

T.G.F.5.

Memorandum Date: July 10, 2009
Order Date: August 5, 2009

TO: Board of County Commissioners
DEPARTMENT: Public Works
PRESENTED BY: Frank Simas, Right of Way Manager
AGENDA ITEM TITLE: IN THE MATTER OF APPROVING AN AGREEMENT WITH THE OREGON DEPARTMENT OF TRANSPORTATION (ODOT) REGARDING THE ISSUANCE OF CONTINUOUS OPERATION VARIANCE PERMITS AND AUTHORIZING THE COUNTY ADMINISTRATIVE OFFICER TO SIGN THE AGREEMENT.

I. MOTION

Move approval of the Agreement with the Oregon Department of Transportation (ODOT) to issue Continuous Operation Variance Permits and authorize the County Administrator to sign the Agreement.

II. AGENDA ITEM SUMMARY

The State of Oregon has requested that Lane County sign the Agreement to Issue Continuous Operation Variance Permits allowing travel by certain overweight and/or oversize loads on both state highways and County roads throughout the State of Oregon. This agreement replaces the existing agreement between ODOT and Lane County which will expire on December 31, 2009.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

The Continuous Operation Variance Permits (COVP) Program was authorized by the Oregon Legislature in 1999. To implement the program, the State and counties agreed to allow the issuance of annual permits for oversize and overweight loads meeting specified limits for certain types of haulers within the state, thereby allowing travel on both state highways and county roads. The permits are issued on an annual basis by ODOT as well as third party agents, one of which is Lane County. The current agreement was authorized by the Board pursuant to Order 06-12-13-7.

ODOT has requested that the County sign a new agreement as shown attached hereto and identified as "Attachment 1". The new Agreement adds Section 2.1 relating to liability for breach of Motor Carrier Transportation Division data in electronic or other form. This additional language has been reviewed by Lane County Information Services Department staff and has been found to be acceptable from an IS perspective. This new agreement will be effective upon execution and will expire December 31, 2011.

B. Policy Issues

None known

C. Board Goals

This Agreement relates to the County Goal of "Contributing to appropriate community development in the area of transportation and telecommunications infrastructure, housing growth management and land development" and protection of the public infrastructure.

D. Financial and/or Resource Considerations

For the 12-month period ending May 31, 2009, total net revenues derived from issuance of these permits was \$53,484.50. Approximately \$47,000 was received due to fees collected by other agencies for Lane County. About \$15,000 was collected by Lane County for Lane County, and about \$8,400 was remitted to the State of Oregon for distribution to other agencies for permits issued on their respective roads. Total Lane County staff costs for the same period for these permits was \$13,231.51.

E. Analysis

If Lane County were to decline to participate in the state-wide COVP program, all annual permits would be issued by Lane County for Lane County Roads. Net revenue would be about the same, but labor costs would be substantially higher due to the higher number of permits processed by Lane County staff. Convenience to the trucking industry would be impaired.

The staff position having primary responsibility for issuance of the State-wide COVP annual permits also serves as primary point of contact for single trip permits as well as all other Facility Permits, so non-participation in the Program would not translate to elimination of this position or re-assignment to other duties.

F. Alternatives/Options

1. Authorize the County Administrative Officer to sign the agreement.

2. Deny the authorization to sign the agreement.

IV. TIMING/IMPLEMENTATION

The signed Agreement will be effective upon execution by all parties.

V. RECOMMENDATION

Option 1.

VI. FOLLOW-UP

Upon approval by the Board, the Agreement will be processed for signature by the County Administrator.

VII. ATTACHMENTS

Attachment 1 – Agreement

IN THE BOARD OF COUNTY COMMISSIONERS
OF LANE COUNTY, OREGON

ORDER NO.

(IN THE MATTER OF APPROVING AN
(AGREEMENT WITH THE OREGON
(DEPARTMENT OF TRANSPORTATION
((ODOT) REGARDING THE ISSUANCE OF
(CONTINUOUS OPERATION VARIANCE
(PERMITS AND AUTHORIZING THE COUNTY
(ADMINISTRATIVE OFFICER TO SIGN THE
(AGREEMENT

WHEREAS, pursuant to Order No. 06-12-13-7, Lane County entered into an agreement with the State of Oregon to issue Continuous Operation Variance Permits (COVP) and authorized the County Administrative Officer authority to sign a Memorandum of Understanding and the Agreement to Participate, plus any other necessary documents; and

WHEREAS, said agreement will expire on December 31, 2009, and the County and ODOT are desirous of entering into a new agreement to replace the existing agreement effective upon execution by all parties; and


WHEREAS, participation in the COVP program pursuant to ORS 818.205 will enhance the convenience of commerce within the State of Oregon and will encourage compliance with laws relating to travel by oversize and overweight loads on county and state roads; **NOW THEREFORE**

IT IS HEREBY ORDERED that the County Administrative Officer be authorized to sign the Agreement.

