

# AGENDA

**Thursday, January 21, 2021 - 10:00 AM**  
**BOARD OF COUNTY COMMISSIONERS**

Beginning Board Order No. 2021-04

**CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

**\*WILDFIRE UPDATE**

**\*COVID UPDATE**

**I. PUBLIC COMMUNICATION** *(The Chair of the Board will call for statements from citizens regarding issues relating to County government. It is the intention that this portion of the agenda shall be limited to items of County business which are properly the object of Board consideration and may not be of a personal nature. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.*

**II. CONSENT AGENDA** *(The following Items are considered to be routine, and therefore will not be allotted individual discussion time on the agenda. Many of these items have been discussed by the Board in Work Sessions. The items on the Consent Agenda will be approved in one motion unless a Board member requests, before the vote on the motion, to have an item considered at its regular place on the agenda.)*

**A. Department of Transportation & Development**

1. Accept SRTS Grant Award from Oregon Department of Transportation (ODOT) and Execute Grant Agreement Execute Grant Agreement for the Webster Road Sidewalk Project
2. Approval of a Resolution Declaring the Public Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property for the Fuller Causeway Crosswalk Improvement Project and Authorizing Good Faith Negotiations and Condemnation Actions
3. Approval of Amendment #1 to Contract #1831 with Murraysmith, Inc. for the Jennings Ave OR99E to Oatfield Road Project. – Procurement

**B. Finance Department**

1. Approval to accept a grant award from the State of Oregon, by and through the Oregon Military Department for FEMA 4562-DR-OR Wildfire Declaration and Straight-Line Winds

**C. Business & Community Services**

1. Approval of an Extension to the Wood Innovation Grant Award between Clackamas County and US Forest Service to Support Incorporation of Mass Timber in County Courthouse Project

**D. Juvenile Department**

1. Approval of a Contract with Maple Star Oregon, Inc. for the Emergency Shelter Care Services
2. Approval of a Contract with Boys and Girls Aid Society of Oregon for the Emergency Shelter Care Services

**III. COUNTY ADMINISTRATOR UPDATE**

**IV. COMMISSIONERS COMMUNICATION**

**NOTE: Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County's Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel. <https://www.clackamas.us/meetings/bcc/business>**



**DAN JOHNSON**  
DIRECTOR

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

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Amendment #1 to Contract #1831 with Murraysmith, Inc. for the  
Jennings Ave: OR99E to Oatfield Rd Project

<b>Purpose/Outcomes</b>	Execution of Contract #1831 Amendment #1 allows Clackamas County and Murraysmith, Inc. to continue with the design of sidewalk and bicycle improvements to Jennings Avenue between OR99E and Oatfield Rd.
<b>Dollar Amount and Fiscal Impact</b>	The original contract amount was \$848,665.07. Amendment #1 adds \$150,927.63 for a total not to exceed \$999,592.70.
<b>Funding Source</b>	Federal Surface Transportation Program (STP) and County Road Funds.
<b>Duration</b>	Project is anticipated to be completed by June 30, 2022.
<b>Previous Board Action</b>	01/12/21: BCC Discussion of Amendment #1 to Contract with Murraysmith, Inc. for the Jennings Ave: OR99E to Oatfield Rd Project. 10/17/19: BCC Approval of a Contract with Murraysmith, Inc. for the Jennings Ave: OR 99E to Oatfield Rd Project. 10/11/18: BCC Approval of an Intergovernmental Agreement for Right-of-Way Services with Oregon Department of Transportation for the Jennings Ave: OR99E to Oatfield Rd Project 06/29/17: BCC Approval of Supplemental Project Agreement No. 31035 with Oregon Department of Transportation for the Jennings Ave: OR 99E to Oatfield Road Project. 01/01/17: BCC Approval of Master Certification Agreement No. 30923 for County implementation of federally funded projects.
<b>Strategic Plan Alignment</b>	1. This item supports the DTD Strategic Focus on Safe Roads and Strategic Result of providing safe roads for the “users of the transportation system so they can travel safely and efficiently in Clackamas County.” 2. This item aligns with “Build a Strong Infrastructure” and “Ensure safe, healthy and secure communities” by constructing bicycle lanes and sidewalks.
<b>Procurement Review</b>	1. Was this item processed through Procurement? <input checked="" type="checkbox"/> yes <input type="checkbox"/> no 2. If no, provide a brief explanation:
<b>Counsel Review</b>	Reviewed Date: 12/16/2020; ARN
<b>Contact Person</b>	Joel Howie, Civil Engineering Supervisor 503-742-4658

**Background:**

The County obtained Federal Surface Transportation Program funding to construct improvements along Jennings Avenue from OR99E (McLoughlin Blvd) to Oatfield Road. The improvements include constructing a curb tight sidewalk on the north side of the road and constructing bike lanes on both sides of the road for enhanced bicycle and pedestrian connectivity. The total length of improvements is approximately three quarters (3/4) of a mile (approximately 3860 feet).

The design of the project is 60 percent complete and additional work is needed to finalize the design and perform the right of way phase of the project. The amendment includes items related to additional environmental work related to cultural resources and wetland studies needed to gain FHWA environmental clearances for the project. Additionally, there are additional design efforts related geotechnical pavement explorations (more locations required), illumination analysis (PGE no longer provides this service), traffic speed signs and a pedestrian crossing signal, and additional right of way effort due to an increase in right of way files related to more right-of-way maps & descriptions, right of entries and appraisal and acquisition files. Additional design effort and right of way files are needed because of ADA Ramps needed on the south side of the project at various intersections and the addition of the traffic speed signs and pedestrian crossing signal.

**Procurement Process:**

This Amendment is in accordance with LCRB C-047-0800(b) for an unanticipated amendment. Amendment #1 is a 17.8% increase to the original contract.

**Recommendation:**

Staff respectfully recommends that the Board approve and execute Amendment #1 for the contract with Murraysmith, Inc. for the Jennings Ave: OR 99E to Oatfield Rd Project.

Sincerely,

*Joel Howie*

Joel Howie,  
Civil Engineering Supervisor

Placed on the BCC Agenda \_\_\_\_\_ by Procurement and Contract Services

**AMENDMENT #1  
TO THE CONTRACT DOCUMENTS WITH MURRAYSMITH, INC. FOR JENNINGS AVE.  
OR99E TO OATFIELD ROAD (RFP 2019-14)  
Contract #1831**

This Amendment #1 is entered into between **Murraysmith, Inc.** (“Contractor” or “Consultant”) and Clackamas County (“County”) and shall become part of the Contract documents entered into between both parties on **October 17, 2019** (“Contract”).

The Purpose of this Amendment #1 is to make the following changes to the Contract:

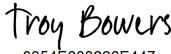
1. Item 2. **Statement of Work, Exhibit A** is hereby amended as follows:  
County has requested additional work to be performed by Contractor. The additional Work is attached as **Exhibit A, Supplement to Statement of Work**, and hereby incorporated by reference.
2. Item 3. **Compensation** is hereby amended as follows:  
The associated fees to complete the additional Work is summarized at the end of Exhibit A, and approved for up to **\$150,927.63**. The total Contract Compensation shall not exceed \$999,592.70.

ORIGINAL CONTRACT	\$ 848,665.07
<u>AMENDMENT #1</u>	<u>\$ 150,927.63</u>
<b>TOTAL AMENDED CONTRACT</b>	<b>\$ 999,592.70</b>

Except as expressly amended above, all other terms and conditions of the Contract shall remain in full force and effect. By signature below, the parties agree to this Amendment #1, effective upon the date of the last signature below.

**Murraysmith, Inc.**

**Clackamas County**

DocuSigned by:  
 12/15/2020  
0354E003220E447...  
 Authorized Signature                      Date


\_\_\_\_\_ Chair

Troy Bowers  
\_\_\_\_\_  
Printed Name

\_\_\_\_\_ Recording Secretary

\_\_\_\_\_ Date

**Approved as to form:**

  
 \_\_\_\_\_  
 County Counsel                                      Date

**SUPPLEMENT TO EXHIBIT A  
ADDITIONAL WORK**

## **SUPPLEMENT TO EXHIBIT A STATEMENT OF WORK**

### **1.1 Administration & Record Keeping – Additional Effort**

Consultant shall:

- Prepare invoices and progress reports according to the Invoice Requirements Guide referenced in the Contract under Section H.5 - Invoices. Each progress report must:
  - Break out profit from cost based on percent complete

For budgeting purposes, it is assumed that up to an additional 11 reports for a total of 33 progress reports will be necessary.

### **1.2 Coordination – Additional Effort**

Consultant shall:

- Support County’s management of right-of-entry acquisition

### **3.2.1 Literature Review/Field Reconnaissance/Baseline Report - Deleted Task**

This task is deleted in its entirety.

### **3.2.2 Phase I Archaeological Investigation with Technical Report – New Task**

The purpose of this task is for Consultant to establish the presence or absence of archaeological sites in, or eligible for the National Register of Historic Places (“NRHP”), which may be in the APE for the Project. Investigations under this task must comply with Guidelines for Conducting Field Archaeology in Oregon, The Phase I investigation must comply with the latest updated SHPO guidelines and the latest updated SHPO guidelines for Reporting on Archaeological Investigations. These investigations must include a pedestrian survey and/or subsurface exploratory probing. Subsurface probing must be conducted in areas where ground visibility is low and in areas of high probability for archaeological resources, unless documented proof of previous fill is available i.e. as-builts/geomorphological work.

Consultant shall conduct record searches and literature review for the APE provided by Agency and a one-mile radius, prior to any fieldwork. Consultant shall, at a minimum, examine the following databases and documents:

- the SHPO database in Salem, OR;
- appropriate Tribal Historic Preservation Office (“THPO”) database if APE is within a recognized reservation boundary;
- General Land Office maps;
- historic topographic maps;
- Sanborn Fire Insurance Maps;

- other records archives (i.e. historical societies; tribal archives) for known/potential prehistoric and historic archaeological resources within a one mile radius of the APE.

Consultant shall conduct pedestrian field surveys within the APE and must include areas where ground will be disturbed by Project construction including temporary access roads, as well as staging areas, material sources, disposal sites, detours, etc. Consultant shall provide the Agency Archaeologist with a minimum of 5 business days advance notice prior to conducting a pedestrian survey. Pedestrian survey methods must be consistent with the latest updated SHPO guidelines. The recommended maximum spacing of transects will be 20 meters apart and no more than 30 meters apart; and may be as close as 10 meters apart vary depending on terrain features and/or ground visibility. Consultant shall determine transect spacing based on professional judgment to ensure that all probable sites are discovered. All cultural resources observable on the surface and in exposed subsurface profiles during the inventory must be identified and recorded. Consultant shall mobilize up to three (3) times to facilitate right-of-entry timelines.

