



**DAN JOHNSON**  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
DEVELOPMENT SERVICES BUILDING  
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

April 4, 2019

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of an Intergovernmental Agreement with the City of Tualatin regarding a  
transfer of a portion of Borland Road**

<b>Purpose/Outcomes</b>	Jurisdictional transfer of a fragmented portion of Borland Road
<b>Dollar Amount and Fiscal Impact</b>	Cost savings in the form of staff time and Maintenance monies used on an isolated County maintained portion of road located entirely within the City of Tualatin. Initial cost of transfer is \$366,500, which represents the cost of a 2" asphalt overlay and necessary ADA improvements along that portion being transferred.
<b>Funding Source</b>	Road Fund
<b>Duration</b>	Upon execution; permanent transfer.
<b>Previous Board Action</b>	2003 IGA with the City of Tualatin. Recorded as A&C No. 2003-4264 01/22/19- Policy Session on Borland IGA.
<b>Strategic Plan Alignment</b>	Build a strong infrastructure. Build public trust through good government.
<b>Contact Person</b>	Michael Bays- Survey & CADD Supervisor – 503-742-4667

**BACKGROUND:**

There are certain County roads, such as Borland Road in Tualatin, that are wholly, mostly, or partially within various Cities throughout Clackamas County. Fragmented jurisdiction over these roads often results in differing road maintenance activities and confusion by the public as to which agency is responsible for the operation and maintenance of the roads. With the intent of eliminating confusion to the public and to improve the efficiencies of maintenance and public service, the attached IGA formalizes an agreement to provide funds to the City of Tualatin in the amount of \$366,500, which is equal to the cost of a 2" asphalt overlay, rebuilding or installing nineteen (19) curb ramps to meet ADA requirements, and upgrades to an ADA signal at SW 56<sup>th</sup> Avenue, in the event the City is successful in assuming exclusive jurisdiction over a portion of Borland Road containing approximately 340,000 square feet of Right-of-Way. Payment of these funds are contingent upon the City finalizing the jurisdictional transfer process. Once jurisdiction is transferred, the City becomes the "Road Authority" responsible for all maintenance, permitting and road standard activities.

County staff have been negotiating with the City of Tualatin and they have reached this agreement for the transfer for an approximately 3/4 mile long section of Borland Road that includes a provision for the city of Tualatin to complete ADA ramp and signal upgrades by December 31, 2021.

County Counsel has reviewed and approved of this agreement

**RECOMMENDATION:**

Staff respectfully requests that the Board approve the attached IGA between Clackamas County and the City of Tualatin related to the transfer of jurisdiction of a portion of Borland Road and the payment to the City in an amount equivalent to a 2" asphalt overlay and ADA improvement of that portion being transferred.

Respectfully Submitted,

Michael Bays  
Survey & CADD Supervisor  
Department of Transportation and Development

Attachments:  
Intergovernmental Agreement  
Map of proposed transfer area

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF TUALATIN AND  
CLACKAMAS COUNTY RELATED TO THE TRANSFER OF A PORTION OF  
SOUTHWEST BORLAND ROAD**

This agreement (the "Agreement") is made on the date all required signatures have been obtained, between the City of Tualatin ("CITY"), a municipal corporation of the State of Oregon, and Clackamas County ("COUNTY"), a political subdivision of the State of Oregon, pursuant to ORS Chapter 190 (Intergovernmental Cooperation), collectively referred to as the "PARTIES" and each a "PARTY."

**RECITALS**

WHEREAS, ORS Chapter 190 authorizes local governments to enter into intergovernmental agreements for the performance of any or all functions and activities that a local government, its officers or agencies, have the authority to perform;

WHEREAS, the portion of SW Borland Rd. subject to this Agreement is located entirely within the boundaries of the City and is a County Road, as defined in ORS 368.001 ("Borland Rd.");

WHEREAS, Borland Rd. is depicted in Exhibit "B" and more particularly described in Exhibit "A," all of which are attached hereto and incorporated herein;

WHEREAS, the Parties agree that the City is best suited to assume primary responsibility for maintenance and permitting of Borland Rd.;

