



DAN JOHNSON
DIRECTOR

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

September 5, 2019

Board of Commissioners
Clackamas County
Members of the Board:

A Board Order Accepting and Acknowledging Right of Way and Simultaneously Vacating Schmidt Road

Purpose/Outcomes	Acceptance and Acknowledges a permanent right of way easement for road purposes as part of the County Road system. Simultaneously vacates a portion of Schmidt Road right of way.
Dollar Amount and Fiscal Impact	None
Funding Source	N/A
Duration	Upon execution; permanent right of way easement and vacation.
Previous Board Action	N/A
Counsel Review	Reviewed and approved by County Counsel on 08/27/19
Strategic Plan Alignment	Grow a Vibrant Economy
Contact Person	Doug Cutshall, Engineering Technician 503-742-4669

BACKGROUND:

Schmidt Road, (County Road No. 1840), located in the NE quarter of Section 12, Township 4 South, Range 2 East, W.M., was dedicated to the public in a deed from George, Kata and, Kilian Schmidt, November 4, 1938. Unfortunately, it appears the location of the existing road was not surveyed and the road as constructed is located entirely out of the right of way. The Schmidt's are partitioning a portion of their property and would very much like to place the road within an accurately described right of way.

The Schmidt's have again offered to the public a 30 foot wide Permanent Right of Way Easement for Road Purposes through their property. Accepting the easement and acknowledging it to be part of the County Road system will allow for the simultaneous vacation of the unused right of way. There are no negative impacts to the traveling public or the adjoining property owners by this road vacation. This action is pursuant to ORS 368.126.

Schmidt Road, lying within the Schmidt property, is open to the public for travel. After considering traffic impacts, fiscal impacts, and social impacts, staff believes that it would be in the public's interest to approve the Board Order accepting the Permanent Right of Way Easement for Road Purposes as part of the County Road system and simultaneously vacate the unused S. Schmidt Road right of way, in accordance with ORS 368.126.

RECOMMENDATION:

Staff respectfully recommends that the Board adopt the attached Board Order accepting the permanent right of way easement for road purposes and acknowledging it as being part of the County Road system and simultaneously vacating the unused S. Schmidt Road right of way, (County Road No. 1840, DTD No. 42009).

Respectfully submitted,

Michael Bays
Survey/ CADD Group Supervisor

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON

In the Matter of Accepting and Acknowledging an Easement to be part of the County Road System and the Simultaneous Vacation of a Portion of S Schmidt Road, Co. Rd. No. 1840, DTD No. 42009, Situated in Section 12, T.4 S., R.2 E., W.M.



Board Order No. _____

Page 1 of 1

This matter coming before the Board of County Commissioners at this time and it appearing to the Board that the Schmidt Family has offered to the public a Permanent Right of Way Easement for Road Purposes, and;

IT APPEARING to the Board that said easement is being provided to place the constructed county road into an accurately described right of way. Accepting the easement, which is attached to this order and contains descriptions and depictions on the attached Exhibits "A" and "B" and acknowledging said easement to be part of the County Road System, will allow the Board, per ORS 368.126, to simultaneously vacate the unused Schmidt Road right of way; now therefore,

IT IS HEREBY ORDERED that the Board accept the offered Permanent Right of Way Easement for Road Purposes, which is attached to this order,, acknowledge said easement to be a part of the County Road System being County Road Number 1840 and, simultaneously vacate the unused Schmidt Road right of way, as described in Clackamas County Deed Records Book 252, Page 99-100 and, Commission Journal Book 34, Page 489.

IT IS FURTHER ORDERED that this Order and supporting documents be recorded free of charge with the Clackamas County Clerk when presented, with copies sent to the County Assessor Office, County Surveyor's Office, and County Finance/Fixed Assets' Offices.

ADOPTED this _____ day of _____, 2019

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

Grantor: Ralph and Merry Schmidt Address: 24419 Hwy.395 North Kettle Falls, WA 99141	State of Oregon
Grantee: Clackamas County 150 Beaver Creek Rd. Oregon City, OR 97045	
After Recording Return to: Clackamas County Engineering 150 Beaver Creek Rd. Oregon City, OR 97045	
Until a change is requested, all taxes shall be sent to: No Change	Accepted by Clackamas County by Act of the Road Official Acceptance Date: _____
Road Name: _____ DTD Rd. File No. _____	Authorized by Clackamas County Ordinance No. 02-2009 Project: _____

PERMANENT RIGHT OF WAY EASEMENT FOR ROAD PURPOSES
(Individual Grantor)

For value received, Ralph Schmidt and Merry Schmidt, (Grantor), hereby grants and conveys to Clackamas County, a political subdivision of the State of Oregon, its heirs, successors and assigns, (Grantee), a permanent easement dedicated to the public for road and right of way purposes, in, under, upon, and across Grantor's real property located in Clackamas County, State of Oregon.

Grantor's real property is more particularly described as follows: A Tract of land located in the NE 1/4 and SE 1/4 of Section 12, T4S, R2E, WM, as described by that certain Statutory Warranty Deed recorded on February 17, 2004, as Document No. 2004-012469 in the Deed Records of Clackamas County, Oregon.

The Permanent Right of Way Easement for Road Purposes is more particularly described as follows: A strip of land as described and depicted in Exhibits "A" and "B" attached hereto and by this reference made a part hereof (the Easement Area).

Grantee's rights include, but are not limited to, Grantee's right to enter upon and utilize the Easement Area for the purposes described in this document. Grantee may remove trees, shrubs, brush, paving or other materials within the Easement Area whenever necessary to accomplish these purposes.

Grantor, Grantor's heirs, successors, assigns or representatives, shall not construct or maintain any building or other structures upon the above described Easement Area.

This easement does not obligate the public or Grantee to replace landscaping, fencing, shrubs or trees that may be placed within the Easement Area, and which interfere with Grantee's use of the Easement Area for the purposes described in this document.

Statutory Land Use Disclaimer: Before signing or accepting this instrument, the person transferring fee title should inquire about the person's rights, if any, under ORS 195.300, 195.301 and 195.305 to 195.336 and Sections 5 to 11, Chapter 424, Oregon Laws 2007, Sections 2 to 9 and 17, Chapter 855, Oregon Laws 2009, and Sections 2 to 7, Chapter 8, Oregon Laws 2010. This instrument does not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify that the unit of land being transferred is a lawfully established lot or parcel, as defined in ORS 92.010 or 215.010, to verify the approved uses of the lot or parcel, to determine any limits on lawsuits against farming or forest practices,

195.300, 195.301 and 195.305 to 195.336 and Sections 5 to 11, Chapter 424, Oregon Laws 2007, Sections 2 to 9 and 17, Chapter 855, Oregon Laws 2009, and Sections 2 to 7, Chapter 8, Oregon Laws 2010.

In witness whereof, the above named Grantor has hereunto set Grantor's hand to this document on this 28th day of June 2019.

Ralph Schmidt
Signature

Ralph Schmidt
Print Name

Merry Schmidt
Signature

Merry A. Schmidt
Print Name

STATE OF Washington)
County of Ferry) ss.

This instrument was signed and attested before me this 28th day of June 2019,
by Ralph Schmidt and Merry Schmidt.

Linda L. Schaub

Notary Public for State of WASHINGTON

My Commission Expires: April 03, 2023



ZTec Engineers, Inc.

Civil ♦ Structural ♦ Surveying

John McL. Middleton, P.E.

Chris C. Fischborn, P.L.S.

Ronald b. Sellards, P.E.

3880 SE 8th Ave., Suite 280. Portland, Or. 97202 530-235-8795

EXHIBIT "A"

Date: 9-20-18

Schmidt Road

Owner: Ralph and Merry Schmidt

Relocation of County Road No. 1840

Tax Lot: 42E12 00200

A Tract of land over and across a portion of the existing Schmidt Road right-of-way as described in that deed recorded November 4, 1939 in Book 252, Page 99, Clackamas County Deed Records, and over and across a portion of Parcel 1 of that tract of land described in that deed recorded as Document No. 2004-012469, Clackamas County Deed Records, all located in the Northeast one-quarter and in the Southeast one-quarter of Section 12, Township 4 South, Range 2 East, of the Willamette Meridian, Clackamas County, Oregon. Said Tract of land being depicted on attached Exhibit "B" and being a part hereof and more particularly described as follows:

Commencing at a 5/8 inch iron rod found at the Center of said Section 12, said iron rod being on the centerline of Larkin Road (County Road No. 385) and being North 00°24'53" West a distance of 2611.93 feet from the South one-quarter corner of said Section 12; thence South 89°32'10" East, along the East-West center of Section line, a distance of 30.00 feet to a point on the East right-of-way line of said Larkin Road and the true point of beginning of the Tract of land herein described; thence North 00°25'05" West, along said East right-of-way line, a distance of 40.28 feet to a point; thence along a 50.00 foot radius non-tangent curve to the left, with a radial bearing of North 39°06'06" East, through a central angle of 34°01'06", an arc distance of 29.69 feet (the long chord of said curve bears South 67°54'27" East a distance of 29.25 feet) to a point of continuing curve; thence along a 2470.00 foot radius curve to the left, through a central angle of 09°23'01", an arc distance of 404.52 feet (the long chord of said curve bears South 89°36'31" East a distance of 404.07 feet) to a point that is 30.00 feet North of, when measured at right angles, said East-West center of Section line; thence South 89°32'10" East, parallel with and 30.00 feet North of, when measured at right angles, said center of Section line, a distance of 856.22 feet to a point on the East line of the West half of the Northeast one-quarter of said Section 12; thence South 00°06'24" East, along said East line, a distance of 30.00 feet to the Southeast corner of said West half of the Northeast one-quarter of said Section 12; thence North 89°32'10" West, along said East-West center of Section line, a distance of 855.27 feet to a point of non-tangent curve; thence along a 2500.00 foot radius curve to the right with a radial bearing of North 04°16'18" West, through a central angle of 09°21'18", an arc distance of 408.19 feet (the long chord of said curve bears North 89°35'39" West a distance of 407.74 feet) to a point of reverse curve; thence along a 27.00 foot radius curve to the left, through a central angle of 58°27'53", an arc distance of 27.55 feet (the long chord of said curve bears South 65°51'03" West a distance of 26.37 feet) to a point on said East right-of-way line of said Larkin Road; thence North 00°24'53" West, along said East right-of-way line, a distance of 11.40 feet to the true point of beginning of the Tract of land herein described. Said Tract of land contains an area of 38,800 square feet more or less.

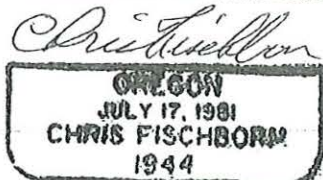
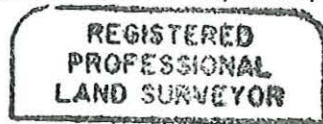
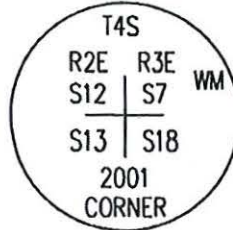


EXHIBIT "B"

SECTION CORNER

FD. 3/4" BRONZE DISC IN MONUMENT
BOX USBT ENTRY 2001-090

FD. 5/8" I.R. WITH YPC STAMPED
"LOVELAND SURVEYS INC."
SET ON PP(1) HELD



S 00°06'24" E 30.00'

12 7
13 18

T.L. 42E1200200

ROAD DEDICATION
AREA = 38,800 SQ.FT.

T.L. 42E1200900

SCHMIDT RD. CO. RD. 11840

S 89°32'10" E
856.22' (M)

855.27'
1961.55' (M)
1961.70' PP(1)

N 89°32'10" W

Δ = 09°23'01"
R = 2,470.00'
L = 404.52'
CH = S 89°36'31" E
404.07'

Δ = 09°21'18"
R = 2,500.00'
L = 408.19'
CH = N 89°35'39" W
407.74'

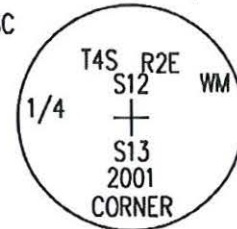
S 89°09'01" E 2590.31' (M) 2590.30 PP(1) 2950.18 LP 055
(BASIS OF BEARINGS)

LARKIN RD.

POINT "A"
CENTER OF SECTION 12
FD. 5/8" I.R., 0.4' BURIED, SET ON SN(4)
PP(1) CALLS THIS MONUMENT A 3/4" I.P.
(HELD)

N 00°24'53" W
2611.93' (M)
2611.89' PP(1)

1/4 CORNER
FD. 3-1/4" BRONZE DISC
IN MONUMENT BOX
USBT ENTRY 2001-088



PP(1) PARTITION PLAT NO. 2008-082

YPC DENOTES YELLOW PLASTIC CAP

I.R. DENOTES IRON ROD

CO. RD. DENOTES COUNTY ROAD

SN(1) SN 19840

TITLE: RELOCATION OF SCHMIDT RD.

