

February 4, 2016

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement between
Oregon Department of Transportation (ODOT) and Clackamas County Service District No. 5 (CCSD#5)
for McLoughlin Blvd. Street Lighting

Purpose/Outcomes	Provide an agreement between ODOT and CCSD#5 for conditions and funding contribution related to the street lighting installation on McLoughlin Blvd. between the cities of Milwaukie and Gladstone.
Dollar Amount and Fiscal Impact	Total initial estimated project costs: \$1,055,089 Project funding: 1. \$615,089 (Option B Pole Sale) 2. \$230,000 (Energy Trust Credit) 3. \$210,000 (ODOT contribution)
Funding Source	ODOT and CCSD#5
Duration	Useful life of the constructed facilities
Previous Board Contact	Business meeting on 11/25/2015
Strategic Plan Alignment	Promotes a safe, healthy and secure community through the enhanced nighttime visibility created with new street lighting.
Contact Person	Wendi Coryell, Service District Specialist - DTD Engineering 503-742-4657 (Phone) wendicor@clackamas.us
Contract No.	None

BACKGROUND:

On November 25, 2015 the Board approved the McLoughlin Blvd. street lighting petition for the installation of street lighting on McLoughlin Blvd. This agreement memorializes ODOT's financial commitment and outlines roles and responsibilities between the district and ODOT for construction of the McLoughlin Blvd. lighting project.

The intergovernmental agreement is attached for your review and approval.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners, acting in the capacity of governing board for Clackamas County Service District No. 5, approve the attached intergovernmental agreement to install street lighting on McLoughlin Blvd. between the cities of Milwaukie and Gladstone.

Respectfully submitted,

Wendi Coryell, Service District Specialist
Department of Transportation and Development

**COOPERATIVE IMPROVEMENT AGREEMENT
CLACKAMAS COUNTY URBAN HIGHWAY ILLUMINATION**

OR99E - McLoughlin Boulevard

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 CLACKAMAS COUNTY SERVICE DISTRICT NO. 5, acting by and through its elected officials, hereinafter referred to as "DISTRICT," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. OR99E is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Within the District boundary, OR99E is also known as McLoughlin Boulevard.
2. By the authority granted in Oregon Revised Statutes (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. State, by ORS 366.220, is vested with complete jurisdiction and control over the roadways of other jurisdictions taken for state highway purposes.
4. The District contracts with Portland General Electric Company, a regulated public utility (PGE), for design, installation, maintenance and operation of street lights within the District, including along OR99E.
5. District has a desire to collaborate with the state to install new street lighting along OR99E/McLoughlin Boulevard from the southern boundary of the city of Milwaukie (MP 6.68) to the northern boundary of the city of Gladstone (MP 10.43).

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 District agree to set conditions for District to meet in order for State to permit the installation, operation and maintenance of highway illumination on McLoughlin Blvd. (the "Project"). The District shall construct, operate and maintain all illumination installed as part of the Project under this Agreement. The District shall be solely responsible for costs associated with the ongoing operation, maintenance and repair of the illumination installed in this Project. The

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location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof. The Project general scope and estimate is shown on Exhibit B, attached hereto, and by this reference made a part hereof.

2. The total cost of the Project is estimated to be \$1,064,825, which is subject to change. State shall contribute up to \$210,000 to the District for Project expenditures. District will be responsible for financing all Project costs in excess of State's contribution. If installation of the Project is not completed by September 30, 2018, District shall reimburse State for funds disbursed to District for the Project.
3. State and District shall work cooperatively to design and construct the Project to PGE specifications. Notwithstanding, State reserves the right to review and approve the location of all new facilities installed by the Project.
4. District to coordinate with PGE to provide the services needed for this illumination project. It is expected that PGE will design, install and maintain the light poles. To the extent any of the District's responsibilities are provided by a regulated utility company with tariffs on file at the Public Utilities Commission of Oregon (Commission), it is the intent of the Parties that all such duties performed by a regulated utility shall be exclusively in accordance with the utility company's Commission-approved tariff. If such responsibilities are provided by persons or entities other than a regulated utility, District shall be responsible for managing any such agreements to ensure illumination is properly installed, operated and maintained.
5. 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 responsibilities for the useful life of the facilities constructed as part of the Project which is determined to be 20 years.

