



**DAN JOHNSON**  
DIRECTOR

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

April 11, 2019

Board of County Commissioners  
Clackamas County

Members of the Board:

A Board Order Accepting the Final Report and Setting a Public Hearing for  
Final Assessments for the Starview Lane LID

<b>Purpose/Outcomes</b>	Accepting the final report and setting a public hearing for the final assessments for the Starview Lane LID.
<b>Dollar Amount and Fiscal Impact</b>	Final construction cost is \$69,549.59. LID will reimburse \$65,549.59. DTD will contribute \$4,000.02
<b>Funding Source</b>	LID Construction Fund, paid for by a special assessment against the benefitting properties, with reimbursement from property owners through lump sum payment or financing over 10 years. Road Fund contribution.
<b>Duration</b>	Construction is complete. Reimbursement of LID cost through assessment financing payments may occur for up to 10 years.
<b>Previous Board Contact</b>	7/7/16 BCC Business Meeting – Order No. 2016-70 to proceed with construction of the Starview Lane LID improvements by contract.
<b>Strategic Plan Alignment</b>	Build a strong infrastructure.
<b>Counsel Review</b>	County Counsel has reviewed and approved on 04/02/2019
<b>Contact Person</b>	Kenneth Kent, DTD Engineering, Senior Planner 503-742-4673

**BACKGROUND:**

The Starview Lane LID was initiated by Board Resolution 2016-22. In accordance with ORS 371.615 and Ordinance 93-97, a Preliminary Feasibility Report was submitted and approved by Board Order 2016-43. Following a 20 day remonstrance period, the Board of County Commissioners approved Board Order 2016-70 to proceed with design and construction of the project. The improvements are now complete and a public hearing is being requested for Thursday May 2, 2019 at 10:00 A.M. in the 4<sup>th</sup> floor Hearing Room at the County Public Services Building, 2051 Kaen Rd., Oregon City, Oregon to hear the objections to the final assessments based on the completed improvements.

Costs of these improvements will be reimbursed by a special assessment against the properties benefited as set forth in the attached Board Order and Report.

**RECOMMENDATION:**

Staff recommends that the Board accept the attached Final Report for the Starview Lane LID, set the time and place for the final assessment hearing and direct the Department of

Transportation, as per the County LID Ordinance, #93-97, and ORS 371.645, to send written notice of the time and place for the hearing of objections and the amount of individual assessments to each property owner in the district.

Respectfully submitted,

Kenneth Kent, Senior Planner  
Department of Transportation and Development

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

In the Matter of Accepting the Final Report and Scheduling the Hearing of Objection to the Assessments Against Land Benefited by the Starview Lane LID improvement to Starview Lane in Sections 12B and 12C, T3, R3E, W.M., Clackamas County, Oregon

} Order No. \_\_\_\_\_  
Page 1 of 1

This matter coming before the Clackamas County Board of Commissioners at the regularly scheduled public meeting on April 11, 2019 to consider acceptance of the engineer's report required by ORS 371.645 and scheduling the Public Hearing of Objection to Assessments against land benefited by the Starview Lane LID improvements, located in Sections 12B and 12C, T3, R3E, W.M., Clackamas County, Oregon; and

**WHEREAS**, by Order No. 2016-70, in accordance with ORS 371.635, the Board of County Commissioners did order that the public road, Starview Lane, be improved by contract; and

**WHEREAS**, these improvements have been completed and the Director of the Department of Transportation and Development has ascertained the amount of the assessment proposed against each parcel of land benefiting from the improvement, as required by ORS 371.645 and has prepared a report of the same to the Board of County Commissioners.

**NOW, THEREFORE, the Clackamas County Board of Commissioners do hereby order:** that the engineer's report required by ORS 371.645 and attached to this order as Exhibit A is hereby accepted; and

**IT IS FURTHER ORDERED**, pursuant to the provisions of ORS 371.645, that Thursday, May 2, 2019 at 10 A.M. in the 4<sup>th</sup> floor Hearing Room at the County Public Services Building, 2051 SE Kaen Road, Oregon City, Oregon, be the time and place of hearing the objections to the final assessments based on the completed improvements; and

**IT IS FURTHER ORDERED**, that the Director of the Department of Transportation and Development send a written notice, to all benefiting property owners, of the time and place for the hearing of objections and the amounts of the completed costs of the improvement, and the final assessment (Exhibit A) based on the completed improvements for property benefited by the Starview Lane Local Improvement District.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Chair

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

# **EXHIBIT A**

COUNTY OF CLACKAMAS  
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
150 BEAVERCREEK ROAD  
OREGON CITY, OREGON 97045

**Final Report**  
**For**  
**Starview Lane**  
**Local Improvement District**

Kenneth Kent, Report Author  
Mike Bezner, Assistant Director  
Dan Johnson, Director

April 11, 2019

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April 11, 2019

Board of County Commissioners  
Clackamas County

SUBJECT: Submittal of Final Report for Starview Lane Local Improvement District

The improvements within the Starview Lane Local Improvement District have been completed.

