

## **BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES**

*A complete video copy and packet including staff reports of this meeting can be viewed at*

<https://www.clackamas.us/meetings/bcc/business>

**Thursday, September 30, 2021 – 10:00 AM**

**Virtual Meeting via Zoom and in Person**

**PRESENT:** Chair Tootie Smith  
Commissioner Mark Shull  
Commissioner Paul Savas  
Commissioner Martha Schrader

**EXCUSED:** Commissioner Sonya Fischer

### **CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

**\*\*\*Wild Fire Updates** <https://www.clackamas.us/meetings/bcc/business>

**\*\*\*COVID-19 Updates** <https://www.clackamas.us/meetings/bcc/business>

~Board Discussion~

### **I. PRESENTATION** <https://www.clackamas.us/meetings/bcc/business>

- A. Presentation regarding hunger in our community and announcing the results of the 2021 H3S Food Drive. (H3S)

### **II. PUBLIC HEARINGS** <https://www.clackamas.us/meetings/bcc/business>

- A. Approval of a Board Order for the Withdrawal of County Road Status of McIntyre Road. (DTD)

~Board Discussion~

Opened Public Communication  
No Public Comment  
Closed Public Communication

Commissioner Shull: I move we approve the Board Order for the Withdrawal of County Road Status of McIntyre Road

Commissioner Schrader: Second

Clerk called the Poll

Commissioner Shull: Aye.

Commissioner Schrader: Aye

Commissioner Savas: Aye

Chair Smith: Aye.–the motion carries 4-0

- B. Approval of a Clackamas County Supplemental Budget Resolution for Fiscal Year 2021-2022. (Finance)

Opened Public Communication  
No Public Comment  
Closed Public Communication

Commissioner Shull: I move we approve the Supplemental Budget Resolution for Fiscal Year 2021-2022

Commissioner Savas: Second

Clerk called the Poll  
Commissioner Schrader: Aye  
Commissioner Savas: Aye  
Commissioner Shull: Aye.  
Chair Smith: Aye.–the motion carries 4-0

**III. CONSENT AGENDA** <https://www.clackamas.us/meetings/bcc/business>

**A. Health, Housing & Human Services**

1. Request for approval to apply for the 2021 Grant Application with the U.S Department of Housing and Urban Development (HUD). The Clackamas County Continuum of Care Program (CoC) annual application for funding is \$3,791,435 including a possible \$481,621 of bonus funding available from HUD. No County General Funds are involved.
2. Approval of a Local Subrecipient Grant Agreement with Clackamas Women's Services to provide evidence-based Parenting Education Classes. Maximum Value \$20,166 through Oregon Community Foundation. No County General Funds are involved.
3. Approval of a Local Subrecipient Grant Agreement with Lifeworks NW to provide evidence-based Parenting Education Classes. Maximum Value \$8,850 through Oregon Community Foundation. No County General Funds are involved.
4. Approval of a Local Subrecipient Grant Agreement with Northwest Family Services to provide evidence-based Parenting Education Classes. Maximum Value \$48,661 through Oregon State University and Oregon Community Foundation. No County General Funds are involved.
5. Approval of a Local Subrecipient Grant Agreement with Todos Juntos to provide evidence-based Parenting Education Classes. Maximum Value \$46,087 through Oregon State University. No County General Funds are involved.
6. Approval of Application for Federal Lands Access Program Funds for Continuing Operations of the Mt Hood Express in the amount of \$838,500 from Western Federal Lands. No County General Funds are involved.
7. Approval to Execute Amendment #1 to the Short-term Revenue Sharing Agreement between Clackamas County and Metro Regional Government to extend the terms to ensure Clackamas County continues to receive revenues collected from measure 26-210 until the IGA is fully executed.

**B. Transportation & Development**

1. Resolution Approving Tualatin Valley Fire and Rescue's Fire Code Ordinance 2020-21. There is not financial impact.

**C. Resolution Services**

1. Approval to accept receipt of FY2021-23 fund distribution from the Oregon Judicial Department for Family Law Mediation and Conciliation funds. Total contract value is \$1,056,341. Funded through the Oregon Judicial Department. No County General Funds are involved.

**D. Human Resources**

1. Approval of a contract between Voya Retirement Insurance and Annuity Company and Clackamas County and the Housing Authority of Clackamas County for record keeping services for Deferred Compensation 457(b) Retirement Plans. All contract fees come from participant contributions. There are no fees paid directly by the County.

Read Consent Agenda

Commissioner Schrader: I move we approve the Consent Agenda  
Commissioner Savas: Second  
Clerk called the Poll  
Commissioner Shull: Aye.

Commissioner Schrader: Aye  
Commissioner Savas: Aye  
Chair Smith: Aye.–the motion carries 4-0

**Recess as the Board of County Commissioners and convene as the North Clackamas Parks and Recreation District Board**

**IV. \*\*NORTH CLACKAMAS PARKS AND RECREATION CONSENT AGENDA**

<https://www.clackamas.us/meetings/bcc/business>

- A. Approval of Ground Lease Agreement of Trolley Trail Easement between North Clackamas Parks and Recreation District (NCPRD) and Crainic Auto Group Inc. Lease Revenue is \$13,032 with an annual increase of 3%. No County General Funds are involved.

Read Consent Agenda

Commissioner Savas: I move we approve the Consent Agenda  
Commissioner Schrader: Second  
Clerk called the Poll  
Commissioner Savas: Aye  
Commissioner Shull: Aye.  
Commissioner Schrader: Aye  
Chair Smith: Aye.–the motion carries 4-0

**Adjourn as North Clackamas Parks and Recreation District Commission and reconvene as the Board of County Commissioners.**

**V. PUBLIC COMMUNICATION** <https://www.clackamas.us/meetings/bcc/business>

Opened Public Communication

General Public Comment in Person:

1. Elvis Clark – Milwaukie

General Public Comment Zoom:

1. Christine Kennedy – Lake Oswego
2. Cris Waller – Jennings Lodge
3. Angela Nyland – Boring
4. Connie Lee- Lake Oswego
5. Julie Skarphol – Milwaukie

Closed Public Communication

**VI. COUNTY ADMINISTRATOR UPDATE** <https://www.clackamas.us/meetings/bcc/business>

GS gave good news for the county

**VII. COMMISSIONERS COMMUNICATION** <https://www.clackamas.us/meetings/bcc/business>

Commissioner Fischer joined meeting at 11:25AM and shared during communication

***Adjourned 11:32 AM***

## Terwilliger, Christina

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**From:** Connie Lee <connie21@aol.com>  
**Sent:** Wednesday, October 6, 2021 11:09 AM  
**To:** BCCMail  
**Subject:** Chair Smith cut off my testimony

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

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**Warning: External email. Be cautious opening attachments and links.**

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Dear Commissioners,

My guess is that you already have received my full testimony, because Commissioner Shull sent me a letter in response to it. But just in case you missed it is below.

My guess is that most or all of you knew what the research found, that right wing Republicans are dying at a much higher rate than others. It is the elephant in the room, because we are not allowed to talk about it. But how are we in Clackamas County going to beat Covid by putting our collective heads in the sand? Maybe the far right can not be reached, but we should be coming to that conclusion after thoughtful consideration with outside help from many populations in Clackamas.

Please let me know what you think.

Connie Lee  
503-975-1157

BCC 9/30/21  
Connie Lee, Lake Oswego

Commissioners, please bear with me. This is not meant to be a partisan speech. It is about Covid.

This week the New York Times wrote that, "In counties where Donald Trump received at least 70 percent of the vote, the virus has killed about 47 out of every 100,000 people since the end of June, according to Charles Gaba, a health care analyst. In counties where Trump won less than 32 percent of the vote, the number is about 10 out of 100,000."

This data implies that Republicans are dying from Covid at a much higher rate than Democrats. The article goes on to say that this type of difference in Covid deaths is not seen in other countries saying, "What distinguishes the U.S. is a Conservative party — the Republican Party — that has grown hostile to science and empirical evidence in recent decades. A conservative media complex, including Fox News, Sinclair Broadcast Group and various online outlet, echoes and amplifies this hostility. Trump took the conspiratorial thinking to a new level, but he did not create it."