PLOT DATE: 8-6-18

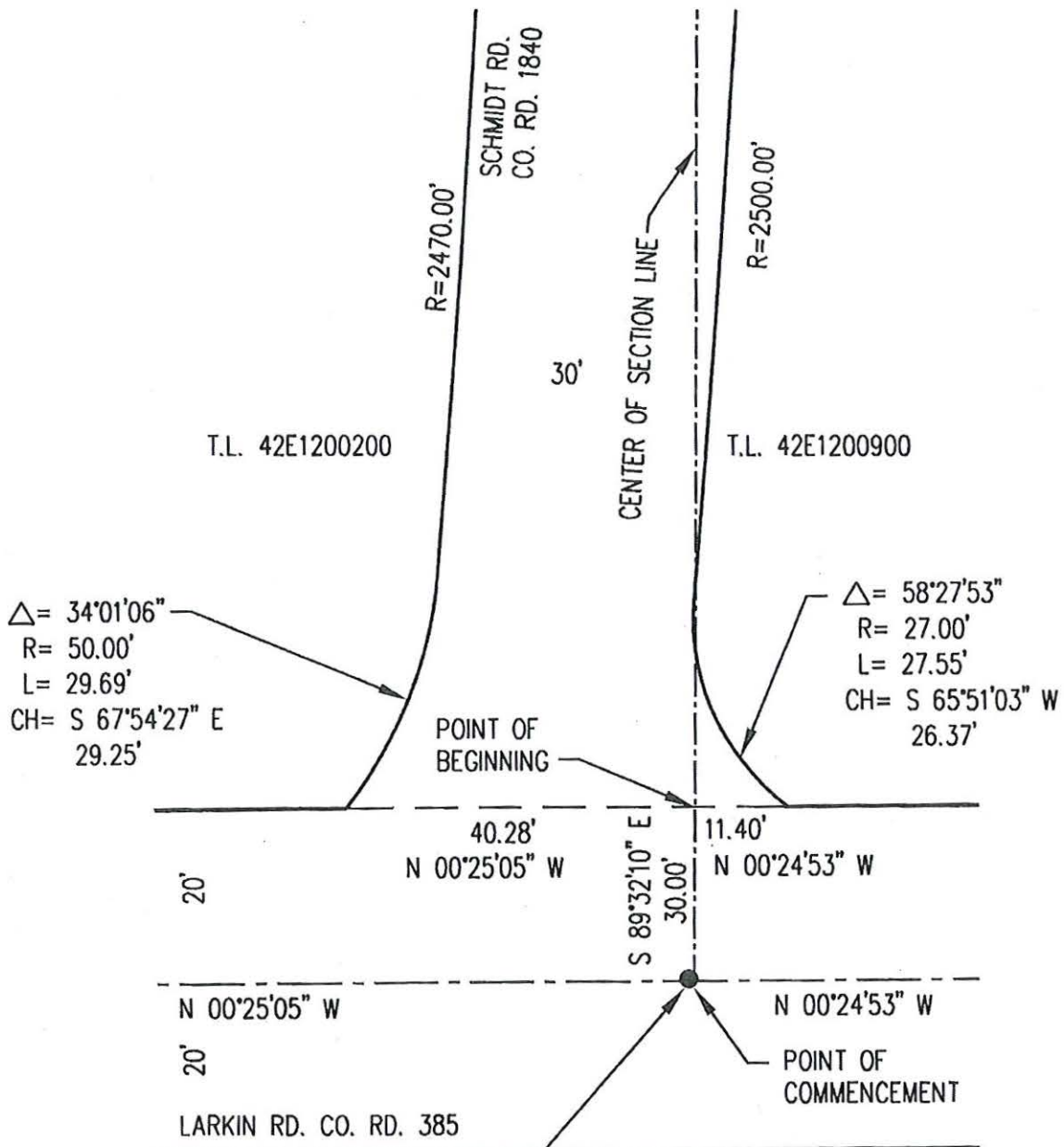
FILE: 18-3451-2

CLIENT: RALPH SCHMIDT

SHEET: 1 OF 2

ZTec ENGINEERS, INC.
3880 S.E. 8TH AVE., SUITE 280
PORTLAND, OREGON 97202
(503) 235-8795

EXHIBIT "B"



SN(1) SN 19840
CO. RD. DENOTES COUNTY ROAD



TITLE: DETAIL OF SCHMIDT RD.	
PLOT DATE: 8-6-18	
FILE: 18-3451-2	
CLIENT: RALPH SCHMIDT	SHEET: 2 OF 2

ZTec ENGINEERS, INC.
3880 S.E. 8TH AVE., SUITE 280
PORTLAND, OREGON 97202
(503) 235-8795



DAN JOHNSON
DIRECTOR

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

September 5, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Resolution Declaring the Public Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property for the S Central Point Rd. and S New Era Rd. Intersection Realignment Project and Authorizing Good Faith Negotiations and Condemnation Actions

Purpose/Outcomes	Under ORS 35 and the federal Uniform Act, a local government agency is authorized to declare by resolution or ordinance the necessity and the purpose for which the project is required by enacting a Resolution of Necessity prior to initiating acquisition of the easements or other property rights needed from abutters to the project.
Dollar Amount and Fiscal Impact	The right of way budget for the project is \$142,725 and is included within the \$1,182,200 total project budget.
Funding Source	County Road Funds/HB 2017 Safety Fund
Duration	The Resolution remains active throughout the project's duration and terminates upon completion of the project or when all litigation associated with the project is concluded.
Previous Board Action	N/A
Strategic Plan Alignment	-Build a strong and safe infrastructure -Ensure safe, healthy and secure communities.
Counsel Review	County Counsel reviewed and approved on 08/27/19
Contact Persons	Sharan Hams-LaDuca, DTD Sr. Right of Way Agent @ 503-742-4675

BACKGROUND:

The intersection of S Central Point Road and S New Era Road is two-way-stop-controlled in the northbound and southbound directions and uncontrolled in the eastbound and westbound directions. It is located south of Oregon City in a rural area. There have been a high number of recorded property and injury accidents at this intersection. There has also been one fatal accident at this intersection. This intersection currently has a 75 degree skew, which may have a correlation with the high percentage of angle crashes. This project will realign the northbound and southbound intersection approaches to reduce the intersection skew. In order to construct the improvements as designed, additional rights of way and easements will be required. The Board has authority to exercise the power of eminent domain under ORS Chapter 35 to acquire rights of way, easements, and fee property by purchase or condemnation proceedings.

The project has been planned and located in a manner which is most compatible with the greatest public good and which causes the least private injury. The design has progressed through the Department of Transportation and Development (DTD) project development procedures and the legal descriptions required for acquisition of the needed rights of way and easements from six properties affected by the Project are being developed.

DTD shall negotiate in good faith and accordance with all applicable laws, rules, and regulations in an attempt to reach agreement as to the amount of Just Compensation owed each affected property owner. To fairly determine the amount of Just Compensation, staff will utilize the expertise of authorized real estate appraisers and other such experts.

The resolution directs DTD staff to proceed with good faith negotiations for the acquisition of the needed property rights and to utilize the expertise of authorized real estate appraisers and other such experts to assist in the acquisition process. The resolution further requires the Director of the Department to notify the Board if the exercise of the power of eminent domain becomes necessary. Only after this process is completed does it authorize the Office of County Counsel to file a Condemnation Action.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the Resolution of Necessity and Purpose authorizing the acquisition of necessary rights of way, easements, and fee property by good faith negotiation if possible, or condemnation, if necessary for the S Central Point Road and S New Era Road Intersection Realignment Project.

Sincerely,

Sharan Hams-LaDuca
Senior Right of Way Agent

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of the S Central Point Road
and S New Era Road Intersection
Realignment Project Declaring the
Necessity and Purpose for Acquisition of
Rights of Way, Easements, and Fee
Property, and Authorizing Good Faith
Negotiations and Condemnation Actions



Board Order No. _____

Page 1 of 2

This matter comes before the Board of County Commissioners of Clackamas County, Oregon (the "Board") at its regularly scheduled meeting on September 5, 2019 and,

It appearing to the Board that the S Central Point Road and S New Era Road Intersection Realignment Project ("Project") will improve the safety of this intersection by eliminating the 75 degree skew that has contributed to a high number of accidents; is consistent with the powers and purposes of County government; and is necessary for the continued growth, safety and welfare of the community; and,

It further appearing to the Board that the Project has been developed and reviewed by County Staff; and

It further appearing to the Board that the Project has been planned and located in a manner which is most compatible with the greatest public good and causes the least private injury; and,

It further appearing to the Board that rights of way and easements within the boundaries described and depicted in the attached Exhibit "A and B" are a necessary part of the Project; and,

It further appearing to the Board that the acquisition of the necessary rights of way and easements are described as follows: the centerline is described in Exhibit "A and B"; the width of right-of-way will be in accordance with the Clackamas County Comprehensive Plan and Transportation System Plan; ancillary easements including sign, slope, sidewalk, utility, wetland mitigation, storm water treatment, storm water detention, traffic and safety facility, and temporary construction purposes, together with such incidental additional right-of-way at intersections and due to topography, all as may be reasonably necessary to accommodate project design; and any uneconomic remnants, as determined by appraisal; all being in the public interest in order to commence and complete the Project in a timely manner; and,

It further appearing that the Board has authority under ORS Chapter 35 to acquire rights of way, easements, and fee property by good faith negotiation, agreement, and purchase or by exercise of the power of eminent domain with condemnation proceedings.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of the S Central Point Road
and S New Era Road Intersection
Realignment Project Declaring the
Necessity and Purpose for Acquisition of
Rights of Way, Easements, and Fee
Property, and Authorizing Good Faith
Negotiations and Condemnation Actions



Board Order No. _____

Page 2 of 2

NOW, THEREFORE, IT IS HEREBY RESOLVED that this Board declares it necessary and in the public interest that the County Department of Transportation and Development (Department), in connection with this Project, begin the acquisition process, in accordance with all applicable laws, rules, and regulations governing such process, for the necessary rights of way, easements, and fee property, either through good faith negotiation, agreement, and purchase, or, if necessary, by commencement of condemnation proceedings.

IT IS FURTHER ORDERED THAT:

1) The Department be authorized to, in good faith, attempt to negotiate agreements of just compensation with owners of affected property identified as necessary within the boundaries of Exhibit "A and B". In so doing, the Department is authorized to retain real estate appraisers, negotiators, and other such experts deemed necessary to assist staff with the acquisition process; and,

2). It is the intention of the Board that the required rights of way, easements, and fee property be obtained through good faith negotiation. The Board acknowledges that the exercise of the power of eminent domain may be necessary. The Director of the Department shall inform the Board when the Director deems eminent domain necessary. Thereafter, the Office of County Counsel is authorized to file complaints of condemnation with the circuit court of the County and take such other steps as it determines necessary for the immediate possession of required rights of way, easements, and fee property and the successful litigation of the condemnation action, including the retention of real estate appraisers, experts and other consultants deemed necessary to the successful conclusion of that litigation.

Dated this _____ day of _____, 2019.

Jim Bernard, Chair

Mary Raethke, Recording Secretary

EXHIBIT "A"

S. Central Point Road
July 23, 2019
Page 1 of 1

CENTERLINE DESCRIPTION OF A PORTION OF S. CENTRAL POINT

A portion of the roadway commonly known as S. Central Point Road, Market Road No. 24, Located in section 24, Township 3 South, Range 1 East, Willamette Meridian, the centerline of which is more particularly described as follows:

Beginning at station 16+00 of the S. Central Point Road alignment, as defined on SN 2019-141 of the Clackamas County Survey records, being 466.12 feet South and 2593.95 feet east of the one-quarter corner common to section 23 and 24, Township 3 South, Range 1 East, Willamette Meridian;

Thence along the centerline of said S. Central Point Road, North $13^{\circ} 09' 17''$ East, a distance of 488.61 feet to Station 20+88.61, being the intersection of S. New Era Road, Market Road 570;

Thence North $17^{\circ} 17' 40''$ East, a distance of 502.86 feet to a point of curve at Station 25+91.47;

Thence 208.53 feet along a tangent curve to the left, with a delta angle of $06^{\circ} 15' 21''$, a radius of 1909.86 feet, and a long chord which bears North $14^{\circ} 09' 59''$ East, a distance of 208.42 feet to Station 28+00 of said S. Central Point Road and the Terminus of this centerline description.

Bearings are based on the Oregon Coordinate Reference System, Portland Zone, NAD 83 (2011) epoch 2010.00. Per OAR 734.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Brian Paull

OREGON
MARCH 13, 2018
BRIAN W. PAULL
89074

EXPIRATION DATE: 12-31-20

EXHIBIT "B"

S. New Era Road
July 23, 2019
Page 1 of 1

CENTERLINE DESCRIPTION OF A PORTION OF S. NEW ERA ROAD

A portion of the roadway commonly known as New Era Road, County Road No. 570, Located in section 24, Township 3 South, Range 1 East, Willamette Meridian, the centerline of which is more particularly described as follows:

Beginning at station 23+00 of the S. New Era Road alignment, as defined on SN 2019-141 of the Clackamas County Survey records, being 8.23 feet North and 2300.00 feet East of the one-quarter corner common to section 23 and 24, Township 3 South, Range 1 East, Willamette Meridian;

Thence, along the centerline of said S. New Era Road North 89°47'42" East, 405.16 feet to the intersection of S. Central Point Road, being at station 27+05.16 of said S. New Era Road;

Thence, North 89°47'42" East, 394.84 feet to station 31+00, and the Terminus of this centerline description.

Bearings are based on the Oregon Coordinate Reference System, Portland Zone, NAD 83 (2011) epoch 2010.00. Per OAR 734.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Brian W. Paull

OREGON
MARCH 13, 2018
BRIAN W. PAULL
89074

EXPIRATION DATE: 12-31-20



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

September 5, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Federal Lands Access Program Project Memorandum of Agreement
with Western Federal Lands Highway Division for the
East Salmon River Road Surface Preservation Project

Purpose/Outcomes	The purpose of the agreement is to approve a Project Memorandum of Agreement for the East Salmon River Road Surface Preservation Project.
Dollar Amount and Fiscal Impact	Overall Project Cost Estimate: \$493,099 Federal Lands Access Program (FLAP) funds: \$200,000 County minimum match (10.27%): up to \$22,891 County overmatch: up to \$270,208
Funding Source	FLAP Funds and County Road Funds.
Duration	Upon execution through summer of 2020
Previous Board Action	06/28/16: BCC Authorization to Apply for Federal Land Access Program Funding 02/15/18: BCC Authorization of the Federal Lands Access Program Match Agreement 07/11/19: BCC Authorization of Western Federal Lands Highway Division Memorandum of Agreement
Counsel Review	Reviewed and approved by County Counsel
Strategic Plan Alignment	-Build a strong infrastructure
Contact Person	Mike Ward, Civil Engineer 503-742-4688

BACKGROUND:

Clackamas County submitted a grant application to Western Federal Lands Highway Division (WFLHD) to perform a two-inch asphalt overlay along 2.03 miles of East Salmon River Road between Highway 26 and the Mount Hood National Forest Boundary to the south. The grant application's total estimated cost was \$444,680 with a federal funding request of \$395,422. During the grant review process, WFLHD added a ten percent construction phase contingency raising the grant's overall project cost estimate to \$493,099.

WFLHD awarded the project \$200,000 in federal funds, requiring a minimum County Match of \$22,891 based on a 10.27 percent match. Up to an additional \$270,208 in County funds will be required to complete the project as envisioned in the grant application. WFLHD's grant award decision was based on the percentage (40%) of traffic that actually travels to the national forest area. Although the grant award is significantly less than the application's request, the road is in need of an asphalt overlay and leveraging the funds to pay for a portion of the overlay project is prudent.

A Program Match Agreement was approved by the Board in February of 2108 to confirm the Clackamas County's intention to meet our grant award and match requirements. A

Memorandum of Agreement with WFLHD which outlined the roles and responsibilities of both parties was approved by the Board in July of 2019.

This Grant Program Description, Federal Award & Administration Information Agreement identifies that the County is accepting the grant funding from WFLHD as discussed in the Memorandum of Agreement, which is included as an exhibit in this agreement.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the attached Grant Agreement with WFLHD for the East Salmon River Road Surface Preservation Project as listed in the agreement.

