



**DAN JOHNSON**  
DIRECTOR

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

September 8, 2022

Board of County Commissioners  
Clackamas County

**Approval of an Intergovernmental Agreement with Portland State University for Annual Population Estimates for the former City of Damascus. Total value is \$27,013. Funding through Damascus Road Fund. County General Funds are not involved.**

<b>Purpose/Outcome</b>	Prepare annual population estimates for the former City of Damascus, to be used for calculating the State Highway Fund city distributions, which are based on population.
<b>Dollar Amount and Fiscal Impact</b>	\$27,013 over five years. Continuing to generate these population estimates ensures the Damascus Road Fund will receive shared revenues for ten years following disincorporation.
<b>Funding Source</b>	Damascus Road Fund. No General Funds used.
<b>Duration</b>	5 years; IGA expires February 2027.
<b>Previous Board Action/Review</b>	02/16/2017; Prior 5-year Population Estimate IGA with PSU executed. 09/06/2022; Discussion item at issues.
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. The ability to target these investments on roads in the prior city limits (Safe Roads) ensures users of the transportation system can travel safely through/in Clackamas County.</li> <li>2. This IGA will allow the County to undertake transportation improvements (Build strong infrastructure) and planning efforts (Build public trust through good government), supporting County jobs and transportation goals.</li> </ol>
<b>Counsel Review</b>	Date of Counsel review: 07/21/2022 (A. Naylor)
<b>Procurement Review</b>	<ol style="list-style-type: none"> <li>3. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/></li> <li>4. Item is an IGA.</li> </ol>
<b>Contact Person</b>	Diedre Landon, Administrative Services Manager, Snr. 503-742-4411

**BACKGROUND:**

The City of Damascus disincorporated July 17, 2016. The state mandate for Portland State University to produce population estimates is for counties and incorporated cities and towns only; so, the Portland State University's Oregon Population Estimates Program no longer include estimates for the Damascus area.

Legislation enacted after the disincorporation entitles Clackamas County to receive shared state revenue for the area that would have otherwise been incorporated as Damascus for a period of 10 years following the disincorporation.

While many state shared revenues are based solely on population and can rely on the Clackamas County estimate; the State Highway Fund distribution formula considers both population (city distribution) and the number of registered vehicles (county distribution). Of the State Highway Funds distributed to local agencies, the state of Oregon distributes:

- 60% of the funding to counties, based on active vehicle registrations, and
- 40% of the funding to cities, based on population.

When Clackamas County adopted a local Vehicle Registration Fee, ORS requires that the 40% city distribution follow that of the State Highway Fund, unless otherwise agreed to by IGA. So, each month, a portion of the Countywide Vehicle Registration Fee is also deposited in to the Damascus Roads account for use in this area.

Continuing to generate these population estimates ensures the Damascus Road Fund will receive shared revenues for ten years following disincorporation:

- Approximately \$800k in State Highway Fund Each Year; and
- Approximately \$200k in Countywide Vehicle Registration fee.

Maintaining an accurate population estimate ensures that the County will continue to receive a portion of these city distributions for the Damascus area for 10-years following disincorporation, through 2027.

**RECOMMENDATION:** Staff respectfully recommends approval of this IGA, and authorizes the Chair to sign on behalf of the County.

Respectfully submitted,

*Diedre Landon*

Diedre Landon  
Administrative Services Manager, Snr.  
Transportation & Development

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN CLACKAMAS COUNTY  
AND PORTLAND STATE UNIVERSITY**

THIS AGREEMENT (this “Agreement”) is entered into and between Clackamas County (“County”), a political subdivision of the State of Oregon, and Portland State University (“Agency”), a unit of local government, collectively referred to as the “Parties” and each a “Party.”

**RECITALS**

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

The purpose of this Agreement is to implement the provisions of Oregon Laws 2015, chapter 637, section 1(4), compiled as a note after ORS 221.650 (2015), which provides that County will continue to receive certain state shared revenue that would have otherwise gone to the City of Damascus. To implement this bill, Agency will assist County in preparing annual population estimates for the former City of Damascus, as described here.

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

**TERMS**

1. **Term.** This Agreement shall be effective upon execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or February 28, 2027, whichever is sooner.
2. **Scope of Work.** The Agency agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein (“Work”).
3. **Consideration.** The County agrees to pay Agency, from available and authorized funds, a sum not to exceed \$27,013.00 for accomplishing the Work required by this Agreement.
4. **Payment.** Unless otherwise specified, the Agency shall submit monthly invoices for Work performed and shall include the total amount billed to date by the Agency prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. Payments shall be made to Agency following the County’s review and approval of invoices submitted by Agency. Agency shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above.
5. **Representations and Warranties.**
  - A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.

