

**INTERGOVERNMENTAL AGREEMENT**

**BETWEEN:** The City of Portland, a unit of local government of the State of Oregon (City)

**AND:** The Port of Portland, a port district of the State of Oregon (Port)

**EFFECTIVE DATE:** Upon execution by both parties.

This Intergovernmental Agreement is for Administration of Columbia Blvd: Cully Blvd & Alderwood Rd, NE (KN 18837).

**RECITALS**

- A. ORS 190.010 provides that units of local government may enter into agreements for the performance of any and all functions and activities that any party to the agreement, its officers or agents have the authority to perform.
- B. The authority of the Port to enter into and perform this Agreement is ORS 778.015 and ORS 778.085(1).
- C. It will mutually benefit the parties if they exchange services as described in this Agreement.
- D. The City and Port desire to provide the services described in this Agreement on the terms and conditions set forth herein and in Exhibit A and Exhibit B.
- E. The Port intends to enter into an Agreement to construct the project "NE COLUMBIA BLVD: CULLY BLVD & ALDERWOOD RD." (Key Number 18837) ("Project") for the construction of a signal and turn lanes at the NE Columbia Boulevard and NE Alderwood intersection. The total cost is estimated at \$5,527,534.00, which is subject to change according to the provisions of this Agreement. The Project is further described in Exhibit A. If the Port and ODOT do not execute the above mentioned agreement, this IGA is null and void.
- F. The City has entered into Agreement No. 30890 with ODOT in which the City is a "Certified Agency" such that ODOT certified City's procedures and delegated authority to City to administer federal-aid projects, pursuant to which the City may perform work on behalf of non-Certified agencies, such as the Port, to administer their federal-aid projects. If the Port and ODOT do not execute the above mentioned agreement, this IGA is null and void.
- G. The City has entered into Agreement No. 31025 with ODOT for Administration of Columbia Blvd: Cully Blvd & Alderwood Rd, NE (KN 18837).

**AGREEMENT**

- 1. **Services to be Provided.** The City and Port each agree to provide services to the other as follows:
  - A. The Port authorizes the City to perform the work identified in the Port-ODOT Agreement No. 31024 to administer the Project as described in this Agreement.

- B. The City will perform the work identified in the Port-ODOT Agreement No. 31024 and to meet the requirements in Attachment 1 (Special Provisions) and Attachment 2 (Federal Standard Provisions) on behalf of the Port.
  - C. The City will perform the work as authorized in the City-ODOT Agreement No. 31025, including consultant selection, design, permit acquisition, advertise, bid and award of the construction contract, and construction contract administration. The City will perform public involvement and any needed public hearings.
  - D. The Port will be responsible for project overruns and costs deemed nonparticipating. However, if funding does not materialize as anticipated in Recital E above, or if unforeseen events increase the cost of construction, the parties shall diligently work together in good faith in a cooperative effort to find funding to cover the deficit, to reduce the work scope to eliminate the deficit, or both. If alternative funding and reduction of the work scope will not eliminate the deficit the Port may exercise its right under this Agreement to terminate the project. Termination of the project will not relieve the Port of their obligations under previous land use decisions.
  - E. The Parties will perform this Agreement in accordance with the terms and conditions set forth in Exhibit A (Project Area) and Exhibit B (Scope of Work).
2. **Agreement Effective Date and Term.** This Agreement is effective on the date it has been signed by the parties. No work or compensation under the Agreement is authorized until ODOT issues authorization to proceed in writing (email acceptable) pursuant to each agency's agreement with ODOT. Unless otherwise amended or terminated, this Agreement shall expire six (6) months after the City issues Third Notification to the construction contract contractor.
3. **Termination.**
- This Agreement may be terminated prior to the expiration of any agreed-upon term by either: (a) by mutual consent of parties; or (b) by either party upon thirty (30) calendar days written notice to the other. In the event of early termination, payment to City shall be equitably prorated to the extent work has been performed pursuant to a City work order. Both parties reserve the right to terminate this Agreement with 30-day written notice to the other party and may terminate this Agreement for any reason(s) deemed appropriate based on the sole discretion of the party requesting termination. To the maximum extent possible, the decision to terminate this Agreement shall seek to minimize the negative impact on the non-terminating party. Termination by either party to this Agreement or Expiration of the Agreement subsequent to the authorization of federal or state funding of the Project shall in no way relieve the parties of their respective obligations for costs incurred under this Agreement, including but not limited to amounts owed for work performed, amounts owed for early termination of third party contracts, and the terminating party's obligations to reimburse the United States or the State, respectively, any federal or state funding provided for the Project.
4. **Agreement Administration.** Each party designates the following as its representative for purposes of administering this Agreement:
- Port: Phil Healy  
 Port of Portland  
 7200 NE Airport Way  
 Portland, OR 97218  
 e-mail: philip.healy@portofportland.com  
 phone: (503) 415-6512

City: Dan Layden  
 Portland Bureau of Transportation  
 1120 SW 5<sup>th</sup> Avenue #800  
 Portland, OR 97218  
 e-mail: dan.layden@portlandoregon.gov  
 phone: (503) 823-2804

Either party may change its designated representative by giving written notice to the other as provided in paragraph 11.

