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DIRECTOR

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

February 11, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Cooperative Improvement Agreement with the Oregon Department of
Transportation for the Clackamas Regional Center Mobility Improvement Project

Purpose/Outcome	This agreement memorializes roles and responsibilities as agreed to by all parties related to right of way acquisition, construction and maintenance for the Clackamas Regional Center mobility improvement project.
Dollar Amount and Fiscal Impact	The Agency will reimburse ODOT up to \$60,000 for costs associated with inspection and right of way services
Funding Source	Clackamas County Development Agency: Clackamas Town Center Urban Renewal District.
Duration	This Agreement will be in effect for twenty (20) years.
Previous Board Action/Review	The Board approved the construction contract on December 5, 2019. This matter was discussed at Issues on January 19, 2021. The Board authorized signature for the Development Agency at the January 28 th Business meeting.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. <i>How does this item align with your department's Strategic Business Plan goals?</i> None 2. <i>How does this item align with the County's Performance Clackamas goals?</i> Build public trust through good government
Counsel Review	Reviewed and Approved by County Counsel on December 15, 2020 (NB)
Procurement Review	<ol style="list-style-type: none"> 1. <i>Was this item process through Procurement?</i> No 2. <i>If no, provide brief explanation:</i> Item is an IGA
Contact Person	Dave Queener, Development Agency Program Supervisor 503-742-4322

BACKGROUND:

Construction is underway on the Clackamas Regional Center mobility improvement project. Some portions of the project are within ODOT right of way, which requires inspection by their personnel. In addition, portions of the acquired right of way will need to be transferred to the State following completion of the project for maintenance responsibility. Lastly, portions of this

project will be located out of ODOT right of way and will need to be maintained by Clackamas County.

This three party agreement between the County, Development Agency and ODOT memorializes the roles and responsibilities of each party as it relates to right of way acquisition, construction and maintenance.

The Agreement will remain in effect for twenty (20) years and commits the Agency to reimburse ODOT up to \$60,000 for inspection and right of way service costs.

RECOMMENDATION:

Staff recommends the Board approve and authorize the Chair to sign the Cooperative Improvement Agreement on behalf of Clackamas County, with Oregon Department of Transportation for the Clackamas Regional Center mobility improvement project.

Respectfully submitted,

Dan Johnson

Dan Johnson, Director
Department of Transportation and Development

**COOPERATIVE IMPROVEMENT AGREEMENT
Clackamas Regional Center Mobility Projects**

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;" Clackamas County, acting by and through its elected officials, hereinafter referred to as "County," and the Clackamas County Development Agency, the urban renewal Agency of Clackamas County, acting by and through its duly appointed board, hereinafter referred to as "Agency" all herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. I-205 is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Harmony Road, Sunnyside Road, Sunnybrook Blvd., SE Stevens Road, and SE 80th, SE 93rd, and SE 97th are a part of the county road system under the jurisdiction and control of Clackamas County.
2. Agency is the County's Urban Renewal Agency and is authorized under ORS 457.035 to enter into this Agreement and to perform work on behalf of the County.
3. By the authority granted in Oregon Revised Statutes (ORS) [190.110](#), 283.110, [366.572](#) and [366.576](#), State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
4. By the authority granted in ORS [810.210](#), State is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where State deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than State, except with its written approval. Traffic signal work on this Project will conform to the current State standards and specifications.
5. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for their performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
6. Agency is building a suite of projects, together known as the Clackamas Regional Center Mobility Project. It encompasses approximately 30 transportation improvements across County and State facilities paid for by County funds. This Agreement lays out reimbursement for State's activities in reviewing, permitting, and

inspecting the Project improvements that impact State facilities and outlines future maintenance responsibilities for the new improvements on State right of way.

