

July 25, 2019

Board of County Commissioners Clackamas County

Members of the Board:

Request by the Clackamas County Sheriff's Office (CCSO) to Approve an Intergovernmental Agreement with the Oregon Department of Transportation (ODOT) for MCSAP Enforcement

Purpose/Outcome	The State of Oregon through the ODOT wishes to enter into an agreement with CCSO to facilitate increased inspection of commercial vehicles, drivers, general	
	cargo or hazardous materials using employees who have been trained as a commercial vehicle inspector pursuant to ORS 810.560	
Dollar Amount and Fiscal Impact	The State shall reimburse certified officers a maximum rate of \$113.75 per qualified safety stop (QSS). Total funds awarded in this agreement are \$75,000	
Funding Source	The Oregon Department of Transportation is the source of the funds	
Safety Impact	A reduction of injuries and fatalities resulting from accidents involving commercial vehicles	
Duration	The award period is July 1, 2019 – June 30, 2020	
Previous Board Action/Review	The County Board of Commissioners has previously approved participation of the CCSO in the MCSAP program	
Strategic Plan Alignment	Furthers the County's focus on keeping our residents safe, healthy and secure	
Counsel Review	This agreement has been reviewed, and approved as to legal sufficiency, by County Counsel	
Contact Person	Nancy Artmann, Sheriff's Finance Manager – (503) 785-5012	
Contract No.	Agreement #33531	

BACKGROUND:

The purpose of the Oregon Motor Carrier Safety Action Plan (MCSAP) is to enhance highway safety through uniform commercial motor vehicle inspections conducted statewide. The goal of the MCSAP is to reduce accidents involving commercial motor vehicles and to reduce injuries and fatalities caused by such vehicles.

RECOMMENDATION:

It is recommended that the Board of County Commissioners approve the intergovernmental agreement between the Clackamas County Sheriff's Office and the Oregon Department of Transportation for the enforcement of the FY 2019 – 20 Oregon Motor Carrier Safety Action Plan.

Respectfully submitted,

mark Bronclassing

Angela Brandenburg, Undersheriff

"Working Together to Make a Difference"

INTERGOVERNMENTAL AGREEMENT Oregon Motor Carrier Safety Action Plan (MCSAP)

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State;" and Clackamas County acting by and through the Clackamas County Sheriff's Department, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

- 1. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
- 2. Pursuant to ORS 825.248, the Oregon Department of Transportation (ODOT) is required to develop an annual commercial motor vehicle safety plan, referred to as the Oregon Motor Carrier Safety Action Plan (MCSAP). The goal of the MCSAP is to reduce accidents involving commercial motor vehicles (CMV) and to reduce injuries and fatalities resulting from accidents involving CMVs. On-road vehicle inspections focusing on conditions that would require the CMV or CMV operator to be taken out of service can reduce truck-at-fault crashes on Oregon highways. Because the on-road vehicle inspections would be precipitated by a valid traffic stop of the CMV, the on-road vehicle inspections may also curb unsafe driving actions of CMV operators that would be subject to a traffic citation or written warning.
- 3. By the authority granted in ORS 825.250(2), the Oregon Department of Transportation (ODOT) may enter into agreements with Agency or a city to provide inspections of commercial vehicles, drivers, general cargo or hazardous materials when the inspections are performed by employees of the Agency or agency who have been trained and certified by ODOT as a commercial vehicle inspector pursuant to ORS 810.560.
- 4. Agency employs individuals who are trained and certified by ODOT as a commercial vehicle inspector pursuant to ORS 810.560. Agency wishes to have said employees perform inspections of commercial vehicles, drivers, general cargo or hazardous materials on behalf of, and at the request of, State.
- 5. State wishes to enter into an agreement with Agency to facilitate increased inspection of commercial vehicles, drivers, general cargo or hazardous materials, using employees of the Agency who have been trained and certified by ODOT as a commercial vehicle inspector pursuant to ORS 810.560 in order to enhance highway safety through uniform commercial motor vehicle inspections conducted statewide.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

DEFINITIONS

1. "Authorized Representative" as defined in ORS 825.250(2), means a city, agency or state employee who has been trained and certified by Oregon Department of Transportation (ODOT), as a commercial vehicle inspector, as defined in Oregon Administrative Rules (OAR) 740-100-0015, and who is employed either by ODOT or by an agency that has an agreement with ODOT to provide inspections of commercial vehicles, drivers, general cargo or hazardous materials.