WHEREAS, ORS 373.270 provides a procedure whereby a county may transfer jurisdiction over any county roads within a city to the City, and the Parties desire to pursue a transfer of jurisdiction of Borland Rd. pursuant to the terms of this Agreement; and

WHEREAS, the Parties agree that Borland Rd. should be improved, or the City should be compensated, consistent with the terms of this Agreement at, or prior to, the completion of the full transfer pursuant to ORS 373.270.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Term.** This Agreement shall be effective upon execution, and shall expire automatically at the time the City assumes jurisdiction of Borland Rd. pursuant to ORS 373.270, and the County has paid the amount of money set forth herein.
2. **County Responsibilities.**

- A. The County shall give notice and shall carry out those procedures set forth in ORS 373.270 to determine whether it is necessary, expedient or for the best interests of the County to surrender jurisdiction over Borland Rd.
- B. The County shall provide to the City the sum of \$366,500, which is equivalent to the cost of the following improvements: a 2-inch asphalt overlay on the portions of Borland Rd. identified in the exhibits attached to this Agreement, rebuilding or installing nineteen (19) curb ramps to meet ADA requirements, and upgrades to an ADA signal at SW 56<sup>th</sup> Avenue. The sum of \$366,500 identified in this paragraph shall be payable to the City within 30 days of the date that full and absolute jurisdiction over Borland Rd. is surrendered by the County and accepted by the City as described below.

### **3. City Responsibilities.**

- A. After the County has initiated the process to transfer jurisdiction of Borland Rd., the City shall carry out those procedures set forth in ORS 373.270 for purposes of finalizing the transfer. The City shall not unreasonably delay or withhold its consent to the transfer of Borland Rd., and shall complete the process to finalize the transfer within 90 days from the date that the County concludes its hearing and decision on the matter. This obligation shall terminate in the event the governing body of the County fails to find that it is necessary, expedient or for the best interests of the County to surrender jurisdiction over Borland Rd.
- B. The City agrees to assume full and absolute jurisdiction over the portion of Borland Rd. identified in the exhibits attached to this Agreement, as the governing body of the City and the governing body of the County both determined that it is necessary, expedient or for the best interests of their respective jurisdictions to complete the transfers described herein.
- C. The City agrees to complete the rebuilding or installation of nineteen (19) curb ramps along the section of Borland Road described within this document to meet ADA requirements, and the upgrade to the ADA signal at SW 56<sup>th</sup> Avenue by December 31, 2021.

### **4. Termination.**

- A. The County and the City, by mutual written agreement, may terminate this Agreement at any time.
- B. Either the County or the City may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.

- C. The County or the City shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project. Each Party shall use best efforts to coordinate with the other to minimize conflicts.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

**5. Indemnification.**

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.
- B. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

**6. General Provisions**

- A. **Oregon Law and Forum.** This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- B. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

- D. **Access to Records.** The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.
- E. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. 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 either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- I. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- J. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the County or the City.

- K. **No Assignment.** No Party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.
- L. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, 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.
- M. **Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.
- N. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