- B. *County Representations and Warranties*: County represents and warrants to Agency that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

**6. Termination.**

- A. Either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the County or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. Either party may terminate this Agreement in the event the terminating party fails to receive expenditure authority sufficient to allow the terminating party, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

**7. Indemnification.**

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the Agency, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, employees, or agents.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Agency agrees to indemnify, save harmless and defend the

County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the Agency or its officers, employees, or agents.

8. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.
9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

- A. Diedre Landon, Administrative Services Manager, or their designee will act as liaison for the County.

**Contact Information:**

DTD Administration – MS-1  
150 Beaver Creek Road  
Oregon City, OR 97045  
[dlandon@clackamas.us](mailto:dlandon@clackamas.us)

Huda Alkitkat, or their designee will act as liaison for the Agency.

**Contact Information:**

Huda Alkitkat, Ph.D., Population Estimates Program Manager  
PSU Population Research Center - College of Public and Urban Affairs  
P.O. Box 751-PRC  
Portland, Oregon 97207-0751  
[alkitkat@pdx.edu](mailto:alkitkat@pdx.edu)

**10. General Provisions.**

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon;

provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by either Party of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.

- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement (“Records”) for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County’s authorized representatives’ access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Work Product.** All work product of Agency that results from this Agreement (the “Work Product”) is the exclusive property of Agency. Agency and County do not intend such Work Product be deemed a “work made for hire” where County would be deemed the author. If for any reason the work product is deemed a “work made for hire”, County hereby irrevocable assigns to Agency all its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. The Agency shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials produced in connection with this Agreement. Notwithstanding the foregoing language, County in all circumstances is hereby granted a perpetual, nonexclusive, royalty-free license to use the Work Product, which includes the right to use, circulate, and reproduce the Work Product for its own use and on completion or termination of the Agreement, the Agency shall promptly deliver a copy of these materials to the County’s project manager.

- F. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- G. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- H. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- I. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- J. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- K. **No Third-Party Beneficiary.** Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- L. **Subcontract and Assignment.** Agency shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole

discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.

- M. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- N. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (K), (N), (Q), (S), and (T) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- O. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- P. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- Q. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- R. **Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- S. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.



**IN WITNESS HEREOF**, the Parties have executed this Agreement by the date set forth opposite their names below.

**Clackamas County**

**Portland State University**

\_\_\_\_\_  
Chair, Board of County Commissioners

*Paul L. Thomas*  
\_\_\_\_\_  
By: Paul L. Thomas  
\_\_\_\_\_  
Its: Sr. Contracts Officer

\_\_\_\_\_  
Date

August 23, 2022  
\_\_\_\_\_  
Date

## Exhibit A

### SCOPE OF WORK AND FEE SCHEDULE

#### **GENERALLY**

Portland State University, through its Population Research Center (PRC), will annually prepare by July 1 population estimates for the geographic area that would have comprised the former City of Damascus.

#### **BACKGROUND**

Legislation enacted after the July 17, 2016, disincorporation of Damascus, Oregon entitles Clackamas County to receive shared state revenue for the area that would have otherwise been incorporated as Damascus for a period of 10 years following the disincorporation.

Under Portland State University's Oregon Population Estimates Program, a July 1, 2016 population estimate was prepared for Damascus. Since Damascus disincorporated and moving forward, an annual population estimate under the Population Estimate Program will no longer be prepared as the state mandate for producing population estimates is for counties and incorporated cities and towns only. PRC is able to prepare annual population estimates for the area that would have been the city of Damascus on a commissioned project basis.

#### **PROJECT DETAILS AND TASKS**

PRC will prepare five annual population estimates for the area that would have been the city of Damascus. The beginning year will be 2022 and the ending year, 2026. The estimate date will represent July 1 of each year. The total population for the area will be estimated assuming the most recent city boundary that was in place at disincorporation.

Over the course of the next five years, if any of the Damascus area becomes annexed by Happy Valley (or any other city based on the information that the PRC receives from the Secretary of State's Office of an approved annexation), that area will be removed from the boundary area used to prepare the population estimate for the former city of Damascus.