Respectfully submitted,

Mike Ward
Civil Engineer

1. **Award No.**
6905671940023
2. **Effective Date**
See Block 17
3. **CDFA No.**
20.224
4. **Awarded To**
Clackamas County
150 Beaver Creek Road
Oregon City, OR 97045 - 4302
DUNS No.: 0969926560000
5. **Sponsoring Office**
U.S. Department of Transportation
Federal Highway Administration
Western Federal Lands Highway Division
6. **Period of Performance**
From Effective date to 12/31/2021
7. **Total Amount**
Federal Share: \$200,000.00
Recipient Share: \$293,099.00
Total Value \$493,099.00
8. **Type of Agreement**
Grant
9. **Authority**
23 U.S.C. Section 204
10. **Procurement Request No.**
HFLWRA180122PR
11. **Funds Obligated**
\$180,000.00
12. **Submit Payment Requests To**
See "Payment" clause in General Terms and Conditions
13. **Payment Office**
14. **Accounting and Appropriation Data**
1517410526391 531.CN.K200.41 1741000000 41012 \$180,000.00
\$180,000.00
15. **Description of Project**
OR CLACK 2639(1), East Salmon River Road Surface Preservation
16. **Clackamas County**
17. **Federal Highway Administration**

Signature Date
Name: Jim Benard
Title: Commissioner

Signature Date
Name: Angy Liljedahl
Title: Agreement Officer

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SECTION A - PROGRAM DESCRIPTION

1. STATEMENT OF PURPOSE

See Section A of the attached Project MOA.

2. LEGISLATIVE AUTHORITY

23 U.S.C. Section 204.

3. PROJECT BACKGROUND AND SCOPE

See Section E of the attached Project MOA.

4. STATEMENT OF WORK

This agreement provides for funding of the construction of the project. An environmental decision document must be completed and approved by Federal Highway Administration - WFL Federal Lands Highway Division (FHWA). If FHWA's environmental decision document indicates significant impacts or identifies the preferred alternative to be a "no-build" alternative, then this agreement will be terminated with no eligibility for funding post environmental decision activities. Construction will not be eligible for reimbursement until the Final PS&E package is approved.

FHWA and the Clackamas County (Recipient) may amend or terminate this agreement to adjust to project development, environmental, or construction needs.

A. Preliminary Design

1. Design

1.1. Perform a site survey as necessary to support the design and environmental compliance needs of the project.

1.2. Prepare and submit a preliminary plan package to FHWA. The preliminary plan package shall reflect the work as described in the Project Description above. Any deviations from the described work must be approved in writing by FHWA. Include a preliminary cost estimate with the preliminary plan package.

2. Environmental Compliance

Note: Federally funded projects must fully comply with all requirements of the National Environmental Policy Act (NEPA). An appropriate range of reasonable alternatives will be evaluated for this project based on its scope and extent.

Amendments to the scope of this may be required upon completion of the environmental clearance document and decision.

2.1. Coordinate environmental compliance efforts with FHWA environmental staff. Utilizing the information provided through work performed under this agreement, FHWA will write an independent environmental decision document.

2.2. Support FHWA in environmental compliance efforts, coordinate, develop and complete tasks including resource surveys, studies and assessments for documentation

2.2.1. National Historic Preservation Act (NHPA)

2.2.1.a. FHWA will take the federal lead for Section 106 of the National Historic Preservation Act (NHPA) compliance and perform tribal consultation.

2.2.1.b. Recipient through a qualified archeologist shall perform resource surveys of the area of potential effect (APE) for the project area in compliance with Department of Interior guidelines. If the APE includes land owned or controlled by the federal government, then obtain a permit from the federal land management agency to conduct resource surveys in accordance with the Archaeological Resources Protection Act. Prepare and submit to FHWA a report documenting Section 106 findings and recommendations that complies with applicable State Historic Preservation Office (SHPO) standards for use in Section 106 consultation.

2.2.1.c. FHWA will complete consultation with the SHPO under Section 106 of the NHPA.

2.2.2. Wetlands

2.2.2.a. Recipient through a qualified wetland biologist to identify the presence or absence of wetlands or other waters of the U.S. within the project area. Wetlands believed to be under the jurisdiction of the U.S. Army Corps of Engineers (USACE) should be identified. This may include but is not limited to referencing the National Wetland Inventory or local wetland inventory, NRCS soil survey maps, and field observations.

2.2.2.b. If no potential wetlands are observed within the project area, these findings can be documented in a short report submitted to FHWA.

2.2.2.c. If potential wetlands exist in the project area, delineate and document wetlands in accordance with the USACE 1987 Wetland Delineation Manual and submit the information to FHWA.

2.2.3. Threatened & Endangered (T&E) Species and Essential Fish Habitat (EFH)

2.2.3.a Recipient through a qualified biologist or botanist to perform threatened and endangered species and essential fish habitat studies within the project area. The biologist will obtain updated T&E species lists for the project area from the US Fish and Wildlife Service (USFWS) and, if appropriate, NOAA Fisheries Service.

2.2.3.b If there are no T&E species or EFH within the project area or the proposed project would have no effect to any T&E species or no adverse effect on EFH within the project area, the biologists/botanist shall prepare and submit to FHWA a written finding documenting the finding and the basis for their conclusion.

2.2.3.c If there are T&E species within the project area and the project may affect these species, prepare and submit to FHWA a Biological Assessment (BA) following USFWS and/or NOAA guidelines.

2.2.3.d If the project may affect threatened or endangered species, FHWA will perform Section 7 consultation as appropriate with USFWS and NOAA Fisheries Service. If appropriate, include consultation for EFH.

2.2.4. Other Environmental Issues

2.2.4.a FHWA will identify other environmental issues such as consistency with the Coastal Zone Management Act, floodplains, and hazardous materials

2.2.4.b Submit other environmental surveys, studies, and assessments as needed to support environmental compliance to FHWA.

B. Final Design1. Design

- 1.1. Do not initiate final design activities until FHWA has issued an independent environmental decision document(s).
- 1.2. If the NEPA decision is to construct a project, prepare and submit final plans, specifications, and construction estimate package. The final design package shall reflect the work as described in the environmental decision document. Any deviations from the described work must be approved in writing by FHWA.

2. ROW Acquisition

- 2.1 Rights-of-way and/or easements acquisitions are not anticipated for this project. Include in the administrative record, a certification that all work will occur within the existing right-of-way.

3. Utility Relocation

- 3.1. Utility relocation is not anticipated for this project.

4. Permits

- 4.1 The agency overseeing the construction will identify all permits necessary for construction and submit a list of permits to FHWA.
- 4.2 Submit copies of all completed applications for necessary permits to FHWA.
- 4.3 Obtain permits necessary for construction. Submit copies of approved permits with the final design plans, specifications, and estimate package.

C. Advertisement

- 5.1. Do not initiate construction advertisement activities until FHWA has written an independent environmental decision document.
- 5.2. Provide notification to FHWA once the contract has been awarded.

D. Construction

1. Do not initiate construction activities until FHWA has written an independent environmental decision document.
2. Construct and administer the project in conformance with the FHWA environmental decision document.
3. Submit before, during, and post construction photographs to FHWA to document project progress.

4. Submit a copy of the final construction acceptance letter.

5. DELIVERABLES

Task	Reference Paragraph	Delivery Due On or Before Date
A. 4. A. PRELIMINARY DESIGN		
1. DESIGN		
<ul style="list-style-type: none"> Submit a copy of the preliminary plan package and preliminary cost estimate 	A.4.A.1.2	August 2019
2. ENVIRONMENTAL COMPLIANCE		
<ul style="list-style-type: none"> Submit a cultural resources report for FHWA review. 	A.4.A.2.2.1.b	December 2019
<ul style="list-style-type: none"> Submit a report identifying the presence or absence of jurisdictional wetlands 	A.4.A.2.2.2.b A.4.A.2.2.2.c	December 2019
<ul style="list-style-type: none"> Submit a report documenting T&E and EFH species findings to FHWA. 	A.4.A.2.2.3.b A.4.A.2.2.3.c	December 2019
<ul style="list-style-type: none"> Submit other environmental surveys, studies, and assessments as needed to support environmental compliance to FHWA. 	A.4.A.2.2.4.b	December 2019
A. 4. B. Final Design		
1. DESIGN		
<ul style="list-style-type: none"> Submit final plans, specifications, and construction estimate. 	A.4.B.1.2	June 2020
2. ROW ACQUISITION		
<ul style="list-style-type: none"> Submit certification of rights-of-way and/or easements to FHWA <i>-or- include certification that all work will occur within existing right-of-way as part of the administrative record.</i> 	A.4.B.2.2	With Final PS&E
3. UTILITY RELOCATION		
<ul style="list-style-type: none"> Submit certification of Utility Relocation 	A.4.B.3.2	With Final PS&E
4. PERMITS		
<ul style="list-style-type: none"> Submit a list of all permits necessary for construction to FHWA 	A.4.B.4.1	With Preliminary Plan Package
<ul style="list-style-type: none"> Submit copies of all completed applications for necessary permits to FHWA. 	A.4.B.4.2	With Final PS&E
<ul style="list-style-type: none"> Submit copies of approved permits. 	A.4.B.4.3	With Final PS&E
5. ADVERTISEMENT		
<ul style="list-style-type: none"> Submit Notice of Contract Award to FHWA 	A.4.B.5.3	Upon Award
A. 4. C. CONSTRUCTION		
<ul style="list-style-type: none"> Submit before, during, and post construction photographs to FHWA 	A.4.C.3	Ongoing
<ul style="list-style-type: none"> Submit copy of the Final Construction Acceptance Letter 	A.4.C.4	Upon Completion of Construction / December 2020

Note:

- The Recipient will submit a progress report with each request for reimbursement indicating dates covered, work that has been completed within the request for reimbursement coverage dates, and anticipated dates of major project milestones (i.e. survey completion, preliminary design completion, construction start, and construction completion).
- Submit electronic pdf files and one hard copy of all deliverables to FHWA.

6. KEY OFFICIALS

Government – FHWA/Federal Lands Highway Division

Contact: Neal Christensen, Agreement Officer's Representative (AOR)
Voice: (360) 619-7780
Email: Neal.Christensen@dot.gov

Financial Contact:

Contact: Genise Dance
Voice: (360) 619-7534
Email: WFL.Finance@dot.gov

Recipient- Clackamas County, OR

Program Contact:

Name: Joel Howie
Address: 150 Beaver Creek Road
Oregon City, OR 97045
Telephone: 503-742-4658
Email: jhowie@clackamas.us

Finance Contact:

Name: Michael Morasko
Address: 150 Beaver Creek Road
Oregon City, OR 97045
Telephone: 503-742-5435
Email: mmorasko@clackamas.us

Cooperative Agreement Contact:

Name: Ryan Rice
Address: 150 Beaver Creek Road
Oregon City, OR 97045
Telephone: 503-742-5446
Email: rrice@clackamas.us

SECTION B – FEDERAL AWARD INFORMATION

1. TYPE OF AWARD

The planned award type is a Grant.

2. COST SHARING OR MATCHING

See Section K of the attached Project MOA.

3. PERIOD OF PERFORMANCE

The period of performance for this Agreement is in accordance with Block 6 on page one of the Agreement.

4. DEGREE OF FEDERAL INVOLVEMENT

The FHWA does not anticipate substantial Federal involvement between it and the Recipient during the course of this project. The anticipated Federal involvement is included in Sections G, H, and P of the attached Project MOA.

SECTION C - FEDERAL AWARD ADMINISTRATION INFORMATION

1. FEDERAL AWARD NOTICES

Only the AO can commit the FHWA. The award document, signed by the AO, is the authorizing document. Only the AO can bind the Federal Government to the expenditure of funds.

2. ADMINISTRATIVE AND NATIONAL POLICY REQUIREMENTS

General terms, conditions, and governing regulations that apply to this agreement are available online at:

https://www.fhwa.dot.gov/cfo/contractor_recip/gtandc_generaltermsconditions.cfm

The online list dated March 6, 2015 of "GENERAL TERMS AND CONDITIONS FOR ASSISTANCE AWARDS" shall apply to the resulting award.

A. INDIRECT COSTS

Indirect costs are allowable under this Agreement in accordance with the Recipient's ---Federally Negotiated Indirect Cost Rates as documented in writing and approved by the Recipient's cognizant Government agency.

This Indirect Cost provision does not operate to waive the limitations on Federal funding provided in this document. The Recipient's audited final indirect costs are allowable only insofar as they do not cause the Recipient to exceed the total obligated funding.

B. DATA RIGHTS

The Recipient must make available to the FHWA copies of all work developed in performance with this Agreement, including but not limited to software and data. Data rights under this agreement shall be in accordance with 2 CFR 200.315, Intangible property.

C. PERSONALLY IDENTIFIABLE INFORMATION (PII)

Personally Identifiable Information (PII) as defined at CFR Part 200.79 and 2 CFR 200.82 at will not be requested unless necessary and only with prior written approval of the AO with concurrence from the AOR.

D. AVAILABLE FUNDING

The cost of the work to be reimbursed by FHWA is Not to Exceed the amount in block 11 of the cover page, unless an amendment to the Agreement is made in writing and agreed to by both parties.

E. KEY PERSONNEL

Pursuant to 2 CFR 200.308(c)(2), the Recipient must request prior written approval from the AO for any change in Key Personnel specified in the award. The following person(s) are/have been identified as Key Personnel:

Name	Title/Position
None	

F. SUBAWARDS AND SUBCONTRACTS APPROVAL

The Recipient has been determined to have a procurement system that is approved and accepted by the Government, so are exempt from the requirements of 2 CFR §200.330.

G. ORDER OF PRECEDENCE

The Project MOA is accepted, approved, and incorporated herein as Attachment 1. In the event of any conflict between this agreement document and Project MOA, this Agreement document shall prevail.

H. DESIGNATION AS RESEARCH OR NON-RESEARCH AGREEMENT

This agreement is designated as: NON-RESEARCH

I. CONFERENCE SUPPORT RESTRICTIONS

The Recipient must obtain written approval from the AOR prior to incurring any costs for conference support. See the definition of conference as contained in 2 CFR 200.432.

Food and beverage costs are not allowable conference expenses for reimbursement under this Agreement.

Note: Costs of meals are allowable as a travel per diem expense for individuals on travel status and pursuant to the Travel clause of this Agreement.

