

INTERSTATE AGREEMENT
Funding Agreement for the
Columbia River Crossing Project
Washington State Department of Transportation
Oregon Department of Transportation

THIS AGREEMENT is made and entered into this 3rd day of January, 2006, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter the "WSDOT" and the State of Oregon, Department of Transportation, acting by and through the Oregon Transportation Commission, hereinafter the "ODOT," together referred to as "PARTIES," and individually, the "PARTY."

RECITALS

WHEREAS, WSDOT is authorized by the Revised Code of Washington (RCW) 47.52.020, RCW 47.04.080 and RCW 39.34.030 to enter into this AGREEMENT, and ODOT is authorized by Oregon Revised Statutes (ORS 190.410 to 190.440 and ORS 381.005 to 381.820) to enter into this AGREEMENT, and

WHEREAS, ODOT and WSDOT entered into Agreement WSDOT No. GM 0395 and ODOT No. 3193) on October 25, 1966, which provided for ODOT and WSDOT to jointly be responsible for the maintenance of the two Interstate bridges crossing the Columbia River between Vancouver, Washington and Portland, Oregon on Pacific Highway (I-5), and

WHEREAS, the Columbia River Crossing Project, hereinafter called the "PROJECT" is one of a finite list of projects recognized by the Oregon and Washington Departments of Transportation through the I-5 Partnership Strategic Plan as being a solution to improving the existing I-5 Columbia River crossing and significant to the future of the Pacific Northwest. This PROJECT encompasses a five-mile capacity improvement along I-5 from the SR 500 interchange in Clark County to the Columbia Boulevard interchange in Portland. It includes possible improvements to 8 interchanges (4 in each state); and replacement of or the addition of a supplemental structure to the existing bridge over the Columbia River, and

WHEREAS, the PROJECT is a product of the I-5 Partnership Strategic Plan adopted in 2002 that articulates a 20 to 30-year vision for the I-5 Corridor between I-205 in Washington and I-84 in Oregon that will be implemented in phases, one of which is the Columbia River Crossing Project, and

WHEREAS, by modernizing I-5 where it crosses the Columbia River, the PROJECT will contribute to the economic and freight mobility needs of both PARTIES, and

WHEREAS, the PARTIES have formed a PROJECT Team, hereinafter the "TEAM" to manage the PROJECT as one team that works on behalf of both PARTIES. Said TEAM is a co-state team making joint decisions following federally accepted laws and procedures along with

individual state laws for contracting. TEAM members retain employment relationship with their respective employing state and are not receiving salary from any other agency connected with this PROJECT, and

WHEREAS, the PARTIES have agreed to, the TEAM has approved and WSDOT has entered into a contract with a consultant team as listed in Exhibit A to perform services by "Task Order" through the completion of the PROJECT or termination of the consultant contract, and

WHEREAS, the PARTIES agree that the purpose for this AGREEMENT is to define responsibility for funding the PROJECT, and

WHEREAS, the PARTIES recognize that each state's legislature operates on its own schedule and have allocated unequal amounts of state resources at this time. In addition, the federal earmarks dedicated to this PROJECT are of unequal amounts and have been earmarked at different times, and

WHEREAS, it shall be the goal of the PARTIES to manage these inconsistent revenue streams in such a way as to keep the PROJECT as close to equally funded by each state as possible, and

WHEREAS, both PARTIES agree that all terms set forth in the existing I-5 Crossing Maintenance Agreement, WSDOT No. GM0395 and ODOT No. 3193 shall remain in full force and effect for the existing crossings,

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein, or attached and made a part hereof,
IT IS MUTUALLY AGREED AS FOLLOWS:

