



DAN JOHNSON
DIRECTOR

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

September 5, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of an Intergovernmental Agreement with Oregon Department of Transportation for Technical Services on the OR 224 at Amisigger Road Roundabout Project. Total value is \$35,000. Funding through Community Road Fund. No County General Funds are involved.

Previous Board Action/Review	04/28/22: BCC approval of a contract with Kittelson & Associates, Inc., for the Amisigger Road at OR 224 Intersection Improvements Project 09/03/24: Request for consent		
Performance Clackamas	The project will build a strong infrastructure.		
Counsel Review	Yes – HH, 08/21/24	Procurement Review	No
Contact Person	Mike Ward	Contact Phone	503-742-4688

EXECUTIVE SUMMARY: This agreement provides funding for Oregon Department of Transportation (ODOT) to perform technical reviews of the County’s design of the OR 224 at Amisigger Road Roundabout Project in order for ODOT to advance the County’s design through the ODOT approval process. OR 224 is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission.

The intersection of Amisigger Road at OR 224 was identified through the Community Road Committee process as a high priority improvement project. Vehicles entering OR 224 from Amisigger Road experience significant delays at peak travel periods and the County secured Community Road Funds to install a roundabout this intersection. In addition to reducing travel times, the intersection improvements are expected to increase safety by reducing accidents. The total cost of the project is \$5,574,229.

For Filing Use Only

RECOMMENDATION: Staff respectfully recommends the Board of County Commissioners approve and sign the attached intergovernmental agreement with ODOT for technical services on the Amisigger Road Roundabout Project.

Respectfully submitted,

Dan Johnson

Dan Johnson
Director of Transportation & Development

AGREEMENT FOR SERVICES
ODOT Technical Services
OR 224 at Amisigger Road Roundabout

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" or "ODOT," and CLACKAMAS COUNTY, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually as "Party" and collectively as "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, a state agency may enter into agreements with units of local government for the performance of any or all functions and activities that state agency, its officers, or agents have the authority to perform.
2. Agency is designing a project to build a roundabout at the intersection of Oregon Highway OR 224 (OR 224) and Amisigger Road. OR 224 is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Amisigger Road is a part of the county road system under the jurisdiction and control of Clackamas County.
3. By the authority granted in Oregon Revised Statutes (ORS) [190.110](#), [366.572](#) and [366.576](#), State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
4. 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.
5. The Parties desires to define their respective obligations with regard to the design and review of the project to build a roundabout at the intersection of Oregon Highway OR 224 (OR 224) and Amisigger Road in an efficient manner that is in the best interest of the public.

The Parties therefore agree as follows:

TERMS OF AGREEMENT

1. **Project.** Under such authority, Agency wishes to retain the services of State to perform technical review services, as described in Exhibit A, hereinafter referred to as “Project.”
2. **Funding.**
 - a. The Project will be financed at an estimated cost of \$35,000 in Agency funds, as shown on Exhibit B. The estimate for the total Project cost is subject to change. Agency shall be responsible for any nonparticipating costs, and Project costs beyond the estimate.
3. **Exhibits Attached and Incorporated.**
 - a. This Agreement includes the following exhibits, each of which is attached and incorporated into this Agreement by reference:
 - Exhibit TCD –Terms, Conditions and Definitions
 - Exhibit A – Statement of Work and Delivery Schedule
 - Exhibit B – Compensation & Payment Provisions
 - Exhibit C – Reserved
 - Exhibit D – Reserved
 - Exhibit E – Americans with Disabilities Act (ADA) Compliance
 - Exhibit F – Contact Information

4. **Order of Precedence.**

Unless a different order is required by law, this Agreement shall be interpreted in the following order of precedence:

- 1) This Agreement (including all amendments, if any) less all Exhibits, attachments and other documents and information incorporated into this Agreement,
- 2) Exhibit TCD,
- 3) Exhibit A, the Statement of Work,
- 4) All other Exhibits,
- 5) Any other attachments,
- 6) Any documents/information incorporated into this Agreement by reference.

