



**DAN JOHNSON**  
DIRECTOR

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

April 9, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement to  
Provide Planning Services to the City of Gladstone

<b>Purpose/ Outcomes</b>	To adopt an updated intergovernmental agreement (IGA) to provide land use planning services to the City of Gladstone
<b>Dollar Amount and Fiscal Impact</b>	The IGA includes a provision for payment by the city of the full cost of the services to be provided. Rates are billed hourly based upon the charge-out rate of the employee performing the work, and includes overhead. Fiscal impact will be dependent on the demand for services.
<b>Funding Source</b>	There is no cost to the county. The city will pay the Planning and Zoning program for the cost of services provided by staff in the program.
<b>Duration</b>	Effective upon signature by the Board, the IGA will automatically renew annually unless terminated by either party 30 calendar days prior to the next renewal or with 90 days' notice for any reason.
<b>Previous Board Action</b>	The Board has previously approved IGAs with the City of Gladstone to provide land use planning services. The most recent was approved on February 1, 2001.
<b>County Counsel Review</b>	This IGA was reviewed and approved by County Counsel on February 20, 2020. (NB)
<b>Strategic Plan Alignment</b>	<p>1. <i>How does this item align with your Department's Strategic Business Plan goals?</i></p> <p>By assisting the City of Gladstone with planning services we further our goal of providing the residents, property owners, development community and businesses of Clackamas County with a well-planned and vibrant community, leading to a greater ability to invest and develop property.</p>

	<p>2. <i>How does this item align with the County's Performance Clackamas goals?</i></p> <p>While not specifically outlined in the Board's Priorities, Performance Clackamas guides us to support growing a vibrant economy and building a strong infrastructure. By providing land use planning services to a city in our County, we foster the development of land for new housing, businesses, and other uses. This development provides places to live, work and play – creating economic opportunity and community infrastructure.</p>
<b>Contact Person</b>	Jennifer Hughes, Planning Director (503)742-4518

**BACKGROUND:**

For several decades, the City of Gladstone has contracted with the county to provide land use planning services, with the current intergovernmental agreement also including building code (permitting and plan review) functions.

The updated IGA is proposed for several reasons:

- To update the IGA so it conforms to the current format for such documents;
- To recognize changes to the respective planning-related duties of city and county staff, and;
- To remove the provisions related to building permit services, as the city never assumed their building codes program, so by administrative rule (OAR 918-020), the building services are directly under the County's jurisdiction and do not require an IGA.

The Gladstone City Council approved the IGA, and the Mayor signed it on March 10, 2020.

**RECOMMENDATION:**

Staff respectfully recommends approval of the IGA for the provision of land use planning services to the City of Gladstone.

Respectfully submitted,

*Jennifer Hughes*

Jennifer Hughes, Planning Director  
 Department of Transportation and Development

## **INTERGOVERNMENTAL AGREEMENT BETWEEN CLACKAMAS COUNTY AND THE CITY OF GLADSTONE RELATED TO PLANNING SERVICES**

THIS AGREEMENT (this "Agreement") is entered into between Clackamas County ("COUNTY"), a corporate body politic, by and through its Department of Transportation and Development, and the City of Gladstone ("CITY"), a municipal corporation, collectively referred to as the "Parties" and each a "Party."

### **RECITALS**

WHEREAS, authority is conferred upon local governments under ORS 190.010 to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform;

WHEREAS, the City desires a contractual relationship with the County whereby the County will be responsible for providing certain land use planning services on behalf of the City;

WHEREAS, the City wishes to have the County provide services the City would be otherwise obligated to provide for administering land use regulations and processing land use permit applications; and

WHEREAS, the City and the County desire to provide excellent public service to their citizens and accomplish this goal in the most effective and efficient manner; and

WHEREAS, the County agrees to provide the above-described services and the City agrees to pay for the provision of these services under the conditions set forth in this Agreement and in consideration of the fees set out below.

