



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

September 29, 2022

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of an Intergovernmental Agreement with the City of Portland for the culvert replacement on 162nd Avenue conveying Mitchell Creek. Funding through City of Portland and County Road Funds. Total Value: \$10,000.00
County General Funds are not involved.**

Purpose/Outcome	Execution of the Intergovernmental Agreement will allow the City of Portland to replace a culvert on 162 nd Avenue at Mitchell Creek. This culvert is within County jurisdiction and this improvement will provide for passage of the ESA-listed salmonids within the Creek. This IGA will also establish City and County financial, permitting and maintenance obligations related to the construction and operation of the culvert and impacted street area.
Dollar Amount and Fiscal Impact	City of Portland will pay the costs to construct the Project and will secure additional permanent and temporary property interests from property owners on parcels adjacent to the work area. City will apply for all necessary permits for the Culvert work except for those that require application by County. County costs are expected to be less than \$10,000 of County staff time for inspection services.
Funding Source	City of Portland and County Road Funds
Duration	Agreement Execution through completion of the project plus two years of warranty
Previous Board Action/Review	9/27/22: Discussion item at issues.
Strategic Plan Alignment	-This item supports the DTD Strategic Focus on Safe Roads and Strategic Result of "Travelers on Clackamas County roads will experience roads in good condition." -This item aligns with "Build a Strong Infrastructure" by replacing a County culvert to better accommodate the passage and habitat of endangered fish.
Counsel Review	Date of Counsel Review: 09/13/22 Counsel Initials: NB
Procurement Review	Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> This in an IGA.
Contact Person	Joel Howie, Civil Engineering Supervisor 503-742-4658
Contract No.	Not applicable.

BACKGROUND: The City of Portland, Bureau of Environmental Services (“City”) desires to replace the culvert conveying Mitchell Creek on 162nd Avenue to improve fish habitat and fish passage. As the City was initiating the design of the project, the City discovered that the culvert is actually within Clackamas County’s jurisdiction. Having already committed funding to the project and notifying the public about the project, the City would like to proceed with the work at their expense and transfer the finished product and any acquired right of way to the County. The County will be involved with review and inspection as required to ensure the project meets County standards. The project also will include a two-year warranty period after completion of construction of the project.

RECOMMENDATION: Staff respectfully recommends that the Board of County Commissioners approve and sign the attached Intergovernmental Agreement with the City of Portland for the culvert replacement on 162nd Avenue conveying Mitchell Creek.

Respectfully Submitted,

Joel Howie

Joel Howie,
Civil Engineering Supervisor
Department of Transportation and Development

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (this “**IGA**”) is made and entered into on the last date of mutual execution, said date being _____, 2022 (“**Effective Date**”), by and between the **CITY OF PORTLAND**, a municipal corporation of the State of Oregon, through its **Bureau of Environmental Services** (“**City**”), and **CLACKAMAS COUNTY**, an Oregon political subdivision (“**County**”) (jointly referred to herein as the “**Parties**”).

This IGA is authorized pursuant to ORS 190.110 and becomes effective upon full execution of this document.

RECITALS:

- A. County owns and controls certain property interests known as SE 162nd Ave. (the “**Street Area**”) within the County’s jurisdiction. SE 162nd Ave is designated as a Collector Roadway.
- B. County owns an existing culvert (the “**Culvert**”), which runs under the Street Area that serves to facilitate water and fish passage of Mitchell Creek (the “**Creek**”).
- C. City desires to construct a replacement Culvert within the Street Area to provide for passage of the Endangered Species Act (“**ESA**”)-listed salmonids within the Creek, hereinafter referred to as (the “**Project**”).
- D. The purpose of this IGA is to establish City and County financial, permitting and maintenance obligations related to the construction and operation of the Culvert within the Street Area, which is described and depicted on the attached **Exhibit “A,”** which is made a part hereof.

NOW, THEREFORE, the Parties hereby incorporate the above Recitals and agree as follows:

TERMS:

- 1. Execution of this IGA.** City shall execute and deliver to County a counterpart original of this IGA. Upon receipt of a counterpart original of this IGA executed by City, County shall execute and deliver to City a fully executed counterpart original of this IGA.
- 2. Project Construction.** City shall pay for the costs to design and construct the Project in accordance with County Roadway Design Standards. City shall secure additional permanent and temporary property interests from property owners on parcels adjacent to the Street Area in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act and utilizing County right-of-way documents provided by the County for permanent property interests. City shall acquire such property interests in consultation with, and subject to prior written agreement of, County’s Sr. Right of Way Agent. City shall provide signed right-of-way documents to County’s Sr. Right of Way Agent for recording, and County shall accept, such property interests and any improvements associated therewith. County shall provide recorded right-of-way documents within five business days. City shall also apply for all necessary permits for the Culvert work within the Street Area except for permits that require application by County.
- 3. Consideration.** City’s Project will create a benefit to the County with the installation of a new replacement Culvert to provide for passage of ESA-listed salmonids. In consideration for the replacement Culvert, The City shall include the County Capital Projects Civil Engineering