This provision survives termination of the Agreement.

5. **Term of Agreement; Effective Date.** The term of this Agreement shall begin on the date all required signatures are obtained (“Effective Date”) and shall terminate upon

completion of the Project and final payment or ten (10) calendar years following the Effective Date, whichever is sooner.

6. **Termination.** This Agreement may be terminated by mutual written consent of all Parties.
 - a. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - i. If Agency fails to perform any of the other provisions of this Agreement, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - ii. If Agency fails to provide payment of its share of the cost of the Project.
 - iii. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that the work under this Agreement is prohibited.
 - b. Any termination of this Agreement shall not extinguish or prejudice any rights or obligations accrued to the Parties prior to termination.
7. **Certification.** Each Party certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on its behalf, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind that Party.
8. **No Substitutions or Assignments.** Agency shall not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without first obtaining the written consent of State. State's consent to any subcontract (or other delegation of duties) does not relieve Agency of any of its duties or obligations under this Agreement. This Agreement is binding upon and inures to the benefit of each of the Parties, and, except as otherwise provided, their permitted legal successors and assigns.
9. **No Third Party Beneficiaries.** Agency and State 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. This provision survives termination of the Agreement.
10. **Waiver; Amendment.** 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. This provision survives termination of the Agreement.

11. **Notice.** Except as otherwise expressly provided in this Agreement, all notices to be given relating to this Agreement must be given in writing by email, personal delivery, or postage prepaid mail, to a Party's Project Manager at the physical address or email address set forth in Exhibit F, or to such other addresses as either Party may indicate pursuant to this paragraph. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective when the sender receives confirmation of receipt from the recipient (not an auto-reply). Except as set forth above in this paragraph, the Parties may agree to provide operational notices such as delivery, acceptance or rejection of services or deliverables by email as may be mutually agreed in Exhibit A.
12. **Severability.** The Parties 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. This provision survives termination of the Agreement.
13. **Counterparts.** This Agreement may be executed in several counterparts 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. **Integration.** This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

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.

CLACKAMAS COUNTY, by and through
its elected officials

By _____

Date _____

By _____

Date _____

**LEGAL REVIEW APPROVAL (If required
in Agency's process)**

By _____

Agency Counsel

Date _____

STATE OF OREGON, by and through
its Department of Transportation

By _____

Region 1 Manager

Date _____

APPROVAL RECOMMENDED

By _____

Region 1 Maintenance & Operations
Manager

Date _____

By _____

District 2C Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By N/A _____

Assistant Attorney General (If Over
\$250,000)

Date _____

EXHIBIT TCD – TERMS, CONDITIONS AND DEFINITIONS

THIRD PARTY CLAIMS: The following paragraphs 1 through 4 shall survive termination of the Agreement.

1. 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.
2. 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.
3. 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.

4. 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.

RECORDS

Both Parties acknowledge and agree that either Party, 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 the Parties 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 completion of the Project and final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting party. This provision survives termination of the Agreement.

INDEPENDENT CONTRACTOR; EMPLOYMENT COSTS

Both Parties shall perform the services under this Agreement as independent contractors 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.

WORKERS COMP

All employers, including both Parties and both Parties contractors, if any, that employ subject workers, as defined in ORS 656.027, who work under this Agreement in the State of Oregon shall comply with ORS [656.017](#) and shall provide the required Workers' Compensation Insurance coverage, unless such employers are exempt under ORS [656.126\(2\)](#). The coverage shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 for each accident. Both Parties shall ensure that each of its contractors complies with these requirements.

RIGHT OF ENTRY

1. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
2. State grants Agency the right to enter onto State right of way for the performance of duties as set forth in this Agreement.

GOVERNING LAW; VENUE; CONSENT TO JURISDICTION:

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws. Any claim, action, suit or proceeding (collectively, "Claim") between the State and Agency that arises from or relates

to the Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. AGENCY HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of the State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon. This provision survives termination of the Agreement.

COMPLIANCE WITH LAW

Both 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, both 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, as amended, 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.