It seems that this Board is working hard to make vaccines more accessible, and most of you appear to want to wear masks properly so as to keep everyone safe, but how can this Board work against this anti-science mentality mentioned in the NYT article? Or would this effort be futile?

I'm worried that letting Yvonne testify without a mask last week may have set a poor precedent, but time will tell.

And it might help if the registered Republicans on this Board said over and over, "I got the vaccine and I recommend that you get one too."

Though I don't exactly know how to address the anti-science attitudes of many Republicans we need a plan that reaches those Republicans who are dying of Covid.

Thank you.

[Sent from the all new AOL app for iOS](#)



# Clackamas County Sheriff's Office

ANGELA BRANDENBURG  
Sheriff

October 12, 2021

Board of County Commissioners  
Clackamas County

Members of the Board:

Requesting Approval of an Intergovernmental Agreement with the Oregon Department of Transportation (ODOT) for the Motor Carrier Safety Assistance Program (MCSAP)

<b>Purpose/Outcome</b>	The State of Oregon, through the ODOT, wishes to retain the services of Clackamas County Sheriff's Office (CCSO) to perform enforcement of motor carrier safety regulations in mutually agreed upon highway locations
<b>Dollar Amount and Fiscal Impact</b>	The total project cost is \$25,000, including a 14.99% matching fund requirement. CCSO will be reimbursed a maximum of \$21,252.50
<b>Funding Source</b>	Federal funding passed through the ODOT
<b>Duration</b>	The performance period is from July 1, 2021, through September 30, 2022
<b>Previous Board Action/Review</b>	The County Board of Commissioners has previously approved the participation of the CCSO in the MCSAP program annually
<b>Strategic Plan Alignment</b>	Provides traffic enforcement services to those who live, work, and play in Clackamas County so they can enjoy safe roadways.
<b>Counsel Review</b>	Sergeant Marc Griffith <a href="mailto:mgriffith@clackamas.us">mgriffith@clackamas.us</a>
<b>Contact Person</b>	Nancy Artmann, CCSO Finance Manager 503.785.5012
<b>Contract No.</b>	73000-00004096

## BACKGROUND:

The purpose of the Oregon Motor Carrier Safety Actions Plan (MCSAP) is to enhance highway safety through the uniform commercial motor vehicle inspections conducted statewide. The goal of the MCSAP is to reduce accidents involving commercial motor vehicles and reduce injuries and fatalities caused by such vehicles.

## RECOMMENDATION:

Staff respectfully recommends the approval of this intergovernmental agreement between Clackamas County and the Oregon Department of Transportation.

Respectfully submitted,

Jenna Morrison  
Chief Deputy

## INTERGOVERNMENTAL AGREEMENT

### Motor Carrier Safety Assistance Program Federal Fiscal Year 2022

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, Commerce and Compliance Division, hereinafter referred to as "ODOT", and Clackamas County, acting by and through the Clackamas County Sheriff's Office hereinafter referred to as "CCSO", both herein referred to individually and collectively as "Party" or "Parties".

### RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 283.110, and 825.250, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers or agents have the authority to perform.
2. CCSO wishes to have a certain number of its employees remain or become authorized representatives for purposes of ORS 825.250(2). Further, CCSO wishes to receive federal fund reimbursement for approved Motor Carrier Safety Assistance Program (MCSAP) activities conducted at the request of ODOT.
3. ODOT wishes to enter into agreements with participating agencies in order to ensure that highway safety is enhanced through uniform commercial motor vehicle inspections conducted statewide.

The Parties therefore agree as follows:

### DEFINITIONS

1. "Authorized Representative" as defined in ORS 825.250 (2), means a city, county or state employee who has been trained and certified by ODOT as a commercial vehicle inspector, as defined in Oregon Administrative Rules (OAR) 740-100-0015, and who is employed either by ODOT or by an agency that has an agreement with ODOT to provide inspections of commercial vehicles, drivers, general cargo or hazardous materials.
2. "Commercial Motor Vehicle (CMV)" means any self-propelled or towed motor vehicle used on a highway in commerce to transport passengers or property when the vehicle has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight of 10,001 pounds or more or is designed or used to transport more than 8 passengers, including the driver, for compensation or is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation or is used in transporting as hazardous material as defined by the U.S. Department of Transportation under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations found in 49 CFR, subtitle B, chapter I, subchapter C.
3. "Qualifying Safety Stop (QSS)" means a stop of a CMV that results in a truck/driver inspection report and a written traffic citation or written warning for unlawful/unsafe driving behavior.
4. "Highway" means every public way, road, street, thoroughfare and place, including bridges, viaducts and other structures within the boundaries of this state, open, used or intended for use of the general public for vehicles or vehicular traffic as a matter of right.

## TERMS OF AGREEMENT

1. Under such authority, ODOT wishes to retain the services of CCSO to perform the work described in this Agreement under Exhibit “E” and Exhibit “F”, including participation in inspection training and enforcement of motor carrier safety regulations in mutually agreed upon highway locations as identified in Exhibit “F”, attached hereto and by this reference made a part hereof.
2. Total Project cost is \$25,000, including CCSO’s fourteen point ninety-nine (14.99) percent matching fund requirement. ODOT’s payments to CCSO under this Agreement will be based on actual costs related to the MCSAP activities. Program payments will be made solely from federal funds and shall not exceed \$21,252.50. No state funds are obligated under this Agreement. CCSO shall be responsible for any nonparticipating costs and Project costs beyond the estimate.
3. This Agreement covers services performed, during the period from July 1, 2021, through September 30, 2022. The final payment for work completed may be made through December 31, 2022, on which date this Agreement automatically terminates unless extended by a fully executed amendment.

## CCSO OBLIGATIONS

1. CCSO shall perform the work described in Exhibits E and F.
2. CCSO shall not enter into any subcontracts for any of the work scheduled under this Agreement.
3. All employers, including CCSO, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS [656.017](#) and provide the required Workers’ Compensation coverage unless such employers are exempt under ORS [656.126](#). Employers Liability insurance with coverage limits of not less than \$500,000 must be included. CCSO shall ensure that each of its contractors complies with these requirements.
4. CCSO shall:
  - a. Comply with all provisions contained in Exhibits A, B, C and H, attached hereto and incorporated herein.
  - b. Comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, CCSO expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
  - c. Ensure that all CCSO personnel as defined by OAR 740-100-0015 who engage in the inspection of commercial motor vehicles and their drivers are trained and certified by ODOT pursuant to ORS 810.560.



5. CCSO shall perform the service under this Agreement as a sub-recipient and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
6. CCSO shall submit a monthly detailed invoice either of CCSO's own design or using the example in Exhibit D, attached hereto and by this reference made a part hereof. For payroll reimbursement, invoice must include the officer name, hours requested for reimbursement, hourly rate (including salary and fringe benefits), less 14.99% agency match amount, and the total amount. Submission of all inspections, citations and written warnings for the previous month shall be submitted, to ODOT's Project Manager for review and approval, no later than the 20th of each month. Under no conditions shall ODOT's obligations exceed the amount listed under TERMS OF AGREEMENT, Paragraph 2.
7. CCSO certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.

CCSO's Project Manager for this Project is Sergeant Marc Griffith (9101 SE Sunnybrook Blvd, Clackamas, OR 97015, (971)275-2452, [mgriffith@clackamas.us](mailto:mgriffith@clackamas.us)), or assigned designee upon individual's absence. CCSO shall notify the other Party in writing of any contact information changes during the term of this Agreement.

