



DAN JOHNSON
DIRECTOR

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

May 13, 2021

Board of Commissioners
Clackamas County
Members of the Board:

Approval of Amendment No. 1 of the Intergovernmental Agreement with the
Oregon Department of Transportation (ODOT) for the
Transit Development Plan

Purpose/ Outcomes	Amend the Intergovernmental Agreement (IGA) with ODOT to shift funding from unneeded meetings to production of an Executive Summary Story Map. In addition, minor changes have been made to the project schedule.
Dollar Amount and Fiscal Impact	ODOT is directly contracting with the project consultant for the \$175,200 grant award. County staff time to assist in project completion has been through an in-kind match of \$23,891 which was funded by STIF funds.
Funding Source	No cash match is required.
Duration	From Amendment No. 1 execution date to through June 18, 2021.
Previous Board Action	<ul style="list-style-type: none"> • June 7th, 2018 provided an approval to apply and a Resolution of Support for the Transit Development Plan grant submittal • September 20, 2018: Acceptance of TGM Grant Award for Clackamas County Transit Development Plan. • December 19, 2019. Executed the IGA with ODOT. • May 4, 2021: Discussion item at issues
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build a strong infrastructure • Grow a vibrant economy
Counsel Review	Reviewed and approved by Counsel on 4/27/21 NB
Procurement Review	<ol style="list-style-type: none"> 1. Was this item processed through Procurement? NO 2. If no, provide brief explanation: Item is a grant amendment
Contact Person	Karen Buehrig, Long Range Planning Manager– Department of Transportation and Development – 971-291-8127

BACKGROUND:

The Department of Transportation and Development, Long Range Planning Program was awarded a Transportation and Growth Management (TGM) Grant to develop a Clackamas County Transit Development Plan. With six transit providers in Clackamas County (TriMet, South Metro Area Regional Transit (SMART), Canby Area Transit (CAT), South Clackamas Transportation District (SCTD), Sandy Area Metro (SAM), and the Mt. Hood Express administered by Clackamas County), a Transit Development Plan (TDP) is needed to provide strategic guidance for service improvements and integration between systems from a County perspective.

Additionally, in 2017, the Oregon Legislature passed Keep Oregon Moving (HB 2017), creating a new source of funds for transit projects. These funds, called State Transportation Improvement Fund (STIF), are available for transit projects both inside and outside of existing transit districts or service areas. Projects are required to be in a locally approved plan to be eligible for HB 2017 funding. Adopting the Clackamas County Transit Development Plan will allow the projects identified within the plan to be eligible for consideration for STIF funding.

While the majority of the project and contract with the consultant have been completed, the Amendment #1 to the IGA is necessary to incorporate the changes to the consultant contract through ODOT that allows a shift of funds from meetings that were not needed to the creation of an Executive Summary Story Map which will be a user friendly way to access information about the Transit Development Plan online. In addition, changes to the project schedule reflect delays that occurred throughout the project over the past year due to the impact of COVID-19.

IGA amendment #1 does not change the cost of the project or the County match requirements.

RECOMMENDATION:

Staff respectfully requests the BCC sign the attached Amendment Number 1 to the Grant Agreement No. 33964 for the Clackamas County Transit Development Plan with the Oregon Department of Transportation (ODOT).

Respectfully submitted,

Karen Buehrig

Karen Buehrig, Long Range Planning Manager
Department of Transportation and Development

AMENDMENT NO. 1

The State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as "ODOT" or "Agency", and Clackamas County, hereinafter referred to as "County", entered into an intergovernmental agreement on December 26, 2019 ("Agreement"). Said Agreement covers a Transportation and Growth Management grant for Clackamas County, Transit Development Plan.

It has now been determined by ODOT and County that the Agreement referenced above, although remaining in full force and effect, shall be amended to extend the agreement end date, and include an addendum to the Statement of Work. Except as expressly amended below, all other terms and conditions of the Agreement, are still in full force and effect.

Exhibit A, the Statement of Work, shall be amended to include an addendum to the Statement of Work.

Paragraph A of Section 2 (Terms of Agreement); which currently reads:

Term. This Agreement becomes effective on the date on which all parties have signed this Agreement and all approvals (if any) required to be obtained by ODOT have been received. This Agreement terminates on June 18, 2021 ("Termination Date")."

Shall be amended to read:

Term. This Agreement becomes effective on the date on which all parties have signed this Agreement and all approvals (if any) required to be obtained by ODOT have been received. This Agreement terminates on September 30, 2021 ("Termination Date")."

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year hereinafter written.

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

Clackamas County

By _____
Official's Signature

Date _____

STATE OF OREGON, by and through
its Department of Transportation

By _____
Division Administrator or designee
Policy, Data & Analysis Division

Date _____

Addendum
to Exhibit A
Statement of Work

All revisions to the original Statement of Work are shown as ~~strike-through~~ for deletions and **bold and underlined** for added text.

Task 1 shall be revised as follows:

Task 1 Project Management and Grant Administration

- 1.1 Refined Project Schedule – Consultant shall prepare a Refined Project Schedule showing the duration of work tasks and subtasks and dependencies between work tasks and including the subtask name, deliverable, start date of the deliverable and end or due date of the deliverable. Consultant shall distribute draft Refined Project Schedule to County and APM for review at PMT Meeting #1 and provide revised version to County and APM after meeting.
- 1.2 PMT Meetings / Conference Calls – Consultant shall schedule and lead the PMT Meetings / Conference Calls. The PMT will meet via conference call on an as-needed basis up to ~~18~~ **16** times throughout the Project. Consultant shall schedule PMT Meetings / Conference Calls within 5 business days after APM’s request. PMT Meetings / Conference Calls are anticipated to last an average of one hour. In addition, four in-person PMT meetings are specified within the individual tasks in this Statement of Work and Delivery Schedule (“SOW”).
- 1.3 Monthly Progress Reports – Throughout the duration of the Project, Consultant shall provide Monthly Progress Reports by the end of each calendar month. Monthly Progress Reports must include updates on the status of deliverables, upcoming work and scope, budget or schedule issues. As part of Monthly Progress Reports, Consultant shall update Refined Project Schedule and distribute updated Refined Project Schedule to County and APM, provided that all changes to the Refined Project Schedule shall require the approval of County and the APM.
- 1.4 TAC & PAC Rosters – County shall organize and prepare TAC and PAC Rosters including names and contact information.

TAC - County shall solicit TAC members to include, but not be limited to, representatives from the following:

- a. County staff (Transportation Planning, Social Services, Public Health, Public and Government Affairs)
- b. ODOT Region 1 Regional Transit Coordinator
- c. Transit providers operating in Clackamas County (TriMet, SMART, CAT, SAM, SCTD, Mt. Hood Express)
- d. Staff from cities within Clackamas County

- e. Clackamas Community College
- f. Department of Land Conservation and Development

PAC - County shall solicit PAC members to include, but not be limited to, representatives from the following:

- a. County staff (Transportation Planning, Social Services, Public Health)
- b. One or two transit providers operating within Clackamas County
- c. Business community (Chamber of Commerce/Large employers)
- d. School Districts within Clackamas County
- e. Minority/Underserved Communities
- f. Low-income communities
- g. Seniors
- h. Disabled users or advocates
- i. Clackamas County Housing Authority

- 1.5 ~~Project Meetings—Consultant shall prepare for and attend up to 2 project meetings throughout the Project as needed with the TAC, PAC, Planning Commission, Board of Commissioners or other stakeholder groups within 15 business days after APM’s request. County shall prepare an agenda for each meeting. County shall facilitate, distribute information, advertise meetings if necessary and perform logistics. County shall prepare a summary of each meeting and send electronically to all attendees.~~
Executive Summary Story Map – Consultant shall prepare an online “story map” that showcases the short-, medium-, and long-term project recommendations in an interactive online map. Additional content from the Executive Summary (Task 5.6) must be included as necessary, determined by PMT, to provide context for the project recommendations. Executive Summary Story Map may include the existing transit network in Clackamas County, project recommendation tables, and how projects were selected for short-, medium, and long-term.

County Deliverables

- 1.A Project Schedule review and comments (Subtask 1.1)
- 1.B PMT Meetings / Conference Calls, up to ~~18~~**16** (Subtask 1.2)
- 1.C TAC & PAC Rosters (Subtask 1.4)
- 1.D Project Meetings (up to 2) (Subtask 1.5)

Consultant Deliverables

- 1.A Refined Project Schedule (Subtask 1.1)
- 1.B PMT Meetings / Conference Calls, up to ~~18~~**16** (Subtask 1.2)
- 1.C Monthly Progress Reports (Subtask 1.3)
- 1.D ~~Project Meetings (up to 2)~~**Executive Summary Story Map** (Subtask 1.5).

Project Schedule shall be revised as follows:

SCHEDULE

Task # & Description	Project Schedule
Task 1: Project Management and Grant Administration	Throughout Project Timeline
Task 2: Public Engagement Plan & Project Schedule Refinement	January 2020 – February 2020 June 2021
Task 3: Existing Conditions and Needs Analysis	February 2020 – April August 2020
Task 4: Scenario Development to increase accessibility	June 2020 – September November 2020
Task 5: Project Prioritization & Cost Estimates	September 2020 – November 2020 February 2021
Task 6: Final Report & Approval Process	November 2020 – January June 2021

Consultant Deliverable Table shall be revised as follows:

Consultant Deliverable Table

Task	Deliverable	Fixed unit price	Max Quantity	Total
Task 1 Project Management and Grant Administration				
1.A	Refined Project Schedule (Subtask 1.1)	\$900	1	\$900
1.B	PMT Meetings / Conference Calls (Subtask 1.2)	\$430	18 16	\$7,740 \$6,880
1.C	Monthly Progress Reports (Subtask 1.3)	\$170	18 16	\$3,060 \$2,720
1.D	Project Meetings (2) Executive Summary Story Map (Subtask 1.5)	\$2,250 \$5,700	2 1	\$4,500 \$5,700
Task 2 Public Engagement Plan , Background and Existing Conditions				
2.A	Title VI Assessment Report (Subtask 2.1)	\$2,900	1	\$2,900
2.B	Public Engagement Plan (Subtask 2.2)	\$3,100	1	\$3,100
2.C	PMT Meeting #1 (Subtask 2.3)	\$2,800	1	\$2,800
2.D	Materials for Project Web Page, Project Factsheet, and Online Commenting Map (Subtask 2.4)	\$4,550	1	\$4,550
2.E	Background Information and Existing Conditions Memo (Subtask 2.5)	\$13,400	1	\$13,400
2.F	TAC Meeting #1 (Subtask 2.6)	\$3,200	1	\$3,200
2.G	PAC Meeting #1 (Subtask 2.7)	\$3,000	1	\$3,000
Task 3 Needs Analysis				