Consultant shall obtain all required excavation permits and conduct subsurface exploratory probing in the APE. Copies of the draft excavation permits must be provided to the Agency Archaeologist prior to submittal to SHPO. Consultant shall provide the Agency Archaeologist with a minimum of 5 business days advance notice of exploratory probing. Subsurface Exploratory Probing field methodology must be consistent with the latest updated SHPO guidelines.

Probing must be based on an established research design. Probes must be at least 30 cm in diameter and dug to sterile (at least two levels void of cultural material) or to 50 cm and two sterile levels where possible, or as appropriate based on varying field conditions. Materials must be screened with a 1/8-inch mesh screen (1/4-inch as needed, see SHPO guidelines). Up to 15 discovery probes will be excavated under this task.

Auguring may be used, to establish soil stratigraphy or depth of archeological deposits and may be incorporated into the research design, if approved by Agency Archaeologist. Materials must be screened with a 1/8-inch mesh screen.

Consultant shall prepare Phase I Archaeological Investigation Report. The Report must include:

- A purpose statement and full Project description including:
  1. Agency Key Number and Federal Aid Number
  2. Location and legal description
  3. General environmental description
  4. Historic context
  5. Proposed construction activities
  6. Defined APE and APE map
  7. Total acreage of impact
  8. Anticipated direct, indirect and cumulative impacts
- Results of SHPO/THPO data base searches including:
  1. Brief summary of previous archaeological research completed within one mile of APE with eligibility description if available.
  2. Brief summary of recorded archaeological features within one mile of APE with an eligibility description if available.



- Results of GLO and Sanborn map review including:
  1. Brief summary of features (trails, buildings, etc.) depicted on maps and within APE
- Discussion of ethno-historic information and historic context of APE and surrounding environment
- Description of pedestrian survey methods including date(s) of survey, types of transects used, and names and duties of personnel conducting the survey
- Results of pedestrian survey including ground conditions (percent visibility) and difficulties encountered, if any; descriptions of any archaeological artifacts encountered and other pertinent information
- Description of subsurface exploratory probing methodology including date(s) of probing, and names and duties of personnel completing probes
- Results of subsurface exploratory probing, including descriptions of soil conditions and any archaeological artifacts encountered and other pertinent information. Negative findings must be reported also
- Summary of Tribal consultation(s), to be provided by Agency
- A summary with recommendations that must include a discussion of the site(s) identified and whether or not they meet NRHP criteria and maintain integrity
- List of references cited
- Location map at 1:24,000 scale; aerial image (Google map acceptable) showing APE; and representative digital images of current conditions within APE
- Site forms and isolate forms (hard copies) for newly discovered archaeological sites and isolates. Consultant shall also complete the SHPO Online Site Form
- Site update forms for previously identified archaeological sites
- A modified [Determination of Eligibility \(DOE\)](#), a maximum of 2-3 pages long, must be included in the Appendix for historic sites with no subsurface component. This Appendix must include a short discussion on Boundaries (vertical and horizontal), Integrity as well as Statement of Significance and discussion of the NRHP Criteria. Consultant shall provide enough information to write a detailed DOE.
- Maps, photos and an artifact catalogue

Establishing eligibility without testing for prehistoric sites may be difficult; however, this is possible with historic sites if sufficient historic documentation is provided. Please refer to SHPO guidelines.

Consultant shall provide final Phase I Technical Report and site forms in PDF format; digital images of each photo and illustration; raw GPS files (\*.ssf and \*.cor), and edited GIS files (\*.shp, \*.shx, and \*.dbf).

### **3.2.2 Consultant Deliverables and Schedule**

Consultant shall prepare and submit:

- One electronic copy (in WORD format) of the Draft Phase I Technical Report with site forms and/or isolate forms to APM for review per Task 1 Project Design Schedule.
- One electronic copy (in PDF format) of the Final Phase I Technical Report with site forms and/or isolate forms to APM 2 weeks following receipt of draft review comments.

### **3.3.1 Historic Resources Baseline Report – Additional Effort**

It is anticipated there will be an additional 44 resources for a total of 59 historic resources identified in the baseline report.

### **3.3.2 Section 106 Determination of Eligibility (DOE) (CONTINGENCY – See Section F) – Additional Effort**

A DOE will be prepared for up to an additional 4 resources for a total of 6 resources. An ODOT Cultural/Historic Resource Specialist will transmit the final DOE(s) to SHPO and will obtain the necessary concurrence documentation from SHPO.

### **3.3.3 Section 106 Finding of Effect (“FOE”) (CONTINGENCY – See Section F) – Additional Effort**

FOEs will be prepared for up to an additional 4 resources for a total of 6 resources. An ODOT Historic Resource Specialist will transmit the final FOEs to SHPO and will obtain the necessary concurrence documentation from SHPO.

### **Task 3.4.2 Geotechnical Drilling Support (CONTINGENCY – See Section F) – Deleted Task**

This task is deleted in its entirety.

#### **Task 3.4.2.1 Work Plan and Health and Safety Plan (CONTINGENCY – See Section F) – Deleted Task**

This task is deleted in its entirety.

#### **Task 3.4.2.2 Sample Collection and Reporting (CONTINGENCY – See Section F) – Deleted Task**

This task is deleted in its entirety.

### **3.6.1 Wetland/Waters of the U.S./State Determination – Additional Effort**

Consultant shall:

- Mobilize up to two (2) times to facilitate right-of-entry timelines.

## **6.3 Geotechnical and Pavement Explorations**

Consultant shall perform subsurface explorations to estimate and characterize the in situ soils for the purposes of addressing foundation support and other geotechnical or geological considerations for the following:

- Retaining wall design and construction where an additional 2 explorations for a total of 3 geotechnical explorations.

Consultant shall perform the exploration work while following additional requirements as follows:

- Mobilize up to two (2) times to facilitate sight-specific right-of-entry timelines at File 61.

### **8.3 Illumination Analysis and Design – Additional Effort**

Consultant shall complete a lighting analysis for the project corridor using AGI32 Lighting Analysis software. The analysis will be conducted to determine the appropriate spacing, luminaire wattage, and mounting height necessary to obtain the required average maintained light levels and uniformity, assuming PGE final pole locations. Consultant shall coordinate with PGE to refine lighting analysis based on preliminary results. Plans will be developed only after coordination with PGE is completed and lighting analysis results are approved. The results of the lighting analysis shall be summarized in an email to PGE, a technical memorandum is excluded from this task. Illumination plans shall include pole locations and luminaire information only Conduit and circuitry design to be completed by PGE.

This task excludes an evaluation of illumination alternatives and field verified light meter readings.

### **8.3 Consultant Deliverables and Schedule**

Consultant shall provide:

- Advance Illumination plans, specifications, and cost estimate included in Advance PS&E submittal (Task 15.2) contingent on final pole locations from PGE.
- Final Illumination plans, specifications, and cost estimate included in Final PS&E Package submittal (Task 15.3)

### **8.9 Rectangular Rapid Flashing Beacon (RRFB) - New Task**

Consultant shall prepare plans, specifications and construction cost estimate (“PS&E”) for the construction of a Rectangular Rapid Flashing Beacon (RRFB) at the intersection of SE Jennings Avenue and SE Portland Avenue. Plans and specifications shall conform to the County and MUTCD standards. Consultant shall coordinate with utility for service connection, as necessary.

### **8.9 Consultant Deliverables and Schedule**

Consultant shall provide:

- RRFB plans, specifications, and cost estimate included in Preliminary PS&E submittal (Task 15.1)
- Advance RRFB plans, specifications, and cost estimate included in Advance PS&E submittal (Task 15.2)
- Final RRFB plans, specifications, and cost estimate included in Final PS&E Package submittal (Task 15.3)

### **8.10 Driver Speed Feedback Signs - New Task**

Consultant shall prepare plans, specifications and construction cost estimate (“PS&E”) for the construction of two Driver Speed Feedback Signs on SE Jennings Avenue, west of Oatfield Road.

Plans and specifications shall conform to the County and MUTCD standards. Consultant shall coordinate with utility for service connection, as necessary.

**8.10 Consultant Deliverables and Schedule**

Consultant shall provide:

- Driver speed feedback plans, specifications, and cost estimate included in Preliminary PS&E submittal (Task 15.1)
- Advance driver speed feedback plans, specifications, and cost estimate included in Advance PS&E submittal (Task 15.2)
- Final driver speed feedback plans, specifications, and cost estimate included in Final PS&E Package submittal (Task 15.3)

**10.3 Roadway Design Exceptions – Modified Effort**

**10.3 Consultant Deliverables and Schedule:**

Consultant shall provide:

- Up to a total of one (1) multi-disciplined design exception request with multiple sub-requests and greater complexity than originally scoped.

County shall provide:

- ADA related design exception requests

**TASK 14 RIGHT OF WAY (ROW)**

For estimating purposes, an additional 7 files for a total of 46 parcel files are anticipated for this project on the north side of Jennings Avenue. The additional files creates additional effort for the following tasks:

**14.3 Right of Way Engineering, Maps & Descriptions – Additional Effort**

Consultant shall develop an additional 7 ROW Engineering, Maps & Descriptions.

**14.4 Right of Way Programming Estimate – Additional Effort**

Consultant shall revise the ROW Programming Estimate to include the additional files.

**PLEASE NOTE: Consultant shall not perform any services described in Tasks 14.5 through 14.10 below until Agency issues NTP for the ROW phase of the Project.**

**14.5 Preliminary Activities – Additional Effort**

Consultant shall develop GINs for the additional 7 ROW files.

**14.6 Appraisal and Appraisal Review – Additional Effort**

Consultant shall provide:

- Up to an additional 3 appraisals for a total of eight (8) appraisals.