J. DISPUTES

The parties to this Agreement will communicate with one another in good faith and in a timely and cooperative manner when raising issues under this provision. Any dispute, which for the purposes of this provision includes any disagreement or claim, between the FHWA and the Recipient concerning questions of fact or law arising from or in connection with this Agreement and whether or not involving alleged breach of this Agreement, may be raised only under this Disputes provision.

Whenever a dispute arises, the parties will attempt to resolve the issues involved by discussion and mutual agreement as soon as practical. In no event will a dispute which arose more than three months prior to the notification made under the following paragraph of this provision constitute the basis for relief under this article unless FHWA waives this requirement.

Failing resolution by mutual agreement, the aggrieved party will document the dispute by notifying the other party in writing of the relevant facts, identify unresolved issues and specify the clarification or remedy sought. Within five working days after providing written notice to the other party, the aggrieved party may, in writing, request a decision from the AO. The AO will conduct a review of the matters in dispute and render a decision in writing within thirty calendar days of receipt of such written request. Any decision of the AO is final and binding unless a party will, within thirty calendar days, request further review as provided below.

Upon written request to one level above the AO or designee, made within thirty calendar days after the AO's written decision or upon unavailability of a decision within the stated time frame under the preceding paragraph, the dispute will be further reviewed. This review will be conducted by one level above the AO. Following the review, all parties will be notified in writing. Such resolution is not subject to further administrative review and to the extent permitted by law, will be final and binding. Nothing in this Agreement is intended to prevent the parties from pursuing disputes in a United States Federal Court of competent jurisdiction.

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DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

July 11, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Federal Lands Access Program Project Memorandum of Agreement
with Western Federal Lands Highway Division for the
East Salmon River Road Surface Preservation Project

Purpose/Outcomes	The purpose of the agreement is to approve a Project Memorandum of Agreement for the East Salmon River Road Surface Preservation Project.
Dollar Amount and Fiscal Impact	Overall Project Cost Estimate: \$493,099 Federal Lands Access Program (FLAP) funds: \$200,000 County minimum match (10.27%): up to \$22,891 County overmatch: up to \$270,208
Funding Source	FLAP Funds and County Road Funds.
Duration	Upon execution through summer of 2020
Previous Board Action	06/28/16: BCC Authorization to Apply for Federal Land Access Program Funding 02/15/18: BCC Authorization of the Federal Lands Access Program Match Agreement
Counsel Review	The agreement was reviewed by County Counsel on July 2, 2019
Strategic Plan Alignment	<ul style="list-style-type: none"> Build a strong infrastructure
Contact Person	Joel Howie, Civil Engineering Supervisor 503-742-4658

BACKGROUND:

Clackamas County submitted a grant application to Western Federal Lands Highway Division (WFLHD) to perform a two-inch asphalt overlay along 2.03 miles of East Salmon River Road between Highway 26 and the Mount Hood National Forest Boundary to the south. The grant application's total estimated cost was \$434,055 with a federal funding request of \$394,680. During the grant review process, WFLHD added a ten percent construction phase contingency raising the grant's overall project cost estimate to \$493,099.

WFLHD awarded the project \$200,000 in federal funds, requiring a minimum County Match of \$22,891 based on a 10.27 percent match. Up to an additional \$270,208 in County funds will be required to complete the project as envisioned in the grant application. WFLHD's grant award decision was based on the percentage (40%) of traffic that actually travels to the national forest area. Although the grant award is significantly less than the application's request, the road is in need of an asphalt overlay and leveraging the funds to pay for a portion of the overlay project is prudent.

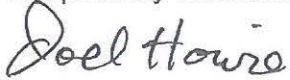
A Program Match Agreement was approved by the Board in February of 2108 to confirm the Clackamas County's intention to meet our grant award and match requirements. This

agreement is required to identify the responsibilities between WFLHD and Clackamas County for the project.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the attached Project Memorandum of Agreement with WFLHD for the East Salmon River Road Surface Preservation Project as listed in the agreement.

Respectfully submitted,



Joel Howie
Civil Engineering Supervisor

Federal Lands Access Program Project Memorandum of Agreement

Project / Facility Name: OR CLACK 2639(1)

Project Route: East Salmon River Road Surface Preservation

State: Oregon

County: Clackamas County

Owner of Federal Lands to which the Project Provides Access: United States Forest Service – Mt. Hood National Forest

Entity with Title or Maintenance Responsibility for Facility: Clackamas County

Type of Work:

- Preliminary Engineering
- NEPA / Permitting
- Rehabilitation
- Construction Engineering / Contract Administration

This Agreement does not obligate (commit to) the expenditure of Federal funds nor does it commit the parties to complete the project. Rather, this agreement sets forth the respective responsibilities as the project proceeds through the project development process.

Parties to this Agreement: Federal Highway Administration, Western Federal Lands Highway Division and Clackamas County

The Program Decision Committee approved this project on August 30, 2016.

AGREED:



Commissioner, Clackamas County

7-11-19 B.2

Date



Chief of Business Operations, FHWA - WFLHD

7.23.19

Date

A. PURPOSE OF THIS AGREEMENT:

This Agreement documents the intent of the parties and sets forth the anticipated responsibilities of each party in the development, construction, and future maintenance of the subject project. The purpose of the Agreement is to identify and assign responsibilities for the environmental analysis, design, right-of-way, utilities, acquisition and construction as appropriate for this project, and to insure maintenance of the facility for public use if improvements are made. The parties understand that any final decision as to design or construction will not be made until after the environmental analysis required under the National Environmental Policy Act (NEPA) is completed (this does not prevent the parties from assigning proposed design criteria to be studied in the NEPA process.) Any decision to proceed with the design and construction of the project will depend on the availability of appropriations at the time of obligation and other factors such as issues raised during the NEPA process, a natural disaster that changes the need for the project, a change in Congressional direction, or other relevant factors.

If Federal Lands Access Program (FLAP) funds are used for the development or construction of this project, Clackamas County agrees to provide a matching share equal to 10.27% of the total cost of the project, as detailed more fully in Section J below. When agencies other than Federal Highway Administration – Western Federal Lands Highway Division will be expanding FLAP Funds, the parties agree to execute a separate obligating document. No reimbursement will be made for expenses incurred prior to execution of the obligating document.

B. AUTHORITY:

This Agreement is entered into between the signatory parties pursuant to the provisions of 23 U.S.C. 204.

C. JURISDICTION AND MAINTENANCE COMMITMENT:

The Clackamas County has jurisdictional authority to operate and maintain the existing facility and will operate and maintain the completed project at its expense.

D. FEDERAL LAND MANAGEMENT AGENCY COORDINATION:

Clackamas County has coordinated project development with the USFS – Mt. Hood National Forest. The USFS – Mt. Hood National Forest support of the project is documented by their endorsement of the project application OR FY16-05.

Each party to this agreement who has a primary role in NEPA, design or construction should coordinate their activities with the Federal Highway Administration – Western Federal Lands Highway Division.

E. PROJECT BACKGROUND / SCOPE:

East Salmon River Road is a rural major collector that provides primary access to the Salmon Huckleberry Wilderness. The wilderness is a high quality destination for those who fish for chinook, Coho and steelhead salmon, for hikers and for those who enjoy wilderness camping. Additionally cyclists enjoy using the road It specifically provides access to the BLM lands and the Coquille Tribal Lands.

The project will include guardrail replacement that meets the current AASHTO Standards. The guardrail will be replaced between MP 25.44 and MP 28.50. Approximately 1400 linear feet of guardrail will be replaced.

F. PROJECT BUDGET:

This is the anticipated budget for the project based on information developed to date. Federal Lands Access Program funds in conjunction with matching funds provided by Clackamas County will fund this project as detailed in Section K.

Phase	FLAP Funds			Partner Match		Total
	To FHWA	To CC	Total	From CC	Total	
PE	\$10,000	\$0	\$10,000	\$0	\$0	\$10,000
CE	\$10,000	\$0	\$10,000	\$0	\$0	\$10,000
CN	\$0	\$180,000	\$180,000	\$22,891	\$22,891	\$202,891
	\$20,000	\$180,000	\$200,000	\$22,891	\$22,891	\$222,891

Note: The total match is calculated on the total FLAP funds provided. However, the total project cost is \$493,099. The FLAP amount is limited to \$200,000.

G. ROLES AND RESPONSIBILITIES:

Clackamas County will provide full support in the NEPA and environmental review process. This includes, but is not limited to: obtaining permits, providing documentation to support NEPA, Endangered Species Act (ESA), and Section 106 compliance, performing studies, etc. FHWA will be responsible for making the NEPA decision.

Clackamas County will administer the other phases of project development such as survey, geotechnical investigation (if required), hydraulic investigation (if required) right-of-way plan preparation (if required), preliminary and final design. The project will be designed to AASHTO Standards. Clackamas County will obtain, or will require the contractor to obtain, all necessary Federal, State, or local permits.

Clackamas County will be responsible for the acquisition of any rights-of-way, easements and / or permits necessary to complete the project. Clackamas County will not initiate right-of-way acquisition until FHWA has written an environmental decision document.

Although not expected, prior to Clackamas County soliciting bids for the project, Clackamas County will certify to FHWA that all right-of-way appraisals and acquisitions have been performed in accordance with the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970 and the Uniform Relocation Act Amendments of 1987.

Although not expected, Clackamas County will be responsible for the relocation of any utilities necessary to complete the project. In accordance with 23 CFR PART 645.103; any applicable reimbursement to the utility company will be governed by State and federal Laws and regulations, or Occupancy Permits. Utility relocation costs will be reimbursable under the construction costs for the project.

During the construction phase, Clackamas County will appoint a Project Engineer to oversee and inspect the work to ensure a quality product. The construction will be governed by the Oregon Standard Specifications for Construction, 2015 Edition.

Clackamas County will be responsible for the following:

- Appointing a representative who will be the primary contact for FHWA’s Project Manager.

- Project activities identified in Section P.
- Provide appropriate match to all FLAP funds expended on the project even if the project is terminated prior to completion.
- Upon completion of construction, provide copies of final inspection demonstrating the project has been constructed in substantial conformity with the approved plans and specifications.
- Provide written confirmation of its final acceptance of the constructed project.
- Compliance with terms and conditions as noted in 2 CFR 200 Common Rule Requires.

FHWA will be responsible for the following:

- Stewardship and oversight activities identified in Section P.
- FHWA decisions that may not be delegated, identified in Section P.

H. ROLES AND RESPONSIBILITIES – SCHEDULE:

Responsible Lead	Product/Service	Schedule Finish
Clackamas County	30% Design	August 2019
Clackamas County	Environmental Reviews and Studies	December 2019
FHWA	NEPA Decision	February 2020
Clackamas County	Final Design	June 2020
Clackamas County	Construction	Summer 2020

I. PROPOSED DESIGN STANDARDS:

Preferred design alternatives will be determined through the NEPA process. The following design criteria will be applied on the project:

Criteria		Comments
Standard Design	AASHTO	Oregon Standard Drawings
Functional Classification	Major Collector	
Surface Type	Asphalt	
Design Volume	1,400	20 year projection, currently at 1,135 ADT

J. FUNDING:

The project is partially funded by the Federal Lands Access Program administered by FHWA-WFL, with matching funds and additional funds provided by Clackamas County.

Fund Source	Amount	Comments
Title 23 FLAP funds – K200	PE - \$10,000 CE - \$10,000 CN - \$180,000	The PDC agreed to provide \$200,000 of funding including \$20,000 for S/O and NEPA
Local Matching Share – Clackamas County (10.27%)	\$22,891	In-kind services
Additional funds – Clackamas County	\$270,208	
TOTAL	\$493,099	

K. MATCHING SHARE REQUIREMENTS:

The purpose of this section is to document the intent of Clackamas County to meet its match requirement for the subject project as authorized under Section 23 USC 201(b)(7)(B). All FLAP expenditures associated with this project will need to be matched by a non-Federal sources, other Federal funds other than those made available under Title 23 and 49 of the United States Code, or by funds made available under 23 USC 202 and 203. The matching requirement under the FAST Act will be met by Clackamas County

Clackamas County has committed to the project. The forms of match shall be those consistent with the “Federal-Aid Guidance Non-Federal Matching Requirements” and as approved by FHWA-WFL. In the state of Oregon, 10.27% of the total project cost.

This project is authorized to use a Tapered Match. Under this approach, the non-Federal match is imposed over the entire project rather than individual progress payments. Timing of all fund transfers are specified under the Funding Plan. Tapered Match is authorized because it will result in an earlier completion date.

Estimated cost and fiscal year (FY) for the funding are based on the best budgeting and scheduling information known at the time. The final match will be determined based on actual expenditures at the conclusion of the project work. Matching cash funds in FWHA-WFL receipt may need to be supplemented, or returned, once actual expenditures are determined. As noted under Modifications, if cost increase over the amount within this agreement, FHWA-WFL will consult with the agency providing match before granting approval.

Maintain all project records, including source documentation for all expenditures and in-kind contributions, for a period of three (3) years from the date of final acceptance. If any litigation claim, negotiation, or audit has been started before expiration of the three-year period, the records shall be retained until completion of the action or resolution of all issues that arise from it.

The following agencies have agreed to contribute the amounts showing which will reduce the federal share by the same amount. The funding plan is as follows:

Agency	Phase	Form	Due	Value	Comments
Clackamas County	PE/CN	In-Kind Services	7/1/2020	\$22,891	This is to match the FLAP amount, additional funds are needed to complete the project

L. PROJECT TEAM MEMBERS – POINT OF CONTACT:

The following table provides the points of contact for this project. They are to be the first persons to deal with any issues or questions that arise over the implementation of each party's role and responsibility for this agreement.

Name & Title	Agency	Phone & Email
Joel Howie, Civil Engineering Supervisor	Clackamas County	503-742-4658 jhowie@co.clackamas.or.us
Neal Christensen, Program Manager	FHWA	360-619-7780 Neal.christensen@dot.gov

M. CHANGES / AMENDMENTS / ADDENDUMS:

The agreement may be modified, amended, or have addendums added by mutual agreement of all parties. The change, amendment, or addendum must be in writing and executed by all parties.

Potential changes include, but are not limited to, changes that significantly impact scope, schedule, or budget; changes to the local match, either in type or responsibility; change that alter the level of effort or responsibilities of a party. The parties commit to consider suggested changes in good faith. Failure to reach agreement on changes may be cause for termination of this agreement.

A change in composition of the project team members does not require the agreement to be amended.

It is the responsibility of the project team members to recognize when changes are needed and to make timely notifications to their management in order to avoid project delivery delays.

N. ISSUE RESOLUTION PROCEDURES MATRIX:

Issues should be resolved at the lowest level possible. The issue should be clearly defined in writing and understood by all parties. Escalating to the next level can be requested by any party. When an issue is resolved, the decision will be communicated to all levels below.