TERMS OF AGREEMENT

1. FUNDING

- 1.1 The PARTIES have combined funds to apply toward the PROJECT. Current funding and expenses are as shown in Exhibit A, attached hereto and by this reference made a part hereof. An amendment to Exhibit A is required prior to incurring costs beyond the total dollar amount identified in the Exhibit A. As additional funding is obtained, this AGREEMENT shall be amended by amending Exhibit A through the approval and agreement by the Deputy Director, Highway Division from ODOT and the Assistant Secretary for Engineering, Regional Operations from WSDOT. The PARTIES funding shares shall be based on the actual direct and related indirect total cost of PROJECT and shall include applicable Washington State Sales Tax.
- 1.2 It shall be the goal of both PARTIES that the PROJECT will be funded equally by resources developed by each PARTY, whether from state, local, or federal funds, with the intent to spend funds as they become available from whichever source. Funding obtained from regional partners outside the PARTIES shall be applied only after separate written

agreements between said partners and the specific PARTY have been executed. An amendment to Exhibit A of this AGREEMENT is also required.

1.3 All expenses associated with the PROJECT must be jointly approved by both PROJECT Directors.

- a. WSDOT's PROJECT Director is Doug Ficco, 700 Washington St, Suite 222, Vancouver, WA 98660-3177; telephone (360) 942-2092, or an individual designated by WSDOT in the event of the unavailability of the aforementioned individual.
- b. ODOT's PROJECT Director is Rob DeGraff., 700 Washington St, Suite 222, Vancouver, WA 98660-3177; telephone (360) 942-2092, or an individual designated by ODOT in the event of the unavailability of the aforementioned individual.

1.4 The procurement/contracting process is currently being conducted through WSDOT but may be conducted by either PARTY. The current contracts (including all task orders and work order contracts) were procured by and are held by WSDOT, and are listed in Exhibit A. The cost sharing described in this AGREEMENT shall apply to listed current contracts, and to future contracts or contract amendments when approved by the TEAM. It is recognized that WSDOT has incurred costs related to Consultant Agreement Y9245 and other expenditures prior to entering into this Agreement. It is also recognized that ODOT cannot reimburse WSDOT for costs incurred prior to the effective date of this Agreement. Therefore, the PARTIES agree that the costs incurred by WSDOT subsequent to the effective date of this Agreement will be invoiced and paid by ODOT until ODOT's contribution equals what WSDOT has expended to date under Y9245.

1.5 The PARTY conducting procurement/contracting for the PROJECT shall obtain TEAM approval; make payments from its funding source as funds are or become available. Said PARTY shall also submit a written request to the other PARTY requesting that PARTY's monetary contributions (if any) for that particular contract. It is the intent of the TEAM to manage inconsistent revenue flows in such a way as to keep the PROJECT as close to equally funded by each PARTY as possible. The contracting PARTY shall provide monthly statements of procurement/contract payments and invoices to the other PARTY in accordance with the contracts and funding listed in Exhibit A. Invoices shall be in a form identifying the PROJECT and AGREEMENT number. Itemization and explanation of all expenses for which reimbursement is claimed will be maintained on file with the contracting PARTY and available for review upon request for the life of PROJECT plus five (5) years. Exhibit A shall be amended as outlined in Section 1.1 of this AGREEMENT, as PROJECT revenues and financing strategies change. All payments and/or contributions shall be submitted to WSDOT at: Department of Transportation, Financial Services, PO Box 1709, Vancouver, WA 98668-1709; and/or to ODOT at: Department of Transportation, Financial Services, 355 Capitol Street NE #434, Salem, OR 97301-3872 and shall reference this AGREEMENT # ODOT 22946/WSDOT 4723. Under no conditions shall the total expenditure of funds under this AGREEMENT exceed the amount available in Exhibit A, including all expenses, without prior amendment to this AGREEMENT.

