

RESOLUTION NO. 2170

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN THE JURISDICTIONAL TRANSFER AGREEMENT FROM THE STATE OF OREGON FOR A PORTION OF OLD KENDALL ROAD

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. Columbia River Highway, I-84, (State Highway No. 2) is under the jurisdiction and control of the Oregon Transportation Commission (OTC). Old Kendall Road is a frontage road which parallels the I-84 eastbound on-ramp, and is also under the jurisdiction and control of the OTC.
2. State of Oregon (State) and City of Troutdale (City) agree that the defined Unit A from the Jurisdictional Transfer Agreement (Agreement) will be transferred to the City subject to the terms of the Agreement.
3. City will accept all of State's right, title and interest in Unit A as defined in the Agreement.
4. State will relinquish all maintenance and repair responsibilities and liability to the City.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. That the Mayor is hereby authorized to sign the Jurisdictional Transfer Agreement with the Oregon Department of Transportation which is substantially in accordance with the Agreement attached to the staff report as Exhibit "B".

Section 2. Unit A as defined in the Agreement as a portion of Old Kendall Road will be designated as an extension of 257th Way.

Section 3. This resolution shall take effect upon adoption.

YEAS: 7
NAYS: 0
ABSTAINED: 0

Mayor Jim Kight
Mayor Jim Kight

Date July 12, 2012

Debbie Stickney
Debbie Stickney, City Recorder

Adopted: July 10, 2012

JURISDICTIONAL TRANSFER AGREEMENT
Old Kendall Frontage Road
County of Multnomah
City of Troutdale

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 the CITY OF TROUTDALE, acting by and through its elected officials, hereinafter referred to as "City," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. Columbia River Highway, I-84, (State Highway No. 2) is under the jurisdiction and control of the Oregon Transportation Commission (OTC). Old Kendall Road is a frontage road which parallels the I-84 eastbound on-ramp, and is also under the jurisdiction and control of the OTC.
2. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting Parties.
3. By the authority granted in ORS 366.395, State may relinquish title to any of its property not needed by it for highway purposes to any other governmental body or political subdivision within the State of Oregon, subject to such restrictions, if any, imposed by deed or other legal instrument or otherwise imposed by State.
4. Pursuant to ORS 373.010 whenever the routing of any state highway passes through the corporate limits of any city, State may locate, relocate, reroute, alter or change any routing when in its opinion the interests of the traveling public will be better served.
5. State maintains a state route system to assist the traveling public in their travels. Designated routes may be composed of both state highway and local roads. Designation and elimination of state routes are under authority of the OTC.
6. For the purpose of furthering the development of a state highway system adopted in all particulars to the needs of the people of the State of Oregon, State and City agree to eliminate from the state highway system the Old Kendall Frontage Road, or portion of, described below and hereinafter referred to as Unit A.
7. In the process of determining the transfer limits of Unit A, it was discovered that the adjacent property owner has encroached onto a portion of Unit A as approximately shown on the attached sketch map marked Exhibit A, and by this reference made a part hereof. It has been agreed between City and State that City will accept Unit A for roadway purposes only, under the awareness that the encroachment exists, and that the City intends to resolve the

encroachment issue with the adjacent property owner to remove improvements and return the encroached upon area to use for roadway, bike, and pedestrian purposes within two years of transfer of Unit A to the City.

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. Subject to the provisions of this Agreement, State and City agree, conditioned upon approval by the OTC, or designee, that Unit A be eliminated as a portion of the Columbia River Highway and the state highway system; that the Unit pass to and vest in City; and that City maintain the Unit as a part of its city street system as long as needed for the service of persons living thereon or a community served thereby. If said right of way is no longer used for public street purposes, it shall automatically revert to State. The location of Unit A is approximately as shown on Exhibit A. This section of roadway does not carry a State Route designation.
2. This Agreement becomes effective on the date all required signatures are obtained. The Agreement terminates upon acceptance and recording of a Jurisdictional Transfer Document and upon resolution of the encroachment issue addressed in Terms of Agreement, paragraph 7, or two (2) calendar years after the effective date of the Agreement, whichever is earlier. The State shall pursue approval by the OTC or designee, and the actual transfer of property shall be accomplished by acceptance and recording of the Jurisdictional Transfer Document.

