



RESOLUTION NO. 7213

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE OREGON DEPARTMENT OF TRANSPORTATION

WHEREAS, the Ellsworth Street bridge is part of the state highway system under the jurisdiction of the Oregon Department of Transportation (ODOT); and

WHEREAS, the City of Albany owns and maintains the lighting improvements located on the Ellsworth Street bridge; and

WHEREAS, ODOT is constructing improvements on the Ellsworth Street bridge to increase the vertical clearance of the bridge beams to reduce the risk of future damage; and

WHEREAS, the City is responsible for costs associated with relocating lighting improvements in conjunction with the bridge improvements; and

WHEREAS, the estimated cost to relocate the city-owned lighting is \$40,000.00.

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that the City of Albany is obligated in the amount of \$40,000.00 for purposes of relocating city-owned lighting improvements on the Ellsworth Street bridge; and authorizes the city manager to execute the intergovernmental agreement; and

BE IT FURTHER RESOLVED that the Fiscal Year 2022-2023 street capital and restoration funds are hereby appropriated as follows:

Resources	Debit	Credit
25040250-8XXXXXX	\$40,000	

DATED THIS 10TH DAY OF MAY 2023.

Mayor

ATTEST:

City Clerk

INTERGOVERNMENTAL AGREEMENT
US 20 Ellsworth Street (Willamette River) Bridge No. 01025D
Key Number: 20428

THIS AGREEMENT ("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" or "ODOT," and the CITY OF ALBANY, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually as "Party" and collectively as "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. US 20 (Albany-Corvallis Highway) and the Ellsworth Street (Willamette River) Bridge are a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). US 20 is routed through the city limits of Agency where it becomes Ellsworth Street.
3. State is increasing bridge clearance to lessen collision risk and to allow more efficient movement of freight. As part of the project, Agency has requested State, at Agency's expense, to relocate existing Agency lighting on the State-owned bridge.
4. This Agreement is intended to document the responsibilities of both Parties for the project as identified in Terms of Agreement, Paragraph 1.
5. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the state. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.

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 Agency agree to State, during the process of reconstructing the US 20 Ellsworth Street Bridge, to replace defective Agency-owned bridge lighting and relocate lighting to new permanent raised cross structures.

Collectively, these improvements shall hereinafter be referred to as "Project." The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A; the proposed lighting is approximately as shown on the illumination

plan attached hereto, marked Exhibit B, both of which by this reference are made a part hereof.

2. The Project will be financed at an estimated cost of \$5,873,300.00 in state, federal, and local funds. The estimate for the total Project cost is subject to change. ODOT funds for this Project shall be limited to \$5,833,300.00. Agency shall be responsible for an estimated amount of \$40,000 for the lighting relocation portion of the Project and for any Project costs related to the lighting relocation beyond that estimate.
3. 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 if applicable) responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years. The Project shall be completed within three (3) calendar years following the date of final execution of this Agreement by both Parties.

AGENCY OBLIGATIONS

1. Agency shall review and concur with Project plans, designs, drawings, and specifications for the lighting relocation portion of the Project.
2. On acceptance of plans, Agency grants to ODOT the right to enter onto Agency right of way for the purpose of construction, connection, or placement of Project improvements as set forth in this Agreement.
3. Agency shall contribute an estimated amount of \$40,000.00 for the lighting relocation portion of the Project.
4. Agency shall accept ownership and control of bridge illumination and shall pay all future maintenance and power costs for said improvements. Agency shall require the power company to send invoices directly to Agency.
5. If Agency fails to maintain illumination in accordance with the terms of this Agreement, ODOT at its option, may maintain the illumination and bill Agency, seek an injunction to enforce the duties and obligations of this Agreement, or take any other action allowed by law.
6. Agency, by execution of this Agreement, gives its consent as required by ORS 373.050(1) to any and all closures of streets that intersect the state highway, if any there be in connection with or arising out of the Project covered by the Agreement.
7. All employers, including City, 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. City shall ensure that any contractor it hires to perform construction of this Project complies with these requirements.