2. "Commercial Motor Vehicle (CMV)" means any self-propelled or towed motor vehicle used on a highway in commerce to transport passengers or property when the vehicle has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight of 10,001 pounds or more or is designed or used to transport more than 8 passengers, including the driver, for compensation or is designed or used to transport passengers for compensation or is used in transporting as hazardous material as defined by the U.S. Department of Transportation under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations found in 49 CFR, subtitle B, chapter I, subchapter C.

3. "Qualifying Safety Stop (QSS)" means a stop of a CMV that result in a truck/driver inspection report and a written traffic citation or written warning for unlawful/unsafe driving behavior.

4. "Highway" means every public way, road, street, thoroughfare and place, including bridges, viaducts and other structures within the boundaries of this state, open, used or intended for use of the general public for vehicles or vehicular traffic as a matter of right.

For the purpose of enforcing traffic offenses contained in the Oregon Vehicle Code, except for ORS 810.230, "highway" includes premises open to the public that are owned by a homeowners association and whose boundaries are contained within a service district established on or before July 1, 2002, under ORS 451.410 to 451.610. [1983 c.338 §51; 2007 c.561 §1]

TERMS OF AGREEMENT

 Under such authority, State wishes to retain the services of Agency to enforce motor carrier safety regulations in mutually agreed upon highway locations, as identified in Exhibit A" attached hereto and by this reference made a part hereof. Payment for said services shall not exceed a maximum amount of \$113.75 per QSS. The cumulative maximum not to exceed amount for all payments to Agency is \$75,000.00 in state funds, which may be increased by a fully executed amendment. 2. The term of this Agreement shall begin on July 1, 2019, and will terminate on June 30, 2020 or upon completion of the project and final payment, unless extended by a fully executed amendment.

Agency OBLIGATIONS

- 1. Agency, through its Authorized Representative, shall initiate safety inspections only within the course of conducting a valid traffic stop. The safety inspection shall comply with the North American Standard Inspection Procedures, which are incorporated by reference and made part of this Agreement.
- 2. Agency shall conduct roadside inspections in a manner that provides a continuous enforcement presence in identified locations on highways throughout the term of the agreement.
- Agency Authorized Representative shall to the greatest extent possible, record all inspections on Aspen software and electronically upload computer-driven inspections daily.
- 4. Agency Authorized Representative shall conduct roadside inspections at locations on state highways that are adequate to protect the safety of driver and enforcement personnel.
- 5. Agency shall provide copies of any truck/driver inspections and CMV operator traffic citations or written warnings issued during a QSS within agreed locations. Agency shall ensure citations and written warnings reflect unlawful/unsafe driving behavior.
- 6. Agency agrees that their Authorized Representative will implement inspection procedures in accordance with minimum standards contained herein.
- 7. Agency agrees to enforce the North American Uniform Inspection Out-of-Service Criteria as adopted into Oregon law by State under:
 - a. OAR 740-100-0090, Part I- Driver.
 - b. OAR 740-100-0070, Part II Vehicle.
 - c. OAR 740-100-0080, Part III Hazardous Materials.
- 8. Agency agrees citations and written warnings shall include at a minimum the following:
 - a. Date of QSS
 - b. Location of QSS (Hwy, Direction, and Milepost Marker)
 - c. Vehicle License Number

- d. Motor Carrier Name
- e. Motor Carrier US DOT Number
- f. Driver Name and Driver License Number
- g. Reason for QSS
- h. Violation(s)
- i. Out of Service defects (if applicable)
- 9. Agency shall submit monthly, an Invoice Cover Sheet see Exhibit B, attached hereto and by this reference made a part hereof, that identifies the number of QSS inspections along with corresponding citations and written warnings. Submission of all inspections, citations and written warnings for the previous month shall be submitted, to State's Project Manager for review and approval, no later than the 20th of each month. Under no conditions shall State's obligations exceed the amount listed under Terms of Agreement, Paragraph 1. Travel expenses will not be reimbursed.
- 10. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitations.
- 11. Agency shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
- 12. Agency shall not enter into any subcontracts for any of the work schedules under this agreement without obtaining prior written approval from State.
- 13. All employers, including Agency, 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. Agency shall ensure that each of its contractors complies with these requirements.
- 14. Agency certifies and represents that the individual(s) signing this Agreement has/have been authorized to enter into and execute this Agreement on behalf of

Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.