Task	Deliverable	Fixed unit price	Max Quantity	Total
3.A	Draft Memo #1: Goals, Objectives and Performance Measures (Subtask 3.2)	\$5,300	1	\$5,300
3.B	Draft Memo #2: Existing Conditions and Needs Identification (Subtask 3.3)	\$10,600	1	\$10,600
3.C	Outreach Effort #1 Online Survey (Subtask 3.4)	\$4,500	1	\$4,500
3.D	Outreach Effort #1 Promotion Support (Subtask 3.4)	\$2,500	1	\$2,500
3.E	Outreach Effort #1 In-person Events (4) (Subtask 3.4)	\$8,100	1	\$8,100
3.F	Outreach Effort #1 Summary (Subtask 3.4)	\$2,200	1	\$2,200
3.G	PMT Meeting #2 (Subtask 3.5)	\$2,300	1	\$2,300
3.H	TAC Meeting #2 (Subtask 3.6)	\$3,200	1	\$3,200
3.I	PAC Meeting #2 (Subtask 3.7)	\$3,000	1	\$3,000
3.J	Final Memo #1: Goals, Objectives and Performance Measures (Subtask 3.8)	\$1,000	1	\$1,000
3.K	Final Memo #2: Existing Conditions and Needs Identification (Subtask 3.9)	\$1,750	1	\$1,750
Task 4 Future Service Opportunities and Evaluation				
4.A	Memo #3: Assessment of Future Service Opportunities and Costs (Subtask 4.1)	\$7,250	1	\$7,250
4.B	Draft Memo #4: Future Solution Strategies (Subtask 4.2)	\$10,550	1	\$10,550
4.C	Outreach Effort #2 Online Survey (Subtask 4.3)	\$4,500	1	\$4,500
4.D	Outreach Effort #2 Promotion Support (Subtask 4.3)	\$1,900	1	\$1,900
4.E	Outreach Effort #2 In-person Events (4) (Subtask 4.3)	\$8,100	1	\$8,100
4.F	Outreach Effort #2 Summary (Subtask 4.3)	\$2,200	1	\$2,200
4.G	PMT Meeting #3 (Subtask 4.4)	\$2,300	1	\$2,300
4.H	TAC Meeting #3 (Subtask 4.5)	\$3,200	1	\$3,200
4.I	PAC Meeting #3 (Subtask 4.6)	\$3,000	1	\$3,000
4.J	Final Memo #4: Future Solution Strategies (Subtask 4.7)	\$2,400	1	\$2,400
Task 5 Draft CCTDP				
5.A	CCTDP Outline and Draft CCTDP (Subtask 5.1)	\$9,700	1	\$9,700
5.B	PMT Meeting #4 (Subtask 5.2)	\$2,300	1	\$2,300

Task	Deliverable	Fixed unit price	Max Quantity	Total
5.C	TAC Meeting #4 (Subtask 5.3)	\$3,200	1	\$3,200
5.D	PAC Meeting #4 (Subtask 5.4)	\$3,000	1	\$3,000
5.E	Revised Draft CCTDP (Subtask 5.5)	\$2,200	1	\$2,200
5.F	Executive Summary (Subtask 5.6)	\$5,600	1	\$5,600
Task 6 Final CCTDP & Approval Process				
6.A	Clackamas County Planning Commission Hearing (Subtask 6.1)	\$2,250	1	\$2,250
6.B	C4 Meeting (Subtask 6.2)	\$1,800	1	\$1,800
6.C	Final CCTDP (Subtask 6.3)	\$1,200	1	\$1,200
Contingent Task				
7.C	Contingent Transit Survey	\$4,950	1	\$4,950
Project Total				\$175,200



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

May 13, 2021

Board of Commissioners
Clackamas County

Members of the Board:

A Board Order Adopting the Vacation of Midway Street

Purpose/Outcomes	Vacates a portion of Midway Street
Dollar Amount and Fiscal Impact	Application and processing fee received.
Funding Source	N/A
Duration	Upon execution; permanent vacation.
Previous Board Action	5/4/21: Discussion item at issues.
Strategic Plan Alignment	Build public trust through good government
Counsel Review	Date of Counsel Review on 03/03/2021 NB
Procurement Review	This Item was not processed through Procurement This is a road vacation
Contact Person	Doug Cutshall, Engineering Technician 503-742-4669

BACKGROUND

Midway Street is a 50 foot wide right of way that connects to a 20 foot wide unnamed road both dedicated to the public via the plat of Carver, Plat No. 419, August 7, 1917, Clackamas County Plat Records, said plat being situated in the SW1/4 of Section 18, T.2 S., R.3 E. A steep escarpment at the end of and parallel to both rights of way would make construction dangerous and costly. Portions of these rights of way have been marginally improved by the petitioner, and predecessors in title. The petitioner would utilize the vacated right of way for business expansion and parking.

The 100 foot long portion of Midway Street and 104 foot long unnamed road to be vacated contains approximately 7,877 square feet of right-of-way that serves no public need and is not a benefit to the traveling public. Access to adjoining properties and area traffic flow will not be affected by vacating these portions of road right of way.

The Petition to Vacate under ORS 368.341 has been filed with the determined fee and, acknowledged signatures of owners of 100 percent of private property proposed to be vacated

and acknowledged signatures of owners of 100 percent of property abutting the public property proposed to be vacated, pursuant to ORS 368.351. All abutting property owners in this instance have signed the Consent to Vacate forms that have been acknowledged by the proper authority.

Midway Street and unnamed road lie within the City of Happy Valley or their Urban Growth Boundary and, per ORS 368.361(3), the City must concur by resolution or order with the County's findings in this road vacation in order for the vacation to take effect.

Oregon Department of Transportation, Clackamas County Departments of Transportation Maintenance, Engineering, Planning, Traffic, and the City of Happy Valley, along with all local utility companies have been contacted and do not have any objections to this vacation.

RECOMMENDATION

Staff respectfully recommends that the Board adopt the attached Board Order approving the vacation of this portion of Midway Street and the portion of an unnamed road right of way.

Sincerely,

Douglas Cutshall

Douglas Cutshall

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the matter of the Vacation of
Midway Street, and an Unnamed Road,
situated In the SW1/4 of
Section 18, T.2 S., R.3 E., W.M.
Clackamas County, Oregon



Board Order No. _____

Page 1 of 2

This matter coming before the Board of County Commissioners at this time and appearing to the Board that in accordance with ORS 368.341 and pursuant to ORS 368.346, a petition has been filed with the determined fee, and a written report finding this vacation to be in the public interest from the County Road Official, Dan Johnson, Director, have been submitted in the matter of the vacation of a portion of Midway Street and an unnamed right of way, both being Non-Maintained Local Access Roads, described as follows:

All of that portion of Midway Street and an unnamed portion of right of way in Carver, Plat No. 419, Clackamas County Plat Records, situated in the SW1/4 of Section 18, T.2 S., R.3 E., W.M. Clackamas County, Oregon;
Midway Street, lying south of, and between, the southerly right of way line of State Highway 224, and the north line of Lot 1, Block 2, First Addition to Carver, Plat No. 491, Clackamas County Plat Records. Together with a portion of an Unnamed 20 foot wide road being all that portion of right of way lying one foot east of and between the southerly projection of the west line of Lot 10, Block 4, said Carver plat and, the southerly projection of the east line of Lot 11, Block 4, of said Carver plat, and as shown on attached Exhibit "A", being made a part of this description.

Whereas the Board having read said petition and report from the County Road Official, have determined the vacation of the above described portions of roadway to be in the public interest; and,

Whereas Midway Street lies within the urban growth boundary and adjacent to the City of Happy Valley and an unnamed portion of right of way lies within the City of Happy Valley and per ORS 368.361(3) the Happy Valley City Council, having read the Road Officials Report and Staff Report, has concurred, by City Resolution 21-02, with the findings contained in those reports and agrees that this road vacation is in the public interest; and,

Whereas Oregon Department of Transportation, Clackamas County Departments of Transportation Maintenance, Engineering, Planning, Traffic, along with all local utility companies, have been contacted and do not have any objections to this vacation; now therefore,

IT IS HEREBY ORDERED, that the Board adopts as its own, the findings and conclusions contained in the written report from the County Road Official dated October 28, 2020; and,

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the matter of the Vacation of
Midway Street, and an Unnamed Road,
situated In the SW1/4 of
Section 18, T.2 S., R.3 E., W.M.
Clackamas County, Oregon



Board Order No. _____
Page 2 of 2

IT IS HEREBY ORDERED that the attached described portion of Midway Street and Unnamed Road, containing 7,877 square feet, more or less, as described herein and as illustrated on Exhibit "A" be vacated; and,

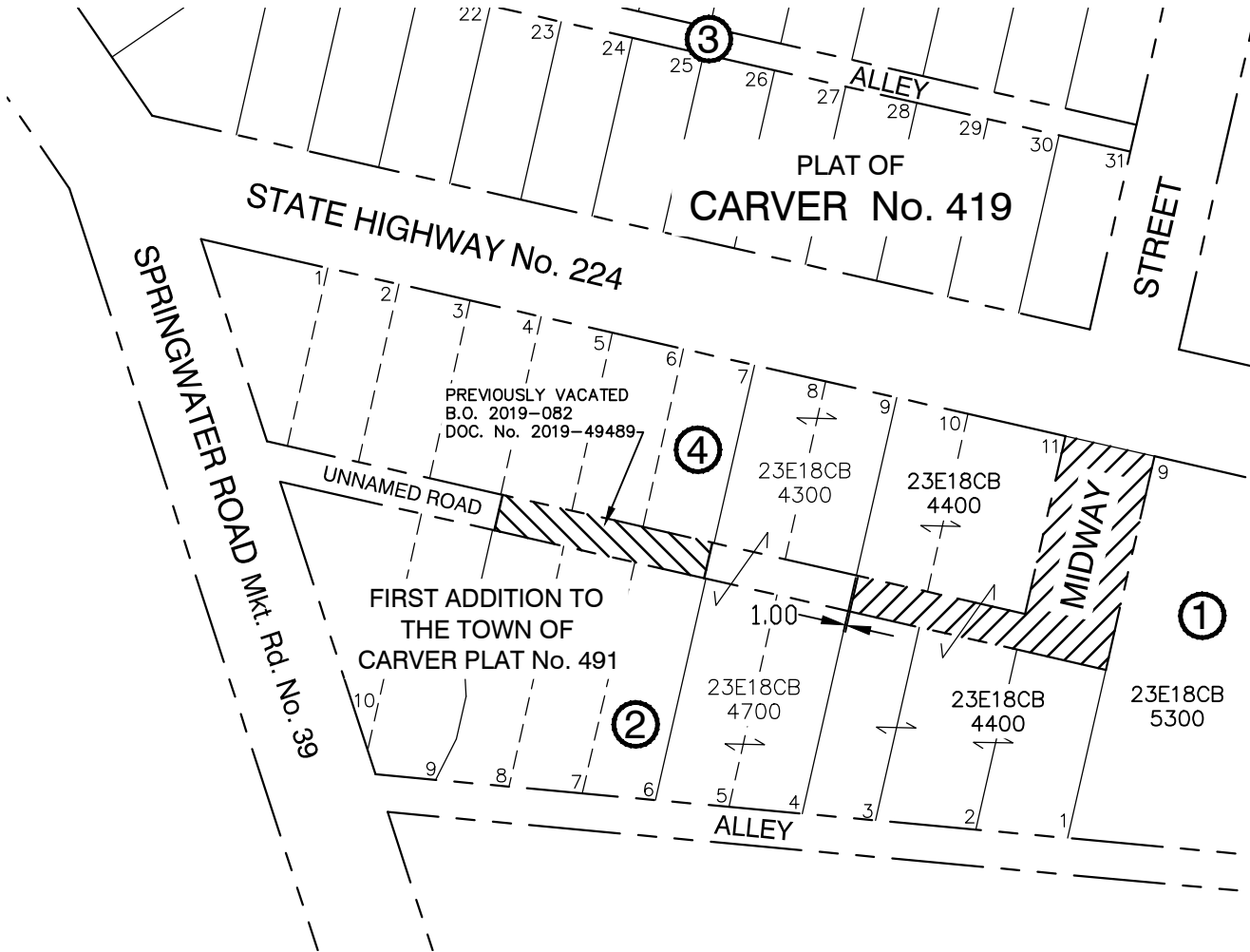
IT IS FURTHER ORDERED, that this Order and attached exhibits be recorded in the Deed Records for Clackamas County and that a copy be filed with the County Surveyor, County Assessor, and Finance Office/Fixed Assets.

