

I frequently receive requests to research the ownership and jurisdiction of portions of our state highways. These requests usually are for proposed project and involve city streets or county roads that intersect the highway or are adjacent to the right of way. More than once, when the city or county has jurisdiction of the road in question and the proposed project will impact that street; I've found that the Project Leaders will want to open a right of way file to acquire the street right of way from the local agency. Existing right of way for a city street or county road is designated for public use, and ODOT does not purchase existing public right of way.

The Oregon Revised Statutes grants ODOT the authority to utilize and take over existing county roads and city streets as state highways. The relevant statutes are located in Chapter 366-State Highways and State Highway Fund, Chapter 373-Roads and Highways Through Cities and Chapter 374-Control of Access to Public Highways. Basically, these statutes allow ODOT the authority to enter into agreements with local agencies when a state highway is impacting the local agency's facilities.

Two types of agreements you may run across are the Cooperative Improvement Agreement and the Intergovernmental Agreement. The Cooperative Improvement Agreement is used for any projects planned, developed and/or constructed on the state highway system by ODOT that could have impacts to a local system (city or county). The Intergovernmental Agreement or IGA is used for a jointly initiated project with a local agency where responsibilities of the project are shared.

In these agreements, the responsibilities of all parties are specified. These responsibilities can cover who will do the engineering and design, prepare the contract plans, oversee the work, acquire any needed right of way and specify if any right of way is to be relinquished after completion. If any street closures are involved with the project, they will be specified in the agreement. The agreement is signed by representatives of all parties involved and in the course of a project there could be several amendments to the agreement.

So, here is a way to impress your coworkers, peers and supervisors. The next time you are working on a state highway project, and are requested to open a right of way file to acquire an easement for a sound wall across public street right of way, just mention that the best way to handle this would be in the agreement.

APPROVED: L. E. George  
EDM:pf  
Rev. 5/24/84

MISC. CONTRACTS and AGREEMENTS No. 6879

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CONSTRUCTION-FINANCE AGREEMENT  
INTERSTATE TRANSFER PROJECT

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, Highway Division, hereinafter referred to as "State"; and WASHINGTON COUNTY, a political subdivision of the State of Oregon, acting by and through its Board of County Commissioners, hereinafter referred to as "County".

W I T N E S S E T H

RECITALS

1. The Tualatin Valley Highway is a part of the Federal Aid Primary System under the jurisdiction and control of State, and has been designated as Federal Aid Primary Route No. 32.

2. By the authority granted in ORS 366.770 and 366.775, State may enter into cooperative agreements with the various counties and cities for the performance of work on certain types of projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties. Under said authority, the State and the County plan and propose to construct the Tualatin Valley Highway (FAP 32) at S.W. 185th Avenue Section, 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. The project will be financed with Interstate Transfer (e)(4) Funds withdrawn from the Mt. Hood Freeway and local matching funds to be provided by Washington County with no expense to the State.

NOW, THEREFORE, the premises being in general as stated in the foregoing RECITALS, it is agreed by and between the parties hereto as follows:

STATE OBLIGATIONS

1. State shall submit a program to the Federal Highway Administration with a request for approval of federal aid participation in all engineering, right-of-way acquisition, eligible utility relocations and construction of the project. No work shall proceed until said approval has been obtained. The program will include services to be provided by both the State and the County. The State shall notify the County in writing when authorized to proceed with each phase of the work.

2. State shall perform all preliminary engineering and design work required to produce plans, specifications and estimates, acquire the necessary right-of-way and easements, advertise for construction bid proposals, award all contracts and furnish all construction engineering, material testing, technical inspection and project manager services for administration of the contract.

3. State shall prepare an estimate of cost for preliminary engineering services to be provided by State, and shall furnish the County with a copy of such estimate. The actual cost of all services provided by the State will be included in the total project costs and the local matching share will be billed to the County upon completion of the project.

4. The State shall arrange conferences with the County during the construction phase of the project to review the work in progress and assume conformance with the County project request. As a minimum, a preconstruction conference shall be arranged prior to proceeding with the contract work with representatives of the State, the County, and the Contractor in attendance, and at any time alternates are to be considered. The State shall submit plans and estimates for review and approval by the County prior to advertisement for construction bid proposals.