In preparing its estimates, PRC will account for all annexations that may have occurred to cities throughout the year after receiving notification from the Secretary of State's Office by revising affected cities' populations quarterly as annexation data are submitted to PRC by those cities.

In the case of any land being annexed from the area that was the city of Damascus, PRC will adjust the Damascus area population in the quarter PRC receives the data from the annexing city.

In order to ensure that PRC develops accurate population estimates for the Damascus area, Clackamas County will provide PRC with the following information:

- To ensure that the boundary is current, each year by June 30, Clackamas County will send PRC the revised boundary (in electronic format) for the area that would have been the city of Damascus.
- Clackamas County will monitor annexations that affect the Damascus area and if the area is affected, send PRC the annexing city's corresponding Ordinance Number or Secretary of State's filing number so that the appropriate annexation data will be used to revise the Damascus area's population estimate quarterly as necessary.

In order to estimate population change in the area that was formerly Damascus, aside from possible annexations by Happy Valley, Clackamas County will also send to PRC point level data on net new housing units and on group quarters facilities to PRC on an annual basis. This data will consist of the following:

- Building permits for housing units representing the calendar year prior to the estimate year (e.g. building permits issued for single-family, multi-family, and accessory units during January 1- December 31, 2021 will be used to develop the 2022 population estimate).
- Subtracted housing units (e.g. demolitions, destroyed homes) from July 1 to June 30 of the following year (e.g. for the 2022 estimate, these data represent the fiscal year, which is July 1, 2021 through June 30, 2022).
- The number of mobile homes that are present on June 30 of the estimate year, and on the number that moved in and that moved out during the fiscal year.
- Group quarters facilities and on the number of residents residing in them as of June 30 of the estimate year.
- The number of special housing units on June 30, such as RVs, vans, and tents; and on the numbers of persons that reside in them, if available.
- The current boundary, in electronic GIS compatible format, for the area of the former city of Damascus, accounting for any annexations into Happy Valley that may have occurred during the year; by December 31 of the estimate year.

PRC will provide Clackamas County with the most recent data collected from the City of Damascus in the Population Estimates Program.

To produce the annual population estimates, PRC will perform the following:

- Determine the population base for current the current boundary, as necessary.
- Review boundaries annually affecting the area that was Damascus and the surrounding area.
- Monitor annexation activity year-round affecting the Damascus area and revising the Damascus area population estimate as appropriate quarterly.
- Annually incorporate the new data submitted by Clackamas County to develop the population estimates for the former city area of Damascus.
- Prepare a brief documentation of the methodology used to produce the population estimates for the Damascus area.

## **DATA SOURCES**

- U.S. Census Bureau, 2020 Census of Population and Housing.
- Population Research Center, Portland State University-2020-2026 Annual Population Estimates Program, Housing and Group Quarters Population Data for Oregon Counties and Places.
- The geographic boundaries for the former city of Damascus, representing July 1st, 2022, and each July 1 each year thereafter, will be provided to PRC by Clackamas County in electronic format to be used in GIS (shapefiles).
- Housing unit and group quarters data will be provided by Clackamas County in electronic format.
- Data on the numbers of housing units and persons annexed are obtained from the annexing cities directly after PRC receives notification from the Secretary of State's Office that an annexation has been filed.

## **DELIVERABLES and DEADLINE**

The population estimates will be presented in a table in Excel format.

- The first year of the agreement (2022), the estimates will be delivered within one month from the date in which the agreement is signed by all parties.
- The remainder of the agreement, the estimates will be delivered every year by July 31<sup>st</sup>.

The estimates will be sent to Diedre Landon (DLandon@clackamas.us) and to the PSU State of Oregon email distribution list for use in the calculation of the State Highway Fund Shared revenues.

## **COST**

The following are the fees PRC will charge to produce the population estimates:

- Population Estimate, 2022: \$5,192
- Population Estimate, 2023: \$5,295
- Population Estimate, 2024: \$5,400
- Population Estimate, 2025: \$5,508
- Population Estimate, 2026: \$5,618

## COVER SHEET

- New Agreement/Contract
- Amendment/Change/Extension to \_\_\_\_\_
- Other \_\_\_\_\_

Originating County Department: \_\_\_\_\_

Other party to contract/agreement: \_\_\_\_\_

Document Title:

After filing please return to: \_\_\_\_\_

County Admin

Procurement

If applicable, complete the following:

\_\_\_\_\_

Board Agenda Date/Item Number: \_\_\_\_\_