ADOPTED this _____ day of _____, 2021
BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

SITUATED IN THE SW¹/₄ OF
SECTION 18, T.2S., R.3E., W.M.



LEGEND



VACATED AREA
7,877 Sq. Ft.



SCALE 1" = 100'

MEMORANDUM

TO: Board of Commissioners

FROM: Dan Johnson, Director D.T.D.

DATE: October 28, 2020

SUBJ: **ROAD OFFICIAL'S REPORT FOR THE VACATION OF MIDWAY STREET
AND AN UNNAMED RIGHT OF WAY**

LOCATION: Midway Street and the unnamed right of way, situated in the SW1/4 of Section 18, T.2 S., R.3 E., W.M. and Carver, Plat No. 419.

FACTS AND FINDINGS: Midway Street is a 50 foot wide right of way that connects to a 20 foot wide unnamed road both dedicated to the public via the plat of Carver, Plat No. 419, August 7, 1917, Clackamas County Plat Records. A steep escarpment at the end of and parallel to both rights of way would make construction dangerous and costly. Portions of these rights of way have been marginally improved by the petitioner, and predecessors in title.

The 120 foot long portion of Midway Street and 94 foot long unnamed road to be vacated contains approximately 7,877 square feet of right-of-way that serves no public need and is not a benefit to the traveling public. Access to adjoining properties and area traffic flow will not be affected by vacating these portions of road right of way.

The Petition to Vacate under ORS 368.341 has been filed with the determined fee and, acknowledged signatures of owners of 100 percent of private property proposed to be vacated and acknowledged signatures of owners of 100 percent of property abutting the public property proposed to be vacated, pursuant to ORS 368.351. All abutting property owners in this instance have signed the Consent to Vacate forms that have been acknowledged by the proper authority.

Midway Street lies within the City of Happy Valley's Urban Growth Boundary and, per ORS 368.361(3), the City must concur by resolution or order with the County's findings in this road vacation in order for the vacation to take effect.

Oregon Department of Transportation, Clackamas County Departments of Transportation Maintenance, Engineering, Planning, Traffic, and the City of Happy Valley, along with all local utility companies have been contacted and do not have any objections to this vacation.

To determine whether the proposed vacation is in the public interest, an analysis of Clackamas County Code 7.03.095(A)(4) is required. Said Code criteria are as follows;

a. Whether the vacation would inhibit or preclude access to an abutting property, and whether an access reservation would be adequate to protect that access;

Finding: Vacating this right of way would not inhibit or preclude access to any abutting property. Access to abutting properties is available via State Highway 212 and a 20 foot wide public right of way along the bottom of the escarpment.

b. Whether it is physically possible to build a road that meets contemporary standards over the existing terrain or right of way;

Finding: It may be physically possible to build a road that meets contemporary standards however the right of way only serves the petitioners property.

c. Whether it is economically feasible to build a road that meets contemporary standards over the existing terrain or right of way;

Finding: It may be economically feasible to build a road in a portion of this right of way however it will not provide access to any property other than the owners.

d. Whether there is another nearby road that can effectively provide the same access as the right-of-way to be vacated;

Finding: There are several nearby roads that effectively provide the same access.

e. Whether the right-of-way to be vacated has present or future value in terms of development potential, use in transportation linkages, or use in road replacements;

Finding: The right of way has no present or future value.

f. Whether there are present and future likely benefits of the right-of way to the traveling public;

Finding: There are no present and future likely benefits of the right of way to the traveling public.

g. Whether anticipated growth or changes in use of the surrounding area are likely to impact the future use of the right-of-way proposed to be vacated;

Finding: There are no anticipated impacts to the future use of the right of way proposed to be vacated.

h. Whether the right-of-way proposed to be vacated leads to a creek, river, or other waterway that can be used for public recreation; and

Finding: Not applicable.

i. Whether the right-of-way proposed to be vacated leads to federal, state or local public lands that can be used for public recreation.

Finding: Not applicable.

After considering traffic impacts, fiscal impacts, and social impacts, it appears to be in the public interest to vacate the area petitioned.

It is my assessment to support the subject vacation.

Pursuant to ORS 368.351 and County policy, the Board may make its determination in the matter of this vacation without a public hearing. This is allowed when there is acknowledged signatures of owners of 100 percent of private property proposed to be vacated and acknowledged signatures of owners of 100 percent of property abutting any public property proposed to be vacated, this Road Official's Report is submitted, and there is no controversy related to the proposed vacation.

Dan Johnson

**CITY OF HAPPY VALLEY
RESOLUTION 21-02**

MIDWAY STREET VACATION – RESOLUTION OF SUPPORT

WHEREAS, Per ORS 368.361(3) when a road or public property to be vacated lies in county jurisdictions within a city, each jurisdiction can choose to conduct separate vacations or concur by resolution or order, with the findings of the county governing body; and,

WHEREAS, the City of Happy Valley has reviewed the materials submitted by Clackamas County regarding the proposed vacation of the portion of Midway Street illustrated in EXH A; and,

WHEREAS, the City Council finds no reason not to support the proposed street vacation which will benefit surrounding property/business owners located in both the city limits and unincorporated Clackamas County; and,

WHEREAS, the City Council supports the notion of having a single Board Order satisfy the vacation request (versus having two public hearings).

NOW THEREFORE, THE CITY OF HAPPY VALLEY RESOLVES AS FOLLOWS:

Section 1. The City of Happy Valley City Council supports the proposed vacation of a portion of Midway Street by Board Order per the provisions of ORS.368.361(3).

Resolution 21-02 is enacted by the City Council of the City of Happy Valley, this 19th day of January 2021.



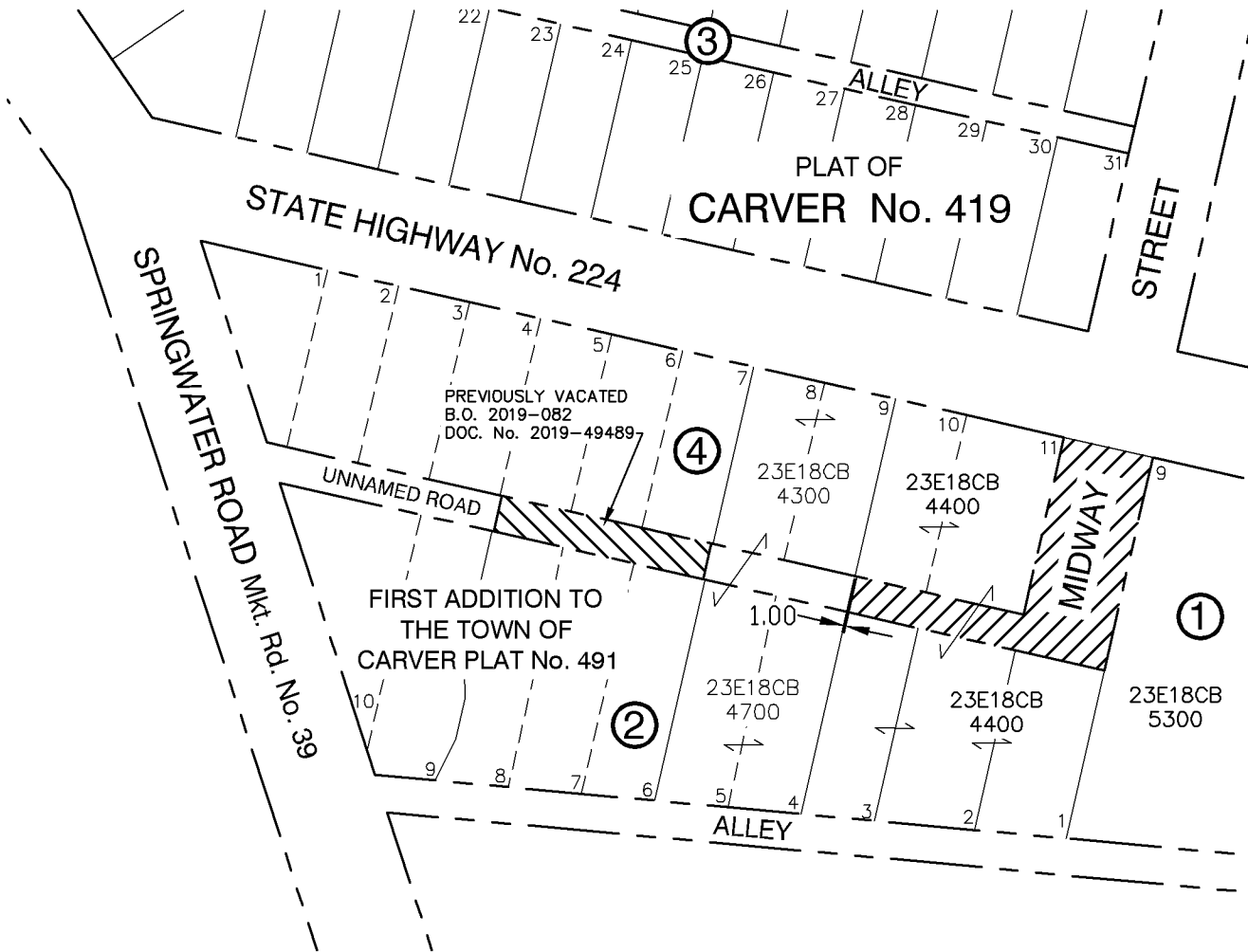
Tom Ellis
Mayor

ATTEST:



Kara Kerpan
City Recorder

SITUATED IN THE SW¹/₄ OF
SECTION 18, T.2S., R.3E., W.M.



LEGEND



VACATED AREA
7,877 Sq. Ft.



SCALE 1" = 100'



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DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

May 13, 2021

Board of Commissioners
Clackamas County

Members of the Board:

A Board Order Adopting the Vacation of a Portion of Shafford Street

Purpose/Outcomes	Vacates a Portion of Shafford Street
Dollar Amount and Fiscal Impact	Application and processing fee received.
Funding Source	N/A
Duration	Upon execution; permanent vacation.
Previous Board Action	5/4/21: Discussion item at issues
Strategic Plan Alignment	Build public trust through good government
Counsel Review	Reviewed and approved by County Counsel on 4/28/21 NB
Procurement Review	This Item was not processed through Procurement This is a road vacation
Contact Person	Doug Cutshall, Engineering Technician 503-742-4669

BACKGROUND

Shafford Street, County Road Number 465, established through petition and road viewers April 9, 1896, is partially unconstructed, that portion being the object of this road vacation. A portion of Shafford Street, remains almost as it was in 1896 because of the steep terrain making the construction of a modern road very unlikely as well as costly. The petitioner and the City of Estacada wish to vacate that unconstructed portion of Shafford Street to be a part of a downtown improvement project. This portion of Shafford Street right of way has been vacant and unused for 124 years, and is of no public need and is not a benefit to the traveling public.

