

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Study Session Worksheet

Presentation Date: June 18, 2013

Approx Start Time: 10:00 a.m.

Approx Length: 30 minutes

Presentation Title: Clackamas County Active Transportation Plan IGA, continued.

Department: Department of Transportation and Development (DTD) – Engineering Division

Presenters: Mike Bezner, Engineering Manager, Karen Buehrig, Transportation Planning Supervisor and Scott Hoelscher, Senior Planner

Other Invitees: Lori Mastrantonio, Senior Planner

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

We are asking the Board of County Commissioners (BCC) to place the following as a consent item on the June 20, 2013 Business Meeting, for approval:

The Intergovernmental Agreement (IGA) between the Oregon Department of Transportation (ODOT) and Clackamas County to develop a Clackamas County Active Transportation Plan

EXECUTIVE SUMMARY:

At a May 14, 2013 BCC Study Session, the purpose of the Active Transportation Plan for Clackamas County was discussed. It was highlighted that:

- In June 2012 the BCC supported the Transportation and Growth Management (TGM) grant application and passed Resolution 2012-69,
- In October 2012 DTD was awarded a TGM grant from ODOT to develop an Active Transportation Plan and incorporate it into the County's Comprehensive Plan,
- Since that time, DTD has been working with ODOT to prepare an IGA and the scope of work for the project. Attached is the final IGA, which includes the scope of work.

DTD staff have met with the BCC to discuss their concerns regarding the IGA language and the proportion of funds that are being spent on Active Transportation projects.

FINANCIAL IMPLICATIONS (current year and ongoing):

The total cost for the Active Transportation Plan is \$117,980. The proposed budget is as follows:

- TGM Grant Amount: \$105,000
- County Match: \$12,980 (in-kind staff time)
- Approximately 50% of the project funds will be for a consultant and 50% for county staff working on the project.

The project will begin in July 2013 and continue through the end of June 2014. The project has been included in the 2013-14 Road Fund budget. Since the project is funded through a grant, no additional County funds are needed and there are no other fiscal impacts to the County.

LEGAL/POLICY REQUIREMENTS:

The IGA for the TGM grant is a legal contract between the Oregon Department of Transportation and Clackamas County. The IGA has been reviewed and approved by County Counsel. This project is not subject to any other legal standards.

From a policy perspective, any Comprehensive Plan changes, Zoning and Development Ordinance amendments or other regulatory amendments resulting from the project will be brought before the BCC. Study sessions with the Planning Commission and BCC will be scheduled when policy direction is needed.

PUBLIC/GOVERNMENTAL PARTICIPATION:

The scope of work for the Active Transportation Plan includes a stakeholder involvement strategy to inform and solicit public participation through a project webpage, virtual open house, public comment periods, fact sheets and information sharing with Community Planning Organizations, Hamlets and Villages, and other methods.

In addition, the County will establish a Public Advisory Committee (PAC) to review and comment on project materials. PAC members will be recruited and appointed by the County to provide a geographic balance of the project area and to represent various active transportation perspectives, including bicycling, walking and equestrian.

OPTIONS:

1. Place the Intergovernmental Agreement on a Business Meeting agenda as a consent item for Board approval.
2. Place the Intergovernmental Agreement on a Business Meeting agenda as a discussion item for Board approval.

RECOMMENDATION:

The DTD Engineering Division respectfully requests the Intergovernmental Agreement be placed on the June 20, 2013 Business Meeting agenda as a consent item for BCC approval.

ATTACHMENTS:

TGM Intergovernmental Agreement and Scope of Work for the Active Transportation Plan

SUBMITTED BY:

Division Director/Head Approval

Department Director/Head Approval

County Administrator Approval

M. B. Castmill 6-12-13

For information on this issue or copies of attachments, please contact Scott Hoelscher
@ 503-742-4524

INTERGOVERNMENTAL AGREEMENT
Clackamas County, Active Transportation Plan

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation ("ODOT" or "Agency"), and Clackamas County ("County" or "Grantee").

RECITALS

1. The Transportation and Growth Management ("TGM") Program is a joint program of ODOT and the Oregon Department of Land Conservation and Development.
2. The TGM Program includes a program of grants for local governments for planning projects. The objective of these projects is to better integrate transportation and land use planning and develop new ways to manage growth in order to achieve compact pedestrian, bicycle, and transit friendly urban development.
3. This TGM Grant (as defined below) is financed with federal Moving Ahead for Progress in the 21st Century ("MAP-21") funds. Local funds are used as match for MAP-21 funds.
4. By authority granted in ORS 190.110, state agencies may enter into agreements with units of local government or other state agencies to perform any functions and activities that the parties to the agreement or their officers or agents have the duty or authority to perform.
5. County has been awarded a TGM Grant which is conditional upon the execution of this Agreement.
6. The parties desire to enter into this Agreement for their mutual benefit.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION 1. DEFINITIONS

Unless the context requires otherwise, the following terms, when used in this Agreement, shall have the meanings assigned to them below:

A. "County's Amount" means the portion of the Grant Amount payable by ODOT to County for performing the tasks indicated in Exhibit A as being the responsibility of County.