**14.7 Acquisition Services – Additional Effort****TASK 15 - PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E) – Additional Effort**

Consultants shall prepare additional or modified plan sheets according to the following table:

Table 15

<b>Name of Sheet</b>	<b>Estimated # of Sheets</b>	<b>60% PS&amp;E Submittal</b>	<b>Advanced Submittal</b>	<b>Final Submittal</b>
Sheet index	(1)	X	X	X
Typical sections	(5)	X	X	X
Civil details	(6)	X	X	X
Roadway plan and profiles (1"=30')	(15)	X	X	X
ADA ramp/intersection details	(28)	X	X	X
<del>Drainage/stormwater plan/profile</del>	(0)			
<del>Drainage &amp; water quality details</del>	(0)			
Driveway Details	(6)	X	X	X
<del>Erosion Control Details</del>	(0)			
Illumination legend	(1)		X	X
Illumination plans (rural version)	(7)		X	X
Retaining wall #1 plan and profile	(9)	X	X	X
<del>Retaining wall details</del>	(0)			
Signal plans	(5)	X	X	X
Signal details	(2)	X	X	X
Rectangular Rapid Flashing Beacon (RRFB)	(2)	X	X	X
Driver Speed Feedback Sign	(3)	X	X	X

**SUMMARY FEE SCHEDULE:****Summary Breakdown of Costs****PA/ATA or Contract Number: 1831; Amd Number: 1****WOC Number: ##; Amd Number: ##****PROJECT NAME: Jennings Avenue: OR 99E to Oatfield Road**

Total Non-Contingency Hours	1198
Total Non-Contingency Labor Costs	\$ 114,942.27
Total Non-Contingency Direct Expenses	\$ 12,539.00
Total Non-Contingency Costs	\$ 127,481.27
Total Non-Contingency Profit	\$ 10,207.96
<b>Total Non-Contingency Cost + Profit</b>	<b>\$ 137,689.23</b>

Total Contingency Hours	193
Total Contingency Labor Costs	\$ 12,437.49
Total Contingency Direct Expenses	\$ (1,027.00)
Total Contingency Costs	\$ 11,410.49
Total Contingency Profit	\$ 1,827.91
<b>Total Contingency Cost + Profit</b>	<b>\$ 13,238.40</b>

**Total For Amendment #1 \$ 150,927.63**



**DAN JOHNSON**  
DIRECTOR

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

January 21, 2021

Board of Commissioners  
Clackamas County  
Members of the Board:

**Accept Safe Routes to School Grant Award from Oregon Department of Transportation (ODOT) and Execute Grant Agreement for the Webster Road Sidewalk Project**

<b>Purpose/ Outcomes</b>	Accept a Safe Routes to School (SRTS) construction grant award and execute a grant agreement with ODOT to construct sidewalks and bike lanes on SE Webster Road to Bilquist Elementary School.
<b>Dollar Amount and Fiscal Impact</b>	Total project cost is \$2,637,300 ODOT grant award is \$1,977,975 20% match of \$659,325 is required
<b>Funding Source</b>	Transportation System Development Charge (TSDC)
<b>Duration</b>	Five years from execution date of Grant Agreement.
<b>Previous Board Action</b>	<ul style="list-style-type: none"> <li>The Board signed a letter of support and authorized the Department of Transportation and Development to apply for the SRTS grant on August 20, 2020.</li> <li>Item was brought to issues on 01/12/21 for discussion.</li> </ul>
<b>Strategic Plan Alignment</b>	<ul style="list-style-type: none"> <li>Build a strong infrastructure</li> <li>Grow a vibrant economy</li> </ul>
<b>Counsel Review</b>	Reviewed and approved by Counsel on 12/16/20 NB
<b>Procurement Review</b>	<ol style="list-style-type: none"> <li>Was this item processed through Procurement? <b>NO</b></li> <li>If no, provide brief explanation: <b>Item is a grant amendment</b></li> </ol>
<b>Contact Person</b>	Scott Hoelscher, Senior Planner-Multimodal Transportation– Department of Transportation and Development - 742-4533

**BACKGROUND:**

The ODOT Safe Routes to School Infrastructure Grant Program provides funding for projects that address barriers for students walking and biking to school. The statewide competitive grant process occurs every two years. \$28.3 million was distributed this grant cycle. Clackamas County was awarded \$1,977,975.00 to construct sidewalks on both sides of SE Webster Road from Bilquist Elementary School to the existing Tri-Met transit stop at SE Roots Road. The project has a required match of 20% in which will be paid by Transportation System Development Charge (TSDC), no road funds will be utilized for the required match.

The existing substandard, shoulder bike lanes will be widened to standard 8-foot buffered bike lanes. The north project extent will connect to the existing school crosswalk at Bixel Way. Crosswalk upgrades consisting of illumination, center pedestrian refuge and ADA compliant curb

ramps will be included. The project length is approximately 1,325 feet and also includes 7 reconstructed and 13 new ADA compliant intersection curb ramps. The purpose of the project is to provide a safe place for students and families to walk or bike to school.

**RECOMMENDATION:**

Staff respectfully requests that the BCC accept the SRTS Construction Grant Award from the Oregon Department of Transportation and execute attached Grant Agreement No. 34472.

Respectfully submitted,

*Scott Hoelscher*

Scott Hoelscher- Senior Transportation Planner



**GRANT AGREEMENT**  
**OREGON DEPARTMENT OF TRANSPORTATION**  
**SAFE ROUTES TO SCHOOL PROGRAM (SRTS)**  
**Project Name: Bilquist Elementary School - Sidewalks**

This Grant Agreement (“Agreement”) is made and entered into by and between the **State of Oregon**, acting by and through its Department of Transportation (“ODOT”), and Clackamas County Department of Transportation and Development, acting by and through its Governing Body, (“Recipient”), both referred to individually or collectively as “Party” or “Parties.”

- 1. Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law (the “Effective Date”). The availability of Grant Funds (as defined in Section 3) shall end five (5) years after the Effective Date (the “Availability Termination Date”).
- 2. Agreement Documents.** This Agreement consists of this document and the following documents:
  - a. Exhibit A: Project Description, Key Milestones, Schedule and Budget**
  - b. Exhibit B: Recipient Requirements**
  - c. Exhibit C: Subagreement Insurance Requirements**
  - d. Exhibit D: Documentation provided by Recipient prior to execution of the Agreement (i.e. application, Part 1 of the Project Prospectus)**

Exhibits A, B and C are attached to this Agreement. Exhibit D is incorporated by reference. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits; Exhibit A; Exhibit B; Exhibit C; Exhibit D.

- 3. Project Cost; Grant Funds.** The total estimated Project cost is \$2,637,300. In accordance with the terms and conditions of this Agreement, ODOT shall provide Recipient grant funds in a total amount not to exceed \$1,977,975 (the “Grant Funds”). Recipient will be responsible for all Project costs not covered by the Grant Funds.
- 4. Project.**
  - a. Use of Grant Funds.** The Grant Funds shall be used solely for the Project described in Exhibit A (the “Project”) and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless ODOT approves such changes by amendment pursuant to Section 4(c).
  - b. Eligible Costs.** Recipient may seek reimbursement for its actual costs to develop the Project, consistent with the terms of this Agreement (“Eligible Costs”).

- i.** Eligible Costs are actual costs of Recipient to the extent those costs are:
  - A.** reasonable, necessary and directly used for the Project;
  - B.** permitted by generally accepted accounting principles established by the Governmental Accounting Standards Board, as reasonably interpreted by the State, to be capitalized to an asset that is part of the Project; and
  - C.** eligible or permitted uses of the Grant Funds under the Oregon Constitution, the statutes and laws of the state of Oregon, and this Agreement.
- ii.** Eligible Costs do NOT include:
  - A.** operating and working capital or operating expenditures charged to the Project by Recipient;
  - B.** loans or grants to be made to third parties;
  - C.** any expenditures incurred before the Effective Date or after the Availability Termination Date; or
  - D.** costs associated with the Project that substantially deviate from Exhibit A, Project Description, unless such changes are approved by ODOT by amendment of this Agreement;
- c. Project Change Procedures.**
  - i.** If Recipient anticipates a change in scope, Key Milestone Dates, or Availability Termination Date, Recipient shall submit a written request to [SRTSProgramMailbox@odot.state.or.us](mailto:SRTSProgramMailbox@odot.state.or.us). The request for change must be submitted before the change occurs.
  - ii.** Recipient shall not proceed with any changes to scope, Key Milestone Dates, or Availability Termination Date before the execution of an amendment to this Agreement executed in response to ODOT's approval of a Recipient's request for change. A request for change may be rejected at the sole discretion of ODOT.

## **5. Reimbursement Process and Reporting.**

- a.** ODOT shall reimburse Recipient for 80 percent of Eligible Costs up to the Grant Fund amount provided in **Section 3**. ODOT shall reimburse Eligible Costs within forty-five (45) days of ODOT's receipt and approval of a request for reimbursement from Recipient. Recipient must pay its contractors, consultants and vendors before submitting a request for reimbursement to ODOT for reimbursement. ODOT will not reimburse more than one request for reimbursement per month.
- b.** Recipient must submit to ODOT its first reimbursement request within two (2) years of the Effective Date.

- c. Each reimbursement request shall be submitted on ODOT's Reimbursement request form <https://www.oregon.gov/ODOT/Forms/2ODOT/7373558.docx> to the SRTSProgramMailbox@odot.state.or.us and include the Agreement number, the start and end date of the billing period, and itemize all expenses for which reimbursement is claimed. Upon ODOT's request, Recipient shall provide to ODOT evidence of payment to contractors. Recipient shall also include with each reimbursement request a summary describing the work performed for the period seeking reimbursement and work expected for the next period, if any.
- d. **RESERVED**
- e. Recipient shall, no later than ninety (90) days after the completion of the Project or Availability Termination Date, whichever occurs earlier, submit a final reimbursement request. Failure to submit the final request for reimbursement within ninety (90) days after could result in non-payment.
- f. Upon ODOT's receipt of the final reimbursement request, ODOT will conduct a final on-site review of the Project. ODOT will withhold payment of the final reimbursement request until both (i) its SRTS Program Manager, or designee, has completed the final review and accepted the Project as complete and (ii) Recipient and ODOT staff have signed the Recommendation of Acceptance Form (ODOT Form No. 737-3560).
- g. ODOT's obligation to disburse Grant Funds to Recipient is subject to the satisfaction, with respect to each disbursement, of each of the following conditions precedent:
  - i. ODOT has received funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to make the disbursement.
  - ii. Recipient is in compliance with the terms of this Agreement.
  - iii. Recipient's representations and warranties set forth in Section 6 are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
- h. Recovery of Grant Funds.
  - i. Recovery of Misexpended Funds or Nonexpended Funds. Any Grant Funds disbursed to Recipient under this Agreement that are either (i) disbursed but unexpended at the end of the Availability Termination Date ("Unexpended Funds") or (ii) expended in violation of one or more of the provisions of this Agreement ("Misexpended Funds") must be returned to ODOT. Recipient shall return all Unexpended Funds to ODOT no later than fifteen (15) days after the Availability Termination Date. Recipient shall return all Misexpended Funds to ODOT promptly after ODOT's written demand and no later than fifteen (15) days after ODOT's written demand.
  - ii. Recovery of Grant Funds upon Termination. If this Agreement is terminated under any of Sections 9(b)(i), 9(b)(ii), 9(b)(iii) or 9(b)(vi), Recipient shall return to ODOT all Grant Funds disbursed to Recipient within 15 days after ODOT's written demand for the same.
- i. Reporting

- i. **Quarterly Reports.** Recipient shall submit quarterly progress reports to ODOT using a format that ODOT provides. Recipient must submit the reports to SRTSProgramMailbox@odot.state.or.us by the first Wednesday of March, June, September, and December.
- ii. **Final Report.** Recipient shall submit a final written report (the “Final Report”) to SRTSProgramMailbox@odot.state.or.us that identifies how hazards have been reduced to children walking or bicycling to and from school as a direct result of this Project. Recipient must submit the Final Report within six (6) months after the Project Completion Date. Recipient’s obligation to provide the Final Report will survive Agreement expiration.

