



BOARD OF COUNTY COMMISSIONERS FOR COLUMBIA COUNTY, OREGON

Wednesday, August 3, 2016
10:00 a.m. - Room 308

BOARD MEETING AGENDA

CALL TO ORDER/FLAG SALUTE

MINUTES:

- Minutes, July 27, 2016 Board meeting;
- Minutes, July 27, 2016 Staff meeting.

VISITOR COMMENTS - 5 MINUTE LIMIT

HEARING:

- 1) Public Hearing, "In the Matter of the Application of Brian Rosenthal for a Zoning Map Amendment to Rezone Property Within the City of Scappoose's Urban Growth Boundary (UGB) from Rural Residential (RR-5) to Highway Commercial".

CONSENT AGENDA:

- (A) Ratify the Select to Pay for week of 8/1/16.

AGREEMENTS/CONTRACTS/AMENDMENTS:

- (B) Amendment No. 1 to Fund Exchange Agreement No. 30822 with Oregon Department of Transportation for Scappoose-Vernonia Highway Overlay.
- (C) Fund Exchange Agreement No. 31559 with Oregon Department of Transportation for Apiary Road Overlay.
- (D) Intergovernmental Agreement with the City of Rainier for Road Work.

DISCUSSION ITEMS:

COMMISSIONER HYDE COMMENTS:

COMMISSIONER HEIMULLER COMMENTS:

COMMISSIONER FISHER COMMENTS:

EXECUTIVE SESSION:

Pursuant to ORS 192.640(1), the Board of County Commissioners reserves the right to consider and discuss, in either open session or Executive Session, additional subjects which may arise after the agenda is published.

AMENDMENT NUMBER 01
2015 FUND EXCHANGE AGREEMENT
Scappoose-Vernonia Highway Pavement Preservation Project
Columbia County

This is Amendment No. 01 to the Agreement between the **STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as "State," and **COLUMBIA COUNTY**, acting by and through its elected officials, hereinafter referred to as "Agency." The Parties entered into an Agreement on July 14, 2015.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to increase funds and update State's contact information.

1. **Effective Date.** This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.
2. **Amendment to Agreement.**
 - a. **Exhibits A-1 and A-2 shall be deleted in their entirety and replaced with the attached Revised Exhibit A-1. All references to "Exhibits A-1 and A-2" shall hereinafter be referred to as "Revised Exhibit A-1."**
 - b. **TERMS OF AGREEMENT, Paragraph 2, Page 1, which reads:**
 2. State has reviewed Agency's prospectus and considered Agency's request for the Fund Exchange. State has determined that Agency's Project is eligible for the exchange of funds and has approved it as shown in "Exhibits A-1 and A-2", attached hereto and by this reference made a part hereof.

Shall be deleted in its entirety and replaced with the following:

2. State has reviewed Agency's prospectus and considered Agency's request for the Fund Exchange. State has determined that Agency's Project is eligible for the exchange of funds and has approved it as shown in "Revised Exhibit A-1," attached hereto and by this reference made a part hereof.
- c. **TERMS OF AGREEMENT, Paragraph 4, Page 1, which reads:**
 4. Based on this ratio, Agency wishes to trade \$179,031.30 federal funds for \$168,289.42 state funds.

Shall be deleted in its entirety and replaced with the following:

4. Based on this ratio, Agency wishes to trade \$212,201.45 federal funds for \$199,469.36 state funds.

d. **TERMS OF AGREEMENT, Paragraph 6d, Page 2, which reads:**

6d. This Fund Exchange shall be on a reimbursement basis, with state funds limited to a maximum amount of \$168,289.42. All costs incurred in excess of the Fund Exchange amount will be the sole responsibility of Agency.

Shall be deleted in its entirety and replaced with the following:

6d. This Fund Exchange shall be on a reimbursement basis, with state funds limited to a maximum amount of \$199,469.36. All costs incurred in excess of the Fund Exchange amount will be the sole responsibility of Agency.

e. **TERMS OF AGREEMENT, Paragraph 6i, Page 3, which reads:**

6i. Agency shall submit invoices to State on a monthly basis for actual costs incurred by Agency on behalf of the Project directly to State's Project Manager for review and approval. Such invoices will be in a form identifying the Project, the agreement number, the invoice number or account number or both, and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$168,289.42, including all expenses. Travel expenses will not be reimbursed.

Shall be deleted in its entirety and replaced with the following:

6i. Agency shall submit invoices to State on a monthly basis for actual costs incurred by Agency on behalf of the Project directly to State's Project Manager for review and approval. Such invoices will be in a form identifying the Project, the agreement number, the invoice number or account number or both, and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$199,469.36, including all expenses. Travel expenses will not be reimbursed.