B. "County's Matching Amount" means the amount of matching funds which County is required to expend to fund the Project.

C. "County's Project Manager" means the individual designated by County as its project manager for the Project.

D. "Consultant" means the personal services contractor(s) (if any) hired by ODOT to do the tasks indicated in Exhibit A as being the responsibility of such contractor(s).

E. "Consultant's Amount" means the portion of the Grant Amount payable by ODOT to the Consultant for the deliverables described in Exhibit A for which the Consultant is responsible.

F. "Direct Project Costs" means those costs which are directly associated with the Project. These may include the salaries and benefits of personnel assigned to the Project and the cost of supplies, postage, travel, and printing. General administrative costs, capital costs, and overhead are not Direct Project Costs. Any jurisdiction or metropolitan planning organization that has federally approved indirect cost plans may treat such indirect costs as Direct Project Costs.

G. "Federally Eligible Costs" means those costs which are Direct Project Costs of the type listed in Exhibit D incurred by County and Consultant during the term of this Agreement.

H. "Grant Amount" or "Grant" means the total amount of financial assistance disbursed under this Agreement, which consists of the County's Amount and the Consultant's Amount.

I. "ODOT's Contract Administrator" means the individual designated by ODOT to be its contract administrator for this Agreement.

J. "PSK" means the personal services contract(s) executed between ODOT and the Consultant related to the portion of the Project that is the responsibility of the Consultant.

K. "Project" means the project described in Exhibit A.

L. "Termination Date" has the meaning set forth in Section 2.A below.

M. "Total Project Costs" means the total amount of money required to complete the Project.

N. "Work Product" has the meaning set forth in Section 5.I below.

SECTION 2. TERMS OF AGREEMENT

A. Term. This Agreement becomes effective on the date on which all parties have signed this Agreement and all approvals (if any) required to be obtained by ODOT have been received. This Agreement terminates on June 30, 2014 ("Termination Date").

B. Grant Amount. The Grant Amount shall not exceed \$105,000.

C. County's Amount. The County's Amount shall not exceed \$44,300.

D. Consultant's Amount. The Consultant's Amount shall not exceed \$60,700.

E. County's Matching Amount. The County's Matching Amount is \$12,980 or 11% of the Total Project Costs.

SECTION 3. DISBURSEMENTS

A. Subject to submission by County of such documentation of costs and progress on the Project (including deliverables) as are satisfactory to ODOT, the County may be reimbursed by ODOT for, or may use as part of the County's Matching Amount, as the case may be, only Direct Project Costs that are Federally Eligible Costs that incurs after the execution of this Agreement up to the County's Amount. Generally accepted accounting principles and definitions of ORS 294.311 shall be applied to clearly document verifiable costs that are incurred.

B. County shall present reimbursement requests, cost reports, progress reports, and deliverables to ODOT's Contract Administrator no less than every other month. County shall submit reimbursement requests, cost reports for 100% of County's Federally Eligible Costs, and shall be reimbursed at 77.34% up to the County's Amount.

C. ODOT shall make interim payments to County for deliverables identified as being County's responsibility in the approved statement of work set out in Exhibit A within 45 days of satisfactory completion (as determined by ODOT's Contract Administrator) of such deliverables.

D. ODOT reserves the right to withhold payment equal to ten percent (10%) of each disbursement until 45 days after ODOT's Contract Administrator's approval of the

completion report described Section 5.K(2), at which time the balance due to County under this Agreement shall be payable.

E. Within 45 days after the latter of the Termination Date of this Agreement or County's compliance with Section 5.K. below, ODOT shall pay to County the balance due under this Agreement.

F. ODOT shall limit reimbursement of travel expenses in accordance with current State of Oregon Accounting Manual, General Travel Rules, effective on the date the expenses are incurred.

SECTION 4. COUNTY'S REPRESENTATIONS, WARRANTIES, AND CERTIFICATION

A. County represents and warrants to ODOT as follows:

1. It is a municipality duly organized and existing under the laws of the State of Oregon.

2. It has full legal right and authority to execute and deliver this Agreement and to observe and perform its duties, obligations, covenants and agreements hereunder and to undertake and complete the Project.

3. All official action required to be taken to authorize this Agreement has been taken, adopted and authorized in accordance with applicable state law and the organizational documents of County.

4. This Agreement has been executed and delivered by an authorized officer(s) of County and constitutes the legal, valid and binding obligation of County enforceable against it in accordance with its terms.

5. The authorization, execution and delivery of this Agreement by County, the observation and performance of its duties, obligations, covenants and agreements hereunder, and the undertaking and completion of the Project do not and will not contravene any existing law, rule or regulation or any existing order, injunction, judgment, or decree of any court or governmental or administrative agency, authority or person having jurisdiction over it or its property or violate or breach any provision of any agreement, instrument or indenture by which County or its property is bound.

6. The statement of work attached to this Agreement as Exhibit A has been reviewed and approved by the necessary official(s) of County.

B. As federal funds are involved in this Grant, County, by execution of this Agreement, makes the certifications set forth in Exhibits B and C.