### **AGREEMENT**

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

1. **Initial Term and Renewal.** This Agreement shall be effective upon execution and shall automatically renew each calendar year on March 31 for successive one-year terms. Either Party may elect not to renew the Agreement by providing written notice to the other at least 30 calendar days prior to the effective date of the next renewal.
2. **Scope of Services.** Nothing in this Agreement shall be construed as an assumption of other City programs not specifically listed in this Agreement, including, but not limited to code enforcement.
3. **Revenue Collection by the County.** The County will collect all fees from applications filed and permits issued under this Agreement, including but not limited to land use application permits. Permit revenue shall be distributed pursuant to Section 4.

#### **4. Rights and Obligations of the County.**

- A. The County hereby agrees to administer land use regulations and shall process land use applications pursuant to the City's applicable comprehensive plan, zoning, partitioning and subdivision provisions. Specific services may include:
- i. Receiving all land use applications and accompanying fees, and providing the city administrator, or designee, with a monthly report of all applications;
  - ii. Reviewing land use applications for completeness and notifying applicants and the city administrator, or designee, accordingly;
  - iii. Conducting all pre-application meetings and responding to substantive inquiries regarding specific development proposals, and providing the city administrator, or designee, notice of such meetings and copies of minutes, if any, from such meetings;
  - iv. Notifying the public as required by state and applicable local provisions;
  - v. Issuing appropriate notices to state and regional agencies, including the Department of Land Conservation and Development and Metro, as required by state and local laws, and providing copies of the same to the city administrator, or designee;
  - vi. Circulating and compiling requests for comments from City departments;
  - vii. Preparing staff reports for land use applications subject to Planning Commission review and providing copies of the same to the city administrator, or designee;
  - viii. Issuing final written decisions on quasi-judicial and administrative applications as provided in the City's applicable comprehensive plan, zoning, partitioning and subdivision provisions;
  - ix. Creating and maintaining land use application files until transferred to the City;
  - x. Preparing presentations for Planning Commission and City Council meetings;
  - xi. Attending meetings of the City Council, Planning Commission, Citizen Advisory Committees and other public agencies or civic groups as required for purposes of administering land use regulations and processing land use permit applications;
  - xii. Reviewing applications for building permits and certificates of occupancy for land use compliance;
  - xiii. Performing public services tasks such as responding to land use and other planning inquiries, dispersing related informational handouts and materials, and evaluating and approving land use compatibility statements;
  - xiv. Performing other related tasks specifically requested by the City and agreed to in writing by the County.
- B. The County may provide long-range planning services as mutually agreed upon by both the City and the County.

- i. Services covered under this section may include, but are not limited to, legislative amendments to the City's comprehensive plan, zoning, partitioning and subdivision provisions.
  - ii. Services covered under this section, including the financing or budgeting of these services, will be considered by the County on a case-by-case basis upon written request by the City.
  - iii. Upon receipt of a written request from the City to perform services covered under this section, the County shall advise the City within fourteen (14) days of its decision to accept or decline the request.
  - iv. If the County accepts the request, the County will provide a quote to the City outlining the work to be done with estimated labor and material costs in accordance with this Agreement before commencing any work. Prior to any work being started, the quote must be signed by the City Administrator for the City and the Planning Director for the County, or their respective designees.
- C. The County may provide other community planning-related services on an as needed basis as mutually agreed upon by both the City and the County.
- i. Services covered under this section may include, but are not limited to, services related to the compilation and reporting of data to state and federal agencies.
  - ii. The County shall consider the provision of community planning-related services upon written request by the City.
  - iii. Upon receipt of a written request from the City to perform community planning-related services, the County shall advise the City within fourteen (14) days of its decision to accept or decline the request.
  - iv. If the County accepts the request, the County will provide a quote to the City outlining the work to be done with estimated labor and material costs in accordance with this Agreement before commencing any work. Prior to any work being started, the quote must be signed by the City Administrator for the City and the Planning Director for the County, or their respective designees.
- D. The County will administer the City's fee structure for all land use permit applications.
- E. The County shall submit a detailed monthly invoice to the City with work descriptions, labor costs, and material costs for services performed pursuant to this Agreement. The invoice shall be issued within sixty (60) days of performing the work. Labor rates shall be established by the County and shall include overhead (which includes fringe benefits). Labor rates may be updated annually by the County. The County's rates for staff as of the effective date of this Agreement are attached hereto and fully incorporated herein as Exhibit "A". The City may request, and the County shall provide, a schedule of the labor rates currently in effect for those positions that may perform work under this Agreement.
- F. At least once every calendar quarter, the County shall produce a summary for the City that identifies the land use applications the County received on behalf of the City, and the revenues collected from permit application fees. At the time the County provides the

summary described in this section, the County shall transfer any revenues collected from permit application fees to the City.