STATE OBLIGATIONS

1. Upon adoption of a Resolution by the OTC or designee providing for elimination of Unit A, as hereafter defined, as a portion of the state highway system, State shall formally eliminate Unit A as a portion of the Columbia River Highway (State Highway No. 2) and the state highway system. Upon acceptance and recording of a Jurisdictional Transfer Document, all right, title, and interest of State, including all jurisdiction, maintenance, and control shall pass to and vest in City. If said right of way is no longer used for public street purposes, it shall automatically revert to State. Unit A is described as follows:

Unit A

All land within the right of way boundaries of the Columbia River Highway No. 2 situated in Section 25, Township 1 North, Range 3 East, W.M., Multnomah County, Oregon, lying between lines at right angles to the center line of said highway at Engineer's Stations 500+45.41 and 506+20.00 and Southerly of the following described line:

Beginning on the Southerly right of way of the Columbia River Highway No. 2 at a point opposite and 162.22 feet Southerly of the center line of the Columbia River

Highway No. 2 at Engineer's Station 500+45.41; thence Northeasterly in a straight line to a point opposite and 122.00 feet Southerly of said center line at Engineer's Station 500+84.00; thence Easterly in a straight line to a point opposite and 98.00 feet Southerly of said center line at Engineer's Station 501+40.00; thence Easterly in a straight line to a point opposite and 74.00 feet Southerly of said center line at Engineer's Station 504+59.36; thence Easterly in a straight line to a point opposite and 64.00 feet Southerly of said center line at Engineer's Station 505+75.00; thence Southeasterly in a straight line to the Southerly right of way of said highway at a point opposite Engineer's Station 506+20.00 and the terminus of said described line.

2. State shall retain all property identified as excess acquired by State for highway right of way and other public purposes. State shall convey the "operating" right of way, including all slope, utility, wetland, water quality and similar easements to the City upon execution of this Agreement and acceptance and recording of the subsequent Jurisdictional Transfer Document.
3. State hereby relinquishes all maintenance and repair responsibilities and liability over Unit A and City hereby accepts all maintenance and repair responsibilities and liability for Unit A upon execution of this Agreement.
4. State agrees to furnish City copies of any maps, records, permits, and any other related data available that may be required to administer the Old Kendall Frontage Road, upon City's written request.

CITY OBLIGATIONS

1. City agrees to accept all of State's right, title and interest in Unit A; to accept jurisdiction and control over the property, and to maintain the property as a portion of its city street system as long as needed for the service of persons living thereon or a community served thereby, including all signs and illumination and all things and appurtenances within the transferred right-of-way. Any right-of-way being transferred in which State has any title shall be vested in City so long as used for public street purposes. If said right of way is no longer used for public street purposes, it shall automatically revert to State.
2. City agrees to honor State's access control and management along Graham Road within the access control limits of Columbia River Highway, as per the ODOT OAR 734-51 Access Management Spacing Standards, unless proposed changes are agreed to by State under the provisions of OAR 734-51. No grants of access will be allowed without following the proper State process.
3. City is aware that title of Unit A will not be vested in City until the subsequent Jurisdictional Transfer Document is executed by State, accepted by City, and recorded with the county in which the City is located. City agrees to accept all liability and maintenance responsibilities upon acceptance and recording of the subsequent Jurisdictional Transfer Document.

4. City is aware of the need to provide for a bike and pedestrian connection between the multi-use path crossing the Sandy River Bridge and the intersection of Graham Road and 257th. Also, future alignments of the 40-mile loop trail leading under the Sandy River Bridge may require connection to Graham Road and 257th. City agrees that if space within State's right of way is not available for a bike and pedestrian connection, City will allow the use of the south sidewalk along Unit A for such purposes.
5. City agrees that no on-street parking is allowed on Unit A in its current configuration. If, in the future, the City improves/widens the street and wishes to have on-street parking, prior written ODOT approval is required.
6. City is aware of the encroachment issue from the adjacent property owner to a portion of Unit A and agrees to resolve such issue and return the Unit to use for roadway, bike, and pedestrian purposes within two years of acceptance of the transfer.
7. City agrees to allow State continued access to Unit A for the purpose of maintaining the I-84 bridge. A separate access driveway will be identified and provided by City as agreed to by both Parties at a later date.
8. City shall return permit files, utility permit files, right of way maps and as-built files to State if any or a portion of Unit A reverts to the State or in the event that the OTC or designee does not approve the transfer.
9. City shall pass an ordinance or resolution authorizing the City Manager to enter into the Agreement on behalf of City.

GENERAL PROVISIONS

1. The properties above described are relinquished and transferred subject, however, to the rights of any utilities located within said properties and further subject to the rights of the owners of said existing facilities, if any there be, to operate, reconstruct, and maintain their utility facilities presently located within said properties.
2. This Agreement may be terminated by mutual written consent of both Parties. State may terminate this Agreement effective upon delivery of written notice to City, or at such later date as may be established by State, under any of the following conditions:
 - a. If City fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If City fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State, fails to correct such failures within ten (10) days or such longer period as State may authorize.

