

Memorandum Date: April 26, 2010
Meeting Date: May 12, 2010

W-10-a

TO: Board of County Commissioners
DEPARTMENT: Public Works
PRESENTED BY: Celia Barry, Transportation Planning
AGENDA ITEM TITLE: WORK SESSION AND PUBLIC HEARING/IN THE MATTER OF AMENDING ORDER 10-5-12-1 TO INCLUDE THE I-5 AT COBURG PROJECT IN THE PUBLIC WORKS CAPITAL IMPROVEMENT PROGRAM

I. MOTION

Staff recommendation is to move approval of the Order (Attachment 1).

II. AGENDA ITEM SUMMARY

On May 19, 2010, the Board requested staff return on June 16, 2010 with options regarding the I-5 @ Coburg match funding that was deleted that day from the Public Works Capital Improvement Program (CIP), including the option to cancel the Intergovernmental Agreement (IGA) that the County executed with the Oregon Department of Transportation (ODOT), committing to provide the \$1,030,000 match (IGA is in Attachment 2). The Board also moved to hold a work session and public hearing at a time certain, 1:30, June 16, 2010, to expressly hear from the principals in the matter, being representatives from ODOT, Department of Land Conservation and Development (DLCD), and the City of Coburg. A notice to representatives of these agencies was distributed late in the day on Friday, May 28, 2010.

Staff requests direction on whether to proceed on other, related items coming to the Board in June and later this year, as described in the Analysis section.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

On May 12, 2010 the Board held a public hearing and discussed the matter of adopting the County's Capital Improvement Program Fiscal Year 2011-Fiscal Year 2015 (CIP). Staff was asked to come back on May 19, 2010 for a continued public hearing, and to provide responses to issues raised, particularly on the CIP proposed \$1.03 million allocation for the Coburg I-5 Interchange Area Improvement project. Testimony was provided by City of Coburg staff, ODOT staff, and a property owner near the Interchange.

The Agenda Item Summary above provides results of that meeting.

B. Policy Issues

The Lane County Transportation System Plan, Goal 24 provides guidelines on Road Fund uses: *Use the County Road Fund effectively by following the priorities established in the 1991 Road*

Fund Financial Plan (updated 1995). According to this policy, maintenance, and preservation of the County Roads and Bridges and providing a safe roadside environment, are the first priorities (Core Programs). Modernization and improvement of County Roads is the next tier of priority (Enhanced Program).

C. Board Goals

The Board is being asked to allocate Road Fund financial resources through the Capital Improvement Program. Two goals from the Strategic Plan, page 13, are relevant:

- *Contribute to appropriate community development in the areas of transportation and telecommunications infrastructure, housing, growth management, and land development.*
- *Protect the public's assets by maintaining, replacing or upgrading the County's investments in systems and capital infrastructure.*

D. Financial and/or Resource Considerations

The County's capital improvement program is mostly funded through the Road Fund. Currently, the Road Fund includes revenues from timber replacement receipts, state highway gas tax, and other user fees.

E. Analysis

Extensive information about the I-5 at Coburg Interchange project was provided at the May 19 meeting and previously during adoption of the associated Interchange Area Management Plan (IAMP).

Options for the Board regarding the match that was deleted from the CIP prior to its adoption on May 19, 2010 by Order 10-5-12-1 are listed below in Section IV.

Lane County has been working with Coburg and ODOT on this effort since 2004 and prior to that on previous versions of this project. Cancellation of the IGA may result in long term repercussions to Lane County with regard to partnering with ODOT on other projects, obtaining matching funds for County projects for which we are seeking earmarks, such as Territorial Highway, prioritizing projects for funding, and formation of an Area Commission on Transportation.

If the Board decides to leave the I-5 at Coburg project out of the CIP and cancel the IGA, ODOT staff indicate they are likely to supply the match. If so, then staff requests direction on proceeding with the following items:

1. Access Management IGA - this item first came to the Board as a Consent Calendar item for your June 9, 2010 meeting.
2. Project Construction IGA - since the Phase I improvements are on County Roads an IGA is necessary to complete construction.
3. Coburg IAMP Implementation Plan Amendment and Zone Change - this item would incorporate the Coburg IAMP by reference into the TSP, and provide an overlay zone and code provisions to implement the IAMP. The provisions would be consistent with the version of the IAMP that the Board adopted.

IV. Alternatives/Options

1. Adopt the attached Board Order including the I-5 at Coburg project in the CIP.
2. Do not adopt the Board Order, and provide direction to cancel the IGA committing Lane County to providing the match.