#### **ODOT OBLIGATIONS**

1. In consideration for the services performed, ODOT agrees to reimburse CCSO, pursuant to its obligations set forth above, an amount not to exceed \$21,252.50 in federal funds for personal services, performing selected enforcement work as described above. No state funds are obligated under this Agreement.
2. ODOT will assess CCSO's performance in conducting inspection levels as defined by ODOT. In the event CCSO's performance of conducting inspections is deemed unreasonable per ODOT's assessment, contract termination, per General Provisions Paragraph 3 of this Agreement, will be enforced.
3. In furtherance of ODOT's contractual obligations to the Federal Motor Carrier Safety Administration (FMCSA), and in recognition of ODOT's sponsorship and responsibility to coordinate the motor carrier safety activities of CCSO, ODOT agrees to:
  - a. Pursuant to the Governor's directive, function as the lead agency for purposes of administering Oregon's participation in motor carrier safety activities and to the maximum extent possible coordinate commercial vehicle and driver enforcement activities between all certified and participatory agencies in accordance with the Commercial Vehicle Safety Plan (CVSP).
  - b. Coordinate and assist CCSO in the preparation and timely submission to ODOT of required safety program documentation.
  - c. Supply vehicle out-of-service stickers.

- d. Monitor proper application of inspection procedures, the Motor Carrier Safety Regulations and the Out-of-Service Criteria required by the MCSAP and ORS 810.560. Further, ODOT will review inspection documents for proper documentation techniques and correct application of violations.
  - e. Consolidate CCSO's safety activities and fiscal reports.
  - f. Train, retrain (as necessary or desirable and within ODOT's ability to make training available), test, and certify the inspectors of CCSO, in accordance with ORS 810.560, this Agreement, the Oregon Board of Public Safety Standards and Training, and, as applicable, CVSA.
4. The Field Unit Safety Manager at the Commerce and Compliance Division is ODOT's Project Manager for purposes of administering this Agreement (Howard Russell, 3930 Fairview Industrial Dr SE, Salem, OR 97302, 503-373-1979, [Howard.H.RUSSELL@odot.state.or.us](mailto:Howard.H.RUSSELL@odot.state.or.us)) or assigned designee upon individual's absence. ODOT shall notify the other Party in writing of any contact information changes during the term of this Agreement.
  5. In no event shall ODOT's obligations hereunder be construed to require ODOT to provide any coordination or assistance in the form of either personnel or funds, related to CCSO's efforts to ensure it will be able to continue providing mission critical services.

## GENERAL PROVISIONS

1. ODOT certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within ODOT's current appropriation or limitation of current biennial budget.
2. This Agreement may be terminated by mutual written consent of both Parties.
3. ODOT may terminate this Agreement effective upon delivery of written notice to CCSO, or at such later date as may be established by ODOT, under any of the following conditions:
  - a. If CCSO fails to provide services called for by this Agreement within the time specified herein or any extension thereof;
  - b. If CCSO fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from ODOT fails to correct such failures within ten (10) days or such longer period as ODOT may authorize;
  - c. If ODOT fails to receive funding, appropriations, limitations, or other expenditure authority at levels sufficient to pay for the work provided in the agreement, including cancellation or discontinuation of any federal grants whose funds are used to pay for CCSO's work under this Agreement;
  - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if ODOT is prohibited from paying for such work from the planned funding source.
4. CCSO may terminate this Agreement effective upon delivery of written notice to ODOT if CCSO fails to receive funding, appropriations, limitations, or other expenditure authority at levels sufficient to pay for the work provided in this Agreement.

5. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination except when the Agreement is terminated due to conditions 3c or 3d above.
6. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or CCSO with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
7. With respect to a Third Party Claim for which ODOT is jointly liable with CCSO (or would be if joined in the Third Party Claim), ODOT shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by CCSO in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of CCSO on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of CCSO on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.
8. With respect to a Third Party Claim for which CCSO is jointly liable with ODOT (or would be if joined in the Third Party Claim), CCSO shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT in such proportion as is appropriate to reflect the relative fault of CCSO on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of CCSO on the one hand and of ODOT on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. CCSO's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
9. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
10. CCSO acknowledges and agrees that ODOT, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of CCSO, which are directly pertinent to the specific Agreement for the purpose of making audits, examinations, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.

11. As federal funds are involved in this Agreement, EXHIBITS A, B, C, and G are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by CCSO representative.
12. CCSO, as a recipient of grant funds, pursuant to this Agreement with ODOT, shall assume sole liability for CCSO's breach of the conditions of the grant, and shall, upon CCSO's breach of grant conditions that requires ODOT to return funds to FMCSA, the grantor, hold harmless and indemnify ODOT for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of CCSO, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
13. This Agreement may be executed in several counterparts all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
14. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification, or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.
15. Per Section 889(b) of the National Defense Authorization Act ("NDAA") of 2019, Pub L. No, 115-232, the following covered entities and their subsidiaries and affiliates are prohibited from providing telecom and video surveillance equipment and services: Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company. The Department of Defense has the authority to add additional companies to this list.
16. Information required by 2 Code of Federal Regulation (CFR) 200.331(a)(1) shall be contained in the USDOT FHWA Federal Aid Project Agreement for this Project, a copy of which shall be provided by ODOT to CCSO with the Notice to Proceed.
17. Indirect Cost Rate.
  - a. As required by 2 CFR 200.331(a)(4), the indirect cost rate(s) for this project at the time the agreement is written is zero percent (0%). This rate may change during the term of this Agreement upon notice to ODOT and ODOT's subsequent written approval.
  - b. If the approved rate(s) change(s) during the term of this Agreement, CCSO shall invoice ODOT using the current indirect cost rate(s) for the project on file with ODOT at the time the work is performed. If CCSO does not have approved indirect cost rate(s) on file with ODOT at the time the work is performed, CCSO shall invoice ODOT using a zero percent (0%) rate.
18. By signing this Federal-Aid Agreement CCSO agrees to comply with the provisions of the Federal Funding Accountability and Transparency Act (FFATA) and is subject to the

following award terms: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>. If, in the preceding fiscal year, CCSO received more than 80% of its gross revenues from the federal government, those federal funds exceed \$25,000,000 annually, and the public does not have access to information about the compensation of executives through reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986, CCSO shall report the total compensation and names of its top five executives to State. CCSO shall report said information to State within 14 calendar days of execution of this Agreement and annually thereafter, utilizing the FFATA form attached hereto as Exhibit "G".

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

**Clackamas County**, by and through its Sheriff's Office

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**CCSO Contact:**

Sgt. Marc Griffith  
Clackamas County Sheriff's Office  
9101 SE Sunnybrook Blvd.  
Clackamas, OR 97015  
(971)275-2452  
[mgriffith@clackamas.us](mailto:mgriffith@clackamas.us)

**ODOT Contact:**

Howard Russell  
Safety Enforcement Manager  
3930 Fairview Industrial Dr SE  
Salem, OR. 97302  
(503) 373-1979  
[howard.h.russell@odot.state.or.us](mailto:howard.h.russell@odot.state.or.us)

**STATE OF OREGON**, by and through its Department of Transportation

By \_\_\_\_\_

Carla Phelps, Manager, Commerce & Compliance Division, Enforcement and Safety Section

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_

Elisha Brackett, Fiscal Officer, Commerce & Compliance Division, or Designee

Date \_\_\_\_\_

## EXHIBIT A to Agreement No. 73000-00004096

For purposes of Exhibit A, references to State shall mean ODOT, references to applicant/recipient and contractor shall mean CCSO and references to contract shall mean Agreement.