The improvements consisted of street and storm drainage improvements acceptable to Clackamas County.

The statement of benefits and assessment formula applicable to the Starview Lane Local Improvement District and adopted by the Board of County Commissioners in Order No. 2016-43 is included in this report.

Based on the preliminary estimate of costs of the improvements, the basis for the estimated assessments was as follows:

Construction	\$36,482
<u>Engineering and Administration</u>	<u>\$12,769</u>
<b>TOTAL ESTIMATED COST</b>	<b>\$49,251</b>

The project was divided into three zones (A,B and C) with properties contributing a percentage of the costs based on a length of road travelled basis.

16 shares at \$2,704.80/share (Sections A+B+C)  
2 shares at \$2,212.29/share (Sections A+B)  
1 share at \$1,549.59/share (Section A)

19 Total Shares

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Based on the completed costs of the improvements, the basis for the final assessments is as follows:

Construction	\$69,549.59
LID Assessment	\$65,549.59
<u>DTD Contribution</u>	<u>\$4,000.02</u>
<b>TOTAL FINAL LID PROJECT COST</b>	<b>\$65,549.59</b>

Road and Storm Drainage Improvements; 19 shares, consisting of one share at \$2,064.81, two shares at \$2,943.18, and sixteen shares at \$3,599.90

## REVISED DESIGN AND FINAL COSTS

The cost of construction for this project increased over the estimated amount at the time of the preliminary assessment notification. This was due to a recommended design change at the time of contract bidding. Staff recommended a revised design that would result in an improved overall project for the neighborhood as well as a competitive bid package. The original design consisted of repairs to the road base and asphalt patching of eight individual sections of the road, leaving existing asphalt sections between the repair areas. The revised design proposed by staff consisted of base repair to five key sections of the road, and a full width asphalt overlay along the entire project length. The revised design increased the overall cost of the LID and the changes were presented to the property owners. Staff worked with the neighborhood to adjust engineering and administrative costs charged to the LID and there was agreement to proceed with competitive bid and construction.

Following completion of project construction, the LID representatives identified areas of the project that required warranty work. Staff worked with the LID representatives and the contractor to resolve the issues. Although, the work met contract specifications following completion of warranty work, staff agreed to further adjust the costs charged to the LID to address the concerns of the LID owners. As a result, staff is recommending that the Board authorize a contribution of \$4000.02 from DTD to offset LID construction costs.

Pursuant to ORS 371.645, I request that a hearing for objections to the proposed final assessment be set for 10 A.M., Thursday, May 2, 2019, in the 4<sup>th</sup> Floor Hearing Room, County Public Services Building, 2051 Kaen Rd., Oregon City, Oregon. Objections shall be submitted in written form.

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KENNETH KENT – LID Program Manager  
Department of Transportation and Development

Attachments

**FINAL COSTS  
FOR  
STARVIEW LANE LID**

Item	Unit	Quantity actual	Unit Price	Total Price
Mobilization	LS	1	\$5,500.00	\$5,500.00
Temporary Work Zone Traffic Control	LS	1	\$1,000.00	\$1,000.00
Removal of Structures and Obstructions	LS	1	\$10,000.00	\$10,000.00
12" Subgrade Stabilization	SY	24	\$59.00	\$1,416.00
Subgrade Geotextile	SY	438.61	\$2.00	\$877.22
4" ADS Storm Pipe, Perforated	FT	35	\$65.00	\$2,275.00
3/4"-0 Aggregate Base	Ton	160.71	\$53.00	\$8,517.63
1-1/2"-3/4" Drain Rock	Ton	7.26	\$70.00	\$508.20
Level 2, 1/2" ACP Mixture	Ton	317.70	\$105.00	\$33,358.50
Additional Dig Out	LS	1	\$1,609.65	\$3,000.00
Ditch Clean Out	LS	1	\$4,487.39	\$4,487.39
<b>Total Construction Costs</b>				<b>\$69,549.59</b>

CONSTRUCTION COST	\$69,549.59
<u>LID REBURSEMENT</u>	<u>\$65,549.57</u>
DTD CONTRIBUTION	\$4000.02



**STARVIEW LANE  
LOCAL IMPROVEMENT DISTRICT**

**ASSESSMENT POLICY  
FOR  
ROADWAY IMPROVEMENTS**

**ASSESSMENT METHOD**

The following is the recommended statement of benefits and assessment formula applicable to the Starview Lane Local Improvement District.