5. State shall notify the County Surveyor of necessary interference with Section Corners, Quarter Section Corners, or Donation Land Claim Corners. State shall provide survey monumentation, conforming to the requirements of the County Surveyor, for highway centerline and right-of-way line angle points in addition to road intersecting points if required. The State shall file a map with the County Surveyor showing monumentation found and set.

6. The State shall, upon completion of the project, perform all maintenance necessary for the operation of traffic signal equipment installed on the Tualatin Valley Highway at 185th, at its own expense and no cost to the County, and shall retain all jurisdiction and control of the timing established for operation of the traffic signals.

7. The State shall, upon completion of construction, maintain and operate that portion of the project lying within State Highway Jurisdiction.

8. State shall, relocate, or cause to be relocated, all existing privately-owned utility conduits, lines, poles, mains, pipes, and other such facilities that are located on private property or within State Highway jurisdiction where such relocation is necessary to conform said utilities or facilities to the plans for the project.

9. State shall, upon receipt of monthly approved itemized statements for 100 percent of actual costs incurred by the County on behalf of the project to date, promptly reimburse the County for the full amount of Federal-aid participation in such eligible costs.

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10. State shall, in the first instance, pay all costs of the project, submit all claims for federal-aid participation to the Federal Highway Administration in the normal manner; complete accurate cost accounting records and furnish the County with an itemized statement of actual costs to date at the end of each State Fiscal Year. When the actual total cost of the project has been computed, the State shall furnish the County with an itemized statement of such final costs.

COUNTY OBLIGATIONS

1. County shall not undertake any phase of the work prior to proceeding written authorization from State. All work and records of such work shall be in strict conformance with Federal statutes, rules and regulations and the Oregon Action Plan.
2. County shall, prior to proceeding with each phase of the work covered by this agreement, including the engineering, right-of-way and construction phases, forward to the State an advance deposit in the amount of 100 percent of the difference between the estimated total cost of such work and the amount anticipated to be contributed by the Federal Highway Administration. In the event that cost overruns are identified during the course of the project, the State may request additional deposits. When the actual total cost of the project has been computed, an adjustment will be made in the County local matching share of costs.
3. County shall relocate or reconstruct, or cause to be relocated or reconstructed, all privately or publicly-owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature, where such utilities or facilities are located within the right-of-way of any presently existing county road where such relocation or reconstruction is necessary in order to conform said utilities or facilities to the plans for the project. Only those utility relocations which are eligible for federal participation under Federal Aid Highway Program Manual, Volume 1, Chapter 4, Section 4, shall be included in the total project cost and participation; all other utility relocations shall be at the sole cost of County or others. County may request State to arrange for said relocations, acting on behalf of County.
4. County shall present properly certified bills for 100 percent of actual costs incurred by County on behalf of the project directly to the State Project Manager for review and approval. Said bills shall be in a form acceptable to State and documented in such a manner as to be easily verified. Billings shall be presented for periods of not less than one month duration, based on actual expenses to date. County's actual costs eligible for federal-aid participation shall be those allowable under the provisions of 23 CFR 1.11 and FHPM 1-4-5 (23 CFR 140.7)
5. Any eligible expenses incurred by the County Surveyor relative to the restoration or remonumentation of Section Corners, Quarter Section Corners, or Donation Land Claim Corners shall be included as part of reimbursable project costs.

6. REQUIRED STATEMENT FOR USDOT FINANCIAL ASSISTANCE AGREEMENT:  
 If, as condition of assistance, the recipient has submitted and the U.S. Department of Transportation has approved a minority business enterprise affirmative action program which the recipient agrees to carry out, this program is incorporated into this financial assistance agreement by reference. This program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of this financial assistance agreement. Upon notification to the recipient of its failure to carry out the approved program, the U.S. Department of Transportation shall impose such sanctions as noted in Title 23, Code of Federal Regulations, Part 23, Subpart E, which sanctions may include termination of the agreement or other measures that may affect the ability of the recipient to obtain future U.S. Department of Transportation financial assistance.

The recipient further agrees to comply with all applicable Civil Rights Law, Rules and Regulations, including Section 504 of the Rehabilitation Act of 1973 and the Vietnam Era Veterans' Readjustment Act.

7. County acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete the construction of the project which may alter or change the grade of existing County roads are being accomplished at the direct request of County.