**6. Representations and Warranties of Recipient.** Recipient represents and warrants to ODOT as follows:

- a. **Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient’s Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.
- b. **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors’ rights generally.
- c. **No Solicitation.** Recipient’s officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- d. **No Debarment.** Neither Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from any federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify ODOT immediately if it is debarred, suspended or otherwise excluded from any federally assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.

- e. **Compliance with Oregon Taxes, Fees and Assessments.** Recipient is, to the best of the undersigned(s) knowledge, and for the useful life of the Project will remain, current on all applicable state and local taxes, fees and assessments.

## 7. Records Maintenance and Access; Audit.

- a. **Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Recipient shall ensure that each of its subrecipients and subcontractors complies with these requirements. ODOT, the Secretary of State of the State of Oregon (the "Secretary") and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the Grant Funds, or the Project for the purpose of making audits and examinations. In addition, ODOT, the Secretary and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of ODOT and the Secretary to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.
- b. **Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for a period of six (6) years after final payment. If there are unresolved audit questions at the end of the period described in this section, Recipient shall retain the records until the questions are resolved.
- c. **Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by ODOT under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit ODOT to verify how the Grant Funds were expended.

This Section 7 shall survive any expiration or termination of this Agreement.

## 8. Recipient Subagreements and Procurements

- a. **Subagreements.** Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, "subagreements") for performance of the Project.
  - i. All subagreements must be in writing, executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
  - ii. Recipient shall require all of its contractors performing work under this Agreement to name ODOT as a third-party beneficiary of Recipient's subagreement with the Contractor and to name ODOT as an additional or "dual" obligee on contractors' payment and performance bonds.

- iii. Recipient shall provide ODOT with a copy of any signed subagreement, as well as any other purchasing or contracting documentation, upon ODOT's request at any time. Recipient must report to ODOT any material breach of a term or condition of a subagreement within ten (10) days of Recipient discovering the breach.

**b. Subagreement indemnity; insurance.**

- i. *Recipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless State of Oregon, the Oregon Transportation Commission and its members, the Department of Transportation, their officers, agents and employees from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Recipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that ODOT shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of ODOT, be indemnified by the other party to Recipient's subagreement(s) from and against any and all Claims.*
- ii. Any such indemnification shall also provide that neither Recipient's subrecipient(s), contractor(s) nor subcontractor(s), nor any attorney engaged by Recipient's subrecipient(s), contractor(s) nor subcontractor(s) shall defend any claim in the name of ODOT or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient's subrecipient is prohibited from defending the State, or that Recipient's subrecipient is not adequately defending the State's interests, or that an important governmental principle is at issue or that it is in the best interests of the State to do so. The State reserves all rights to pursue claims it may have against Recipient's subrecipient if the State of Oregon elects to assume its own defense.
- iii. If the Project or Project work is on or along a state highway, Recipient shall require its contractor(s) to meet the minimum insurance requirements provided in Exhibit C. Recipient may specify insurance requirements of its contractor(s) above the minimum insurance requirements specified in Exhibit C. Recipient shall verify its contractor(s) meet the insurance requirements in Exhibit C.
- iv. Recipient shall determine insurance requirements, insurance types and amounts, as deemed appropriate based on the risk of the work outlined within the subagreement. Recipient shall specify insurance requirements and require its contractor(s) to meet the insurance requirements. Recipient shall obtain proof of the required insurance coverages, as applicable, from any contractor providing services related to the subagreement.
- v. Recipient shall require its contractor(s) to require and verify that all subcontractors carry insurance coverage that the contractor(s) deems appropriate based on the risks of the subcontracted work.

- c. **Procurements.** Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code, Oregon Revised Statute (ORS) 279 A, B, and C, and rules, ensuring that:
  - i. All applicable clauses required by federal statute, executive orders and their implementing regulations are included in each competitive procurement; and
  - i. All procurement transactions are conducted in a manner providing full and open competition.
- d. **Self-Performing Work.** Recipient must receive prior approval from ODOT for any self-performing work.
- e. **Conflicts of Interest.** Recipient's public officials shall comply with Oregon's government ethics laws, ORS 244.010 *et seq.*, as those laws may be subsequently amended.

## 9. Termination

- a. **Mutual Termination.** This Agreement may be terminated by mutual written consent of the Parties.
- b. **Termination by ODOT.** ODOT may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by ODOT in such written notice, under any of the following circumstances:
  - i. If Recipient fails to perform the Project within the time specified in this Agreement, or any extension of such performance period;
  - ii. If Recipient takes any action pertaining to this Agreement without the approval of ODOT and which under the provisions of this Agreement would have required ODOT's approval;
  - iii. If Recipient fails to perform any of its other obligations under this Agreement, and that failure continues for a period of 10 calendar days after the date ODOT delivers Recipient written notice specifying such failure. ODOT may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action;
  - iv. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement;
  - v. If Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
  - vi. If the Project would not produce results commensurate with the further expenditure of funds.

- c. **Termination by Either Party.** Either Party may terminate this Grant Agreement upon at least ten (10) days' notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Grant Agreement.
- d. **Rights upon Termination; Remedies.** Any termination of this Grant Agreement shall not prejudice any rights or obligations accrued before termination. The remedies set forth in this Grant Agreement are cumulative and are in addition to any other rights or remedies available at law or in equity.

## 10. GENERAL PROVISIONS

### a. Contribution.

- i. 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 Recipient 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.
- ii. With respect to a Third Party Claim for which ODOT is jointly liable with Recipient (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 Recipient in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of the Recipient 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 Recipient 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.
- iii. With respect to a Third Party Claim for which Recipient is jointly liable with ODOT (or would be if joined in the Third Party Claim), Recipient 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 Recipient 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 Recipient 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. Recipient'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.
- b. Dispute Resolution.** 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.
  - c. Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
  - d. Duplicate Payment.** Recipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
  - e. No Third-Party Beneficiaries.** ODOT and Recipient 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 or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.
  - f. Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email or mailing the same, postage prepaid, to Recipient Contact or ODOT Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 10(g). Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.
  - g. Governing Law, 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 law. Any claim, action, suit or proceeding (collectively, "Claim") between ODOT (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party

hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

- h. Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Recipient 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. Recipient agrees to comply with the requirements of ORS 366.514, Use of Highway Fund for footpaths and bicycle trails.
- i. Insurance; Workers' Compensation.** All employers, including Recipient, that employ subject workers who provide services 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. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Recipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- j. Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of ODOT. Recipient has no right or authority to incur or create any obligation for or legally bind ODOT in any way. ODOT cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of ODOT, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- k. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- l. Counterparts.** This Agreement may be executed in two or more counterparts, each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- m. Integration and Waiver.** This Agreement, including all Exhibits, constitutes 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. The delay or failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. Recipient, by the signature below of its authorized representative, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

ODOT/Recipient  
Agreement No. 34472

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

The Project was approved on December 1, 2020 by the Oregon Transportation Commission.

**Signature Page to Follow**

ODOT/Recipient  
Agreement No. 34472

Clackamas County Department of **STATE OF OREGON**, by and through its  
Transportation and Development, by and Department of Transportation  
through its elected officials

By \_\_\_\_\_  
(Legally designated representative)

Name \_\_\_\_\_  
(printed)

Date \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_  
(printed)

Date \_\_\_\_\_

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

By \_\_\_\_\_  
Recipient's Legal Counsel

Date \_\_\_\_\_

**Recipient Contact:**

Scott Hoelscher  
150 Beaver Creek Road  
Oregon City, OR 97045  
(503) 577-5057  
scotthoe@clackamas.us

**ODOT Contact (SRTS):**

LeeAnne Fergason  
555 13<sup>th</sup> Street NE  
Salem, OR 97301-4178  
Phone: 503-986-5805  
[LeeAnne.Fergason@odot.state.or.us](mailto:LeeAnne.Fergason@odot.state.or.us)

By \_\_\_\_\_  
Public Transportation Division Administrator

Name \_\_\_\_\_  
(printed)

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Safe Routes to School Program Manager

Name \_\_\_\_\_  
(printed)

Date \_\_\_\_\_

By Michael Kimlinger via email  
State Traffic-Roadway Engineer

Date November 3, 2020

**APPROVED AS TO LEGAL SUFFICIENCY**

By Sam Zeigler via email saved in file  
Assistant Attorney General

Date December 10, 2020

## EXHIBIT A

### Project Description, Key Milestones, Schedule and Budget

Agreement No. 34472

Project Name: Bilquist Elementary School - Sidewalks

#### A. PROJECT DESCRIPTION

Webster Road from approximately Bilquist Elementary School to Roots Road.

Recipient shall construct sidewalks on both sides of Webster Rd approximately from Bilquist Elem to Tri-Met stop at Roots Rd. Existing shoulder bike lanes will be improved to approximately 8-foot buffered bike lanes. The north project extent will connect to Bixel Way crosswalk which will be improved with illumination; ramps and center pedestrian refuge. Project length is approximately 1,325' and includes curbs; intersection ramps (approximately 14 new; 7 reconstructed) and underground storm water management.

Recipient acknowledges that such Project improvements funded under this Agreement may trigger other Recipient responsibilities under the Americans with Disabilities Act. Recipient agrees that it is solely responsible for ensuring Americans with Disabilities Act compliance pursuant to Exhibit B, Recipient Requirements, Section 4.

#### B. PROJECT KEY MILESTONES AND SCHEDULE

The Project has two (2) Key Milestone(s). Key Milestones are used for evaluating performance on the Project as described in the Agreement. Neither Key Milestone 1, Scoping and planning, nor Key Milestone 2, Project completion, can be changed without an amendment to the Agreement.

If Recipient anticipates either that Key Milestone 1 will require material changes or that Key Milestone 2 will be delayed by more than ninety (90) days, Recipient shall submit a Request for Change Order, as described in Section 4(c) of the Agreement, to SRTSProgramMailbox@odot.state.or.us as soon as Recipient becomes aware of any possible change or delay. Recipient must submit the Request for Change Order before materially changing the project scope (Key Milestone 1) or delaying the Project completion (Key Milestone 2).