The portion to be vacated contains approximately 19,915 square feet. Vacating this portion of road right of way will not affect area traffic flow or deprive public access to adjoining properties.

The Petition to Vacate under ORS 368.341 has been filed with the determined fee and acknowledged signatures of owners of 100 percent of property abutting public property proposed to be vacated, pursuant to ORS 368.351. All abutting property owners in this instance have signed the Consent to Vacate forms that have been acknowledged by the proper authority.

Shafford Street lies within the City of Estacada's Urban Growth Boundary and, per ORS 368.361(3) will concur by city resolution with the County's findings in this road vacation.

Oregon Department of Transportation, the City of Estacada, Clackamas County Department of

Transportation Maintenance, Engineering, Planning, Traffic Divisions, and all local utility companies, have been contacted and do not have any objections to this vacation.

RECOMMENDATION

Staff respectfully recommends that the Board adopt the attached Board Order approving the vacation of this portion of Shafford Street, County Road Number 465.

Sincerely,

Douglas Cutshall

Douglas Cutshall

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the matter of the Vacation of
A portion of Shafford Street,
County Road No. 465, situated
In Section 28, T.3 S., R.4 E., W.M.
Clackamas County, Oregon



Board Order No. _____

Page 1 of 1

This matter coming before the Board of County Commissioners at this time and appearing to the Board that in accordance with ORS 368.341 and pursuant to ORS 368.346, a petition has been filed with the determined fee, and a written report finding this vacation to be in the public interest from the County Road Official, Dan Johnson, Director, have been submitted in the matter of the vacation of a portion of Shafford Street, County Road No. 465, described as follows:

All of that portion of Shafford Street, County Road No. 465, as depicted in First Addition to Estacada, Plat No. 151 and, E.L. Fraley's Subdivision of a Tract of Land, Plat No. 172, Clackamas County Plat Records, situated in the northwest ¼ of Section 28, T.3 S., R.4 E., W.M., Clackamas County, Oregon, lying one foot south of and between the westerly extension of the north line of Lot 4, of said E.L. Fraley's Subdivision, and the northerly right of way of State Highway 224, as shown on attached Exhibit "A", being a part of this description.

Whereas the Board having read said petition and report from the County Road Official, have determined the vacation of the above described portion of roadway to be in the public interest; and,

Whereas Shafford Street lies within the City of Estacada and per ORS 368.361(3) the Estacada City Council, having read the Road Officials Report and, Staff Report, has concurred with the County's findings by City Resolution 2020-020, for this road vacation and,

Whereas Oregon Department of Transportation, Clackamas County Departments of Transportation Maintenance, , Engineering, Planning, Traffic, along with all local utility companies, have been contacted and do not have any objections to this vacation; now therefore,

IT IS HEREBY ORDERED, that the Board adopts as its own, the findings and conclusions contained in the written report from the County Road Official dated July 10, 2020; and,

IT IS HEREBY ORDERED that the attached described portion of Shafford Street, County Road No. 465, containing, 19,915 square feet, more or less, be vacated; and,

IT IS FURTHER ORDERED, that this Order and attached exhibits be recorded in the Deed Records for Clackamas County and that a copy be filed with the County Surveyor, County Assessor, and Finance Office/Fixed Assets.

ADOPTED this _____ day of _____, 2021

BOARD OF COUNTY COMMISSIONERS

Chair

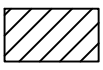
Recording Secretary

SITUATED IN THE CITY OF ESTACADA
 IN THE NW 1/4 OF SECTION 28, T.3S., R.4E., W.M.,
 CLACKAMAS COUNTY, OREGON

EXHIBIT "A"



LEGEND:

 AREA TO BE VACATED (19,915 SF±)

*FIRST ADDITION TO ESTACADA PLAT # 151 BLOCK 36 LOTS 1-6

**E.L. FRALEY'S SUBDIVISION PLAT # 0172 LOTS 4-9

SCALE: 1" = 100'

CITY OF ESTACADA
 SHAFFORD STREET VACATION
 CLACKAMAS COUNTY, OREGON

CURRAN-McLEOD, INC.
 CONSULTING ENGINEERS

6655 S.W. HAMPTON ST., SUITE 210
 PORTLAND, OREGON 97223
 PHONE (503) 684-3478

MEMORANDUM

TO: Board of Commissioners

FROM: Dan Johnson, Director D.T.D.

DATE: July 10, 2020

SUBJ: **ROAD OFFICIAL'S REPORT FOR THE VACATION OF A PORTION OF, SHAFFORD STREET**

LOCATION: Shafford Street, County Road Number 465, Located in the City of Estacada, is situated in the NW1/4 of Section 28, T.3 S., R.4 E., W.M., Clackamas County, Oregon

FACTS AND FINDINGS: Shafford Street, County Road Number 465, established through petition and road viewers April 9, 1896, is partially unconstructed, that portion being the object of this road vacation. A portion of Shafford Street, remains almost as it was in 1896 because of the steep terrain making the construction of a modern road very unlikely as well as costly. The petitioner and the City of Estacada wish to vacate that unconstructed portion of Shafford Street to be a part of a downtown improvement project. This portion of Shafford Street right of way has been unimproved for 124 years, and is of no public need and is not a benefit to the traveling public.

The portion to be vacated contains approximately 19,915 square feet. Vacating this portion of road right of way will not affect area traffic flow or deprive public access to adjoining properties.

The Petition to Vacate under ORS 368.341 has been filed with the determined fee and, acknowledged signatures of owners of 100 percent of private property proposed to be vacated and acknowledged signatures of owners of 100 percent of property abutting the public property proposed to be vacated, pursuant to ORS 368.351. All abutting property owners in this instance have signed the Consent to Vacate forms that have been acknowledged by the proper authority.

Shafford Street lies within the City of Estacada's Urban Growth Boundary and, per ORS 368.361(3), the City must concur by resolution or order with the County's findings in this road vacation in order for the vacation to take effect.

Oregon Department of Transportation, Clackamas County Departments of Transportation Maintenance, Engineering, Planning, Traffic, and the City of Estacada, along with all local utility companies have been contacted and do not have any objections to this vacation.

To determine whether the proposed vacation is in the public interest, an analysis of Clackamas County Code 7.03.095 (4) (A) is required. Said Code criteria are as follows;

a. Whether the vacation would inhibit or preclude access to an abutting property, and whether an access reservation would be adequate to protect that access;

Finding: Vacating this right of way would not inhibit or preclude access to any abutting property. Access to abutting properties is still available via the remaining Shafford Street and Espinosa Street.

b. Whether it is physically possible to build a road that meets contemporary standards over the existing terrain or right of way;

Finding: It is not physically possible to build a road that meets contemporary standards because of the very steep cross slope.

c. Whether it is economically feasible to build a road that meets contemporary standards over the existing terrain or right of way;

Finding: It may be economically feasible to build a road in a portion of this right of way however retaining wall construction will drive up the cost and out weigh the benefits of a road in this location.

d. Whether there is another nearby road that can effectively provide the same access as the right-of-way to be vacated;

Finding: There are several nearby roads that effectively provide the same access.

e. Whether the right-of-way to be vacated has present or future value in terms of development potential, use in transportation linkages, or use in road replacements;

Finding: The right of way has no present or future value.

f. Whether there are present and future likely benefits of the right-of way to the traveling public;

Finding: There are no present and future likely benefits of the right of way to the traveling public.

g. Whether anticipated growth or changes in use of the surrounding area are likely to impact the future use of the right-of-way proposed to be vacated;

Finding: There are no anticipated impacts to the future use of the right of way proposed to be vacated.

h. Whether the right-of-way proposed to be vacated leads to a creek, river, or other waterway that can be used for public recreation; and

Finding: Not applicable.

i. Whether the right-of-way proposed to be vacated leads to federal, state or local public lands that can be used for public recreation.

Finding: Not applicable.

It is my assessment that the proposed vacation is in the public interest.

RESOLUTION 2020-020

A RESOLUTION OF THE ESTACADA CITY COUNCIL CONCURRING WITH CLACKAMAS COUNTY'S INTENT TO VACATE PORTIONS OF SHAFFORD STREET WITHIN THE CITY LIMITS

WHEREAS, Clackamas County has received a petition from William Hilands, an adjacent property owner, requesting the vacation of the Shafford Street right-of-way south of Jeremy Loveless Avenue (Exhibit A), which is under the jurisdiction of Clackamas County; and

WHEREAS, Clackamas County has read the petition and prepared the County Road Official Report (Exhibit B), and has determined the vacation of the above described portion of Shafford Street to be in the public interest; and

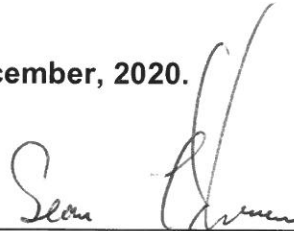
WHEREAS, all impacted property owners have signed a consent form agreeing to the vacation; and

WHEREAS, the Oregon Department of Transportation, Clackamas County Departments of Transportation, Maintenance, Engineering, Planning, and Traffic, along with all local utility companies, have been contacted and do not have any objections to this vacation; and

WHEREAS, Shafford Street lies within the City of Estacada and per ORS 368.361(3) the Estacada City Council is required to concur with the County's intent before the vacation can be approved.

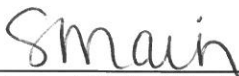
NOW, THEREFORE, BE IT RESOLVED that the City Council of Estacada hereby concurs with the County's findings in approval of the vacation of Shafford Street south of Jeremy Loveless Avenue.

Passed and effective this 14th day of December, 2020.



Sean Drinkwine, Mayor

ATTEST:



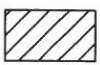
Sadie Main, CMC, City Recorder

SITUATED IN THE CITY OF ESTACADA
 IN THE NW 1/4 OF SECTION 28, T.3S., R.4E., W.M.,
 CLACKAMAS COUNTY, OREGON

EXHIBIT "A"



LEGEND:

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SCALE: 1" = 100'

CITY OF ESTACADA
 SHAFFORD STREET VACATION
 CLACKAMAS COUNTY, OREGON

CURRAN-McLEOD, INC.
 CONSULTING ENGINEERS

6655 S.W. HAMPTON ST., SUITE 210
 PORTLAND, OREGON 97223
 PHONE (503) 684-3478

Exhibit B

MEMORANDUM

TO: Board of Commissioners

FROM: Dan Johnson, Director D.T.D.

DATE: July 10, 2020

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The portion to be vacated contains approximately 19,915 square feet. Vacating this portion of road right of way will not affect area traffic flow or deprive public access to adjoining properties.

The Petition to Vacate under ORS 368.341 has been filed with the determined fee and, acknowledged signatures of owners of 100 percent of private property proposed to be vacated and acknowledged signatures of owners of 100 percent of property abutting the public property proposed to be vacated, pursuant to ORS 368.351. All abutting property owners in this instance have signed the Consent to Vacate forms that have been acknowledged by the proper authority.

Shafford Street lies within the City of Estacada's Urban Growth Boundary and, per ORS 368.361(3), the City must concur by resolution or order with the County's findings in this road vacation in order for the vacation to take effect.