EXHIBIT A
STATEMENT OF WORK AND DELIVERABLE SCHEDULE
PROJECT: OR 224 at Amisigger Road Roundabout

PROJECT DESCRIPTION and OVERVIEW of SERVICES

Agency is designing a roundabout at the intersection of OR 224 and Amisigger Road. In order to assist in advancing the Agency’s design, Agency will require technical review and consultation services from State throughout development of the Project, the review and rendering of services will not unreasonably be delayed.

State Services

State shall provide technical review in the following disciplines (grouped by State technical services sections):

- Traffic
- Roadway
- Geotechnical, Hazardous Materials, Hydrology, and Environmental
- Survey and Utilities
- Bike/ped program
- Mobility
- Pavement

State’s review shall be consistent, and in compliance, with all applicable state law, regulations, permitting requirements and standards.

PROJECT LOCATION MAP

The Project location and approximate limits are shown on the following map.



EXHIBIT B - COMPENSATION AND PAYMENT PROVISIONS

STATE OBLIGATIONS

1. State shall, upon execution of this Agreement, forward to Agency a letter of request for a lump sum deposit in the amount of \$35,000 for payment of services under this Agreement. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete Project.
2. Upon completion of the Project, the State will either approve the roundabout design as being in conformance with the current edition of the *ODOT Highway Design Manual* and the *Oregon Standard Specifications* or provide documentation outlining the steps needed to obtain conformance and State approval.
3. Upon completion of the Project, State shall either send to Agency a bill for the amount which, when added to Agency's advance deposit, will equal 100 percent of the total state costs for Project or State will refund to Agency any portion of said advance deposit which is in excess of the total State costs for Project.

AGENCY OBLIGATIONS

1. Agency shall, upon receipt of a fully-executed copy of this Agreement and subsequent letter of request from State, forward to State a lump sum deposit in the amount of \$35,000 for payment of State's services on the Project.
2. Upon completion of State's services for the Project and receipt from State of an itemized statement of the actual total cost of State's participation for the Project, Agency shall pay any amount which, when added to Agency's advance deposit, will equal 100 percent of actual total State costs for the Project. Any portion of said advance deposit which is in excess of the State's total costs will be refunded or released to Agency.
3. 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 biennial budget.

Agency/State
Agreement No.73000-00028712

EXHIBIT C – INSURANCE - RESERVED
EXHIBIT D - SPECIAL TERMS AND CONDITIONS - RESERVED

EXHIBIT E - AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE

Americans with Disabilities Act Compliance:

Agency agrees that it will design the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, to comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together "ADA") by meeting current ODOT Highway Design Manual standards. Agency further agrees that all Project sidewalks, curb ramps, and pedestrian-activated signals will be designed using ODOT Standard Drawings, and that Agency will follow the ODOT Design Exception process for any sidewalk, curb ramp, or pedestrian-activated signal that cannot be designed to the ODOT standards. The Project design shall include temporary pedestrian routes through or around any work zone. All such temporary pedestrian routes shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Agency shall submit the Project plans to State's Project Manager for approval upon completion and prior to final payment.

EXHIBIT F - CONTACT INFORMATION

1. The Parties Contact Information is as follows:

a. State's Contact:

State's Project Manager for this Agreement is:

Name:	Robert Cox
Address:	2225 NW Campus Dr Estacada OR 97023
Ph:	503-314-5702
E-mail:	Robert.w.cox@odot.oregon.gov

b. Agency Contacts:

Agency's Project Manager for this Agreement is:

Name:	Mike Ward
Address:	150 Beaver creek Rd Oregon City, OR 97045
Ph:	971-352-2487
E-mail:	mward@clackamas.us

Agency's Invoice Contact and remit address for payments is:

Name:	Dede Kraft
Address:	150 Beaver creek Rd Oregon City, OR 97045
Ph:	503-742-4334
E-mail:	Dkraft@clackamas.us

2. Either Party may change the Project Manager designation during the term of this Agreement by promptly sending written notice (e-mail acceptable) to the other Party.