

**AMENDMENT NUMBER 03
LOCAL AGENCY AGREEMENT
HIGHWAY BRIDGE REPLACEMENT AND REHABILITATION PROJECT
Willamette River (Sellwood) Bridge (Bridge #06879) and
Oregon Route (OR) 43 Interchange Improvements
Multnomah County**

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 Local Agency Agreement No. 22,858 on March 10, 2006, Amendment No. 1 on January 18, 2008, and Amendment No. 2 on December 2, 2010. Said Agreement covers the preliminary engineering (PE) and right of way (R/W) activities for the Sellwood Bridge.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to clarify roles, responsibilities and obligations; add additional Special Provisions; and Exhibit C Interchange Concepts. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

Insert new EXHIBIT C, attached hereto and made a part hereof.

TERMS OF AGREEMENT, Paragraph 2, Page 3, Amendment No. 2, which reads:

2. State and the Federal Highway Administration (FHWA) have a keen interest in making sure roles and responsibilities are clearly identified, therefore, both Parties agree to the roles and responsibilities in the environmental impact statement (EIS) Record of Decision (ROD) and that the OR 43 interchange improvements will be built according to the ROD unless otherwise approved by the FHWA.

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

2. State and the Federal Highway Administration (FHWA) have a keen interest in making sure roles and responsibilities are clearly identified, therefore, both Parties agree to the roles and responsibilities in the final environmental impact statement (FEIS) Record of Decision (ROD) and that the OR 43 interchange improvements will be built according to the ROD unless otherwise approved by the FHWA, as shown in Exhibit C, Figure No. 1. Should there be any funding shortfalls necessitating a reduced scope of work from the previous pre-approved FEIS; Agency may implement the "Interim Interchange Concept," as shown in Exhibit C, Figure No. 2. However, Agency and State agree that the final scope of the "Interim Interchange Concept" must be acceptable to both the State and the Agency, and the Parties will amend this Agreement, including Exhibit C, Figure

No. 2 to incorporate an agreed to final scope. This option includes the requirement that Agency shall remove the "Interim Interchange Concept" and construct the full interchange as shown in Exhibit C, Figure No 1 or as mutually agreed in writing by the Parties (see Special Provision #23).

TERMS OF AGREEMENT, Paragraph 5, Page 2, which reads:

5. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten calendar years following the date all required signatures are obtained, whichever is sooner.

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

5. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or (10) ten calendar years following the date all required signatures are obtained, whichever is sooner. Special Provisions Paragraph 11 and 23 shall survive termination of this Agreement.

SPECIAL PROVISIONS, Paragraph 11, Page 7, Amendment No. 2, which reads:

11. Agency and State, with Consultant technical advice on Interchange Area Management Plan (IAMP) strategies, have prepared an IAMP for the Project, which was approved on May 13, 2010. An IAMP is a requirement of the State for new or significantly reconstructed interchanges under Oregon Administrative Rule (OAR) 734-051-0155 (6). The purpose of an IAMP is to protect the function of the interchange and consequently the site's investment in the facility. Other reasons for preparing an IAMP include supporting Project development, and addressing facility sufficiency concerns, local road network sufficiency concerns, and land use concerns.

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

11. Agency and State, with Consultant technical advice on Interchange Area Management Plan (IAMP) strategies, have prepared an IAMP for the Project, which was approved on May 13, 2010. An IAMP is a requirement of the State for new or significantly reconstructed interchanges under Oregon Administrative Rule (OAR) 734-051-0155 (6). The purpose of an IAMP is to protect the function of the interchange and consequently the State's investment in the facility. Other reasons for preparing an IAMP include supporting Project development, and addressing facility sufficiency concerns, local road network sufficiency concerns, and land use concerns. Should there be any funding shortfalls necessitating a reduced scope of work from the previous pre-approved FEIS; Agency may implement the "Interim Interchange Concept," as shown in Exhibit C, Figure No. 2. However, Agency and State agree that the final scope of the "Interim Interchange Concept" must be acceptable to both the State and the Agency, and

the Parties will amend this Agreement, including Exhibit C, Figure No. 2 to incorporate an agreed to final scope. The IAMP would then be deferred until the full interchange is constructed, as shown in Exhibit C, Figure No. 1, or as mutually agreed in writing by the Parties. A re-evaluation of the IAMP would be required to assess any changes from the time the plan was originally approved, on May 13, 2010. If an Interim Interchange is constructed, the existing access to the Staff Jennings Property will be closed and other modifications may be needed to meet the IAMP requirements.