G. The County shall submit invoices to the City at the following address:

City of Gladstone  
Attention: City Administrator  
525 Portland Ave.  
Gladstone, OR 97027

**5. Rights and Obligations of the City.**

- A. The City shall coordinate with the County in the administration of the services provided through this Agreement.
- B. The City shall provide at least 30 days' notice to the County prior to any proposed change to the City's fee schedule.
- C. The City shall compensate the County for all labor costs, consistent with Section 4(E). Any out of pocket expenses or transportation vehicle expenses incurred while performing services under this Agreement shall be agreed to in advance and in writing by the Clackamas County Planning Director or his or her designee, and the Gladstone City Administrator or his or her designee.
- D. The City shall compensate the County for the services provided based on the rates established by the County to local governments. The County's rates for staff as of the effective date of this Agreement are attached hereto and fully incorporated herein as Exhibit "A".
- E. The City shall pay the County for invoices submitted by the County for costs billed pursuant to this Agreement and incurred by the County. The City shall issue payment to the County for approved costs within 30 days of receipt of invoices. The City shall remit payment to the County at the following address:

Clackamas County  
DTD Administration – MS1  
150 Beaver Creek Rd.  
Oregon City, OR 97045

**6. Liaison.**

- A. The Clackamas County Planning Director or his or her designee will act as liaison for the County for this Agreement.

**Contact Information:**

Clackamas County  
Planning and Zoning Division  
150 Beaver Creek Rd  
Oregon City, OR 97045

- B. The Gladstone City Administrator or his or her designee will act as liaison for the City for this Agreement.

**Contact Information:**

City of Gladstone  
525 Portland Ave  
Gladstone, OR 97027

- C. Any notice required or permitted under this Agreement shall be given to the above named individuals and shall become effective when actually delivered or forty-eight (48) hours after its deposit in the United States mail, addressed to such address as may be specified from time to time by a Party or Parties in writing.

**7. Termination.**

- A. Either the County or the City may terminate this Agreement at any time, with or without cause, by providing 90 days' written notice to the other Party.
- B. Either the County or the City may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County or the City shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination

**8. 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 persons or property caused by negligent or willful acts performed under this Agreement by 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 negligent or willful acts performed un the Agreement by the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

## 9. General Provisions

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. City, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** County and City shall retain, maintain, and keep accessible all records relevant to this Agreement (“Records”) for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be



required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. County and City shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, each Party shall permit the other Party's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.

- E. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- F. **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.
- G. **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. This Agreement specifically supersedes that "Contract for Continuing Planning Services and Building Services By and Between the City of Gladstone, Oregon and Clackamas County Department of Transportation & Development" dated February 1, 2001 by and between the Parties (the "2001 Agreement"). The Parties agree that the 2001 Agreement is hereby terminated. There are no other 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.
- H. **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.
- I. **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.
- J. **No Third-Party Beneficiary.** City and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

- K. **Subcontract and Assignment.** The County shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the City, which approval may not be unreasonably withheld.
- L. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- M. **Survival.** All provisions in sections 8 and 9 shall survive the termination of this Agreement.
- N. **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.
- O. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- P. **Force Majeure.** Neither City nor County shall be held responsible for delay or default caused by events outside of the City or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, each Party shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.