A special benefit is derived by the entirety of all properties within the Starview Lane Local Improvement District because of the accessibility of the roadway.

All parcels within the improvement district will be assessed shares based on the costs associated with three sections of improvements, A, B and C, on a length of road travelled basis.

**Section A** = 59.85% of Total Project Cost

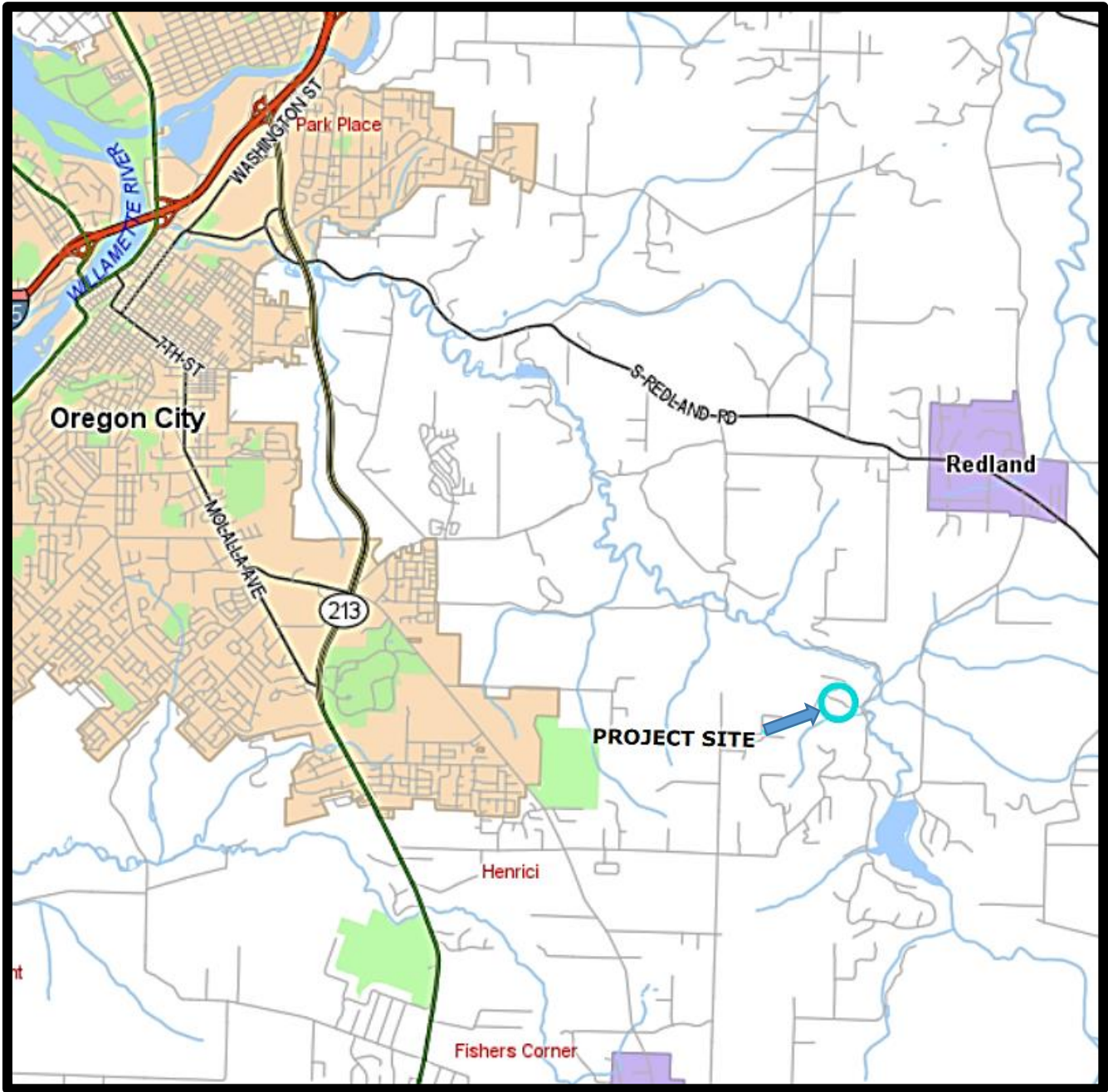
All 19 Properties pay equal shares

**Section B** = 24.12% of Total Project Cost

18 of 19 Properties pay equal shares  
(excluding 19623 S Creek Rd.)