**Table 1: Key Milestones**

Key Milestone	Description	Estimated Due Date
1	Scoping and planning	3/31/2021
2	Project completion (Project must be completed within 5 years of agreement execution.)	7/31/2025

## **EXHIBIT B**

### **Recipient Requirements**

1. Recipient shall comply with all applicable provisions of ORS 279C.800 to 279C.870 pertaining to prevailing wage rates and including, without limitation, that workers on the Project shall be paid not less than rates in accordance with ORS 279C.838 and 279C.840 pertaining to wage rates and ORS 279C.836 pertaining to having a public works bond filed with the Construction Contractors' Board.
2. Recipient shall notify ODOT's Contact in writing when any contact information changes during the Agreement.
3. Recipient shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. If the Project or any portion is destroyed, insurance proceeds will be paid to ODOT, unless Recipient has informed ODOT in writing that the insurance proceeds will be used to rebuild the Project.
4. **Americans with Disabilities Act Compliance**
  - a. **State Highway:** For portions of the Project located on or along the State Highway System or a State-owned facility ("state highway"):
    - i. Recipient shall utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, pedestrian-activated signals meet current ODOT Highway Design Manual standards;
    - ii. Recipient shall follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
    - iii. At Project completion, Recipient shall send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form and to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>

- iv. Recipient shall promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by Recipient and prior to release of any Recipient contractor.
  - v. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, disability organizations, and ODOT at least 10 days prior to the start of construction.
- b. Local Roads:** For portions of the Project located on Recipient roads or facilities that are not on or along a state highway:
- i. Recipient shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed and maintained in compliance with the ADA.
  - ii. Recipient may follow its own processes or may use ODOT's processes for design, construction, or alteration of Project sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:  
  

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>;

Additional ODOT resources are available at the above-identified link. ODOT has made its forms, processes, and resources available for Recipient's use and convenience.
  - iii. Recipient assumes sole responsibility for ensuring that the Project complies with the ADA, including when Recipient uses ODOT forms and processes. Recipient acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.
  - iv. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations prior to the start of construction.
- c.** Recipient shall ensure that any portions of the Project under Recipient's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Recipient ensuring that:

- i. Pedestrian access is maintained as required by the ADA,
  - ii. Any complaints received by Recipient identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
  - iii. Recipient, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the Project in compliance with the ADA requirements that were in effect at the time the Project was constructed or altered,
  - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
  - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- d. Maintenance obligations in this Section 4 shall survive termination of this Agreement.

**5. Work Performed within ODOT’s Right of Way**

- a. Prior to the commencement of work, Recipient shall obtain, or require its contractor to obtain, permission from the appropriate ODOT District Office to work on or along the state highway. This Agreement does not provide permission to work on or along the state highway.
- b. If the Project includes traffic control devices (see ODOT’s Traffic Manual, Chapter 5, for a description of traffic control devices) on or along a state highway, Recipient shall, pursuant to Oregon Administrative Rule (OAR) 734-020-0430, obtain the approval of the State Traffic Engineer prior to design or construction of any traffic control device being installed.
- c. Recipient shall enter into a separate traffic signal agreement with ODOT to cover obligations for any traffic signal being installed on a state highway.
- d. Recipient shall ensure that its electrical inspectors possess a current State Certified Traffic Signal Inspector certificate before the inspectors inspect electrical installations on state highways. The ODOT’s District Office shall verify compliance with this requirement before construction. The permit fee should also cover the State electrician's supplemental inspection.

**6. General Standards**

The Project shall be completed within industry standards and best practices to ensure that the functionality and serviceability of the Program’s investment meets the intent of the application and the Program.

**7. Land Use Decisions**

- a. Recipient shall obtain all permits, “land use decisions” as that term is defined by ORS 197.015(1) (2020), and any other approvals necessary for Recipient to complete the Project by the Project completion deadline identified in Exhibit A (each a “Land Use Decision” and collectively, “Land Use Decisions”).



- b. If at any time before the Availability Termination Date identified in Section 1 of this Agreement ODOT concludes, in its sole discretion, that Recipient is unlikely to obtain one or more Land Use Decisions before the Availability Termination Date, ODOT may (i) suspend the further disbursement of Grant Funds upon written notice to Recipient (a “Disbursement Suspension”) and (ii) exercise any of its other rights and remedies under this Agreement, including, without limitation, terminating the Agreement and recovering all Grant Funds previously disbursed to Recipient.
- c. If after a Disbursement Suspension ODOT concludes, in its sole discretion and based upon additional information or events, that Recipient is likely to timely obtain the Land Use Decision or Decisions that triggered the Disbursement Suspension, ODOT will recommence disbursing Grant Funds as otherwise provided in this Agreement.
- d. This Section 7 is in addition to, and not in lieu of, ODOT’s rights and remedies under Section 5.h (“Recovery of Grant Funds”) of this Agreement.

**8. Website**

Recipient shall provide ODOT a link to any website created about the Project identified in Exhibit A before any costs being considered eligible for reimbursement. Recipient shall notify the ODOT Contact in writing when the link changes during the term of this Grant Agreement.

**9. Photographs**

Recipient shall provide pre-construction Project photographs within thirty (30) days of the execution of this Agreement. Recipient shall provide Project photographs thirty (30) days after Project is completed.

## **EXHIBIT C**

### **Subagreement Insurance Requirements**

#### **1. GENERAL.**

- a. If the Project is on or along a state highway, Recipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, “TAIL” COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to ODOT. Recipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Recipient permit work under a subagreement when Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, “first tier” means a subagreement in which the Recipient is a Party.
- b. The insurance specified below is a minimum requirement that the contractor within the subagreement shall meet. Recipient may determine insurance types and amounts in excess to the minimum requirement as deemed appropriate based on the risks of the work outlined within the subagreement.
- c. Recipient shall require the contractor(s) to require that all of its subcontractors carry insurance coverage that the contractor deems appropriate based on the risks of the subcontracted work. Contractor shall obtain proof of the required insurance coverages, as applicable, from any subcontractor providing Services related to the Contract.

#### **2. TYPES AND AMOUNTS.**

##### **a. WORKERS COMPENSATION.**

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide **Workers' Compensation Insurance** coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employer's Liability Insurance with limits not less than \$500,000 each accident. **Contractor shall require compliance with these requirements in each of its subcontractor contracts.**

##### **b. COMMERCIAL GENERAL LIABILITY.**

Commercial General Liability Insurance shall be issued on an occurrence basis covering bodily injury and property damage and shall include personal and advertising injury liability, products and completed operations, and contractual liability coverage. When work to be performed includes operations or activity within 50 feet of any railroad property, bridge, trestle, track,

roadbed, tunnel, underpass or crossing, the Contractor shall provide the Contractual Liability – Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy. Amounts below are a minimum requirement as determined by ODOT:

Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

**c. AUTOMOBILE Liability Insurance: Automobile Liability.**

Automobile Liability Insurance covering Contractor’s business-related automobile use covering all owned, non-owned, or hired vehicles for bodily injury and property. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Amount below is a minimum requirement as determined by ODOT:

Coverage shall be written with a combined single limit of not less than \$1,000,000.

**d. ADDITIONAL INSURED.**

The Commercial General Liability Insurance and Automobile Liability Insurance must include the “**State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees**” as an **endorsed** Additional Insured but only with respect to the contractor’s activities to be performed under the Subcontract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations. Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to the Recipient.

**e. “TAIL” COVERAGE.**

If any of the required insurance policies is on a “claims made” basis, such as professional liability insurance or pollution liability insurance, the contractor shall maintain either “tail” coverage or continuous “claims made” liability coverage, provided the effective date of the continuous “claims made” coverage is on or before the effective date of the Subcontract, for a minimum of twenty-four (24) months following the later of : (i) the contractor’s completion and Recipient’s acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing twenty-four (24) month requirement, if the contractor elects to maintain “tail” coverage and if the maximum time period “tail” coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then the contractor may request and ODOT may grant approval of the maximum “tail “ coverage period reasonably available in the marketplace. If ODOT approval is granted, the contractor shall maintain “tail” coverage for the maximum time period that “tail” coverage is reasonably available in the marketplace.

**f. NOTICE OF CANCELLATION OR CHANGE.**

The contractor or its insurer must provide thirty (30) days' written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**g. CERTIFICATE(S) OF INSURANCE.**

Recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) **“State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees”** as an endorsed Additional Insured in regards to the Commercial General Liability and Automobile Liability policies and ii) that all liability insurance coverages shall be primary and non-contributory with any other insurance and self-insurance, with exception of Workers' Compensation..

**The Recipient shall immediately notify ODOT of any change in insurance coverage.**



**DAN JOHNSON**  
DIRECTOR

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

January 21, 2021

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of a Resolution Declaring the Public Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property for the Fuller Causey Crosswalk Improvement Project and  
Authorizing Good Faith Negotiations and Condemnation Actions**

<b>Purpose/Outcomes</b>	Under ORS 35 and the federal Uniform Act, a local government agency is authorized to declare by resolution or ordinance the necessity and the purpose for which the project is required by enacting a Resolution of Necessity prior to initiating acquisition of the easements or other property rights needed from abutters to the project.
<b>Dollar Amount and Fiscal Impact</b>	The right of way budget for the project is estimated to be \$17,500 and is included in the \$185,588 total project budget.
<b>Funding Source</b>	\$37,118 of County Road Fund and ODOT State Grants of \$148,470 will be utilized for this project.
<b>Duration</b>	The Resolution remains active throughout the project's duration and terminates upon completion of the project or when all litigation associated with the project is concluded.
<b>Previous Board Action/Review</b>	10/11/18: BCC authorized DTD to apply for the Safe Routes to School grant. 03/18/19: BCC executed Intergovernmental Agreement (IGA) No. 33116 with Oregon Department of Transportation for the Fuller Causey Crosswalk Improvement Project. 1/12/21: Discussion with the board at issues
<b>Strategic Plan Alignment</b>	1. How does this item align with your department's Strategic Business Plan goals? This item supports the DTD Strategic Focus on Safe Roads and Strategic Result of "Travelers on Clackamas County roads will experience safe roads in good condition." 2. How does this item align with the County's Performance Clackamas goals? This item aligns with "Ensure safe, healthy and secure communities" by adding advance warning signs, rectangular rapid flashing beacons, a center lane pedestrian refuge, and curb ramps thereby ensuring safer pedestrian travel, particularly children, within the community, which will add to the overall secure feeling of the community.
<b>Counsel Review</b>	Date of Counsel review: 12/10/20, NB Initials of County Counsel performing review. NB
<b>Procurement Review</b>	1. <i>Was the item processed through Procurement?</i> yes <input type="checkbox"/> no <input checked="" type="checkbox"/> This item is a resolution of necessity, required under ORS 35 as a precursor in support of possible condemnation action.