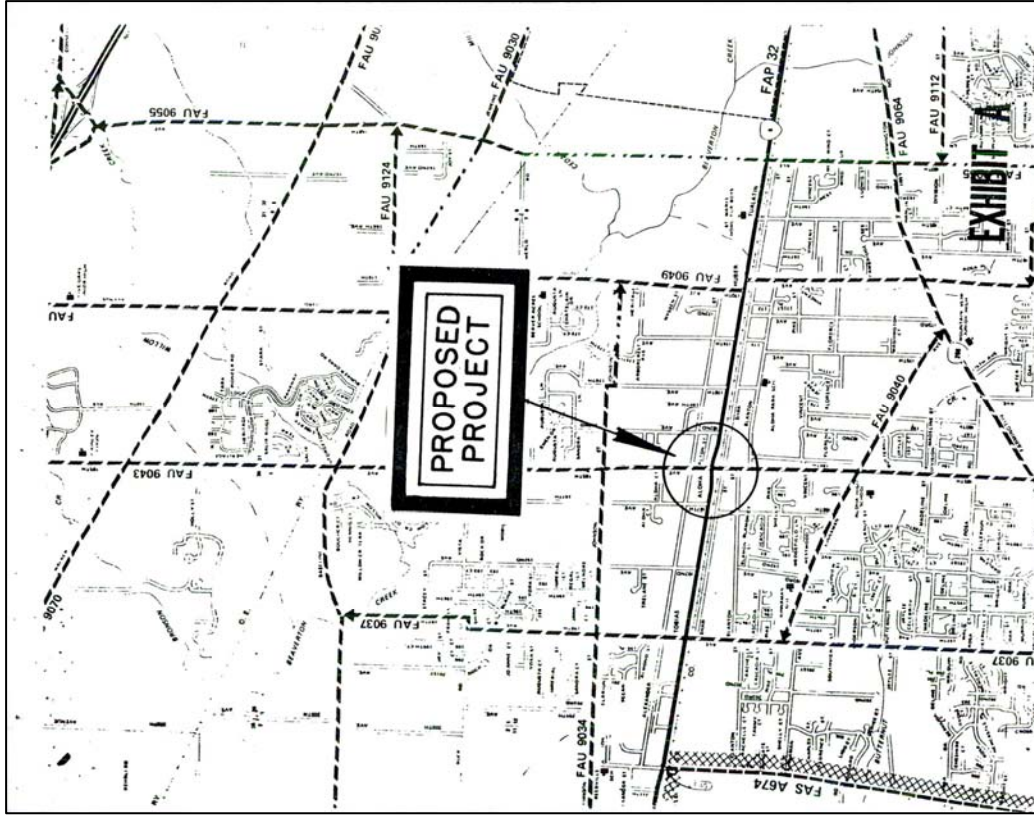
8. Upon completion of the project, County shall thereafter, at its own cost and expense, maintain and operate that portion of the project, including off-street parking areas lying outside State Highway jurisdiction in a manner satisfactory to the State and/or the Federal Highway Administration and shall pay all costs of electrical energy consumed in operation of the traffic signals installed on the Tualatin Valley Highway at 185th Avenue.

9. County agrees that should the project be cancelled or terminated for any reason prior to completion, the County will reimburse the State for actual expenses incurred by the State on behalf of the project.

10. County shall authorize execution of this agreement during a regular session of its Board of County Commissioners.

MUTUAL OBLIGATIONS

1. The parties hereto agree and understand that they will comply with all applicable Federal and State statutes and regulations, including but not limited to: Title 6, U.S.C., Civil Rights Act; Title 18, U.S.C., Anti-Kickback Act; Title 23, U.S.C., Federal Aid Highway Act; Titles 2 and 3 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; and the Oregon Action Plan.



2. The parties hereto also mutually agree that if any parcel of real property purchased with federal-aid participation is no longer needed for right-of-way, or other public purposes, the sale, transfer or exchange of such property shall be subject to applicable Federal and State statutes, rules and regulations which are in effect at the time of disposition. Reimbursement to State of the required proportionate share of the fair market value may be required.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

This project was approved by the Oregon Transportation Commission on November 28, 1978, at which time the State Highway Engineer was authorized and directed to sign the necessary agreements for and on behalf of the Commission. Said authority is set forth in the Minutes of the Oregon Transportation Commission.