FHWA	Clackamas County	Time
Neal Christensen Program Manager neal.christensen@dot.gov 360-619-7780	Joel Howie Civil Engineering Supervisor jhowie@co.clackamas.or.us 503-742-4658	15 Days
Pete Field Environment, Planning and Programming Branch Chief Peter.field@dot.gov 360-619-7619	Mike Bezner Assistant Director of Transportation mikebez@clackamas.us 503-742-4651	15 Days
Dan Donovan Chief of Business Operations Daniel.donovan@dot.gov 360-619-7966	Dan Johnson Director of Transportation danjoh@clackamas.us 503-742-4326	15 Days

O. TERMINATION:

This agreement may be terminated by mutual written consent of all parties. This agreement may also be terminated if either the NEPA process or funding availability requires a change and the parties are not able to agree to the change. Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination. If Federal access funds have been expended prior to termination, the party responsible for the match agrees to provide a match in the applicable percentage of the total amount expended on the project prior to the termination.

P. STEWARDSHIP & OVERSIGHT ACTIVITIES:

Phase	Activity	Roles		Comments
		Clackamas County	FHWA	
Planning & Programming	Design exception approval agency identified	Provide	Approve	
Planning & Programming	Evidence of funding allocation	Signed Match Agreement	File copy	Completed
Planning & Programming	Memorandum of Agreement with scope, schedule, & budget	Signed MOA	File copy	
Environment	Identify NEPA contact		Provide	FHWA must be a lead agency on NEPA
Environment	Complete all environmental documents necessary for FHWA to develop an environmental decision (ESA, Section 106, 4F, etc.)	Provide	Review and prepare environmental decision	
Environment	NEPA – Tribal coordination		Provide	FHWA must perform this task
Environment	Obtain environmental permits	Provide	File copy	
Environment	Attend public meetings	Notify	Attend as determined by FHWA	
Environment	FHWA NEPA decision	Comply	Provide	FHWA approval needed
Design	Complete 30% PS&E	Provide	Concur	Completed
Design	Complete 95% PS&E	Provide	Approve	Must have written approval by FHWA

Design	Review or approve design exceptions	Provide	Approve	Follow ODOT's process
Acquisitions	Approval of proprietary products	Provide	Approve	
Acquisitions	Contract package for required clauses (Civil Rights, Davis Bacon, Buy America/American, etc.)	Provide	Approve	
Acquisitions	Receive copy of award package	Provide	File copy	
Acquisitions	Review and approve contract modifications	Provide	Approve	
Construction	Attend Pre-Construction Meeting	Attend	Attend as determined by FHWA	
Construction	Final Project Inspections	Attend	Attend as determined by FHWA	
Construction	Construction photographs of project, before, during (quarterly) and post construction	Provide	File	
Construction	Copy of As-Builts	Provide	File	
Construction	Contract disputes (Claims)	Provide	Review and Provide assistance as warranted	
Construction	Copy of Final Construction Acceptance Letter and report	Provide	Review	



Oregon

Kate Brown, Governor

Department of Transportation
Financial Services Branch
355 Capital Street NE MS #21
Salem OR 97301
Phone: (503) 986-3900
Fax: (503) 986-3907

CENTRAL SERVICE ALLOCATION PLAN July 1, 2019 – June 30, 2020

May 14, 2019

Clackamas County
Attn: Jian Zhang
2051 Kaen Road
Oregon City, OR 97045

As outlined by the Office of Management and Budget (OMB) in 2 CFR Part 200 (formerly OMB Circular A-87 and 2 CFR 225), the Oregon Department of Transportation (ODOT) recommends the Clackamas County Central Service Cost Allocation Rates cited in this agreement for fiscal year ending June 30, 2020.

Since ODOT is not an authorized federal cognizant audit agency, the cost rates below are for use on federal grants and contracts administered by ODOT with the federal government grants and contracts to which 2 CFR Part 200 applies. The rate was negotiated by Clackamas County and ODOT according to the authority contained in Appendix VII, Section D.1b of 2 CFR Part 200. Other entities may use this rate as the costs presented are in accordance with OMB 2 CFR Part 200.

The rate delineated in this section is effective for the period of July 1, 2019 through June 30, 2020. The rate is applicable to all programs exclusive of “pass-through” programs or those exempt by law.

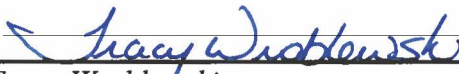

Indirect Costs, Direct Costs and Central Service Allocations were based on actual expenditures for the 2017-2018 fiscal year.

ODOT accepts the submitted indirect cost rates from the county, no adjustments are proposed. Indirect rates shall be applied to direct salary & wages.

Below is list of Clackamas County Division’s approved indirect cost rates for ODOT purposes.

Transportation Construction	35.35%
Transportation Maintenance	38.93%
Transportation Safety	40.93%
Long Range Planning	40.67%
Development Agency	43.63%
Land Use, Dev & Permitting, Road Fund	26.70%

The rates in this agreement should be allocated to all Federal grant programs and contracts for the effective period. Costs allocable to programs which restrict reimbursement of indirect costs may not be allocated to other participating programs.

<i>For the Oregon Department of Transportation</i>	<i>For Clackamas County</i>
	
Tracy Wroblewski Chief Financial Officer	Christa Bosserman Wolfe Finance Director
5-17-19	5/17/19
Date	Date



DAN JOHNSON
DIRECTOR

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

September 5, 2019

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of a Federal Lands Access Program Project Grant Agreement
with Western Federal Lands Highway Division for the
Lolo Pass Road Stabilization and Surface Preservation Project

Purpose/Outcomes	The purpose of the agreement is to approve a Project Grant Agreement for the Lolo Pass Road Stabilization and Surface Preservation Project.
Dollar Amount and Fiscal Impact	Overall Project Cost Estimate: \$4,052,403 Federal Lands Access Program (FLAP) funds: \$3,241,922 County minimum match (10.27%): up to \$371,052 County overmatch: up to \$439,429
Funding Source	FLAP Funds and County Road Funds.
Duration	Upon execution through summer of 2021
Previous Board Action	06/28/16: BCC Authorization to Apply for Federal Land Access Program Funding 02/15/18: BCC Authorization of the Federal Lands Access Program Match Agreement 07/11/19: BCC Authorization of Western Federal Lands Highway Division Memorandum of Agreement
Counsel Review	Reviewed and approved by County Counsel
Strategic Plan Alignment	-Build a strong infrastructure
Contact Person	Mike Ward, Civil Engineer 503-742-4688

BACKGROUND:

Clackamas County submitted a grant application to Western Federal Lands Highway Division (WFLHD) to stabilize and improve Lolo Pass Road by extending a section of existing revetment constructed as a part of the Lolo Pass Road Emergency Repair Project. The revetment construction is intended to reduce the likelihood that the Sandy River will leave its banks during the next flood event at this location. Additionally, Lolo Pass Road will receive a two-inch asphalt overlay along the entire 3.99 miles of road between Highway 26 and the Mount Hood National Forest Boundary to the north. The grant application's total estimated cost was \$3,696,370 with a federal funding request of \$3,316,753. During the grant review process, WFLHD added a ten percent construction phase contingency raising the grant's overall project cost estimate to \$4,052,403.

WFLHD awarded the project \$3,241,922 in federal funds, requiring a minimum County Match of 10.27 percent or \$371,052. Up to an additional \$439,429 in County funds will be required to complete the project as envisioned in the grant application. WFLHD's grant award decision was based on providing 80 percent of the project's total estimated cost. Although the grant award is less than the application's request, the revetment adjacent to Lolo Pass road described in the

grant application is in need of stabilization, the entire road limits are in need of an asphalt overlay and leveraging the funds to pay for most of the project is prudent.

A Program Match Agreement was approved by the Board in February of 2018 to confirm the Clackamas County's intention to meet our grant award and match requirements. A Memorandum of Agreement with WFLHD outlined the roles and responsibilities of both parties was approved by the Board in July of 2019.

This Grant Program Description, Federal Award & Administration Information Agreement identifies that the County is accepting the grant funding from WFLHD as discussed in the Memorandum of Agreement, which is included as an exhibit in this agreement.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the attached Grant Agreement with WFLHD for the Lolo Pass Road Stabilization and Surface Preservation Project as listed in the agreement.

Respectfully submitted,

Mike Ward,
Civil Engineer

- 1. Award No.**
6905671940020
- 2. Effective Date**
See Block 17
- 3. CDFA No.**
20.224
- 4. Awarded To**
Clackamas County
150 Beaver Creek Road
Oregon City, OR 97045 - 4302
DUNS No.: 096992656
- 5. Sponsoring Office**
U.S. Department of Transportation
Federal Highway Administration
Western Federal Lands Highway Division
- 6. Period of Performance**
From Effective date to 12/31/2022
- 7. Total Amount**
Federal Share: \$3,241,992.00
Recipient Share: \$ 810,411.00
Total Value \$4,052,403.00
- 8. Type of Agreement**
Grant
- 9. Authority**
23 U.S.C. Section 204
- 10. Procurement Request No.**
HFLWRA180123PR
- 11. Funds Obligated**
\$3,221,922.00
- 12. Submit Payment Requests To**
See "Payment" clause in General Terms and Conditions
- 13. Payment Office**
- 14. Accounting and Appropriation Data**
1517410570052 531.CN.K200.41 1741000000 41012 \$3,221,992.00
\$3,221,992.00
- 15. Description of Project**
OR CLACK 37005(2), Lolo Pass Road Stabilization and Surface Preservation
- 16. Clackamas County**
- 17. Federal Highway Administration**

Signature Date
Name: Jim Benard
Title: Commissioner

Signature Date
Name: Angy Liljedahl
Title: Agreement Officer

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SECTION A - PROGRAM DESCRIPTION

1. STATEMENT OF PURPOSE

See Section A of the attached Project MOA.

2. LEGISLATIVE AUTHORITY

23 U.S.C. Section 204.

3. PROJECT BACKGROUND AND SCOPE

See Section E of the attached Project MOA.

4. STATEMENT OF WORK

This agreement provides for funding of the construction of the project. An environmental decision document must be completed and approved by Federal Highway Administration - WFL Federal Lands Highway Division (FHWA). If FHWA's environmental decision document indicates significant impacts or identifies the preferred alternative to be a "no-build" alternative, then this agreement will be terminated with no eligibility for funding post environmental decision activities. Construction will not be eligible for reimbursement until the Final PS&E package is approved.

FHWA and the Clackamas County (Recipient) may amend or terminate this agreement to adjust to project development, environmental, or construction needs.

A. Preliminary Design

1. Design

1.1. Perform a site survey as necessary to support the design and environmental compliance needs of the project.

1.2. Prepare and submit a preliminary plan package to FHWA. The preliminary plan package shall reflect the work as described in the Project Description above. Any deviations from the described work must be approved in writing by FHWA. Include a preliminary cost estimate with the preliminary plan package.

2. Environmental Compliance

Note: Federally funded projects must fully comply with all requirements of the National Environmental Policy Act (NEPA). An appropriate range of reasonable alternatives will be evaluated for this project based on its scope and extent.

Amendments to the scope of this may be required upon completion of the environmental clearance document and decision.

2.1. Coordinate environmental compliance efforts with FHWA environmental staff. Utilizing the information provided through work performed under this agreement, FHWA will write an independent environmental decision document.

2.2. Support FHWA in environmental compliance efforts, coordinate, develop and complete tasks including resource surveys, studies and assessments for documentation

2.2.1. National Historic Preservation Act (NHPA)

2.2.1.a. FHWA will take the federal lead for Section 106 of the National Historic Preservation Act (NHPA) compliance and perform tribal consultation.

2.2.1.b. Recipient through a qualified archeologist shall perform resource surveys of the area of potential effect (APE) for the project area in compliance with Department of Interior guidelines. If the APE includes land owned or controlled by the federal government, then obtain a permit from the federal land management agency to conduct resource surveys in accordance with the Archaeological Resources Protection Act. Prepare and submit to FHWA a report documenting Section 106 findings and recommendations that complies with applicable State Historic Preservation Office (SHPO) standards for use in Section 106 consultation.

2.2.1.c. FHWA will complete consultation with the SHPO under Section 106 of the NHPA.

2.2.2. Wetlands

2.2.2.a. Recipient through a qualified wetland biologist to identify the presence or absence of wetlands or other waters of the U.S. within the project area. Wetlands believed to be under the jurisdiction of the U.S. Army Corps of Engineers (USACE) should be identified. This may include but is not limited to referencing the National Wetland Inventory or local wetland inventory, NRCS soil survey maps, and field observations.

2.2.2.b. If no potential wetlands are observed within the project area, these findings can be documented in a short report submitted to FHWA.

2.2.2.c. If potential wetlands exist in the project area, delineate and document wetlands in accordance with the USACE 1987 Wetland Delineation Manual and submit the information to FHWA.

2.2.3. Threatened & Endangered (T&E) Species and Essential Fish Habitat (EFH)

2.2.3.a Recipient through a qualified biologist or botanist to perform threatened and endangered species and essential fish habitat studies within the project area. The biologist will obtain updated T&E species lists for the project area from the US Fish and Wildlife Service (USFWS) and, if appropriate, NOAA Fisheries Service.

2.2.3.b If there are no T&E species or EFH within the project area or the proposed project would have no effect to any T&E species or no adverse effect on EFH within the project area, the biologists/botanist shall prepare and submit to FHWA a written finding documenting the finding and the basis for their conclusion.

2.2.3.c If there are T&E species within the project area and the project may affect these species, prepare and submit to FHWA a Biological Assessment (BA) following USFWS and/or NOAA guidelines.

2.2.3.d If the project may affect threatened or endangered species, FHWA will perform Section 7 consultation as appropriate with USFWS and NOAA Fisheries Service. If appropriate, include consultation for EFH.

2.2.4. Other Environmental Issues

2.2.4.a FHWA will identify other environmental issues such as consistency with the Coastal Zone Management Act, floodplains, and hazardous materials

2.2.4.b Submit other environmental surveys, studies, and assessments as needed to support environmental compliance to FHWA.

B. Final Design1. Design

- 1.1. Do not initiate final design activities until FHWA has issued an independent environmental decision document(s).
- 1.2. If the NEPA decision is to construct a project, prepare and submit final plans, specifications, and construction estimate package. The final design package shall reflect the work as described in the environmental decision document. Any deviations from the described work must be approved in writing by FHWA.

2. ROW Acquisition

- 2.1 Rights-of-way and/or easements acquisitions are not anticipated for this project. Include in the administrative record, a certification that all work will occur within the existing right-of-way.