**[Signatures on Following Page]**

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

**Clackamas County**

**City of Gladstone**

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

  
\_\_\_\_\_

\_\_\_\_\_  
Date

*3/10/2020*  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
, City Recorder

# Active Employee List with Current Charge-Out Rates

As of 02/25/2020

**Fund-Dept: 214-7441 PLANNING FUND | LAND USE & PERMITTING**

Employee Name	Emp ID	Reg/ Temp	Full/ Part	Emp Class	Emp Class Descr	FACTORS				TOTAL CHARGE-OUT RATES		
						Class Labor Rate	Reg Fringe Rate	OT Fringe Rate	Ovrhd Rate*	Reg Labor Rate	OT Labor Rate	Reg Lbr Rate + Ovrhd*
AHRENS, MELISSA	28005	RG	FT	3313	PLANNER, SENIOR	\$55.4119	\$29.7225	\$0.0000	43.89%	\$85.1344	\$83.1179	\$122.4999
BLESSING, BENJAMIN	21955	RG	FT	3312	PLANNER 2	\$46.4563	\$23.4973	\$0.0000	43.89%	\$69.9536	\$69.6845	\$100.6562
CROSS, NICOLE	27951	RG	FT	3312	PLANNER 2	\$46.4563	\$23.4973	\$0.0000	43.89%	\$69.9536	\$69.6845	\$100.6562
DANCE, LIZBETH	27965	RG	FT	3311	PLANNER 1	\$40.9147	\$26.3793	\$0.0000	43.89%	\$67.2940	\$61.3721	\$96.8293
DAWSON, CAROL	8921	RG	FT	3318	PLANNER TRAINEE	\$36.7190	\$32.5381	\$0.0000	43.89%	\$69.2571	\$55.0785	\$99.6540
GLASGOW, CLAYTON	12778	RG	FT	3313	PLANNER, SENIOR	\$55.4119	\$29.7225	\$0.0000	43.89%	\$85.1344	\$83.1179	\$122.4999
HAMBURG, GLEN	27039	RG	FT	3313	PLANNER, SENIOR	\$55.4119	\$29.7225	\$0.0000	43.89%	\$85.1344	\$83.1179	\$122.4999
HANSCHKA, STEPHEN	16693	RG	FT	3313	PLANNER, SENIOR	\$55.4119	\$29.7225	\$0.0000	43.89%	\$85.1344	\$83.1179	\$122.4999
HUGHES, JENNIFER	6233	RG	FT	20358	PLANNING DIRECTOR*	\$62.6714	\$44.0643	\$0.0000	43.89%	\$106.7357	\$62.6714	\$153.5820
MCINTIRE, RICHARD	5813	RG	FT	3313	PLANNER, SENIOR	\$55.4119	\$29.7225	\$0.0000	43.89%	\$85.1344	\$83.1179	\$122.4999
NESBITT, LINDSEY	26877	RG	FT	20359	PLANNING MANAGER	\$59.0179	\$29.2214	\$0.0000	43.89%	\$88.2393	\$59.0179	\$126.9675
RENHARD, DARCY	22939	RG	FT	3622	ADMINISTRATIVE SPECIALIST 2	\$38.8881	\$33.9476	\$0.0000	43.89%	\$72.8357	\$58.3322	\$104.8033
RIEDERER, ANTHONY	28027	RG	FT	3313	PLANNER, SENIOR	\$55.4119	\$29.7225	\$0.0000	43.89%	\$85.1344	\$83.1179	\$122.4999
SALO, MICHELLE	27000	RG	FT	3054	PERMITS SPECIALIST	\$30.2786	\$25.5810	\$0.0000	43.89%	\$55.8596	\$45.4179	\$80.3764
THORNHILL, SUSAN	29292	RG	FT	3054	PERMITS SPECIALIST	\$30.2786	\$25.5810	\$0.0000	43.89%	\$55.8596	\$45.4179	\$80.3764
YADEN, ANDREW	27170	RG	FT	3311	PLANNER 1	\$40.9147	\$26.3793	\$0.0000	43.89%	\$67.2940	\$61.3721	\$96.8293

\*Overhead rates shown on this report are only applied to regular hours on non-overhead projects.