**CLACKAMAS COUNTY**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
Recording Secretary

**CITY OF TUALATIN**

  
\_\_\_\_\_  
City Manager

3/11/19  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
City Attorney

Exhibit A

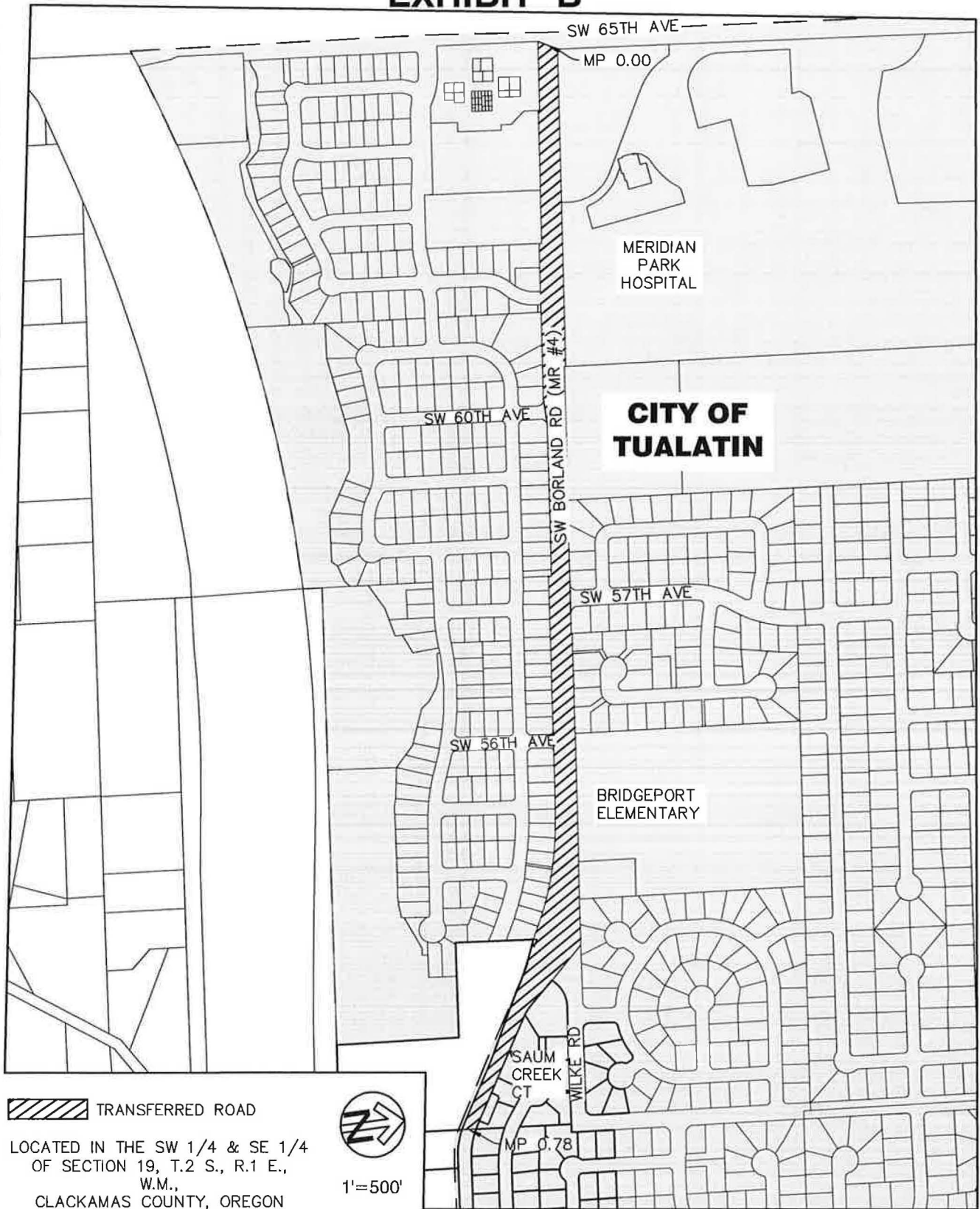
Southwest Borland Road Description


All that portion of SW Borland Road, Market Road No. 4, Department of Transportation and Development maintenance No. 21547; Situated in the southwest 1/4 and southeast 1/4 of Section 19, T. 2S., R. 1E., W.M. as depicted on Exhibit B, attached hereto, lying East of and between SW 65<sup>th</sup> Avenue (mile point 0.00) and the extension of the easterly boundary of the plat of "Saum Creek Court", Plat No. 3316 (mile point 0.78), being a total of approximately 4,120 feet long, varying in width.

Containing 340,000 square feet, more or less.