DISTRICT OBLIGATIONS

1. District shall pursue with due diligence the annexation of properties into the District which is necessary for the successful completion of the Project and ongoing operations. Within thirty (30) days of the date all required signatures have been obtained on this Agreement, and the needed properties have been annexed into the District, District shall notify State and State shall send to District its \$210,000 contribution toward funding for the Project.
2. District shall be responsible for 100 percent of the maintenance and operations responsibilities and costs, including power associated with the illumination installed as part of this Project. District shall require the utility company to send all related invoices directly to District.

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3. District shall exempt ODOT owned properties along OR99E that are currently within the District, or that may be annexed into the District, from taxes and fees imposed on properties within the District.
4. District shall submit all drawings and specifications, and other information at a level of detail needed to complete roadway safety and operational evaluations on facilities being installed by the project to State for review and approval. District may not commence construction of the Project without first obtaining State's approval. District shall assume responsibility for removal of any improvements installed or constructed within the Project area that were not approved by State.
5. If District does not complete installation by September 30, 2018, District will reimburse State for funds contributed to the Project. The deadline may be extended upon mutual agreement by the Parties.
6. All employers, including District, 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. District shall ensure that each of its contractors complies with these requirements.
7. District 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.
8. District 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 District's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims") in connection with the construction of the facilities installed within the scope of the Project. It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligence, willful misconduct, or strict liability of the State, be indemnified by the contractor and subcontractor from and against any and all Claims in connection with the construction of the facilities installed within the scope of the Project.
9. Any such indemnification shall also provide that neither the District's contractor and subcontractor nor any attorney engaged by District's contractor and subcontractor

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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 District's contractor is prohibited from defending the State of Oregon, or that District'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 District's contractor if the State of Oregon elects to assume its own defense.

10. District shall comply with all federal, state, and local laws, regulations, tariffs, 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, District expressly agrees to comply with (is) 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. District shall construct the Project in accordance with the requirements of ORS 276.071 including the public contracting laws within ORS Chapters 279A, 279B and 279C.
12. If District chooses to assign its contracting responsibilities to a consultant or contractor, or utility, District shall inform the consultant or contractor of the requirements of ORS 276.071, to ensure that the public contracting laws within ORS Chapters 279A, 279B and 279C are followed.
13. District, or its contractor, shall follow the Oregon Locate Laws (ORS 757 and OAR 952).
14. District shall obtain a permit to "Occupy or Perform Operations upon a State Highway" from assigned State District 2B office for illumination installation. District agrees to comply with all provisions of said permit(s), and shall require its developers, contractors, subcontractors, partnering utility provider or consultants performing such work to comply with such permit and review provisions.
15. District shall provide State District 2B office 48-hour notice prior to performing normal operational and/or maintenance activities and as much notice as possible for emergency repairs. State District 2B office reserves the right to place day/time, traffic control, and other requirements on District work activities. State also reserves

the right to delay approval of request to perform activities if safety and/or operational concerns require additional information.

16. If District enters into a construction contract for performance of work on the Project, then District will require its contractor to provide the following:

- a. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under the resulting contract or tariff, in connection with the construction of the facilities installed within the scope of the Project. It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligence, willful misconduct, or strict liability of the State, be indemnified by the contractor and subcontractor from and against any and all Claims. Contractor and District shall name State as a third party beneficiary of any resulting contract.
- b. General Liability. Contractor shall maintain, at Contractor's expense, and keep in effect during the term of the resulting contract, General Liability Insurance covering bodily injury and property damage in a form and with coverages that are reasonably satisfactory to State. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than \$ 1,000,000 for each job site or location. Each annual aggregate limit will not be less than \$ 2,000,000.
- c. Automobile Liability. Contractor shall maintain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than \$1,000,000.
- d. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of any resulting contract will include State and its divisions, officers and employees as Additional Insured, but only with respect to Contractor's contractually assumed indemnity obligations under this Agreement. Coverage will be primary and non-contributory with any other insurance and self-insurance.
- e. Contractor shall have the right, at its sole discretion, to self-insure any of its insurance requirements under this Agreement.