**Active Employee List with Current Charge-Out Rates**  
 As of 02/25/2020

**Fund-Dept: 214-7442 PLANNING FUND | DTB LONG RANGE PLANNING**

Employee Name	Emp ID	Reg/ Temp	Fu l/ Part	Emp Class	Emp Class Descr	FACTORS				TOTAL CHARGE-OUT RATES		
						Class Labor Rate	Reg Fringe Rate	OT Fringe Rate	Ovrhd Rate*	Reg Labor Rate	OT Labor Rate	Reg Lbr Rate + Ovrhd*
FIELDS, JOY	29121	RG	FT	3313	PLANNER, SENIOR	\$55.1000	\$39.2714	\$0.0000	43.18%	\$94.3714	\$82.6500	\$135.1210
FRITZIE, MARTHA	20881	RG	FT	3313	PLANNER, SENIOR	\$55.1000	\$39.2714	\$0.0000	43.18%	\$94.3714	\$82.6500	\$135.1210
GONZALES, LORRAINE	12333	RG	FT	3313	PLANNER, SENIOR	\$55.1000	\$39.2714	\$0.0000	43.18%	\$94.3714	\$82.6500	\$135.1210

\*Overhead rates shown on this report are only applied to regular hours on non-overhead projects.



**DAN JOHNSON**  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

April 9, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Oregon Public Works Emergency Response  
Cooperative Assistance Agreement

<b>Purpose/ Outcomes</b>	This Agreement is between the government agencies (local, county, or state) that have executed the Agreement. This is a cooperative assistance agreement so that in the event of an emergency as defined in ORS 401.025 (5), the parties who have executed this agreement may need assistance to provide supplemental personnel, equipment, or other support.
<b>Dollar Amount and Fiscal Impact</b>	There will be no fiscal impact unless there is an emergency and then each event will be negotiated between the two agencies involved.
<b>Funding Source</b>	Transportation Maintenance 215-7433, if required
<b>Duration</b>	This Agreement shall be effective upon approval by two or more parties and shall remain in effect as to a specific party for five years after the date that party executes this Agreement unless sooner terminated.
<b>Previous Board Action/Review</b>	None
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Helps keep a strong infrastructure and ensures safe communities</li> <li>2. Provides maintenance to the traveling public so they can experience a clean, attractive and healthy community.</li> </ol>
<b>Counsel Review</b>	Reviewed and approved by Nate Boderman, County Counsel on March 31, 2020.
<b>Procurement Review</b>	<ol style="list-style-type: none"> <li>1. Was the item processed through Procurement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></li> <li>2. If no, provide brief explanation. Item is an Cooperative Assistance Agreement</li> </ol>
<b>Contact Person</b>	Terry S. Abbott, Transportation Operations Manager, 503-650-3218

**BACKGROUND:**

The last time Clackamas County participated in this Agreement for Public Works Cooperative Assistance was in 2011, and it should be reviewed and renewed every five years.

This agreement explains how the parties could exchange services and equipment during those times when a declaration of emergency is in effect. Clackamas County has established charge out rates for our equipment and are agreeable to materials being replaced at our discretion in lieu of cash payment.

The Oregon Department of Transportation (ODOT) Office of Maintenance maintains the master copy of this Agreement, including a list of all those governmental entities that have executed the agreement.

The parties to this agreement are responsible for the construction and maintenance of public facilities such as street, road, highway, sewer, water, and related systems during routine and emergency conditions. Each of the parties owns and maintains equipment, and employs personnel who are trained to provide service in the construction and maintenance of street, road, highway, sewer, water, and related systems and other support.

Staff respectfully recommends that the Board of County Commissioners approve the attached Oregon Public Works Emergency Response Cooperative Assistance Agreement.

Respectfully submitted,

*Terry S. Abbott*

Terry S. Abbott  
Transportation Operations Manager  
Transportation Maintenance Division

OREGON PUBLIC WORKS EMERGENCY RESPONSE  
COOPERATIVE ASSISTANCE AGREEMENT

THIS AGREEMENT is between the government agencies (local, county, or state) that have executed the Agreement, as indicated by the signatures at the end of this document.

