

**AMENDMENT NUMBER 03  
LOCAL AGENCY AGREEMENT  
SURFACE TRANSPORTATION PROJECT – METRO  
Sandy Blvd. – Bridge Street (UPRR Under Xing)**

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 “Agency,” entered into an Agreement on October 9, 2003, Amendment Number 01 on November 22, 2004, and Amendment Number 02 on April 30, 2008. Said Agreement covers the design and construction of a wider replacement railroad underpass where the Union Pacific Railroad crosses 223<sup>rd</sup> Avenue from Sandy Boulevard to Bridge Street.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to extend the termination date and update standard language. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

**TERMS OF AGREEMENT, Paragraph 3, Page 2, which reads:**

3. The term of this Agreement shall begin upon execution of the Agreement by all parties and shall terminate upon completion of the work or eight calendar years following the date of final execution of this Agreement by both parties, whichever is sooner.

**Shall be deleted in its entirety and replaced with the following:**

3. The term of this Agreement shall begin upon execution of the Agreement by all parties and shall terminate upon completion of the work or by December 31, 2013, whichever is sooner.

**ATTACHMENT NO. 1, SPECIAL PROVISIONS, Paragraph 5, which reads:**

5. Subject to the limitations and conditions of, and to the extent permitted by, the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 et seq.), the Agency and State each shall be solely responsible for any loss or injury caused to third parties arising from Agency’s or State’s own acts or omissions under the agreement; and Agency or State shall defend, hold harmless, and indemnify the other party to this Agreement with respect to any claim, litigation, or liability arising from Agency’s or State’s own acts or omissions under this Agreement.

**Shall be deleted in its entirety and replaced with the following:**

5. Indemnification language in the Standards Provisions, Paragraph 44, shall be replaced with the following language:
  - a. 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.
  - b. 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.
  - c. 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.

- d. 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.

**Insert new ATTACHMENT NO. 1, SPECIAL PROVISIONS, Paragraph 7, to read as follows:**

7. Worker's Compensation Coverage language in the Standards Provisions, Paragraph 46, shall be replaced with the following language:
  - a. All employers, including Agency, 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. Agency shall ensure that each of its contractors complies with these requirements.

This Amendment 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 Amendment so executed shall constitute an original.

**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 #11429) that was approved by the Oregon Transportation Commission on December 16, 2010 (or subsequently approved by amendment to the STIP).

Agency/State  
Agreement No. 20934-03

**MULTNOMAH COUNTY**, by and  
through its elected officials

By \_\_\_\_\_  
Jeff Cogen, Chair, Multnomah  
County Board of Commissioners

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By /s/ Matthew O. Ryan  
Assistant County Attorney

Date September 14, 2011

**Agency Contact:**

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Bret.n.richards@odot.state.or.us

County No. 0310531

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

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Technical Services Manager/Chief Engineer

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 1 Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_