Oregon Department of Transportation, Clackamas County Departments of Transportation Maintenance, Engineering, Planning, Traffic, and the City of Estacada, along with all local utility companies have been contacted and do not have any objections to this vacation.

To determine whether the proposed vacation is in the public interest, an analysis of Clackamas County Code 7.03.095 (4) (A) is required. Said Code criteria are as follows;

a. Whether the vacation would inhibit or preclude access to an abutting property, and whether an access reservation would be adequate to protect that access;

Finding: Vacating this right of way would not inhibit or preclude access to any abutting property. Access to abutting properties is still available via the remaining Shafford Street and Espinosa Street.

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Finding: It is not physically possible to build a road that meets contemporary standards because of the very steep cross slope.

c. Whether it is economically feasible to build a road that meets contemporary standards over the existing terrain or right of way;

Finding: It may be economically feasible to build a road in a portion of this right of way however retaining wall construction will drive up the cost and out weigh the benefits of a road in this location.

d. Whether there is another nearby road that can effectively provide the same access as the right-of-way to be vacated;

Finding: There are several nearby roads that effectively provide the same access.

e. Whether the right-of-way to be vacated has present or future value in terms of development potential, use in transportation linkages, or use in road replacements;

Finding: The right of way has no present or future value.

f. Whether there are present and future likely benefits of the right-of way to the traveling public;

Finding: There are no present and future likely benefits of the right of way to the traveling public.

g. Whether anticipated growth or changes in use of the surrounding area are likely to impact the future use of the right-of-way proposed to be vacated;

Finding: There are no anticipated impacts to the future use of the right of way proposed to be vacated.

h. Whether the right-of-way proposed to be vacated leads to a creek, river, or other waterway that can be used for public recreation; and

Finding: Not applicable.

i. Whether the right-of-way proposed to be vacated leads to federal, state or local public lands that can be used for public recreation.

Finding: Not applicable.

It is my assessment that the proposed vacation is in the public interest.



DAN JOHNSON
DIRECTOR

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

May 13, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Oregon Department of Transportation Flexible Services Agreement

Purpose/ Outcomes	By the authority in ORS 190.110, 366.574 and 366.576, ODOT may enter into cooperative agreements with counties for the performance of work on certain types of maintenance or improvement projects. Sharing equipment, materials, and services is to the general public's benefit and promotes the cost-effective and efficient use of public resources so long as used for transportation purposes.
Dollar Amount and Fiscal Impact	There will be no fiscal impact unless there is a need to share transportation related equipment and materials, which will be charged at providers invoice cost or at the providers rates used for internal financial management of personnel and equipment.
Funding Source	Road Fund
Duration	This is a renewal of an existing agreement and shall terminate April 17, 2031 unless otherwise renewed.
Previous Board Action/Review	December 13, 2012: Board Approval May 4, 2021: Discussion item at issues
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Helps keep a strong infrastructure and ensures safe communities 2. Provides maintenance to the traveling public so they can experience a clean, attractive and healthy community.
Counsel Review	Reviewed and approved by County Counsel on 4/2/21 NB
Procurement Review	<ol style="list-style-type: none"> 1. Was the item processed through Procurement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> 2. If no, provide brief explanation. Item is an Cooperative Assistance Agreement
Contact Person	Terry S. Abbott, Transportation Operations Manager, 503-650-3218

BACKGROUND:

This is a renewal of an agreement that not only extends the term of the agreement, but also adds additional provisions to address issues related to Americans with Disabilities Act compliance. This agreement allows ODOT and Clackamas County to share road and highway services, equipment and materials.

ODOT and Clackamas County have established charge out rates for equipment and personnel and we are agreeable to materials being charged at providers invoice cost plus an established administrative fee, or replaced by the user in lieu of cash payment.

This agreement allows Clackamas County to request services from ODOT on an as-needed basis for work performed on county owned and maintained roads or county right

of way in the form of a written Work Order Authorization. We are requesting Dan Johnson (Director of DTD) be named authorized signer for work orders with a maximum annual total obligation of \$500,000.

Staff respectfully recommends that the Board of County Commissioners approve the renewal of attached Oregon Department of Transportation Flexible Services Agreement.

Respectfully submitted,

Terry S. Abbott

Terry S. Abbott
Transportation Operations Manager
Transportation Maintenance Division

SECOND REVISED
ODOT Flexible Services Maintenance Agreement Signature Page

IN THE WITNESS WHEREOF, the Public Entity _____
(Party) has caused THIS AGREEMENT to be executed by its duly authorized
representatives as the date of their signatures below:

<u>Signature of Officer</u>	<u>Date</u>	<u>Officer's title</u>
<u>Signature of Officer</u>	<u>Date</u>	<u>Officer's title</u>
<u>Signature of Counsel</u>	<u>Date</u>	<u>Counsel's title</u>

Name and Title of the Agency's Authorized Signer for Work Orders:

Address: _____

Phone: _____ Fax: _____

E-mail: _____

Name, Title, Address, Phone and email of **additional contact for coordination** of this Agreement and/or Work Order Authorizations:

Agency's maximum annual total obligation, if different than established in Reimbursement Instructions, Paragraph 4, shall be \$ _____.

Send the **original Agreement Signature Page (this page)**, and the **Equipment Sharing Catalog (See: page 2, revised paragraph 5)** or **Updates** to:

Theodore C. Miller, ODOT Region 1 Operations/Maintenance Manager
ODOT Region 1, 123 NW Flanders Street, Portland, OR 97209,
Telephone: (503)731-8559, Email: Theodore.C.Miller@odot.state.or.us

ODOT FLEXIBLE SERVICE AGREEMENT
Intergovernmental Agreement for Equipment and Services with
The Oregon Department of Transportation

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation and the cities and/or counties signing on to this Agreement, hereinafter referred to collectively as "Agencies". ODOT and Agencies shall be referred to collectively as "Parties".

RECITALS

1. By the authority granted in ORS 190.110, 366.572, 366.574 and 366.576, ODOT may enter into cooperative agreements with the counties, cities, and units of local government for the performance of work on certain types of maintenance or improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. ODOT and Agencies own certain equipment and materials, and provides services that may be useful to other Parties for transportation related activities.
3. The Parties agree that sharing equipment, materials, and services is both to their mutual benefit and to the general public's benefit and promotes the cost-effective and efficient use of public resources so long as used for transportation purposes.
4. A previous Intergovernmental Agreement (IGA) for shared services was signed by Multnomah County, the City of Gresham, City of Portland, City of Fairview, City of Troutdale, City of Wood Village and Oregon Department of Transportation in 1991 which expired in 1996. A subsequent three-year IGA for shared services was entered into by Multnomah County, City of Gresham and Oregon Department of Transportation in 1996 and by the provision of a 1999 ADDENDUM, other parties agreed to sign and join the 1996 agreement.
5. The previously mentioned IGA and addendum have expired and have been replaced by the Portland Metropolitan Area Transportation (PMAT) Agreement, executed on August 15, 2002. Said agreement is administered by Multnomah County. The parties to said agreement to-date are Multnomah County, Washington County, Marion County, City of Gresham, City of Wood Village, Clackamas County, City of Salem, City of Portland, Hood River County, Polk County, Columbia County, Wasco County and Benton County.

6. It has been determined that ODOT cannot sign said aforementioned PMAT agreement in its current form. Therefore, in an effort to commit to the obligations in said PMAT agreement, ODOT wishes to enter into this Agreement with Agencies.

DEFINITIONS

1. The term "Provider" shall be defined as the Party (either ODOT or Agencies) that is supplying the service, equipment or materials.
2. The term "User" shall be defined as the Party (either ODOT or Agencies) that is requesting or receiving services, equipment or materials.

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. Under such authority, ODOT and Agencies desire to enter into this Agreement to establish procedures for sharing road and highway services, equipment and materials, and to define legal relationships and responsibilities for any services or equipment sharing between ODOT and any of the Agencies. Any services or equipment shared between the Agencies that *do not* involve ODOT should follow the existing PMAT agreement which is administered by Multnomah County, provided that the Agencies are signed parties to the PMAT agreement.
2. The Parties shall make available to each other vehicles, equipment, machinery, materials, related items, and services in the manner and on the terms and conditions provided herein. The vehicles, equipment and machinery covered by this Agreement shall only be such items appropriate for transportation related activities, and shall not include regular automobiles.
3. An Equipment Sharing Catalog will be provided upon request by each entity to the other parties of this Agreement. Said catalog shall describe available equipment and current rental rates. Upon receipt, ODOT's Region 1 Operations/Maintenance Manager will distribute said catalog to the appropriate ODOT personnel. Supplies or materials shall be charged at Provider's invoice cost plus an established administrative fee, or may be replaced by the User. Equipment usage and services shall be charged at Provider's rates used for its internal financial management of personnel and equipment.
4. The tasks associated with the responsibilities referred to above are as defined in the current editions of the ODOT Maintenance Guide, ODOT Maintenance Field Operations Manual, Maintenance Management System (MMS) Manual, Water Quality and Habitat Guide, and Best Management Practices Manual which, by this reference,

are incorporated herein. All services requested of ODOT shall follow procedures addressed in these manuals and will require a Work Order Authorization. All services provided to ODOT shall follow the accepted industry standard, and any specifics identified in the Work Order Authorization, and will require a Work Order Authorization. The Work Order Authorization shall include MMS Activity numbers. Other maintenance services may be included as defined on the Work Order by a MMS Activity number from the current manual edition.

5. *The term of this Agreement shall begin upon signature by ODOT and the first Party to execute said Agreement and shall be in effect for a period of five (5) years. The Agreement may be extended at that time by mutual consent of all parties in the form of an amendment to this Agreement.*
6. This Agreement may be modified by mutual consent of all Parties and upon execution of amendments to this Agreement stating said modifications. If the total cost of any Work Order under this Agreement exceeds \$100,000, the Department of Justice must review and approve any amendments and/or Work Orders prior to performance of any work. At no time shall total cost under this Agreement for services provided to ODOT (including all Work Orders) exceed a total amount of \$4,000,000 per calendar year for an Agreement total of \$20,000,000 without first obtaining a fully executed amendment to this Agreement.

SCOPE OF WORK

1. ODOT's District Managers, or their approved designees, may request services from Agencies on an as-needed basis for work performed on ODOT-owned and maintained highways and highway right of way. Service requests shall be a written request in the form of a Work Order Authorization, attached hereto as Exhibit A and made a part of this Agreement. The Work Order Authorization may be signed by ODOT's District Manager, or their approved designee. Each Work Order Authorization shall be issued pursuant to this Agreement and the provisions of this Agreement shall be incorporated into each Work Order Authorization. Both parties shall sign the Work Order Authorization before commencement of work. Under emergency conditions, the Work Order Authorization may be faxed. Both parties shall sign the faxed Work Order Authorization before work begins. An original signed Work Order Authorization shall be completed and returned to the originating party within ten (10) working days.
2. Agencies may request services from ODOT on an as-needed basis for work performed on city or county owned and maintained streets or roads and city or county right of way. Service requests shall be a written request in the form of a Work Order Authorization, as shown on Exhibit A. The Work Order Authorization may be signed by the Agencies Public Works Director, Street Foreman, or their approved designee. Each Work Order Authorization shall be issued pursuant to this Agreement and the provisions of this Agreement shall be incorporated into each Work Order Authorization. Both parties shall sign the Work Order Authorization before commencement of work. Under emergency conditions, the Work Order Authorization may be faxed. Both

parties shall sign the faxed Work Order Authorization before work begins. An original signed Work Order Authorization shall be completed and returned to the originating party within ten (10) working days. Upon execution of this Agreement, Agencies shall provide the names and titles of the individuals authorized to sign the Work Order Authorizations to ODOT on the signature page attached to this Agreement.