# EXHIBIT "B"



 TRANSFERRED ROAD  
 LOCATED IN THE SW 1/4 & SE 1/4  
 OF SECTION 19, T.2 S., R.1 E.,  
 W.M.,  
 CLACKAMAS COUNTY, OREGON



1"=500'

DEPARTMENT OF TRANSPORTATION  
 AND DEVELOPMENT  
 150 BEAVERCREEK ROAD  
 OREGON CITY, OR 97045



BY: M.BAYS DATE: 12/17/2018  
 JURISDICTIONAL TRANSFER  
 BORLAND ROAD  
 MARKET ROAD #4

SHEET  
 1 OF 1



**DAN JOHNSON**  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
DEVELOPMENT SERVICES BUILDING  
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of a Contract with D&D Concrete and Utilities, Inc. for the  
Torbank (River Road-Trolley Trail) Sidewalks Project**

<b>Purpose/Outcomes</b>	Provide a sidewalk route for students traveling to and from home and Oak Grove Elementary and other area schools. In addition to pedestrian improvements, this project will also provide improved storm drainage facilities and asphalt paving
<b>Dollar Amount and Fiscal Impact</b>	Contract value is \$571,110.00
<b>Funding Source</b>	215-7432-02102-481200-22243 DTD Funds
<b>Duration</b>	Contract execution through December 31, 2019
<b>Previous Board Action</b>	
<b>Strategic Plan Alignment</b>	Build a strong infrastructure. Ensure safe, healthy and secure communities.
<b>Contact Person</b>	Jonathan Hangartner, Project Manager 503-742-4649

**Background:**

Clackamas County has bicycle and pedestrian funds to enhance sidewalk facilities along SE Torbank Road in Oak Grove. The majority of the existing street lacks pedestrian facilities. This project will provide a sidewalk route for students traveling to and from home and Oak Grove Elementary and other area schools. In addition to pedestrian improvements, this project will also provide improved storm drainage facilities and asphalt paving.

Work will construct curbs and gutters, landscape strips, sidewalks, storm drainage facilities, roadway paving, and water quality facility along SE Torbank Road.

The project work is anticipated to begin immediately following contract signing. Substantial completion will be not later than August 23, 2019, with final completion no later than December 31, 2019.

**Procurement Process:**

This project was advertised in accordance with ORS and LCRB Rules on February 5, 2019. Bids were opened on February 28, 2019. The County received five (5) bids: D&D Concrete and Utilities, \$571,110.00; Bill Erickson Heavy Construction, \$656,205.00; Turney Excavating, \$571,830.50; Kodiak Pacific Construction, \$608,608.00; and R&R General Construction, \$597,999.00. D&D Concrete and Utilities was determined to be the lowest responsive bidder.

This contract has been reviewed and approved by County Counsel.

**Recommendation:**

Staff respectfully recommends that the Board approves and signs this Public Improvement Contract with D&D Concrete and Utilities, Inc. for the Torbank (River Road-Trolley Trail) Sidewalks Project.

Sincerely,

Jonathan Hangartner, Project Manager

Placed on the BCC Agenda \_\_\_\_\_ by Procurement



## CLACKAMAS COUNTY PUBLIC IMPROVEMENT CONTRACT

This Public Improvement Contract (the "Contract"), is made by and between the Clackamas County, a political subdivision of the State of Oregon, hereinafter called "Owner," and **D & D Concrete and Utilities, Inc.**, hereinafter called the "Contractor" (collectively the "Parties"), shall become effective on the date this Contract has been signed by all the Parties and all County approvals have been obtained, whichever is later.

### **Project Name: #2019-05 Torbank (River Road-Trolley Trail) Sidewalks Project**

#### **1. Contract Price, Contract Documents and Work.**

The Contractor, in consideration of the sum of **five hundred seventy-one thousand one hundred ten dollars (\$571,110.00)** (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the project specifications) referenced within the Instructions to Bidders), all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents. The Contract Price is the amount contemplated by the Base Bid.

Also, the following documents are incorporated by reference in this Contract and made a part hereof:

- Notice of Contract Opportunity
- Supplemental Instructions to Bidders
- Public Improvement Contract Form
- Prevailing Wage Rates
- Plans, Specifications and Drawings
- Instructions to Bidders
- Bid Bond
- Performance Bond and Payment Bond
- Payroll and Certified Statement Form
- Addendum #1

The Plans, Specifications and Drawings expressly incorporated by reference into this Contract includes, but is not limited to, the Special Provisions for Highway Construction (the "Specifications"), together with the provisions of the Oregon Standard Specifications for Construction (2015) referenced therein.