SECTION 5. GENERAL COVENANTS OF COUNTY

A. County shall be responsible for the portion of the Total Project Costs in excess of the Grant Amount. County shall complete the Project; provided, however, that County shall not be liable for the quality or completion of that part of the Project which Exhibit A describes as the responsibility of the Consultant.

B. County shall, in a good and workmanlike manner, perform the work on the Project, and provide the deliverables for which County is identified in Exhibit A as being responsible.

C. County shall perform such work identified in Exhibit A as County's responsibility as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform such work. County shall also be responsible for providing for employment-related benefits and deductions that are required by law, including, but not limited to, federal and state income tax withholdings, unemployment taxes, workers' compensation coverage, and contributions to any retirement system.

D. All employers, including County, 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. County shall ensure that each of its contractors complies with these requirements.

E. County shall not enter into any subcontracts to accomplish any of the work described in Exhibit A, unless it first obtains written approval from ODOT.

F. County agrees to cooperate with ODOT's Contract Administrator. At the request of ODOT's Contract Administrator, County agrees to:

- (1) Meet with the ODOT's Contract Administrator; and
- (2) Form a project steering committee (which shall include ODOT's Contract Administrator) to oversee the Project.

G. County shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, applicable provisions of the Oregon Public Contracting Code. Without limiting the generality of the foregoing, County expressly agrees to comply with: (1) Title VI of Civil Rights Act of 1964; (2) Title V and Section 504 of the Rehabilitation Act of 1973; (3) the Americans with Disabilities Act of 1990 and ORS 659A.142; (4) all regulations and administrative rules established pursuant to the foregoing laws; and (5) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

H. County shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, County shall maintain any other records pertinent to this Agreement in such a manner as to clearly document County's performance. County acknowledges and agrees that ODOT, the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans, and writings of County that are pertinent to this Agreement to perform examinations and audits and make copies, excerpts and transcripts.

County shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

I. (1) All of County's work product related to the Project that results from this Agreement ("Work Product") is the exclusive property of ODOT. ODOT and County intend that such Work Product be deemed "work made for hire" of which ODOT shall be deemed the author. If, for any reason, such Work Product is not deemed "work made for hire", County hereby irrevocably assigns to ODOT all of its rights, 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. County shall execute such further documents and instruments as ODOT may reasonably request in order to fully vest such rights in ODOT. County forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

(2) ODOT hereby grants to County a royalty free, non-exclusive license to reproduce any Work Product for distribution upon request to members of the public.

(3) County shall ensure that any work products produced pursuant to this Agreement include the following statement:

“This project is partially funded by a grant from the Transportation and Growth Management (TGM) Program, a joint program of the Oregon Department of Transportation and the Oregon Department of Land Conservation and Development. This TGM grant is financed, in part, by federal Moving Ahead for Progress in the 21st Century (“MAP-21”), local government, and State of Oregon funds.

The contents of this document do not necessarily reflect views or policies of the State of Oregon.”

(4) The Oregon Department of Land Conservation and Development and ODOT may each display appropriate products on its “home page”.

J. Unless otherwise specified in Exhibit A, County shall submit all final products produced in accordance with this Agreement to ODOT’s Contract Administrator in the following form:

- (1) two hard copies; and
- (2) in electronic form using generally available word processing or graphics programs for personal computers via e-mail or on compact diskettes.

K. Within 30 days after the Termination Date, County shall

- (1) pay to ODOT County’s Matching Amount less Federally Eligible Costs previously reported as County’s Matching Amount. ODOT may use any funds paid to it under this Section 5.K (1) or any of the County’s Matching Amount that is applied to the Project pursuant to Section 3.A to substitute for an equal amount of federal MAP-21 funds used for the Project or use such funds as matching funds; and
- (2) provide to ODOT’s Contract Administrator, in a format provided by ODOT, a completion report. This completion report shall contain:
 - (a) The permanent location of Project records (which may be subject to audit);
 - (b) A summary of the Total Project Costs, including a breakdown of those Project costs that are reimbursable hereunder and those costs which are being treated by County as County’s Matching Amount;

- (c) A list of final deliverables; and
- (d) County's final disbursement request.

SECTION 6. CONSULTANT

If the Grant provided pursuant to this Agreement includes a Consultant's Amount, ODOT shall enter into a PSK with the Consultant to accomplish the work described in Exhibit A as being the responsibility of the Consultant. In such a case, even though ODOT, rather than County is the party to the PSK with the Consultant, ODOT and County agree that as between themselves:

- A. Selection of the Consultant will be conducted by ODOT in accordance with ODOT procedures with the participation and input of County;
- B. ODOT will review and approve Consultant's work, billings and progress reports after having obtained input from County;
- C. County shall be responsible for prompt communication to ODOT's Contract Administrator of its comments regarding (A) and (B) above; and
- D. County will appoint a Project Manager to:
 - (1) be County's principal contact person for ODOT's Contract Administrator and the Consultant on all matters dealing with the Project;
 - (2) monitor the work of the Consultant and coordinate the work of the Consultant with ODOT's Contract Administrator and County personnel, as necessary;
 - (3) review any deliverables produced by the Consultant and communicate any concerns it may have to ODOT's Contract Administrator; and
 - (4) review disbursement requests and advise ODOT's Contract Administrator regarding payments to Consultant.

