



DAN JOHNSON  
DIRECTOR

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

January 25, 2024

BCC Agenda Date/Item: \_\_\_\_\_

Board of County Commissioners  
Clackamas County

**Approval of an Intergovernmental Agreement with Marion County for the Scotts Mills Road: Butte Creek Bridge Replacement Project. Total agreement value is \$4,300,000. Funding is through Marion County and a grant from the Federal Highway Bridge Program. No County General Funds are involved.**

<b>Previous Board Action/Review</b>	1/23/24: Request for consent		
<b>Performance Clackamas</b>	The project will build a strong infrastructure.		
<b>Counsel Review</b>	Yes-Hong Huynh	<b>Procurement Review</b>	No
<b>Contact Person</b>	Carol Hager	<b>Contact Phone</b>	503-742-4674

**EXECUTIVE SUMMARY:** This is an agreement between Clackamas County and Marion County for right-of-way services related to the Scotts Mills Road: Butte Creek Bridge Replacement Project. The Scotts Mills Bridge crosses Butte Creek between Marion and Clackamas counties in the City of Scotts Mills. The current bridge was built in 1947 and is at the end of its useful life. The project will replace the current bridge with a new structure meeting current standards along with 6-foot-wide sidewalks and 6-foot-wide shoulders/bike lanes on both sides.

Per the agreement, Clackamas County will be providing an in-kind DTD staff time contribution towards the acquisition of real properties within the jurisdiction of Clackamas County. These contributions include passing a resolution of necessity, providing document templates, and assisting with the acceptance and recording of documents.

Marion County, as a recipient of federal funding to pay for the Project, is solely responsible for all costs and expenses of the Project, including the costs to acquire easements and rights of way on properties located in both county jurisdictions. If condemnation is necessary, litigation

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and court filings for properties in the jurisdiction of Clackamas County will be handled by Clackamas County counsel and costs will be reimbursed by Marion County.

**RECOMMENDATION:** Staff respectfully recommends that the Board of County Commissioners sign the attached Intergovernmental Agreement with Marion County for the Scotts Mills Road: Butte Creek Bridge Replacement Project.

Respectfully submitted,

*Dan Johnson*

Dan Johnson  
Director of Transportation & Development

**INTERGOVERNMENTAL AGREEMENT**  
**Between**  
**MARION COUNTY and CLACKAMAS COUNTY**  
**PW-5625-23**

**1. PARTIES TO AGREEMENT**

This Agreement between Clackamas County, hereafter called Clackamas, and Marion County, a political subdivision of the state of Oregon, hereafter called Marion, is made pursuant to ORS 190.010 (Cooperative Agreements); Clackamas and Marion are each herein referred to individually as a "Party" and collectively as the "Parties."

**2. RECITALS**

- A. The Butte Creek Bridge #06207A, which crosses Butte Creek, is a Rural Major Collector that is half in Scotts Mills' Urban Growth Boundary of Marion County, and half in rural Clackamas County.
- B. The Scotts Mills Road: Butte Creek Bridge Replacement Project ("Project"), as is more particularly described in Attachment 1, which is attached hereto and incorporated by reference herein, is a project to replace the existing Butte Creek Bridge with a new bridge that affects real properties within the jurisdictions of both Marion and Clackamas.
- C. Marion is an applicant and a recipient of federal funding, through the Oregon Department of Transportation (ODOT), to pay for the Project; and pursuant to the federal requirement of 2 C.F.R 200.311, Marion is the non-Federal entity in whom title must be vested for any real property acquired for the Project with the awarded federal funds.
- D. The Parties agree that it is a matter of county concern to have the Project completed with federal funds and to take actions to ensure compliance with federal requirements for real property acquisitions that are necessary to the Project.

**3. PURPOSE/STATEMENT OF WORK**

The purpose of this Agreement is to establish the terms and conditions for a cooperative working relationship for the Project, including the acquisition of rights of way, easements, and Project delivery.

**4. TERM AND TERMINATION**

- 4.1 This Agreement shall be effective as of the last date of execution by both Parties. Unless extended or terminated pursuant to this section, this Agreement shall terminate upon completion of the Project and final payment, or by December 31, 2028, whichever is sooner.