Supervisor throughout the design and construction Phases and solicit review comments from the County at each milestone. The County shall provide final approval of the final plans and technical special provisions and reserves the right to approve or deny deviations from County Road Standards. The County shall be responsible for the costs of County Development and Right of Way permitting and inspection fees. The City shall pay for and acquire all necessary property rights outside of the Street Area.

4. **Maintenance.** Upon City's completion of the Project, County shall own and maintain the Culvert within the Street Area. However, City shall warrant and pay for any maintenance costs of the Culvert for two (2) years (the "**Warranty Period**") upon completion of the Project.
5. **Duration.** This IGA is effective upon execution by both Parties. Unless earlier terminated by written agreement from both Parties, this IGA shall expire upon the end of the Warranty Period, or regulatory requirements, whichever is outstanding.
6. **Amendments.** The terms of this IGA shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties.
7. **Termination.** Either party may terminate this IGA in the event of a breach by the other party. Prior to such termination, however, the party seeking termination shall give the other party written notice of the party's intent to terminate. If the party has not cured the breach within ten (10) days or a longer period as granted in the cure notice, the party seeking compliance may terminate this IGA.
8. **Ownership of Work Product.** All work products, including reports, research data in hard copy or electronic form that result from this IGA, are the joint property of City and County and shall be considered a public record.
9. **Access to Records.** Both Parties and their duly authorized representatives shall have access to the other party's books, documents, papers, and records which are directly pertinent to this IGA, for the purpose of making audits, examinations, excerpts, and transcripts.
10. **Compliance with Applicable Law.** Both Parties shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to this IGA.
11. **Indemnification.** To the extent allowed under the Oregon Constitution and within the limits of the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each Party agrees to indemnify, defend, and hold the other Party and its officers, employees, agents, and representatives harmless from and against all claims, suits, and actions of whatsoever nature, damages and losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorney's fees resulting from this IGA or arising out of or resulting from the acts or omissions of the indemnitor or its employees, agents, subcontractors, or representatives. The Parties' reciprocal indemnification obligations under this Section shall survive the termination of this IGA.
12. **Successors; No Assignment.** The benefits conferred by this IGA, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties. The rights and obligations of each Party under this IGA may not be assigned in whole or in part without the prior written consent of the other Party.
13. **Choice of Law and Venue for Enforcement.** Oregon law shall govern this IGA and all rights, obligations and disputes arising out of this IGA, without regard to conflicts of law provisions. Venue for all disputes and litigation shall be in Clackamas County, Oregon.

- 14. Waivers.** No waiver by either Party of any provision of this IGA shall be of any force or effect unless in writing. Except as otherwise provided herein, no waiver made by a Party with respect to the performance, or manner or time thereof, or obligation of the other Party or any condition inuring to its benefit under this IGA shall be considered a waiver of any other rights of the Party making the waiver or a waiver by the other Party not joining in such waiver, and no such waiver shall be construed to be a continuing waiver.
- 15. No Third-Party Beneficiaries.** City and County are the only Parties to this IGA and, as such, are the only Parties entitled to enforce its terms. Nothing contained in this IGA gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended beneficiaries of its terms.
- 16. Severability/Survival.** If any of the provisions contained in this IGA are held unconstitutional or unenforceable, the enforceability of the remaining provisions shall not be impaired. All provisions concerning the limitation of liability, indemnity and conflicts of interest shall survive the termination of this IGA for any cause.
- 17. Merger, Modification, and Administrative Changes.** This IGA constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings, representations, or communications of every kind. No waiver, consent, modification or change of terms of this IGA shall bind either party unless in writing and signed by both Parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The Parties shall not make changes to this IGA through the issuance of permits, approvals, or other administrative requirements or processes.
- 18. Captions.** The captions or headings in this IGA are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this IGA.
- 19. Counterparts.** This IGA may be signed in two (2) or more counterparts, each of which shall be deemed an original and which, when taken together, shall constitute one and the same agreement. The Parties agree that City and County may conduct this transaction, including any contract amendments, by electronic means, including the use of electronic signatures.