3. The User shall provide instructions to the Provider's employees concerning work to be performed under the Work Order, and the Provider shall direct and supervise its employees who are assigned to assist the User.

REIMBURSEMENT INSTRUCTIONS

1. Provider shall submit an estimate for specific services, use of materials, or rental of equipment to the User at the request of the User. Provider shall maintain an accurate cost accounting system, track expenditures and provide monthly statements to User for actual costs incurred for work performed under this Agreement. Provider shall quarterly total all costs due based on the monthly statements of accounts sent to User and submit an invoice to User for payment within 45 days of receipt of the invoice. User shall reimburse Provider for materials, equipment and services based on invoice plus administrative fee for materials and supplies and the Provider's rates used for its internal financial management of personnel and equipment. User may replace materials or supplies with a like quantity and amount, as determined by Provider. If User elects to replace said materials, replacement shall be made within 45 days of the invoice date.
2. Billings to ODOT shall be submitted to ODOT's Region 1 Operations/Maintenance Manager at 123 NW Flanders St., Portland, OR 97204. Billings to Agencies shall be submitted to the contact person and address provided on the individual Agency signature page.
3. Under no condition shall ODOT's total obligation for payments exceed \$20,000,000 during the term of this Agreement.
4. Under no condition shall an individual Agency's total obligation for payments exceed \$500,000 during the term of this Agreement unless the signature page for the specific Agency identifies a different annual maximum amount.

EXPENDITURE AUTHORIZATION

1. All Parties certify, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within their current appropriation or limitation of their current biennial budget. No Party shall be indebted or liable for any obligation created by this Agreement in excess of the debt limitation as stated in Article XI, Section 7, of the Oregon Constitution. No Party shall assume any debts of the other Parties in violation of Article XI, Section 8, of the Oregon Constitution.

2. No Party shall be liable for any expenditure under this Agreement without proper appropriation pursuant to ORS Chapter 291 and ORS Chapter 294 respectively.

EQUIPMENT AND SERVICES

1. Each Party shall make available to the other Party vehicles, equipment, machinery, employees, related items and services in the manner and on the terms and conditions provided herein.
2. Services and equipment shall be provided upon reasonable request at mutually convenient times and locations. Each Party retains the right to refuse to honor a request if the services or equipment are needed for other purposes, if providing the equipment would be unduly inconvenient or if for any other reason the Party determines in good faith that it is not in its best interest to provide a particular item or service at the requested time. It is up to the discretion of the Provider as to whether an operator shall be provided with the equipment.
3. The User shall take proper precaution in its operation, storage, and maintenance of the Provider's equipment. Equipment shall be used only for its intended purpose. User shall permit the equipment to be used only by properly trained and supervised operators and shall be responsible for equipment repairs necessitated by misuse or negligent operation. User shall perform and document required written maintenance checks prior to and after use and shall provide routine daily maintenance of equipment during the period in which the equipment is in User's possession. User shall not, however, be responsible for scheduled maintenance or repairs other than repairs necessitated by misuse or negligent operation. User shall be responsible for damage to rented equipment considered beyond normal wear and tear, including repairs necessitated by misuse or negligent operation; however, shall not be responsible for scheduled maintenance and related normal repairs
4. If a piece of equipment requires repair while in use, a Provider mechanic and a User mechanic shall assess the problem and, in consultation with each other, determine which party is responsible for repair. In the event an agreement cannot be reached, ODOT's appropriate District Manager, or designee, and the other Party's authorized representative shall determine the responsible party.
5. The Provider shall endeavor to provide equipment in good working order and to inform User of any information necessary for the proper operation of the equipment. The equipment, however, is provided "as is", with no representations or warranties as to its fitness for a particular purpose. User shall be solely responsible for selecting the proper equipment for its needs and inspecting equipment prior to use. It is acknowledged by the Parties that the Provider is not in the business of selling, leasing, renting, or otherwise providing equipment to others and that the parties are acting only for their mutual convenience and efficiency.

6. The Parties shall provide equipment storage space to each other, at no charge, upon rental request when mutually convenient. It is recognized that such storage is for the benefit of the party requesting it. The Party storing the equipment shall be responsible only for providing a reasonably safe and secure area.
7. Service and usage times, established for the purpose of record keeping and rental charges, shall be defined as "hours used on the job". In the event the equipment being used does not have an hour meter, the User shall document the number of hours used performing an activity.
8. The Parties shall use their individual internal rental rates for labor and equipment. These rates may be adjusted only once per State fiscal year.
9. The Parties shall maintain accurate and up-to-date records of all rentals of equipment and operators. Said records will be kept available for inspection by representatives of each Party for a period of three years following termination of this Agreement.
10. The Parties shall furnish fuel, maintenance, and insurance for their equipment; however, fuel for vehicles and equipment shall be provided by the User during the period in which the equipment or vehicle is in the User's possession. Equipment shall be returned to the Provider with a like amount of fuel as when it was furnished to the User.

GENERAL PROVISIONS

1. The Parties hereby grant the other Parties authority to enter onto their right-of-way for the purpose of performing the maintenance services as stated on the Work Order.
2. The Parties shall only assign personnel to work on the other's right-of-way that have similar job experience on public right-of-way.
3. The Parties acknowledge and agree that each of the other Parties, the Oregon Secretary of State's office, and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of each Party that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts. The Parties shall retain and keep all files and records for a minimum of three years following termination of the Agreement.
4. All Parties 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, all Parties expressly agree 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.

5. Each Party represents that this Agreement is signed by personnel who have been authorized to do so by that Party.
6. Provider personnel assigned to assist User shall not be considered employees of User. Each Party shall be responsible for the following items in regard to their own employees:
 - a) Payment of all wages and benefits that its employees are entitled to receive through their employment including, but not limited to, vacation, holiday and sick leave; other leaves with pay; medical, dental, life, and accident insurance; other insurance coverage; overtime; Social Security; Workers' Compensation; unemployment compensation, and retirement benefits.
 - b) Withholding Social Security, federal and state taxes, and other regular deductions from wages paid to employees.
 - c) Administration of applicable civil service statutes and rules, classification and compensation plans, collective bargaining agreements, and other laws and agreement governing personnel relations with employees.
7. The Parties to this Agreement are of equal authority. Each Party acts independently in the performance of its obligations and functions under this Agreement, and no Party shall be considered the agent of another Party.
8. To the extent permitted by Article XI, Section 7 and Section 10 of the Oregon Constitution and by the Oregon Tort Claims Act, each Party shall indemnify each other Party against liability for damage to life or property arising from the indemnifying Party's own activities under this Agreement, provided that a Party will not be required to indemnify the other Party for any such liability arising out of the wrongful acts of employees or agents of that other Party.
9. Notwithstanding the foregoing defense obligations under paragraph 8 above, no Party nor any attorney engaged by any Party(s) shall defend any claim in the name of the any Party(s) or any agency/department/division of such other Party(s), nor purport to act as legal representative of the any Party(s) or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of any such other Party(s). Each Party may, at anytime at its election assume its own defense and settlement in the event that it determines that the other Party(s) is/are prohibited from defending it, or other Party(s) is/are not adequately defending its interests, or that an important governmental principle is at issue or that it is in the best interests of the Party(s) to do so. Each Party reserves all rights to pursue any claims it may have against the other Parties if it elects to assume its own defense.

10. All employers under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers, unless such employers are exempt under ORS 656.126. All employers shall ensure that each of its contractors complies with these requirements.
11. Any Party may terminate its participation by providing at least thirty (30) days written notice to the other Parties. Any amounts due and owing by a terminating Party shall be paid within thirty (30) days of termination. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
12. The Provider shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from the User.
13. Nothing herein shall be deemed to restrict authority of any of the Parties to enter into separate Agreements governing the terms and conditions for providing equipment or services on terms different than specified herein.
14. No Party to this Agreement shall be indebted or liable for an obligation created by this Agreement in excess of the debt limitation as stated in Article XI, Section 10, of the Oregon Constitution.
15. This Agreement and attached exhibit 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 any Party unless in writing and signed by all 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 ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.
16. 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.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year hereinafter written.

Agreement No. 20656
Agencies/ODOT

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

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

APPROVAL RECOMMENDED:

By *Rob. A. Brown*
State Highway Maintenance Engineer

Date 4/11/06

By *Jac. Teal*
Region 1 Manager

Date 3/30/06

STATE OF OREGON, by and through its
Department of Transportation

By *L.M. Fawcett*
Deputy Director, Highways

Date 17 APR 06

**APPROVED AS TO FORM AND AS AN
AGREEMENT TO AGREE:**

By *Debra K. W. ...*
Assistant Attorney General

Date 4/6/06

AMENDMENT NUMBER 01
ODOT FLEXIBLE SERVICE AGREEMENT
Intergovernmental Agreement for Equipment and Services with
The Oregon Department of Transportation

The **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "ODOT," and the cities and counties which have signed on to this Agreement, hereinafter referred to collectively as "Agencies," entered into an Agreement on April 17, 2006. Said Agreement covers procedures for sharing road and highway services, equipment and materials and to define legal relationships and responsibilities for any services or equipment sharing between ODOT and any of the Agencies.

It has now been determined by ODOT and Agencies that the Agreement referenced above shall be amended to extend the term of the Agreement, correct and update standard language, update contact information and update Exhibit A. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

ODOT Flexible Services Maintenance Agreement Signature Page shall be deleted in its entirety and replaced with the attached Revised ODOT Flexible Services Maintenance Agreement Signature Page. All references to "ODOT Flexible Services Maintenance Agreement Signature Page" shall hereinafter be referred to as "Revised ODOT Flexible Services Maintenance Agreement Signature Page."

Exhibit A, Work Order Authorization, shall be deleted in its entirety and replaced with the attached Revised Exhibit A, Work Order Authorization. All references to "Exhibit A, Work Order Authorization" shall hereinafter be referred to as "Revised Exhibit A, Work Order Authorization."

TERMS OF AGREEMENT, Paragraph 5, Page 3, which reads:

5. The term of this Agreement shall begin upon signature by ODOT and the first Party to execute said Agreement and shall be in effect for a period of five (5) years. The Agreement may be extended at that time by mutual consent of all parties in the form of an amendment to this Agreement.

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

5. a. The term of this Agreement shall begin upon the signature by ODOT and first Party to execute this Agreement and shall terminate April 17, 2021.
 - b. Amendment No. 1 extends this Agreement for another ten (10) years, but continued participation after April 17, 2011 by an individual Party will be viewed as

terminated unless the Party has signed Amendment No. 1. No activity after April 17, 2011 shall be considered as billable under this Agreement without a Party's execution of this Amendment 1. After April 17, 2011, the Agreement may still be extended by mutual consent of the Parties by signing Amendment No. 1, at any time during the term established by Amendment No. 1. Any Party's current Equipment Sharing Catalogue already on file for this Agreement shall remain active if the Party signs Amendment No. 1.