- 1.6 Work performed by the staff of either PARTY on behalf of the PROJECT may be billed and paid in the same manner as stated in Section 1.5 of this AGREEMENT.
- 1.7 The PARTY conducting procurement/contracting or any individual work for the PROJECT shall furnish copies of the monthly progress report to the other PARTY's PROJECT Director during the term of the PROJECT. The monthly progress report briefly states the progress achieved during the previous one-month period and the overall progress to date, including costs incurred.
- 1.8 The PARTY conducting procurement/contracting or any individual work for the PROJECT shall maintain accurate cost records for all work. Overhead, supervision and other administrative costs, including applicable Washington State Sales Tax, related to the work performed under the terms of this AGREEMENT shall be accumulated and computed in accordance with acceptable accounting procedures.
- 1.9 The PARTY conducting the procurement/contracting or any individual work for the PROJECT shall submit proposed change orders in excess of \$10,000.00 to the other PARTY's PROJECT Director for review and approval prior to issuance of a change order to the contractor/consultant. The PARTY conducting the procurement/contracting or individual work for the PROJECT has the right to issue change orders necessary to preserve public safety without such prior review but shall submit change orders immediately to the other PARTY's PROJECT Director.
- 1.10 Any work under this AGREEMENT to be performed by any party, such as regional partners other than the PARTIES or the approved consultants shall not be approved or reimbursed as a PROJECT cost, unless previously approved by the TEAM and a separate agreement between such regional partner and the PARTY has been executed.

2. MODIFICATIONS

- 2.1 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 prior to starting work. 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 ODOT and/or WSDOT to enforce any provision of this AGREEMENT shall not constitute a waiver by ODOT and/or WSDOT of that or any other provision.

3. AUDITS, INSPECTIONS, AND RETENTION OF RECORDS

- 3.1 WSDOT, ODOT, the Federal Highway Administration, Federal Transit Administration and any of their respective representatives, shall have full access to and the right to examine, during normal business hours and as often as they deem necessary, all of the records with

respect to all matters covered by this AGREEMENT. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and other matters covered by this AGREEMENT. All documents, papers accounting records, and other material pertaining to costs incurred in connection with the work covered by this AGREEMENT shall be retained by the PARTIES for five years after the work covered by this AGREEMENT is completed and/or the AGREEMENT is terminated. Copies thereof shall be furnished if requested. If any litigation claims, or audit is commenced, the records and accounts, along with supporting documentation, shall be retained until all litigation, claim, or audit continues past the five-year retention period.

4. TERMINATION

- 4.1 This AGREEMENT may be terminated if mutually agreed to by both PARTIES. Termination shall be in writing and signed by both PARTIES.
- 4.2 Either PARTY may terminate this AGREEMENT should either PARTY be prevented from proceeding with the work as a direct result of an Executive Order of the President of the United States of America (President) with respect to the prosecution of war or in the interest of national defense, or an Executive Order of the President or Governor of the State of Washington or Governor of the State of Oregon, with respect to the preservation of energy resources.
- 4.3 Either PARTY may terminate this AGREEMENT, in whole or in part or from time to time in part, if the AGREEMENT is prevented from proceeding by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction.
- 4.4 Either PARTY may terminate this AGREEMENT if its governing body determines that such termination is in the best interests of its state.
- 4.5 Any termination of this AGREEMENT shall not prejudice any rights or obligations accrued to the PARTIES prior to termination.
- 4.6 In the event of a termination of this AGREEMENT, resulting in the termination of the PROJECT, each PARTY shall be responsible for paying 50 percent of all costs prior to termination. Further, the PARTIES agree, in the event of termination, to equally share in the information, data, reports, personal property, or other such items developed or acquired pursuant to the terms of this AGREEMENT.
- 4.7 Termination of a Task Order shall not have any effect on any other Task Orders or this AGREEMENT.

5. ASSIGNMENT

- 5.1 Neither PARTY to this AGREEMENT shall transfer or assign any right or obligation hereunder without prior written consent of the other PARTY.

6. DISCLAIMER

- 6.1 The PARTIES acknowledge that both PARTIES are subject to certain public contracting laws and regulations. The PARTIES agree to make best efforts to conduct the procurement recognizing applicable laws and regulations of both states and, if necessary, to amend this AGREEMENT.
- 6.2 The PARTIES shall not consider unsolicited proposals for a public private partnership for the PROJECT.