DATED this _____ day of _____, 2009.

APPROVED AS TO FORM

Date: 7-23-09 Lane County



OFFICE OF LEGAL COUNSEL

Chair,
Board of County Commissioners

Attachment 1

Agreement To Issue Continuous Operation Variance Permits (Agreement)

Between

**Oregon Department of Transportation
(ODOT)
Motor Carrier Transportation Division**

And

**Lane County
(Road Authority)**

Oregon Revised Statute (ORS) 818.205, directs the State of Oregon by and through the Oregon Department of Transportation, Motor Carrier Transportation Division, hereinafter referred to as State, to develop and implement a program that allows State and other participating road authorities to issue transportation continuous operation variance permits, herein referred to as COVPs, covered by this program for, and on behalf of, each other and other participating road authorities.

The Lane County, who has elected to participate as a Level 3 participant in this program by entering into an Agreement to Participate with State, which agreement is attached hereto and by this reference is incorporated herein, and State agree to the following terms and conditions regarding the issuance of COVPs under this program:

- 1.1 Lane County will act as an agent for State issuing approved COVP's in accordance with established State requirements for same. Such requirements are contained in the COVP policy document, incorporated herein by reference.
- 1.2 State shall provide to Lane County an electronic interface and allow Lane County electronic access to the State database of motor carrier records including, but not necessarily limited to, the over dimension permitting system, carrier name and address records and approved vehicle records.
- 1.3 State will provide the necessary technical assistance to create the electronic interface and will otherwise provide sufficient training to designated Lane County staff to enable their satisfactory participation in the activities included under this agreement.
- 1.4 State reserves the right to change and upgrade computer systems. Lane County shall provide and maintain computer systems hardware and software sufficient to maintain access to the State database of motor carrier records and computer systems as necessary to conduct agreed upon COVP processing.

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2. Lane County will ensure the security of the State database. The information obtained by Lane County pursuant to this Agreement shall be used by Lane County only for the purposes of performing its duties and responsibilities under this Agreement. Lane County shall allow only its authorized employees to access the database records to obtain information necessary to perform its functions under this Agreement. No other use, sale, or access by unauthorized persons shall be allowed. No individual or other entity shall access or otherwise utilize any information contained in the database, for any purpose not permitted or authorized by the parties. Lane County retains ownership of records pertaining to Lane County's jurisdiction.
 - 2.1 Lane County shall immediately notify MCTD of any breach or potential breach of security of MCTD data obtained by Lane County pursuant to this agreement. For the purpose of this agreement, a breach of security is the unauthorized release or inadvertent public exposure of data in any format that has the potential to materially compromise the security, confidentiality or integrity of personal information maintained by the person. Lane County will bear the expense of any notification to the entities impacted by the breach or potential breach if ODOT in its judgment determines that notification is required by statute or prudence; and, Lane County will bear the expense of any credit monitoring by impacted parties resulting from a security breach to MCTD data that is caused by Lane County users or systems.
3. Lane County will utilize the information made available to it under this Agreement to perform the following functions:
 - Lane County will utilize database information to support the preparation of COVPs for motor carriers pursuant to the provisions of this Agreement and ORS 818.200 through 818.220.
 - Lane County will prepare and submit to motor carriers COVPs under the approval and authority of State.
 - Lane County will assist motor carriers in understanding the permit conditions and restrictions imposed by COVPs issued by Lane County.
 - Lane County may enforce permit provisions for operations conducted within its jurisdiction.
4. State shall provide and Lane County is required to use, and shall not alter or modify, all language, attachments, and maps for each COVP issued under this Agreement or as provided through the COVP Policy. This provision does not affect Lane County's authority to define special requirements related to size and weight limitations under its jurisdiction pursuant to its Agreement to Participate with State.