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

TERMS OF AGREEMENT

1. Under such authority, the Parties agree to the Agency designing and constructing a suite of projects referred to as the Clackamas Regional Center Mobility Project, hereinafter referred to as "Project." The Project includes:

- Curbs and sidewalks along Harmony Road, Sunnyside Road, Sunnybrook Blvd., SE 84th Ave., and SE Stevens Road
- Bike lanes & Cycle tracks along SE Harmony Road and SE Sunnyside Road
- Traffic signal modifications at SE Sunnyside Road and I-205 Northbound Ramps, and SE Sunnyside Road and I-205 Southbound Ramps.
- Striping and signing
- Paving
- Street lighting
- Landscaping
- Retaining Walls
- Storm system improvements
- Stormwater quality and detention facilities
- Bridge widening at SE Sunnyside Road overpass over I-205
- Repair or replace ITS signs on the south face of the bridge overpass at SE Sunnyside Road
- Widening the off and on I-205 Northbound ramps at SE Sunnyside Road

The location of the Project is approximately as shown on the map marked Exhibit A. The Project excludes the areas shown on Exhibit A-2. Exhibits A and A-2 are attached hereto and by this reference made a part hereof.

2. The Project will be financed entirely by Agency at an estimated cost of \$23,800,000.

3. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance and power responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years. The Project shall be completed within ten (10) calendar years following the date of final execution of this Agreement by both Parties.

AGENCY AND COUNTY OBLIGATIONS

1. Agency shall upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from State, forward to State an advance deposit or irrevocable letter of credit in the amount of \$60,000, said amount being equal to the estimated total cost for the work performed by State as further described under State Obligations. Agency agrees to make additional deposits as needed upon request from State and mutually agreed to by both State and Agency.
2. Upon completion of the Project and receipt from State of an itemized statement of the actual total cost of State's participation for the Project, Agency shall pay any amount which, when added to Agency's advance deposit, will equal 100 percent of actual total mutually agreed State costs for the Project. Any portion of said advance deposit which is in excess of the State's total costs will be refunded or released to Agency. Agency shall not be liable for costs exceeding \$60,000 without first receiving from State a request for additional deposit accompanied by an itemized statement of expenditures and an estimated cost to complete Project and receiving Agency's approval.
3. Agency or its consultant shall conduct the necessary field surveys, environmental studies, traffic investigations; arrange for relocation or reconstruction of any conflicting utility facilities; obtain all needed right of way; identify and obtain all required permits; and perform all preliminary engineering and design work required to produce plans, specifications, and cost estimates. Agency or its contractor shall construct the Project, perform all construction engineering, including all required materials testing and quality documentation, provide technical inspection, project management, and other necessary functions for contract administration for the construction contract entered into for the Project.
4. Agency shall design and construct the portions of the Project located on or along the Oregon State Highway System (state highway) in conformance with the current edition of the ODOT Highway Design Manual and the Oregon Standard Specifications for Construction Manual. Agency understands the Project shall be designed and constructed to State standards and approved by State prior to advertisement for bid, or construction of Project by Agency.
5. Agency agrees that for all projects on the Oregon State Highway System or State-owned facility, for portions of the Project located on or along the Oregon State Highway System (state highway), any design element that does not meet ODOT Highway Design Manual design standards must be justified and documented by means of a design exception. Agency further agrees that for all projects on the NHS,

regardless of funding source, any design element that does not meet AASHTO standards must be justified and documented by means of a design exception. State shall review any design exceptions on the Oregon State Highway System and retains authority for their approval.

6. Agency agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the Manual on Uniform Traffic Control Devices and Oregon Supplement as adopted in Oregon Administrative Rule (OAR) 734-020-0005. Agency must obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a state highway pursuant to OAR 734-020-0430.

7. Americans with Disabilities Act Compliance

a. For portions of the Project located on or along the Oregon State Highway System (state highway), when the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, Agency shall:

- i. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
- ii. Follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan, and current ODOT Curb Ramp Inspection form; and
- iii. At Project completion, send an ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed, modified, upgraded, or improved as part of the Project. The completed form is the documentation required from the Agency showing that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address: <https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>
- iv. Promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by Agency and prior to release of any Agency contractor.

- v. Ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Agency shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, disability organizations, and ODOT at least 10 days prior to the start of construction.

b. Local Roads: For portions of the Project located on roads or facilities under the County's jurisdiction that are not on or along a state highway:

- i. Agency shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed, and maintained in compliance with the ADA.

- ii. Agency may follow its own processes or may use ODOT's processes for design, construction, or alteration of Project sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>

Additional ODOT resources are available at the above-identified link. ODOT has made its forms, processes, and resources available for Agency's use and convenience.

