

IN THE BOARD OF COUNTY COMMISSIONERS  
OF LANE COUNTY, OREGON

ORDER NO. 12-06-06-14

( In the matter of approving a three-party Intergovernmental  
( agreement between Lane County, the State of Oregon  
( acting through the Department of Corrections and the City  
( of Junction City in connection with improvements to  
( Milliron Road East and Milliron Road West, and the  
( Jurisdictional transfer of portions of Milliron Road East  
( upon completion of the improvements, and authorizing the  
( County Administrator to execute the agreement and any  
( amendments

WHEREAS, the State of Oregon is in the process of constructing a new State Mental Health Facility and Corrections Complex on State Land within the City Limits of Junction City and along the south line of Milliron Road east, a County Road, a portion of which will be improved to City of Junction City street standards; and

WHEREAS, The State of Oregon is funding the construction of all of the proposed improvements and needs a Lane County Facility Permit in order to undertake construction within the County right of way; and

WHEREAS, there are affected portions of Milliron Road East that are within the City Limits of Junction City, and there are issues of mutual concern to Lane County, the City of Junction City and the State of Oregon, Department of Corrections concerning road jurisdiction, maintenance responsibilities, funding of the work and indemnification/hold harmless in connection with the construction of the proposed road improvements; and

WHEREAS, the Intergovernmental Agreement (IGA) in substantially the form as attached hereto and marked as "Exhibit A" addresses these issues, including transfer of jurisdiction, indemnification/hold harmless, and long-term maintenance obligations once the road improvements are completed, and

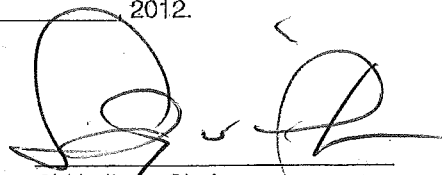
WHEREAS, Lane County, The State of Oregon Department of Corrections, and Junction City are in agreement with the terms and conditions as stated in "Exhibit A"; and

WHEREAS, ORS 190.010 provides that units of local government may enter into agreements with any other unit of local government for the performance of any or all functions and activities that a party to the agreement, its officer or agencies, have authority to perform.

NOW THEREFORE, IT IS ORDERED that the County Administrator is hereby authorized to sign the acceptance of the Agreement in substantially the form as shown on "Exhibit A" and execute any amendments; and

IT IS FURTHER ORDERED that this Order shall be entered into the records of the Board of Commissioners of the County.

DATED this 6th day of June 2012.

  
Sid Leiken, Chair,  
Board of County Commissioners

APPROVED AS TO FORM:

5-29-12  
Date: \_\_\_\_\_  
Lane County  
OFFICE OF LEGAL COUNSEL

# EXHIBIT A

Cooperative Agreement Milliron Road  
DOC/Junction City/ Lane County  
IGA #4625

## COOPERATIVE IMPROVEMENT AGREEMENT MILLIRON ROAD IMPROVEMENTS INTERGOVERNMENTAL AGREEMENT OREGON DEPARTMENT OF CORRECTIONS LANE COUNTY AND CITY OF JUNCTION CITY

**THIS AGREEMENT** is made and entered into by and between the State of Oregon, acting through its Department of Corrections, hereinafter referred to as **STATE**, Lane County, a political subdivision of the State of Oregon, hereinafter referred to as **COUNTY**, and the City of Junction City, an Oregon Municipal Corporation, hereinafter referred to as **CITY**, acting through their respective designated officials, hereinafter all referred to individually and collectively as "PARTY" or "PARTIES".

