



**DAN JOHNSON**  
DIRECTOR

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

September 29, 2022

Board of County Commissioners  
Clackamas County

**Approval of an Intergovernmental Agreement between the City of Happy Valley and Clackamas County relating to the OR HWY. 212/224 Intersection (Rock Creek Interchange) Improvement Project Study. Total value is \$40,000. Funding through County Road Fund. County General Funds are not involved.**

<b>Purpose/Outcome</b>	Approval of an Intergovernmental Agreement between the City of Happy Valley and Clackamas County relating to the OR HWY. 212/224 Intersection (Rock Creek Interchange) Improvement Project Study.
<b>Dollar Amount and Fiscal Impact</b>	Up to 50 percent of the final Project cost, not to exceed a \$40,000.
<b>Funding Source</b>	County Road Fund. No County General funds are involved.
<b>Duration</b>	At time of IGA execution through completion of the project.
<b>Previous Board Action/Review</b>	9/27/22: Discussion item at issues
<b>Strategic Plan Alignment</b>	-This agreement aligns with the department's transportation purpose to help users of the transportation system to travel safely and efficiently in Clackamas County. -Aligns with the County's strategic priority to build a strong infrastructure.
<b>Counsel Review</b>	Date of Counsel review:09/19/22 Name of County Counsel performing review: NB
<b>Procurement Review</b>	(Please check yes or no for procurement review. If the answer is "no," please provide an explanation.) 1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. This is an Intergovernmental Agreement
<b>Contact Person</b>	Mike Bezner, Assistant Director of Transportation 503-742-4651
<b>Contract No.</b>	N/A

**BACKGROUND:**

Staff is requesting the approval of an Intergovernmental Agreement between the city of Happy Valley and Clackamas County relating to the OR HWY. 212/224 Intersection (Rock Creek Interchange) Improvement Project Study for the purpose of providing relatively low-cost design alternatives to ease congestion. Currently, the intersection is near failure (above 0.90 volume to capacity ratio).

This study will determine how much capacity can be added and the projected costs of improvements.

Both parties have determined it is in the public interest to cooperate in the planning and execution of the Project. Therefore, the cost of the project will be shared by both parties. City of Happy Valley will be responsible for paying the upfront costs associated with the Project, and then billing the County for 50 percent of the final project cost, not to exceed a \$40,000 County contribution.

**RECOMMENDATION:** Staff respectfully recommends the approval of the Intergovernmental Agreement between the City of Happy Valley and Clackamas County relating to the OR HWY. 212/224 Intersection (Rock Creek Interchange) Improvement Project Study and authorizes the Chair to sign on behalf of the County

Respectfully submitted,

*Mike Bezner*

Mike Bezner  
Assistant Director of Transportation  
Department of Transportation and Development

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE CITY OF HAPPY VALLEY AND CLACKAMAS COUNTY  
RELATING TO THE OR HWY. 212/224 INTERSECTION (ROCK CREEK INTERCHANGE)  
IMPROVEMENT PROJECT STUDY**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is entered into between the City of Happy Valley, an Oregon municipal corporation (“City”), and Clackamas County, a political subdivision of the state of Oregon (“County”), collectively referred to as the “Parties” and each a “Party.”

**RECITALS**

- A. This Agreement is entered into pursuant to ORS 190.010, which confers authority on local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreements, its officers or agencies have authority to perform.
- B. The Parties plan to study potential improvements at the Rock Creek Interchange (the “split” of OR Hwy. 212/224) – see **Exhibit A**. The Rock Creek Interchange Project (the “Project”) is proposed to examine lane improvements and additions to the Project that will add vehicular capacity to this failing (above 0.90 volume to capacity ratio in the City’s current Transportation System Plan) intersection; determine how much capacity would be added if the improvements were to be pursued; and, determine the projected costs of said improvements.
- C. The Parties desire to provide the basis for a cooperative working relationship for the purpose of providing design, capacity and cost projections as part of the Project.
- D. The Parties have determined it is in the public interest to cooperate in the planning and execution of the Project.

**AGREEMENT**

Now, therefore, based on the foregoing, the Parties agree as follows:

- 1. **Term.** This Agreement becomes effective as of the last date of signature by a Party indicated below. Unless terminated earlier pursuant to Section 5 of this Agreement, this Agreement will expire upon the completion of each, and every obligation of the Parties set forth in this Agreement.
- 2. **City Obligations.**
  - a. **Scope of Work.** The City agrees to contract for the scope of work set out in **Exhibit B**. Prior to approving the contract, the City will approve the study parameters, estimates, and specifications.
  - b. **Project Schedule.** The City agrees to the proposed project schedule set out in **Exhibit C**. The City acknowledges that the attached schedule is an estimate and may change due to conditions outside of the reasonable control of the Parties. Except as otherwise provided in this Agreement, neither Party may be held liable for failure to adhere to the attached

schedule where that Party proceeds with reasonable diligence and in good faith to advance the Project.