7. SEVERABILITY

- 7.1 Should any part, term or provision of this AGREEMENT be determined to be invalid, the remainder of this AGREEMENT shall not be affected, and the same shall continue in full force and effect.

8. DISPUTE RESOLUTION

- 8.1 In the event that a dispute arises under this AGREEMENT, it shall be resolved as follows:

The ODOT's Director of Transportation and WSDOT Secretary of Transportation shall each appoint a member to a disputes board, these two members shall select a third member not affiliated with either PARTY. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. The decision of the board shall not be binding upon the PARTIES, but its recommendations shall be given serious consideration when resolving the dispute. An attempt at such dispute resolution in compliance with aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute. All expenses of the third board member shall be shared equally between the PARTIES.

- 8.2 In the event that either PARTY deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the PARTIES hereto agree that any such action or proceedings shall be brought in either the United States District Court, Western District, located in Tacoma, Washington or the United States District Court, Oregon, located in Portland, Oregon.

9. LEGAL RELATIONS

- 9.1 The PARTY procuring and entering into a contract shall insure that any contractor is responsible to indemnify both PARTIES and name both states as beneficiaries of the resulting contract(s). The contractor(s) shall also be required, at a minimum, to obtain and keep in effect during the term of the contract Comprehensive or Commercial General Liability Insurance covering bodily injury and property damage. This insurance shall include personal injury coverage, contractual liability coverage and products/completed operations liability. The contractor shall include the PARTIES as additional insureds on

policies issued for this PROJECT, or shall furnish an additional insured endorsement naming the same as additional insureds to the contractor's existing comprehensive or commercial general liability insurance. The certificate of insurance shall include both PARTIES, their Transportation Commissions and members, Departments of Transportation, officers and employees as additional insureds.

Before the contract is executed, the contractor shall furnish to the PARTY entering into the contract, a certificate of insurance for the limits which will be in force and applicable to the PROJECT.

- a. The insurance coverage shall not be amended, altered, modified, or cancelled insofar as the coverage contemplated herein is concerned without at least thirty (30) days notice to the contracting PARTY and approval from the PARTIES.
- b. The PARTIES agree that Consultant Agreement Y9245 as listed in Exhibit A either complies with this AGREEMENT or may be amended to comply with this AGREEMENT.

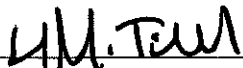
9.2 Both PARTIES shall, to the extent permitted by law, indemnify, save, and hold harmless each other, their officers and employees from any and all claims, suits, and liabilities which may occur in the performance of this PROJECT. This provision does not require either PARTY to indemnify the other for claims, suits or liabilities which are the result of actions or inactions of the other PARTY.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the day and year first above written.

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 when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

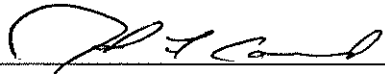
On November 10, 2004, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates to the Deputy Director, Highways; the authority to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission such as the Traffic Safety Performance Plan, or in a line item in the biennial budget approved by the Director.

STATE OF OREGON, by and through its
Transportation Commission

By: 
Doug J. Tindall Deputy Director,
Highway Division

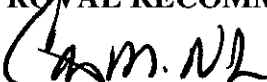
Date: 07 Dec 05

STATE OF WASHINGTON, by and through its
Secretary of Transportation

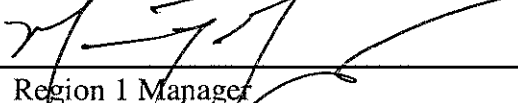
By: 
John F. Conrad, Assistant Secretary for
Engineering, Regional Operations

Date: 11/3/06

APPROVAL RECOMMENDED

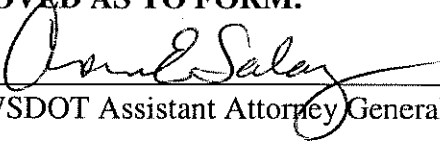
By: 
Technical Services Manager/Chief Engineer