4.2 This Agreement may be extended for an additional period of one year by mutual agreement of the Parties. Any modifications in the terms of such amendment shall be in writing.

4.3 This Agreement may be terminated by mutual agreement of both Parties at any time or by either Party upon 30 days' written notice. Any such termination of this Agreement shall be without prejudice to any obligations or liabilities of either Party already accrued prior to such termination.

4.4 Marion may terminate this Agreement effective upon delivery of written notice to Clackamas or at such later date as may be established under any of the following conditions:

- a. If funding from federal, state, or other sources is not obtained or continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds.
- b. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
- c. If any license, certificate, or insurance required by law or regulation to be held by Clackamas to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- d. If Clackamas fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
- e. If Clackamas fails to perform any of the provisions of this Agreement or so fails to pursue the work as to endanger the performance of this Agreement in accordance with its terms and after written notice from Marion, fails to correct such failure(s) within ten (10) days or such longer period as the Marion may authorize.

4.5 Any such termination of this Agreement shall be without prejudice to any obligations or liabilities of either Party already accrued prior to such termination.

## **5. FUNDING AND BILLING**

5.1 Marion and Clackamas agree that no money or funds will be exchanged directly between the Parties as a result of this Agreement, except as otherwise set forth in this Agreement.

5.2 Except as provided otherwise as in-kind contribution by Clackamas under Section 6.1 of this Agreement, Marion, as a recipient of federal funding to pay for the Project, is solely responsible for all costs and expenses of the Project, including the costs to acquire easements and rights of way on properties locating in both county jurisdictions.

## 6. OBLIGATIONS UNDER THE TERMS OF THIS AGREEMENT

### 6.1 UNDER THE TERMS OF THIS AGREEMENT, CLACKAMAS AGREES TO THE FOLLOWING:

- a. Clackamas agrees to do the following in-kind contribution with respect to the acquisition of any real properties in its jurisdiction that are necessary to the Project:
  - i. Within eight weeks of the date of this Agreement, develop and process a resolution authorizing the exercise of the eminent domain in a form approved by both Parties. The resolution will address properties delineated on a map shown on Attachment 2, which is attached hereto and incorporated by reference herein.
  - ii. Provide Marion with a copy of the executed resolution authorizing the exercise of the eminent domain.
  - iii. Provide Marion with Clackamas's permanent easement for right of way and temporary construction easement templates.
  - iv. Process and record the applicable signed easement forms (3) through the Clackamas County Recorder's Office and return the original recorded copies to Clackamas within a reasonable period thereafter so that Marion may order payment for acquisitions in time to meet the Project schedule. At the conclusion of the Project, Marion will return Clackamas's recorded easements, along with copies of other acquisition support documents for the files negotiated in Clackamas County.
  - v. Participate in any lawsuit related to the Project that affects property in Clackamas County, including but not limited to an action to acquire right of way or easements through eminent domain. It is understood that in such a lawsuit the lawsuit shall be brought in the name of Clackamas County. Legal counsel for Marion and Clackamas shall work jointly to manage the case and perform necessary work with the understanding that Clackamas will be primarily responsible for prosecuting said suit in Clackamas County. Marion will reimburse Clackamas at Clackamas's hourly rate for outside agencies for the labor and overhead costs of its employees related to these proceedings.
- b. In the event that Marion encounters conflicts or complications during right of way negotiations, Clackamas agrees to coordinate with Marion.
- c. Labor and overhead costs of Clackamas' employees, including legal counsel's costs and fees, performing eminent domain work will be reimbursed by Marion, provided that those costs are estimated in advance by Clackamas and approved in advance by Marion. Invoices and any settlement cost submitted to Marion will be due and payable within sixty (60) days of receipt. All charges will be billed monthly to Marion.
- d. Clackamas agrees not to act in a manner that in any way prejudices Marion's ability to secure the necessary rights of way or easements for the Project, and generally agrees to work with Marion as reasonably needed in order to ensure all such real property rights are timely obtained.

