BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 16-05-03-05

IN THE MATTER OF AN
INTERGOVERNMENTAL AGREEMENT
WITH THE CITY OF SPRINGFIELD
GRANTING EMINENT DOMAIN AUTHORITY
FOR THE FRANKLIN BOULEVARD
DEVELOPMENT PROJECT IN GLENWOOD

WHEREAS, the County and the City of Springfield co-adopted the Glenwood Refinement Plan (City Ordinances 6279; 6316 and County Ordinances PA1288; PA1308) which sets out policies and implementation strategies involving the redevelopment of Franklin Boulevard as a hybrid multi-way boulevard; and

WHEREAS, the City plans to redevelop Franklin Boulevard to urban standards by upgrading it to be a hybrid multi-way boulevard with roundabouts, sidewalks, and pedestrian and bicycle facilities separated from vehicular traffic, with the first phase of the work planned to start in the summer of 2016; and

WHEREAS, Phase I of the City's Franklin Boulevard Development Project requires the acquisition of right-of-way both for permanent improvements and for temporary construction easements, but the City lacks eminent domain authority for necessary properties outside the current Springfield city limits; and

WHEREAS, the County has been granted eminent domain authority to acquire real property for public road purposes by ORS 368.073 and 368.096, which may be delegated to the City of Springfield for roads leading directly to the City, as authorized in ORS 373.260; and

WHEREAS, the delegation of the County's eminent domain authority for Phase I of the project to the City of Springfield will support the County's Strategic Plan priorities for vibrant communities and infrastructure, and the costs related to the exercise of the delegated authority will be borne by the City;

NOW, THEREFORE, the Board of County Commissioners of Lane County ORDERS as follows:

1. That the County delegates its eminent domain authority under ORS 368.073 and 368.096 to the City of Springfield for Phase I of the Franklin Boulevard Development Project; and
2. That the County Administrator is authorized to execute an intergovernmental agreement for this delegation in substantially the form included as Attachment A.

ADOPTED this 3rd day of May, 2016.

Chair, Lane County Board of Commissioners

APPROVED AS TO FORM
Date: 29 APRIL 2016
Lane County
OFFICE OF LEGAL COUNSEL
INTERGOVERNMENTAL AGREEMENT

DELEGATION OF EMINENT DOMAIN AUTHORITY FOR THE FRANKLIN BOULEVARD REDEVELOPMENT PROJECT (PHASE I)

THIS AGREEMENT is made and entered into by and between Lane County, a political subdivision of the State of Oregon, hereinafter referred to as "County"; and the City of Springfield, a municipal corporation, acting by and through its designated officials, hereinafter referred to as "City," each herein referred to individually or collectively as "Party" or "Parties."

1. RECITALS

1.1 ORS 190.010 and the Lane County Home Rule Charter provide that units of local governments may enter into agreements for the performance of any or all functions and activities that a party to the agreements, its officers or agents, have authority to perform.

1.2 ORS 368.073 and ORS 368.096 provide that counties may acquire real property for public road purposes and sets out the allowable methods. ORS 373.260 provides that a county and a city of less than 100,000 population may enter into intergovernmental agreements for acquisition of right-of-way for roads leading directly to the city, whether such roads are within or outside the corporate limits of such city. The current population of City is approximately 60,000.

1.3 Franklin Boulevard, a significant transportation facility located within the City’s urban growth boundary in the area commonly known as Glenwood. City annexed Franklin Boulevard and McVay Highway on April 1, 2013 (Ordinance 6290) and on June 16, 2014 executed Jurisdictional Transfer Agreements No. 792 and 795 with the Oregon Department of Transportation (Resolutions 2014-20 and 2014-21) transferring jurisdiction of McVay Highway and Franklin Boulevard from the State of Oregon to the City.

1.4 County and City co-adopted the Glenwood Refinement Plan (City Ordinances 6279; 6316 and County Ordinances PA1288; PA1308) which sets out policies and implementation strategies involving the redevelopment of Franklin Boulevard as a hybrid multi-way boulevard.

1.5 City plans to redevelop Franklin Boulevard to urban standards by upgrading it to be a hybrid multi-way boulevard that will have roundabouts, sidewalks, pedestrian and bicycle facilities separated from vehicle traffic, to provide a greater level of safety for those traveling through Glenwood.

1.6 The Franklin Redevelopment Project will be completed in phases. City is preparing to construct Phase I starting in the summer of 2016 as depicted in Exhibit A of this Agreement.
1.7 Phase I of the Franklin Redevelopment Project requires the acquisition of right-of-way for both permanent improvements and temporary construction easements from the properties listed in Exhibit B of this Agreement. Some of the properties listed in Exhibit B are not annexed into the City.