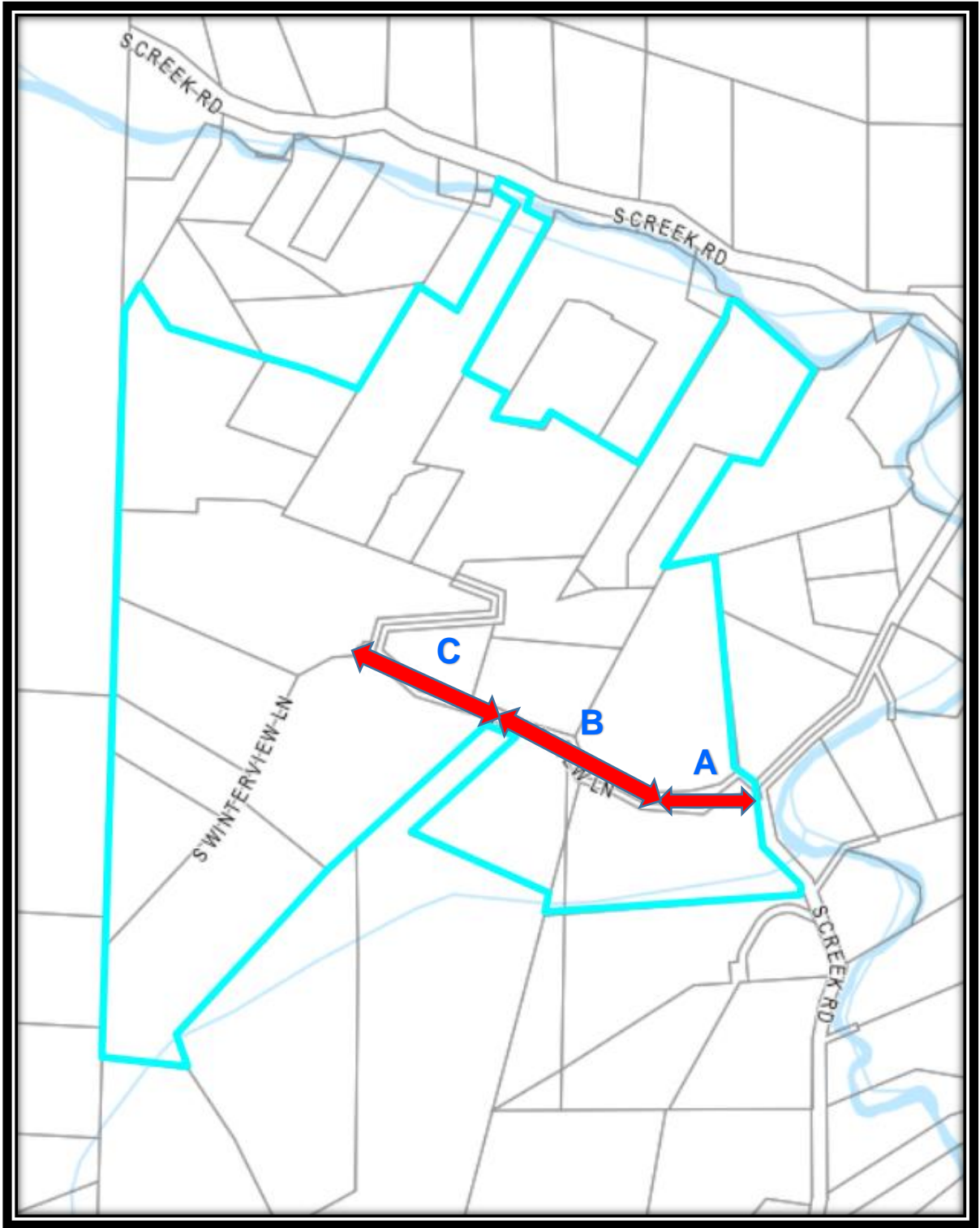
**Section C** = 16% of Total Project Cost

16 of 19 Properties pay equal shares  
(excluding 19623 Creek Rd, 19505 Starview Ln and 19496 Starview Ln)