3. Utility Relocation

- 3.1. Utility relocation is not anticipated for this project.

4. Permits

- 4.1 The agency overseeing the construction will identify all permits necessary for construction and submit a list of permits to FHWA.
- 4.2 Submit copies of all completed applications for necessary permits to FHWA.
- 4.3 Obtain permits necessary for construction. Submit copies of approved permits with the final design plans, specifications, and estimate package.

C. Advertisement

- 5.1. Do not initiate construction advertisement activities until FHWA has written an independent environmental decision document.
- 5.2. Provide notification to FHWA once the contract has been awarded.

D. Construction

1. Do not initiate construction activities until FHWA has written an independent environmental decision document.
2. Construct and administer the project in conformance with the FHWA environmental decision document.
3. Submit before, during, and post construction photographs to FHWA to document project progress.

4. Submit a copy of the final construction acceptance letter.

5. DELIVERABLES

Task	Reference Paragraph	Delivery Due On or Before Date
A. 4. A. PRELIMINARY DESIGN		
1. DESIGN		
<ul style="list-style-type: none"> Submit a copy of the preliminary plan package and preliminary cost estimate 	A.4.A.1.2	August 2019
2. ENVIRONMENTAL COMPLIANCE		
<ul style="list-style-type: none"> Submit a cultural resources report for FHWA review. 	A.4.A.2.2.1.b	February 2020
<ul style="list-style-type: none"> Submit a report identifying the presence or absence of jurisdictional wetlands 	A.4.A.2.2.2.b A.4.A.2.2.2.c	February 2020
<ul style="list-style-type: none"> Submit a report documenting T&E and EFH species findings to FHWA. 	A.4.A.2.2.3.b A.4.A.2.2.3.c	February 2020
<ul style="list-style-type: none"> Submit other environmental surveys, studies, and assessments as needed to support environmental compliance to FHWA. 	A.4.A.2.2.4.b	February 2020
A. 4. B. Final Design		
1. DESIGN		
<ul style="list-style-type: none"> Submit final plans, specifications, and construction estimate. 	A.4.B.1.2	December 2020
2. ROW ACQUISITION		
<ul style="list-style-type: none"> Submit certification of rights-of-way and/or easements to FHWA <i>-or- include certification that all work will occur within existing right-of-way as part of the administrative record.</i> 	A.4.B.2.2	With Final PS&E
3. UTILITY RELOCATION		
<ul style="list-style-type: none"> Submit certification of Utility Relocation 	A.4.B.3.2	With Final PS&E
4. PERMITS		
<ul style="list-style-type: none"> Submit a list of all permits necessary for construction to FHWA 	A.4.B.4.1	With Preliminary Plan Package
<ul style="list-style-type: none"> Submit copies of all completed applications for necessary permits to FHWA. 	A.4.B.4.2	With Final PS&E
<ul style="list-style-type: none"> Submit copies of approved permits. 	A.4.B.4.3	With Final PS&E
5. ADVERTISEMENT		
<ul style="list-style-type: none"> Submit Notice of Contract Award to FHWA 	A.4.B.5.3	Upon Award
A. 4. C. CONSTRUCTION		
<ul style="list-style-type: none"> Submit before, during, and post construction photographs to FHWA 	A.4.C.3	Ongoing
<ul style="list-style-type: none"> Submit copy of the Final Construction Acceptance Letter 	A.4.C.4	Upon Completion of Construction / December 2021

Note:

- The Recipient will submit a progress report with each request for reimbursement indicating dates covered, work that has been completed within the request for reimbursement coverage dates, and anticipated dates of major project milestones (i.e. survey completion, preliminary design completion, construction start, and construction completion).
- Submit electronic pdf files and one hard copy of all deliverables to FHWA.

6. KEY OFFICIALS

Government – FHWA/Federal Lands Highway Division

Contact: Neal Christensen, Agreement Officer's Representative (AOR)
Voice: (360) 619-7780
Email: Neal.Christensen@dot.gov

Financial Contact:

Contact: Genise Dance
Voice: (360) 619-7534
Email: WFL.Finance@dot.gov

Recipient- Clackamas County, OR

Program Contact:

Name: Joel Howie
Address: 150 Beaver Creek Road
Oregon City, OR 97045
Telephone: 503-742-4658
Email: jhowie@clackamas.us

Finance Contact:

Name: Michael Morasko
Address: 150 Beaver Creek Road
Oregon City, OR 97045
Telephone: 503-742-5435
Email: mmorasko@clackamas.us

Cooperative Agreement Contact:

Name: Ryan Rice
Address: 150 Beaver Creek Road
Oregon City, OR 97045
Telephone: 503-742-5446
Email: rrice@clackamas.us

SECTION B – FEDERAL AWARD INFORMATION

1. TYPE OF AWARD

The planned award type is a Grant.

2. COST SHARING OR MATCHING

See Section K of the attached Project MOA.

3. PERIOD OF PERFORMANCE

The period of performance for this Agreement is in accordance with Block 6 on page one of the Agreement.

4. DEGREE OF FEDERAL INVOLVEMENT

The FHWA does not anticipate substantial Federal involvement between it and the Recipient during the course of this project. The anticipated Federal involvement is included in Sections G, H, and P of the attached Project MOA.

SECTION C - FEDERAL AWARD ADMINISTRATION INFORMATION

1. FEDERAL AWARD NOTICES

Only the AO can commit the FHWA. The award document, signed by the AO, is the authorizing document. Only the AO can bind the Federal Government to the expenditure of funds.

2. ADMINISTRATIVE AND NATIONAL POLICY REQUIREMENTS

General terms, conditions, and governing regulations that apply to this agreement are available online at:

https://www.fhwa.dot.gov/cfo/contractor_recip/gtandc_generaltermsconditions.cfm

The online list dated March 6, 2015 of "GENERAL TERMS AND CONDITIONS FOR ASSISTANCE AWARDS" shall apply to the resulting award.

A. INDIRECT COSTS

Indirect costs are allowable under this Agreement in accordance with the Recipient's Federally Negotiated Indirect Cost Rates as documented in writing and approved by the Recipient's cognizant Government agency.

This Indirect Cost provision does not operate to waive the limitations on Federal funding provided in this document. The Recipient's audited final indirect costs are allowable only insofar as they do not cause the Recipient to exceed the total obligated funding.

B. DATA RIGHTS

The Recipient must make available to the FHWA copies of all work developed in performance with this Agreement, including but not limited to software and data. Data rights under this agreement shall be in accordance with 2 CFR 200.315, Intangible property.

C. PERSONALLY IDENTIFIABLE INFORMATION (PII)

Personally Identifiable Information (PII) as defined at CFR Part 200.79 and 2 CFR 200.82 at will not be requested unless necessary and only with prior written approval of the AO with concurrence from the AOR.

D. AVAILABLE FUNDING

The cost of the work to be reimbursed by FHWA is Not to Exceed the amount in block 11 of the cover page, unless an amendment to the Agreement is made in writing and agreed to by both parties.

E. KEY PERSONNEL

Pursuant to 2 CFR 200.308(c)(2), the Recipient must request prior written approval from the AO for any change in Key Personnel specified in the award. The following person(s) are/have been identified as Key Personnel:

Name	Title/Position
None	

F. SUBAWARDS AND SUBCONTRACTS APPROVAL

The Recipient has been determined to have a procurement system that is approved and accepted by the Government, so are exempt from the requirements of 2 CFR §200.330.

G. ORDER OF PRECEDENCE

The Project MOA is accepted, approved, and incorporated herein as Attachment 1. In the event of any conflict between this agreement document and Project MOA, this Agreement document shall prevail.

H. DESIGNATION AS RESEARCH OR NON-RESEARCH AGREEMENT

This agreement is designated as: NON-RESEARCH

I. CONFERENCE SUPPORT RESTRICTIONS

The Recipient must obtain written approval from the AOR prior to incurring any costs for conference support. See the definition of conference as contained in 2 CFR 200.432.

Food and beverage costs are not allowable conference expenses for reimbursement under this Agreement.

Note: Costs of meals are allowable as a travel per diem expense for individuals on travel status and pursuant to the Travel clause of this Agreement.

J. DISPUTES

The parties to this Agreement will communicate with one another in good faith and in a timely and cooperative manner when raising issues under this provision. Any dispute, which for the purposes of this provision includes any disagreement or claim, between the FHWA and the Recipient concerning questions of fact or law arising from or in connection with this Agreement and whether or not involving alleged breach of this Agreement, may be raised only under this Disputes provision.

Whenever a dispute arises, the parties will attempt to resolve the issues involved by discussion and mutual agreement as soon as practical. In no event will a dispute which arose more than three months prior to the notification made under the following paragraph of this provision constitute the basis for relief under this article unless FHWA waives this requirement.

Failing resolution by mutual agreement, the aggrieved party will document the dispute by notifying the other party in writing of the relevant facts, identify unresolved issues and specify the clarification or remedy sought. Within five working days after providing written notice to the other party, the aggrieved party may, in writing, request a decision from the AO. The AO will conduct a review of the matters in dispute and render a decision in writing within thirty calendar days of receipt of such written request. Any decision of the AO is final and binding unless a party will, within thirty calendar days, request further review as provided below.

Upon written request to one level above the AO or designee, made within thirty calendar days after the AO's written decision or upon unavailability of a decision within the stated time frame under the preceding paragraph, the dispute will be further reviewed. This review will be conducted by one level above the AO. Following the review, all parties will be notified in writing. Such resolution is not subject to further administrative review and to the extent permitted by law, will be final and binding. Nothing in this Agreement is intended to prevent the parties from pursuing disputes in a United States Federal Court of competent jurisdiction.



B.I.

14

DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

July 11, 2019

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of a Federal Lands Access Program Project Memorandum of Agreement
with Western Federal Lands Highway Division for the
Lolo Pass Road Stabilization and Surface Preservation Project

Purpose/Outcomes	The purpose of the agreement is to approve a Project Memorandum of Agreement for the Lolo Pass Road Stabilization and Surface Preservation Project.
Dollar Amount and Fiscal Impact	Overall Project Cost Estimate: \$4,052,403 Federal Lands Access Program (FLAP) funds: \$3,241,922 County minimum match (10.27%): up to \$371,052 County overmatch: up to \$439,429
Funding Source	FLAP Funds and County Road Funds.
Duration	Upon execution through summer of 2021
Previous Board Action	06/28/16: BCC Authorization to Apply for Federal Land Access Program Funding 02/15/18: BCC Authorization of the Federal Lands Access Program Match Agreement
Counsel Review	The agreement was reviewed by County Counsel on July 2, 2019
Strategic Plan Alignment	<ul style="list-style-type: none"> Build a strong infrastructure
Contact Person	Joel Howie, Civil Engineering Supervisor 503-742-4658

BACKGROUND:

Clackamas County submitted a grant application to Western Federal Lands Highway Division (WFLHD) to stabilize and improve Lolo Pass Road by extending a section of existing revetment constructed as a part of the Lolo Pass Road Emergency Repair Project. The revetment construction is intended to reduce the likelihood that the Sandy River will leave its banks during the next flood event at this location. Additionally, Lolo Pass Road will receive a two-inch asphalt overlay along the entire 3.99 miles of road between Highway 26 and the Mount Hood National Forest Boundary to the north. The grant application's total estimated cost was \$3,696,370 with a federal funding request of \$3,316,753. During the grant review process, WFLHD added a ten percent construction phase contingency raising the grant's overall project cost estimate to \$4,052,403.

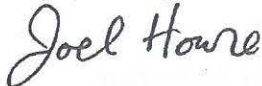
WFLHD awarded the project \$3,241,922 in federal funds, requiring a minimum County Match of 10.27 percent or \$371,052. Up to an additional \$439,429 in County funds will be required to complete the project as envisioned in the grant application. WFLHD's grant award decision was based on providing 80 percent of the project's total estimated cost. Although the grant award is less than the application's request, the revetment adjacent to Lolo Pass road described in the grant application is in need of stabilization, the entire road limits are in need of an asphalt overlay and leveraging the funds to pay for most of the project is prudent.

A Program Match Agreement was approved by the Board in February of 2018 to confirm the Clackamas County's intention to meet our grant award and match requirements. This agreement is required to identify the responsibilities between WFLHD and Clackamas County for the project.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the attached Match Agreement with WFLHD for the Lolo Pass Road Stabilization and Surface Preservation Project as listed in the agreement.

Respectfully submitted,

A handwritten signature in cursive script that reads "Joel Howie".

Joel Howie,
Civil Engineering Supervisor

Federal Lands Access Program Project Memorandum of Agreement

Project / Facility Name: Lolo Pass Road Stabilization and Surface Preservation, OR CLACK 37005(2)

Project Route: Clackamas County Road #37005

State: Oregon

County: Clackamas County

Owner of Federal Lands to which the Project Provides Access: United States Forest Service – Mt. Hood National Forest

Entity with Title or Maintenance Responsibility for Facility: Clackamas County

Type of Work:


- Preliminary Engineering
- NEPA / Permitting
- Rehabilitation
- Construction Engineering / Contract Administration

This Agreement does not obligate (commit to) the expenditure of Federal funds nor does it commit the parties to complete the project. Rather, this agreement sets forth the respective responsibilities as the project proceeds through the project development process.

Parties to this Agreement: Federal Highway Administration, Western Federal Lands Highway Division and Clackamas County

The Program Decision Committee approved this project on August 30, 2016.

AGREED:



Commissioner, Clackamas County

7-11-19 B.I.

Date



Chief of Business Operations, FHWA - WFLHD

7.23.19

Date

A. PURPOSE OF THIS AGREEMENT:

This Agreement documents the intent of the parties and sets forth the anticipated responsibilities of each party in the development, construction, and future maintenance of the subject project. The purpose of the Agreement is to identify and assign responsibilities for the environmental analysis, design, right-of-way, utilities, acquisition and construction as appropriate for this project, and to insure maintenance of the facility for public use if improvements are made. The parties understand that any final decision as to design or construction will not be made until after the environmental analysis required under the National Environmental Policy Act (NEPA) is completed (this does not prevent the parties from assigning proposed design criteria to be studied in the NEPA process.) Any decision to proceed with the design and construction of the project will depend on the availability of appropriations at the time of obligation and other factors such as issues raised during the NEPA process, a natural disaster that changes the need for the project, a change in Congressional direction, or other relevant factors.