5. **Records/Inspection.** The City and Port shall each maintain records of its costs and expenses under this Agreement for a period of not less than three full fiscal years following completion of this Agreement. Upon reasonable advance notice, either party or its authorized representatives may from time to time inspect, audit and make copies of the other party's records.
6. **Indemnification.** Subject to the conditions and limitations of the Oregon Constitution, Article XI, Section 9, and the Oregon Tort Claims Act (30.260 to 30.300), the Port and the City shall indemnify, defend and hold the other, its officers, agents, employees and contractors, harmless from and against any and all claims, actions, liabilities, costs, including attorney fees and other costs of defense, arising out of or in any way related to any act or failure to act by each other and each other's officers, employees, agents, officers and contractors in the performance of this Agreement.
7. **Compensation.** Each party will make payments and invoice ODOT for work performed on the Project pursuant to each agency's agreement with ODOT. The Port agrees that the City may receive the funds from ODOT identified in the Port-ODOT Agreement Number 31024 for work performed by City.
8. **Assignment.** Neither party shall assign this Agreement, in whole or in part, or any right or obligation hereunder, without the other party's prior written approval.
9. **Maintenance.** In accordance with Port-ODOT Agreement Number 31024, City is responsible to maintain and operate the Project upon the initiation of the Project construction contract warranty period and throughout the useful life of the Project.
10. **Compliance with Laws.** The Parties shall comply with all applicable Federal, State, and local laws, rules, ordinances and regulations at all times and in the performance of the Project.
11. **Notices.** Any notices permitted or required by this Agreement shall be deemed given when personally delivered or upon deposit in the United States mail, postage fully prepaid, certified, return receipt requested and addressed to the representative designated in paragraph 4. Either party may change its address by notice given to the other in accordance with this paragraph.
12. **Modifications.** This Agreement may be modified only by a written amendment signed by authorized representatives of each party. The parties anticipate one or more future amendments to modify the amounts in Recital E. as the design progresses and cost estimates are refined.
13. **Dispute Resolution.** 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 agreeable mediator for mediation. Each party shall bear its own costs for mediation and the parties shall share the cost of the mediator. This mediation procedure shall be followed to its conclusion prior to either party seeking relief from the court, except in the case of an emergency.

14. **Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right benefit or remedy of any nature whatsoever under or by reason of this Agreement.
15. **Integration.** This Agreement embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein. This Agreement shall supersede all prior communications, representations or agreements, either oral or written, between the parties. This Agreement shall not be amended except in writing, signed by both parties.
16. **Interpretation.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon.