**6.2 UNDER THE TERMS OF THIS AGREEMENT, MARION AGREES TO THE FOLLOWING:**

- a. Perform right of way work in accordance with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, including develop and deliver general information notices, perform appraisals and appraisal reviews, negotiate agreements and obtain all necessary permanent and temporary easements and rights of way for the Project in both counties, or contract with a competent consultant to do so.
- b. Contract with a competent consultant to perform appraisals and appraisal reviews, negotiations and obtain all necessary permanent and temporary easements and rights of way for the Project in both counties.
- c. Provide payments for just compensation and pay for consultant services related to property acquisition in both counties that are necessary for the Project and seek reimbursement from ODOT in accordance with the federal grant requirements.
- d. Record permanent easements for road and right of way purposes that Marion approves and accepts Marion.
- e. Participate in any suit related to the Project which affects property in Clackamas County with the understanding that Clackamas will be primarily responsible for prosecuting the suit and that Marion will reimburse Clackamas at Clackamas's hourly rate for outside agencies for the labor and overhead costs of its employees related to these proceedings.
- f. Design and construct the Project, pay for the Project, and seek reimbursement from ODOT in accordance with the federal grant requirements.
- g. Reimburse Clackamas for costs it incurs for eminent domain work related to the Project, including legal counsel's costs and fees.
- h. Provide updates to Clackamas's liaison on the status of the right of way negotiations on a monthly basis.
- i. Will promptly notify Clackamas of any conflicts or complications which arise in right of way negotiations.

**7. COMPLIANCE WITH APPLICABLE LAWS**

The Parties agree that both shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement. The Parties agree that this Agreement shall be administered and construed under the laws of the state of Oregon.

**8. NONDISCRIMINATION**

The Parties agree to comply with all applicable requirements of Federal and State civil rights and rehabilitation statutes, rules and regulations in the performance of this Agreement.

**9. HOLD HARMLESS**

To the extent permitted by Article XI, Section 7 of the Oregon Constitution and by the Oregon Tort Claims Act, each Party agrees to waive, forgive, and acquit any and all claims it may otherwise have against the other and the officers, employees, and agents of the other, for or resulting from damage or loss, provided that this discharge and waiver shall not apply to claims by one Party against any officer, employee, or agent of the other arising from such person's malfeasance in office, willful or wanton neglect of duty, or actions outside the course and scope of his or her official duties.

**10. INSURANCE**

Each Party shall insure or self-insure and be independently responsible for the risk of its own liability for claims within the scope of the Oregon Tort Claims Act (ORS 30.260 TO 30.300).

**11. MERGER CLAUSE**

Parties concur and agree that this Agreement constitutes the entire agreement between the Parties. No waiver, consent, modification or change to the terms of this Agreement shall bind either Party unless in writing and signed by both Parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Parties, by the signatures below of their authorized representatives, hereby agree to be bound by this Agreement's term and conditions.

**12. NOTICES**

Any notice required to be given Clackamas or Marion under this Agreement shall be sufficient if given, in writing, by first class mail or in person as follows:

For Clackamas:  
Joel Howie, PE  
150 Beaver creek Rd  
Oregon City, OR 97045  
JHowie@clackamas.us

For Marion:  
Steven Preszler, PE  
5155 Silverton Rd  
Salem, OR 97305  
spreszler@co.marion.or.us

**13. SEVERABILITY**

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the term or provision held to be invalid.

**14. SIGNATURES**

This Agreement and any changes, alterations, modifications, or amendments will be effective when approved in writing by the authorized representative of the Parties hereto as of the effective date set forth herein.

**15. COUNTERPARTS**

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

In witness whereof, the Parties hereto have caused this Agreement to be executed on the date set forth below.

**MARION COUNTY SIGNATURE**

Authorized Signature: DocuSigned by:  
Brian Melobas  
9793BA7ACD6D443... 10/9/2023

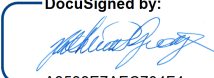
Department Director or designee Date

Authorized Signature: DocuSigned by:  
Jan Fritz  
DC16351248DE4EC... 10/9/2023

Chief Administrative Officer Date

Reviewed by Signature: DocuSigned by:  
Scott Norris  
60C98A6F708240B... 10/9/2023

Marion County Legal Counsel Date

Reviewed by Signature: DocuSigned by:  
  