3. **Counterparts.** This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
4. **Original Agreement.** Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. Recipient certifies that the representations, warranties and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

The funding for this Fund Exchange program was approved by the Oregon Transportation Commission on December 18, 2014 as a part of the 2015-2018 Statewide Transportation Improvement Program (STIP).

The Program and Funding Manager approved the Fund Exchange on June 13, 2016.

COLUMBIA COUNTY, by and through
its elected officials

By _____
Chair

By _____
Commissioner

By _____
Commissioner

Date _____

APPROVED AS TO LEGAL FORM

By _____
County Legal Counsel

Date _____

Agency Contact:

Tristan Wood
Engineering Project Coordinator
Columbia County Roads Department
1054 Oregon Street
St. Helens, OR 97051
Phone: (503) 397-5090
Email: tristan.wood@co.columbia.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Region 2 Manager

Date _____

APPROVAL RECOMMENDED

By _____
Region 2 Planning and Development
Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

State Contact:

Shelly White-Robinson, Acting Local Project
Delivery Coordinator
ODOT, Region 2
455 Airport Road SE, Bldg. B
Salem, OR 97301
Phone: (503) 986-6925
Email: shelly.white-robinson@odot.state.or.us

**REVISED EXHIBIT A-1
State Approval**

Oregon

DEPARTMENT OF
TRANSPORTATION

ACTIVE TRANSPORTATION SECTION
Program and Funding Services
(503) 986-3755

DATE: June 10, 2016

TO: Jeff Flowers, Manager
Program and Funding Services
Active Transportation Section

FROM: Flower Dade
Local Programs Funding Coordinator
Active Transportation Section

SUBJECT: Fund Exchange 2016
Columbia County
EA: FX201501-001; FX201601-003

#5632 Columbia County is requesting their remaining 2015 STP allocation of \$33,170.15 to be added to their Scappoose – Vernonia Hwy Pavement Preservation Project (IGA 30822). The County is also requesting their 2016 STP allocation of \$413,158.00 to finance their #5643 Apiary Rd between Meissner Rd and Simmons Rd – Grind and Inlay HMA project.

The County will exchange a total of \$446,328.15 in federal funds for state funds at a ratio of 94 cents state funds for each federal dollar. The State will reimburse the County up to a total of \$419,548.46 in state funds for eligible costs incurred (\$31,179.94 to Scappoose - Vernonia; \$388,368.52 to Apiary Rd).

Approved


Jeff Flowers, Manager
Program and Funding Services

Date

6/13/16

cc: Shelly A. White-Robinson, Local Agency Liaison



2016 FUND EXCHANGE AGREEMENT

Apiary Road between Meissner Road and Simmons Road
Grind and Inlay HMAC
Columbia 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 COLUMBIA COUNTY, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statutes (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.
2. Apiary Road between Meissner Road and Simmons Road is a county road that is under the jurisdiction and control of Agency pursuant to ORS 368.001(1) and 368.016.
3. As part of ongoing maintenance, Agency plans to grind and inlay the portion of Apiary Road between Meissner Road and Simmons Road.

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. Agency has submitted a completed and signed Part 1 of the Project Prospectus, or a similar document agreed to by State, outlining the schedule and costs associated with all phases of the Apiary Road between Meissner Road and Simmons Road – Grind and Inlay HMAC project, hereinafter referred to as "Project."
2. State has reviewed Agency's prospectus and considered Agency's request for the Fund Exchange. State has determined that Agency's Project is eligible for the exchange of funds and has approved it as shown in "Exhibit A," attached hereto and by this reference made a part hereof.
3. To assist in funding the Project, Agency has requested State to exchange 2016 federal funds, which have been allocated to Agency, for state funds based on the following ratio:

\$94 state for \$100 federal

4. Based on this ratio, Agency wishes to trade \$413,158.00 federal funds for \$388,368.52 state funds.
5. The term of this Agreement will begin upon execution and will terminate two (2) calendar years later, unless extended by an executed amendment.
6. The Parties agree that the exchange is subject to the following conditions:
 - a. The federal funds transferred to State may be used by State at its discretion.
 - b. State funds transferred to Agency must be used for the Project. This Fund Exchange will provide funding for specific roadway projects and may also be used for the following maintenance purposes:
 - i. Purchase or Production of Aggregate. Agency shall ensure the purchase or production of aggregate will be highway related and used exclusively for highway work.
 - ii. Purchase of Equipment. Agency shall clearly describe how it plans to use said equipment on highways. Agency shall demonstrate that the equipment will only be used for highway purposes.
 - c. State funds may be used for all phases of the Project, including preliminary engineering, right of way, utility relocations and construction. Said use shall be consistent with the Oregon Constitution and statutes (Section 3a of Article IX Oregon Constitution). Agency shall be responsible to account for expenditure of state funds.
 - d. This Fund Exchange shall be on a reimbursement basis with state funds limited to a maximum amount of \$388,368.52. All costs incurred in excess of the Fund Exchange amount will be the sole responsibility of Agency.
 - e. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
 - f. Agency, and any contractors, shall perform the work as an independent contractor and will be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
 - g. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including,

without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530, and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