1.8 City has determined that the appropriation of such land is reasonably necessary to protect the full use and enjoyment by the public of Franklin Boulevard, and that the public good realized by this project far outweighs any loss to the affected property owners, particularly in light of City's obligation to provide just compensation for any such loss.

2. SCOPE OF AGREEMENT

2.1 County's Obligations. County delegates its authority of eminent domain granted under ORS 368.073 to City for the specific purpose of allowing City to acquire the necessary right-of-way for the properties located within the Franklin Redevelopment Project (Phase I) as set out in Exhibits A and B of this Agreement.

2.2 City's Obligations.
   2.2.1 Be responsible for all design, construction, engineering and right-of-way acquisition whether through negotiation with the affected property owners or through the exercise of eminent domain under Oregon law.
   2.2.2 Pay for all costs associated with acquiring the right-of-way for the Franklin Redevelopment Project Phase I.

3. DOCUMENTS FORMING THE AGREEMENT

3.1 The Agreement. The Agreement consists of this document and all exhibits listed below, which are incorporated into this Agreement by this reference.

3.2 Exhibits. With this document, the following exhibits are incorporated into the Agreement:
   - Exhibit A – Project Map
   - Exhibit B – List of Impacted Properties

4. EFFECTIVE DATE AND DURATION

4.1 Effective Date. This Agreement is effective upon signatures of all parties.

4.2 Duration. Unless extended or terminated earlier in accordance with its terms, this Agreement will terminate 36 months from the Effective Date. However, such expiration shall not extinguish or prejudice either party's right to enforce this agreement with respect to any breach or default in performance which has not been cured.
5. INDEMNIFICATION
To the extent permitted by the Oregon Constitution, and to the extent permitted by the Oregon Tort Claims Act, and to the extent otherwise provided for in private contracts of insurance, the parties agree to indemnify, defend, and hold each other, their agents, officers and employees, harmless from all damages, losses and expenses, including but not limited to attorney fees, and to defend all claims, proceedings, lawsuits, and judgments arising out of or resulting from the other party’s negligence in the performance of or failure to perform under this Agreement. No party to this Agreement will be required to indemnify or defend the other party for any liability arising solely out of wrongful acts of its own officers, employees or agents.

6. MODIFICATION AND TERMINATION
6.1 Modification. No modification or amendment to this Agreement will bind either party unless in writing and signed by both parties.

6.2 Termination. The parties may jointly agree to terminate this Agreement at any time by written agreement.

7. DISPUTES
The parties are required to exert every effort to cooperatively resolve any disagreements that may arise under this Agreement. This may be done at any management level, including at a level higher than the persons directly responsible for administration of the Agreement. In the event that the parties alone are unable to resolve any conflict under this Agreement, they are encouraged to resolve their differences through mediation or arbitration, using such process as they may choose at the time.

8. MISCELLANEOUS PROVISIONS
8.1 Merger. This Agreement contains the entire agreement of the County and the City with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings.

8.2 Waiver. Failure of either party to enforce any provision of the Agreement does not constitute a waiver or relinquishment by the waiving party of the right to such performance in the future nor of the right to enforce that or any other provision of this Agreement.

8.3 Severability. If any provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions are not affected; and the rights and obligations of the parties are to be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

8.4 Time is of the Essence. The parties agree that time is of the essence with respect to all provisions of this Agreement.

8.5 No Third-Party Beneficiaries. The County and the City are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this
Agreement gives or may be construed to give or provide any benefit or right to third persons, either directly or indirectly that is greater than the rights and benefits enjoyed by the general public, unless that party is identified by name in this Agreement.

8.6 **Headings.** The headings and captions in this Agreement are for reference and identification purposes only and may not be used to construe the meaning or to interpret the Agreement.

8.7 **Force Majeure.** Neither party will be held responsible for delay or default due to Force Majeure acts, events or occurrences unless they could have been avoided by the exercise of reasonable care, prudence, foresight, and diligence by that party.

8.8 **Multiple Counterparts.** This Agreement and any subsequent amendments may be executed in several counterparts, facsimile or otherwise, all of which when taken together will constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement and any amendments so executed will constitute an original.