SECTION 7. ODOT'S REPRESENTATIONS AND COVENANTS

A. ODOT certifies that, at the time this Agreement is executed, sufficient funds are authorized and available for expenditure to finance ODOT's portion of this Agreement within the appropriation or limitation of its current biennial budget.

B. The statement of work attached to this Agreement as Exhibit A has been reviewed and approved by the necessary official(s) of ODOT.

C. ODOT will assign a Contract Administrator for this Agreement who will be ODOT's principal contact person regarding administration of this Agreement and will participate in the selection of the Consultant, the monitoring of the Consultant's work, and the review and approval of the Consultant's work, billings and progress reports.

D. If the Grant provided pursuant to this Agreement includes a Consultant's Amount, ODOT shall enter into a PSK with the Consultant to perform the work described in Exhibit A designated as being the responsibility of the Consultant, and in such a case ODOT agrees to pay the Consultant in accordance with the terms of the PSK up to the Consultant's Amount.

SECTION 8. TERMINATION

This Agreement may be terminated by mutual written consent of all parties. ODOT may terminate this Agreement effective upon delivery of written notice to County, or at such later date as may be established by ODOT under, but not limited to, any of the following conditions:

A. County fails to complete work specified in Exhibit A within the time specified in this Agreement, including any extensions thereof, or fails to perform any of the provisions of this Agreement and does not correct any such failure within 10 days of receipt of written notice or the date specified by ODOT in such written notice.

B. Consultant fails to complete work specified in Exhibit A within the time specified in this Agreement, including any extensions thereof, and does not correct any such failure within 10 days of receipt of written notice or the date specified by ODOT in such written notice.

C. 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 ODOT is prohibited from paying for such work from the planned funding source.

D. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.

In the case of termination pursuant to A, B, C or D above, ODOT shall have any remedy at law or in equity, including but not limited to termination of any further disbursements hereunder. Any termination of this Agreement shall not prejudice any right or obligations accrued to the parties prior to termination.

SECTION 9. GENERAL PROVISIONS

A. Time is of the essence of this Agreement.

B. Except as otherwise expressly provided in this Agreement, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to ODOT or County at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and mailed is in effect five (5) days after the date postmarked. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT's Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

C. ODOT and County are the only parties to this Agreement and are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons (including but not limited to any Consultant) unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

D. Sections 5(H), 5(I), and 9 of this Agreement and any other provision which by its terms is intended to survive termination of this Agreement shall survive.

E. The parties agree as follows:

(a) Contribution.

If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or Grantee ("Notified Party") with respect to which the other party ("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 the Other Party of

the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which ODOT is jointly liable with the Grantee (or would be if joined in the Third Party Claim), ODOT shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Grantee in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of the Grantee on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of the Grantee on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including but not limited to the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.

With respect to a Third Party Claim for which the Grantee is jointly liable with ODOT (or would be if joined in the Third Party Claim), the Grantee 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 ODOT in such proportion as is appropriate to reflect the relative fault of the Grantee on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Grantee on the one hand and of ODOT on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Grantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including but not limited to the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

(b) Choice of Law; Designation of Forum; Federal Forum.

(1) The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

(2) Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

(3) Notwithstanding Section 9.E (b)(2), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section 9.E(b)(3) applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section 9.E(b)(3) is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

(c) Alternative Dispute Resolution.

The parties shall attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the 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.

F. This Agreement and attached Exhibits (which are by this reference incorporated herein) 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 modification or change of terms of this Agreement shall bind either party unless in writing and signed by all parties and all necessary approvals have been obtained. Budget modifications and adjustments from the work described in Exhibit A must be processed as an amendment(s) to this Agreement and the PSK. No waiver or consent shall be effective unless in writing and signed by the party against whom such waiver or consent is asserted. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

G. 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.

On December 1, 2010 the Director of the Oregon Department of Transportation approved DIR-06, in which authority is delegated from the Director of the Oregon Department of Transportation to the Operations Deputy Director and Transportation Development Division Administrator, to approve agreements with local governments, other state agencies, federal governments, state governments, other countries, and tribes as described in ORS 190 developed in consultation with the Chief Procurement Officer.

County

Clackamas County

By: _____
(Official's Signature)

(Printed Name and Title of Official)

Date: _____

ODOT

STATE OF OREGON, by and through
its Department of Transportation

By: _____
Jerri Bohard, Division Administrator
Transportation Development Division

Date: _____

Contact Names:

Scott Hoelscher
Clackamas County
150 Beavercreek Rd.
Oregon City, OR 97045
Phone: 5037424524
Fax: 503-742-4349
E-Mail: scotthoe@clackamas.us

Gail Curtis, Contract Administrator
Transportation and Growth Management Program
123 NW Flanders
Portland, OR 97209-4037
Phone: 503-731-8206
Fax: 503-731-3266
E-Mail: Gail.E.Curtis@odot.state.or.us