8. Agency shall, upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from State, forward to State an advance deposit or irrevocable letter of credit in the amount of \$20,000.00 for the Project, said amount being equal to fifty percent (50%) of the estimated total cost for the work performed by State at Agency's request under State Obligations paragraph 3. Agency agrees to make additional deposits as needed upon request from State. Depending upon the timing of portions of the Project to which the advance deposit contributes, it may be requested by State prior to Preliminary Engineering, purchase of right of way, or approximately 4-6 weeks prior to Project bid opening.
9. Upon completion of the Project and receipt from State of an itemized statement of the actual total cost of State's participation for the Project, Agency shall pay any amount which, when added to Agency's advance deposit, will equal 100 percent (100%) of actual total State costs for the lighting relocation portion of the Project. Any portion of said advance deposit which is in excess of the State's total costs for this portion will be refunded or released to Agency.
10. Agency shall obtain a miscellaneous permit to occupy State right of way through the State District 4 Office prior to any maintenance work.
11. Agency shall contact State's District 4 Permits Office in writing, seven (7) working days prior to the commencement of maintenance activities that impact travel lanes of US 20. No lane restrictions are permitted unless prior written approval from State's District 4 Manager or designee is provided.
12. Agency acknowledges and agrees 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 Agency 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 final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
13. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
14. Agency's Project Manager for this Project is Staci Belcastro, City Engineer; 333 Broadalbin Street, Albany, Oregon 97321; 541-917-7645; staci.belcastro@cityofalbany.net, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

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; and provide technical inspection, project management services, and other necessary functions for sole administration of the construction contract entered into for this Project.
2. With the exception of the costs related to the relocation of existing Agency lighting on the State-owned bridge listed in Agency Obligations Paragraph 3, State shall be responsible for all costs associated with construction of the Project.
3. State shall replace defective Agency-owned bridge lighting and relocate said lighting to new permanent raised cross structures.
4. State grants authority to Agency to enter upon State right of way for maintenance activities as provided for in a miscellaneous permit to be issued by State District 4 Office.
5. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
6. State's Project Manager for this Project is James Doll, Transportation Project Manager; 3700 SW Philomath Blvd., Corvallis, Oregon 97333; 541-286-8358; james.p.doll@odot.oregon.gov, 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 may be terminated by mutual written consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency 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.

- c. If Agency 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.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
 4. 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 Agency 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.
 5. With respect to a Third Party Claim for which State is jointly liable with Agency (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 Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency 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 Agency 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.
 6. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency 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 Agency 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 Agency 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. Agency'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.

7. 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.
8. 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.
9. 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.
10. Electronic Signatures. The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the Agreement and amendments, submitted or exchanged via email are "Electronic Signatures" under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. State reserves the right at any time to require the submission of the hard copy originals of any documents.

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.

This Project is in the 2021-2024 Statewide Transportation Improvement Program (STIP), (Key #20428) that was adopted by the Oregon Transportation Commission on July 15, 2020 (or subsequently by amendment to the STIP).

City of Albany/ODOT
Agreement No. 73000-00012707

CITY OF ALBANY, by and through its
elected officials

By _____

Date _____

By _____

Date _____

By _____

Date _____

LEGAL REVIEW APPROVAL (If required
in Agency's process)

By _____
Agency's Counsel

Date _____

Agency Contact

Staci Belcastro
City Engineer
333 Broadalbin Street
Albany, Oregon 97321
541-917-7645
staci.belcastro@cityofalbany.net

State Contact

James Doll
Transportation Project Manager
3700 SW Philomath Blvd.
Corvallis, Oregon 97333
541-286-8358
james.p.doll@odot.oregon.gov

STATE OF OREGON, by and through
its Department of Transportation

By _____

Delivery and Operations Division
Administrator

Date _____

APPROVAL RECOMMENDED

By _____

Region 2 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Janet Borth via email _____
Assistant Attorney General