A3538E7AEC704F4... 10/9/2023

Marion County Contracts & Procurement Date

**CLACKAMAS COUNTY SIGNATURE  
BOARD OF COMMISSIONERS:**

Authorized Signature: \_\_\_\_\_  
Chair Date

Reviewed by Signature: \_\_\_\_\_  
Clackamas County Legal Counsel Date



## **ATTACHMENT 1 – PW-5625-23**

### **SCOTTS MILLS ROAD: BUTTE CREEK BRIDGE REPLACEMENT**

#### **PROJECT DESCRIPTION**

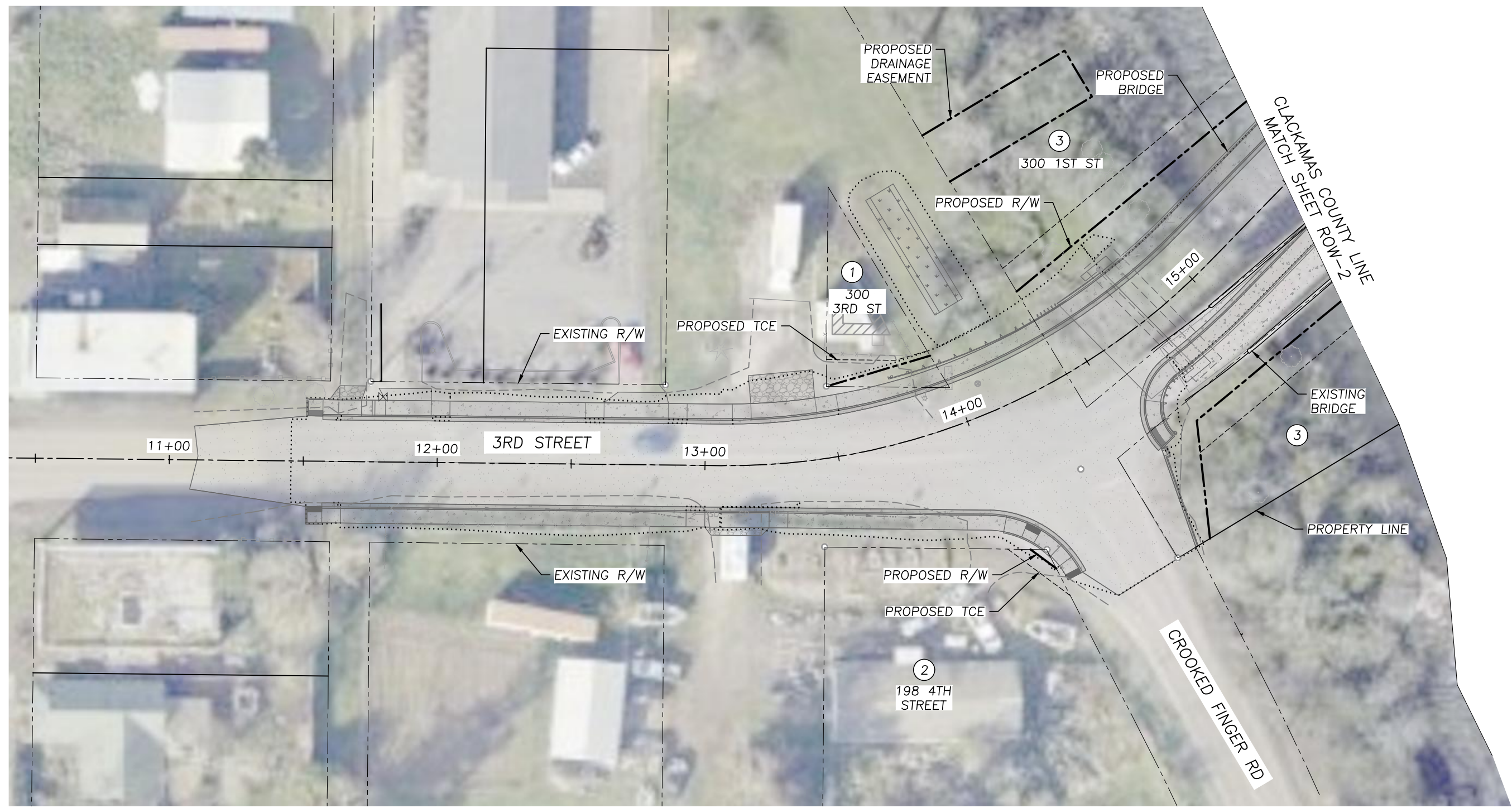
The Butte Creek Bridge #06207A is currently a fracture-critical steel pony truss constructed in 1947 with a sufficiency rating of 2. The deck has an NBI rating of 4 and is in need of replacement. The narrow bridge has been damaged numerous times by trucks, including log trucks. The bridge currently has a high volume of pedestrian, equestrian, and bike traffic. Butte Creek Bridge is on 3rd Street/S. Nowlens Br. Rd., and close to the intersection with Crooked Finger Rd. NE.

