencing contractor activities on the property.

8. State's construction contractor shall minimize the areas used for material storage and staging to the extent practicable, and in general will limit the area so used to around 2 acres in size. Exact configuration and location will be determined with approval by City and County.
9. State shall instruct its contractor to design any necessary nighttime work lighting so as to minimize impacts outside the construction area zone.
10. Nothing in this Agreement allows State to operate outside limits established in the City of Eugene's noise-related ordinances. If State desires any variance to the ordinances, it shall work through the proper City process.
11. Trails will, to the maximum extent practicable, be kept open, safe, and useable during construction. A continuous route across State right of way for the bicycle/pedestrian pathways will be kept open, safe and accessible at all times on both the north side, and to the extent practicable, the south side of the river during construction. The construction contractor will, in coordination with State, City, and Willamalane Park and Recreation District, prepare a traffic control plan for the park trail system in the Project area. State will provide as much advance notice as possible of proposed trail closures. State will ensure that existing or constructed detours are safe, adequately signed and marked, and sufficient in size and passability to accommodate existing bicycle/pedestrian traffic loads. All closures and detours will be approved by the State Project Manager, as identified in State Obligations, paragraph 6.3.8. Temporary constructed detours will be removed as soon as they are no longer needed and disturbed areas shall be restored to prior conditions or better.
12. The State shall coordinate with City and Willamalane park officials, and the Citizen Planning Committee for the Whilamut Natural Area on temporary closures or detours of trails of more than one day in duration. Closures of trails of duration less than one day may be approved by the State Project Manager and will be done in accordance with the traffic control plan.
13. In consideration for State's use of WNA, the following mitigation measures shall be taken:
 - (a) State shall, in coordinaton with City, plant native vegetation to initiate establishment of a riparian forest corridor west of I-5, outside of State's Right of Way, between the existing forested areas along the Willamette River and south of the Canoe Canal, extending the forested area southward toward the Willamette River . The State will coordinate with the City to develop the planting plan and define the specific areas to be

planted. The State will monitor and maintain the plantings for two years. The general size and orientation are identified on the Exhibit A.

(b) State shall, in coordination with the City, remove invasive plants from and plant native understory plants in the existing riparian forest area west of I-5 and south of the Canoe Canal as indicated on Exhibit A. State will coordinate with the City to develop the planting plan for the re-establishment of native understory plants, and define the specific area where the invasive plants will be removed. The State will monitor and maintain the plantings for two years.

14. State shall fund the creation and placement of up to five additional "talking stones" for placement within the WNA (within the combined areas under the jurisdiction of the City and Willamalane Park and Recreation District). The final placement of the stones will be determined by the City, Willamalane Park and Recreation District, and the Citizen Planning Committee for the Whilamut Natural Area. The talking stones will be similar in size and design to those previously placed in the park.
15. State will restore areas within WNA affected by the Project to the same or better condition as prior to the start of Project. Affected sites will be restored in accordance with the Oregon Transportation Investment Act (OTIA) III Site Management and Maintenance requirements. Restoration plans will be provided to the City for review, comment, and approval. In accordance with the OTIA III Environmental Performance Standards, the State or designate, will monitor and maintain restored areas within the Project limits, for a period of five (5) years after installation to ensure they are established.
16. State shall reconstruct the multi-use pathway under the Canoe Canal Bridge to improve its safety and functionality. The State will, to the maximum extent practicable, design and construct a passage that is safe with an adequate safe sight distance along its entirety; utilize natural features such as plantings and earthen banks; and collaborate with representatives from the City, Willamalane Park and Recreation District, and the Citizen Planning Committee for the Whilamut Natural Area to design a pathway that is aesthetically acceptable to all parties.
17. State shall improve the riding surface on a limited basis, by patching the asphalt surface, or unsafe pavement areas on the western portions of the Canoe Canal pathway between the Walnut Road Bridge and the I-5 Bridge to enhance bicycle safety and passability along the route. Improvements may include removal of bumps and ruts to accommodate anticipated increased use of this route as a bicycle/pedestrian detour during construction.

18. The State and City will coordinate on a potential design of an improved intersection at the north end of the Knickerbocker footbridge near the existing frog pond. The City will coordinate with the State to provide, if feasible, a concept design. If a mutually acceptable concept design is developed, the State will provide contract documents and construct the intersection.
19. Any reconstruction or realignment of trails will be done in accordance with applicable design standards.
20. Removal of mature vegetation outside State's permanent right of way will be limited to the minimum area necessary for construction and staging activities, park trail repairs, trail enhancement, noxious weed abatement, and restoration as identified on Exhibit A, and will be reviewed by and subject to City approval, which will not be unreasonably withheld.