If Federal Lands Access Program (FLAP) funds are used for the development or construction of this project, Clackamas County agrees to provide a matching share equal to 10.27% of the total cost of the project, as detailed more fully in Section J below. When agencies other than Federal Highway Administration – Western Federal Lands Highway Division will be expanding FLAP Funds, the parties agree to execute a separate obligating document. No reimbursement will be made for expenses incurred prior to execution of the obligating document.

B. AUTHORITY:

This Agreement is entered into between the signatory parties pursuant to the provisions of 23 U.S.C. 204.

C. JURISDICTION AND MAINTENANCE COMMITMENT:

The Clackamas County has jurisdictional authority to operate and maintain the existing facility and will operate and maintain the completed project at its expense.

D. FEDERAL LAND MANAGEMENT AGENCY COORDINATION:

Clackamas County has coordinated project development with the USFS – Mt. Hood National Forest. The USFS – Mt. Hood National Forest support of the project is documented by their endorsement of the project application OR FY16-14.

Each party to this agreement who has a primary role in NEPA, design or construction should coordinate their activities with the Federal Highway Administration – Western Federal Lands Highway Division.

E. PROJECT BACKGROUND / SCOPE:

Lolo Pass Road is the only paved access route to the Zig Zag District of the Mt. Hood National Forest and the community of Zig Zag. As a result, the Forest Service and Clackamas County residents are completely dependent upon Lolo Pass Road for access to the Mt. Hood National Forest and Zig Zag. Unfortunately, this critical access route is vulnerable to the unstable hydrology of the Sandy River, which is prone to flooding and periodic washouts. When washouts occur, the only alternative detour is over 30 miles of unpaved roads.

Lolo Pass Road is the access point for visitors seeking to enjoy the trails, campgrounds, fishing and scenic beauty of the Zig Zag Ranger District. Lolo Pass Road serves as an

important access point for the Pacific Crest Trail, as well as for several other trails with the Mt. Hood National Forest. In addition, there are three campgrounds accessed from Lolo Pass Road including a horse campground. Lolo Pass Road and the French's Dome Trail provide access to French's Dome, a popular rock climbing destination. Lolo Pass Road is also the western access for Mt. Hood and its glaciers.

Lolo Pass Road is of critical concern to the National Forest Service because it serves as the only paved access to the Mt. Hood National Forest Zig Zag Ranger District Headquarters. The Zig Zag Ranger District Headquarters is also the location of several maintenance and support facilities including the Rangers office, housing, District Fire Warehouse, and the Road and Trail Warehouse. The Fire Warehouse serves as a local base and support for firefighting. The Road and Trail Warehouse supports Forest Service road and trail maintenance activities in the area. Loss of Lolo Pass Road due to a flood event would not only prevent visitors from accessing this portion of the Mt. Hood National Forest, it would limit access to all the support facilities located at the Zig Zag Ranger District Headquarters and severely hamper on-going operations of this area of the national forest.

Washouts have occurred a number of times over the course of recent years due to flooding and/or channel migration by the Sandy River. The Upper Sandy River has experienced several major floods that caused substantial flooding, bank erosion and damage to Lolo Pass Road. During the 50 years between 1964 and 2014 the river has experienced 8 of the 10 highest peak flows in its 100 year flow record. The flood of record occurred in 1964 and had a flow of 61,400 cubic feet per second. This event completely destroyed the Sandy River Bridge on Lolo Pass Road as well as several other sections of the road. Damaging floods also occurred in 1996 and 2011 resulting in the loss of several additional sections of the road.

During the January 2011 event the Sandy River eroded the roadway embankment at a location about 0.23 miles north of its intersection with E. Barlow Trail Road, washed out approximately 300 feet of Lolo Pass Road, and ran south along the roadway, destroying several houses. A total of 1/2 mile of Lolo Pass Road was washed out. This washout closed the road for over four months.

As a result of this event Clackamas County repaired the damaged section of the road, rechanneled a section of the Sandy River and stabilized the banks with riprap and plantings with added large woody debris for riparian and fish habitat. This returned the road to service and helped reduce the likelihood of the river leaving its channel at that location during future flood events. However, there was not sufficient funding available at the time to completely overlay the road or construct a revetment that protected the entire portion of the west bank where the river left its channel. While these actions returned the road to service and addressed the immediate issues with the river channel, it was not sufficient to prevent the Sandy River from leaving its channel at this location or to protect the road from washout should another flood event occur.

This project undertakes two steps that should help prevent the river from leaving its channel and protect the road from potential washouts. To address these vulnerabilities the existing west bank revetment will be extended 300 feet upstream, and add a 2 inch overlay of the entire road will be added to protect the existing breaks and joints in the road surface from being undermined by future flooding. The extension of the revetment will protect the entire area that experienced bank erosion during the 2011 flood event. The overlay paving will seal the joints that remain exposed from previous patching and reduce the likelihood of failure in those locations during future floods.

F. PROJECT BUDGET:

This is the anticipated budget for the project based on information developed to date. Federal Lands Access Program funds in conjunction with matching funds provided by Clackamas County will fund this project as detailed in Section K.

Phase	FLAP Funds			Partner Match		Total
	To FHWA	To CC	Total	From CC	Total	
PE	\$10,000	\$0	\$10,000	\$220,000	\$220,000	\$230,000
CE	\$10,000	\$0	\$10,000	\$151,061	\$151,061	\$161,061
CN/CM	\$0	\$3,221,992	\$3,221,992	\$0	\$0	\$3,221,992
	\$20,000	\$3,221,992	\$3,241,992	\$371,061	\$371,061	\$3,613,053

Note: The total match is calculated on the total FLAP funds provided. However, the total project cost is \$4,052,403. The FLAP amount is limited to \$3,241,992.

G. ROLES AND RESPONSIBILITIES:

Clackamas County will provide full support in the NEPA and environmental review process. This includes, but is not limited to: obtaining permits, providing documentation to support NEPA, Endangered Species Act (ESA), and Section 106 compliance, performing studies, etc. FHWA will be responsible for making the NEPA decision.

Clackamas County will administer the other phases of project development such as survey, geotechnical investigation (if required), hydraulic investigation (if required) right-of-way plan preparation (if required), preliminary and final design. The project will be designed to AASHTO Standards. Clackamas County will obtain, or will require the contractor to obtain, all necessary Federal, State, or local permits.

Clackamas County will be responsible for the acquisition of any rights-of-way, easements and / or permits necessary to complete the project. Clackamas County will not initiate right-of-way acquisition until FHWA has written an environmental decision document.

Although not expected, prior to Clackamas County soliciting bids for the project, Clackamas County will certify to FHWA that all right-of-way appraisals and acquisitions have been performed in accordance with the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970 and the Uniform Relocation Act Amendments of 1987.

Although not expected, Clackamas County will be responsible for the relocation of any utilities necessary to complete the project. In accordance with 23 CFR PART 645.103; any applicable reimbursement to the utility company will be governed by State and federal Laws and regulations, or Occupancy Permits. Utility relocation costs will be reimbursable under the construction costs for the project.

During the construction phase, Clackamas County will appoint a Project Engineer to oversee and inspect the work to ensure a quality product. The construction will be governed by the Oregon Standard Specifications for Construction, 2015 Edition.

Clackamas County will be responsible for the following:

- Appointing a representative who will be the primary contact for FHWA’s Project Manager.

- Project activities identified in Section P.
- Provide appropriate match to all FLAP funds expended on the project even if the project is terminated prior to completion.
- Upon completion of construction, provide copies of final inspection demonstrating the project has been constructed in substantial conformity with the approved plans and specifications.
- Provide written confirmation of its final acceptance of the constructed project.
- Compliance with terms and conditions as noted in 2 CFR 200 Common Rule Requires.

FHWA will be responsible for the following:

- Stewardship and oversight activities identified in Section P.
- FHWA decisions that may not be delegated, identified in Section P.

H. ROLES AND RESPONSIBILITIES – SCHEDULE:

Responsible Lead	Product/Service	Schedule Finish
Clackamas County	30% Design	August 2019
Clackamas County	Environmental Reviews and Studies	February 2020
FHWA	NEPA Decision	May 2020
Clackamas County	Final Design	December 2020
Clackamas County	Construction	Summer 2021

I. PROPOSED DESIGN STANDARDS:

Preferred design alternatives will be determined through the NEPA process. The following design criteria will be applied on the project:

Criteria	Comments	
Standard Design	AASHTO	Oregon Standard Drawings
Functional Classification	Arterial	
Surface Type	Asphalt	
Design Volume	2,375	ADT = 2,375 at BOP, 1,150 at EOP for 20 year projection, currently at 1,950 at BOP, 950 at EOP

J. FUNDING:

The project is partially funded by the Federal Lands Access Program administered by FHWA-WFL, with matching funds and additional funds provided by Clackamas County.

Fund Source	Amount	Comments
Title 23 FLAP funds – K200	PE - \$10,000 CE - \$10,000 CN - \$3,221,922	The PDC agreed to provide \$3,241,922 of funding including \$20,000 for S/O and NEPA

Local Matching Share – Clackamas County (10.27%)	\$371,061	In-kind services
Additional funds – Clackamas County	\$439,420	
TOTAL	\$4,052,403	

K. MATCHING SHARE REQUIREMENTS:

The purpose of this section is to document the intent of Clackamas County to meet its match requirement for the subject project as authorized under Section 23 USC 201(b)(7)(B). All FLAP expenditures associated with this project will need to be matched by a non-Federal sources, other Federal funds other than those made available under Title 23 and 49 of the United States Code, or by funds made available under 23 USC 202 and 203. The matching requirement under the FAST Act will be met by Clackamas County

Clackamas County has committed to the project. The forms of match shall be those consistent with the “Federal-Aid Guidance Non-Federal Matching Requirements” and as approved by FHWA-WFL. In the state of Oregon, 10.27% of the total project cost.

This project is authorized to use a Tapered Match. Under this approach, the non-Federal match is imposed over the entire project rather than individual progress payments. Timing of all fund transfers are specified under the Funding Plan. Tapered Match is authorized because it will result in an earlier completion date.

Estimated cost and fiscal year (FY) for the funding are based on the best budgeting and scheduling information known at the time. The final match will be determined based on actual expenditures at the conclusion of the project work. Matching cash funds in FWHA-WFL receipt may need to be supplemented, or returned, once actual expenditures are determined. As noted under Modifications, if cost increase over the amount within this agreement, FHWA-WFL will consult with the agency providing match before granting approval.

Maintain all project records, including source documentation for all expenditures and in-kind contributions, for a period of three (3) years from the date of final acceptance. If any litigation claim, negotiation, or audit has been started before expiration of the three-year period, the records shall be retained until completion of the action or resolution of all issues that arise from it.

The following agencies have agreed to contribute the amounts showing which will reduce the federal share by the same amount. The funding plan is as follows:

Agency	Phase	Form	Due	Value	Comments
Clackamas County	PE/CN	In-Kind Services	7/1/2020	\$371,061	This is to match the FLAP amount, additional funds are needed to complete the project

L. PROJECT TEAM MEMBERS – POINT OF CONTACT:

The following table provides the points of contact for this project. They are to be the first persons to deal with any issues or questions that arise over the implementation of each party’s role and responsibility for this agreement.

Name & Title	Agency	Phone & Email
Joel Howie, Civil Engineering Supervisor	Clackamas County	503-742-4658 jhowie@co.clackamas.or.us
Neal Christensen, Program Manager	FHWA	360-619-7780 Neal.christensen@dot.gov

M. CHANGES / AMENDMENTS / ADDENDUMS:

The agreement may be modified, amended, or have addendums added by mutual agreement of all parties. The change, amendment, or addendum must be in writing and executed by all parties.

Potential changes include, but are not limited to, changes that significantly impact scope, schedule, or budget; changes to the local match, either in type or responsibility; change that alter the level of effort or responsibilities of a party. The parties commit to consider suggested changes in good faith. Failure to reach agreement on changes may be cause for termination of this agreement.

A change in composition of the project team members does not require the agreement to be amended.

It is the responsibility of the project team members to recognize when changes are needed and to make timely notifications to their management in order to avoid project delivery delays.

N. ISSUE RESOLUTION PROCEDURES MATRIX:

Issues should be resolved at the lowest level possible. The issue should be clearly defined in writing and understood by all parties. Escalating to the next level can be requested by any party. When an issue is resolved, the decision will be communicated to all levels below.

FHWA	Clackamas County	Time
Neal Christensen Program Manager neal.christensen@dot.gov 360-619-7780	Joel Howie, Civil Engineering Supervisor jhowie@co.clackamas.or.us 503-742-4658	15 Days
Pete Field Environment, Planning and Programming Branch Chief Peter.field@dot.gov 360-619-7619	Mike Bezner, Assistant Director of Transportation mikebez@clackamas.us 503-742-7651	15 Days
Dan Donovan Chief of Business Operations Daniel.donovan@dot.gov 360-619-7966	Dan Johnson, Director of Transportation danjoh@clackamas.us 503-742-4326	15 Days

O. TERMINATION:

This agreement may be terminated by mutual written consent of all parties. This agreement may also be terminated if either the NEPA process or funding availability requires a change and the parties are not able to agree to the change. Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination. If Federal access funds have been expended prior to termination, the party responsible for the match agrees to provide a match in the applicable percentage of the total amount expended on the project prior to the termination.

P. STEWARDSHIP & OVERSIGHT ACTIVITIES:

Phase	Activity	Roles		Comments
		Clackamas County	FHWA	
Planning & Programming	Design exception approval agency identified	Provide	Approve	
Planning & Programming	Evidence of funding allocation	Signed Match Agreement	File copy	Completed
Planning & Programming	Memorandum of Agreement with scope, schedule, & budget	Signed MOA	File copy	
Environment	Identify NEPA contact		Provide	FHWA must be a lead agency on NEPA
Environment	Complete all environmental documents necessary for FHWA to develop an environmental decision (ESA, Section 106, 4F, etc.)	Provide	Review and prepare environmental decision	
Environment	NEPA – Tribal coordination		Provide	FHWA must perform this task
Environment	Obtain environmental permits	Provide	File copy	
Environment	Attend public meetings	Notify	Attend as determined by FHWA	
Environment	FHWA NEPA decision	Comply	Provide	FHWA approval needed
Design	Complete 30% PS&E	Provide	Concur	Completed
Design	Complete 95% PS&E	Provide	Approve	Must have written approval by FHWA
Design	Review or approve design exceptions	Provide	Approve	Follow ODOT's process
Acquisitions	Approval of proprietary products	Provide	Approve	
Acquisitions	Contract package for required clauses (Civil Rights, Davis Bacon, Buy America/American, etc.)	Provide	Approve	
Acquisitions	Receive copy of award package	Provide	File copy	
Acquisitions	Review and approve contract modifications	Provide	Approve	
Construction	Attend Pre-Construction Meeting	Attend	Attend as determined by FHWA	

Construction	Final Project Inspections	Attend	Attend as determined by FHWA	
Construction	Construction photographs of project, before, during (quarterly) and post construction	Provide	File	
Construction	Copy of As-Builts	Provide	File	
Construction	Contract disputes (Claims)	Provide	Review and Provide assistance as warranted	
Construction	Copy of Final Construction Acceptance Letter and report	Provide	Review	



Oregon

Kate Brown, Governor

Department of Transportation

Financial Services Branch

355 Capital Street NE MS #21

Salem OR 97301

Phone: (503) 986-3900

Fax: (503) 986-3907

CENTRAL SERVICE ALLOCATION PLAN

July 1, 2019 – June 30, 2020

May 14, 2019

Clackamas County
Attn: Jian Zhang
2051 Kaen Road
Oregon City, OR 97045

As outlined by the Office of Management and Budget (OMB) in 2 CFR Part 200 (formerly OMB Circular A-87 and 2 CFR 225), the Oregon Department of Transportation (ODOT) recommends the Clackamas County Central Service Cost Allocation Rates cited in this agreement for fiscal year ending June 30, 2020.