### GENERAL PROVISIONS FOR MCSAP AGREEMENT

1. General Provisions: The State will comply with all Federal laws and requirements which are applicable to grant agreements, and imposed by the Federal Motor Carrier Safety Administration (FMCSA) concerning special requirements of law, program requirements, and other administrative requirements.
2. Regulation Requirements: The State hereby assures and certifies that it will comply with the regulations, policies, guidelines, and requirements of the Commercial Motor Vehicle Safety Act of 1986, and the new Federal Common Rule 49 CFR, Part 18, 49 CFR, Part 90 (Audits of State and Local Governments), and 2 CFR, Part 225 (Cost Principles for State, Local, and Indian Tribal Governments) as they relate to the application, acceptance and use of Federal funds for this federally-assisted project.
3. Modifications: This Agreement may be amended at any time by a written modification properly executed by both the FMCSA and the State.
4. Retention and Custodial for Records:
  - (a) Financial records, supporting documents, statistical records, and all other records pertinent to this instrument shall be retained for a period of six years, with the following exception:
    - (1) If any litigation, claim, or audit is started before the expiration of the 6-year period, the records shall be retained until all litigation claims or audit findings involving the records have been resolved.
    - (2) Records for nonexpendable property, if any, required with Federal funds shall be retained for six years after its final disposition.
    - (3) When records are transferred to or maintained by FMCSA, the 6-year retention requirement is not applicable to the recipient.
  - (b) The retention period starts from the date of the submission of the final expenditure report.
  - (c) The Secretary of Transportation and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the recipient, and its contractors and subcontractors, to make audits, examinations, excerpts, and transcripts.
5. Equal Employment Opportunity:
  - (a) The applicant/recipient agrees to incorporate in all contracts having a value of over \$10,000, the provisions requiring compliance with Executive Order 11246, as amended, and implementing regulations of the United States Department of Labor at 41 CFR 60, the provisions of which, other than the standard EEO clause and applicable goals for employment of minorities and women, may be incorporated by reference.
  - (b) The applicant/recipient agrees to ensure that its contractors and subcontractors, regardless of tier, awarding contracts and/or issuing purchase orders for material, supplies or equipment over \$10,000 in value will incorporate the required EEO provisions in such contracts and purchase orders.
  - (c) The applicant/recipient further agrees that its own employment policies and practices will be without discrimination based on race, color, religion, sex, national origin, handicap or age; and that it has or will develop and submit to FMCSA by August 1, an affirmative action plan consistent with the Uniform Guidelines on Employee Selection Procedures, 29 CFR 1607, and the Affirmative Action Guidelines, 29 CFR 1608.
6. Copeland Act: All contracts in excess of \$2,000 for construction or repair awarded by recipient and its contractors or subcontractors shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, or give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to FMCSA.
7. Davis-Bacon Act: When required by the Federal program legislation, all construction contracts awarded by the recipient and its contractors or subcontractors of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wage specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a

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week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the G/CAO.

8. Contract Work Hours and Safety Standards Act: Where applicable, all contracts awarded by recipient in excess of \$2,500 that involve the employment of mechanics or laborers, shall include a provision of compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workday of 8 hours and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at the rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek. Section 107 of the Act, if applicable to construction work, provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
9. Access to Records: All negotiated contracts (except those of \$10,000 or less) awarded by recipients shall include a provision to the effect that the recipient, FMCSA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcripts.
10. Civil Rights Act: The recipient shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and in accordance with Title VI of that Act, no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient received Federal financial assistance and shall immediately take any measures necessary to effectuate this Agreement. It shall comply with Title VI of the Civil Rights Acts of 1964 (42 U.S.C. 2000d) prohibiting employment discrimination where:
  - (a) The primary purpose of an instrument is to provide employment, or
  - (b) Discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.
11. Nondiscrimination: The applicant/recipient hereby agrees that, as a condition to receiving any Federal financial assistance from the Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d), related nondiscrimination statutes, and applicable regulatory requirements to the end that no person in the United States shall, on the grounds of race, color, national origin, sex, handicap or age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the applicant/recipient receives Federal financial assistance. The specific requirements of the United States Department of Transportation standard Civil Rights assurances with regard to the States' highway safety programs (required by 49 CFR 21.7 and on file with the U.S. DOT) are incorporated in this grant Agreement.
12. Rehabilitation Act: The recipient shall comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C 794, P.L. 93-112), and all requirements imposed by or pursuant to the regulations of the Department of Health, Education, and Welfare (45 CFR, Parts 80, 81 and 84), promulgated under the foregoing statute. It agrees that, in accordance with the foregoing requirements, no otherwise qualified handicapped person, by reason of handicap, shall be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and that it shall take any measures necessary to effectuate this Agreement.
13. Government Rights (Unlimited): FMCSA shall have unlimited rights for the benefit of the Government in all other work developed in the performance of this Agreement, including the right to use same on any other Government work without additional cost to FMCSA.

For purposes of Exhibits B and C, references to Department shall mean ODOT, references to Contractor shall mean CCSO and references to Contract shall mean Agreement.

**EXHIBIT B (CCSO)**

**CONTRACTOR CERTIFICATION**

Contractor certifies by signing this contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this contract,
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

**DEPARTMENT OFFICIAL CERTIFICATION (ODOT)**

Department official likewise certifies by signing this contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

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**EXHIBIT C**

Federal Provisions  
Oregon Department of Transportation

**I. CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION**

Contractor certifies by signing this contract that to the best of its knowledge and belief, it and its principals:



1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

**EXCEPTIONS:**

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this contract, the Contractor is deemed to have signed this certification.

II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

1. By signing this contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Oregon Department of Transportation determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.
4. The Contractor shall provide immediate written notice to the Department to whom this proposal is submitted if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-3400) to which this proposal is being submitted for

assistance in obtaining a copy of those regulations.

6. The Contractor agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by submitting this proposal that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a

participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

### III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

#### **Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

##### Instructions for Certification

1. By signing and submitting this contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible",

"lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed

that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

- a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**IV. EMPLOYMENT**

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranting,

Department shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the contract, any professional or technical personnel who are or have been at any time during the period of this contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

#### V. NONDISCRIMINATION

During the performance of this contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this contract. Contractor, with regard to the work performed after award and prior to completion of the contract work, shall not discriminate on grounds of race, creed, color, sex or national origin

in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contract covers a program set forth in Appendix B of the Regulations.

2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this contract, Contractor agrees as follows:
  - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.

- b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
  - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor may request

Department to enter into such litigation to protect the interests of the State of Oregon.

VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

**DBE POLICY STATEMENT**

**DBE Policy.** It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this contract.

**Required Statement For USDOT Financial Assistance Agreement.** If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

**DBE Obligations.** The Oregon Department of Transportation (ODOT) and its contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither ODOT nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure

by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as ODOT deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this contract.

**Records and Reports.** Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

**DBE Definition.** Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

#### **CONTRACTOR'S DBE CONTRACT GOAL**

**DBE GOAL 0 %**

By signing this contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the Request for Proposal/Qualification for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

#### **VII. LOBBYING**

The Contractor certifies, by signing this Agreement to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

FOR INQUIRY CONCERNING  
DEPARTMENT'S DBE PROGRAM  
REQUIREMENT CONTACT OFFICE OF  
CIVIL RIGHTS AT (503)986-4354.



## EXHIBIT E

1. CCSO and the Oregon Department of Transportation agree that 50% of all inspections must be Qualifying Safety Stops (QSS) conducted on I-5 or I-205 within the patrol limits of the CCSO.
2. CCSO and the Oregon Department of Transportation further agree that the remaining fifty percent (50%) of inspections will be conducted in high crash corridors of CCSO's choosing.
3. CCSO, through its Authorized Representative, shall initiate safety inspections only within the course of conducting a valid traffic stop or as otherwise approved by ODOT. The safety inspection shall comply with the North American Standard Inspection Procedures, which are incorporated by reference and made part of this Agreement.
4. Enforce Oregon's Commercial Vehicle Safety and Hazardous Material Rules and Regulations in a manner consistent with the approved state MCSAP/CVSP and MCSAP/Commercial Vehicle Safety Alliance (CVSA) approved inspection procedures.
5. Conduct inspection levels as defined by ODOT.
6. CCSO agrees to enforce the North American Uniform Inspection Out-of-Service Criteria as adopted into Oregon law by State under:
  - a. OAR 740-100-0090, Part I- Driver.
  - b. OAR 740-100-0070, Part II -Vehicle.
  - c. OAR 740-100-0080, Part III - Hazardous Materials.
7. CCSO agrees citations and written warnings shall include at a minimum the following:
  - a. Date of QSS
  - b. Location of QSS (Hwy, Direction, and Milepost Marker)
  - c. Vehicle License Number
  - d. Motor Carrier Name
  - e. Motor Carrier US DOT Number
  - f. Driver Name and Driver License Number
  - g. Reason for QSS
  - h. Violation(s)
  - i. Out of Service defects (if applicable)
8. Conduct all inspections on public highways and conduct the inspections in high crash corridors.