**Exhibit A
Statement of Work
TGM 1E-12
Clackamas County
Active Transportation Plan**

| | | | |
|---|--|---|---|
| Name: Address: Phone: Fax: Email: | <u>Agency Work Order Contract Project Manager (WOCPM)</u> Gail Curtis ODOT Region 1 123 NW Flanders St Portland, OR 97209-4037 503-731-8206 503-731-3266 Gail.E.Curtis@odot.state.or.us | Name: Address: Phone: Fax: Email: | <u>Consultant Project Manager</u> Susie Wright Kittelsohn & Associates, Inc. 610 SW Alder St Portland, OR 97205 503.535.7432 (direct) 503-273-8169 swright@kittelsohn.com |
| Name: Address: Phone: Fax: Email: | <u>County Project Manager</u> Scott Hoelscher Clackamas County 150 Beaver Creek Rd Oregon City, OR 97045 503-742-4524 503-742-4349 scotthoe@clackamas.us | | |

Abbreviations

| | |
|-------------|--|
| Agency/ODOT | Oregon Department of Transportation |
| AT | Active Transportation |
| ATP | Active Transportation Plan |
| County | Clackamas County |
| CTAC | Clackamas County Transportation Advisory Committee |
| PAC | Public Advisory Committee |
| PAT | Principal Active Transportation |
| PM | Project Manager |
| PMT | Project Management Team |
| TAC | Technical Advisory Committee |
| TSP | Transportation System Plan |
| WOCPM | Work Order Contract Project Manager |

This statement of work describes the responsibilities of all entities involved in this cooperative project.

The work order contract (for the purposes of the quoted language below the "WOC") with the work order consultant ("Consultant") shall contain the following provisions in substantially the form set forth below:

"PROJECT COOPERATION

This statement of work describes the responsibilities of the entities involved in this cooperative Project. In this Work Order Contract (WOC), the Consultant shall only be responsible for those deliverables assigned to the Consultant. All work assigned to other entities are not Consultant's obligations under this WOC, but shall be obtained by Agency through separate intergovernmental agreements which contain a statement of work that is the same as or similar to this statement of work. The obligations of entities in this statement of work other than the Consultant are merely stated for informational purposes and are in no way binding, nor are the named entities parties to this WOC. Any tasks or deliverables assigned to a subcontractor shall be construed as being the responsibility of the Consultant.

Any Consultant tasks or deliverables which are contingent upon receiving information, resources, assistance, or cooperation in any way from another entity as described in this statement of work shall be subject to the following guidelines:

1. At the first sign of non-cooperation, the Consultant shall provide written notice (email acceptable) to Oregon Department of Transportation (Agency) Work Order Contract Project Manager (WOCPM) of any deliverables that may be delayed due to lack of cooperation by other entities referenced in this statement of work.
2. WOCPM shall contact the non-cooperative entity or entities to discuss the matter and attempt to correct the problem and expedite items determined to be delaying the Consultant.

If Consultant has followed the notification process described in item 1, and Agency finds that delinquency of any deliverable is a result of the failure of other referenced entities to provide information, resources, assistance, or cooperation, as described in this statement of work, the Consultant will not be found in breach of contract; nor shall Consultant be assessed or liable for any damages arising as a result of such delinquencies. Neither shall ODOT be responsible or liable for any damages to Consultant as the result of such non-cooperation by other entities. WOCPM will negotiate with Consultant in the best interest of the State, and may amend the delivery schedule to allow for delinquencies beyond the control of the Consultant."

Project Purpose and Transportation Relationship and Benefits

This Project will result in designated Principal Active Transportation (PAT) Routes identifying bicycle and pedestrian routes that link major destinations, cities and other communities within

Clackamas County (County). It is anticipated that PAT Routes will include 8-12 key routes or "active transportation corridors." PAT Routes will be distinguished from the Transportation System Plan (TSP) bicycle and pedestrian routes due their unique role in linking destinations that have County-wide significance. Major destinations include cities, regional centers, town centers, rural communities, major employment centers, Light Rail Transit stations, major transit stops, schools and parks in the County. Due to the rural nature of the County, the Project will also document existing and planned public trails and trailheads including multi-use trails that allow for equestrians.

Project Area

The Clackamas County Active Transportation Plan project area covers all of unincorporated Clackamas County. The Project will focus on rural areas of the County to identify destinations, determine the appropriate improvement and to prioritize the potential routes. For the urban areas of the County, the Project will build off Metro's identified recommended, regional bicycle and pedestrian connections. While bicycle and pedestrian connections within city jurisdictional boundaries are included in the Project Area, final decisions about these routes will be made by the local cities separately, but in coordination with this plan.

Project Overview

Active transportation is transportation powered by human energy. A local, regional, and national emphasis on Active Transportation (AT) has emerged in recent years, focusing on the fiscal, environmental, and public health benefits of non-motorized travel.

The County's AT network is the system of bicycle and pedestrian facilities, well-connected to the public transportation system, which allows people to travel without a car within the County and the region. Public transportation is also active travel because it usually involves walking and provides an essential connection to bicycling and walking facilities, thus allowing for longer trips without a car.

In many areas of the County, benefits associated with active travel are limited because it does not feel safe to walk or ride a bicycle. Improved safety, convenience and accessibility of cycling and walking facilities are known needs. In addition, through the TSP update process we have learned that there is a need to provide facilities accessible to equestrian users. Note: Grant resources do not include planning for equestrian routes and trails. Outside of this Project, the County will identify which PAT Route rural segments, if any, can feasibly be planned and designed to accommodate equestrian users.