**VICINITY MAP**  
**STARVIEW LANE LID**





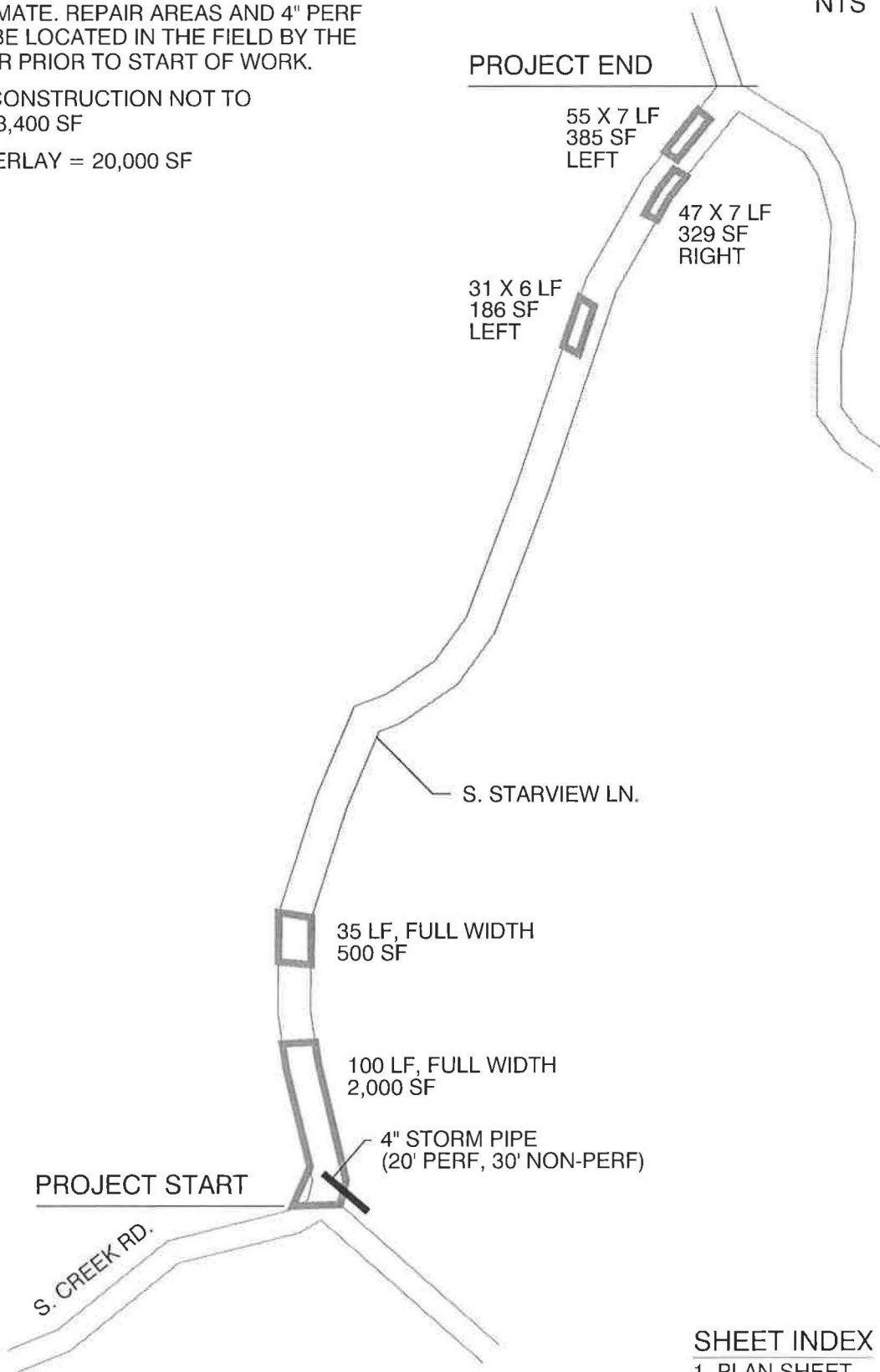
### Proposed Starview Lane LID

-  District Boundary
-  Project Limits (Sections A, B & C)



NOTES:

1. ALL LOCATIONS AND DIMENSIONS ARE APPROXIMATE. REPAIR AREAS AND 4" PERF PIPE TO BE LOCATED IN THE FIELD BY THE ENGINEER PRIOR TO START OF WORK.
2. FULL RECONSTRUCTION NOT TO EXCEED 3,400 SF
3. 2" AC OVERLAY = 20,000 SF



**SHEET INDEX**  
 1. PLAN SHEET  
 2. SECTIONS AND DETAIL

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REVISION	DATE	BY

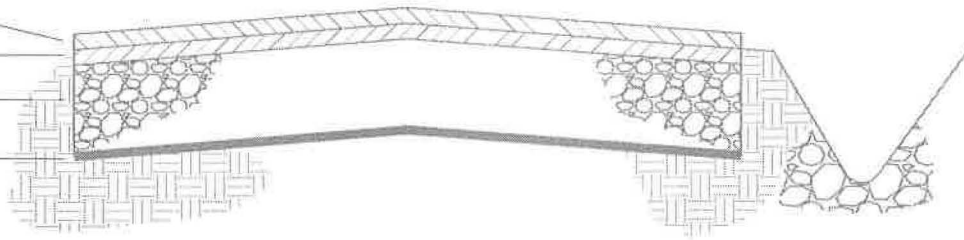
DEPARTMENT OF TRANSPORTATION  
 AND DEVELOPMENT  
 150 BEAVERCREEK ROAD  
 OREGON CITY, OR 97045