Since ODOT is not an authorized federal cognizant audit agency, the cost rates below are for use on federal grants and contracts administered by ODOT with the federal government grants and contracts to which 2 CFR Part 200 applies. The rate was negotiated by Clackamas County and ODOT according to the authority contained in Appendix VII, Section D.1b of 2 CFR Part 200. Other entities may use this rate as the costs presented are in accordance with OMB 2 CFR Part 200.

The rate delineated in this section is effective for the period of July 1, 2019 through June 30, 2020. The rate is applicable to all programs exclusive of "pass-through" programs or those exempt by law.

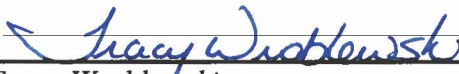

Indirect Costs, Direct Costs and Central Service Allocations were based on actual expenditures for the 2017-2018 fiscal year.

ODOT accepts the submitted indirect cost rates from the county, no adjustments are proposed. Indirect rates shall be applied to direct salary & wages.

Below is list of Clackamas County Division's approved indirect cost rates for ODOT purposes.

Transportation Construction	35.35%
Transportation Maintenance	38.93%
Transportation Safety	40.93%
Long Range Planning	40.67%
Development Agency	43.63%
Land Use, Dev & Permitting, Road Fund	26.70%

The rates in this agreement should be allocated to all Federal grant programs and contracts for the effective period. Costs allocable to programs which restrict reimbursement of indirect costs may not be allocated to other participating programs.

<i>For the Oregon Department of Transportation</i>	<i>For Clackamas County</i>
	
Tracy Wroblewski Chief Financial Officer	Christa Bosserman Wolfe Finance Director
5-17-19	5/17/19
Date	Date



DAN JOHNSON
DIRECTOR

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

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Contract with Kerr Contractors Oregon, Inc. for
Realignment of Victory Road at Forsythe Road**

Purpose/Outcomes	This Contract will relocate the Victory Road at Forsythe Road intersection, which will correct a severe skew that currently has limited site distance.
Dollar Amount and Fiscal Impact	Contract value is \$451,122.00
Funding Source	215-7432-02101-481200-22240 County funds: \$409,122.00 Developer conditions of approval funds: \$42,000.00
Duration	Contract execution through June 30, 2019
Previous Board Action	N/A
Strategic Plan Alignment	This project will provide strong infrastructure and ensure safe communities by maintaining the County's existing road infrastructure.
Counsel Approval	This Contract was reviewed and approved by Count Counsel on August 19, 2019
Contact Person	Bob Knorr, Project Manager 503-742-4680

Background:

The County worked with the adjacent property owner/developer to dedicate property for the relocation of Victory Road at Forsythe Road intersection approximately 700 feet to the west of the existing intersection. The existing intersection has a severe skew with limited site distance and experiences periodic crashes. Construction of the project is funded by County Road Fund and \$42,000 in the adjacent developer's condition of approval for development.

This project includes constructing approximately 950 feet of a new section of Victory Road and overlaying approximately 250 feet on Forsythe Road to provide adequate site distance at the intersection. The project includes 550 tons of asphalt concrete pavement, 1,459 tons of aggregate base, 53 tons of aggregate shoulders, 144 feet of 31 inch high guardrail, 1,169 cubic yards of general excavation, a water quality facility, and 186 linear feet of various sizes and types of storm pipe.

The project work is anticipated to begin immediately following contract signing. Substantial completion will be not later than October 31, 2019 with final completion not later than June 30, 2020 to allow for seed establishment.

Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on June 13, 2019. Bids were opened on July 10, 2019. The County received three (3) bids: Banzer Construction, \$497,673.50; Braun Construction, \$462,380.00; and Kerr Contractors Oregon, Inc., \$451,122.00. Kerr Contractors

Oregon, Inc. was determined to be the lowest responsive bidder and was below the engineer's estimate of \$455,414.00.

Recommendation:

Staff respectfully recommends that the Board approves and signs this public improvements contract with Kerr Contractors Oregon, Inc. for the Realignment of Victory Road at Forsythe Road.

Sincerely,

Mike Bezner,
Assistant Director,
Department of Transportation and Development

Placed on the BCC Agenda _____ by Procurement



CLACKAMAS COUNTY
PUBLIC IMPROVEMENT CONTRACT
Contract #1787

This Public Improvement Contract (the "Contract"), is made by and between the Clackamas County, a political subdivision of the State of Oregon, hereinafter called "Owner," and **Kerr Contractors Oregon, LLC**, hereinafter called the "Contractor" (collectively the "Parties"), shall become effective on the date this Contract has been signed by all the Parties and all County approvals have been obtained, whichever is later.

Project Name: #2019-46 Realignment of Victory Road at Forsythe Road

1. Contract Price, Contract Documents and Work.

The Contractor, in consideration of the sum of **four hundred fifty-one thousand one hundred twenty-two dollars (\$451,122.00)** (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the project specifications) referenced within the Instructions to Bidders), all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents. The Contract Price is the amount contemplated by the Base Bid, as indicated in the accepted Bid.

Also, the following documents are incorporated by reference in this Contract and made a part hereof:

- Notice of Contract Opportunity
- Supplemental Instructions to Bidders
- Bid Form
- Performance Bond and Payment Bond
- Payroll and Certified Statement Form
- Addendum #1
- Instructions to Bidders
- Bid Bond
- Public Improvement Contract Form
- Prevailing Wage Rates
- Plans, Specifications and Drawings

The Plans, Specifications and Drawings expressly incorporated by reference into this Contract includes, but is not limited to, the Special Provisions for Highway Construction (the "Specifications"), together with the provisions of the Oregon Standard Specifications for Construction (2018) referenced therein.

The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default

2. Representatives.

Contractor has named Alan W. Aplin as its Authorized Representative to act on its behalf. Owner designates, or shall designate, its Authorized Representative as indicted below (check one):

Unless otherwise specified in the Contract Documents, the Owner designates Bob Knorr as its Authorized Representative in the administration of this Contract. The above-named individual shall be the initial point of contact for matters related to Contract performance, payment, authorization, and to carry out the responsibilities of the Owner.

Name of Owner's Authorized Representative shall be submitted by Owner in a separate writing.

3. Key Persons.

The Contractor's personnel identified below shall be considered Key Persons and shall not be replaced during the project without the written permission of Owner, which shall not be unreasonably withheld. If the

Contractor intends to substitute personnel, a request must be given to Owner at least 30 days prior to the intended time of substitution. When replacements have been approved by Owner, the Contractor shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be working on the project concurrently. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the written permission of Owner. The Contractor's project staff shall consist of the following personnel:

Project Executive: Carl Nelson shall be the Contractor's project executive, and will provide oversight and guidance throughout the project term.

Project Manager: David Finnigan shall be the Contractor's project manager and will participate in all meetings throughout the project term.

Job Superintendent: Chris Martinez shall be the Contractor's on-site job superintendent throughout the project term.

Project Engineer: Steve Cespedes shall be the Contractor's project engineer, providing assistance to the project manager, and subcontractor and supplier coordination throughout the project term.

4. Contract Dates.

COMMENCEMENT DATE: Upon Issuance of Notice to Proceed ("NTP")

SUBSTANTIAL COMPLETION DATE: October 31, 2019

FINAL COMPLETION DATE: June 30, 2020

Time is of the essence for this Contract. It is imperative that the Work in this Contract reach Substantial Completion and Final Completion by the above specified dates.

5. Insurance Certificates and Required Performance and Payment Bonds.

5.1 In accordance with Section 00170.70 of the Specifications, Contractor shall furnish proof of the required insurance naming Clackamas County as an additional insured. Insurance certificates may be returned with the signed Contract or may be emailed to Procurement@clackamas.us.

5.2 Primary Coverage: Insurance carried by Contractor under the Contract shall be the primary coverage. The coverages indicated are minimums unless otherwise specified in the Contract Documents.

5.2.1 Workers' Compensation: All employers, including Contractor, that employ subject workers who work under the Contract 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. This shall include Employer's Liability Insurance with coverage limits of not less than the minimum amount required by statute for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation coverage by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.

5.3 Builder's Risk Insurance: During the term of the Contract, for new construction the Contractor shall obtain and keep in effect Builder's Risk insurance on an all risk forms, including earthquake and flood, for an amount equal to the full amount of the Contract, plus any changes in values due to

modifications, Change Orders and loss of materials added. Such Builder's Risk shall include, in addition to earthquake and flood, theft, vandalism, mischief, collapse, transit, debris removal, and architect's fees "soft costs" associated with delay of Project due to insured peril. Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood deductible which shall not exceed 2 percent of each loss or \$50,000, whichever is greater. The deductible shall be paid by Contractor. The policy will include as loss payees Owner, the Contractor and its Subcontractors as their interests may appear.

5.4 Builder's Risk Installation Floater: For Work other than new construction, Contractor shall obtain and keep in effect during the term of the Contract, a Builder's Risk Installation Floater for coverage of the Contractor's labor, materials and equipment to be used for completion of the Work performed under the Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Contract. The policy will include as loss payees Owner, the Contractor and its Subcontractors as their interests may appear. Owner may waive this requirement at its sole and absolute discretion.

5.4.1 Such insurance shall be maintained until Owner has occupied the facility.

5.4.2 A loss insured under the Builder's Risk insurance shall be adjusted by the Owner and made payable to the Owner as loss payee. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Owner shall have power to adjust and settle a loss with insurers.

5.5 "Tail" Coverage: If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Contract for a duration of 36 months or the maximum time period available in the marketplace if less than 36 months. Contractor shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for 36 months following Final Completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of the Contract. Owner's receipt of the policy endorsement evidencing such coverage shall be a condition precedent to Owner's obligation to make final payment and to Owner's final acceptance of Work or services and related warranty (if any).

5.6 Notice of Cancellation or Change: If the Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify Owner by fax within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. When notified by Owner, the Contractor agrees to stop Work pursuant to the Contract at Contractor's expense, unless all required insurance remain in effect. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverages provided to the Owner and its institutions, divisions, officers, and employees.

Owner shall have the right, but not the obligation, of prohibiting Contractor from entering the Project Site until a new certificate(s) of insurance is provided to Owner evidencing the replacement coverage. The Contractor agrees that Owner reserves the right to withhold payment to Contractor until evidence of reinstated or replacement coverage is provided to Owner.

5.7 Before execution of the Contract, the Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Revised Statutes, Chapter 279C.830 and 279C.836, unless otherwise exempt under those provisions.

The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting any Subcontractor to start Work.

5.8 When the Contract Price is \$50,000 or more, the Contractor shall furnish and maintain in effect at all times during the Contract Period a performance bond in a sum equal to the Contract Price and a separate payment bond also in a sum equal to the Contract Price. Contractor shall furnish such bonds even if the Contract Price is less than the above thresholds if otherwise required by the Contract Documents.

5.9 Bond forms furnished by the Owner and notarized by Contractor's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Contract Documents.

6. Responsibility for Damages/Indemnity.

6.1 Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under the Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, employees, guests, visitors, invitees and agents.

6.2 To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by Owner) and hold harmless the Owner and its elected officials, officers, directors, agents, and employees (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses, demands and actions of any nature whatsoever which arise out of, result from or are related to: (a) any damage, injury, loss, expense, inconvenience or delay described in this Section 6.1; (b) any accident or occurrence which happens or is alleged to have happened in or about the Project Site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects; (c) any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract; (d) the negligent acts or omissions of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140); and (e) any lien filed upon the Project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 6.2.

6.3 In claims against any person or entity indemnified under Section 6.2 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 6.2 shall not be limited on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

7. Tax Compliance.

Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the

termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

8. Confidential Information.

Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to Owner. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed confidential information of Owner ("Confidential Information"). Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Contract.

9. Counterparts.

This Contract may be executed in several counterparts, all of which when taken together shall constitute an agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

10. Integration.

All provisions of state law required to be part of this Contract, whether listed in the General or Special Conditions or otherwise, are hereby integrated and adopted herein. Contractor acknowledges the obligations thereunder and that failure to comply with such terms is a material breach of this Contract.

The Contract Documents constitute the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

11. Liquidated Damages

The Contractor acknowledges that the Owner will sustain damages as a result of the Contractor's failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to delays in completion, use of the Project, and costs associated with Contract administration and use of temporary facilities.

- 11.1 Liquidated Damages shall be as follows if the actual Substantial Completion exceeds the required date of Substantial Completion:
 - 11.1.1. \$ 600.00 per Calendar day past the Substantial Completion date as identified in section 00180.85 (b) and 00180.85 (c).

12. Compliance with Applicable Law. Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract including, but not limited to, compliance with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default.

In witness whereof, Clackamas County executes this Contract and the Contractor does execute the same as of the day and year first above written.

Contractor DATA:
Kerr Contractors Oregon, LLC
P.O. Box 1060
Woodburn, Oregon 97071

Contractor CCB # 227664 Expiration Date: 8/27/21
 Oregon Business Registry # 687808-90 Entity Type: DLLC State of Formation: Oregon

Payment information will be reported to the IRS under the name and taxpayer ID# provided by the Contractor. Information must be provided prior to contract approval. Information not matching IRS records could subject Contractor to 28 percent backup withholding.

Kerr Contractors Oregon, LLC

Clackamas County Board of County Commissioners

 Authorized Signature Date

 Chair Date

 Name / Title Printed

 Recording Secretary

APPROVED AS TO FORM

 County Counsel Date