Identifying the principal County AT network and establishing County project priorities will help the County secure federal, state, regional and local funding to expand AT options.

Metro is developing a Regional Active Transportation Plan (ATP) which has regional background information to help identify the County's principal AT routes. The urban portion of

the County's ATP must be coordinated with the Regional ATP. By the time this Project begins, the County will have updated bicycle and pedestrian-related TSP policies, existing conditions, planned Bicycle and Pedestrian Networks, projects, cost estimates, and implementation guidance that will serve as a framework and background for the County's ATP.

PROJECT OBJECTIVES

- Adopt ATP into the County's 2035 TSP; and at a minimum, amend the County's 2003 Pedestrian Master Plan and 2003 Bicycle Master Plan and TSP maps.
- Gain public input throughout plan process including with the assistance of a citizen committee.
- Identify and prioritize the County's principal AT network to serve as many types of users as possible from the reluctant to the fearless to enable safe bicycling and walking in urban and rural areas between communities and major destinations of county-wide significance including major employment centers, Light Rail Transit stations, major transit stops, schools, parks and the regional AT system within the County.
- Develop Facility Types (e.g. bicycle lanes, cycle tracks, shoulder widening, separated paths) for different types of conditions.
- Determine needed infrastructure improvements (e.g. trails, bicycle facilities, and paved shoulders, where secure parking or other amenities are needed) for the prioritized PAT corridors.
- Map existing public equestrian trailheads in rural Clackamas County; and identify which PAT Route segments are appropriate to accommodate equestrian users.
- Identify the type of PAT Route signage desired and key signage locations using the "Intertwine" signage guidelines.
- Develop AT project-level costs for the County's TSP and Capital Improvements Plan.
- Include both on and off-street (i.e. trails) bicycling and walking facilities in network to connect to the PAT as time and funding allows.
- Identify and coordinate with other related Clackamas County jurisdictional planning projects.

PROJECT REQUIREMENTS

Project Management

County shall identify a Project Manager (PM) to provide day-to-day and overall project administration and management. The County PM shall form the Project Management Team (PMT) consisting of the County PM, County Multi-Model Planner, Oregon Department of Transportation's (ODOT) Work Order Contract Project Manager (WOCPM), Consultant PM and County Public & Government Affairs representative. The PMT will meet as described in the tasks. The County shall send meeting materials to members one week in advance and make available meeting summaries for members to review one week after the meeting takes place.

Unless otherwise noted in the tasks, the County shall be responsible for

- convening and facilitating all project meetings,
- preparing agendas,
- assembling meeting materials,
- coordinating and arranging presentations and briefings to stakeholder groups, advisory committees, and other related jurisdictional planning efforts.
- taking and distributing PMT, Public Advisory Committee (PAC) and public meeting summary notes within two weeks of the meeting; and providing PAC members the opportunity to make changes to the summary notes. Typically there will be only one set of meeting notes unless corrections are needed.

Stakeholder Coordination

County shall establish a PAC to obtain public comment on the ATP. The purpose of the PAC is to review and comment on Project materials, providing input through PAC meetings. The County will coordinate the PAC, including setting meeting schedules, creating agendas, preparing materials, and writing and distributing meeting summaries. The PAC will include the members of the Clackamas County Pedestrian/Bikeway Advisory Committee, an existing committee formed to review and advise on pedestrian and bicycle related projects county-wide. In addition, four to six additional PAC members will be recruited and appointed by the County PM with input from the PMT to provide a geographic balance of the project area and to represent bicycling, walking, access to transit and equestrian perspectives. The four to six additional members must include one representative each from the Clackamas County Parks Board; the Tourism Development Council and the Bicycle Transportation Alliance as well as other organizations to be determined. The County PM shall ensure that materials for meetings are sent to members one week in advance and that meeting summaries are available for members to review one week after the meeting takes place.

Partner Agency Coordination

The County shall establish a Technical Advisory Committee (TAC) to guide the technical development of the ATP. The purpose of the TAC is to provide policy and technical guidance; review and comment on materials, and provide input on recommendations. The TAC will consist of the WOCPM, ODOT engineer, and representatives from the following County departments/divisions: Transportation Engineering, Planning and Zoning, Tourism and Cultural Affairs, County Parks and North Clackamas Parks and Recreation, as well as other AT stakeholders from Metro, TriMet, and the Oregon Department of Land Conservation and Development). The TAC will meet at least three times during the Project to provide technical guidance and to ensure the project progresses in a manner consistent with the Statement of Work, schedule and budget.

Additionally, the County will use the Clackamas County Transportation Advisory Committee (CTAC) to review or coordinate the technical review of deliverables as jointly determined by the PMT throughout the project life. (CTAC is an existing group of City, Metro and ODOT representatives from urban Clackamas County.) Because there is no equivalent standing

committee for the rural portion of the County, the County will coordinate with the Community Planning Organizations in the rural areas of the County.