V. TIMING/IMPLEMENTATION

The Board may amend the CIP at any time as needed to respond to new information. County Termination of the IGA, page 3, requires 30 days written notice, with delivery by certified mail or in person. Termination must occur prior to the award of a construction contract for the Project. The project has not gone out to bid, but right-of-way acquisition is scheduled to begin within two months and design plans are 80 percent complete.

VI. RECOMMENDATION

Option 1

VI. FOLLOW-UP

No follow up is necessary at this time.

VII. ATTACHMENTS

- A. Board Order and Exhibit A
- B. ODOT-Lane County Intergovernmental Agreement

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY
STATE OF OREGON

ORDER NO.) IN THE MATTER OF AMENDING ORDER NO. 10-
) 5-12-1 TO INCLUDE THE I-5 AT COBURG
) PROJECT IN THE PUBLIC WORKS CAPITAL
) IMPROVEMENT PROGRAM

WHEREAS, the Board of County Commissioners (Board) has adopted a process as outlined in Lane Manual 15.575 for annual review and development of a Five-Year Public Works Capital Improvement Program (CIP); and

WHEREAS, a recommended Five-Year CIP has been developed in keeping with that process, including staff analysis, citizen involvement, the conducting of a public hearing on February 24, 2010 by the Roads Advisory Committee, and deliberation and a recommendation on the Capital Improvement Program by the Roads Advisory Committee on April 28, 2010; and

WHEREAS, the Board held a public hearing on May 12, 2010 on the recommended Public Works Five-Year CIP; and

WHEREAS, the Board continued the public hearing to May 19, 2010 to take additional testimony; and

WHEREAS, the Board adopted the CIP after removing \$1.03 million in matching funds previously allocated for the Interstate 5 at Coburg Interchange (I-5 at Coburg) project, and directed staff to return on June 16, 2010 for a work session and public hearing to consider the matter further; and

WHEREAS, the Board discussed and considered public testimony, staff analysis, and the recommendation of the Roads Advisory Committee; now, therefore, it is hereby

ORDERED, that the CIP as adopted by Board Order No. 10-5-12-1 be amended to include the I-5 at Coburg project; and be it further

ORDERED, that the County Administrator be delegated authority to execute all contracts and agreements in connection with the FY 2010/11-FY 2014/15 CIP in accordance with the terms of LM 21.145; and, be it further

ORDERED, that staff pursue all necessary actions to ensure timely construction of projects scheduled for FY 2010/11; and, be it further

ORDERED, that staff perform preliminary design activities, acquire right-of-way, prepare planning actions and permit applications necessary to ensure that projects scheduled for FY 2010/11 through FY 2014/15 remain on schedule; and, be it further

ORDERED, that the cost of such actions and preparations, including any damages, be paid from the County Road Fund or in any manner permitted by law as authorized by the Department of Public Works or as further authorized by the Board of County Commissioners.

ENACTED this _____ day of June 2010.

APPROVED AS TO FORM

Date 6-8-10 Lane County


OFFICE OF LEGAL COUNSEL

William A. Fleenor, Chair
Lane County Board of Commissioners

April 23, 2008

Misc. Contracts and Agreements
No. 23,602

**COOPERATIVE IMPROVEMENT AGREEMENT
HIGH PRIORITY PROJECT
I-5 Coburg Interchange
Lane County**

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 LANE COUNTY, acting by and through its board of directors, hereinafter referred to as "Agency."

RECITALS

1. Interstate 5 (I-5), is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission.
2. By the authority granted in ORS 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. Under provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which provides authorization for Federal-aid highways, highway safety programs, and transit programs, and for other purposes, State is required to set aside federal funds over the five years of SAFETEA-LU for High Priority Projects.
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 Agency agree that this Agreement serves as a funding agreement to identify the funding obligations for the I-5 Coburg Interchange project that will replace the structure over I-5 with a modern structure of appropriate width to provide adequate bicycle and pedestrian facilities; realign ramps as needed; signalize the southbound ramp terminal intersection; realign a local road south of the

Key No. 14649

5-22-09

Lane County/ODOT
 Agreement No. 23602

interchange to improve intersection spacing standards on the crossroad; and improve access control on the north side of the interchange by acquiring access control and developing a system of frontage and or local roadways, hereinafter referred to as "Project."

2. The Project will be financed at an estimated cost of \$20,700,000 in State, Federal and Agency funds. The Project shall be conducted as a part of the High Priority Projects authorized under SAFETEA-LU. The High Priority Projects funds available for the Project are estimated at \$9,000,000 with Agency providing the match for the federal funds. The federal pro-rata funding for the Project is 89.73 percent and provided federal funds will be subject to annual obligation limitations and possible rescissions. The funds shall be used for all phases of work. In the event the actual cost of the Project exceeds the estimate, State shall, at its sole discretion determine whether to provide additional funds to the Project or to modify the Project as necessary to keep costs within the estimate.
3. The High Priority Projects Numbers and Project Descriptions are as shown in the table below:

High Priority Projects Number	Project Description
1526	Interstate 5 Interchange at City of Coburg
4704	For Interstate 5 interchange, City of Coburg

4. The federal funding for this Project is contingent upon approval by the Federal Highway Administration (FHWA). Any work performed prior to acceptance by FHWA will be considered nonparticipating and paid for at Agency expense. The Catalog of Federal Domestic Assistance (CFDA) number for this Project is 20.205.
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.