- f. Notice of Cancellation or Change. There shall be no cancellation, material change that may affect the availability of insurance under this Agreement, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor's or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.
17. District is responsible for and ensures that all survey monuments recorded with a county and within or adjacent to the highway right of way shall be preserved in accordance with ORS 209.140 and 209.150. Any such monumentation that is damaged or removed during the course of the Project must be replaced in compliance with ORS Chapter 209 stipulations, the State Right of Way Monumentation Policy, and at District's own expense.
18. District is also responsible, at its own expense, for replacement of any additional State survey marks or other monumentation not recorded with a county that are damaged or removed during the course of the Project. In the event of such replacement, District shall contact State's Geometrics Unit for replacement procedures.
19. District certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of District, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind District.
20. District's Project Manager for this Project is Wendi Coryell, Clackamas County Service District Specialist, 150 Beaver Creek Rd., Oregon City, OR 97045, 503-742-4657, wendicor@clackamas.us or assigned designee upon individual's absence. District shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. Within thirty (30) days of the date State receives notice from District that the properties have been annexed into the District, and required signatures have been obtained on this Agreement, State shall send to District its \$210,000 contribution toward funding for the Project.
2. The State shall review illumination installation plans, specifications, and other information needed for State to complete roadway safety and operational evaluations on facilities being installed and respond to the District within ten (10) business days of receipt, whether the plans have been approved or whether additional information or corrections are required prior to State approval.
3. District shall notify State when they have completed the illumination installation Project. Upon completion of the illumination installation, State shall either send to

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District a bill for the amount which, when added to District's advance deposit, will equal 100 percent of the total state costs for Project or State will refund to District any portion of said advance deposit which is in excess of the total State costs for Project.

4. State grants authority to District, or District's contractor, to enter upon State right of way for the construction of this Project as provided for in this agreement and the permit or permits to be issued by State District 2B Office.
5. State's Project Manager for this Project is Richard Garrison, Project Manager, 123 NW Flanders Street, Portland, OR 97222, 503-731-8462, Richard.F.Garrison@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. 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 responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years.
2. Prior to the installation of illumination or State's disbursement of funds to District, this Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
3. District may terminate this Agreement effective upon delivery of written notice to State, or at such later date as may be established by District, if State fails to provide services called for by this Agreement within the time specified herein or any extension thereof. If District terminates this Agreement pursuant to the terms herein, State may require District to reimburse State for any and all funds disbursed to District.
4. State may terminate this Agreement effective upon delivery of written notice to District, or at such later date as may be established by State, under any of the following conditions:
 - a. If District fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If District 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 unless such failure is of such nature that it cannot be cured within such 10 day period, in which case

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State may not terminate so long as the District shall commence the curing of the failure within such 10 day period and shall thereafter complete the curing thereof with diligence.

- c. If District fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. 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.
5. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
 6. 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 District 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.
 7. With respect to a Third Party Claim for which State is jointly liable with District (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 District in such proportion as is appropriate to reflect the relative fault of State on the one hand and of District 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 District 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.

8. With respect to a Third Party Claim for which District is jointly liable with State (or would be if joined in the Third Party Claim), District 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 District 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 District 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. District'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.
9. 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.
10. 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.
11. 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.

SIGNATURES TO FOLLOW

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**CLACKAMAS COUNTY SERVICE
DISTRICT NO. 5, by and through its elected
officials**

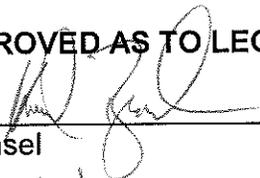
By _____

Date _____

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By 
Counsel

Date 1/27/16

District Contact:

Wendi Coryell, Clackamas County Service
District Specialist
Clackamas County
150 Beavercreek Road
Clackamas, OR 97015
503-742-4657
wendicor@clackamas.us

State Contact:

Richard Garrison, Project Manager
123 NW Flanders Street
Portland, OR 97209
503-731-8462
Richard.F.Garrison@odot.state.or.us