County shall send materials for meetings to members one week in advance and provide meeting summaries to members to review two weeks after the meeting takes place.

TASKS

Task 1: Project Start and Stakeholder Involvement

Objectives

- Develop and implement a public involvement process that generates input from a cross-section of stakeholders involved with and impacted by AT.
- Set the stage for efficient development of an ATP by providing key ATP base data early in the process.

Subtasks

- 1.1 Existing Conditions Report** - County shall prepare and make available an Existing Conditions Report within one week following the Notice to Proceed. At a minimum, the Existing Conditions Report must include the following products:
- a. Glossary of AT Definitions – Words, terms and phrases that define and describe street and route types associated with AT to help Project participants understand terms and definitions relating to AT.
 - b. Existing Plans and Regulations Inventory – Inventory and review of existing County plans and regulations impacting the Project. Inventory and review must address the County's Comprehensive Plan and Zoning and Development Ordinance as they relate to pedestrian and bicycle policies and regulations.
 - c. AT Documents – AT studies and documents including *Connecting Clackamas*, TSP existing conditions; County sidewalk inventory and *Bicycle Tourism Studios*. In addition, County shall conduct inventory of rural multi-use trails and bicycle facilities and obtain Metro data for existing trails and bicycle facilities in the urban area; and map existing public equestrian trailheads in rural Clackamas County.
 - d. Bicycle and Pedestrian Network Inventory Update – Copy of Metro's regional inventory of the existing regional bicycle, pedestrian and trail network; and other available bicycle route information from other sources such as cities and the U.S. Forest Service.
 - e. Roadway Conditions- Where available, specifications on county-maintained roads for existing or TSP-recommended bicycle and pedestrian routes:
 - Crash data in order to identify the high crash locations
 - Posted road speeds.
 - Vehicle volumes.

- Functional classification.
 - Right-of-way width.
 - Pavement width.
 - System gaps and deficiencies for TSP designated bicycle and pedestrian routes.
 - Comprehensive Plan Designations map showing TSP designated or recommended bicycle and pedestrian routes.
- 1.2 Project Schedule** – Consultant shall prepare a draft project schedule with potential dates for meetings, draft and final deliverables, and identifying review times. The Project schedule must be in Excel format. County shall maintain the Project schedule throughout the project.
- 1.3 Stakeholder Involvement Strategy**– County shall prepare draft and final Stakeholder Involvement Strategy. PMT shall review Stakeholder Involvement Strategy at PMT Meeting #1. Consultant shall incorporate PMT comments into final Stakeholder Involvement Strategy. All parts of the draft and final Stakeholder Involvement Strategy must be written for the public to easily understand and be included in final ATP and include a AT project vision statement, project timeline of major deliverables for website posting; methods to inform and engage stakeholders, including existing public County advisory committees not reflected in this statement of work. Expected Stakeholder Involvement Strategy methods shall include a project webpage, virtual open house, public comment periods, fact sheets, postings on social media, information-sharing with Community Planning Organizations, Hamlets and Villages.
- 1.4 PAT Destinations Inventory and Map** – County shall prepare a draft and final inventory and map of potential PAT destinations for PMT and PAC committee review and agreement (under Subtasks 1.10 and 2.5). The Metro ATP has identified and will largely guide the PAT destinations within the County’s Metro urban area. The potential PAT must include both Clackamas County Regional Centers and seven town centers unless there is a compelling reason to not include the town centers; additional County Metro cities may be included. Rural PAT destinations may include rural cities and unincorporated rural communities. County may make revisions to the map throughout the project life as decisions are made and refined or reflect the decisions in subsequent deliverables. County’s revisions to the map may be limited to noting recommended changes in a memo to the PAC based on County PM discretion versus revising the whole document.
- 1.5 Project Template** – Consultant shall prepare a draft and final Project Template to be used by the County and Consultant to provide a standard layout of project deliverables. Final version must incorporate PMT comments.

- 1.6 Project Website** – Consultant shall prepare a Project website that can be used to post meeting dates, project announcements, and draft and final deliverables. The Consultant shall provide training in how to post information to the Project website for up to two County staff with administrative website privileges; and County shall maintain the website throughout the Project.
- 1.7 PAT Corridor Selection Criteria** - Consultant shall prepare preliminary draft, draft, and final PAT Corridor Selection Criteria. The PAT Corridor Selection Criteria must provide a framework for evaluating and prioritizing AT corridors and projects. PAT Corridor Selection preliminary criteria must consider, but are not limited to, the following:
- Has county-wide significance, connects communities and provides access to “community attractors”. A working definition of Community Attractors must be included in the AT Glossary. “Community attractors” may include parks, schools, historical sites, employment centers, Light Rail Transit stations, trail heads, camp grounds and major transit stops.
 - Is safe or can reasonably be made safe considering user, user comfort, route posted speed and high, medium and low cost of safety or facility improvement;
 - Road routes with lower vehicle traffic volume have priority over road routes with higher traffic volume roads;
 - Serves a variety of types of users;
 - Communities and routes that provide access to “community attractors” of potential interest to users have priority over communities or routes with fewer attractors.
 - More scenic routes have priority over less scenic routes; and
 - Consideration of barriers such as ownership of the connection, presence of significant natural resources (based on data provided by the County).
- PMT shall review the preliminary draft PAT Corridor Selection. Consultant shall make revisions prior to Task 2 TAC and PAC review. The final version shall be developed following PAC Meeting #1 and reflect PAC comments. County shall post the final version on the Project Website.
- 1.8 ATP Introduction and Table of Contents** –County shall develop a preliminary draft and draft ATP Introduction and Table of Contents in consultation with Consultant for PMT review and approval. The ATP Introduction must include the goals and purpose of the ATP; purpose of the PAT corridors; benefits of AT, and descriptions of the different types of AT network users. The Table of Contents must list the intended maps and generally be based on the Project deliverables. County shall provide preliminary draft ATP Introduction and Table of Contents to the PMT at least one week prior to PMT Meeting #1. The draft version shall also be subject to the PMT’s review and approval. Up to one additional draft ATP Introduction and Table of Contents may be needed as determined by the PMT. County shall post the final draft version on the project website.