Date: 12-14-05

By: 
Region 1 Manager

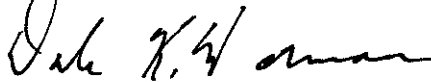
Date: 12/1/05

APPROVED AS TO FORM:

By: 
WSDOT Assistant Attorney General

Date: 12-27-05

**APPROVED AS TO LEGAL
SUFFICIENCY:**

By: 
Oregon Asst. Attorney General

Date: 12/6/05

EXHIBIT A (Page 1 of 3)

Funding to Date (in millions of dollars)

	FORCASTED PHASES ¹	WSDOT	Federal Grant (WSDOT)	ODOT	Federal Grant (ODOT)
2003	Planning - Post Strategic Plan			.4	3.5
2004	Planning - Begin EIS	.07	3		
2005	EIS		2	5	
2005/2007	EIS**	10			
2007/2009	EIS – Preliminary Design**	20			
2009/2011	EIS – Preliminary Design**	20			

Total Known Funding: \$63.97

	WSDOT	Federal Grant (WSDOT)	ODOT	Federal Grant (ODOT)
Totals:	\$50.07	\$5.00	\$5.40	\$3.5

Total combined funding available under this AGREEMENT \$63.97
(additional funds cannot be expended prior to amendment to this Exhibit A)

EXHIBIT A (PAGE 2 OF 3)

CONTRACTS UNDER THIS AGREEMENT

This Exhibit shows the current contracts currently being administered under this AGREEMENT. These contracts have been approved by the TEAM, and the PARTIES agree that these contracts comply with the provisions of this AGREEMENT or may be amended to comply with the provisions of this AGREEMENT. This Exhibit will be modified as additional contracts need to be entered into and by amendment to this AGREEMENT.

Both states are aware that ODOT can participate in funding of all applicable work performed only after execution of this AGREEMENT.

1. 2004 Project Services Consultant Agreement # Y9245
Contracting Party: WSDOT and David Evans and Assoc.
Total amount authorized \$50,000,000
Effective Date: 5/16/2005
Completion Date: 6/30/2010

2. Task Order #AA under Agreement #Y9245
Task Amount: \$250,000
Start Date: 5/16/05 End Date: 11/30/05

Work to be performed under this Task Order:

- Develop Scope, Schedule, and Budget and detailed tasks for Task Order #AB

3. Task Order #AB under Agreement #Y9245
Two amendments for time and funding
Total Combined Task Amount \$3,578,274.33

Work to be performed under this Task Order and its Amendments:

- Perform services required to jump start the project in accordance with the Statement of Work provided in the Consultant Agreement #Y9245
 - PROJECT Management and Quality Control; includes establishing joint project office.
 - PROJECT Controls
 - Financial Structures
 - Communications
 - Transportation Planning: Travel Demand Modeling; Planning Coordination
 - Environmental (NEPA activities) to Notice of Intent/Scoping
 - Transit Planning/Engineering: Alternative concepts.
 - Design Engineering for development of alternative concepts for EIS
4. Task Order #AC under Agreement #Y9245
Total Combined Task Amount \$16,020,511.00

EXHIBIT A (PAGE 3 OF 3)

Work to be performed under this Task Order and its Amendments:

- Perform services required to jump start the project in accordance with the Statement of Work provided in the Consultant Agreement #Y9245
- PROJECT Management and Quality Control; includes establishing joint project office.
- PROJECT Controls
- Financial Structures
- Communications
- Transportation Planning: Travel Demand Modeling; Planning Coordination
- Environmental (NEPA activities) to Notice of Intent/Scoping
- Transit Planning/Engineering: Alternative concepts.
- Design Engineering for development of alternative concepts for EIS

5. Five-year lease for Joint TEAM Office Space
Leased with: VancouverCenter Development, LLC
Monthly Lease Amount: \$25,939.01
Total Amount of Lease: \$1,556,340.60
Beginning Date of Lease: October 12, 2005
Ending Date of Lease: October 12, 2010