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DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
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December 7, 2023

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of an Intergovernmental Agreement with Government Camp Village Special Road District related to Wy East Trail Road. Total value is \$60,000.00. Funding through County Road Fund. No County General Funds are involved.

Previous Board Action/Review	12/05/23: Request for consent		
Performance Clackamas	<ul style="list-style-type: none"> • Build public trust through good government • Build a strong infrastructure 		
Counsel Review	Yes	Procurement Review	No
Contact Person	Mike Bezner	Contact Phone	503-742-4651

EXECUTIVE SUMMARY: Wy East Trail is a County road located within the boundary of the Government Camp Special Road District (District). It is currently maintained by the County and not included in the District’s inventory. This agreement transfers certain road maintenance responsibilities to the District in exchange for the County applying a 2-inch asphalt overlay. The 2” overlay will be completed in-house in 2024 with an estimated cost of \$60,000.00. Once complete, the District will be responsible for maintenance including future road surface treatments, patching, shoulder repair, ditch clearing, and minor culvert maintenance. The County will retain responsibility for the aggregate base under the existing pavement, permitting and land use, bridge maintenance, and emergency response.

RECOMMENDATION: Staff respectfully recommends approval of this Intergovernmental Agreement with Government Camp Village Special Road District related to Wyeast Trail Road.

Respectfully submitted,

Dan Johnson

Dan Johnson, Director
Transportation & Development

For Filing Use Only

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
CLACKAMAS COUNTY AND
GOVERNMENT CAMP VILLAGE SPECIAL ROAD DISTRICT
RELATED TO WY EAST TRAIL ROAD**

THIS AGREEMENT is made and entered into by and between CLACKAMAS COUNTY, a political subdivision of the State of Oregon, hereinafter referred to as "COUNTY" and the GOVERNMENT CAMP SPECIAL ROAD DISTRICT, hereinafter referred to as "DISTRICT," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

A. ORS 190.003 to 190.030 allow units of local government to enter into agreement for performance of any or all functions and activities which such units have authority to perform, including controlling, and performing maintenance responsibilities for, roads and improvements within the public rights of way;

B. Through ORS chapter 368, the COUNTY has general jurisdiction and authorities over roads within its boundary as a matter of county concern;

C. Through a July 2012 Board Order, the Board of County Commissioners approved formation of the DISTRICT under ORS chapter 371 to maintain and improve roads in Government Camp;

D. Wy East Trail, County Road no. 38002 (the "ROAD"), as shown on Exhibit 1, is wholly within the boundary of the DISTRICT and primarily serves properties within the DISTRICT, but is not maintained by the DISTRICT;

E. The Parties have determined that delineation and transfer of certain responsibilities with regards to the ROAD will lead to efficient and consistent road maintenance activities and reduce any confusion on the part of the public as to which Party is responsible for the condition and maintenance of the ROAD; and

F. It is the intent of the Parties that the COUNTY transfer certain maintenance responsibility under ORS chapter 368 with regards to the ROAD as may be allowed under state law.

TERMS AND CONDITIONS

NOW THEREFORE, it is agreed by the parties as follows:

1. **TERM OF AGREEMENT.** This Agreement becomes effective as of the last date of signature by a Party indicated below. Unless terminated earlier pursuant to Section 5 of this Agreement, this Agreement remain in effect in perpetuity, unless the COUNTY, by order or

by separate agreement, assumes all maintenance of the ROAD, in which event this Agreement shall terminate.

2. COUNTY'S OBLIGATIONS. The COUNTY agrees to be responsible for the following related to the ROAD:

2.1. The following maintenance, the extent and timing of which is at the sole discretion of the COUNTY:

- 2.1.1. Perform levelling where required;
- 2.1.2. Dig out severely distressed areas;
- 2.1.3. Apply a two-inch lift of asphalt-concrete on surface;
- 2.1.4. Provide a 0-2" taper grind of suitable length at connections to existing roadways, namely Government Camp Loop Road, E Alpen Way, E Mossy Tree Lane, and E Blossom Trail.

2.2. Move the travelled surface of the ROAD into the appropriate right-of-way.

2.3. Retain the remainder of responsibilities over the ROAD that are not DISTRICT obligations under Section 3 of this Agreement, including:

- 2.3.1. Long term responsibility for the crushed rock base structure underneath the asphalt concrete surface;
- 2.3.2. Permitting and land use authorities;
- 2.3.3. The bridge associated with the ROAD;
- 2.3.4. Emergency response.

