

INTERGOVERNMENTAL AGREEMENT
US 30: Lower Columbia River Hwy at Cornelius Pass Rd.

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 MULTNOMAH COUNTY, acting by and through its elected officials, hereinafter referred to as "County," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. U.S. Route 30 (US 30), also known as the Lower Columbia River Highway, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Cornelius Pass Road is a part of the county road system under the jurisdiction and control of County.
2. 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.
3. By the authority granted in ORS 810.210, State is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where State deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than State, except with its written approval. Traffic signal work on this Project will conform to the current State standards and specifications.
4. 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 County agree to State's project to add an additional left and right turn lane at US 30 and to add a right turn lane on US 30 and reconstruct the traffic signal at the intersection of US 30 and Cornelius Pass Road, hereinafter referred to as "Project." The 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. State will also move a County culvert crossing under Cornelius Pass Road (Culvert Work) out of the Project area.

2. The Project will be financed at an estimated cost of \$1,607,000 in federal funds. The estimate for the total Project cost is subject to change. State shall be responsible for any Project costs beyond the estimate. County will be responsible for the costs of the Culvert Work, which is estimated to cost \$9,370. County shall be responsible for any Culvert Work costs beyond this estimate.
3. The Parties entered into Miscellaneous Contracts & Agreements Number 9958 on April 24, 1991, which governs the jurisdiction, maintenance, electrical power, and control of timing for the traffic signal installed at the intersection of US 30 and Cornelius Pass Road. The provisions of that agreement will continue to govern the jurisdiction, maintenance, electrical power, and control of timing of the new signal that State is constructing as a part of the Project.
4. 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 ten (10) calendar years following the date of final execution of this Agreement by both Parties.

STATE OBLIGATIONS

1. State, or its consultant, shall conduct the necessary field surveys, environmental studies, traffic investigations, preliminary engineering and design work to produce and provide final plans, specifications, and cost estimates for the Project; identify and obtain all required permits; acquire all necessary right of way and easements, 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 the construction contract entered into for the Project and the Culvert Work.
2. State shall, upon execution of this agreement, forward to County a letter of request for an advance deposit in the amount of \$9,370 for payment for the Culvert Work performed by State. State may request additional deposits from County if the initial deposit does not cover all of the Culvert Work. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Culvert Work. Any portion of said advance deposit which is in excess of the State's total costs for the Culvert Work will be refunded or released to County.
3. State shall, upon completion of the Project, relinquish to County by Relinquishment Deed all "operating" right of way obtained or purchased on behalf of the County for

Highway Right of Way Purposes and Permanent Easements for Slopes. State will acquire property rights to the land necessary for the Project or Culvert Work and will pass that title (except for title to land needed for the US 30 improvements) to the County for use as public roadway. Should the land cease to be used for public roadway, title to the land will automatically revert to State.

4. 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.
5. State's Project Manager for this Project is Robyn Bassett, 123 NW Flanders Street, Portland, OR 97209, 503-731-8469, robyn.bassett@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.

COUNTY OBLIGATIONS

1. County grants State the right to enter onto County right of way for the performance of duties as set forth in this Agreement.
2. County shall, upon receipt of an executed copy of this Agreement and upon a subsequent letter of request from State, forward to State an advance deposit in the amount of \$9,370 for the Project, said amount being equal to the agreed upon contribution from County towards the cost of the work performed by State at County's request under State Obligations paragraph 2. County 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.
3. Upon completion of the Project and Culvert Work and receipt from State of an itemized statement of the actual total cost of State's participation for the Culvert Work, County shall pay any amount which, when added to County's advance deposit, will equal 100 percent of actual total State costs for the Culvert Work. Any portion of said advance deposit which is in excess of the State's total costs for the Culvert Work will be refunded or released to County.
4. County shall accept all right, title and interest in the "operating" right of way obtained or purchased on behalf of the County. State shall acquire property rights to the land underlying certain streets constructed or reconstructed by State within County jurisdiction, and will pass that title to County for use as public roadway. No "excess" right of way which may have been acquired by State will be transferred. Transfer of operating right of way will be by separate Relinquishment Deed after the completion of the Project. Should the land cease to be used for public roadway, title to the land will automatically revert to State.

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5. County will maintain, beyond the establishment period, any plantings along Cornelius Pass Road that were planted as part of the Project.
6. County certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of County, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind County.
7. County's Project Manager for this Project is Brian Vincent, County Engineer, 1620 SE 190th Avenue, Portland, OR 97233, 503-988-5050 ext. 29642, brian.s.vincent@multco.us, or assigned designee upon individual's absence. County 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 County, or at such later date as may be established by State, under any of the following conditions:
 - a. If County fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If County 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 County 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

County 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 County (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 County in such proportion as is appropriate to reflect the relative fault of State on the one hand and of County 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 County 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 County is jointly liable with State (or would be if joined in the Third Party Claim), County 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 County 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 County 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. County'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,

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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.

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 2010-2013 Statewide Transportation Improvement Program, (Key #16151) that was approved by the Oregon Transportation Commission on December 16, 2010 (or subsequently approved by amendment to the STIP).

SIGNATURE PAGE TO FOLLOW

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MULTNOMAH COUNTY, by and through
its elected officials

By _____
Jeff Cogen, County Chair
Date _____

By _____ N/A
Date _____ N/A

**APPROVED AS TO LEGAL
SUFFICIENCY**

By /s/ Matthew O. Ryan
Assistant County Attorney
Date May 31, 2012

County Contact:

Brian Vincent
1620 SE 190th Avenue
Portland, OR 97233
503-988-5050 ext. 29642
brian.s.vincent@multco.us

State Contact:

Robyn Bassett
123 NW Flanders Street
Portland, OR 97209
503-731-8469
robyn.bassett@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator
Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Manager

Date _____

By _____
District 2B Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

Multnomah County No. 4400000085

EXHIBIT A PROJECT LOCATION MAP

