



**DAN JOHNSON**  
DIRECTOR

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

September 12, 2024

BCC Agenda Date/Item: \_\_\_\_\_

Board of County Commissioners  
Clackamas County

**Approval to Quitclaim a Permanent Easement for Road Purposes to Oregon Department of Transportation. No fiscal impact. No County General Funds are involved.**

<b>Previous Board Action/Review</b>	9-10-24: Request for Consent 4-4-19: Signing of Intergovernmental Agreement for Right of Way services between the State of Oregon and the County of Clackamas for the CRC Mobility Improvements project.		
<b>Performance Clackamas</b>	Building a strong infrastructure.		
<b>Counsel Review</b>	Yes – HH	<b>Procurement Review</b>	No
<b>Contact Person</b>	Carol Hager	<b>Contact Phone</b>	503.742.4674

**EXECUTIVE SUMMARY:** Clackamas County Development Agency began construction of the CRC Mobility Improvements Project (the Project) in December of 2019 and completed construction in December 2022. Permanent easements for the project were acquired in the name of Clackamas County.

Per the Right of Way Services Agreement signed with the Oregon Department of Transportation in April 2019 “certain portions of SE 82<sup>nd</sup> Avenue and SE Sunnyside Road right of way will be acquired by Agency for relinquishment to STATE.” The attached materials illustrate +/- 574 sq ft portion of right of way being transferred from the County to the State of Oregon. This right of way currently contains portion of the onramp to I-205 which is controlled by the state. The attached Quitclaim deed completes the required transfer.

**RECOMMENDATION:** Staff respectfully recommends that the Board of County Commissioners approve the granting of a Quitclaim Deed from Clackamas County to the State of Oregon.

Respectfully submitted,

*Dan Johnson*

Dan Johnson, Director  
Dept of Transportation & Development

For Filing Use Only

Grantor: Clackamas County	State of Oregon
150 Beaver Creek Road	
Oregon City, OR 97045	
Grantee: State of Oregon	
Department of	
Transportation	
After Recording Return to:	
Clackamas County Engineering	
150 Beaver Creek Rd.	
Oregon City, OR 97045	
Until a change is requested, all	
taxes shall be sent to: No Change	
	Board Agenda No.:
Road Name: SE Sunnyside Road	Approval Date:

**QUITCLAIM of Property for Use as Permanent Right of Way for Road Purposes**

KNOW ALL PERSONS BY THESE PRESENTS, THAT, Clackamas County, a political subdivision of the State of Oregon, by and through its Elected Officials (Grantor), for value received, hereby releases and quitclaims to the State of Oregon, by and through its Department of Transportation, (Grantee), and Grantee’s heirs, successors and assigns, all of Grantor’s rights and interest to that certain property situated in Clackamas County, Oregon, and being more particularly described and depicted as Parcel 1 in Exhibits A and B attached hereto and by this reference made a part hereof.

The true consideration for this transfer is as set forth in that Right of Way Services Agreement for CRC Mobility Improvements, Misc. Contracts and Agreements No. 32561, fully executed on April 19, 2019.

Statutory Land Use Disclaimer: Before signing or accepting this instrument, the person transferring fee title should inquire about the person’s rights, if any, under ORS 195.300, 195.301 and 195.305 to 195.336 and Sections 5 to 11, Chapter 424, Oregon Laws 2007, Sections 2 to 9 and 17, Chapter 855, Oregon Laws 2009, and Sections 2 to 7, Chapter 8, Oregon Laws 2010. This instrument does not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify that the unit of land being transferred is a lawfully established lot or parcel, as defined in ORS 92.010 or 215.010, to verify the approved uses of the lot or parcel, to determine any limits on lawsuits against farming or forest practices, as defined in ORS 30.930, and to inquire about the rights of neighboring property owners, if any, under ORS 195.300, 195.301 and 195.305 to 195.336 and Sections 5 to 11, Chapter 424, Oregon Laws 2007, Sections 2 to 9 and 17, Chapter 855, Oregon Laws 2009, and Sections 2 to 7, Chapter 8, Oregon Laws 2010.

[Signatures and acknowledgement on following page]

In witness whereof, the above named Grantor has hereunto set Grantor's hand to this document on this \_\_\_\_\_ day of \_\_\_\_\_ 2024.