Date 3/28/2023 – email approval retained in file

EXHIBIT A – Project Location Map

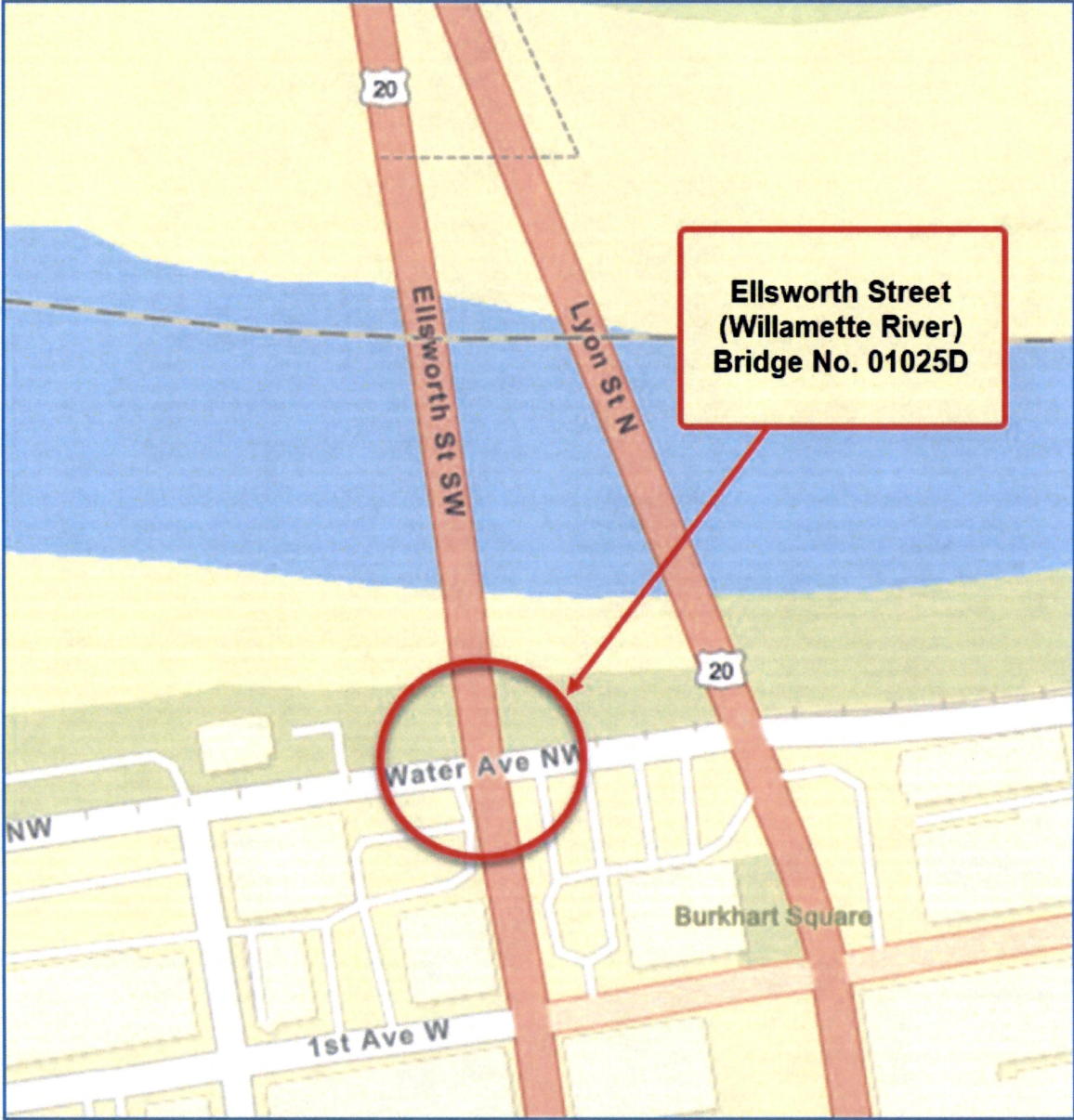