- c. If OTC or designee fails to adopt a resolution eliminating Unit A from the state highway system and approve the Jurisdictional Transfer of Unit A to City.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or City with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
5. With respect to a Third Party Claim for which State is jointly liable with City (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by City in such proportion as is appropriate to reflect the relative fault of State on the one hand and of City on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of City on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
6. With respect to a Third Party Claim for which City is jointly liable with State (or would be if joined in the Third Party Claim), City shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of City on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of City on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. City's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

7. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
8. All employers, including State and City, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. State and City shall ensure that each of its subcontractors complies with these requirements.
9. City 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 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof; Without limiting the generality of the foregoing, City 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.
10. State and City acknowledge and agree that State, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of State and City which are directly pertinent to the specific 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.
11. Each Party hereby grants the other Party authority to enter onto each other's right of way for the purpose of performing any required work or maintenance services.
12. 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.

CITY OF TROUTDALE, by and through its elected officials

By Jim Keight
Title Mayor
Date July 12, 2012

By _____
Title _____
Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
City Counsel
Date _____

City Contact:
Charlie Warren
City of Troutdale Public Works Director
342 SW 4th Street
Troutdale, OR 97060
503-674-7239
charlie.warren@troutdaleoregon.gov

STATE OF OREGON, by and through its Department of Transportation

By _____
State Right of Way Manager
Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Manager
Date _____

By _____
Region 1 Right of Way Manager

Date _____

By _____
District 2B Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

State Contact
Ted Miller, ODOT Region 1
Maintenance and Operations Mgr.
123 NW Flanders St.
Portland, OR 97209
503.731.8559
theodore.c.miller@odot.state.or.us

City of Troutdale/State
Agreement No. 653b

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.

CITY OF TROUTDALE, by and through its elected officials

By James Knight

Title Mayor

Date July 12, 2012

By Chris Klund

Title City Manager

Date 7/18/12

APPROVED AS TO LEGAL SUFFICIENCY

By [Signature]
City Counsel

Date 7/13/12

City Contact:
Charlie Warren
City of Troutdale Public Works Director
342 SW 4th Street
Troutdale, OR 97060
503-674-7239
charlie.warren@troutdaleoregon.gov

STATE OF OREGON, by and through its Department of Transportation

By Joseph A. Dwyer

Title State Right of Way Manager

Date July 25, 2012

APPROVAL RECOMMENDED

By _____
Region 1 Manager

Date _____

By Korn Doud
for Region 1 Right of Way Manager

Date 7/17/2012

By _____
District 2B Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

State Contact
Ted Miller, ODOT Region 1
Maintenance and Operations Mgr.
123 NW Flanders St.
Portland, OR 97209
503.731.8559
theodore.c.miller@odot.state.or.us

City of Troutdale/State
Agreement No. 653b

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.

CITY OF TROUTDALE, by and through its elected officials

By James Keight
Title Mayor

Date July 12, 2012

By [Signature]
Title City Manager

Date 7/19/12

APPROVED AS TO LEGAL SUFFICIENCY

By [Signature]
City Counsel

Date 7/13/12

City Contact:
Charlie Warren
City of Troutdale Public Works Director
342 SW 4th Street
Troutdale, OR 97060
503-674-7239
charlie.warren@troutdaleoregon.gov

STATE OF OREGON, by and through its Department of Transportation

By _____
State Right of Way Manager

Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Manager

Date _____

By _____
Region 1 Right of Way Manager

Date _____

By [Signature]
District 2B Manager

Date 7/18/12

APPROVED AS TO LEGAL SUFFICIENCY

By [Signature]
Assistant Attorney General

Date 7/20/12

State Contact
Ted Miller, ODOT Region 1
Maintenance and Operations Mgr.
123 NW Flanders St.
Portland, OR 97209
503.731.8559
theodore.c.miller@odot.state.or.us

City of Troutdale/State
Agreement No. 653b

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.

CITY OF TROUTDALE, by and through its elected officials

By Jim Kight
Title Mayor

Date July 12, 2012

By Chris Klund
Title City Manager

Date 7/18/12

APPROVED AS TO LEGAL SUFFICIENCY

By _____
City Counsel

Date 7/13/12

City Contact:
Charlie Warren
City of Troutdale Public Works Director
342 SW 4th Street
Troutdale, OR 97060
503-674-7239
charlie.warren@troutdaleoregon.gov