<b>Contact Persons</b>	Mendi Houx, DTD Right of Way Agent 2 @ 971-266-7387 (c)
------------------------	---

The Department of Transportation and Development received a Safe Routes to School grant from the Oregon Department of Transportation to create an enhanced crosswalk to increase visibility and pedestrian safety at the south leg of the intersection of SE Fuller Rd and SE Causey Ave/SE Harmony Dr.

In order to construct the improvements as designed, additional rights of way and easements will be required. The project is expected to impact two properties abutting the project alignment. The Board has authority to exercise the power of eminent domain under ORS Chapter 35 to acquire rights of way, easements, and fee property by purchase or condemnation proceedings. In accordance with the procedure set forth in that statute, a Resolution of Necessity is required before offers are made for needed rights of way and easements.

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

The Department shall negotiate in good faith and accordance with all applicable laws, rules, and regulations in an attempt to reach agreement as to the amount of Just Compensation owed each affected property owner. To fairly determine the amount of Just Compensation for the needed rights of way and easements, staff will utilize their own expertise and reliable data sources to prepare Appraisal Waiver Valuations in accordance with applicable law and regulation.

This resolution directs Department staff to proceed with good faith negotiations for the acquisition of the needed property rights. The resolution further requires the Director of the Department to notify the Board if the exercise of the power of eminent domain becomes necessary in order to acquire the needed property rights. Only after this process is completed does it authorize the Office of County Counsel to file complaints of condemnation with the circuit court of the County and take such other steps as determined necessary for the immediate possession of required rights of way, easements, and fee property and the successful litigation of the condemnation action, including the retention of real estate appraisers, experts, and other consultants deemed necessary to the successful conclusion of that litigation.

**RECOMMENDATION:**

Staff respectfully recommends that the Board of County Commissioners approve the Resolution of Necessity and Purpose authorizing the acquisition of necessary rights of way, easements, and fee property by good faith negotiation if possible, or condemnation, if necessary.

Sincerely,

*Mendi Houx*

Mendi Houx,  
Right of Way Agent 2

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

In the Matter of Declaring the Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property and Authorizing Good Faith Negotiations and Condemnation Actions for the Fuller Causey Crosswalk Improvement Project



Resolution No. \_\_\_\_\_

*Page 1 of 2*

This matter comes before the Board of County Commissioners of Clackamas County, Oregon (the "Board") at its regularly scheduled meeting on January 21, 2021 and,

It appearing to the Board that the Fuller Causey Crosswalk Improvement Project (the "Project") will create an enhanced crosswalk to increase visibility and pedestrian safety; is consistent with the powers and purposes of County government; and is necessary for public use and the continued growth, safety and welfare of the community; and,

It further appearing to the Board that the Project has been planned in accordance with appropriate standards for the improvement of transportation infrastructure such that property damage is minimized, transportation promoted, and travel safeguarded; and

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

It further appearing to the Board that rights of way, and easements within the boundaries described in the attached Exhibit "A-1" and "A-2"(the "Exhibits") are a necessary part of the Project; and,

It further appearing that the Board has authority under ORS Chapter 203 and ORS Chapter 35 to acquire rights of way, easements, and fee property by good faith negotiation, agreement, and purchase or by exercise of the power of eminent domain with condemnation proceedings; and

It further appearing that the Board has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public.

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

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

In the Matter of Declaring the Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property, and Authorizing Good Faith Negotiations and Condemnation Actions for the Fuller Causey Crosswalk Improvement Project



Resolution No. \_\_\_\_\_  
*Page 2 of 2*

IT IS FURTHER RESOLVED THAT:

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

2). If the Director of the Department (the "Director") determines that changes to the design of the Project, unanticipated field conditions, or the need to accommodate uneconomic remnants makes it necessary or desirable to modify the rights of way, easements, and fee property required for the Project, the Director shall promptly bring before the Board, and the Board shall promptly consider a resolution amending the Exhibits; and,

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Tootie Smith, Chair

\_\_\_\_\_  
Recording Secretary



EXHIBIT "A-1"  
Page 1 of 2  
File 1  
December 9, 2020

**TRACT 1**  
**PERMANENT RIGHT OF WAY EASEMENT:**

A portion of that property described in Document No. 1983-21423 of the Clackamas County Deed records, located in the NE 1/4 of Section 32, Township 1 South, Range 2 East, Willamette Meridian, as shown on Exhibit 'B' attached hereto and by this reference made a part hereof, more particularly described as follows:

Commencing from the southwest corner of the above described property, being on the easterly right of way of SE Fuller Rd. (County Road No. 368); thence along said right of way line North 20°52'36" East 245.26 feet to the Point of Beginning; thence continuing along said right of way line, North 20°52'36" East 0.79 feet to a point a 24.28 foot radius, non-tangent curve to the right, having an internal angle of 70°27'20" and a chord bearing of North 58°43'22" East 33.24 feet; thence along said curve, an arc length of 34.73 feet; thence leaving said right of way South 45°43'49" West 12.02 feet; thence South 65°52'36" West 21.70 feet to the Point of Beginning.

Containing 167 square feet, more or less.

Basis of Bearing: NAD83 2011 (epoch 2010) Oregon Coordinate Reference System, Portland Zone, Per OAR 734.

EXHIBIT "A-1"  
Page 2 of 2  
File 1  
December 9, 2020

**TRACT 2**  
**TEMPORARY CONSTRUCTION EASEMENT:**

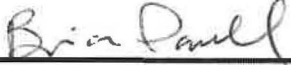
A portion of that property described in Document No. 1983-21423 of the Clackamas County Deed records, located in the NE 1/4 of Section 32, Township 1 South, Range 2 East, Willamette Meridian, as shown on Exhibit 'B' attached hereto and by this reference made a part hereof, more particularly described as follows:

Commencing from the southwest corner of the above described property, being a point on the easterly right of way of SE Fuller Rd. (County Road No. 368); thence along said right of way line North 20°52'36" East 238.19 feet to the Point of Beginning; thence leaving said right of way North 65°52'36" East 58.23 feet to the southerly right of way line of SE Causey Ave.; thence along said right of way North 89°49'46" West 22.21 feet; thence leaving said right of way line South 45°43'49" West 12.02 feet; thence South 65°52'36" West 21.70 feet to the eastly line of said SE Fuller Rd; thence along said easterly right of way line South 20°52'36" West 7.07 feet to the Point of Beginning.

Containing 293 square feet, more or less.

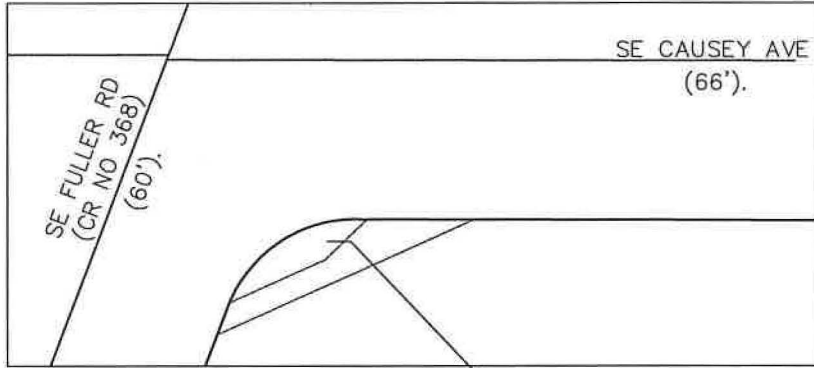
Basis of Bearing: NAD83 2011 (epoch 2010) Oregon Coordinate Reference System, Portland Zone, Per OAR 734.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR



OREGON  
MARCH 13, 2018  
BRIAN W. PAULL  
89074

EXPIRATION DATE: 12-31-20



LOCATED IN THE NORTHEAST 1/4 OF SECTION 32 TOWNSHIP 1 SOUTH, RANGE 2 EAST, W.M. CLACKAMAS COUNTY, OREGON

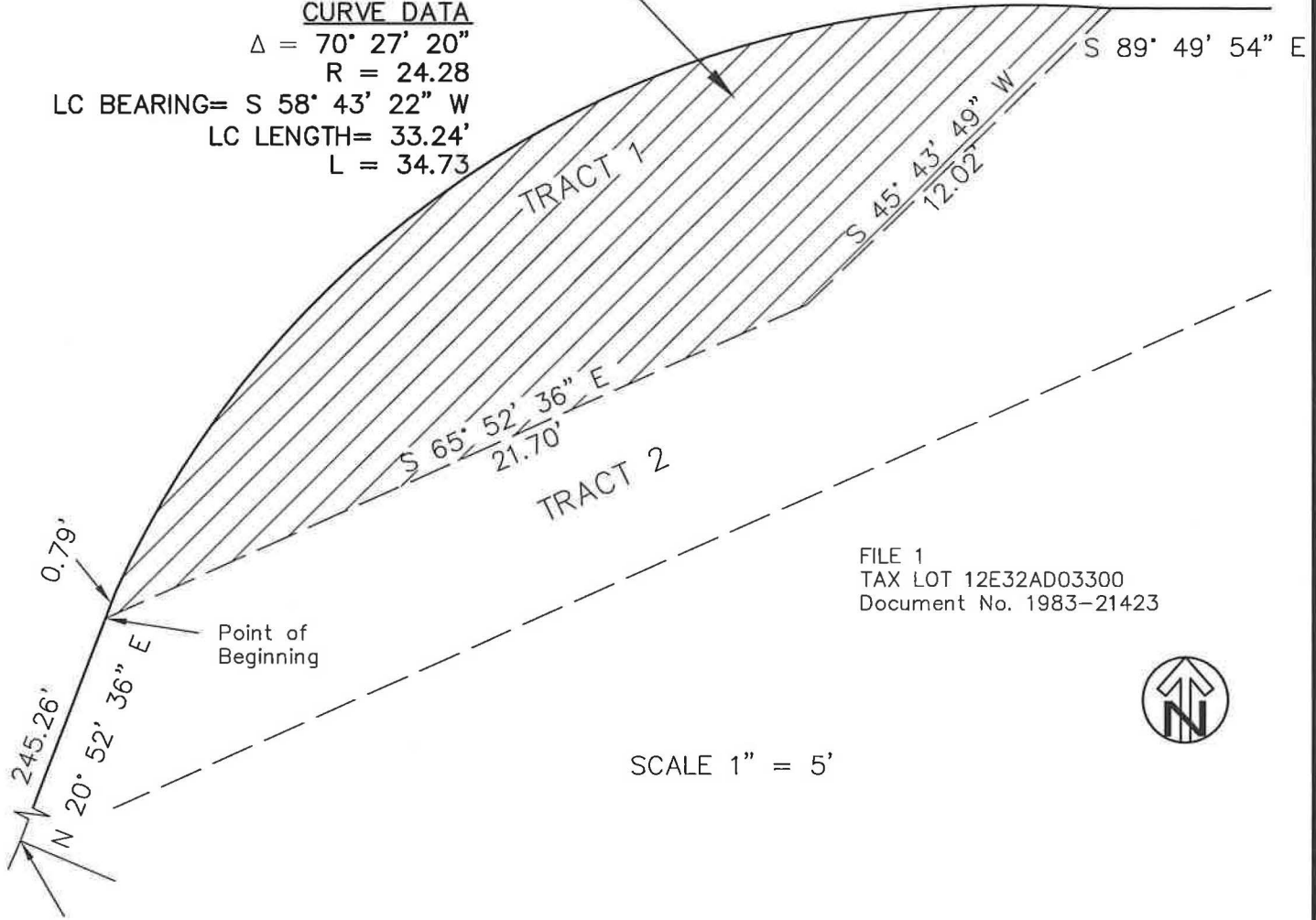
REGISTERED PROFESSIONAL LAND SURVEYOR

*Brian Paull*  
 OREGON  
 MARCH 13, 2018  
 BRIAN W. PAULL  
 89074

EXPIRATION DATE: 12/31/20

**CURVE DATA**

$\Delta = 70^{\circ} 27' 20''$   
 $R = 24.28$   
 LC BEARING= S 58° 43' 22" W  
 LC LENGTH= 33.24'  
 $L = 34.73$