- iii. Agency assumes sole responsibility for ensuring that the Project complies with the ADA, including when Agency uses ODOT forms and processes. Agency acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.

- iv. Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. Agency shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations prior to the start of construction.

- c. County shall ensure that any portions of the Project under the County's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, County ensuring that:
 - i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by County identifying sidewalks, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. County, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
 - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
 - d. Maintenance obligations in this section shall survive termination of this Agreement.
8. Agency shall cause to be relocated or reconstructed, all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements for the portions of the Project which are on County's right of way.
 9. Agency, or its consultant's, electrical inspectors shall possess a current State Certified Traffic Signal Inspector certificate, in order to inspect electrical installations on state highways. The State District 2B Permitting Office shall verify compliance with this requirement prior to construction.
 10. Agency shall provide to State permanent Mylar "as constructed" plans for work on state highways. If Agency redrafts the plans, done in Computer Aided Design and Drafting (CADD) or Microstation, to get the "as constructed" set, and they follow the most current version of the "Contract Plans Development Guide, Volume 1 Chapter 16" http://www.oregon.gov/State/HWY/ENGSERVICES/docs/dev_guide/vol_1/V1-16.pdf, Agency shall provide to State a Portable Document Format (PDF) file and a paper copy of the plan set.
 11. County shall be responsible for and pay to the power company 100 percent of the power costs for the Project illumination and traffic signals at the intersections of Sunnyside/I-205 Northbound Ramps, Sunnyside/I-205 Southbound Ramps. County shall require the power company to send invoices directly to County.

12. County shall keep accurate cost accounting of illumination and signal power costs and bill State annually for 50 percent of all power costs incurred for the Project illumination and traffic signals at Sunnyside/I-205 Northbound Ramps, Sunnyside/I-205 Southbound Ramps.
13. County shall continue to be responsible for the maintenance of all County facilities from curb to curb, and all Project improvements made on County right of way in the Project area. This includes any sign bridges in the Project area in County right of way. County shall grant State access to the sign bridge on Sunnyside Road west of the I-205 interchange in order to make updates to necessary highway signing. Any State work on the sign bridges to update signage will be at State's expense.
14. County shall maintain the asphaltic concrete pavement surrounding the vehicle detector loops installed in Harmony Road, Sunnyside Road, Sunnybrook Blvd., SE 80th Ave., SE 84th Ave., SE 93rd Ave., SE 97th Ave., and SE Stevens Road in such a manner as to provide adequate protection for said detector loops.
15. County shall upon receipt of a fully executed copy of this Agreement and upon receipt of billing from State annually reimburse State for 50 percent of all costs associated with the maintenance of the Project traffic signals at Sunnyside/I-205 Northbound Ramps, Sunnyside/I-205 Southbound Ramps.
16. County will be required to obtain the services of a registered professional engineer to oversee, accept, and document all construction procedures and certify proper construction was performed pursuant to the Project plan and permit. The registered professional engineer will be required to stamp the "As Constructed Plans" and ensure the Project meets State's required standards for the portions of the Project located on or along the Oregon State Highway System (state highway). Construction inspection for this Project will be completed by state-certified inspectors under the direction of the registered professional engineer overseeing the construction and paid for by County.
17. Agency has provided the Project preliminary and final plans and specifications to State's District 2B office for review and written concurrence, including review and concurrence from the Office of the State Traffic Engineer. All signal equipment must be inspected and tested by State's Traffic Systems Services Unit. Any changes to the final plans and specifications shall be provided to the State's District 2B office, which shall coordinate all such review and concurrence of revised plans. All review, inspection, and testing done by the State for the Project will be at Agency's expense.
18. 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.

19. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
20. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Oregon Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260 (Claims), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that State shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of State, be indemnified from and against all Claims caused or alleged to be caused by the contractor or subcontractor.
21. Any such indemnification shall also provide that neither the Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
22. Agency and County shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS [279C.505](#), [279C.515](#), [279C.520](#), [279C.530](#) and [279B.270](#) incorporated herein by reference and made a part hereof. 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 rehabilitation statutes, rules and regulations.