### RECITALS

1. **STATE** is proposing to construct a new State Mental Health Facility and Corrections Complex, hereinafter referred to as "The State Facilities" on land that it currently owns located within the **CITY** limits situated at the southeast quadrant of the Highway 99/Milliron Road Intersection.
2. **STATE** proposes to construct improvements to Milliron Road east and west of Highway 99 (respectively "Milliron Road East" and "Milliron Road West"), hereinafter referred to as "the Project" and as shown on "Exhibit A" attached hereto and incorporated herein by reference, to mitigate a variety of impacts resulting from the State Facilities, including the anticipated additional vehicular traffic to be generated during the construction and subsequent operations of the State Facilities.
3. Milliron Road East and Milliron Road West are both currently part of the Lane County Road system under the jurisdiction and control of **COUNTY**. A portion of Milliron Road East is within the **CITY** limits fronting the north line of the **STATE'S** property as shown on Exhibit A. Milliron Road West is outside the **CITY** limits.
4. **PARTIES** desire to set forth the roles and responsibilities of the **PARTIES** relative to the Project and the affected **COUNTY** and **CITY** roads, including jurisdictional issues and maintenance of the roads and streets related to the Project in this Agreement.
5. By authority granted in Oregon Revised Statutes 190.010 and 190.110, state and units of local government may enter into cooperative agreements for the performance of any or all functions and activities that a party to the agreement, its officers or agencies have authority to perform. Furthermore Oregon Revised Statutes 421.628 bind the state, all counties, cities and political subdivisions to issue the appropriate permits, licenses and certificates and enter into any intergovernmental agreements as necessary for construction and operation of the facilities, subject only to the conditions of the siting decisions.

6. ORS 373.270 provides for the transfer of county roads within the corporate limits of a city from county jurisdiction to city jurisdiction whenever the county governing body deems it necessary, expedient or for the best interest of the county to do so and the governing body of the city deems it necessary or expedient and for the best interest of the city to acquire jurisdiction over the county road or parts thereof to the same extent as it has over other public streets and alleys of the **CITY**.

7. It is in the best interest of the PARTIES that portions of the Project be constructed to **CITY** standards, that the **COUNTY** not be burdened by the expense of having to maintain **COUNTY** roads to **CITY** standards, and therefore that the **CITY** accept the surrender of the reconstructed portion of Milliron Road East within the **CITY** limits and further assume legal jurisdiction for maintenance of said portion of Milliron Road East.

**NOW THEREFORE**, this Agreement is for the purpose of addressing issues of mutual interest to the PARTIES, and it is therefore agreed by and among the PARTIES as follows:

## **TERMS OF AGREEMENT**

### **I. EFFECTIVE DATE AND DURATION:**

The term of this Agreement shall commence on the date ("Effective Date") on which this Agreement has been duly executed and all required approvals have been obtained and shall run until the later of the following: when all affected roadways have been surrendered to **CITY**, or through December 31, 2015, unless earlier terminated pursuant to the termination provisions contained herein.

### **II. CONSIDERATION AND PAYMENT TERMS:**

There shall be no payment from any PARTY to any other PARTY under this Agreement unless otherwise expressly agreed herein.

### **III. AUTHORIZED REPRESENTATIVES:**

For purposes of day-to-day coordination under this Agreement and mailing of notice in regard to any matter hereunder:

- o **COUNTY** hereby designates **Bill Morgan**, County Engineer, Department of Public Works, 3040 Delta Highway North, Eugene, OR 97408 (541-682-6990), as its coordinator.
- o **CITY** hereby designates **Kevin Watson**, City Manager, 680 Greenwood Street, P.O. Box 250 Junction City, Oregon 97448 (541-998-2153), as its coordinator.
- o **STATE** hereby designates **Doug Young**, Construction Administrator, 1793 13<sup>th</sup> Street SE Salem Oregon 97302 (503-934-1064), as its coordinator.

### **IV. AMENDMENTS:**

The terms of this Agreement may not be waived, altered, modified, supplemented or otherwise amended, in any manner whatsoever, except by written mutual agreement signed by authorized representatives of the Parties.

## **V. ACCESS TO DEPARTMENT OF CORRECTIONS FACILITIES:**

Access to any **STATE** facilities is subject to the provisions of ORS 423.020, 423.030 and 423.075, and OAR 291-016 (the Department of Corrections administrative rules on Facility Access).