EACH PARTY, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CITY: 

CITY OF SPRINGFIELD

By: ____________________________
Gino Grimaldi, City Manager

Date: ____________________________

COUNTY: 

LANE COUNTY OREGON

By: ____________________________
Steve Mokrohisky, County Administrator

Date: ____________________________

Project Contact:

Kristi Krueger, Principal Engineer
Development & Public Works
225 Fifth Street
Springfield OR 97477
541-726-4584
kkrueger@springfield-or.gov

Lydia McKinney, Land Management Manager
Lane County Public Works
3040 North Delta Highway
Eugene OR 97408
541-682-6930
lydia.s.mckinney@co.lane.or.us
Exhibit A to Lane-Springfield IGA for Franklin Blvd.
**EXHIBIT B**

Delegation of Eminent Domain Authority for the Franklin Boulevard Redevelopment Project (Phase I)

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RESOLUTION NO. _____

RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN AND AUTHORIZING A RESOLUTION PURSUANT TO ORS 223.005, ORS 223.105 and ORS 35.600-625 CONCERNING ACQUISITION RIGHT OF WAY NECESSARY FOR THE FRANKLIN BOULEVARD REDEVELOPMENT PROJECT (PHASE I) (Project No. P21066)

WHEREAS, the City of Springfield may exercise the power of eminent domain pursuant to Springfield City Charter and the law of the State of Oregon, generally, when the exercise of such power is deemed necessary by the governing body to accomplish public purposes for which the City of Springfield has responsibility;

WHEREAS, the City of Springfield has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public;

WHEREAS, the project known as the Franklin Boulevard Redevelopment Project (Phase I) has been planned in accordance with appropriate engineering standards for the construction, maintenance or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, travel safeguarded;

WHEREAS, to accomplish the project or projects set forth above, it is necessary to acquire fee interest and temporary construction easements in the property for roadway purposes described in “Exhibit A” attached to this Resolution and, by this reference incorporated herein;

WHEREAS, the purpose of the Franklin Boulevard Redevelopment Project (Phase I) is to build a multi-way boulevard that will have roundabouts, sidewalks, separate pedestrian and bicycle facilities from vehicle traffic, provided bicycle access and better safety for those traveling on the road;

WHEREAS, the City has funding from federal, state and local sources for the Franklin Boulevard Redevelopment Project (Phase I);

WHEREAS, the City is engaged in public outreach regarding this project since 2007;

WHEREAS, the envelope design of Phase I was revised from the initial concept in 2009 to lessen the business impact and remove any residential impacts;

WHEREAS, in July of 2015, the City adopted a Resolution of Necessity based on the 30% design of the Franklin Boulevard Redevelopment Project (Phase I);

WHEREAS, in March of 2016, the City completed a 90% design of the Franklin Boulevard Redevelopment Project (Phase I);
WHEREAS, the properties listed in Exhibit A of this Resolution are impacted by the 90% design;

WHEREAS, the public good realized by this project far outweighs any damage that the property owners might sustain, particularly in light of the City's obligation to provide just compensation to the affected property owners;

WHEREAS, the appropriation of such land is reasonably necessary to protect the full use and enjoyment by the public of Franklin Boulevard.

NOW, THEREFORE, based on the above findings, the Common Council of the City of Springfield does hereby resolve as follows:

Section 1: The foregoing statements of authority and need are, in fact, the case. The project for which the property is required and is being acquired are necessary in the public interest, and the same have been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury.

Section 2: The power of eminent domain is hereby exercised with respect to acquiring right of way and easement interests in properties described in Exhibit A. Each is acquired subject to payment of just compensation and subject to procedural requirements of Oregon law.

Section 3: The City of Springfield's staff and attorneys are authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any court to decide matters determined above or determinable by the City of Springfield.

Section 4: If the City of Springfield and the owners or persons in interest as to the compensation paid for each acquisition as described in Exhibit A agree on the amount of just compensation, the City Manager is authorized to negotiate and execute acquisition agreements for those properties.

Section 5: Upon the trial of any suit or action instituted to acquire the real property or any interest therein, the attorneys acting for and on behalf of the City Springfield be and hereby are authorized to make such stipulation, agreement or admission as in their judgment may be for the best interest of the Franklin Boulevard Redevelopment Project (Phase I).

Section 6: The Common Council further declares that the real property interests described in Exhibit A shall be used by the City of Springfield for public purposes at the
earliest possible date and, in any event, no later than ten years from the date this Resolution is adopted by the Council.

**Section 7:** This Resolution shall take effect upon adoption by the Council and approval by the Mayor.

ADOPTED by the Common Council of the City of Springfield this _____ day of May, 2016, by a vote of _____ for and _____ against.

APPROVED by the Mayor of the City of Springfield this _____ day of May, 2016.

______________________________
Christine L. Lundberg, Mayor

______________________________
Amy Sowa, City Recorder