#### **2. Representatives.**

Contractor has named Don Nienke as its Authorized Representative to act on its behalf. Owner designates, or shall designate, its Authorized Representative as indicted below (check one):

Unless otherwise specified in the Contract Documents, the Owner designates Jonathan Hangartner as its Authorized Representative in the administration of this Contract. The above-named individual shall be the initial point of contact for matters related to Contract performance, payment, authorization, and to carry out the responsibilities of the Owner.

Name of Owner's Authorized Representative shall be submitted by Owner in a separate writing.

#### **3. Key Persons.**

The Contractor's personnel identified below shall be considered Key Persons and shall not be replaced during the project without the written permission of Owner, which shall not be unreasonably withheld. If the Contractor intends to substitute personnel, a request must be given to Owner at least 30 days prior to the intended time of substitution. When replacements have been approved by Owner, the Contractor shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be working on the project concurrently. Once a replacement for any of these staff members is authorized, further

replacement shall not occur without the written permission of Owner. The Contractor's project staff shall consist of the following personnel:

**Project Executive:** Don Nienke shall be the Contractor's project executive, and will provide oversight and guidance throughout the project term.

**Project Manager:** Corbin Pierce shall be the Contractor's project manager and will participate in all meetings throughout the project term.

**Job Superintendent:** Corbin Pierce shall be the Contractor's on-site job superintendent throughout the project term.

#### **4. Contract Dates.**

COMMENCEMENT DATE: Upon Issuance of Notice to Proceed ("NTP")

SUBSTANTIAL COMPLETION DATE: August 23, 2019

FINAL COMPLETION DATE: December 31, 2019

Time is of the essence for this Contract. It is imperative that the Work in this Contract reach Substantial Completion and Final Completion by the above specified dates.

#### **5. Insurance Certificates and Required Performance and Payment Bonds.**

5.1 In accordance with Section 00170.70 of the Specifications, Contractor shall furnish proof of the required insurance naming Clackamas County as an additional insured. Insurance certificates may be returned with the signed Contract or may be emailed to [Procurement@clackamas.us](mailto:Procurement@clackamas.us).

5.2 Primary Coverage: Insurance carried by Contractor under the Contract shall be the primary coverage. The coverages indicated are minimums unless otherwise specified in the Contract Documents.

5.2.1 Workers' Compensation: All employers, including Contractor, that employ subject workers who work under the Contract 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. This shall include Employer's Liability Insurance with coverage limits of not less than the minimum amount required by statute for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation coverage by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.

5.3 Builder's Risk Insurance: During the term of the Contract, for new construction the Contractor shall obtain and keep in effect Builder's Risk insurance on an all risk forms, including earthquake and flood, for an amount equal to the full amount of the Contract, plus any changes in values due to modifications, Change Orders and loss of materials added. Such Builder's Risk shall include, in addition to earthquake and flood, theft, vandalism, mischief, collapse, transit, debris removal, and architect's fees "soft costs" associated with delay of Project due to insured peril. Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood deductible which shall not exceed 2 percent of each loss or \$50,000, whichever is greater. The deductible shall be paid by Contractor. The policy will include as loss payees Owner, the Contractor and its Subcontractors as their interests may appear.

5.4 Builder's Risk Installation Floater: For Work other than new construction, Contractor shall obtain and keep in effect during the term of the Contract, a Builder's Risk Installation Floater for coverage of the Contractor's labor, materials and equipment to be used for completion of the Work performed under the Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Contract. The policy will include as loss payees Owner, the Contractor and its Subcontractors as their interests may appear. Owner may waive this requirement at its sole and absolute discretion.

5.4.1 Such insurance shall be maintained until Owner has occupied the facility.

5.4.2 A loss insured under the Builder's Risk insurance shall be adjusted by the Owner and made payable to the Owner as loss payee. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Owner shall have power to adjust and settle a loss with insurers.

5.5 "Tail" Coverage: If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Contract for a duration of 36 months or the maximum time period available in the marketplace if less than 36 months. Contractor shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for 36 months following Final Completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of the Contract. Owner's receipt of the policy endorsement evidencing such coverage shall be a condition precedent to Owner's obligation to make final payment and to Owner's final acceptance of Work or services and related warranty (if any).