CITY OF PORTLAND

CLACKAMAS COUNTY

By: _____
Director of Bureau of
Environmental Services

By: _____
Tootie Smith, Chair

Date: _____

Date: _____

Approved as to form:

Reviewed & Approved:

By: _____
City Attorney


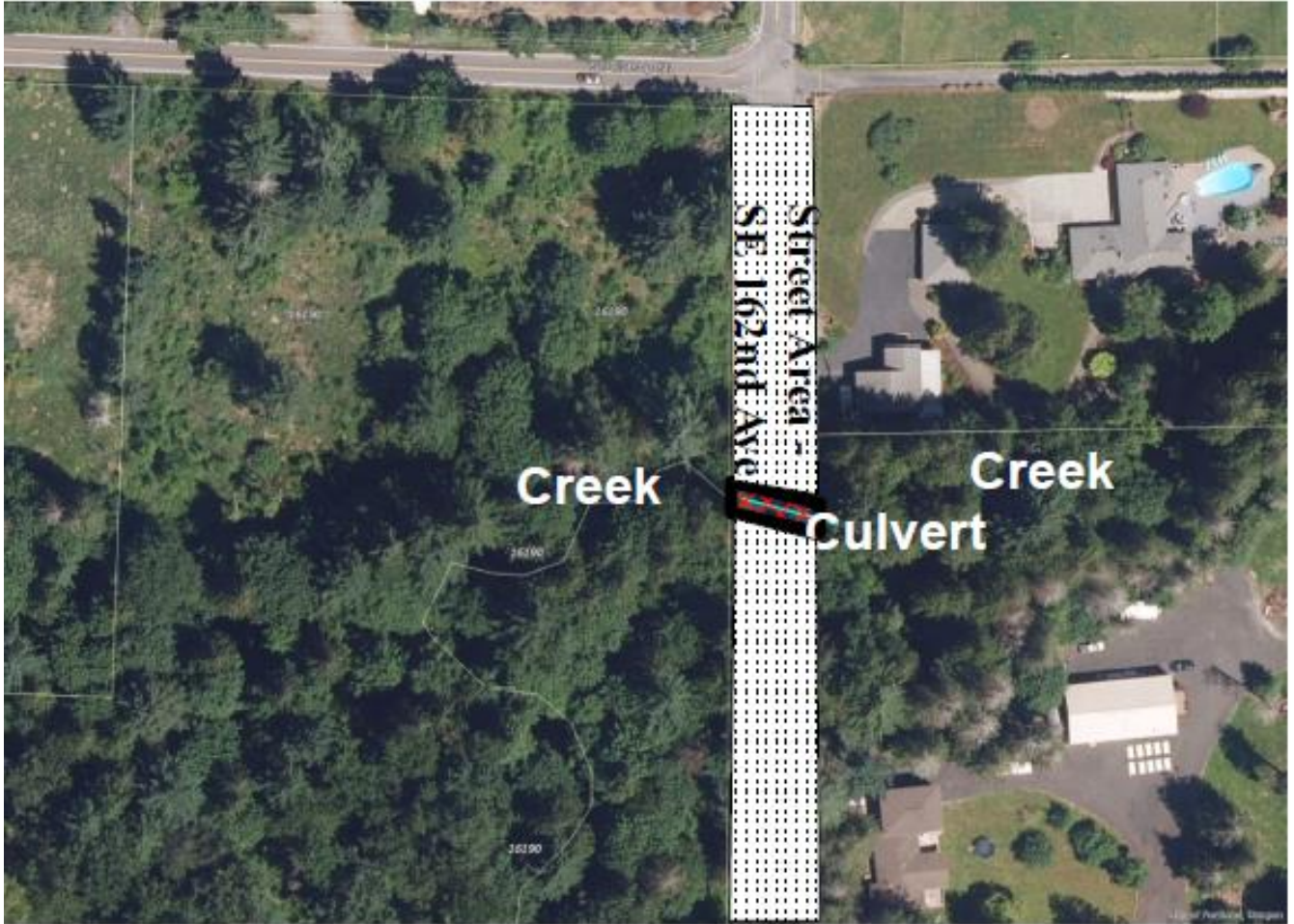
By:  _____
County Attorney

Exhibit A



COVER SHEET

- New Agreement/Contract
- Amendment/Change/Extension to _____
- Other _____

Originating County Department: _____

Other party to contract/agreement: _____

Document Title:

After filing please return to: _____

County Admin

Procurement

If applicable, complete the following:

Board Agenda Date/Item Number: _____