10/10/17 SCALE: N.T.S.  
**PLAN SHEET**  
**S. STARVIEW LANE**  
**PAVING PROJECT**

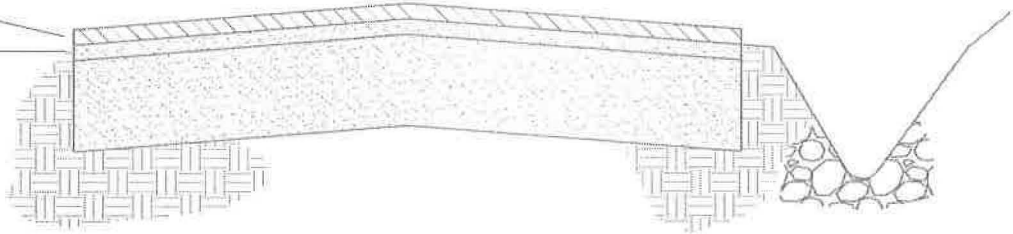
SHEET  
**1**

2" AC  
 2" AC  
 3/4" AGG, 8" DEEP  
 GEO FABRIC

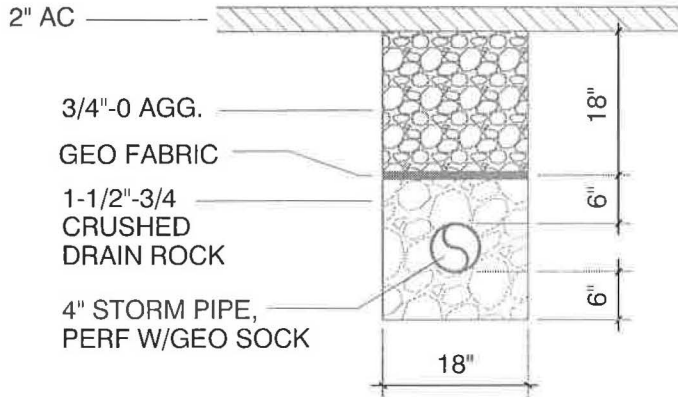


TYPICAL ROAD SECTION  
FULL RECONSTRUCTION  
 NTS

2" AC  
 EXISTING AC



TYPICAL ROAD SECTION  
OVERLAY ONLY  
 NTS



TRENCH AND BACKFILL  
 NTS

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REVISION	DATE	BY

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



10/10/17 SCALE: N.T.S.  
 SECTIONS AND DETAILS  
 S. STARVIEW LANE  
 PAVING PROJECT

SHEET  
 2

**STARVIEW LANE  
LOCAL IMPROVEMENT DISTRICT  
ASSESSMENT RATES  
April 2019**

TOTAL LID COST	\$69,549.59
LID ASSESSMENT	\$65,549.57
DTD CONTRIBUTION	\$4,000.02
NUMBER OF SHARES	19
COST/SHARE Section A (one share)	\$2,064.81
COST/SHARE Section A+B (two shares)	\$2,943.18
COST/SHARE Section A+B+C (sixteen shares)	\$3,599.90

PROPERTY OWNER	TAX LOT	ASSESSABLE SHARE	TOTAL ASSESSMENT
ANDERSON ARNOLD W & SANDRA J 19623 S CREEK ROAD OREGON CITY, OREGON 97045	32E12C 01700	A	\$2,064.81
CARTER LAURIE 19496 S STARVIEW LANE OREGON CITY, OREGON 97045	32E12B 02702	A+B	\$2,943.18
MELLIS JAMES 19505 S STARVIEW LANE OREGON CITY, OREGON 97045	32E12C 01801	A+B	\$2,943.18
SORENSEN PAUL J & SUSAN M 19300 S STARVIEW LANE OREGON CITY, OREGON 97045	32E12B 03501	A+B+C	\$3,599.90
GARFIELD SCOTT D CO-TRUSTEE 19322 S STARVIEW LANE OREGON CITY, OREGON 97045	32E12B 03400	A+B+C	\$3,599.90
WILLIAMSON DALE A 19333 S STARVIEW LANE OREGON CITY, OREGON 97045	32E12B 03301	A+B+C	\$3,599.90
SPEASL JUSTIN A & TABITHA B 19344 S STARVIEW LANE OREGON CITY, OREGON 97045	32E12B 03300	A+B+C	\$3,599.90
CHESS JILL 19388 S STARVIEW LANE OREGON CITY, OREGON 97045	32E12B 02902	A+B+C	\$3,599.90
ANDERSON LEONARD J & DEBBIE 19440 S STARVIEW LANE OREGON CITY, OREGON 97045	32E12B 02700	A+B+C	\$3,599.90
BOYCE NICHOLAS G & KIMBERLY M	32E12B 03003	A+B+C	\$3,599.90