5.6 Notice of Cancellation or Change: If the Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify Owner by fax within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. When notified by Owner, the Contractor agrees to stop Work pursuant to the Contract at Contractor's expense, unless all required insurance remain in effect. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverages provided to the Owner and its institutions, divisions, officers, and employees.

Owner shall have the right, but not the obligation, of prohibiting Contractor from entering the Project Site until a new certificate(s) of insurance is provided to Owner evidencing the replacement coverage. The Contractor agrees that Owner reserves the right to withhold payment to Contractor until evidence of reinstated or replacement coverage is provided to Owner.

5.7 Before execution of the Contract, the Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Revised Statutes, Chapter 279C.830 and 279C.836, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting any Subcontractor to start Work.

5.8 When the Contract Price is \$50,000 or more, the Contractor shall furnish and maintain in effect at all times during the Contract Period a performance bond in a sum equal to the Contract Price and a separate payment bond also in a sum equal to the Contract Price. Contractor shall furnish such

bonds even if the Contract Price is less than the above thresholds if otherwise required by the Contract Documents.

5.9 Bond forms furnished by the Owner and notarized by Contractor's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Contract Documents.

## **6. Responsibility for Damages/Indemnity.**

6.1 Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under the Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, employees, guests, visitors, invitees and agents.

6.2 To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by Owner) and hold harmless the Owner and its elected officials, officers, directors, agents, and employees (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses, demands and actions of any nature whatsoever which arise out of, result from or are related to: (a) any damage, injury, loss, expense, inconvenience or delay described in this Section 6.1; (b) any accident or occurrence which happens or is alleged to have happened in or about the Project Site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects; (c) any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract; (d) the negligent acts or omissions of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140); and (e) any lien filed upon the Project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 6.2.

6.3 In claims against any person or entity indemnified under Section 6.2 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 6.2 shall not be limited on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## **7. Tax Compliance.**

Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement

performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**8. Confidential Information.**

Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to Owner. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed confidential information of Owner ("Confidential Information"). Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Contract.

**9. Counterparts.**

This Contract may be executed in several counterparts, all of which when taken together shall constitute an agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

**10. Integration.**

All provisions of state law required to be part of this Contract, whether listed in the General or Special Conditions or otherwise, are hereby integrated and adopted herein. Contractor acknowledges the obligations thereunder and that failure to comply with such terms is a material breach of this Contract.

The Contract Documents constitute the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

**11. Liquidated Damages**

The Contractor acknowledges that the Owner will sustain damages as a result of the Contractor's failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to delays in completion, use of the Project, and costs associated with Contract administration and use of temporary facilities.

- 11.1 Liquidated Damages shall be as follows if the actual Substantial Completion exceeds the required date of Substantial Completion:
  - 11.1.1. \$700.00 per Calendar day past the Substantial Completion date as identified in section 00180.85 (b) and 00180.85 (c).



**12. Compliance with Applicable Law.**

The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default.

**In witness whereof**, Clackamas County executes this Contract and the Contractor does execute the same as of the day and year first above written.

Contractor DATA:  
**D & D Concrete and Utilities, Inc.**  
**8319 S. Gribble Road**  
**Canby, Oregon 97062**

Contractor CCB # 219262    Expiration Date: 2/26/20  
Oregon Business Registry # 188596-86    Entity Type: DBC                      State of Formation: Oregon

*Payment information will be reported to the IRS under the name and taxpayer ID# provided by the Contractor. Information must be provided prior to contract approval. Information not matching IRS records could subject Contractor to 28 percent backup withholding.*

D & D Concrete and Utilities, Inc.

Clackamas County Board of County Commissioners

\_\_\_\_\_  
Authorized Signature                      Date

\_\_\_\_\_  
Chair    Date

\_\_\_\_\_  
Name / Title Printed

\_\_\_\_\_  
Recording Secretary

APPROVED AS TO FORM

\_\_\_\_\_  
County Counsel    Date