TERMS OF AGREEMENT, Paragraph 6, Page 3, which reads:

6. This Agreement may be modified by mutual consent of all Parties and upon execution of amendments to this Agreement stating said modifications. If the total cost of any Work Order under this Agreement exceeds \$100,000, the Department of Justice must review and approve any amendments and/or Work Orders prior to performance of any work. At no time shall total cost under this Agreement for services provided to ODOT (including all Work Orders) exceed a total amount of \$4,000,000 per calendar year for an Agreement total of \$20,000,000 without first obtaining a fully executed amendment to this Agreement.

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

6. This Agreement may be modified by mutual consent of all Parties and upon execution of amendments to this Agreement stating said modifications. If the total cost of any Work Order under this Agreement exceeds \$150,000, the Department of Justice must review and approve any amendments and/or Work Orders prior to performance of any work. At no time shall total cost under this Agreement for services provided to ODOT (including all Work Orders) exceed a total amount of \$4,000,000 per calendar year for an Agreement total of \$20,000,000 without first obtaining a fully executed amendment to this Agreement.

SCOPE OF WORK, Paragraph 1, Page 3, which reads:

1. ODOT's District Managers, or their approved designees, may request services from Agencies on an as-needed basis for work performed on ODOT-owned and maintained highways and highway right of way. Service requests shall be a written request in the form of a Work Order Authorization, attached hereto as Exhibit A and made a part of this Agreement. The Work Order Authorization may be signed by ODOT's District Manager, or their approved designee. Each Work Order Authorization shall be issued pursuant to this Agreement and the provisions of this Agreement shall be incorporated into each Work Order Authorization. Both parties shall sign the Work Order Authorization before commencement of work. Under emergency conditions, the Work Order Authorization may be faxed. Both parties shall sign the faxed Work Order Authorization before work begins. An original signed

Work Order Authorization shall be completed and returned to the originating party within ten (10) working days.

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

1. ODOT's District Managers, or their approved designees, may request services from Agencies on an as-needed basis for work performed on ODOT-owned and maintained highways and highway right of way. Service requests shall be a written request in the form of a Work Order Authorization, attached hereto as Revised Exhibit A Work Order Authorization and made a part of this Agreement. The Work Order Authorization may be signed by ODOT's District Manager, or their approved designee. Each Work Order Authorization shall be issued pursuant to this Agreement and the provisions of this Agreement shall be incorporated into each Work Order Authorization. Both parties shall sign the Work Order Authorization before commencement of work. Executed Work Order Authorizations shall be sent by the originating party to Ted Miller, ODOT's Region 1 Operations Manager, 123 NW Flanders Street, Portland, OR 97209, Telephone: (503)731-8559;email: Theodore.C.Miller@odot.state.or.us or assigned designee upon individual's absence.

SCOPE OF WORK, Paragraph 2, Page 3, which reads:

2. Agencies may request services from ODOT on an as-needed basis for work performed on city or county owned and maintained streets or roads and city or county right of way. Service requests shall be a written request in the form of a Work Order Authorization, as shown on Exhibit A. The Work Order Authorization may be signed by the Agencies Public Works Director, Street Foreman, or their approved designee. Each Work Order Authorization shall be issued pursuant to this Agreement and the provisions of this Agreement shall be incorporated into each Work Order Authorization. Both parties shall sign the Work Order Authorization before commencement of work. Under emergency conditions, the Work Order Authorization may be faxed. Both parties shall sign the faxed Work Order Authorization before work begins. An original signed Work Order Authorization shall be completed and returned to the originating party within ten (10) working days. Upon execution of this Agreement, Agencies shall provide the names and titles of the individuals authorized to sign the Work Order Authorizations to ODOT on the signature page attached to this Agreement.

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

2. Agencies may request services from ODOT on an as-needed basis for work performed on city or county owned and maintained streets or roads and city or county right of way. Service requests shall be a written request in the form of a Work Order Authorization, as shown on the attached Revised Exhibit A Work Order

Authorization. The Work Order Authorization may be signed by the Agencies Public Works Director, Street Foreman, or their approved designee. Each Work Order Authorization shall be issued pursuant to this Agreement and the provisions of this Agreement shall be incorporated into each Work Order Authorization. Both parties shall sign the Work Order Authorization before commencement of work. Upon execution of this Agreement, Agencies shall provide the names and titles of the individuals authorized to sign the Work Order Authorizations to ODOT on the signature page attached to this Agreement. Executed Work Order Authorizations shall be sent by the originating party sent to Ted Miller, ODOT's Region 1 Operations Manager, 123 NW Flanders Street, Portland, OR 97209, Telephone: (503)731-8559; email: Theodore.C.Miller@odot.state.or.us or assigned designee upon individual's absence.

REIMBURSEMENT INSTRUCTIONS, Paragraph 2, Page 4, which reads:

2. Billings to ODOT shall be submitted to ODOT's Region 1 Operations/Maintenance Manager at 123 NW Flanders St., Portland, OR 97204. Billings to Agencies shall be submitted to the contact person and address provided on the individual Agency signature page.

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

2. Billings to ODOT shall be submitted to Ted Miller, ODOT's Region 1 Operations Manager, 123 NW Flanders Street, Portland, OR 97209, Telephone: (503) 731-8559; email: Theodore.C.Miller@odot.state.or.us or assigned designee upon individual's absence. Billings to Agencies shall be submitted to the contact person and address provided on the individual Agency signature page.

EXPENDITURE AUTHORIZATION, Paragraph 1, Page 4, which reads:

1. All Parties certify, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within their current appropriation or limitation of their current biennial budget. No Party shall be indebted or liable for any obligation created by this Agreement in excess of the debt limitation as stated in Article XI, Section 7, of the Oregon Constitution. No Party shall assume any debts of the other Parties in violation of Article XI, Section 8, of the Oregon Constitution.

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

1. Agencies certify, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within their current appropriation or limitation of the current biennial budget. No Party shall be indebted or liable for any obligation created by this Agreement in excess of the

debt limitation as stated in Article XI, Section 7, of the Oregon Constitution. Agencies shall not be indebted or liable for any obligation created by this Agreement in excess of the debt limitation of Article XI, Section 10, of the Oregon Constitution.

EQUIPMENT AND SERVICES, Paragraph 9, Page 6, which reads:

9. The Parties shall maintain accurate and up-to-date records of all rentals of equipment and operators. Said records will be kept available for inspection by representatives of each Party for a period of three years following termination of this Agreement.

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

9. All Parties shall maintain accurate and up-to-date records of all rentals of equipment and operators. Said records will be kept available for inspection by representatives of each Party for a period of six (6) years following termination of the Agreement.

Insert new EQUIPMENT AND SERVICES, Paragraph 11, to read as follows:

11. The user is responsible for any damage to rented equipment reasonably considered to be beyond normal wear and tear.

GENERAL PROVISIONS, Paragraph 3, Page 6, which reads:

3. The Parties acknowledge and agree that each of the other Parties, the Oregon Secretary of State's office, and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of each Party that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts. The Parties shall retain and keep all files and records for a minimum of three years following termination of the Agreement.

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

3. The Agencies acknowledge and agree that ODOT, the Oregon Secretary of State's office and the federal government and their duly authorized representatives shall have access to the books, documents, papers, and records of the Agencies 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 ODOT.

GENERAL PROVISIONS, Paragraphs 8 and 9, shall be deleted their entirety and shall be identified as RESERVED.

GENERAL PROVISIONS, Paragraph 10, Page 8, which reads:

10. All employers under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers, unless such employers are exempt under ORS 656.126. All employers shall ensure that each of its contractors complies with these requirements.

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

10. All employers, including the Agencies, 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. The Agencies shall ensure that each of its contractors complies with these requirements.

Insert new GENERAL PROVISIONS, Paragraphs 17 through 22, to read as follows:

17. 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 ODOT or any other Party or Parties 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.

18. With respect to a Third Party Claim for which ODOT is jointly liable with any other Party or Parties (or would be if joined in the Third Party Claim), ODOT 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 the Agency in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of the Agency 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 ODOT on the one hand and of the Agency 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. ODOT'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 the ODOT had sole liability in the proceeding.

19. With respect to a Third Party Claim for which any other Party or Parties is jointly liable with ODOT (or would be if joined in the Third Party Claim), the Party or Parties 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 the ODOT in such proportion as is appropriate to reflect the relative fault of the Party or Parties on the one hand and of ODOT 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 the Party or Parties on the one hand and of ODOT 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. The Agency'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.
20. 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.
21. The Agencies shall require any contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agencies' contractor or any of the officers, agents, employees or subcontractors of the contractor("Claims"). It is the specific intention of the Parties that ODOT shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of ODOT, be indemnified by the contractor and subcontractor from and against any and all Claims.
22. Any such indemnification shall also provide that neither the Agencies' contractor and subcontractor nor any attorney engaged by Agencies' contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agencies' contractor is prohibited from

Agencies/ODOT
Agreement No. 20,656-01

defending the State of Oregon, or that Agencies' contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agencies' contractor if the State of Oregon elects to assume its own defense.

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 Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission, or in a line item in the biennial budget approved by the Director. The Director may also delegate to other Administrators the authority to execute intergovernmental agreements over \$75,000 for specific programs such as transportation safety, growth management and public transit.

APPROVAL RECOMMENDED

By [Signature]
State Highway Maintenance Engineer

Date 4/12/11

By [Signature]
Region 1 Manager

Date 4/17/11

By [Signature]
Region 1 Maintenance and Operations Manager

Date 4-7-11

STATE OF OREGON, by and through
its Department of Transportation

By [Signature]
Highway Division Administrator

Date 4/19/11

**APPROVED AS TO LEGAL
SUFFICIENCY**

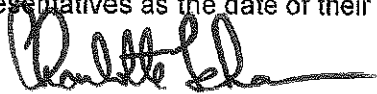
By [Signature]
Assistant Attorney General

Date 4/14/11


REVISED

ODOT Flexible Services Maintenance Agreement Signature Page

IN THE WITNESS WHEREOF, the Public Entity CLACKAMAS COUNTY
(Party) has caused THIS AGREEMENT to be executed by its duly authorized
representatives as the date of their signatures below:

 12-13-12 Chair B.I.
Signature of Officer Date Officer's title

Signature of Officer Date Officer's title

 11-29-12 Legal Counsel Senior
Signature of Counsel Date Counsel's title

Name and Title of the Agency's Authorized Signer for Work Orders:
Samuel Irving, Jr. Transportation Operations Manager

Address: 902 Abernethy Road, Oregon City, OR 97045

Phone: 503-650-3467 **Fax:** 503-650-3992

E-mail: sirving@co.clackamas.or.us

Name, Title, Address, Phone and email of additional contact for coordination of this Agreement and/or Work Order Authorizations:

Agency's maximum annual total obligation, if different than established in Reimbursement Instructions, Paragraph 4, shall be \$ 500,000.

Send the original Agreement Signature Page (this page), and the Equipment Sharing Catalog (See: page 2, revised paragraph 5) or Updates to:

Theodore C. Miller, ODOT Region 1 Operations/Maintenance Manager
ODOT Region 1, 123 NW Flanders Street, Portland, OR 97209,
Telephone: (503)731-8559, Email: Theodore.C.Miller@odot.state.or.us

**REVISED EXHIBIT A
WORK ORDER AUTHORIZATION**

- ODOT Requesting to Perform Work
- Requesting ODOT to Perform Work

Agreement No. 20,656 Work Order No.