Clackamas County:

By: \_\_\_\_\_  
Tootie Smith, Chair  
Clackamas County Board of County Commissioners

STATE OF OREGON            )  
  ) ss.  
County of Clackamas        )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2024,  
by Tootie Smith as the Chair of the Clackamas County Board of County Commissioners on behalf of  
Clackamas County, Oregon.

\_\_\_\_\_  
Notary Public for State of Oregon

My Commission Expires: \_\_\_\_\_

**Acceptance**

State of Oregon, by and through its Department of Transportation:

By: \_\_\_\_\_  
Georgine Gleason, State Right of Way Manager

STATE OF OREGON            )  
  ) ss.  
County of Marion            )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2024,  
by Georgine Gleason, State Right of Way Manager on behalf of State of Oregon.

\_\_\_\_\_  
Notary Public for State of Oregon

My Commission Expires: \_\_\_\_\_

## EXHIBIT A

Clackamas Regional Center  
Mobility Improvement Project  
September 9, 2022

County Project No. DA-03

Page 1 of 2

### **PARCEL 1 (Permanent Right-Of-Way Easement For Road Purposes)**

A parcel of land, as shown on attached Exhibit "B", lying in the Southwest One-Quarter of the Southeast One-Quarter of Section 33, Township 1 South, Range 2 East, of the Willamette Meridian, Clackamas County, Oregon, and being a portion of a Permanent Right of Way Easement for Road Purposes recorded as Document No. 2020-081672, Clackamas County Deed Records, said parcel being that portion of said Document No. 2020-081672 lying easterly of the following described line;

Beginning at a point 58.08 feet left of Existing S.E. Sunnyside Road Centerline Station "SS" 16+87.23;

Thence southerly, in a straight line, to a point 120.34 feet left of Existing S.E. Sunnyside Road Centerline Station "SS" 16+88.40;

The stationing used to describe this parcel is based on the Existing Centerline of S.E. Sunnyside Road, being more particularly described as follows:

A roadway located in the Southeast One-Quarter of Section 33, Township 1 South, Range 2 East, of the Willamette Meridian in Clackamas County, Oregon, the centerline of which is more particularly described as follows:

Beginning at a 3 inch brass disk in monument well, set per Oregon State Highway Drawing No. 9B-18-14, at Existing S.E. Sunnyside Road Centerline Station "SS" 6+92.23, said monument also being shown as Station 10+116.512 meters (331+90.66 feet) on Post-Construction Record of Survey recorded as SN2005-164, Clackamas County Survey Records;

Thence S87°51'44"W, 1207.77 feet to Existing S.E. Sunnyside Road Centerline Station "SS" 19+00.00 and the terminus of this centerline, from which a 2-1/4 inch bronze disk at the One-Quarter Section Corner common to said Section 33 in Township 1 South, Range 2 East and Section 4 in Township 2 South, Range 2 East per U.S.B.T. Entry 2002-106, Clackamas County Survey Records bears S17°34'15"W, 312.39 feet.

This legal description, along with the Basis of Bearings thereof, is based on the Oregon Coordinate Reference System (OCRS) Portland Zone. The south line of the Southwest One-Quarter of said Section 33 was held to be S89°35'48"E per SN2018-216, Clackamas County Survey Records, as measured between the above-described One-Quarter Section Corner common to said Section 33 in Township 1 South, Range 2 East and Section 4 in Township 2 South, Range

EXHIBIT A CONTINUED – Page 2 of 2  
September 9, 2022

2 East per said U.S.B.T. Entry 2002-106 and the Section Corner common to said Sections 32 and 33 in Township 1 South, Range 2 East and Sections 4 and 5 in Township 2 South, Range 2 East per U.S.B.T. Entry 2001-011, Clackamas County Survey Records.