19464 S STARVIEW LANE OREGON CITY, OREGON 97045			
LAWRENCE RUSSELL A & CAROL A 19478 S STARVIEW LANE OREGON CITY, OREGON 97045	32E12B 02703	A+B+C	\$3,599.90
TRACY PENNY M 19416 S STARVIEW LANE OREGON CITY, OREGON 97045	32E12B 02902	A+B+C	\$3,599.90
SMITH CASEY LEE & JULIE LEE 17001 S WINTERVIEW LANE OREGON CITY, OREGON 97045	32E12B 03502	A+B+C	\$3,599.90
GALLAGHER JOHN & KIM H 17041 S WINTERVIEW LANE OREGON CITY, OREGON 97045	32E12C 01902	A+B+C	\$3,599.90
PAULSON LON & CHARLENE 17100 S WINTERVIEW LANE OREGON CITY, OREGON 97045	32E12C 01900	A+B+C	\$3,599.90
HAMBERG KURTIS & JOY 17105 S WINTERVIEW LANE OREGON CITY, OREGON 97045	32E12C 01903	A+B+C	\$3,599.90
SIMMONS KEITH 17171 S WINTERVIEW LANE OREGON CITY, OREGON 97045	32E12C 01904	A+B+C	\$3,599.90
KUYKENDALL DALE A & DIANNE M 17200 S WINTERVIEW LANE OREGON CITY, OREGON 97045	32E12C 01905	A+B+C	\$3,599.90
MARCHISIO DARREN & SUSAN 17223 S WINTERVIEW LANE OREGON CITY, OREGON 97045	32E12C 01901	A+B+C	\$3,599.90

Totals: 19 Owners

Total Assessment: \$65,549.57



**DAN JOHNSON**  
DIRECTOR

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

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of a Contract with Parametrix, Inc. for the  
Oak Grove-Lake Oswego Pedestrian/Bicycle Bridge Feasibility Study**

<b>Purpose/Outcomes</b>	This contract will provide a feasibility study for the Oak Grove to Lake Oswego pedestrian/bicycle bridge.
<b>Dollar Amount and Fiscal Impact</b>	Total Contract value is \$281,000.00
<b>Funding Source</b>	215-7442-02120-431000-0
<b>Duration</b>	Contract execution through June 30, 2020
<b>Previous Board Action</b>	DTD applied for and was awarded a Metro Active Transportation Development Funds in the amount of \$306,000 to conduct a feasibility study for the Oak Grove-Lake Oswego Pedestrian/Bicycle Bridge (TSP project #2022). The Intergovernmental Agreement between Metro and Clackamas County for that funding was approved by the Board at their Business Meeting on September 20, 2018.
<b>Strategic Plan Alignment</b>	-Ensure safe, healthy and secure communities -Build a string infrastructure
<b>Contact Person</b>	Stephen Williams, Transportation Planner, 503-742-4696

**Background:**

The project is intended to conduct engineering analysis to identify the most likely location for a pedestrian and bicycle bridge and determine project feasibility. The project will also provide a planning level cost estimate, scope of work for future environmental studies and permitting, and a plan for intergovernmental coordination on the development and long term maintenance of the proposed bridge. In addition, the study will include an inclusive public engagement process. Discussions with Metro staff indicate a strong willingness on their part to provide additional funding for project development activities on this project, if this study shows that the project is feasible. The approved IGA between Metro and Clackamas County dictates the scope of work and products for the project. This agreement primarily translates the agreed upon scope of work into descriptions of products to be produced by the consultant team. A key aspect of this procurement is the inclusion of a series of contingent phases. Based on previous discussions with Procurement Division and with Metro, this procurement has been structured to allow the project to proceed with the same engineering/design team through the entire project process contingent upon on-going agreement that the project is feasible, availability of funding and satisfactory completion of previous phases.

**Procurement Process:**

This project was advertised in accordance with ORS and LCRB Rules on November 8, 2018. Proposals were opened on December 12, 2018. The County received three (3) Proposals: Parametrix, Inc.; David Evans and Associates, Inc.; and Harper Houf Peterson Righellis, Inc. Upon evaluation of the submitted proposals, the Evaluation Committee chose to interview the top two (2) proposers. After the interviews, it was determined that Parametrix, Inc. was the highest scoring proposer. Following



award, the Project Manager entered into negotiations with Parametrix, Inc. and developed a final statement of work along with final billing rates and a contract total value.

This contract has been reviewed and approved by County Counsel.

**Recommendation:**

Staff respectfully recommends that the Board approves and signs this Professional Services Contract with Parametrix, Inc. for the Oak Grove-Lake Oswego Pedestrian/Bicycle Bridge Feasibility Study.

Sincerely,



Stephen Williams

Placed on the BCC Agenda \_\_\_\_\_ by Procurement



CLACKAMAS COUNTY
PERSONAL/PROFESSIONAL SERVICES CONTRACT

This Personal/Professional Services Contract (this "Contract") is entered into between Parametrix, Inc. ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County") on behalf of the Department of Transportation and Development.