23. Agency shall construct the Project in accordance with the requirements of ORS 276.071 including the public contracting laws within ORS Chapters 279A, 279B and 279C.
24. If Agency chooses to assign its contracting responsibilities to a consultant or contractor, Agency shall inform the consultant or contractor of the requirements of ORS 276.071, to ensure that the public contracting laws within ORS Chapters 279A, 279B and 279C are followed.
25. Agency and its contractor shall follow the Oregon Locate Laws (ORS 757 and OAR 952).
26. For the portions of the Project located on or along the Oregon State Highway System (state highway), Agency or its consultant shall acquire all necessary rights of way according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual. Agency shall provide a letter from Agency's legal counsel certifying that any right of way acquired on State's facility that is to be relinquished to the State has been acquired in conformance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual. The letter shall be routed through the State Region 1 Right of Way Office.
27. Agency shall obtain a permit to "Occupy or Perform Operations upon a State Highway" from assigned State District 2B Project Manager as well as land use permits, building permits, and engineering design review approval from State. Agency agrees to comply with all provisions of said permit(s), and shall require its developers, contractors, subcontractors, or consultants performing such work to comply with such permit and review provisions.
28. Pursuant to the statutory requirements of ORS 279C.380 Agency shall require their contractor to submit a performance bond to Agency for an amount equal to or greater than the estimated cost of the Project.
29. If Agency enters into a construction contract for performance of work on the Project, then Agency will require its contractor to provide the following:
 - a. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under the resulting contract.
 - b. Contractor and Agency shall name State as a third party beneficiary of the resulting contract.
 - c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with

coverages that are satisfactory to State. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than \$ 2,000,000 for each job site or location. Each annual aggregate limit will not be less than \$ 4,000,000.

- d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than \$1,000,000.
- e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees as Additional Insured but only with respect to Contractor's activities to be performed under the resulting contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.
- f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor's or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.

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

31. Agency is responsible for and ensures that all survey monuments recorded with a county and within or adjacent to the highway right of way shall be preserved in accordance with ORS 209.140 and 209.150. Any such monumentation that is damaged or removed during the course of the Project must be replaced in compliance with ORS Chapter 209 stipulations, the State Right of Way Monumentation Policy, and at Agency's own expense.

32. Agency is also responsible, at its own expense, for replacement of any additional State survey marks or other monumentation not recorded with a county that are damaged or removed during the course of the Project. In the event of such replacement, Agency shall contact State's Geometronics Unit for replacement procedures.

33. If additional right of way is acquired for state highway right of way purposes as a result of the Project, then a right of way monumentation survey is required as defined in ORS 209.150 and 209.155. Agency agrees to provide such a survey, at its own expense, following ORS Chapter 209 stipulations, State Right of Way Monumentation Policy, and State's Geometronics Unit review and approval, and to file the legal survey with the appropriate Agency Surveyor's office as required.

34. Agency and County each certify and represent that the individual(s) signing this Agreement on its behalf has been authorized to enter into and execute this Agreement on its behalf, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind it.
35. County's right of way contact person for this Project is Sharan Hams-LaDuca, Right of Way Program Manager, Clackamas County DTD, 150 Beaver Creek Road, Oregon City, OR 97045, (503) 742-4675, shamsladuca@co.clackamas.or.us, or assigned designee upon individual's absence. County shall notify the other Parties in writing, of any contact information changes during the term of this Agreement.
36. Agency's Project Manager for this Project is David Queener, Program Supervisor, Clackamas County Development Agency, 150 Beaver Creek Road, Oregon City, OR 97045, (503) 742-4322, DavidQue@co.clackamas.or.us. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATION

1. State shall, upon execution of the agreement, forward to Agency a letter of request for an advance deposit or irrevocable letter of credit in the amount of \$60,000 for payment of the work performed by State under this Agreement. State will review the Project plans, perform periodic inspection for internal documentation purposes, perform signal turn-on, timing, and testing for State owned or maintained signals, and will perform review, approval and acceptance of right of way acquired on the State Highway to be relinquished by the Agency post-construction. State agrees to not incur costs exceeding \$60,000 without first submitting to Agency a request for additional deposit accompanied by an itemized statement of expenditures and an estimated cost to complete Project and receiving Agency's approval.
2. Upon completion of the Project, State shall either send to Agency a bill for the amount which, when added to Agency's advance deposit, will equal 100 percent of the total state costs for Project or State will refund to Agency any portion of said advance deposit which is in excess of the total State costs for Project.
3. State grants authority to Agency and County to enter upon State right of way for the construction of this Project as provided for in the miscellaneous permit to be issued by State District 2B Office.
4. Within fifteen days of notice from Agency that Agency believes all work is complete, State will perform the final inspection of the Project and notify Agency that it agrees all work is complete or give Agency written instruction regarding incomplete or unsatisfactory work. Upon request by Agency, State will promptly re-inspect the Project to confirm the incomplete or unsatisfactory work has been satisfactorily completed. State will issue a Final Acceptance notice to Agency when all work is inspected and accepted.

5. State 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.
6. State shall be responsible for maintaining the traffic signals and associated illumination at Sunnybrook/I-205, Sunnyside/I-205 Northbound Ramps, Sunnyside/I-205 Southbound Ramps. State shall keep accurate cost accounting records of traffic signal and associated illumination maintenance costs and shall bill County annually for 50 percent of all said costs.
7. State shall upon receipt of a fully executed copy of this Agreement and upon receipt of billing from County annually reimburse County for 50 percent of all power costs associated with the Project traffic signals at Sunnyside/I-205 Northbound Ramps, and Sunnyside/I-205 Southbound Ramps.
8. State shall maintain the asphaltic concrete pavement surrounding the vehicle detector loops installed on Sunnybrook/I-205 Northbound ramps, Sunnyside/I-205 Northbound Ramps, and Sunnyside/I-205 Southbound ramps in such a manner as to provide adequate protection for said detector loops.
9. State's Project Manager for this Project is Jim Bailey, ODOT District 2B, 9200 SE Lawnfield Road, Clackamas, OR 97015, 971-673-6216, james.g.bailey@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.
10. State's Right of Way contact for this Project is David Mendelson, Region 1 Right of Way, 123 NW Flanders St., Portland, OR 97209, 503-731-8451, david.mendelson@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 any Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
2. State may terminate this Agreement effective upon delivery of written notice to Agency and County, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency or County fails to provide services called for by this Agreement within the time specified herein or any extension thereof.

- b. If Agency or County 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 Agency fails to provide payment for this Project, including payment to State for work performed by State.
 - 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. All employers 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. Each Party shall ensure that each of its contractors complies with these requirements.
5. 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 a Party with respect to which any other Party may have liability, the notified Party must promptly notify the other Parties in writing of the Third Party Claim and deliver to the other Parties 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.
6. With respect to a Third Party Claim for which State is jointly liable with any other Party (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 any other Party or Parties in such proportion as is appropriate to reflect the relative fault of State on the one hand and of the other Party or Parties 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 the other Party or Parties on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses,

judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

7. With respect to a Third Party Claim for which Agency or County is jointly liable with State (or would be if joined in the Third Party Claim), Agency and County 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 and County 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 and County 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 and County's contribution amount(s) 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.
8. 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.
9. 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.
10. 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.

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.

SIGNATURE PAGE TO FOLLOW

Agency/County/State
Agreement No. 32508

CLACKAMAS COUNTY, by and through its elected officials

By _____
County Commissioner

Date _____

By _____

Date _____

CLACKAMAS COUNTY DEVELOPMENT AGENCY,
by and through its duly appointed board:

By *Isote Smith*
Chair, Development Agency

Date 1/28/2021

APPROVED AS TO FORM

By _____
Counsel

Date _____

Agency Contact:

David Queener, Program Supervisor
Clackamas County Development Agency
150 Beaver Creek Road
Oregon City, OR 97045
(503)742-4322
davidque@co.clackamas.or.us

County Contact:

Sharan Hams-LaDuca
150 Beaver Creek Road
Oregon City, OR 97045
(503) 742-4675
shamsladuca@co.clackamas.or.us

STATE OF OREGON, by and through its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief Engineer