9. Conduct roadside inspections at locations that are adequate to protect the safety of drivers and enforcement personnel.
10. Provide copies of any truck/driver inspection reports or a list of inspection report numbers, as well as CMV operator traffic citations or written warnings issued during a QSS within agreed locations. Agency shall ensure citations and written warnings reflect unlawful/unsafe driving behavior.
11. Conduct no inspections at a motor carrier's terminal unless such inspections have been authorized by ODOT.
12. Initiate inspections only after a traffic stop, size and weight enforcement stop, or when an out-of-service defect is detected during the normal duty activities of a certified inspector.
13. Verify ODOT registration status for each commercial vehicle inspected power unit.
14. To the greatest extent possible, record all inspections on ASPEN™ software and electronically upload computer-driven inspections daily to the federal Safety and Fitness Electronic Reporting (SAFER) system.
15. Provide, in the event that CCSO is unable to record all inspections on ASPEN™ software and electronically upload computer-driven inspections daily to ODOT, written records of all manual inspections to ODOT on ODOT Driver/Equipment Compliance Check Form No. 735-9242, and forward completed inspections to ODOT within five (5) working days of the inspection.
16. Comply with the requirements of 2 Code of Federal Regulations (CFR), Part 225 (previously OMB Circular A-87, "Cost Principles of State, Local and Indian Tribal Governments").
17. Participate in commercial motor carrier truck inspection training provided by ODOT.
18. Participate in ODOT special operations during which truck inspections are performed by other agencies, with CCSO providing additional support specifically requested by ODOT.
19. If working in the I-5 or I-205 corridors, citations or warnings must be issued during a QSS.
20. If working outside of the I-5 or I-205 corridors, citations or warnings for unlawful/unsafe driving behavior are encouraged, but not required to be issued.

**EXHIBIT F**  
**Agency PATROL Locations**

The Clackamas County Sheriff's Office and the Oregon Department of Transportation agree that fifty (50%) of CCSO's inspections shall be conducted on I-5 or I-205 within the official limits of the CCSO's patrol zones. Inspections in these corridors must include a written traffic citation or warning for unlawful/unsafe driving behavior.

CCSO and the Oregon Department of Transportation further agree that the remaining fifty percent (50%) of CCSO's inspections shall be conducted in high crash corridors of CCSO's choosing. Although not required, written citations or warnings for unlawful/unsafe driving behavior are encouraged when conducting inspections in these corridors.

**Exhibit G**

**Federal Funding Accountability and Transparency Act (FFATA)  
Subaward Reporting**

(For purposes of this Exhibit, references to “your organization” shall mean “Agency” and references to “ODOT” shall mean “State.”)

The Oregon Department of Transportation (ODOT) is required to fulfill a federal requirement for contracting under the Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting System (FSRS). FFATA reporting is a requirement for subawards (also known as subrecipients) of federal awards in excess of \$25,000,000. Your organization will enter into an agreement with ODOT where the funding source is a federal grant with a subrecipient relationship. Your organization is required to submit the information below to the Oregon Department of Transportation within fourteen calendar days of execution of the Agreement and annually thereafter, if applicable. (See the following page for further details.)

**Legal entity name:**

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**Data Universal Number System (DUNS) number:**

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**Executive compensation**

Executive compensation information is also required to determine whether or not the following information must be reported in FSRS:

- a. In your organization’s previous fiscal year, did your organization receive 80% or more of its annual gross revenue and \$25,000,000 or more in federal procurement contracts, subcontracts, loans, grants, subgrants, cooperative agreements and federal financial assistance awards subject to the Transparency Act? (Include parent organization, all branches, and all affiliates worldwide.)

Yes  No      If “yes,” proceed to b. If “no,” no further action is required and submittal of this form is not required.

- b. Does the public have access to information about the compensation of the senior executives in your organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?

Yes  No      If “yes,” provide a link to the SEC: <http://www.sec.gov> where this information is located and return form to the ODOT contact shown at the bottom of this form.  
Provide link here:

If “no,” provide compensation information below.

**Names and annual compensation amounts of the five most highly compensated executives:**

1.	\$
2.	\$
3.	\$
4.	\$
5.	\$

**Business entity contact information (person completing form):**

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Type name	Title	Date
-----------	-------	------

Return completed form to: Alice Bibler, Program and Funding Services Manager; ODOT; 355 Capitol Street NE, MS 11; Salem, OR 97301; [Alice.Bibler@odot.state.or.us](mailto:Alice.Bibler@odot.state.or.us)

**Background on FFATA requirements**

The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The intent of the Act is to empower every American with the ability to hold the government accountable for each spending decision. The end result is to reduce wasteful spending in the government. The FFATA legislation requires information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is [www.USASpending.gov](http://www.USASpending.gov).

**Definition of compensation**

Your organization is considered a subrecipient of federal funds. Unless your organization is exempt, FFATA requires you to report total compensation for each of your five most highly compensated executives for the preceding completed year. Total compensation means the cash and non-cash dollar value earned by the executive during the subrecipient's preceding fiscal year and includes the following: salary and bonus; awards of stock, stock options, and stock appropriation rights; earnings for services under non-equity incentive plans; change in pension value; above-market earnings on deferred compensation which is not tax-qualified; and other compensation as defined in 2 CFR Part 170, Section 170.330(b)(5)(vi).

More detailed information about the FFATA can be found at:  
<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>

**If you have any questions, contact:**

Alice Bibler  
Program and Funding Services Manager  
Oregon Department of Transportation  
355 Capitol Street NE, MS 11  
Salem, OR 97301-3871  
[Alice.Bibler@odot.state.or.us](mailto:Alice.Bibler@odot.state.or.us)  
Telephone: 503-986-3880



# Clackamas County Sheriff's Office

ANGELA BRANDENBURG  
Sheriff

October 12, 2021

Board of County Commissioners  
Clackamas County

Members of the Board:

Requesting Approval of the Intergovernmental Agreement with Oregon Department of Transportation (ODOT) for Traffic Patrol and Law Enforcement for Work Zones.

<b>Purpose/Outcome</b>	The State of Oregon, through the ODOT, wishes to retain the services of Clackamas County Sheriff's Office (CCSO) to perform traffic enforcement in ODOT work zones
<b>Dollar Amount and Fiscal Impact</b>	Payment by ODOT for the project shall not exceed a total amount of \$400,000.00
<b>Funding Source</b>	State funding through the Oregon Department of Transportation
<b>Duration</b>	Effective on the date all signatures are obtained and terminates August 31, 2026
<b>Strategic Plan Alignment</b>	Provides traffic enforcement services to those who live, work, and play in Clackamas County so they can enjoy safe roadways.
<b>Previous Board Action/Review</b>	None
<b>Counsel Review</b>	Andrew Naylor via email 8/18/2021
<b>Contact Person</b>	Sergeant Marc Griffith <a href="mailto:mgriffith@clackamas.us">mgriffith@clackamas.us</a>
<b>Contract No.</b>	34683

## BACKGROUND:

The use of CCSO traffic patrol and law enforcement in ODOT work zones has been proven to increase public safety by encouraging driver compliance, improving worker safety and traffic movement. CCSO will provide traffic patrol and law enforcement in work zones where project work may disrupt traffic flow and increase the risk of hazards to roadway workers.

## RECOMMENDATION:

Staff respectfully recommends the approval of this intergovernmental agreement between Clackamas County and the Oregon Department of Transportation.

Respectfully submitted,

Jenna Morrison  
Chief Deputy

**MASTER AGREEMENT FOR SERVICES**  
**Intergovernmental Agreement**  
**Traffic Patrol and Law Enforcement for Work Zones**

**THIS AGREEMENT** is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State" or "ODOT," and Clackamas County by and through its Sherriff's Office, hereinafter referred to as "Agency," both herein referred to individually as "Party" and collectively as "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statutes (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. The State is authorized by ORS 366.400 to enter into all contracts deemed necessary for the construction, maintenance, operation, improvement or betterment of highways.
3. The use of traffic patrol and law enforcement in work zones has been proven to increase public safety as it encourages driver compliance with the laws that keep both motorists and workers safe in the work zone. The purpose of this agreement is to provide law enforcement at individual ODOT construction projects. The construction projects will have budgets that support Work Orders to law enforcement agencies to provide officers in ODOT work zones.