- c. Management of Study. The City will manage the Project and will administer any associated engineering and design contracts. The City's project manager (the "City PM") is identified below in Section 7 of this Agreement. The City PM will work to resolve any dispute with the County PM (defined below).
- d. Project Coordination. The City PM shall coordinate the Project efforts between City staff, consultant staff, DTD staff and ODOT Region 1 staff. At a minimum, the City PM shall ensure that the County PM has reviewed and approved the work plan at the outset of each individual work task, as set forth in the scope of work set out in Exhibit B, and has further reviewed and approved the work product resulting from each individual work task within a reasonable amount of time after completion of each work product. The County's review and approval under this section shall not be unreasonably withheld.
- e. Payment Obligations. Except as provided in Section 3(e), the City will be responsible for paying, up front, the costs associated with the Project, and then billing the County for 50 percent of the final Project cost, not to exceed a \$40,000 contribution. This bill will be sent to the County within 30 days of the Project completion. The City shall not invoice the County, and the County shall not be liable for, amounts in excess of \$40,000 unless the Parties amend this Agreement by modifying the scope of work set out in Exhibit B.

### **3. County Obligations.**

- a. Scope of Work. The County agrees to the scope of work set out in **Exhibit B**. Prior to contract approval, the County will approve the study parameters, estimates, and specifications associated with the work set out in Exhibit B. The County's project manager (the "County PM") is identified below in Section 7 of this Agreement, and hereby agrees to coordinate with the City PM, consultant staff and ODOT staff with any comments or concerns.
- b. Project Schedule. The County agrees to the proposed Project schedule set forth in **Exhibit C**. The County acknowledges that the attached schedule is an estimate and may change due to conditions outside of the reasonable control of the Parties. Except as otherwise provided in this Agreement, neither Party may be held liable for failure to adhere to the attached schedule where that Party proceeds with reasonable diligence and in good faith to advance the Project.
- c. Project Cost. Upon receipt of the study, which is the deliverable associated with the Project described herein, and proof that all outstanding payments associated with the Project have been made by the

City, the County agrees to contribute 50 percent of the Project cost in an amount not to exceed \$40,000. Once in receipt of the invoice from the City, the County agrees to process payment of the contribution within 30 business days provided the City is otherwise in compliance with the terms of this Agreement.

4. **Attachments.** The Parties understand and agree that **Exhibit A, Exhibit B, and Exhibit C** are attached and incorporated into this Agreement as if fully set forth herein.
5. **Dispute Resolution and Termination.**
  - a. In the event of a dispute arising under the terms of this Agreement that is not resolved by the City PM and the County PM, the City of Happy Valley Economic and Community Development Director and County Department of Transportation Assistant Director shall attempt to resolve the dispute. In the event this does not resolve the dispute, the City of Happy Valley City Manager and County Department of Transportation Director shall attempt to resolve the dispute. In the event the dispute cannot be resolved, either Party may pursue any legal or equitable claims to which that Party may be entitled.
  - b. During the Project period covered by this Agreement, either the City or the County may terminate the Agreement by giving 30 days written notice to the other Party, or at such later date as may be established by the terminating Party. The Parties may terminate this Agreement at any time by mutual written agreement.
  - c. Either the City or the County 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 desire to mutually terminate. If the breaching Party has not entirely cured the breach within ten (10) days of deemed or actual receipt of the notice, then the non-breaching Party may terminate the Agreement at any time thereafter by giving written notice of termination to the other Party stating the effective date of the termination; provided however, if the default is of such a nature that it cannot be completely remedied within such 10-day period, this provision shall be complied with if the breaching Party begins correction of the default within the 10-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.
  - d. The City or the County 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.

- e. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project.
- f. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

**6. 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 City, 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 (including legal and other professional fees) arising out of or based upon damages or injuries to person or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents or its subcontractors or anyone over which the County has a right to control.
- b. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City 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 (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

**7. Party Contacts.**

- a. The City's Economic & Community Development Director or his/her designee will act as project manager for the City for the Project.

**Contact Information:**  
Michael D. Walter, AICP  
City of Happy Valley  
16000 SE Misty Drive  
Happy Valley, OR 97086  
(503) 783-3814  
[Michaelw@happyvalleyor.gov](mailto:Michaelw@happyvalleyor.gov)

- b. The County's Dept. of Transportation Assistant Director or his/her designee will act as project manager for the County for the Project.

**Contact Information:**  
Mike Bezner  
Clackamas County

150 Beaver Creek Road  
Oregon City OR 97045  
(503) 742-4658  
MikeBez@clackamas.us

- c. 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.