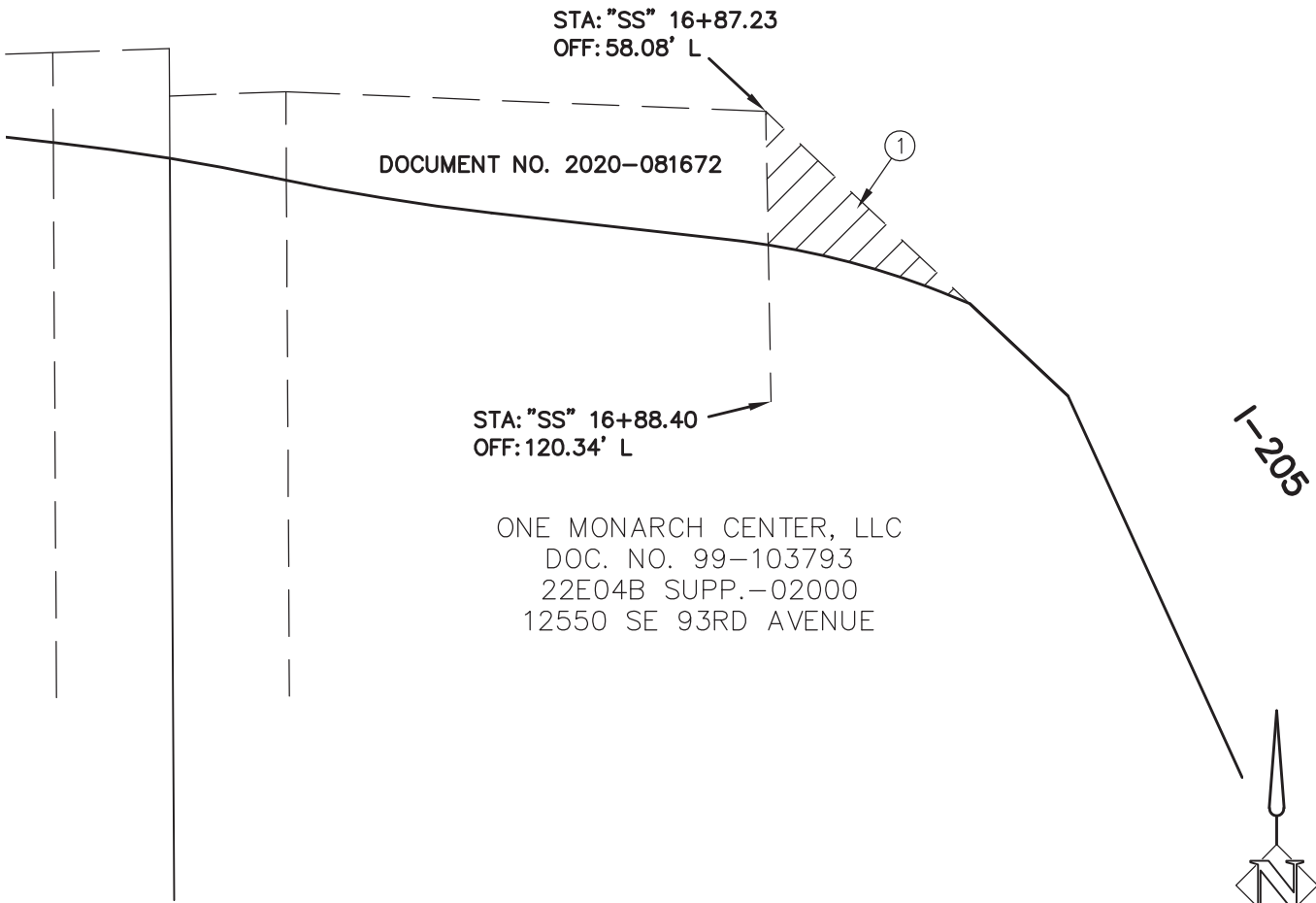
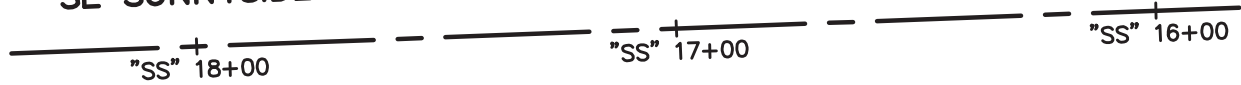
The parcel of land to which this description applies contains 574 square feet more or less.



RENEWS: 12/31/2023

# EXHIBIT "B"

SE SUNNYSIDE ROAD

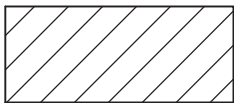


DOCUMENT NO. 2020-081672

STA: "SS" 16+88.40  
OFF: 120.34' L

ONE MONARCH CENTER, LLC  
DOC. NO. 99-103793  
22E04B SUPP.-02000  
12550 SE 93RD AVENUE

## LEGEND



① PERMANENT RIGHT-OF-WAY  
EASEMENT FOR ROAD PURPOSES  
± 574 SQ.FT.