APPROVED AND RECOMMENDED  
 By [Signature]  
 Region Engineer

STATE OF OREGON, by and through  
 its Department of Transportation  
 Highway Division  
 By [Signature]  
 State Highway Engineer  
 Date 8/17/84

APPROVED AS TO  
 LEGAL SUFFICIENCY  
 By [Signature]  
 County Counsel

WASHINGTON COUNTY, by and through  
 its Elected Officials  
 By [Signature]  
 Chairman  
 Approved Washington County Board  
 of Commissioners  
 Minute No. 84-292  
 Date 7-17-84  
 By [Signature]  
 Clerk of the Board

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**366.290 Adding to or removing roads from state highway system; responsibility for construction and maintenance.** (1) The Department of Transportation may select, locate, establish, designate, improve and maintain out of the highway fund a system of state highways, and for that purpose may, by mutual agreement with several counties, select county roads or public roads. By an appropriate order entered in its records the department may designate and adopt such roads as state highways. Thereafter the construction, improvement, maintenance and repair of such roads shall be under the jurisdiction of the department.

(2) In the selection of highways or roads to comprise the state highway system the department shall give consideration to and shall select such county roads or public roads as will contribute to and best promote the completion of an adequate system of state highways.

(3) With the written consent of the county in which a particular highway or part thereof is located, the department may, when in its opinion the interests of the state will be best served, eliminate from the state highway system any road or highway or part thereof. Thereafter the road or highway or part thereof eliminated shall become a county road or highway, and the construction, repair, maintenance or improvement, and jurisdiction over such highway shall be exclusively under the county in which such highway or road is located.

(4) The construction, maintenance and repair of state highways shall be carried on at the sole expense of the state or at the expense of the state and the county by mutual agreement between the department and the county in which any particular state highway is located. [Amended by 1953 c.252 §2; 1979 c.223 §1]

**373.010 Routing and marking state highways through cities.** Whenever the route of any state highway passes through the corporate limits of any city of this state, the Department of Transportation:

(1) Shall select and designate the streets of the city over which the state highway shall be routed.

(2) Shall erect and maintain such road and other signs on and along such streets at such places and of such material and design as it may select.

(3) May alter or change such routing when in its opinion the interests of the motoring public will be better served. [Amended by 1957 c.663 §2]

**373.050 Closing streets that intersect with state highways routed through city.** (1) Whenever the Department of Transportation has located a highway in, into or through the corporate limits of a city upon or over an alignment or route not theretofore comprising a city street and has acquired the necessary rights of way therefor and constructed a highway thereover, or whenever the department, pursuant to ORS 373.010 has selected and designated streets over which to route a state highway within an incorporated city, the department may close any street at the point where it intersects or is intersected by the state highway or by the streets selected and designated as the route of a state highway, by a formal agreement with the municipal authorities of a city set out in a resolution or ordinance of the city, designating the particular streets to be closed by name and intersection.

(2) Before any municipal authorities enter into any such formal agreement with the department, such municipal authorities shall comply with all city ordinances or charter provisions pertaining to the closing of streets in the city.

(3) Before the street can be closed or dead-ended, the department shall, after investigation, find and declare by resolution that the closing of the street at the point of intersection is necessary in order to provide safety for the general public or will contribute to a more expeditious and orderly movement of traffic, or both.

**374.060 Power of Department of Transportation as to intersecting streets and roads.** The Department of Transportation, with the official approval of municipal authorities of cities with respect to city streets and with the official approval of the county court or board of county commissioners of any county with respect to county roads, may:

- (1) Close any street, highway or road at or near the point of its intersection with a throughway; or
  - (2) Make provision for carrying the street or road over or under the throughway; or
  - (3) Provide a connection with a throughway by means of a utility or service road to a suitable point of connection; and
  - (4) Do any and all work on the street, highway or road as is necessary therefor.
- 374.080 Agreements with federal government, counties and cities.** The Department of Transportation may enter into cooperative agreements with the federal government and with any county or city for the

location, adoption, construction and maintenance of a throughway either within or without the corporate limits of any city, with respect to highways under the exclusive jurisdiction of the department, roads under the jurisdiction of the county court or board of county commissioners and streets under the exclusive jurisdiction of cities, and may, in such agreements, agree upon the allocation of costs of the project, the manner and method of maintenance and all other relevant matters.