## **VI. CITY SHALL:**

1. Review and approve drawings, plans and specifications for the Project within the **CITY** limits and be solely responsible for their conformance with applicable **CITY** standards.
2. Coordinate with the PARTIES regarding issues of public involvement, public notification of road closures and detours, notifications to emergency service providers and other issues associated with the implementation of the Project.
3. Provide timely review and approval of in-progress and completed work related to the Project within the **CITY** limits for conformance with applicable **CITY** standards. Such approval shall not be unreasonably withheld.
4. Upon completion of the Project and prior to termination of this Agreement, request surrender of and accept that portion of Milliron Road East from the east line of the Highway 99 right-of-way easterly through to the eastern boundary of the **CITY** limits as shown on Exhibit A. Upon said surrender, that portion of Milliron Road East described herein shall be a **CITY** street under **CITY** jurisdiction, and **CITY** shall thereafter be responsible for any and all maintenance of said street, including but not limited to any existing or newly-constructed public improvements, structures, equipment, and other appurtenances, including without limitation street lights, drainage facilities, and easements acquired related to the Project. The **CITY** shall not be responsible for the operation and maintenance of any traffic signal equipment. This obligation shall survive the expiration of the term of this Agreement.
5. Assume responsibility for the maintenance of any portion of the **COUNTY** road upon which street improvements are constructed to the approve drawings, plans and specifications or **CITY** standards, including but not limited to any existing or newly-constructed public improvements, structures, equipment, and other appurtenances, and construction in connection therewith. Said maintenance responsibility shall become effective upon substantial completion of the Project. This obligation shall survive the expiration of the term of this Agreement.
6. Assume all obligations and responsibilities of the **COUNTY** to be imposed under a Rail Order issued by the Oregon Department of Transportation ("ODOT"), Rail Division, in connection with the Project and required improvements to the road crossing of the Burlington Northern Santa Fe ("BNSF") tracks located along the east side of Highway 99.
7. Request surrender of additional portions of Milliron Road East and Milliron Road West by **COUNTY**, as annexed, upon construction of full road width improvements to **CITY** standards including curb, gutters, sidewalks, street, trees and lighting. This obligation shall survive the expiration of the term of this Agreement.

8. Otherwise take appropriate action, within the scope of the **CITY'S** responsibilities under this Agreement, so that the Project, when completed and constructed in accordance with the intent established by the drawings, plans, specifications, and deliverables to be developed by the **STATE**, shall be structurally sound and a complete and properly functioning facility suitable for the purposes for which it is intended. As such, when completed the **CITY** shall accept and take full ownership and responsibility for the public improvements, structures, equipment and other appurtenances within the **CITY's** limits resulting from and related to the Project and as otherwise agreed to herein.

## **VII. STATE SHALL:**

1. Pay all direct costs and expenses associated with the Project as determined to be just, fair, and reasonable for the successful completion of the Project by **STATE**.
2. Prepare or have prepared, in accordance with the applicable standard of care, all drawings, plans, specifications, deliverables, permit applications and other documents for the Project, so that when completed and constructed in accordance with the intent established by the drawings, plans, specifications, and deliverables, shall be structurally sound and a complete and properly functioning facility suitable for the purposes intended.
3. Construct the Project in accordance with the drawings, plans, specifications approved by ODOT, **COUNTY** and **CITY**.
4. Make application for, pay all fees associated with and receive necessary permits, including a Lane County Facility Permit for any work within **COUNTY** right of way, prior to commencement of the work.
5. Provide and coordinate all necessary construction administration and construction engineering and inspection services in accordance with ODOT's Construction Manual, the Manual of Field Test Procedures and the ODOT Inspectors Manual or as otherwise agreed to by the Parties. Inspection work shall be performed by certified inspection-quality assurance program inspectors. Said inspection services shall be similar to those services defined by the Oregon Department of Transportation Construction Contract Administration and Construction Engineering & Inspection template as described at: (<http://www.oregon.gov/ODOT/CS/OPO/sow.shtml>). Upon completion of construction, provide or have provided a letter from a registered professional engineer, licensed with the State of Oregon certifying that all improvements are constructed in conformance with the approved drawings, plans and specifications.
6. Acquire all necessary rights of way and easements according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual. Title to all rights of way and easements acquired for the Project shall be in the name of the **STATE**. Upon completion of the Project and prior to termination of this Agreement, **STATE** shall facilitate the transfer of said rights of way and easements to the authority having jurisdiction.
7. If so separately agreed to and invoiced, pay a onetime lump sum amount (the "Ownership Costs") for the just, fair and reasonable perpetual cost of associated utilities or other ongoing costs of ownership associated with the public improvements, structures, equipment and other appurtenances within the respective convening authority's right of way, resulting from and related to the Project or as agreed to by the Parties.