THE CITY OF PORTLAND

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

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

APPROVED AS TO LEGAL FORM

By: \_\_\_\_\_  
City Attorney

THE PORT OF PORTLAND

By: \_\_\_\_\_

Print Name: BILL WYATT

As Its: EXECUTIVE DIRECTOR

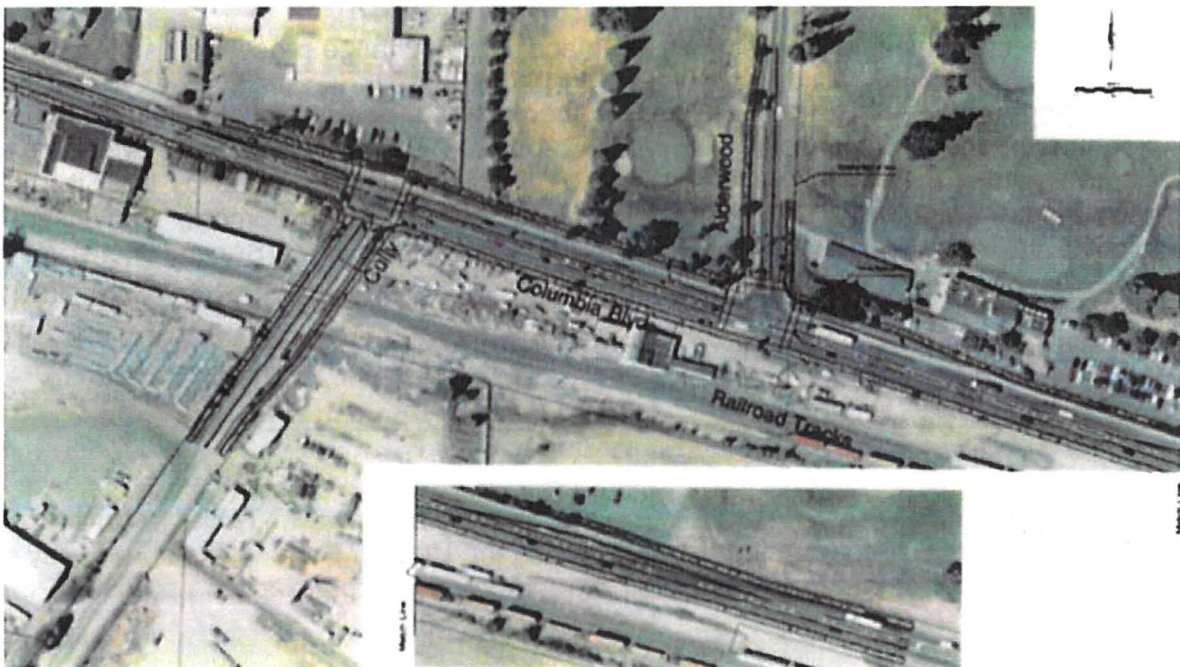
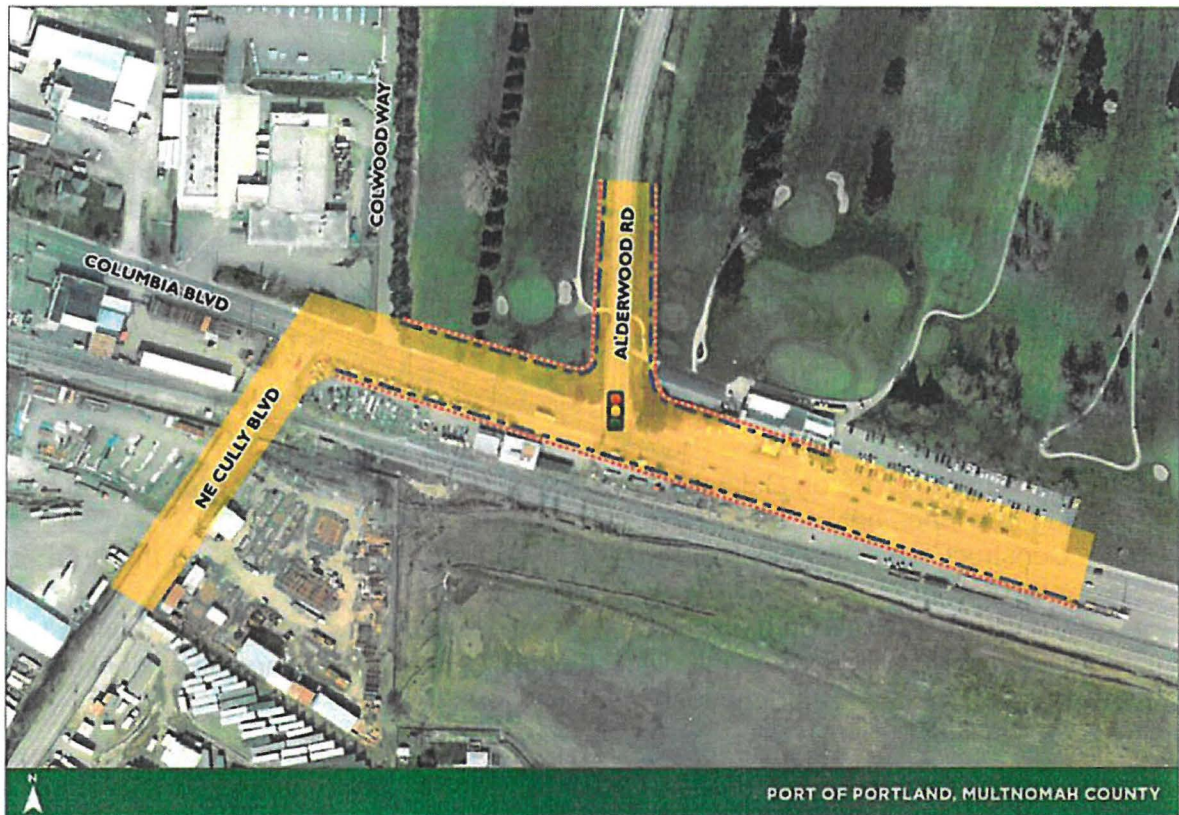
Date: 8/25/14

APPROVED FOR LEGAL SUFFICIENCY  
FOR THE PORT:

By: \_\_\_\_\_  
Counsel for Port of Portland



EXHIBIT A – Project Location Map





**EXHIBIT B****Project Cost Estimate, Progress Reports and Project Change Request Process****Agreement No. 31024****Key Number: 18837****Project Name NE Columbia Blvd: Cully Blvd. & Alderwood Road****1. Project Description and Deliverables**

Description: Design and acquire right of way for improvements to NE Columbia Blvd. between NE Alderwood Rd. and NE Cully Blvd. and to construct improvements at the intersection of Columbia Boulevard and NE Alderwood Road, the "Project."