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- 5.1 Lane County shall collect all authorized permit fees associated with each COVP issued under this Agreement. Each Road Authority retains the right to establish and amend its authorized permit fees upon 120 days advance notice to State.
- 5.2 Lane County shall collect and retain a \$5.00 service charge from the motor carrier for each COVP issued by Lane County under this agreement.
- 5.3 Permit fees of road authorities, except of the issuing Road Authority, shall be reduced by \$2.75 for each road authority included on a permit issued under this Agreement.
- 5.4 In addition to all applicable permit fees, Lane County shall collect a \$2.75 service charge for each road authority permit, except that of Lane County, included on the permit issued. Lane County will retain \$2.00 of the service charge collected and forward the remaining \$.75 to the State.
- 5.5 Lane County will retain its portion of fees and service charges collected and forward to State fees collected for other road authorities, and State's portion of the service charge, as indicated by a monthly transmittal provided by State to Lane County. Payment must be received by State within 45 calendar days of the date of the transmittal.
- 5.6 Lane County shall participate in annual renewal of COVPs.
- 6.1 It is understood that the parties hereto are subject to the Oregon Public Records Law, ORS 192.410 through 192.505, and ORS 802.179 and, therefore, the parties authority to maintain the confidentiality of records and documents is subject to and limited by law.
- 6.2 The parties shall comply with all laws, rules and regulations together with States Continuous Operation Variance Permit Policy for issuance of COVPs covered by this program forwarded by the State to Lane County throughout the term of this Agreement, all as may be amended or updated from time to time. Lane County retains its current authority for roads within its jurisdiction.
- 6.3 The State of Oregon acting through ODOT and Lane County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, or is intended to give, or shall be construed to give or provide, any benefit or right to third persons.
- 6.4 Lane County, its employees, representatives and agents shall not be eligible for any compensation, social security, unemployment insurance or workers' compensation benefits from the State of Oregon under, or by reason of, this Agreement.

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- 6.5 This Agreement shall be governed by and constructed in accordance with the laws of the State of Oregon. Any first party claim, action or suit between State and Lane County that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively in Lane County in the court of the State of Oregon having jurisdiction thereof, provided however, that if any such action, claim or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.
- 6.6 State may limit Lane County's level of participation for failure to comply with program provisions.
- 6.7 The failure of the parties to enforce any provision of this Agreement shall not constitute a waiver by the parties of that or any other provision.
- 7.1 Lane County and State each shall be responsible, to the extent provided by the Oregon Tort Claims Act (ORS 30.260-30.300) and the Oregon Constitution, only for the acts, omissions or negligence of its own officers, employees or agents.
- 7.2 Lane County shall maintain, at Lane County expense, and keep in effect during the term of this Agreement, Commercial Liability Insurance covering bodily injury and property damage. This insurance shall include personal injury coverage, contractual liability coverage for the indemnity provided under this Agreement, errors and omissions and products/completed operations liability. This coverage may be obtained through a program of self-insurance or the purchase of a commercial policy. The limits would be subject to extent required by Oregon Tort Claims Act (ORS 30.260-30.300) and the Oregon Constitution.
- 7.3 Except where a road authority is a self insurer, this liability insurance coverage shall include the State of Oregon, State and its divisions, officers and employees as Additional Insureds but only with respect to the activities that Lane County is to perform under this Agreement.
- 7.4 All work product of Lane County that is produced solely pursuant to this Agreement is the exclusive property of State. If for any reason the work product is not deemed the property of State, Lane County irrevocably assigns to State all of its right, title and interest in and to any and all of the work product, whether arising from copyright, patent, trademark, trade secret, or any other State or federal intellectual property law or doctrine. Lane County shall execute such further documents and instruments as State may reasonably request in order to fully vest such rights in State. Lane County forever waives any and all rights to the work product, including without limitation, any and all rights arising under 17 USC section 106A or any other rights of

Attachment 1

identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

7.5 This Agreement shall become effective on the date it has been signed by every party hereto and, when required, approved by the Department of Justice. Unless terminated or extended, this Agreement shall expire at 12 p.m. on December 31, 2011. This Agreement may be terminated earlier by mutual written consent of the parties. Further, either party may, at its sole discretion, terminate this Agreement upon 30 days written notice to the other party.

Acceptance:

This Agreement in conjunction with an executed Agreement to Participate constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. The undersigned parties accept the terms and conditions of this Agreement.

APPROVED FOR LEGAL SUFFICIENCY

Paul R. Graham Date 2/6/09
Oregon Department of Justice

State of Oregon acting by and through the Motor Carrier Transportation Division of the Department of Transportation.

_____ Date _____
Gregg Dal Ponte, Deputy Director

Lane County, _____, acting by and through its governing body.

_____ Date _____

APPROVED AS TO FORM

_____ Date _____
Lane County Counsel