8. Assume the reimbursement and construction obligations of the **COUNTY**, if so imposed, under a Rail Order issued by ODOT, Rail Division, in connection with the Project and required improvements to the road crossing of the BNSF tracks located along the east side of Highway 99.

#### **VIII. COUNTY SHALL:**

1. Act as the authority having jurisdiction for that portion of the Project within **COUNTY** right of way and in accordance with ORS 421.628. Assist the **STATE** in resolving design and construction related issues, as needed, that arise throughout the course of the Project.

2. Issue Facility Permits for all work within existing **COUNTY** right of way subject to compliance with all terms, conditions and requirements associated with the issuance of said permits. Provide timely review and approval of in-progress and completed work related to the Project for conformance with applicable **COUNTY** standards. Such approval shall not be unreasonably withheld. In accordance with said permits, the **COUNTY** shall inspect and certify that all improvements conform to the approved drawings, plans and specifications.

3. Promptly notify the **STATE** of any conditions resulting from the Project which may adversely affect **COUNTY** right of way or **COUNTY** road improvements.

4. Otherwise take appropriate action, within the scope of the **COUNTY'S** responsibilities under this Agreement, so that the Project, when completed and constructed in accordance with the intent established by the drawings, plans, specifications, and deliverables to be developed by the **STATE**, shall be structurally sound and a complete and properly functioning facility suitable for the purposes for which it is intended. As such, when completed the **COUNTY** shall accept and take full ownership and responsibility for the public improvements, structures, equipment and other appurtenances within the **COUNTY** jurisdiction resulting from and related to the Project.

5. Upon request by **CITY** and in accordance with paragraph 4 in the "**CITY SHALL**" Section above, and pursuant to ORS 373.270, process the surrender requests made by the **CITY** for those portions of public rights of way within the **CITY** limits, and process additional surrender requests from the **CITY** as those requests are made in connection with the annexation of properties which are adjacent to the Project and the construction of Project road improvements to **CITY** standards.

6. Review and provide comment to the **STATE** in acquiring any rights of way and easements according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual. Title to all rights of way and easements acquired for the Project shall be in the name of the **STATE**. Upon completion of the Project and prior to termination of this Agreement, **COUNTY** shall accept transfer of said rights of way and easements as the authority having jurisdiction.

7. As authorized by **STATE**, **COUNTY** shall provide for all necessary construction administration and construction engineering and inspection services in accordance with ODOT's Construction Manual, the Manual of Field Test Procedures and the ODOT Inspectors Manual or as otherwise agreed to by the Parties either directly or through a separate agreement. All inspection work shall be performed by certified inspection quality assurance program inspectors, provided either directly by the **COUNTY** through a qualified staff person or through a consultant retained by the **COUNTY** with expertise in performing such services.

## **ALL PARTIES AGREE**

### **IX. TERMINATION:**

1. This Agreement may be terminated at any time by mutual written consent of the Parties.
2. This Agreement may be terminated by any PARTY upon 30 days written notice to the other Parties if federal, state, or local laws, regulations or guidelines are modified or interpreted in such a way that the Party's activity under this Agreement is prohibited. The date of the termination shall be no later than the effective date of the change in the law. However, any such termination shall be without prejudice to any liabilities or obligations of any Party already accrued as of receipt of the written notice.
3. **STATE**, at any time prior to commencement of work on the Project, may terminate this Agreement upon written notice if **STATE** fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided for in this Agreement; or if federal, state, or local laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or the **STATE** is prohibited from paying for such work from the planned funding source. The date of the termination shall be no later than the effective date of the State's failure to receive funding, appropriations, limitations or other expenditure authority, or the change in the law, as applicable.
4. This Agreement may be terminated for cause by any aggrieved PARTY, upon written notice, if another PARTY commits any material breach or default of any covenant, warranty or obligation under this Agreement, or fails to perform its duties under this Agreement within the time specified herein or any extension thereof, or so fails to pursue its duties as to endanger the aggrieved Party's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within 20 business days after delivery of the aggrieved Party's notice to the other Party of such breach, default, or failure, or within such longer period of cure as the aggrieved Party may specify in such notice.