Date _____

By _____
Region 1 Manager

Date _____

By _____
District 2B Manager

Date _____

By _____
State Traffic – Roadway Engineer

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

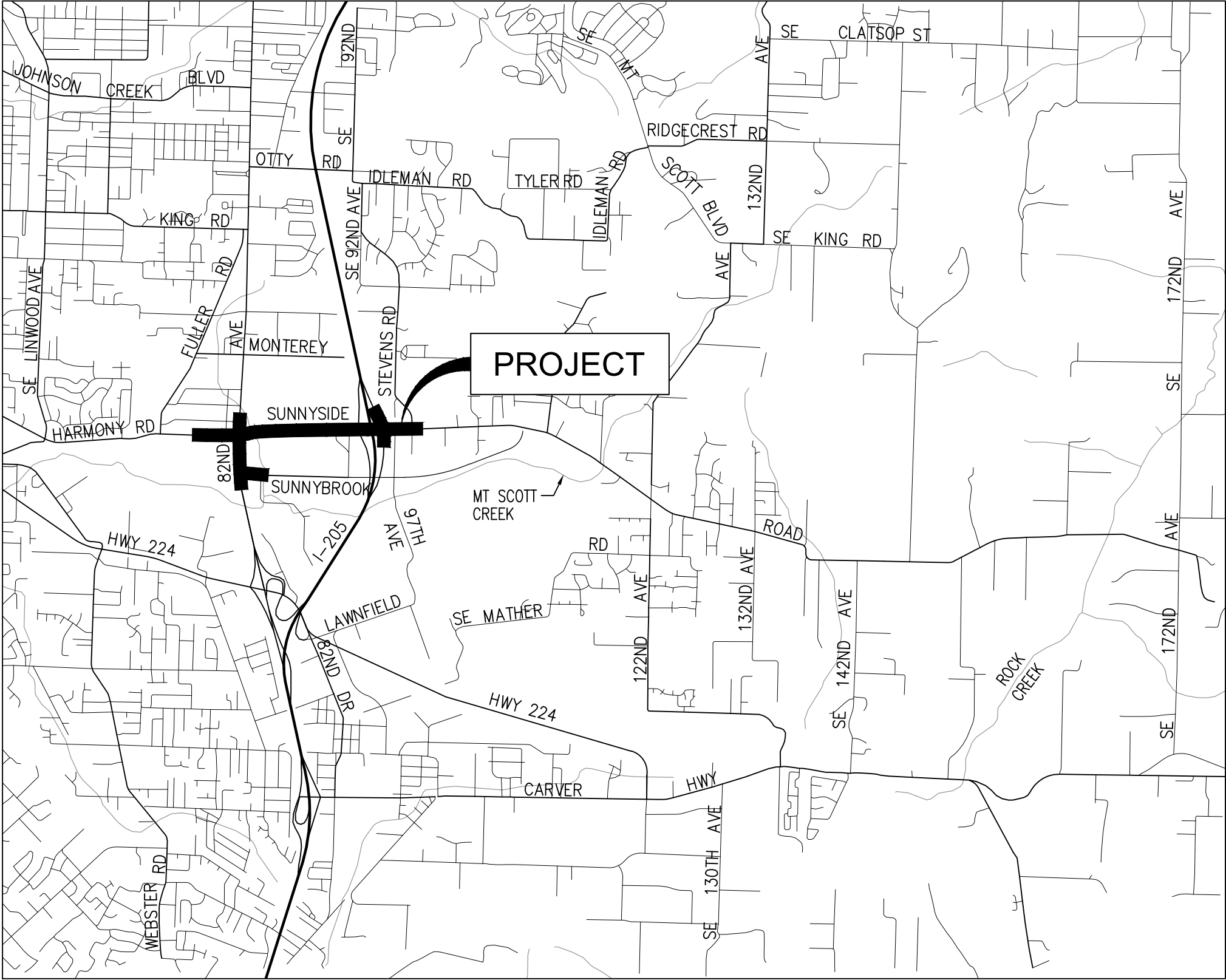
By Jennifer O'Brien
Assistant Attorney General

Date via email dated September 2, 2020

State Contact:

Jim Bailey
ODOT District 2B
9200 SE Lawnfield Road
Clackamas, OR 97015
971-673-6216
james.g.bailey@odot.state.or.us

EXHIBIT A - PROJECT LOCATION MAP



VICINITY MAP
NTS

EXHIBIT A-2 - PROJECT AREAS NOT INCLUDED IN SCOPE