SCALE  
1" = 40'



**Harper  
Houf Peterson  
Righellis Inc.**

ENGINEERS • PLANNERS  
LANDSCAPE ARCHITECTS • SURVEYORS

205 SE Spokane Street, Suite 200, Portland, OR 97202  
phone: 503.221.1131 www.hhpr.com fax: 503.221.1171

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SEE ATTACHED  
LEGAL DESCRIPTION

**INTERGOVERNMENTAL AGREEMENT  
FOR RIGHT OF WAY SERVICES  
CRC Mobility Improvements**

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and COUNTY OF CLACKAMAS, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 283.110, 366.572 and 366.576, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a Party to the agreement, its officers, or agents have the authority to perform.
2. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
3. That certain portions of SE 82<sup>nd</sup> Avenue and SE Sunnyside Road right of way will be acquired by Agency for relinquishment to STATE. The terms of this agreement shall pertain only to those rights of way acquired by Agency within the project limits that are to be relinquished to STATE. That certain portions of the project are under the jurisdiction and control of Agency and Agency may enter into an agreement for the acquisition of real property.

Highway 68, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).

4. This Agreement shall define roles and responsibilities of the Parties regarding the real property to be used as part of right of way for road, street or construction of public improvement. The scope and funding is further described in IGA Agreement number 32508. Hereinafter, all acts necessary to accomplish services in this Agreement shall be referred to as "Project."
5. As of this time there are no local public agencies (LPAs) certified to independently administer federal-aid projects for right of way services. Therefore, State is ultimately responsible for the certification and oversight of all right of way activities under this Agreement (except as provided under "Agency Obligations" for LPAs in State's certification program for consultant selection).

**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, to accomplish the objectives in Agreement No. 32508, State and Agency agree to perform certain right of way activities shown in Special Provisions - Exhibit A, attached hereto and by this reference made a part hereof. For the right of way services State performs on behalf of the Agency, under no conditions shall Agency's obligations exceed a maximum of \$8,000, including all expenses, unless agreed upon by both Parties.
2. The work shall begin on the date all required signatures are obtained and shall be completed no later than December 18, 2021, on which date this Agreement automatically terminates unless extended by a fully executed amendment.
3. The process to be followed by the Parties in carrying out this Agreement is set out in Exhibit A.
4. It is further agreed both Parties will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."

## **STATE OBLIGATIONS**

1. State shall perform the work described in Special Provisions - Exhibit A.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.
3. State shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
4. State's right of way contact person for this Project is David Mendelson, Right of Way Project Manager, 123 NW Flanders Street, Portland, OR 97209, 503-731-8451), or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact changes during the term of this Agreement.

## **AGENCY OBLIGATIONS**

1. Agency shall perform the work described in Special Provisions - Exhibit A.
2. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of current budget. Agency is willing and able to finance all, or its pro-rata share of all, costs and expenses incurred in the Project up to its maximum.

3. Agency's needed right of way services, as identified in Exhibit A, may be performed by qualified individuals from any of the following sources:
  - a. Agency staff,
  - b. State staff,
  - c. Staff of another local public agency, as described in ODOT's Right of Way Manual and approved by the State's Region Right of Way Office;
  - d. Consultants from State's Full Service Architectural and Engineering (A&E) Price Agreement 2 Tier Selection Process. Tier 2 procurements must be requisitioned through State's Local Agency Liaison (LAL) with solicitation process administered by State Procurement Office. Forms and procedures for Tier 2 process are located at: <http://www.oregon.gov/ODOT/CS/OPO/docs/fs/tier2guide.doc>;
  - e. \*Appraiser services procured by Agency from State's Qualified Appraiser List (on line at <http://www.oregon.gov/ODOT/HWY/ROW/Pages/index.aspx>);
  - f. \*Other right of way related services procured by Agency from any source of qualified contractors or consultants.

\* Selections may be based on price alone, price and qualifications, or qualifications alone followed by negotiation. **Federally funded procurements** by Agency for right of way services must be conducted under State's certification program for consultant selection and must comply with requirements in the [LPA A&E Requirements Guide](#) (and must use the State's standard [A&E Contract Template for LPAs](#) which may be modified to include State-approved provisions required by Agency). **State and local funded procurements** by Agency must be in conformance with applicable State rules and statutes for A&E "Related Services" (and Agency may use its own contract document).