### **X. SURVIVAL:**

All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations as required by rule, law, statute, or expressly set forth herein.

### **XI. INDEMNIFICATION:**

1. Subject to the limitations of the Oregon Constitution, the Oregon Revised Statutes, the Oregon Tort Claims Act and as otherwise provided by law, each of the PARTIES hereto agrees to indemnify and save the others harmless, within the limits of and subject to the restrictions in the Oregon Tort Claims Act, from any claims, liability or damages arising out of or resulting from any error, omission or act of negligence on the part of the indemnifying parties, its officers, or employees in the performance of this Agreement.
2. In providing the service specified in this Agreement (and any associated services) all PARTIES are public bodies and maintain their public body status as specified in ORS 30.260. All PARTIES understand and acknowledge that each retains all privileges and immunities provided by law, whether sovereign immunity, immunity under the 11<sup>th</sup> Amendment to the United States Constitution or any other form of governmental immunity, and any and all other statutory rights granted as a result of their status as public bodies.

3. The **STATE's** contribution amount in any instance is limited to the same extent it is limited under Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.397 and as otherwise provided under Oregon law if the **STATE** had sole liability in the proceeding.

## **XII. DISPUTE RESOLUTION; INTEGRATION:**

1. Dispute Resolution-Mediation. The PARTIES shall exert every effort to cooperatively resolve any disagreements they may have under this Agreement. In the event that the PARTIES alone are unable to resolve any conflict under this Agreement, they agree to present their disagreements to a mutually selected mediator. Each PARTY shall bear its own costs for mediation and the parties shall equally share the cost of the mediator. This procedure shall be followed to its conclusion prior to either PARTY seeking relief from a court, except in the case of an emergency.

2. This Agreement constitutes the entire Agreement between **STATE, COUNTY** and **CITY** on the subject matter hereof. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by **STATE, COUNTY** and **CITY**. 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 delay or failure to enforce any provision of this Agreement shall not constitute a waiver by any PARTY of that provision or any other provision. **STATE, CITY** and **COUNTY**, by the signature below of their authorized representatives, hereby acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and conditions.

## **XIII. GOVERNING LAW; VENUE; CONSENT TO JURISDICTION:**

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between **STATE** (and/or any other agency or department of the State of Oregon) and **COUNTY** or **CITY** that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Lane County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by any PARTY of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. **STATE, COUNTY** and **CITY, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

## **XIV. SEVERABILITY:**

The PARTIES agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the PARTIES shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.



**XV. NOTICE:**

Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to the **STATE, COUNTY** or **CITY** at the address, number or email address set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this Agreement. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against **STATE**, any notice transmitted by facsimile must be confirmed by telephone notice to **STATE's** Authorized Representative. Any communication or notice given by personal delivery shall be effective when actually delivered. Any communication or notice given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.

**XVI. COMPLIANCE WITH LAW:**

In connection with each PARTY'S activities under this Agreement, **STATE, COUNTY** and **CITY** shall comply with all applicable federal, state and local statutes, administrative rules, regulations, ordinances and other laws.

**XVII. REPORTING REQUIREMENTS:**

The PARTIES agree that **STATE** shall be the Reporting Party for purposes of ORS 190.115, Summaries of agreements of state agencies. **STATE** shall submit a summary of this Agreement to the Oregon Department of Administrative Services within the 30-day period immediately following the effective date of the Agreement.

**XVIII. NO THIRD PARTY BENEFICIARIES:**

**STATE, COUNTY** and **CITY** are the only PARTIES to this Agreement and are the only PARTIES entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

**XIX. COUNTERPARTS:**

This Agreement may be executed in several counterparts, 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 the Agreement so executed shall constitute an original.

**XX. SIGNATURES:**

In witness whereof, the PARTIES hereto have set their hands and affixed their seals as of the day and year hereinafter written.

\*\*\*\*

**CITY OF JUNCTION CITY**

By \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**LANE COUNTY**

By \_\_\_\_\_

Title: County Administrator

Date: \_\_\_\_\_

**STATE OF OREGON**

By \_\_\_\_\_

Tamara L. Dohrman

Title: Assistant Director, General Services

Date: \_\_\_\_\_

Exhibit A