- h. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right of way in accordance with current state and federal laws and regulations; obtain all required permits; be responsible for all utility relocations; advertise for bid proposals; award all contracts; perform all construction engineering; and make all contractor payments required to complete the Project.
- i. Agency shall submit invoices to State on a monthly basis, for actual costs incurred by Agency on behalf of the Project directly to State's Project Manager for review and approval. Such invoices will be in a form identifying the Project, the Agreement number, the invoice number or account number or both, and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$388,368.52, including all expenses. Travel expenses will not be reimbursed.
- j. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and service demand.
- k. All employers, including Agency, that employ subject workers 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. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its subcontractors complies with these requirements.
- l. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
 - i. 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:

- 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.
- ii. Either Party may terminate this Agreement effective upon delivery of written notice to the other Party, or at such later date as may be established by the terminating Party, under any of the following conditions:
- A. If either Party fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow either Party, in the exercise of their reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - B. 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 either Party is prohibited from paying for such work from the planned funding source.
- iii. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
- m. State and Agency agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, 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.
7. 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 final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
8. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the

direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.

9. 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, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
10. 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.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

The funding for this Fund Exchange program was approved by the Oregon Transportation Commission on December 18, 2014 as a part of the 2015-2018 Statewide Transportation Improvement Program (STIP).

The Program and Funding Services Manager approved the Fund Exchange on June 13, 2016.

SIGNATURE PAGE FOLLOWS

COLUMBIA COUNTY by and through
its elected officials

By _____
Chair

By _____
Commissioner

By _____
Commissioner

Date _____

APPROVED AS TO LEGAL FORM

By _____
County Legal Counsel

Date _____

Agency Contact:

Tristan Wood
Engineering Project Coordinator
Columbia County Roads Department
1054 Oregon Street
St. Helens, OR 97051
Phone: (503) 397-5090
Email: tristan.wood@co.columbia.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Region 2 Manager

Date _____

APPROVAL RECOMMENDED

By _____
Region 2 Planning and Development
Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

State Contact:

Shelly White-Robinson, Acting Local Project
Delivery Coordinator
ODOT, Region 2
455 Airport Road SE, Bldg. B
Salem, OR 97301
Phone: (503) 986-6925
Email: shelly.white-robinson@odot.state.or.us

EXHIBIT A
State Approval

Oregon

**DEPARTMENT OF
TRANSPORTATION**

ACTIVE TRANSPORTATION SECTION
Program and Funding Services
(503) 986-3755

DATE: June 10, 2016

TO: Jeff Flowers, Manager
Program and Funding Services
Active Transportation Section

FROM: Flower Dade
Local Programs Funding Coordinator
Active Transportation Section

SUBJECT: Fund Exchange 2016
Columbia County
EA: FX201501-001; FX201601-003

#5632
#5643
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Approved


Jeff Flowers, Manager
Program and Funding Services

Date

6/13/16

cc: Shelly A. White-Robinson, Local Agency Liaison



**INTERGOVERNMENTAL AGREEMENT BETWEEN
COLUMBIA COUNTY AND THE CITY OF RAINIER**

This Agreement is made by and between Columbia County, a political subdivision of the State of Oregon (hereinafter the "County"), and the City of Rainier, a municipality (hereinafter the "City").

WHEREAS, the County and the City are authorized under ORS 190.003 to 190.030 and ORS 221.410 to enter into intergovernmental agreements for the performance of any and all functions that the County or City has authority to perform; and

WHEREAS, the City has jurisdiction over and maintains City Streets within the City's boundaries, and the City desires to place a chip seal (asphalt matte) on a couple streets; and

WHEREAS, an asphalt matte consists of multiple layers of chip seal typically on a gravel surface; and

WHEREAS, the County has jurisdiction over and maintains County Roads within the County's boundaries, as well as County Roads within city boundaries; and

WHEREAS, the County owns equipment and employs skilled personnel for chip sealing and will perform chip sealing on County Roads in the summer of 2016, including roads in the Rainier area; and

WHEREAS, because the County will be chip sealing County Roads in the Rainier area, and the City needs certain City Streets chip sealed (asphalt matte), the County and the City have determined that it is in the public interest for the City to contract with the County to chip seal (asphalt matte) certain City Streets.