AGENCY OBLIGATIONS

1. Agency shall upon notification from State no more than 60 days prior to bid advertisement for Project that such advertisement will occur and Agency contribution will be needed, sign an irrevocable limited power of attorney to access the Local Government Investment Pool account of Agency in the amount of \$1,030,000 for the Project. Such contribution being Agency's required match for the \$9,000,000 federal earmark. Agency certifies that throughout the term of this Agreement sufficient funds shall be available in its account to cover its contribution. In the event such

Lane County/ODOT
Agreement No. 23602

funds are not available in its account, ODOT shall withhold Agency's proportional share of Highway Fund distribution in an amount equal to Agency's contribution under this Agreement.

2. 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. Agency shall ensure that each of its subcontractors complies with these requirements.
3. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after completion of Project. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
4. Agency's Project Manager for this Project is Bill Morgan, or designee, 3040 North Delta Highway, Eugene, Oregon, 97408-1696; telephone (541) 682-6990.

STATE OBLIGATIONS

1. State shall, no more than 60 days prior to bid advertisement for Project, provide Agency notice of such advertisement and forward to Agency a request to sign an irrevocable limited power of attorney to access the Local Government Investment Pool account of Agency for \$1,030,000, said amount being equal to Agency's contribution towards Project. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete Project.
2. State shall only withdraw Agency funds from the Local Government Investment Pool as needed to provide the match for federal funds as Project expenditures occur.
3. State's Project Manager for this Project is Candice Stich, Area 5 Project Leader, or designee, 644 A Street, Springfield, Oregon 97477; telephone (541) 744-8080.

GENERAL PROVISIONS

1. Prior to the award of a construction contract for the Project, this Agreement may be terminated by either party upon 30 days' notice, in writing and delivered by certified mail or in person.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:

Lane County/ODOT
Agreement No. 23602

- a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency 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 Agency 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. Both parties shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless each other, their officers and employees from any and all claims, suits, and liabilities which may occur in their respective performance of this Project.
 5. Notwithstanding the foregoing defense obligations under paragraph 4 above, neither party nor any attorney engaged by either party shall defend any claim in the name of the other party or any agency, department, or division of such other party, nor purport to act as legal representative of the other party or any of its agencies, departments, or /divisions, without the prior written consent of the legal counsel of such other party. Each party may, at any time at its election assume its own defense and settlement in the event that it determines that the other party is prohibited from defending it, or that other party is not adequately defending its interests, or that an important governmental principle is at issue or that it is in the best interests of the party to do so. Each party reserves all rights to pursue any claims it may have against the other if it elects to assume its own defense.
 6. 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,

Lane County/ODOT
Agreement No. 23602

notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

7. 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.

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

Through adoption of the FY08-12 Capital Improvement Program, the Lane County Board of Commissioners has approved the I-5 Coburg Road Interchange Project authorizing the County Administrator to sign and execute this Agreement on behalf of Lane County.

This Project is in the 2006-2009 Statewide Transportation Improvement Program, (Key #14649) that was approved by the Oregon Transportation Commission on August 17, 2005 (or subsequently approved by amendment to the STIP).

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

Signature Page to Follow

Lane County/ODOT
Agreement No. 23602

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates to the Deputy Director, Highways, the authority to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

LANE COUNTY, by and through its Board of Commissioners

By Jeff Spartz
Jeff Spartz, County Administrator

Date 4-30-08

STATE OF OREGON, by and through its Department of Transportation

By Y.H. Tu
Deputy Director, Highway

Date 22 MAY 09

APPROVED AS TO LEGAL SUFFICIENCY

By [Signature]
Agency Counsel

Date 4/24/08

Agency Contact:
Bill Morgan
Lane County
3040 North Delta Highway
Eugene, Oregon 97408-1696

APPROVAL RECOMMENDED

By [Signature]
Technical Services Manager/Chief Engineer

Date 5-22-08

By [Signature]
Region 2 Manager

Date 5-17-08

By [Signature]
Region 2 Project Delivery Manager

Date 5-13-08

APPROVED AS TO LEGAL SUFFICIENCY

By [Signature]
Assistant Attorney General

Date 5/20/08