4. If Agency intends to use Agency staff, staff of another local public agency, consultants (except for consultants on State's Qualified Appraiser List), or contractors to perform right of way services scheduled under this Agreement, Agency must receive prior written approval from State's Region Right of Way Office.
5. The LPA A&E Requirements Guide and A&E Contract Template referenced above under paragraph 3 are available on the following Internet page: [http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx#Local Public Agency \(LPA\) Consultant Templates and Guidance Docs](http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx#Local_Public_Agency_(LPA)_Consultant_Templates_and_Guidance_Docs).
6. Agency or its subcontractor will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."
7. Agency represents that this Agreement is signed by personnel authorized to do so on behalf of Agency.
8. Agency's right of way contact person for this Project is Sharan Hams-LaDuca Right of Way Program Manager, Clackamas County Department of Transportation, 150 Beaver Creek Road, Suite 325 Oregon City, Oregon 97045, 503-742-4675, [shamsladuca@co.clackamas.or.us](mailto:shamsladuca@co.clackamas.or.us), or assigned designee upon individual's absence.

Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## **PAYMENT FOR SERVICES AND EXPENDITURES:**

1. In consideration for the services performed by State (as identified in the attached Exhibit A), Agency agrees to pay or reimburse State a maximum amount of \$8,000. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to State in accordance with the current Oregon Department of Administrative Services' rates. Any expenditure beyond federal participation will be from, or reimbursed from, Agency funds. Payment in Agency and/or federal funds in any combination shall not exceed said maximum, unless agreed upon by both Parties.
2. State shall upon execution of this Agreement, forward to Agency either: 1) a request to sign an irrevocable limited power of attorney to access the Local Government Investment Pool account of the Agency, or 2) a letter of request for an advance deposit. Agency shall make any advance deposit to the State's Financial Services Branch, in an amount equal to the estimate of costs to be incurred by State for the Project. The preliminary estimate of costs is \$8,000. Additional deposits, if any, shall be made as needed upon request from State and acceptance by Agency. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete Project.
  - a. Agency agrees to pay or reimburse all salaries and payroll reserves of State employees working on Project, direct costs, costs of rental equipment used, and per-diem expenditures, plus 10 percent surcharge on salary costs to cover administrative costs of Right of Way Section.
  - b. State shall present invoices for 100 percent of actual costs incurred by State on behalf of the Project directly to Agency's right of way contact for review and approval. Such invoices shall be in a form identifying the Project, the agreement number, invoice number or account number, and shall itemize all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one (1) month duration, based on actual expenses incurred.
  - c. Upon completion of right of way acquisition and receipt from State of a final itemized statement, Agency shall pay an amount which, when added to said advance deposit, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project shall be refunded to Agency.

## **GENERAL PROVISIONS:**

1. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person, under any of the following conditions:
  - a. If either Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If either Party fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with

its terms, and after receipt of written notice fails to correct such failures within ten (10) days or such longer period as may be authorized.

- c. If Agency fails to provide payment of its share of the cost of the Project.
  - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
2. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
  3. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
  4. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 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, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
  5. All employers 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. Both Parties shall ensure that each of its subcontractors complies with these requirements.
  6. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency 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.

7. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of 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 State on the one hand and of 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. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
8. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. 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.
9. 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.
10. When federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by Agency.
11. When federal funds are involved in this Agreement, Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold

harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

12. The Parties hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
13. 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.
14. This Agreement and attached exhibits and Agreement No. 32508 constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

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

**Signature Page to Follow**

COUNTY OF CLACKAMAS, by and through its elected officials

By *J. Fisher*  
Chair

Date 4-4-2019

By *Mary Raetnke*

Date 4-4-2019 VII.1

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_

Date \_\_\_\_\_

**Agency Contact:**

Sharan Hams-LaDuca  
Right of Way Program Manager,  
Clackamas County Department of  
Transportation, 150 Beaver Creek Road,  
Suite 325 Oregon City, Oregon 97045  
503-742-4675  
shamsladuca@co.clackamas.or.us

**State Contact:**

David Mendelson  
123 NW Flanders Street, Portland, Oregon  
97209  
503-731-8451  
David.Mendelson@odot.state.or.us

STATE OF OREGON, by and through its Department of Transportation

By *Scott C. Claus*  
State Right of Way Manager

Date 4/15/19

**APPROVAL RECOMMENDED**

By *Kat Halpenny*  
Region 1 Right of Way Manager

Date 4/12/19

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By (insert N/A if not applicable)  
Assistant Attorney General

Date \_\_\_\_\_

**APPROVED**

(If Litigation Work Related to Condemnation is to be done by State)

By (insert N/A if not applicable)  
Chief Trial Counsel

Date \_\_\_\_\_



**SPECIAL PROVISIONS EXHIBIT A**  
**Right of Way Services**

THINGS TO BE DONE BY STATE OR AGENCY

1. Pursuant to this Agreement, the work performed on behalf of the Agency can be performed by the Agency, the Agency's consultant, the State or a State Flex Services consultant, as listed under Agency Obligations, paragraph 3 of this Agreement. The work may be performed by Agency staff or any of these representatives on behalf of Agency individually or collectively provided they are qualified to perform such functions and after receipt of approval from the State's Region Region 1 Right of Way Manager.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.