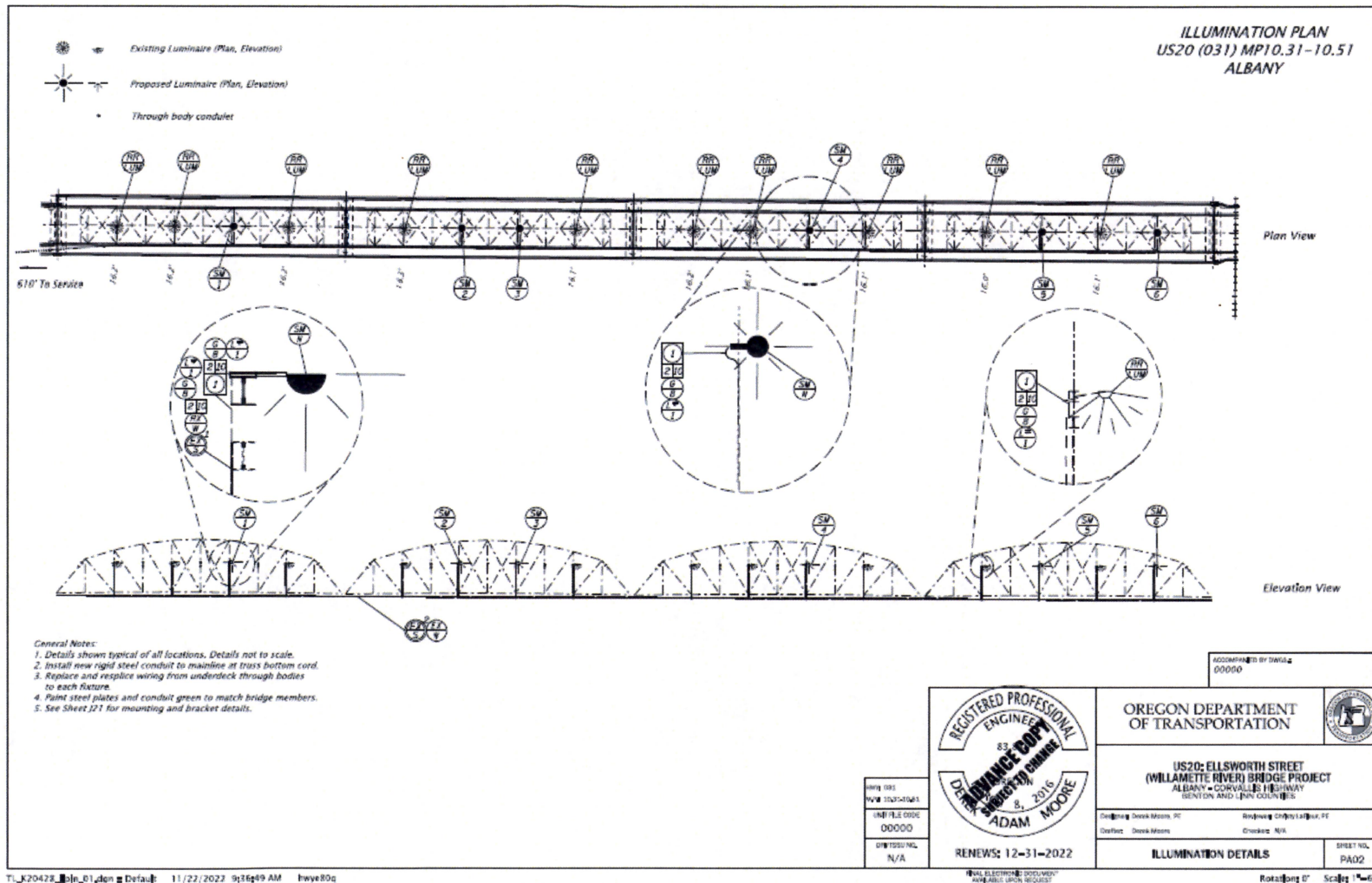


EXHIBIT B – Illumination Plan





ATTACHMENT 3

ELLSWORTH STREET BRIDGE IMPROVEMENTS Project Vicinity Map



NOT TO SCALE