Under the terms of Agreement No. 20,656 between the Oregon Department of Transportation (ODOT) and _____, which is hereby incorporated by reference, the following Project work is authorized:

Project Name: Flexible Maintenance Services

Total Authorized Amt. this Work Order \$ _____ Expenditure Acct. No.: _____
 Work Order Start Date: _____ Work Order End Date: _____

Effective Date: No Work shall occur until signed by all parties.	Totals
Expenditure Account No.	No.
A. Amount authorized for this Work Order	\$
B. Amount authorized on prior Work Orders	\$
C. Total Amount authorized for all Work Orders (A+B=C)	\$
D. Agreement Not-to-Exceed amount	\$
E. Amount remaining on Agreement (D-C=E)	\$

SCOPE OF WORK (tasks, hours per task, estimated cost per task, and staff assigned to do the work and their hourly rate. Specify the Party responsible for providing materials and the Party responsible for material costs associated with the Project or services). Work necessary to complete Project or services as described in original Agreement scope of work: (Indicate which services are to be used by checking appropriate box(es)).

Maintenance Services and Equipment Rental: *(List work shown below)*

- Patching (100-102, 107-108) Shouldering (111-112, 119) Ditching (120) Sweeping (116-117)
 Vegetation Control (131) Striping (140-141, 147) Winter Maintenance (170-171, 179-181, 192)
 Brushing (132-133) Signing (142-143) Landscaping (136) Drainage (121) Guardrail Repair (151) Bridge Repair (163, 169) Hazardous Material Spills (149) Equipment Rental (specify equipment)

General Description of Project: _____

This Work Order Authorization 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 Work Order Authorization so executed shall constitute an original.

--SIGNATURE PAGE TO FOLLOW--

ACCEPTANCE OF TERMS AND ACTION APPROVED BY ODOT: I acknowledge and certify that the work in this Work order authorization is within the scope of work of the original Agreement.

ODOT's 2_ District Manager Date

ACCEPTANCE OF TERMS BY LOCAL AGENCY:

Name / Title Date

APPROVED AS TO LEGAL SUFFICIENCY: If work exceeds \$150,000, signature required

Assistant Attorney General Date

cc: ODOT R1 Maintenance District # 2_ Manager
Ted Miller, ODOT's Region 1 Operations/Maintenance Manager, 123 N.W. Flanders St., Portland, OR 97209
Support Service, Procurement Office (OPO) for General Files

<p>EXHIBIT A</p> <p>Work Order – Local Agency Rev. 04-07-2011</p>
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AMENDMENT NUMBER 02
ODOT FLEXIBLE SERVICES AGREEMENT
Intergovernmental Agreement for Equipment and Services with the Oregon
Department of Transportation

The **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "ODOT," and the cities and counties which have signed on to this Agreement, hereinafter referred to collectively as "Agencies," entered into an Agreement on April 17, 2006 and Amendment Number 1 on April 19, 2011. Said Agreement covers procedures for sharing road and highway services, equipment and materials and to define legal relationships and responsibilities for any services or equipment sharing between ODOT and any of the Agencies.

It has now been determined by ODOT and Agencies that the Agreement referenced above shall be amended to extend the term of the Agreement and add ADA provisions. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

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.**

TERMS OF AGREEMENT, Paragraph 5, Page 3 which reads:

a. The term of this Agreement shall begin upon the signature by ODOT and first Party to execute this Agreement and shall terminate April 17, 2021.

b. Amendment No. 1 extends this Agreement for another ten (10) years, but continued participation after April 17, 2011 by an individual Party will be viewed as terminated unless the Party has signed Amendment No. 1. No activity after April 17, 2011 shall be considered as billable under this Agreement without a Party's execution of this Amendment 1. After April 17, 2011, the Agreement may still be extended by mutual consent of the Parties by signing Amendment No. 1, at any time during the term established by Amendment No. 1. Any Party's current Equipment Sharing Catalogue already on file for this Agreement shall remain active if the Party signs Amendment No. 1.

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

a. The term of this Agreement shall begin upon the signature by ODOT and first Party to execute this Agreement and shall terminate April 17, 2031.

b. Amendment No. 2 extends this Agreement for another ten (10) years, but continued participation after April 17, 2021 by an individual Party will be viewed as terminated unless the Party has signed Amendment No. 2. No activity after April 17, 2021 shall be

considered billable under this Agreement without a Party's execution of this Amendment 2. After April 17, 2021, the Agreement may still be extended by mutual consent of the Parties by signing Amendment No. 2 at any time during the term established by Amendment No. 2. Any Party's current Equipment Sharing Catalogue already on file for this Agreement shall remain active if the Party signs Amendment No. 2.

Insert new EQUIPMENT AND SERVICES Paragraph 11, page 6 to read as follows:

11. Americans with Disabilities Act Compliance

- a. Each Party shall ensure that the services it provides under this Agreement ("Services") comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"). The Parties shall use ODOT standards to assess whether the Services comply with the ADA, including, but not limited to, ODOT Maintenance Operational Notices MG 100-107 ("MG 100-107"), MG144-03 ("MG144-03"), and MG Activities-2 ("MG Activities-2").
- b. The scope of the Services performed under this Agreement is limited to maintenance activities and shall not include alteration, upgrade, or construction of sidewalks or curb ramps, or installation of pedestrian activated signals, except as otherwise expressly agreed by the Parties pursuant to Subsections d.i or d.ii below.
- c. When an Agency is providing Services to ODOT under this Agreement, that Agency shall:
 - i. Promptly notify ODOT of completion of Services and allow ODOT to inspect completed Services located on or along a state highway for ADA compliance, prior to acceptance of such Services and release of any Agency contractor, and
 - ii. Ensure that temporary pedestrian routes are provided through or around any work zone as provided in MG Activities-2 and Chapters 1 and 5 of the Oregon Temporary Traffic Control Handbook 2011 ("OTTCH"). For Services included in MG Activities-2 "Situations" Paragraph 2, the Agency shall provide ODOT with adequate information to allow ODOT to provide advance notice of any temporary pedestrian route to the public, people with disabilities, and disability organizations. The Parties acknowledge that providing advance notice may not be possible in some such circumstances, including but not limited to, when Services are provided on an urgent or emergency basis, or where the nature and location of the Services are unknown until the beginning of the workers' shift.
- d. When ODOT is providing Services to an Agency under this Agreement:
 - i. Prior to the Agency's issuance of a Work Order Authorization, the Agency shall exercise reasonable efforts to identify if the Services may include an

- alteration under the ADA as set forth in MG100-107 (“Alteration”) and thereby trigger additional modifications to the facility in order to comply with the ADA (“ADA Modifications”). If the Agency determines that the Services may include an Alteration, the Agency shall not issue the Work Order Authorization until:
- A. The Agency has completed the ADA Modifications, or
 - B. After obtaining ODOT’s concurrence, ODOT and the Agency include the ADA Modifications in the Services to be provided by ODOT under the Work Order Authorization.
- ii. After the Agency’s issuance of a Work Order Authorization under this Agreement, if ODOT identifies that any Services to be performed by ODOT under the Work Order Authorization in a location under the Agency’s jurisdiction may include an Alteration, ODOT shall immediately notify the Agency. After such notification is provided:
- A. If the Agency decides to proceed with the ADA Modifications, ODOT is not obligated to perform the Services until: (a) ODOT and the Agency have amended the Work Order Authorization to include the ADA Modifications in the scope of the Services, or (b) the Agency has completed the ADA Modifications.
 - B. If the Agency decides not to proceed with the ADA Modifications, (a) ODOT may immediately stop work and cancel the Work Order Authorization, (b) ODOT and the Agency may amend the Work Order to remove the Services that may include the Alteration, or (c) ODOT may decide, at its sole discretion, to continue to provide the Services in the original Work Order.
 - C. Notwithstanding General Provisions Paragraphs 18 and 19, if the Agency decides not to proceed with the ADA Modifications, and if ODOT chooses to continue to provide the Services that may include an Alteration, the AGENCY SHALL INDEMNIFY AND DEFEND ODOT AND ITS OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER ARISING OUT OF, OR RELATING TO THE AGENCY’S DECISION NOT TO PROCEED WITH THE ADA MODIFICATIONS AND ODOT’S PERFORMANCE OF THE SERVICES WITHOUT INCLUSION OF THE ADA MODIFICATIONS.
- iii. Any ADA Modifications performed by ODOT pursuant to Subsections d.i or d.ii above shall follow ODOT’s standards and processes for design, alteration, upgrade, or construction of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design

- Exception process, ODOT Standard Drawings, ODOT Construction Specifications, applicable ODOT Maintenance Operational Notices, and providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form.
- iv. The Agency acknowledges that it has sole responsibility for determining whether the Services may include an Alteration or may trigger other ADA requirements, and agrees to make its own independent assessment regarding compliance with the ADA.
 - v. The Agency reaffirms its commitment to provide an accessible ADA-compliant transportation system and ensure that any feature or part of a feature under Agency's jurisdiction that was addressed as part of the Services ("Feature"), including ADA Modifications, is maintained in compliance with the ADA for the useful life of the Feature. This includes, but is not limited to, the Agency ensuring that:
 - A. Pedestrian access is maintained as required by the ADA,
 - B. Any complaints received by the Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - C. The Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
 - D. Any future work on the Feature during the useful life of the Feature complies with the ADA requirements in effect at the time the future work is performed, and
 - E. Applicable permitting and regulatory actions are consistent with ADA requirements.
 - vi. Maintenance obligations in Subsection d.v above shall survive termination of this Agreement.
 - e. ODOT Maintenance Operational Notices MG 100-107, MG144-03, MG Activities-2, and the OTTCH are incorporated herein by reference.
 - i. The OTTCH is available at <http://www.oregon.gov/ODOT/Engineering/Pages/OTTCH.aspx> Copies of MG 100-107, MG144-03, and MG Activities-2 are available for inspection at the ODOT District 2C Office located at 999 NW Frontage Road, Suite 250, Troutdale, OR 97060, or ODOT District 2B Office located at 9200 SE

Lawnfield Road, Clackamas, OR 97015, during regular business hours, or at the following locations online:

- MG 100-107:
https://www.oregon.gov/ODOT/Engineering/DOCS_ADA/MG100-107_w-diagram.pdf
- MG 144-03:
https://www.oregon.gov/ODOT/Engineering/DOCS_ADA/MG144-03.pdf
- MG Activities-2:
https://www.oregon.gov/ODOT/Engineering/Doc_TechnicalGuidance/MG-Activities-2.pdf

- ii. All references to MG 100-107, MG144-03, and MG Activities-2 in this Section refer to the version of the policy in place at the time the Services are performed.
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. Agency 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.

Agencies/State
Agreement No. 20656-2

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.

APPROVAL RECOMMENDED

By Lucinda Moore
State Highway Maintenance Engineer

Date 3/29/2021

By [Signature]
Region 1 Manager

Date 3-14-21

By Ted Miller 3/10/2021
Region 1 Maintenance and Operations
Manager

Date 3/10/2021

State Contact:

Ted Miller
Region 1 Maintenance & Operations
Manager
123 NW Flanders Street
Portland, OR 97209
503-731-8559
Theodore.c.miller@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By Karen Rowe
Delivery and Operations Division
Administrator

Date 03/30/2021

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Janet Borth
Assistant Attorney General

Date: via email dated March 3, 2021