WITNESSETH:

WHEREAS, parties to this agreement are responsible for the construction and maintenance of public facilities such as street, road, highway, sewer, water, and related systems during routine and emergency conditions; and

WHEREAS, each of the parties owns and maintains equipment, and employs personnel who are trained to provide service in the construction and maintenance of street, road, highway, sewer, water, and related systems and other support;

WHEREAS, in the event of a major emergency or disaster as defined in ORS 40 1.025 (5), the parties who have executed this Agreement may need assistance to provide supplemental personnel, equipment, or other support; and

WHEREAS, the parties have the necessary personnel and equipment to provide such services in the event of an emergency; and

WHEREAS, it is necessary and desirable that this Agreement be executed for the exchange of mutual assistance, with the intent to supplement not supplant agency personnel;

WHEREAS, an Agreement would help provide documentation needed to seek the maximum reimbursement possible from appropriate federal agencies during emergencies;

WHEREAS, ORS Chapter 402.010 provides for Cooperative Assistance Agreement among public and private agencies for reciprocal emergency aid and resources; and

WHEREAS, ORS Chapter 190 provides for intergovernmental agreements and the apportionment among the parties of the responsibility for providing funds to pay for expenses incurred in the performance of the agreed upon functions or activities;

NOW THEREFORE, the parties agree as follows:



## 1. Request

If confronted with an emergency situation requiring personnel, equipment or material not available to it, the requesting party (Requestor) may request assistance from any of the other parties who have executed this Agreement.

## 2. Response

Upon receipt of such request, the party receiving the request (Responder) shall immediately take the following action:

- A. Determine whether it has the personnel, equipment, or material available to respond to the request.
- B. Determine what available personnel and equipment should be dispatched and/or what material should be supplied.
- C. Dispatch available and appropriate personnel and equipment to the location designated by the Requestor.
- D. Provide appropriate access to the available material.
- E. Advise the Requestor immediately in the event all or some of the requested personnel, equipment, or material is not available.

NOTE: It is understood that the integrity of dedicated funds needs to be protected. Therefore, agencies funded with road funds are limited to providing services for road activities, sewer funds are limited to providing services for sewer activities and so on.

## 3. Incident Commander

The Incident Commander of the emergency shall be designated by the Requestor, and shall be in overall command of the operations under whom the personnel and equipment of the Responder shall serve. The personnel and equipment of the Responder shall be under the immediate control of a supervisor of the Responder. If the Incident Commander specifically requests a supervisor of the Responder to assume command, the Incident Commander shall not, by relinquishing command, relieve the Requestor of responsibility for the incident.

#### 4. Documentation

Documentation of hours worked, and equipment or materials used or provided will be maintained on a shift by shift basis by the Responder, and provided to the Requestor as needed.

#### 5. Release of Personnel and Equipment

All personnel, equipment, and unused material provided under this Agreement shall be returned to the Responder upon release by the Requestor, or on demand by the Responder.

#### 6. Compensation

It is hereby understood that the Responder will be reimbursed (e.g. labor, equipment, materials and other related expenses as applicable, including loss or damage to equipment) at its adopted usual and customary rates. Compensation may include:

- A. Compensation for workers at the Responder's current pay structure, including call back, overtime, and benefits.
- B. Compensation for equipment at Responder's established rental rate.
- C. Compensation for materials, at Responder's cost. Materials may be replaced at Requestor's discretion in lieu of cash payment upon approval by the Responder for such replacement.
- D. Without prejudice to a Responder's right to indemnification under Section 7.A. herein, compensation for damages to equipment occurring during the emergency incident shall be paid by the Requestor, subject to the following limitations:
  - 1) Maximum liability shall not **exceed** the cost of repair or cost of replacement, whichever is less.
  - 2) No compensation will be paid for equipment damage or loss attributable to natural disasters or acts of God not related to the emergency incident.
  - 3) To the extent of any payment under this section, Requestor will have the right of subrogation for all claims against parties other than parties to this agreement who may be responsible in whole or in part for damage to the equipment.

- 4) Requestor shall not be liable for damage caused by the neglect of the Responder's operators.

Within 30 days after presentation of bills by Responder entitled to compensation under this section, Requestor will either pay or make mutually acceptable arrangements for payment.