**Instructions:** Insert either: State, Agency, or N/A on each line.

**A. Preliminary Phase**

1. Agency shall provide preliminary cost estimates.
2. Agency shall make preliminary contacts with property owners.
3. Agency shall gather and provide data for environmental documents.
4. Agency shall develop access and approach road list.
5. Agency shall help provide field location and Project data.

**B. Acquisition Phase**

1. General:
  - a. When doing the Acquisition work, as described in this Section, Agency shall provide State with a status report of the Project monthly.
  - b. Title to properties acquired shall be in the name of the Agency.
  - c. The Agency shall adopt a resolution of intention and determination of necessity in accord with ORS 35.235 and ORS 35.610, authorizing acquisition and condemnation, such approval will be conditioned on passage of a resolution by Agency substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof. If the Oregon Department of Justice is to handle condemnation work, prior approval evidenced by Chief Trial Counsel, Department of Justice, signature on this Agreement is required; and authorization for such representation

shall be included in the resolution adopted by the Agency. Prior approval by Oregon Department of Justice is required.

2. Legal Descriptions:

- a. Agency shall provide sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.
- b. Agency shall provide construction plans and cross-section information for the Project.
- c. Agency shall write legal descriptions and prepare right of way maps. If the Agency acquires any right of way on a State highway, the property descriptions and right of way maps shall be based upon centerline stationing and shall be prepared in accordance with the current "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide" and the "Right of Way Engineering Manual." The preliminary and final versions of the property descriptions and right of way maps must be reviewed and approved by the State.
- d. Agency shall specify the degree of title to be acquired (e.g., fee, easement).

3. Real Property and Title Insurance:

- a. Agency shall provide preliminary title reports, if State determines they are needed, before negotiations for acquisition commence.
- b. Agency shall determine sufficiency of title (taking subject to). If the Agency acquires any right of way on a State highway, sufficiency of title (taking subject to) shall be determined in accordance with the current "State Right of Way Manual" and the "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide." Agency shall clear any encumbrances necessary to conform to these requirements, obtain Title Insurance policies as required and provide the State copies of any title policies for the properties acquired.
- c. Agency shall conduct a Level 1 Initial Site Assessment, according to State Guidance, within Project limits to detect presence of hazardous materials on any property purchase, excavation or disturbance of structures, as early in the Project design as possible, but at a minimum prior to property acquisition or approved design.
- d. Agency shall conduct a Level 2 Preliminary Site Investigation, according to State Guidance, of sufficient scope to confirm the presence of contamination, determine impacts to properties and develop special provisions and cost estimates, if the Level 1 Initial Site Assessment indicates the potential presence of contamination that could impact the properties.

- If contamination is found, a recommendation for remediation will be presented to State.
- e. Agency) shall be responsible for proper treatment and cost of any necessary remediation.
  - f. Agency shall conduct asbestos, lead paint and other hazardous materials surveys for all structures that will be demolished, renovated or otherwise disturbed. Asbestos surveys must be conducted by an AHERA (asbestos hazard emergency response act) certified inspector.
4. Appraisal:
- a. Agency shall conduct the valuation process of properties to be acquired.
  - b. Agency shall perform the Appraisal Reviews to set Just Compensation.
  - c. Agency shall recommend Just Compensation, based upon a review of the valuation by qualified personnel.
5. Negotiations:
- a. Agency shall tender all monetary offers to land-owners in writing at the compensation shown in the appraisal review. Agency shall have sole authority to negotiate and make all settlement offers. Conveyances taken for more or less than the approved Just Compensation will require a statement justifying the settlement. Said statement will include the consideration of any property trades, construction obligations and zoning or permit concessions.
  - b. State and Agency shall determine a date for certification of right of way and agree to cosign the State's Right of Way Certification form. State and Agency agree possession of all right of way shall occur prior to advertising for any construction contract, unless exceptions have been agreed to by Agency and State.
  - c. Agency agrees to file all Recommendations for Condemnation at least seventy (70) days prior to the right of way certification date if negotiations have not been successful on those properties.
6. Relocation:
- a. Agency shall perform any relocation assistance, make replacement housing computations, and do all things necessary to relocate any displaced parties on the Project.
  - b. Agency shall make all relocation and moving payments for the Project.