3. DISTRICT'S OBLIGATIONS. The DISTRICT agrees to be responsible for the following maintenance related to the Road:

3.1. Treat the surface of the ROAD with seals or overlays;

3.2. Perform other maintenance consistent with the DISTRICT's "Special Road District Economic Feasibility Statement," dated March 2012, including but not limited to:

- 3.2.1. Asphalt patching;
- 3.2.2. Shoulder repair;
- 3.2.3. Ditch clearing; and
- 3.2.4. Minor culvert maintenance.

3.3. In its sole discretion, after providing notice in advance to the COUNTY, perform the maintenance identified in Section 2.1 of this Agreement if the DISTRICT determines that such maintenance is necessary prior to performance by the COUNTY.

4. MAINTENANCE STANDARD. Unless otherwise specified in this Agreement, any maintenance on the ROAD required by this Agreement must be carried out in a manner that is similar to other roads with similar features, function, and characteristics.

5. TERMINATION.

- 5.1. The Parties, by mutual written agreement, may terminate this Agreement at any time.
- 5.2. Either Party 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 must 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 is not required to give more than one (1) notice for a similar default in any twelve (12) month period.
- 5.3. COUNTY may terminate this Agreement in the event the COUNTY fails to receive expenditure authority sufficient to allow the COUNTY, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Agreement is prohibited or the COUNTY is prohibited from paying for such work from the planned funding source.
- 5.4. A Party will 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 will 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.
- 5.5. Nothing herein shall prevent the Parties from meeting to mutually discuss the subject matter of this Agreement or to amend this Agreement by written amendment signed by both Parties. Each Party shall use best efforts to coordinate with the other to minimize conflicts.
- 5.6. Any termination of this Agreement will not prejudice any rights or obligations accrued to the Parties prior to termination.

6. INDEMNIFICATION.

- 6.1. 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 DISTRICT, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to person or property caused by the negligent or willful acts of the COUNTY or its officers, elected officials, owners, employees, agents or its subcontractors or anyone over which the COUNTY has a right to control.

6.2. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the DISTRICT agrees to indemnify, save harmless and defend the COUNTY, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the DISTRICT or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the DISTRICT has a right to control.

7. **NOTICE; CONTACTS.** Any notice provided under this Agreement must be delivered by email or by first class US mail to the individuals identified below. Any communication or notice mailed by first class US mail will be deemed to be given three (3) days after the date it is sent. Any communication or notice sent by electronic mail is deemed to be received on the date sent, unless the sender receives an automated message or other indication that the email message has not been delivered. Either Party may change the Party contact information, or the invoice or payment addresses, by giving prior written notice to the other Party.

Mike Bezner or their designee will act as liaison for the COUNTY.

Contact Information:

503-742-4651
mikebez@clackamas.us

Ed Rogers or their designee will act as liaison for the DISTRICT.

Contact Information:

503-789-0104
edrskier@msn.com

8. GENERAL PROVISIONS.

8.1. 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 the COUNTY without giving effect to the conflict of the law provisions thereof. Any claim between COUNTY and the DISTRICT 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, government 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. Both Parties, by execution of this Agreement, hereby consent to the in personam jurisdiction of the courts referenced in this section.

8.2. Compliance with Laws. The Parties agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations. All applicable 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.

8.3. 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.

8.4. Access to Records. The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.

8.5. 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.

8.6. 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.

8.7. Integration, Amendment and Waiver. Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of this Agreement. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of the Agreement shall not constitute a waiver by such Party of that or any other provision.

- 8.8. 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.
- 8.9. 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.
- 8.10. No Third-Party Beneficiaries.** The DISTRICT and the 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 identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- 8.11. No Assignment.** No party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.
- 8.12. Counterparts.** This Agreement may be executed in any number of counterparts (electronic, facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
- 8.13. Force Majeure.** Neither the DISTRICT nor COUNTY shall be held responsible for delay or default caused by events outside of that Party's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. 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 or its obligations under this Agreement.
- 8.14. Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.
- 8.15. Necessary Acts.** Each Party will execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

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


GOVERNMENT CAMP SPECIAL ROAD DISTRICT	BOARD OF COMMISSIONERS CLACKAMAS COUNTY
 _____ Authorizing Signature	_____ Chair
<u>Road Dist. Chair</u> _____ Title	_____ Recording Secretary
<u>NOV. 13, 2023</u> _____ Date	_____ Date

EXHIBIT 1
Wy East Trail, County Road no. 38002 (the "ROAD")