#### 7. Indemnification

This provision applies to all parties only when a Requestor requests and a Responder provides personnel, equipment, or material under the terms of this Agreement. A Responder's act of withdrawing personnel, equipment, or material provided is not considered a party's activity under this Agreement for purposes of this provision.

To the extent permitted by Article XI of the Oregon Constitution and by the Oregon Tort Claims Act, each party shall indemnify, within the limits of the Tort Claims Act, the other parties against liability for damage to life or property arising from the indemnifying party's own activities under this Agreement, provided that a party will not be required to indemnify another party for any such liability arising out of the wrongful acts of employees or agents of that other party.

#### 8. Workers Compensation Withholdings and Employer Liability

Each party shall remain fully responsible as employer for all taxes, assessments, fees, premiums, wages, withholdings, workers compensation and other direct and indirect compensation, benefits, and related obligations with respect to its own employees. Likewise, each party shall insure, self-insure, or both, its own employees as required by Oregon Revised Statutes.

#### 9. Pre-Incident Plans

The parties may develop pre-incident plans for the type and locations of problem areas where emergency assistance may be needed, the types of personnel and equipment to be dispatched, and the training to be conducted to ensure efficient operations. Such plans shall take into consideration the proper protection by the Responder of its own geographical area.

#### 10. The Agreement

- A. It is understood that all parties may not execute this Agreement at the same time. It is the intention of the parties that any governmental entity in the State of Oregon may enter into this Agreement and that all parties who execute this Agreement will be

considered to be equal parties to the Agreement. The individual parties to this Agreement may be "Requestor" or "Responder's" as referred to in Section 1. and 2. above, to all others who have entered this Agreement.

- B. The Oregon Department of Transportation (ODOT) Maintenance and Operations Branch shall maintain the master copy of this Agreement, including a list of all those governmental entities that have executed this Cooperative Assistance Agreement. ODOT will make the list of participants available to any entity that has signed the Agreement. Whenever an entity executes the agreement, ODOT shall notify all others who have executed the Agreement of the new participant. Except as specifically provided in this paragraph, ODOT has no obligations to give notice nor does it have any other or additional obligations than any other party.
- C. This Agreement shall be effective upon approval by two or more parties and shall remain in effect as to a specific party for five years after the date that party executes this Agreement unless sooner terminated as provided in this paragraph. Any party may terminate its participation in this Agreement prior to expiration as follows:
  - 1) Written notice of intent to terminate this Agreement must be given to all other parties on the master list of parties at least 30 days prior to termination date. This notice shall automatically terminate the Agreement as to the terminating party on the date set out in the notice unless rescinded by that party in writing prior to that date.
  - 2) Termination will not affect a party's obligations for payment arising prior to the termination of this Agreement.

#### 11. Non-exclusive

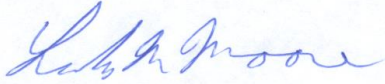
This Agreement is not intended to be exclusive among the parties. Any party may enter into separate cooperative assistance or mutual aid agreements with any other entity. No such separate Agreement shall terminate any responsibility under this Agreement.

#### 12. Parties to This Agreement

Participants in this Agreement are indicated on the following pages, one party per page.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement for Public Works Cooperative Assistance to be executed by duly authorized representatives as of the date of their signatures.

STATE OF OREGON  
DEPARTMENT OF TRANSPORTATION



April 16, 2018

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Luci Moore  
Statewide Maintenance Engineer

Date

IN WITNESS WHEREOF, the parties hereto have caused this Agreement for Public Works Cooperative Assistance to be executed by duly authorized representatives as of the date of their signatures.

\_\_\_\_\_  
Agency

\_\_\_\_\_  
County, Oregon

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Date

<b>Designated Primary Contact:</b>		
<u>Office:</u>	<u>Contact:</u>	<u>Phone Number:</u>
_____	_____	_____
<b>Emergency 24 Hour Phone Number:</b>		<b>Fax Number:</b>
_____		_____
<b>E-mail address (if available):</b>		
_____		