Insert new SPECIAL PROVISIONS, Paragraphs 21 through 27, read as follows:

21. Agency shall place signs that identify Project as “Oregon Jobs and Transportation Act” (State approved design). Agency may affix additional signage that identifies local funds used for the Project.
22. Agency shall provide progress information, appropriate links from Agency’s web sites related to their JTA of 2009 Projects, and photographs in a suitable format directly to the State’s Project Liaison for posting on the State’s JTA of 2009 Program web site.
23. If the interim interchange is constructed under this Project, Agency acknowledges that the interim interchange will likely have a limited traffic operations life span. The Agency agrees they are responsible for securing funding and constructing the full interchange improvements to the level approved in the FEIS, as shown in Exhibit C, Figure No. 1 (or as mutually agreed in writing by the Parties), when the interim interchange operation reaches an unacceptable level as determined by the Agency, and agreed to in writing by State.
24. If Agency enters into a construction contract for the performance of work on the Project, then Agency will require its contractor to provide the following:
 - a. Contractor and Agency shall name State as a third party beneficiary of the resulting contract.
 - b. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, sub-contractors or agents under the resulting contract.
 - c. Commercial General Liability. Contractor shall obtain, at Contractor’s expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage shall be

- written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence shall not be less than \$1,000,000 for each job site or location. Each annual aggregate limit shall not be less than \$2,000,000.
- d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence shall not be less than \$1,000,000.
 - e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees as Additional Insured but only with respect to the Contractor's activities to be performed under the resulting contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
 - f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of the resulting contract and shall be grounds for immediate termination of the resulting contract.
25. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office 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 during the course of the Project and for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
26. Indemnification language in the Standards Provisions, Paragraphs 46 and 47, and Paragraph 4 in regards to tort claims, 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.

Agency/State
Agreement No. 22,858-03
Multnomah Co. No. 4710000017

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when 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 its signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2008-2011 Statewide Transportation Improvement Program, (Key #13762/17067) that was approved by the Oregon Transportation Commission on November 14, 2007.

Signature page to follow

Agency/State
Agreement No. 22,858-03
Multnomah Co. No. 4710000017

MULTNOMAH COUNTY, by and through its
elected officials

By _____
Deborah Kafoury, Vice-Chair, Multnomah
County County Board of Commissioners
Date _____

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator
Date _____

APPROVED AS TO LEGAL SUFFICIENCY

REVIEWED:

JENNY M. MORF, ACTING COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By /s/ Matthew O. Ryan
Assistant County Attorney
Date November 15, 2011

APPROVAL RECOMMENDED

By _____
Technical Services Manager/
Chief Engineer
Date _____

By _____
Local Government Section Manager
Date _____

Agency Contact:

Ian Cannon, Engineering Services Adm.
Multnomah County -Bridge
1403 SE Water Avenue
Portland, OR 97214-3333
(503) 988-3757 x223
ian.b.cannon@co.multnomah.or.us

By _____
Region 1 Manager
Date _____

By _____
District 2B Manager
Date _____

State Contact:

Riad Alharithi, Local Agency Liaison
Oregon Dept. of Transportation
123 NW Flanders Street
Portland, OR 97209-4012
(503) 731-8276
riad.alharithi@odot.state.or.us