The Parties therefore agree as follows:

**TERMS OF AGREEMENT**

1. **Project.**

Under such authority, State wishes to retain the services of Agency to perform Traffic Patrol and Law Enforcement for Work Zones, as described in Exhibit A, hereinafter referred to as "Project."

2. **Funding.**

Payment by ODOT for the Project shall not exceed a total amount of \$400,000.00 in state and federal funds, for all work orders combined.

**3. Exhibits Attached and Incorporated.**

This Agreement includes the following exhibits, each of which is attached and incorporated into this Agreement by reference:

- Exhibit TCD –Terms, Conditions and Definitions
- Exhibit A – Statement of Work and Delivery Schedule
- Exhibit B – Compensation & Payment Provisions
- Exhibit C –Contact Information
- Exhibit D – Americans with Disabilities Act (ADA) Compliance
- Exhibit E – Work Order Authorization (WOA)

**4. Federal Funds.**

- a. ODOT considers Agency to be a vendor under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number for this Project is 20.205, title Highway Planning and Construction, although any federal funds received under this Agreement should not be reported as pass-throughs of federal funds to subrecipients in any audit report.
- b. Agency, as a recipient of federal funds, pursuant to this Agreement with ODOT, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires ODOT to return funds to the Federal Highway Administration, reimburse ODOT for an amount equal to the funds received under this Agreement; or if legal limitations apply to the ability of Agency to reimburse ODOT, the reimbursement amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

**5. Work Order Authorizations**

Agency services must be requested in the form of a written WOA from ODOT, attached as Exhibit E and by this reference made a part hereof. Each WOA that is issued pursuant to this Agreement becomes a part of this Agreement. Both Parties shall execute a WOA before work begins. The WOA must contain estimated beginning and ending dates for the specific work.

**6. Order of Precedence.**

Unless a different order is required by law, this Agreement shall be interpreted in the following order of precedence:

- 1) This Agreement (including all amendments, if any) less all Exhibits, attachments and other documents and information incorporated into this Agreement,
- 2) Exhibit TCD,
- 3) Exhibit A, the Statement of Work,
- 4) All other Exhibits,

- 5) Any other attachments,
- 6) Any documents/information incorporated into this Agreement by reference.

This provision survives termination of the Agreement.

- 7. **Term of Agreement; Effective Date.** The term of this Agreement begins on the date all required signatures are obtained and terminates on August 31, 2026, on which date this Agreement automatically terminates unless extended by a fully executed amendment.
- 8. **Termination.** This Agreement may be terminated by mutual written consent of all Parties.
  - a. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
    - i. If Agency fails to provide the services called for by this Agreement within the time specified herein or any extension thereof.
    - ii. If Agency fails to perform any of the other provisions of this Agreement, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
    - iii. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to fund its obligations for performance of this Agreement.
    - iv. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such services from the planned funding source.
  - b. Any termination of this Agreement shall not extinguish or prejudice any rights or obligations accrued to the Parties prior to termination.
  - c. Upon receiving a notice of termination of this Agreement, Agency shall immediately cease all activities under this Agreement, unless State expressly directs otherwise in such notice.
- 9. **Certification.** Each Party certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on its behalf, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind that Party.
- 10. **No Substitutions or Assignments.** Agency shall not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement. This Agreement is binding



upon and inures to the benefit of each of the Parties, and, except as otherwise provided, their permitted legal successors.

11. **No Third Party Beneficiaries.** Agency and State are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement. This provision survives termination of the Agreement.
12. **Waiver; Amendment.** No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision. This provision survives termination of the Agreement.
13. **Notice.** Except as otherwise expressly provided in this Agreement, all notices to be given relating to this Agreement must be given in writing by email, personal delivery, or postage prepaid mail, to a Party's Project Manager at the physical address or email address set forth in Exhibit C, or to such other addresses as either Party may indicate pursuant to this paragraph. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective when the sender receives confirmation of receipt from the recipient (not an auto-reply). Except as set forth above in this paragraph, the Parties may agree to provide operational notices such as delivery, acceptance or rejection of services or deliverables by email as may be mutually agreed in Exhibit A.
14. **Severability.** The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, 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 particular term or provision held to be invalid. This provision survives termination of the Agreement.
15. **Counterparts.** This Agreement may be executed in several counterparts all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
16. **Integration.** This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this **Agreement.**

17. **Electronic Signatures.** The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the Agreement and any amendments or WOAs, submitted or exchanged via email are "Electronic Signatures" under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. State reserves the right at any time to require the submission of the hard copy originals of any documents.
18. ODOT anticipates the Services identified in individual Work Order Authorizations to be in the 2021-2024 Statewide Transportation Improvement Program (STIP), that was adopted by the Oregon Transportation Commission in July 15, 2020 (or subsequently by amendment to the STIP). The STIP Key number(s) will be project specific and determined with each Work Order Authorization.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

**CLACKAMAS COUNTY**, by and through  
its **SHERRIFF'S OFFICE**

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**LEGAL REVIEW APPROVAL (If required  
in Agency's process)**

By \_\_\_\_\_

Agency Counsel

Date \_\_\_\_\_

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_

Troy Costales, Safety Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_

Safety Section Manager or Designee

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By Jennifer O'Brien

Assistant Attorney General (If Over  
\$150,000)

Date via email dated, June 8, 2021

## EXHIBIT TCD – TERMS, CONDITIONS AND DEFINITIONS

**THIRD PARTY CLAIMS:** The following paragraphs 1 through 4 shall survive termination of the Agreement.

1. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
2. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
3. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

4. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

### **RECORDS**

The Parties acknowledge and agree that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Parties which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after completion of the Project and final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting party. This provision survives termination of the Agreement.

### **INDEPENDENT CONTRACTOR; EMPLOYMENT COSTS**

1. Agency shall perform the services under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
2. State reserves the right (i) to determine and modify the delivery schedule for the services and (ii) to evaluate the quality of the services; however, State may not and will not control the means or manner of Agency's performance. Agency is responsible for determining the appropriate means and manner of performing the services.
3. Agency understands and agrees that it is not an "officer," "employee," or "agent" of the State of Oregon, as those terms are used in ORS 30.265 or otherwise.

### **WORKERS COMP**

All employers, including the Agency and Agency's contractors, if any, that employ subject workers, as defined in ORS 656.027, who work under this Agreement in the State of Oregon shall comply with ORS [656.017](#) and shall provide the required Workers' Compensation Insurance coverage, unless such employers are exempt under ORS [656.126\(2\)](#). The coverage shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 for each accident. Agency shall ensure that each of its contractors complies with these requirements.

### **SUBCONTRACTS**

Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement.

### **GOVERNING LAW; VENUE; CONSENT TO JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws. Any claim, action, suit or proceeding (collectively, "Claim") between the State and Agency that arises from or relates to the Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be

brought in a federal forum, then unless otherwise prohibited by law, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. AGENCY HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of the State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon. This provision survives termination of the Agreement.

### **COMPLIANCE WITH LAW**

Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

### **NON-APPROPRIATION**

The State of Oregon's payment obligations under this Agreement are conditioned upon ODOT's receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. Agency is not entitled to receive payment under this Agreement from any part of Oregon state government other than ODOT. Nothing in this Agreement is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. This provision survives termination of the Agreement.

### **REMEDIES**

1. Agency default.
  - a. In the event Agency is in default under this Agreement, ODOT may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (i) termination of this Agreement, (ii) reducing or withholding payment for work or deliverables that Agency has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (iii) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, including for interest within the limits of ORS 293.462, and (iv) exercise of its right of recovery of overpayments under this Agreement or setoff, or both.