STATE OF OREGON, by and through its Department of Transportation

By _____
State Right of Way Manager

Date _____

APPROVAL RECOMMENDED

By Ted Miller
Region 1 Manager

Date 7/17/12

By _____
Region 1 Right of Way Manager

Date _____

By _____
District 2B Manager

Date _____

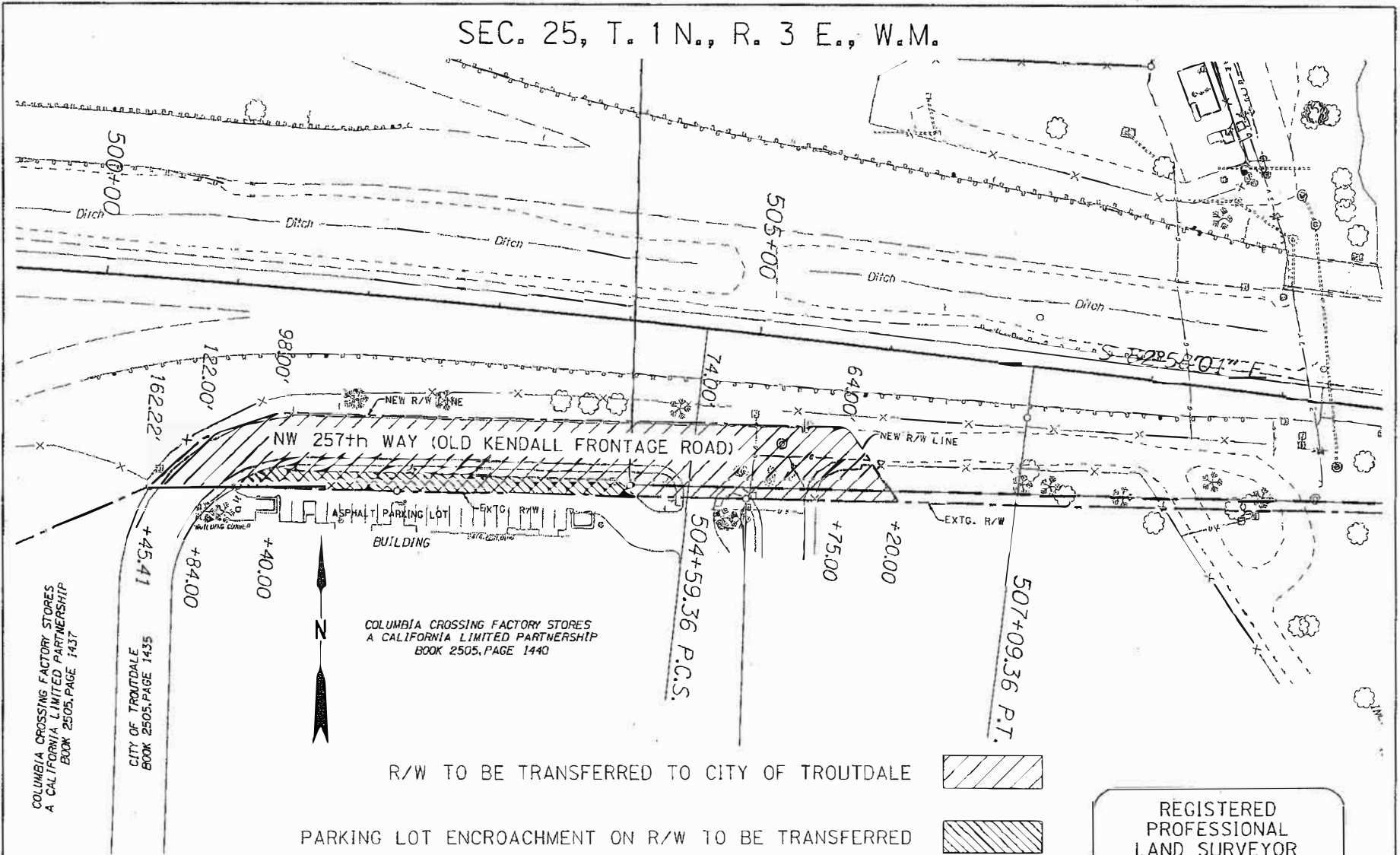
APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

State Contact
Ted Miller, ODOT Region 1
Maintenance and Operations Mgr.
123 NW Flanders St.
Portland, OR 97209
503.731.8559
theodore.c.miller@odot.state.or.us

SEC. 25, T. 1 N., R. 3 E., W.M.



COLUMBIA CROSSING FACTORY STORES
A CALIFORNIA LIMITED PARTNERSHIP
BOOK 2505, PAGE 1437

CITY OF TROUTDALE
BOOK 2505, PAGE 1437

COLUMBIA CROSSING FACTORY STORES
A CALIFORNIA LIMITED PARTNERSHIP
BOOK 2505, PAGE 1440

R/W TO BE TRANSFERRED TO CITY OF TROUTDALE
PARKING LOT ENCROACHMENT ON R/W TO BE TRANSFERRED

OREGON DEPARTMENT OF TRANSPORTATION



JURISDICTIONAL
TRANSFER NO. 653B
EXHIBIT A

Section	Old Kendall Frontage Road		
Highway	Columbia River Highway		
County	Multnomah County		
Scale	1" = 100'	Date	March, 2012

See Drawing 1A-22-7

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Scott Richard Morrison

OREGON
JULY 19, 1994
SCOTT RICHARD MORRISON
2674

RENEWS: 12/31/2012