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General
Date _____

MULTNOMAH COUNTY NO. 4710000017

EXHIBIT C

FIGURE 1

Current Full Interchange Concept

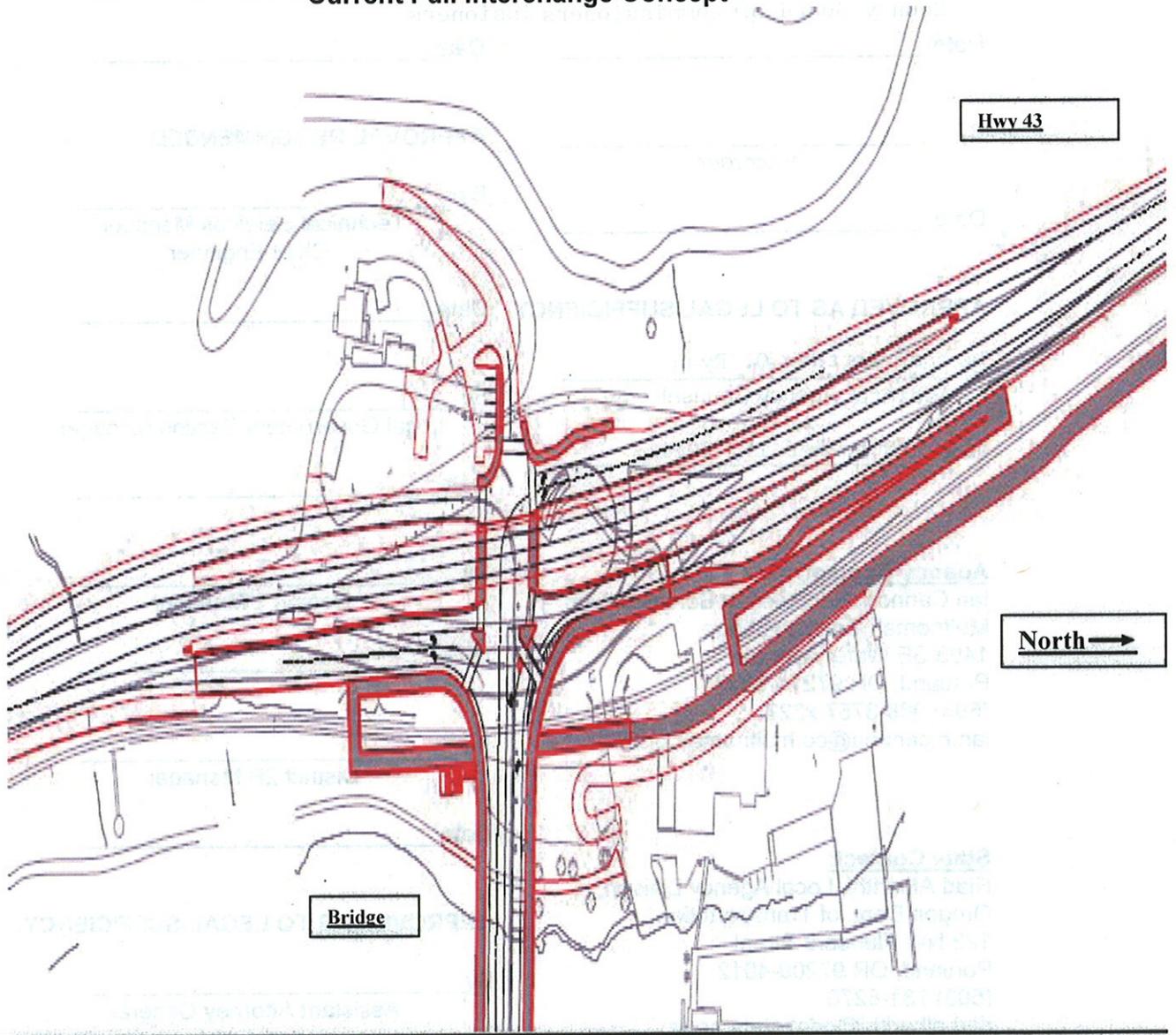


EXHIBIT C

FIGURE 1

Current Full Interchange Concept



EXHIBIT C

FIGURE 2

Interim Interchange Concept