The project will replace the existing bridge with a single-span, concrete girder superstructure spanning the creek on the inside of the current curve, slightly north of the current location. The new bridge, approximately 142-feet in length and 48-feet wide, will meet current AASHTO and ODOT standards for load capacity and deck width. To meet a design speed of 35 mph, the project will realign the road at the bridge to reduce the curve. This new alignment will allow traffic to use the existing bridge during construction with a temporary signal system. Two construction seasons are anticipated with staged construction. Proposed phases are as follows:

- 1) Construct west half of new bridge;
- 2) Route traffic to new bridge with signalized, 1-way traffic control and remove existing bridge;
- 3) While signals are still in place, build the second half of the new bridge, remove temporary barrier and signals, and restore site. Adjacent roadways near the bridge will be restriped.

# ATTACHMENT 2

EXHIBIT ONLY



MARION COUNTY  
**SCOTTS MILLS RD: BUTTE CREEK  
BRIDGE REPLACEMENT**  
DEPARTMENT OF PUBLIC WORKS

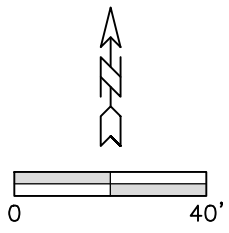
PROJECT NO.:	####
ECMS NO.:	####
FED. PROJ. NO.:	C047(101)
KEY NO.:	21988
SITE NO.:	17-050
HORIZ. DATUM:	OCRS SALEM
VERT. DATUM:	NAVD88
DESIGNED BY:	S. PREZSLER
DRAWN BY:	J. SNYDER

TITLE:  
**MARION COUNTY  
ROW FILES**  
SHEET:  
**ROW-1**

① **MARION COUNTY R/W FILES** 10+00 - 15+50  
SCALE: 1" = 40'