FILE 1  
 TAX LOT 12E32AD03300  
 Document No. 1983-21423



SCALE 1" = 5'

**TRACT 1**  
 PERMANENT RIGHT OF WAY EASEMENT  
 AREA = 167 SF

CLACKAMAS COUNTY

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

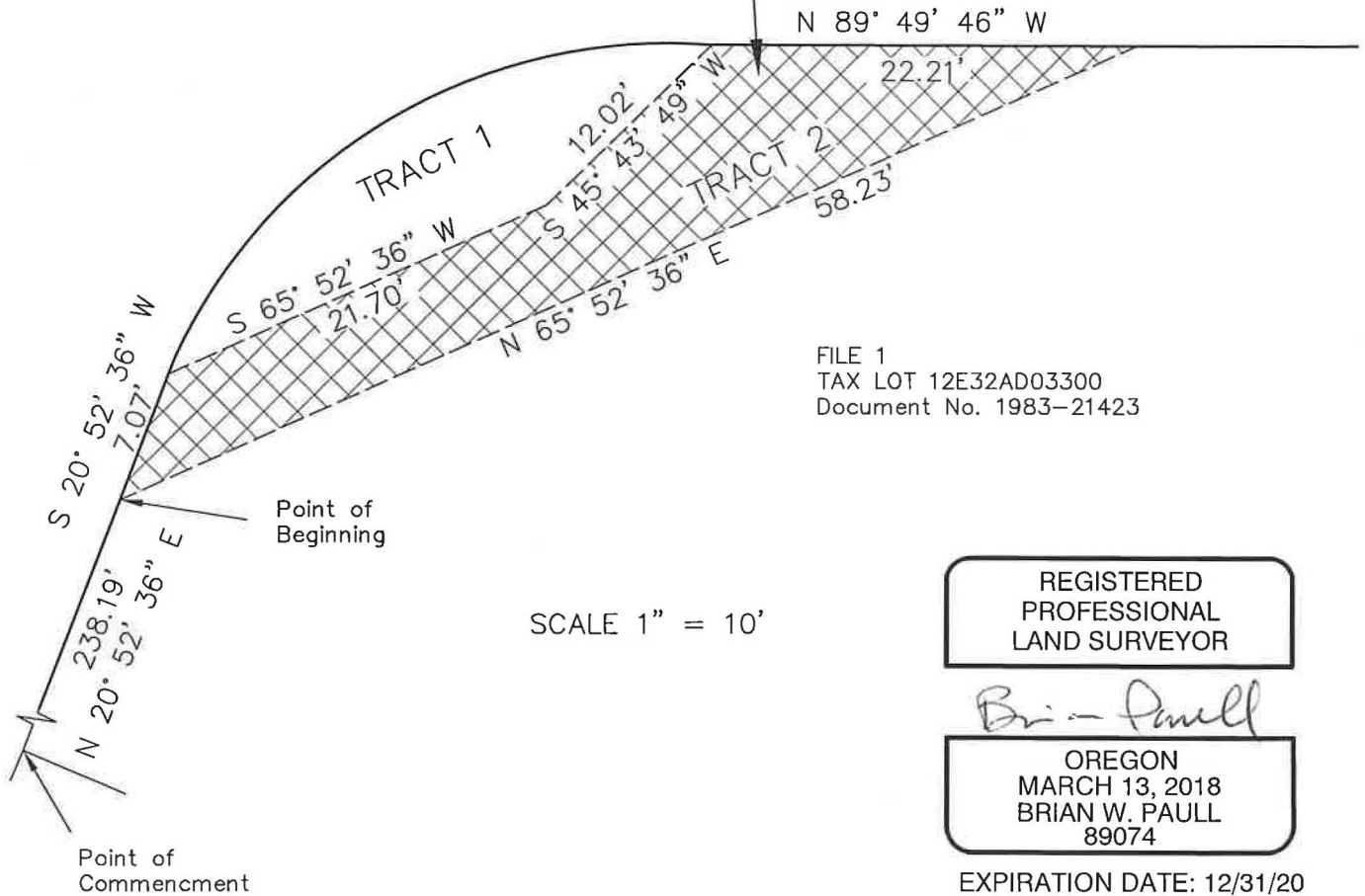
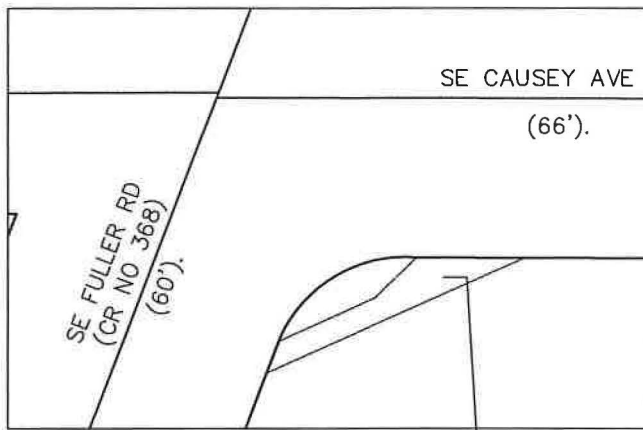
EXHIBIT "B-1"

SE FULLER ROAD AND SE HARMONY DR.

PAGE 1 OF 2

PERMANENT ROW EASEMENT

RD. FILE NO. C122289	DRAWN BY BWP	DESIGN BY BWP	DATE: 10-12-20
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FILE 1  
 TAX LOT 12E32AD03300  
 Document No. 1983-21423

SCALE 1" = 10'


REGISTERED  
 PROFESSIONAL  
 LAND SURVEYOR

*Brian W. Paull*

OREGON  
 MARCH 13, 2018  
 BRIAN W. PAULL  
 89074

EXPIRATION DATE: 12/31/20

LOCATED IN THE NORTHEAST 1/4 OF  
 SECTION 32 TOWNSHIP 1 SOUTH,  
 RANGE 2 EAST, W.M.  
 CLACKAMAS COUNTY, OREGON

 **TRACT 2**  
 TEMPORARY CONSTRUCTION  
 EASEMENT  
 AREA = 293 SF



DEPARTMENT OF  
 TRANSPORTATION  
 AND  
 DEVELOPMENT

EXHIBIT "B-1"

SE FULLER ROAD AND SE  
 HARMONY DR.

PAGE 2 OF 2

TEMPORARY CONSTRUCTION EASEMENT

RD. FILE NO. C122289	DRAWN BY BWP	DESIGN BY BWP	DATE: 12-09-20
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EXHIBIT "A-2"  
Page 1 of 2  
File 2  
December 9, 2020

**TRACT 1**  
**PERMANENT RIGHT OF WAY EASEMENT:**

A portion of that property described in Document No. 2018-074516 of the Clackamas County Deed records, located in the NE 1/4 of Section 32, Township 1 South, Range 2 East, Willamette Meridian, as shown on Exhibit 'B' attached hereto and by this reference made a part hereof, more particularly described as follows:

Beginning at a point at the intersection of the westerly right of way of SE Fuller Rd. (CR No. 368) and the southerly right of way of SE Harmony Dr; thence along said westerly right of way South 20°52'36" West 18.53 feet; thence leaving said westerly right of way line, North 44°52'04" West 24.41 feet to the southerly right of way line of said SE Harmony Dr; thence along said southerly right of way line North 89°57'55" East 23.83 feet to the Point of Beginning.

Containing 206 square feet, more or less.

Basis of Bearing: NAD83 2011 (epoch 2010) Oregon Coordinate Reference System, Portland Zone, Per OAR 734.

EXHIBIT "A-2"  
Page 2 of 2  
File 2  
December 9, 2020

**TRACT 2**  
**TEMPORARY CONSTRUCTION EASEMENT:**

A portion of that property described in Document No. 2018-074516 of the Clackamas County Deed records, located in the NE 1/4 of Section 32, Township 1 South, Range 2 East, Willamette Meridian, as shown on Exhibit 'B' attached hereto and by this reference made a part hereof, more particularly described as follows:

Commencing from a point at the intersection of the westerly right of way of SE Fuller Rd. (CR No. 368) and the southerly right of way of SE Harmony Dr; thence along said southerly right of way South 89°57'55" West 23.83 feet to the Point of Beginning; thence leaving said southerly right of way South 44°52'04" East 24.41 feet to the westerly right of way line of said SE Fuller Rd; thence along said westerly right of way line, South 20°52'36" West 5.48 feet; thence leaving said right of way line, North 44°52'04" West 31.64 feet to the southerly right of way line of said SE Harmony Dr; thence along said southerly right of way line, North 89°57'55" East 7.05 feet to the Point of Beginning.

Containing 140 square feet, more or less.