15. Agency's Project Manager for this Project is Sergeant Richard Sheldon, Traffic Team Supervisor, 2223 Kaen Rd., Oregon City, OR 97045, 503-785-5092, <u>rsheldon@co.clackamas.or.us</u>, or assigned designee upon individual's absence. Agency's billing address is: 2223 Kaen Rd., Oregon City, OR 97045. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

- In consideration for the services performed, State agrees to pay Agency within fortyfive (45) days of receipt by State of eligible inspections, citations or written warnings a maximum amount of \$113.75 per QSS. Total amount will not exceed a maximum amount of \$75,000.00. Travel expenses will not be reimbursed.
- 2. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
- State's Project Manager for this Project is David McKane Safety Program Manager, 3930 Fairview Industrial Dr. SE Salem OR 503-373-0884, David.J.McKane@odot.state.or.us or assigned designee, upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

- 1. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
- State may terminate this Agreement effective upon delivery of written notice to Agency/, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency/ fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its

reasonable administrative discretion, to continue to make payments for performance of this Agreement.

- d. 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 State is prohibited from paying for such work from the planned funding source.
- 3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
- 4. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
- 5. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
- 6. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties'

relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

- 7. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- 8. 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.
- 9. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

Signature Page to Follow

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

Clackamas County , by and through its elected officials	STATE OF OREGON , by and through its Department of Transportation
Ву	Motor Carrier Transportation Division
Date	Administrator
Ву	Date
Date	APPROVAL RECOMMENDED
APPROVED AS TO LEGAL FORM (if required)	By David McKane, Manager Motor Carrier Safety Program Date
By Counsel	
Date	~
Agency Contact: Sergeant Richard Sheldon 2223 Kaen Rd. Oregon City, OR 97045 503-785-5092 rsheldon@co.clackamas.or.us	
STATE Contact: David McKane 3930 Fairview Industrial Dr. SE MS #2 Salem Or 97302 503-373-0884 David.J.McKane@odot.state.or.us	

EXHIBIT A Agency PATROL Locations

Clackamas County and the Oregon Department of Transportation agree that inspections will be conducted only on I-205 within the official limits of agency name qualify for CMV QSS.

Inspections conducted at other locations may qualify for CMV QSSs, if prior approval from ODOT is received.

EXHIBIT B Invoice Cover Sheet

Agreement # 33531 Oregon Motor Carrier Safety Action Plan

Agency Name:	Clackamas County Sheriff's Department	
Address:	2223 Kaen Road	
City:	Oregon City	
State/Zip:	OR, 97045	
Contact Name:	Sergeant Richard Sheldon	
Telephone Number:	503-785-5092	

Month Stops were made: _____

Number of CMV QSS that qualified for payment:	Rate	Amount
	\$113.75	

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Requestor Information	n (Name of staff perso	n initiating f	form):	A. Gale, Sheriff's Pol	icy Analyst	
Requestor Contact Info	ormation:		501	4		
Department Fiscal Rep	resentative:	Nancy Artr	mann, CC	SO Finance Manager		
Program Name or Nun	nber (please specify):	Oregon Mo	otor Carr	ier Safety Action Plan	(MCSAP): No. 33531	
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Section III: Funding Opportunity Information - To be completed at Pre-Application Meeting by Dept Program and Fiscal Staf

Mission/Purpose:

1. How does the grant support the Department and/or Division's Mission/Purpose/Goals?

It is the mission of the CCSO to preserve life, uphold the law, prevent crime, hold offenders accountable, and promote safety while finding innovative solutions and building partnerships with the community. This grant will support ODOT's MCSAP by utilizing deputies who are trained and certified by ODOT as a CMV inspector pursuant to ORS 810.560 to facilitate increased inspection of CMVs and drivers enhancing highway safety.