NOW THEREFORE, in consideration of the benefits that will accrue to the County and City, as set forth herein, the parties agree to the following:

1. **Recitals True.** The recitals set forth above are true and correct and are incorporated herein by this reference.
2. **Term.** This Agreement shall become effective on the date last signed, below, and shall terminate on October 31, 2017. Dependent on weather, the County intends to perform this work between August 11 and August 16, 2016.
3. **Scope of Work.** The work identified under this agreement includes placement of a three layer asphalt matte on View Street and a combination asphalt matte and chip seal on Fox Street, both in the City of Rainier. Upon mutual agreement, other streets may be added to the scope prior to the termination of this agreement.
3. **Consideration.** City shall pay County on a fee-for-service basis for labor, equipment and materials as determined by the County's cost accounting system, an amount estimated to be \$36,600 for View Street, and \$15,000 for Fox Street. The County shall provide an itemized statement of the cost of the work performed. These fees shall be the complete compensation to County for services performed under this Agreement and shall include all expenses. Unless otherwise agreed to in writing by the parties, payment shall be made in a lump sum at the completion of the project.

4. **County's Obligations.** The County shall place a three layer asphalt mat on View Street and a combination mat and chip seal on Fox Street, in the City of Rainier to the width and length as directed by the City.

5. **City's Obligations.** City shall ensure that View Street and Fox Street are properly prepared for asphalt mat prior to the County's commencement of services. City shall notify the property owners of the work identified and shall make certain that all private vehicles are parked at least 10 feet from the road surface.

6. **Independent Contractor.** County is hereby engaged as an independent contractor, and will be so deemed for purposes of this Agreement and any applicable laws, regulations or policies relating to contracting or employment.

7. **Termination.** Either party may terminate this Agreement for convenience upon written notice to the other party.

8. **Contract Representatives.** Contract representatives for this Agreement shall be:

For County:

David Hill
Public Works Director
1054 Oregon Street
St. Helens, OR 97051
503-397-5090

For City:

Debra Dudley
City Manager
106 W. B Street
Rainier, OR 97048
503-556-7301

All correspondence shall be sent to the above addressees when written notification is necessary. Contract representatives can be changed by providing written notice to the other party at the address listed.

9. **Time.** Time is of the essence in this Agreement.

10. **Indemnity.** County agrees to indemnify and hold harmless City, its officers, agents and employees from and against all third party claims, suits, actions, damages, costs, losses and expenses in any manner resulting from, arising out of, or connected to County's performance of, or failure to perform, its obligations under this Agreement, or for any other negligent or willful act or omission by County. City agrees to indemnify and hold harmless County, its officers, agents and employees from and against all third party claims, suits, actions, damages, costs, losses and expenses in any manner resulting from, arising out of, or connected to City's performance, or failure to perform, its obligations under this Agreement or any other negligent or willful act or omission by City. This provision is subject to the limits and provisions of the Oregon Tort Claims Act, ORS 30.260 to 30.300, and as to the County, Article XI, Section 10 of the Oregon Constitution.

11. **Insurance.** The County shall maintain comprehensive general liability and property damage insurance in amounts up to the limits of the Oregon Tort Claims Act as to any and all County work performed pursuant to Section 4, above.

12. **Severability.** If any term or provision of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement, including the application of any term or provision to

persons or circumstances other than those as to which the application is declared invalid or unenforceable, shall not be affected.

13. **Attorney Fees.** If suit or action is instituted arising out of this Agreement, each party shall be responsible for its own attorney fees.

14. **Governing Law; Venue.** This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed under the laws of the State of Oregon (without regard to conflicts of law principles). Venue shall lie exclusively in the Circuit Court of the State of Oregon for Columbia County in St. Helens, Oregon.

15. **Amendment.** This Agreement may only be amended by a writing signed by the County and City.

16. **No Waiver.** Waiver by either party of the strict performance of any term or covenant of this Agreement or any right under this Agreement shall not be a continuing waiver.

17. **Successors and Assigns.** This Agreement and the covenants, agreements, obligations, and restrictions herein contained shall be binding upon and shall inure to the benefit of the parties hereto and to their respective representatives, successors, and permitted assigns.

18. **Entire Agreement.** This is the entire Agreement between the parties and supersedes all prior agreements, proposals or understandings, whether written or oral. All such previous agreements, proposals or understandings, whether written or oral, are rescinded.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed and do each hereby warrant and represent that their respective officers, whose signatures appear below, have been and are on the date of this Agreement authorized by all necessary and appropriate legal action to execute this agreement.

DATED this 5th day of July, 2016.

COLUMBIA COUNTY BOARD OF COUNTY COMMISSIONERS:

Anthony Hyde, Chair

Henry Heimuller, Commissioner

Earl Fisher, Commissioner

Approved as to Form:

Office of County Counsel

CITY OF RAINIER:

Jerry Cole, Mayor

Attested:

City Recorder

Approved as to Form:

City Attorney