Note: ATP Introduction and Table of Contents may be further modified as part of Consultant's preparation of Draft ATP but for the purposes of this subtask it becomes final following the PMT's review of the second, final draft version.

1.9 Initial Meeting Agendas – County shall develop draft and final agendas for the first TAC and PAC meetings. PMT shall review the draft TAC and PAC meeting agendas. County shall incorporate PMT comments in final Initial Meeting Agendas. The agendas and meeting materials must at a minimum include:

- Roster of committee members and contact information;
- PAT Destinations Inventory and Map
- Project Template
- Policy framework as background from “*Existing Conditions / Plans Review*”;
- Draft PAT Corridor Selection Criteria
- Draft ATP Introduction and Table of Contents

1.10 PMT Meeting #1 – County shall organize and conduct PMT Meeting #1, expected to last two to three hours. County shall brief the PMT on the Existing Conditions Report (developed prior to contract) and Task 1 draft deliverables. Consultant shall attend and participate as a PMT member. County shall provide meeting materials two weeks prior to the PMT Meeting #1 and summary notes within two-weeks of meeting.

County Deliverables

- 1A Existing Conditions Report (Subtask 1.1)
- 1B Project Schedule - updates (Subtask 1.2)
- 1C Stakeholder Involvement Strategy (Subtask 1.3)
- 1D PAT Destinations Inventory and Map (Subtask 1.4)
- 1E Project Website - maintenance (Subtask 1.6)
- 1F PAT Corridor Selection Criteria – data needed by Consultant (Subtask 1.7)
- 1G ATP Introduction and Table of Contents (Subtask 1.8)
- 1H Initial Meeting Agendas (Subtask 1.9)
- 1I PMT Meeting #1 (Subtask 1.10)

Consultant Deliverables

- 1a Draft Project Schedule (Subtask 1.2)
- 1b Project Template (Subtask 1.5)
- 1c Project Website (Subtask 1.6)
- 1d PAT Corridor Selection Criteria (Subtask 1.7)
- 1e PMT Meeting #1 (Subtask 1.10)

Task 2: Facility Design

Objectives

- To identify AT facility types early in the process for PAC review to ensure facility types meet user needs and respond to the Existing Conditions Report.
- Develop design guidelines for multi-use trails and other AT facilities.

Subtasks

2.1 Draft PAT Facility Type Report – Consultant shall develop a preliminary draft and draft PAT Facility Type Report to provide a catalog of facility types for various route functions or conditions; and ultimately, to be used to show citizens the type of facility for given segments of the PAT Corridor. The PAT Facility Type Report must include:

- PAT facility types for bicyclists and pedestrians in order to provide a range of facility types that can be applied to a range of conditions from low-volume to high-volume roads;
- A written summary describing the design and illustration with dimensions for each Facility Type.
- Sources of background information must include the Oregon Bicycle and Pedestrian Design Guide (2011), National Association of City Transportation Officials Urban Bikeway Design Guide (2011), Washington County Bicycle Toolkit, and City of Ashland Bicycle and Pedestrian Facility Design Toolkit;
- Design guidance on innovative AT facilities; and

During development of PAT Facility Type Report, Consultant shall meet with County Traffic Engineering and TAC members as necessary to gain their input and support or to note differences of opinion as each version of the PAT Facility Type Report is developed.

The preliminary draft PAT Facility Type Report must be reviewed at PMT Meeting #2. The draft PAT Facility Type Report must incorporate the PMT's comments.

2.2 PMT Meeting #2 – County shall arrange and Consultant shall conduct PMT Meeting #2 to gather PMT input on the preliminary draft version of the PAT Facility Type Report and to review and comment on TAC and PAC draft meetings agendas. County shall provide meeting material at least one-week prior to the meeting and meeting summary notes within one week of the PMT Meeting #2.

2.3 TAC Meeting #1 – County shall arrange and Consultant shall conduct TAC Meeting #1 to gather TAC input on the PAT Destinations Inventory and Map, draft PAT Corridor Selection Criteria, Draft Facility Type Report and to brief the TAC on the existing conditions. County shall provide meeting material at least one-week prior to the meeting and meeting summary notes within one week after TAC Meeting #1.