- b. These remedies are cumulative to the extent the remedies are not inconsistent, and ODOT may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
2. ODOT default.
  - a. In the event ODOT is in default under this Agreement or in the event ODOT terminates this Agreement, Agency's sole remedy will be a claim for unpaid invoices for work completed according to the requirements and acceptance criteria of this Agreement and for authorized expenses incurred and interest within the limits of ORS 293.462, less any claims ODOT has against Agency,
  - b. In no event will ODOT be liable to Agency for any expenses related to termination of this Agreement, including attorney fees. If previous amounts paid to Agency exceed the amount due to Agency, Agency shall promptly pay any excess to ODOT.
3. The rights and remedies set forth in this Agreement are not intended to be exhaustive and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies at law or in equity.
4. This provision survives termination of the Agreement.

**EXHIBIT A**  
**STATEMENT OF WORK (SOW) AND DELIVERABLE SCHEDULE**  
**PROJECT: Traffic Patrol and Law Enforcement for Work Zones**

**ACRONYMS AND DEFINITIONS**

Active In Zone	Providing enforcement by contact in the work zone area for the purposes of work zone safety.
Active Out of Zone	While performing the Services an Agency officer is called away from the work zone or dispatched by Agency for duties apart from the Services.
business days	calendar days, excluding Saturdays, Sundays and all State recognized holidays
calendar days	Any day appearing on the calendar, whether a weekday, weekend day, national holiday, State holiday or other day.
Commute	The time required by an Agency officer to travel to the work zone to perform the Services.
DAS	Oregon Department of Administrative Services
days	calendar days
FHWA	Federal Highway Administration
MP	Mile Point
Non-Active	Agency officer is present in the work zone area or assisting ODOT in traffic control operations, but is not engaged in Active In Zone or Active Out of Zone enforcement and does not engage enforcement by contact.
OAR	Oregon Administrative Rule
ODOT	Oregon Department of Transportation
ORS	Oregon Revised Statute
PDF	Portable Document Format
Scope of Work	The general character and range of Services and supplies needed, the work's purpose and objectives, and an overview of the performance outcomes expected by Agency.
Services	The services to be performed under this Agreement.
SFMS	State Financial Management System
SOW	Statement of Work; the specific provisions in the final Agreement which sets forth and defines in detail (within the identified Scope of Work) the agreed-upon objectives, expectations, performance standards, Services, deliverables, schedule for delivery and other obligations.
STIP	Statewide Transportation Improvement Program

Work Order Authorization (WOA)	Instrument issued by ODOT substantially in the form of Exhibit E to request uniformed Agency officers, vehicles and associated equipment to provide law enforcement and assist ODOT in traffic control operations in ODOT work zone(s).
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## PROJECT DESCRIPTION and OVERVIEW of SERVICES

Agency shall provide all Services included in this SOW on an as-needed basis as further defined in executed Work Order Authorizations. "Services" are defined in Agency Obligations, Paragraph 1 of this SOW. Agency shall provide all labor, equipment and materials to manage, coordinate, and complete the Services.

1. The use of Agency traffic patrol and law enforcement in ODOT work zones has been proven to increase public safety by encouraging driver compliance, improving worker safety and the traffic movement. Agency shall provide traffic patrol and law enforcement in work zones where project work may disrupt the flow of traffic and increase the risk of hazards to roadway workers. The need for Agency assistance in a work zone is considered, determined and implemented by ODOT.
2. Agency law enforcement is not a replacement for effective work zone strategies and traffic control devices. However it can be an effective enhancement that provides enforcement emphasis or other specific assistance duties when other measures are not practical or effective. Active enforcement of traffic laws in operating work zones is an effective strategy for achieving driver attention and compliance.
3. A WOA substantially in the form of Exhibit E, issued by ODOT, to request uniformed Agency officers, vehicles and associated equipment to provide law enforcement and assist ODOT in traffic control operations in ODOT work zone(s), is needed to request Agency enforcement Services. ODOT will determine how often to utilize Agency Services to provide adequate driver compliance, and may use Agency Services in multiple work zones.
4. While performing the Services, Agency's vehicle should be located just before or just beyond the project work area since it can be difficult and potentially hazardous to pull over vehicles within the work area limits. Agency shall coordinate with onsite ODOT personnel as part of this strategy.
5. Federal funds and state funds are used for reimbursement of work zone law enforcement activities. Task 1 will be selected by ODOT in the WOA if federal funds are available, and Task 2 will be selected if only state funds are available. In order to ensure the correct funds are allocated, Agency shall track and report on the hours applied to each type of enforcement while performing the Services. . apart from the work zone activities ("Active Out of Zone"). An Active Out of Zone occurrence is possible, and Agency shall track this time while performing the Services . If Agency



activities are not directly related to the Services, the costs incurred shall be covered by Agency.

## **STATE RESPONSIBILITIES**

1. ODOT will issue a WOA to Agency under the terms of this Agreement, substantially in the form of Exhibit E of this Agreement.
2. The ODOT contact information for each WOA will be provided in each individual issued WOA. At the beginning of each WOA the ODOT contact will meet with Agency to determine communication methods, and to discuss Agency tasks and schedule for the work operation.

## **AGENCY RESPONSIBILITIES**

1. Consistent with all requirements of this SOW, Agency shall provide law enforcement and assist ODOT in traffic control operations including completing all tasks and deliverables ("Services"), when requested by ODOT through an executed WOA. Services may include, but are not limited to, the following:
  - a. work zone traffic enforcement;
  - b. rolling slowdowns;
  - c. flagging;
  - d. controlling pedestrians, spectators and participants;
  - e. controlling signalized intersections;
  - f. controlling traffic in restricted lane situations; and
  - g. providing support during ramp, lane or road closures.
2. Agency shall furnish uniformed Agency officers, vehicles and associated equipment to provide the Services.
3. Agency shall perform Services in a manner consistent with Agency policy and regulations, applicable state and local laws, and the Constitutions of the State of Oregon and the United States. Agency officers shall at all times remain under the sole direction, management and control of Agency.
4. Agency shall coordinate with ODOT to determine the safest locations for placement of law enforcement, while also maintaining a visual presence to the public, within the specified work zone.

## **TASKS, DELIVERABLES and SCHEDULE**

Agency shall complete all tasks and provide all deliverables included in this SOW and individual WOAs. Agency shall provide all labor, equipment and materials to manage,

coordinate, and complete the Services in accordance with the performance and delivery schedules identified in this SOW and individual WOAs. Agency shall provide a report with the total hours of Services provided and a breakdown of hours by enforcement type (Non-Active, Active In Zone, or Commute), with each invoice as stated in Exhibit B.

**Task 1: Traffic Patrol and Law Enforcement**

Agency shall provide uniformed Agency officer(s), vehicle(s) and associated equipment to provide law enforcement and assist ODOT in traffic control operations as specified in individual WOAs issued by ODOT. Agency Services must be provided during the hours as stated in the individual WOAs. Under this task, ODOT will not reimburse Agency for Active Out of Zone enforcement.

**Deliverable 1.1:** traffic patrol and law enforcement

**Schedule:** Hourly Work during date(s) and time(s) specified in individual WOAs

**Task 2: Officer Presence**

Agency shall provide uniformed Agency officer(s), vehicle(s) and associated equipment to provide law enforcement presence and assist ODOT in traffic control operations as specified in individual WOAs issued by ODOT. The Work must be provided during the hours as stated in individual WOAs. Under this task, ODOT will not reimburse Agency for Active In Zone or Active Out of Zone enforcement.