Basis of Bearing: NAD83 2011 (epoch 2010) Oregon Coordinate Reference System, Portland Zone, Per OAR 734.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Brian W. Paull*

OREGON  
MARCH 13, 2018  
BRIAN W. PAULL  
89074

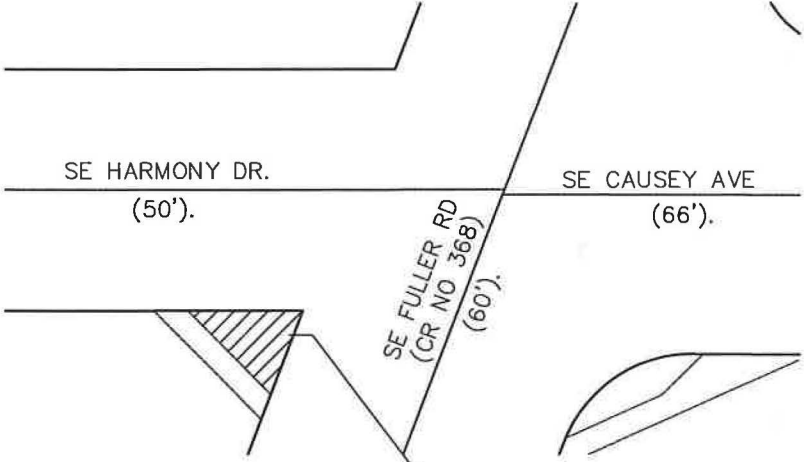
EXPIRATION DATE: 12-31-20

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

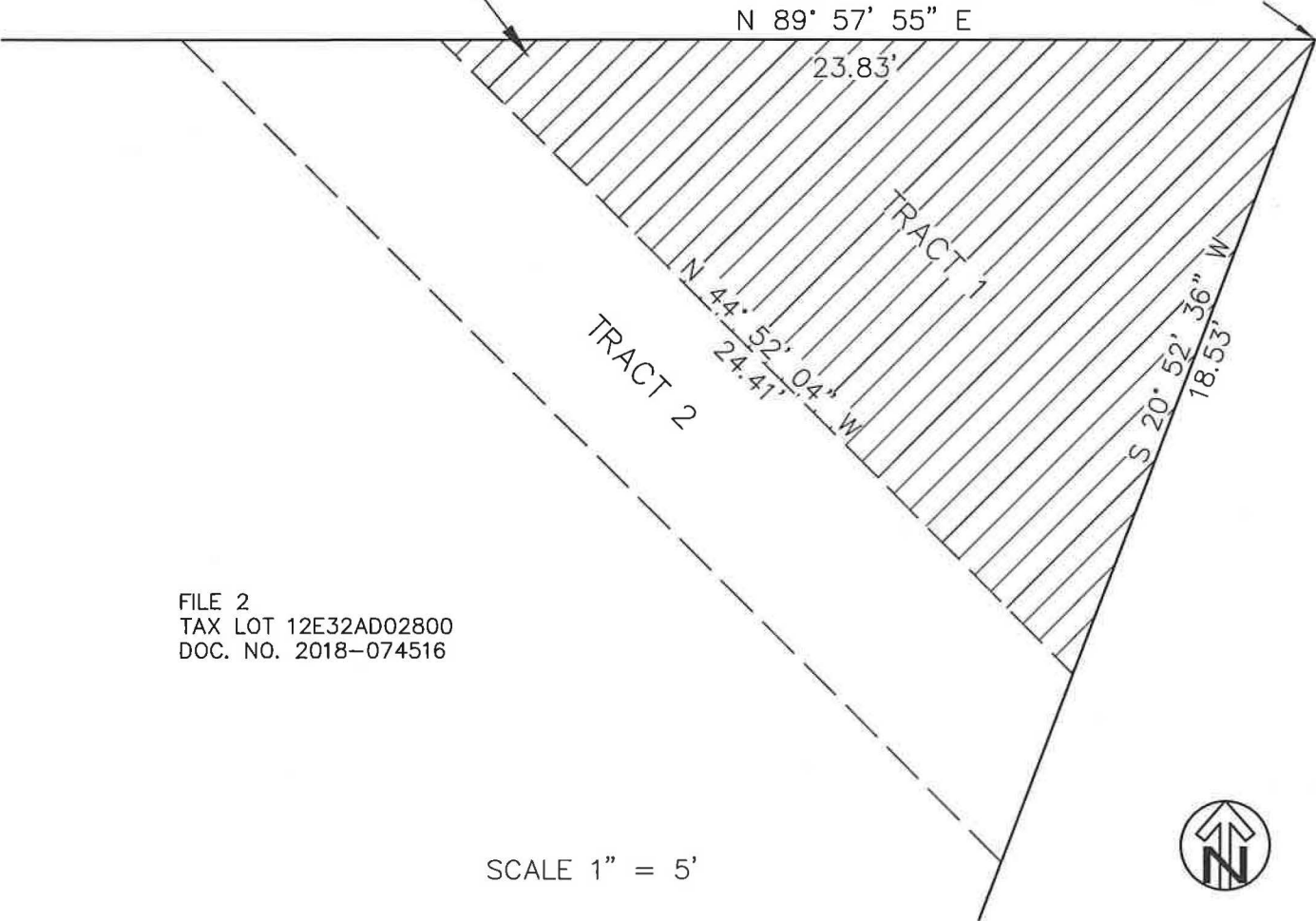
*Brian W. Paull*

OREGON  
MARCH 13, 2018  
BRIAN W. PAULL  
89074

EXPIRATION DATE: 12/31/20



Point of Beginning

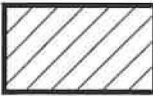



FILE 2  
TAX LOT 12E32AD02800  
DOC. NO. 2018-074516

SCALE 1" = 5'



LOCATED IN THE NORTHEAST 1/4 OF  
SECTION 32 TOWNSHIP 1 SOUTH,  
RANGE 2 EAST, W.M.  
CLACKAMAS COUNTY, OREGON

 **TRACT 1**  
PERMANENT RIGHT OF WAY  
EASEMENT  
AREA = 206 SF

  
**CLACKAMAS  
COUNTY**  
DEPARTMENT OF  
TRANSPORTATION  
AND  
DEVELOPMENT

**EXHIBIT "B-2"**  
SE FULLER ROAD AND SE  
HARMONY DR.  
PAGE 1 OF 2  
PERMANENT ROW EASEMENT

RD. FILE NO. C122289	DRAWN BY BWP	DESIGN BY BWP	DATE: 12-09-20
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SE HARMONY DR.  
(50').

SE CAUSEY AVE  
(66').

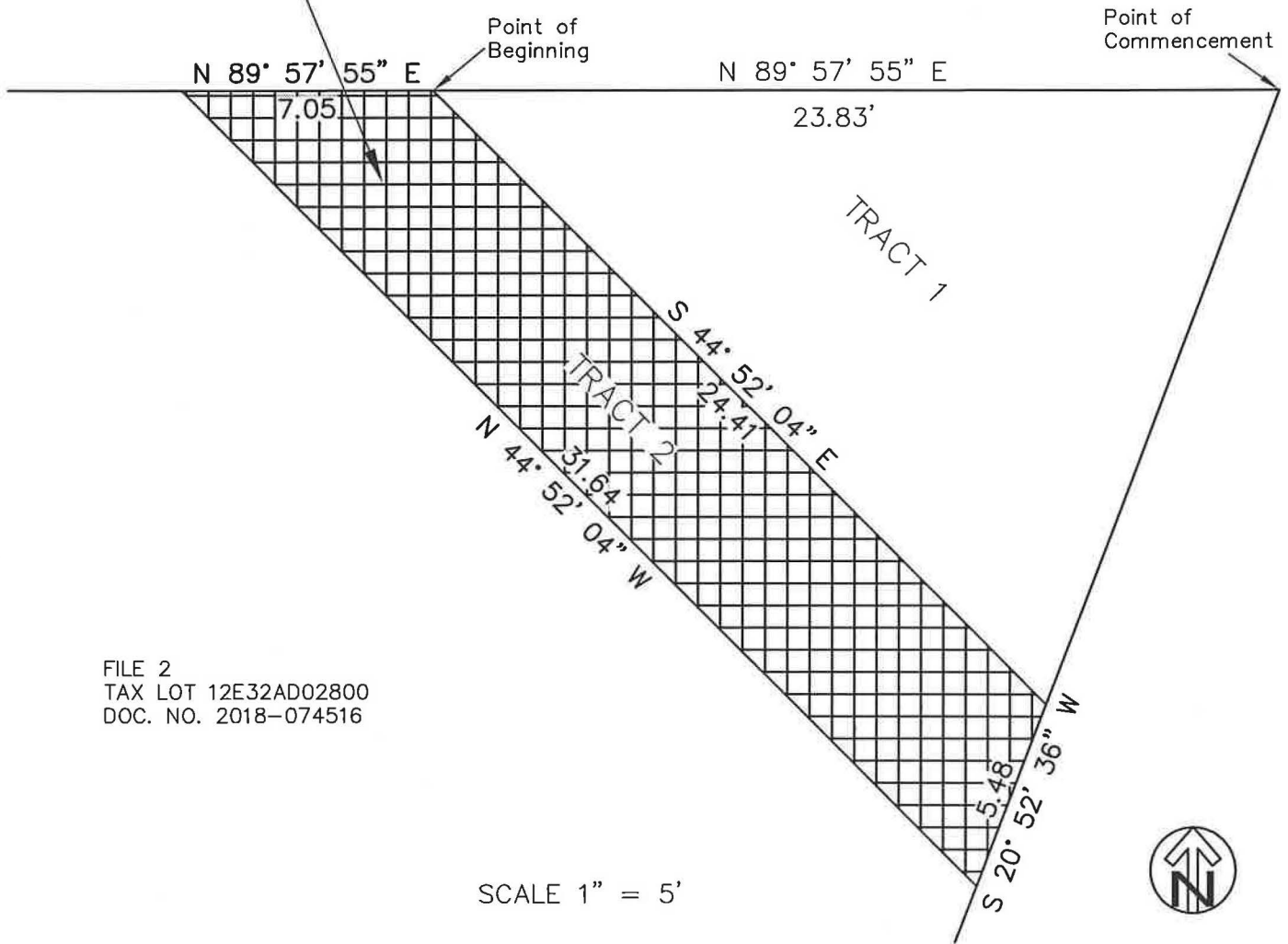
SE FULLER RD  
(CR NO 368)  
(60').

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Brian Paull*

OREGON  
MARCH 13, 2018  
BRIAN W. PAULL  
89074

EXPIRATION DATE: 12/31/20



FILE 2  
TAX LOT 12E32AD02800  
DOC. NO. 2018-074516

LOCATED IN THE NORTHEAST 1/4 OF  
SECTION 32 TOWNSHIP 1 SOUTH,  
RANGE 2 EAST, W.M.  
CLACKAMAS COUNTY, OREGON



TRACT 2  
TEMPORARY CONSTRUCTION  
EASEMENT  
AREA = 140 SF



DEPARTMENT OF  
TRANSPORTATION  
AND  
DEVELOPMENT

EXHIBIT "B-2"

SE FULLER ROAD AND SE  
HARMONY DR.

PAGE 2 OF 2

TEMPORARY CONSTRUCTION EASEMENT

RD. FILE NO. C122289	DRAWN BY BWP	DESIGN BY BWP	DATE: 12-09-20
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