**8. General Provisions.**

- a. **Oregon Law and Forum.** This agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- b. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
- c. **Non-Exclusive Rights and Remedies.** Except as otherwise 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. **Record and Fiscal Control System.** All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
- e. **Access to Records.** The Parties acknowledge and agree that each Party shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three (3) years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.
- f. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated. Any provisions herein which would conflict with law 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.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the County or the City. Neither party objects to contributions to the Project being made by persons, limited liability companies or corporations wishing to assist in the funding of the Project, though said contributions would proportionately decrease the amount of City and County payments to the Project cost.
- l. **No Assignment.** No party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.



- m. **Nonwaiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement, the County is specifically not obligating itself, or any other governmental entity with respect to any discretionary governmental action relating to the Project or any associated development, operation and use of the improvements to be constructed on the Project Area, including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental approvals that are or may be required.
- n. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, 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.
- o. **Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.
- p. **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.

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

Clackamas County

City of Happy Valley

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

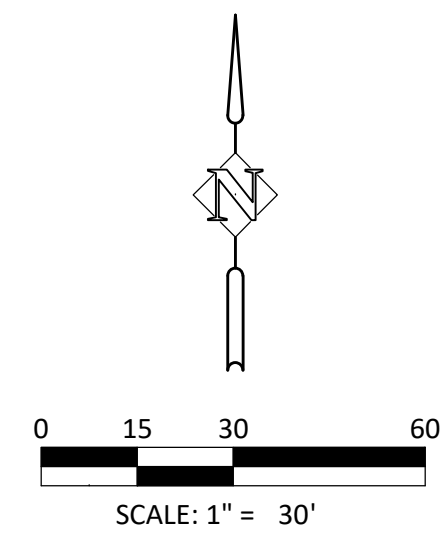
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 Jason A. Tuck, ICMA  
 City Manager

\_\_\_\_\_  
Date

8/17/2022  
\_\_\_\_\_  
Date

**EXHIBIT A**  
**STUDY INTERSECTION**







**EXHIBIT B**  
**SCOPE OF WORK**

**To: Michael Walter**  
Economic and Community Development  
Director - City of Happy Valley, Oregon

**From: Dan Houf, P.E.**  
Harper Houf Peterson Righellis Inc.

**Date:** October 1, 2021

**Re: Highway 212/224 Carver Junction – 10% Intersection Design and Cost Estimate**

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Thank you for the opportunity to present this proposal to complete an intersection analysis study for the City of Happy Valley including 10% Design services. The following is our proposal to complete the work:

### **Scope of Services:**

The intent of the scope of service is to prepare 10% design plans and a cost estimate for the improvements to the Hwy 212/224 Carver Junction Intersection. Traffic requirements will be provided to HHPR by the City's traffic consultant DKS through their on-call contract with the City. DKS will also provide any necessary plan layouts required for the signal improvements and striping.

This scope of services will include the following:

**Task - 1 Base Map/Surveying:** Create a base map starting with the cad files from the previous Rock Creek Employment Center Base map. Supplement the base map by field surveying key elements in the area including existing ROW pins, location of existing bridge structure crossing Rock Creek, and researching existing survey documents to show the existing ROW. Fly the area with the drone to collect horizontal and vertical data for the preliminary survey base map. This product will be considered a preliminary survey and would need to be supplemented for final design. A full ROW recovery survey will not be provided, but available ROW show to determine approximate acquisition needs.

**Task 2 – Prepare 10% Plan:** Prepare a 10% horizontal and vertical layout of the proposed improvements utilizing traffic information provided by DKS and submit to the City, ODOT and Clackamas County for review and approval.

The plans will include:

- Plan and Profile of the Improvements
- Identify areas of potential ROW acquisitions
- Proposed storm water improvements at a conceptual level
- Striping Plans and preliminary signal layout plan.

**Task 3 – Cost Estimate:** Prepare a detailed cost estimate for the improvements at the intersection. Estimate ROW acquisitions areas and provide a budgetary estimate for ROW required for the project.

**Task 4: Respond to Review Comments:** Respond to review comments and provide plan updates to document the final 10% design selected.

**Assumptions:**

It is assumed that DKS will provide all required traffic engineering services including traffic analysis, and striping plan under their on-call contract with the City of Happy Valley.

The City of Happy Valley will provide review of the layouts and help with jurisdictional coordination of the review the submittal documents.

**Fee:**

Harper Houf Peterson Righellis Inc. will bill on a time and material basis with a total not to exceed cost of \$80,320 per the attached Estimated Fee Schedule.

**Agreement:**

Signed

\_\_\_\_\_  
Harper Houf Peterson Righellis Inc.

Name\_\_\_\_\_ Date\_\_\_\_\_

\_\_\_\_\_  
City of Happy Valley

Name\_\_\_\_\_ Date\_\_\_\_\_





**EXHIBIT C**

**PROJECT SCHEDULE**



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: \_\_\_\_\_