**RIGHT-OF-WAY FILES**

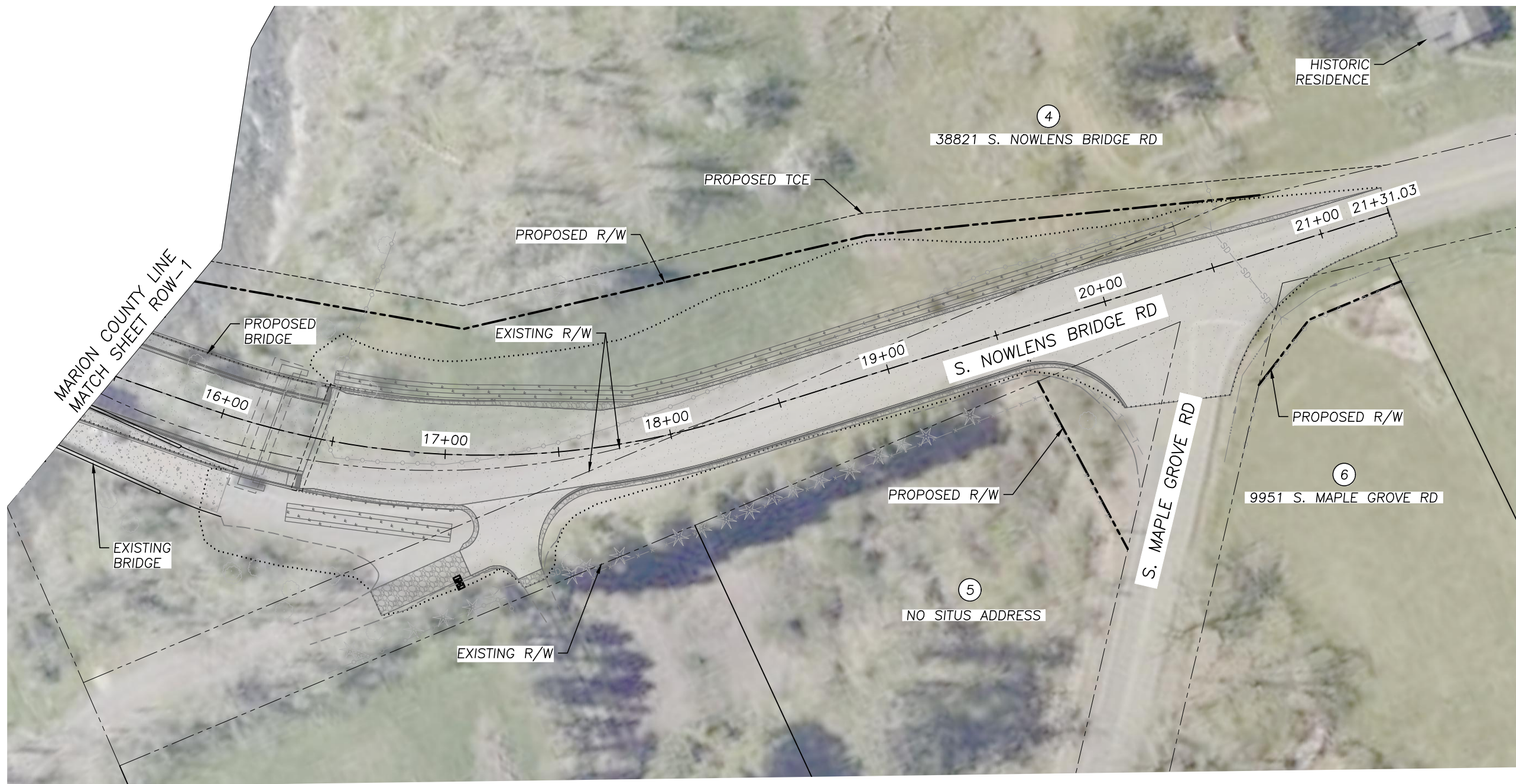
- ① TAX LOT: 061E15DC03800  
PERMANENT R/W: 273 SF  
TEMPORARY EASEMENT: 181 SF
- ② TAX LOT: 061E15DC04000  
PERMANENT R/W: 21 SF  
TEMPORARY EASEMENT: 103 SF
- ③ TAX LOT: 061E15DC00100  
PERMANENT R/W: 7,106 SF  
DRAINAGE EASEMENT: 1,248 SF  
TEMPORARY EASEMENT: 1,842 SF



FILE: G:\ENGINEERING\PROJECTCENTRAL\PROJECTS\BRIDGE06207A\SCOTTS MILLS\CAD\EXHIBITS\SCOTSMILLS ROW EXHIBIT.DWG PLOTTED: 2023/10/09 1:57 PM

# ATTACHMENT 2

EXHIBIT ONLY



① CLACKAMAS COUNTY R/W FILES 15+50 - 21+30  
SCALE: 1" = 50'

**RIGHT-OF-WAY FILES**

- ④ TAX LOT: 61E14 01300  
PERMANENT R/W: 25,266 SF  
TEMPORARY EASEMENT: 4,793 SF
- ⑤ TAX LOT: 61E14 00700  
PERMANENT R/W: 2,838 SF
- ⑥ TAX LOT: 061E14 00903  
PERMANENT R/W: 1,046 SF

MARION COUNTY  
**SCOTTS MILLS RD: BUTTE CREEK  
BRIDGE REPLACEMENT**  
DEPARTMENT OF PUBLIC WORKS

PROJECT NO.:	####
ECMS NO.:	####
FED. PROJ. NO.:	C047(101)
KEY NO.:	21988
SITE NO.:	17-050
HORIZ. DATUM:	OCRS SALEM
VERT. DATUM:	NAVD88
DESIGNED BY:	S. PRESZLER
DRAWN BY:	J. SNYDER

TITLE:  
**CLACKAMAS  
COUNTY ROW  
FILES**

SHEET:  
**ROW-2**