2. What, if any, are the community partners who might be better suited to perform this work?

This work and grant is earmarked to support traffic safety activities conducted by professional law enforcement personnel.

3. What are the objectives of this grant? How will we meet these objectives?

ODOT Motor Carrier Transportation Division review and analysis of CMV QSS and determination of effective countermeansures with the Sheriff's Office to identify problem areas and solutions. Objective is the reduction of crash's and highway safety improvement within the Sheriff's patrol area.

4. Does the grant proposal fund an existing program? If yes, which program? If no, what is the purpose of the program?

Yes. The State wished to facilitate increased inspection of CMVs, drivers, a general cargo or hazardous materials using CCSO employees trained pursuant to ORS 810.560 through payment of qualifying QSS stops. Traffic enforcement and educational activities that facilitate compliance with the Oregon Motor Vehicle Act is one of the primary objectives of the Sheriff's Office Patrol Division.

Organizational Capacity:

1. Does the organization have adequate and qualified staff? If no, can staff be hired within the grant timeframe?

Yes - Deputy Sheriff (Patrol Division)

2. Are there partnership efforts required? If yes, who are we partnering with and what are their roles and responsibilities? N/A

3. If this is a pilot project, what is the plan for sunsetting the project and/or staff if it does not continue (e.g. making staff positions temporary or limited duration, etc.)?

N/A

4. If funded, this grant would create a new program, does the department intend for the program to continue after initial funding is exhausted? If yes, how will the department ensure funding (e.g. request new funding during the budget process, supplanted by a different program, etc.)?

N/A

Collaboration

1. List County departments that will collaborate on this award, if any.

N/A

Reporting Requirements

1. What are the program reporting requirements for this grant?

Monthly reports (QSS Data) to ODOT.

2. How will grant performance be evaluated? Are we using existing data sources? If yes, what are they and where are they housed? If not, is it feasible to develop a data source within the grant timeframe?

ODOT Motor Carrier Transportation Division review and analysis of CMV QSS data and effectiveness of the MCSAP.

3. What are the fiscal reporting requirements for this grant?

Monthly reports (QSS Data) and invoice to ODOT.

Fiscal

1. Will we realize more benefit than this grant will cost to administer?

Yes - grant supports Sheriff's Mission and subsidizes current operational expenditures.

2. Are other revenue sources required? Have they already been secured?

N/A

3. For applications with a match requiement, how much is required (in dollars) and what type of funding will be used to meet it (CGF, In-kind, Local Grant, etc.)?

N/A

4. Does this grant cover indirect costs? If yes, is there a rate cap? If no, can additional funds be obtained to support indirect expenses and what are they?

6/10/19

No - additional funds N/A.

Program Approval:

Nancy Artmann, CCSO Finance Manager

Name (Typed/Printed)

** NOW READY FOR PROGRAM MANAGER SUBMISSION TO DIVISION DIRECTOR**
** ATTACH ANY CERTIFICATIONS REQUIRED BY THE FUNDING AGENCY. COUNTY FINANCE OR ADMIN WILL SIGN.**

Section IV: Approvals

DIVISION DIRECTOR (or designee, if appli	icable)				
S. Strangfield, Captain Patrol Division Name (Typed/Printed) DEPARTMENT DIRECTOR (or designee, if	applicable)	Signature			
A. Brandenburg, Undersheriff Name (Typed/Printed)	Date	afrence by signature			
FINANCE GRANT MANAGER (or designee	, if applicable; FOR FEDERALLY-FUN	DED APPLICATIONS ONLY)			
Name (Typed/Printed)	Date	Signature			
Section V: Board of County Commissioners/County Administration (Required for all grant applications. If your grant is awarded, all grant <u>awards</u> must be approved by the Board on their weekly consent agenda regardless of amount per local budget law 294.338.) For applications less than \$150,000:					
COUNTY ADMINISTRATOR	Approved: 🗆	Denied: 🗆			

Name (Typed/Printed)	Date	Signature

For applications greater than \$150,000 or which otherwise require BCC approval:

BCC Agenda item #:	Date:
OR	
Policy Session Date:	

County Administration Attestation

County Administration: re-route to department contact when fully approved. Department: keep original with your grant file.