- c. Agency shall facilitate the relocation appeal process.

### **C. Closing Phase**

1. Agency shall close all transactions. This includes drawing of deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and making all payments. If State is working as a consultant for the Agency, State shall submit all signed Final Report packets, information required by the Uniform Act, and agreements to the Agency.
2. Agency shall record conveyance documents, only upon acceptance by appropriate agency.

### **D. Property Management**

1. Agency shall take possession of all the acquired properties. There shall be no encroachments of buildings or other private improvements allowed upon the State highway right of way.
2. Agency shall dispose of all improvements and excess land consistent with State prevailing laws and policies.

### **E. Condemnation**

1. Agency may offer mediation if the Agency and property owners have reached an impasse.
2. Agency shall perform all administrative functions in preparation of the condemnation process, such as preparing final offer and complaint letters.
3. Agency shall perform all legal and litigation work related to the condemnation process. Agency is responsible for passage of a resolution substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof, specifically identifying the property being acquired.
4. When State shall perform legal or litigation work related to the condemnation process, Agency acknowledges, agrees and undertakes to assure that no member of Agency's board or council, nor Agency's mayor, when such member or mayor is a practicing attorney, nor Agency's attorney nor any member of the law firm of Agency's attorney, board or council member, or mayor, will represent any party, except Agency, against the State of Oregon, its employees or contractors, in any matter arising from or related to the Project which is the subject of this Agreement.

### **F. Transfer of Right of Way to State**

When right of way is being acquired in Agency's name, Agency agrees to transfer and State agrees to accept all right of way acquired on the State highway. The specific method of

conveyance will be determined by the Agency and the State at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. Agency agrees to provide the State all information and file documentation the State deems necessary to integrate the right of way into the State's highway system. At a minimum, this includes: copies of all recorded conveyance documents used to vest title in the name of the Agency during the right of way acquisition process, and the Agency's Final Report or Summary Report for each acquisition file that reflects the terms of the acquisition and all agreements with the property owner(s).

#### **G. Transfer of Right of Way to Agency**

When right of way is being acquired in State's name, State agrees to transfer and Agency agrees to accept all right of way acquired on the Agency's facility, subject to concurrence from FHWA at the time of the transfer. The specific method of conveyance will be determined by the State and the Agency at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. If requested, State agrees to provide Agency information and file documentation associated with the transfer.

**RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN EXHIBIT D**  
**Right of Way Services**

WHEREAS (insert title of agency) may exercise the power of eminent domain pursuant to (Agency's charter) (statutes conferring authority) and the Law of the State of Oregon generally, when the exercise of such power is deemed necessary by the (insert title of agency)'s governing body to accomplish public purposes for which (insert title of agency) has responsibility;

WHEREAS (insert title of agency) has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public;

WHEREAS the project or projects known as (insert Project name) have been planned in accordance with appropriate engineering standards for the construction, maintenance or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, travel safeguarded; and

WHEREAS to accomplish the project or projects set forth above it is necessary to acquire the interests in the property described in "Exhibit A," attached to this resolution and, by this reference incorporated herein; now, therefore

BE IT HEREBY RESOLVED by (Agency's Council, Commission, or Board)

1. The foregoing statements of authority and need are, in fact, the case. The project or projects for which the property is required and is being acquired are necessary in the public interest, and the same have been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury;
2. The power of eminent domain is hereby exercised with respect to each of the interests in property described in Exhibit A. Each is acquired subject to payment of just compensation and subject to procedural requirements of Oregon law;
3. The (insert title of agency)'s staff and the (Agency's Attorney, Counsel, or District's Counsel (or) (The Oregon Department of Transportation and the Attorney General) are authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any court to decide matters determined above or determinable by the (Agency's Council, Commission, or Board).
4. (insert title of agency) expressly reserves its jurisdiction to determine the necessity or propriety of any acquisition, its quantity, quality, or locality, and to change or abandon any acquisition.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_