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From: **Matthew RYAN** <matthew.o.ryan@multco.us>

Date: Fri, Sep 6, 2013 at 7:54 AM

Subject: Re: **Signatures Requested** Agreement No. 29375 Burnside St:
Willamette River Br Paint & Rehab Bridge No. 0511 (PE ONLY)

To: Jon HENRICHSEN <jon.p.henrichsen@multco.us>

Cc: Brian VINCENT <brian.s.vincent@multco.us>, Victoria MORRIS
<victoria.morris@multco.us>

Jon & Brian,

Set out below for posterity is my email to Jon on July 3rd, that I sent with my revised version of the IGA attached, that contained a project description change and several other edits. Some of the edits ODOT did incorporate, but one of my biggest concerns, the State did not fully address and apparently refuses to do so. That concern is the way ODOT inconsistently and vaguely describes the Project itself. The current version although it deleted the "concrete that is ready to fall off" language in the original, still describes the project to be the preliminary engineering (PE) work and then adds: "the Project also includes...". This is conversational text that is not precise, it reads like an afterthought. My approach was to describe the entire project in phases, the first phase being the PE work. ODOT also then paraphrases and slightly re-describes the Project in Exhibit B, and at one point calls some of the work to be done the "proposed project" losing the capitalization in the process. All of this is not helpful if there is a dispute later on between the parties about what was agreed to as the "Project".

In summary, the current IGA language with respect to the Project is vague and inconsistent, but it does identify tasks to be done. My understanding is the County Bridge Shop understands the concerns that have been expressed herein, but nonetheless wishes to move forward to approve this IGA.

With all that said, and based and conditioned on the disclaimers set forth herein and previously more generally about the obligations imposed under the federal language attachments, the attached IGA has been reviewed and is approved for submission to the BCC for its consideration.

Jon,

I did some substantial tweaking to the clauses of the Agreement that discuss or describe the Project. The main agreement at Terms of Agreement Section, Paragraph 1 identifies the Project. It was hard to follow in the original draft, because it described certain work relating to removal of paint and replacing as "the Project", then said the Project "also consists" of different work. And prior to that in the Recitals the word "Project" was used before the term had been defined. Finally the Project was again described in Exhibit B, Paragraph 1, "Project Description"; but was said differently in part, e.g. "worn concrete" was altered to say "concrete that is ready to fall off", the latter is not a phrase that should be used in any County document about one of our structures (in my humble opinion). Seriously, the Project should not be defined or described differently at any section of the contract. I think it's best to describe the Project at one section and then refer to that section if there is a need in context to discuss the scope of the Project again. I also had a small question about the "coating", i.e. what is it?

Finally, made some other edits as well. And the Federal law boilerplate is "chock full" (that's a legal term, don't you know) of stuff that could be worrisome if was deemed applicable, e.g. Right of Way, Railroads, Grade Change Liability, etc; but that is always the case with these ODOT funding agreements.

Matthew O. Ryan

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