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

By _____
Region 1 Manager

Date _____

APPROVAL RECOMMENDED

By _____
State Traffic Engineer

Date _____

By _____
Region 1 State Traffic Engineer

Date _____

By _____
District 2B Manager

Date _____

By _____
District 2C Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

EXHIBIT A – Project Location Map

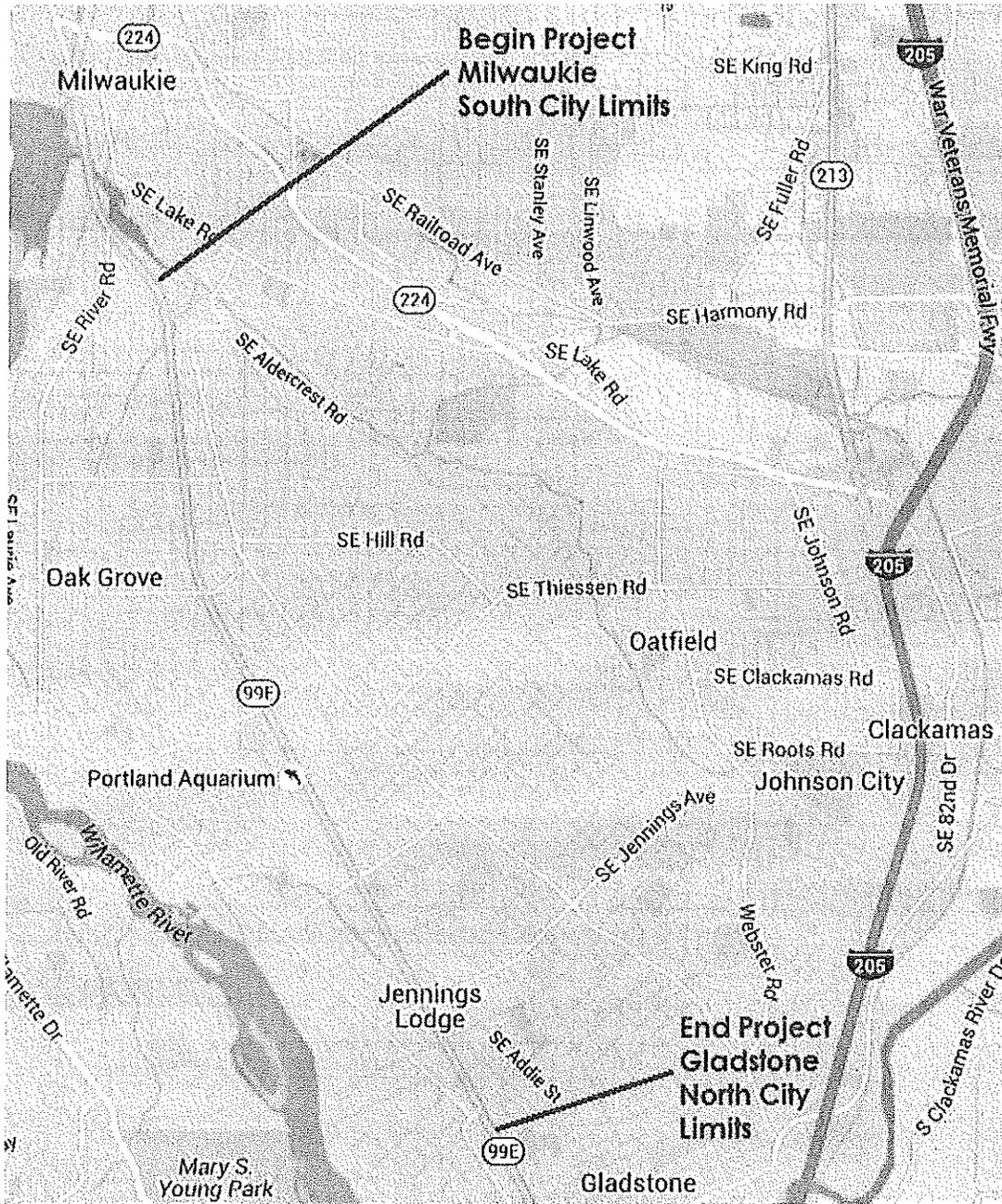


EXHIBIT B – PROJECT ESTIMATE

Capital Costs

Element	Unit(s)	Unit Cost/Rate	Number	Cost/Revenue	Cost/Revenue
<i>Existing Wood Pole Lumination</i>					
Luminary (Cobra)	Luminary	N/A	94		
<i>NEW Wood Pole Lumination</i>					
Luminary (Cobra - LED)	Luminary	N/A	5		
New Wood Pole - 50' Junction boxes	Pole	\$5,000	5	\$25,000	
				\$16,688	
<i>New Aluminum Pole Lumination</i>					
Luminary (Cobra - LED)	Luminary	N/A	85		
New Aluminum Poles - 40'	Pole	N/A	85		
Trench	Linear Feet	\$35	23000	\$805,000	
Pedestals	Pedestal				
Total				\$846,688	
Line Extension Cost					
Cost to install circuitry and energize				\$73,136.21	
Total				\$73,136.21	