**Deliverable 2.1:** law enforcement presence

**Schedule:** Hourly Work during date(s) and time(s) specified in individual WOAs

**Eligible Reimbursement by Enforcement Type:**

	<b>Non-Active</b>	<b>Commute</b>	<b>Active In Zone</b>	<b>Active Out of Zone</b>
<b>Task 1 (federal funds)</b>	Yes	Yes	Yes	No
<b>Task 2 (state funds only)</b>	Yes	Yes	No	No

## EXHIBIT B - COMPENSATION AND PAYMENT PROVISIONS

### AGENCY OBLIGATIONS

1. Agency shall present invoices for 100 percent of Eligible Costs incurred by Agency on behalf of the individual WOAs directly to ODOT's Regional Transportation Safety Coordinator ("Region TSC") for review and approval. The Region TSC contact information and billing address will be included in the WOA. Under no conditions shall State's obligations exceed the maximum amount identified in Terms of Agreement Paragraph 2.
2. ODOT pays invoices from more than one fund. Federal funds and state funds are used and must be applied to the appropriate type of enforcement in order to maintain compliance with federal and state law. In order to ensure the correct funds are allocated, Agency shall track and report on the hours applied to each type of enforcement (Non-Active, Active In Zone, or Commute) while performing the Services.
3. Such invoices shall be in a form identifying the Project and agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one month duration, based on actual expenses incurred. Agency may submit monthly invoices for a WOA with a duration of more than 30 days. Agency shall submit a final invoice for each WOA within 60 days of completing the Services under the WOA. If Agency fails to present a final invoice within 60 days of completing the Services under the WOA, Agency hereby waives any rights to present such invoice thereafter and receive payment therefor.
4. At a minimum, invoices must include:
  - a. Agreement number;
  - b. WOA number;
  - c. construction project name (if applicable);
  - d. construction project number (if applicable);
  - e. invoice number, vendor/customer number, date of invoice, and billing period;
  - f. amount due;
  - g. description, unit quantity, unit price, subtotal for each reimbursable Service;
  - h. description of each reimbursable Service including Non-Active, Active In Zone, or Commute hours to identify the type of enforcement;
  - i. remit payment information with Agency address and contact phone number;
  - j. indirect expense rate and amount (if applicable);
  - k. other expenses charged (if applicable);
  - l. Usage number for State Financial Management System ("SFMS") Agencies;
  - m. a separate report with salary and other personnel expense calculations for current rates ("Sworn Rate Template"); and
  - n. a separate report with tracked hours including the following categories for enforcement type:
    - i. Active In Zone;
    - ii. Non-Active;

- iii. Active Out of Zone (if any hours to report); and
  - iv. Commute hours.
5. Eligible Costs are reasonable and necessary actual costs incurred by the Agency in performance of the Services. Administrative support and operations costs for Agency are considered part of the Eligible Costs.
  6. Travel expenses (such as lodging, meals, per diem rates, etc.) will not be reimbursed. Commute hours of Agency officers are reimbursable if mutually agreed estimated Commute hours are stated in the Description of Work section of the WOA. Agency shall not invoice more than the estimated Commute hours stated in the WOA.
  7. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of current biennial budget.

## **STATE OBLIGATIONS**

1. In consideration for the services performed under this Agreement, State agrees to reimburse Agency for Eligible Costs, including the Agency's current officer hourly rates at the time the Services are performed, within 45 days of receipt and approval by State of monthly Project invoices, up to the maximum amount identified in Terms of Agreement Paragraph 2.
2. The maximum amount identified in Terms of Agreement Paragraph 2 shall include reimbursement for all Eligible Costs.

### EXHIBIT C – CONTACT INFORMATION

1. The Parties Contact Information is as follows:

a. State's Contact:

ODOT's Project Manager for this Agreement is:

<b>Name:</b>	Bill Warner
<b>Address:</b>	ODOT-DMV Transportation Safety Office MS-3 4040 Fairview Industrial Dr SE Salem, Or 97301-1142
<b>Phone:</b>	(503) 986-4195
<b>E-mail:</b>	<a href="mailto:William.A.WARNER@odot.state.or.us">William.A.WARNER@odot.state.or.us</a>

b. Agency Contacts:

Agency's Project Manager for this Agreement is:

<b>Name:</b>	Lt. Brian Jensen
<b>Address:</b>	Clackamas County Sherriff's Office 2223 S. Kaen Road Oregon City, OR 97045
<b>Phone:</b>	
<b>E-mail:</b>	<a href="mailto:brianjen@co.clackamas.or.us">brianjen@co.clackamas.or.us</a>

Agency's Invoice Contact and remit address for payments is (if different than above):

<b>Name:</b>	
<b>Address:</b>	
<b>Phone:</b>	
<b>E-mail:</b>	

2. Either Party may change the Project Manager designation during the term of this Agreement by promptly sending written notice (e-mail acceptable) to the other Party, with a copy to [InterGovernmental.Agreements@odot.state.or.us](mailto:InterGovernmental.Agreements@odot.state.or.us).

**EXHIBIT D - Americans with Disabilities Act (ADA) Compliance**

1. Agency shall ensure that the Services and all component activities comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, as amended (together, "ADA").
  
2. The Parties shall coordinate to ensure that temporary pedestrian routes remain available through or around any Project work zone. If Agency Services conflict with temporary pedestrian routes, Agency shall provide ODOT with adequate information to allow ODOT to: (a) establish a temporary pedestrian route for any work zone resulting from Agency Services, and (b) provide advance notice of any such temporary pedestrian route to the public, people with disabilities, and disability organizations.

## EXHIBIT E – WORK ORDER AUTHORIZATION (WOA)

Agreement No. 34683, WOA No. \_\_\_\_\_

Under the terms of Agreement No. 34683 between the Oregon Department of Transportation (State or ODOT) and Clackamas County by and through its Sherriff's Office (Agency) dated \_\_\_\_\_, which is hereby incorporated by reference, the following Project work is authorized:

<b>Project Name:</b>	<b>Work Order Start Date:</b>							
<b>Key (Project) Number:</b>	<b>Work Order End Date:</b>							
<b>Location of Work:</b>	<b>From MP:</b>	<b>To MP:</b>	<b>ODOT Region:</b>	1	2	3	4	5
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**ODOT Contact Information:**

<b>ODOT Regional Transportation Safety Coordinator ("Region TSC") contact information (Send Invoice to):</b>
<b>ODOT Work Order contact information (if different than Region TSC):</b>
<b>ODOT onsite work zone contact information (if different than Region TSC):</b>

**Agency Contact Information:**

<b>Agency Coordinator contact information:</b>
<b>Agency Work Order contact information (if different than Agency Regional Coordinator):</b>
<b>Agency onsite work zone contact information (if different than Agency Regional Coordinator):</b>

<b>Expenditure Account No.:</b>	<b>STIP Years:</b>	<b>Effective Date:</b>
<b>Effective Date: No Work shall occur until signed by all Parties.</b>		
<b>A. Amount authorized for this WOA (or "Anticipated Item")</b>		<b>ODOT Totals:</b>
<b>B. Amount authorized on prior WOAs</b>		\$
<b>C. Total Amount authorized for all WOAs (A+B=C)</b>		\$
<b>D. Master Agreement Not-to-Exceed amount</b>		\$
<b>E. Amount remaining on Agreement (D-C=E)</b>		\$

**SERVICES:**

- Task 1 Traffic Patrol and Law Enforcement (federal funds)**
- Task 2 Officer Presence (state funds only)**

**DESCRIPTION OF WORK (special terms and conditions):**

[Include the following under this section as applicable: assumptions & expectations; task breakdown showing the days, times and hours of the Services; estimated hours per day required; estimated number of days required; mutually agreed estimated Commute hours; location(s) of Work.]

This WOA and the terms and conditions of the Agreement between ODOT and Agency and any special terms and conditions included with this WOA constitute the entire agreement between the parties about the Deliverables. This WOA indicates an estimate of Services and quantities required.

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

ACCEPTANCE OF TERMS AND ACTION APPROVED BY ODOT: I acknowledge and certify that the work in this WOA is within the scope of work of the original Agreement.

**Use the following if STIP Project**

This Project is in the 2021-2024 Statewide Transportation Improvement Program (STIP), that was adopted by the Oregon Transportation Commission on July 15, 2020 (or subsequently by amendment to the STIP).

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Date

ACCEPTANCE OF TERMS BY AGENCY:

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Date

APPROVED AS TO LEGAL SUFFICIENCY:  
*If Work Order exceeds \$150,000 signature required*

\_\_\_\_\_  
Asst. Attorney General

\_\_\_\_\_  
Date

- cc: Agency
- ODOT Region TSC
- ODOT Work Order contact
- ODOT onsite work zone contact
- Contacts listed in Exhibit C of the Agreement
- ODOT Procurement Office, Agreements