Deliverables:

- Design the Project
- Acquire right of way for the Project, as Project funding allows
- Construct a taper on Columbia Blvd.'s east leg at Alderwood for future side by side left-turn lanes between Cully and Alderwood
- Construct sidewalks with curb on Alderwood and Columbia Blvd. in the area of the intersection
- Construct sidewalk on north side of Columbia Blvd. between Alderwood and Cully
- Install or replace signal at intersection of NE Columbia Blvd. and NE Alderwood Rd.
- Install planter strips along Alderwood

Project Description and Deliverables may only be changed through amendment of this Agreement, after obtaining an approved Project Change Request.

2. This Project is subject to progress reporting and project change process as stated below.
3. **Monthly Progress Reports (MPR)** – It is the Agency's responsibility to ensure monthly progress reports are submitted using MPR Form 734-2935, incorporated by reference and made a part of this Agreement. The Monthly Progress Report is due by the 5th day of each month, starting the first month after execution of this Agreement, and continuing through the first month after State issues Project Acceptance (Second Note) for the Project's construction contract.

The fillable MPR form and instructions are available at the following address:

[http://www.oregon.gov/ODOT/TD/AT/Pages/Forms\\_Applications.aspx](http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx)

4. **Project Milestones** – The Parties agree that the dates shown in Table 1 constitute the intended schedule for advancing and completing the Project. Project Milestones may only be changed through amendment of this Agreement, after obtaining an approved Project Change Request.

**Table 1: Project Milestones – Construction Project**

	Milestone Description	Completion Date
1	Obligation (Federal Authorization) of federal funds for the Preliminary Engineering phase of the Project	08/2016
2	Obligation (Federal Authorization) of federal funds for the Right of Way phase of the Project	08/2017
3	Obligation (Federal Authorization) of federal funds for the Construction phase of the Project	08/2018

5. **Project Change Request (PCR) Process** – It is the Agency's responsibility to ensure approval is obtained from State's Contact for changes to the Project's scope, schedule, or budget as specified in paragraphs 6a, 6b and 6c, below. Agency shall be fully responsible for all costs that occur outside the established Project scope, schedule or budget and prior to an approved PCR. Amendments to this Agreement are required for all approved PCRs.

a. **Scope** - A PCR is required for any significant change or reduction in the scope of work described in the Project Description (Paragraph 1 of this Exhibit). A significant change in project scope includes any scope element or item that:

- i. Would increase project cost by 10% or \$100,000, whichever is less;
- ii. Is outside of the intent of the current project scope, as determined by the ODOT Program Manager; or,
- iii. Does not meet the minimum standards of the American Association of State Highway and Transportation Officials (AASHTO) or the Manual on Uniform Traffic Control Devices (MUTCD).

b. **Schedule**– A PCR is required if Agency or State's Contact anticipate that any Project Milestone will be delayed by more than ninety (90) days, and also for any change in schedule that will require amendment of the Statewide Transportation Improvement Program (STIP).

c. **Budget** – Total Project Cost and approved funds for the Project are controlled by Terms of Agreement, paragraph 2 of this Agreement.

6. **PCR Form** – It is Agency's responsibility to ensure change requests are submitted using PCR Form 734-2936, attached by reference and made a part of this Agreement. The PCR Form is due no later than thirty (30) days after the need for change becomes known to Agency. The PCR shall explain what change is being requested, the reasons for the change, and any efforts to mitigate the change. A Project Change Request may be rejected at the discretion of State's Area Manager.

The fillable PCR form and its instructions are available at the following web site:  
[http://www.oregon.gov/ODOT/TD/AT/Pages/Forms\\_Applications.aspx](http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx)

7. **Consequence for Non-Performance** - If Agency fails to fulfill its obligations in paragraphs No. 3 through No. 7 above, or does not assist in advancing the Project or perform tasks that the Agency is responsible for under the Project Milestones, State's course of action through the duration of Agency's default may include: (a) restricting Agency consideration for future funds awarded through State's managed funding programs, (b) withdrawing unused Project funds, and (c) terminating this Agreement as stated in Terms of Agreement, paragraph No. 14 of this Agreement. State may also choose to invoice Agency for expenses incurred by State for staff time to assist in completion of the final Project documentation and issuance of Third Notification.