ARTICLE I.

1. Effective Date and Duration. This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on June 30, 2020. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

2. Scope of Work. Contractor will provide the following personal/professional services: Oak Grove-Lake Oswego Pedestrian/Bicycle Bridge Feasibility Study ("Work"), further described in Exhibit A.

3. Consideration. The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed two hundred eighty-one thousand dollars (\$281,000.00), for accomplishing the Work required by this Contract. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.

4. Travel and Other Expense. Authorized: [ ] Yes [x] No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: http://www.clackamas.us/bids/terms.html. Travel expense reimbursement is not in excess of the not to exceed consideration.

5. Contract Documents. This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibits A, B, C, D, E, and F.

6. Contractor Data.

Parametrix, Inc.

Address: 1019 39th Ave

Contractor Contract Administrator: Mike Pyszka

Phone No.: 503-233-2400

Email: mpyszka@parametrix.com

MWESB Certification: [ ] DBE # [ ] MBE # [ ] WBE # [ ] ESB #

Payment information will be reported to the Internal Revenue Service ("IRS") under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Contractor to backup withholding.

## ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the Work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.
5. **EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
6. **GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

- 7. HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- 8. INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, or from any negligent act, or omission of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, and hold harmless the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the negligent errors, omissions, or fault of the Contractor or the Contractor's employees, subcontractors, or agents.
- 9. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits; and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656. (Also see Exhibit C)
- 10. INSURANCE.** Contractor shall provide insurance as indicated on **Exhibit B**, attached hereto and by this reference made a part hereof. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon.
- 11. LIMITATION OF LIABILITIES.** Neither party shall be liable for any indirect, incidental, consequential or special damages under this Contract. Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- 12. NOTICES.** Except as otherwise expressly provided in this Contract, 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 the County at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or [procurement@clackamas.us](mailto:procurement@clackamas.us), or to Contractor at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any

communication or notice by personal delivery shall be deemed to be given when actually delivered.

- 13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the “Work Product”) is the exclusive property of County. County and Contractor intend that such Work Product be deemed “work made for hire” of which County shall be deemed the author. If for any reason the Work Product is not deemed “work made for hire,” Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- 14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the customary professional standards; and (D) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Paragraphs 1, 6, 8, 11, 13, 14, 15, and 21.
- 16. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Paragraphs 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County’s consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor’s warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this

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

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

**20. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the County is prohibited from paying for such Work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the Work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

**21. REMEDIES.** (A) In the event of termination pursuant to Article II Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs

otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.

- 22. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 23. TIME IS OF THE ESSENCE.** Time is a material consideration in the performance of all work by the Contractor under this agreement. The contractor shall complete its work and services within the agreed upon schedule.
- 24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 25. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 26. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 27. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:
- (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.
  - (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of this Contract.
  - (C) The Contractor shall pay employees for Work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default.
  - (D) The Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care, or other needed care and





**EXHIBIT A**  
**PERSONAL/PROFESSIONAL SERVICES CONTRACT**

**SCOPE OF WORK**

Contractor shall provide a feasibility study for the Oak Grove-Lake Oswego Pedestrian/Bicycle Bridge as outlined in the Request for Proposal #2018-117, issued November 8, 2018, hereby attached as incorporated as **Exhibit D**; the Vendors Response/Statement of Work hereby attached and incorporated as **Exhibit E**; and the Vendor Rate Schedule hereby attached and incorporated as **Exhibit F**.

The County Contract administrator for this Contract is: Stephen Williams.

**CONSIDERATION**

- a. Consideration Rates –Tim &Material as detailed in Exhibit F.
- b. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of \$281,000.00 Invoices shall be submitted to: Clackamas County Department of Transportation and Development, 150 Beaver Creek Road, Oregon City, Oregon 97045 or via email at
- c. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made to Contractor following the County's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.
- d. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.

**EXHIBIT B  
INSURANCE**

During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below:

**1. Required by County of Contractor with one or more workers, as defined by ORS 656.027.**

**Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.**

**2.  Required by County     Not required by County**

**Professional Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. The policy must provide extending reporting period coverage for claims made within two years after the contract is completed.

**3.  Required by County     Not required by County**

**General Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract.

**4.  Required by County     Not required by County**

**Automobile Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each accident for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

**5. Certificates of Insurance.** Contractor shall furnish evidence of the insurance required in this Contract. The insurance for general liability and automobile liability must include an endorsement naming the County, its officers, elected officials, agents, and employees as additional insureds with respect to the Work under this Contract. Insuring companies or entities are subject to County acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the County. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

**6. Notice of cancellation or change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the County at the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or [procurement@clackamas.us](mailto:procurement@clackamas.us).

**EXHIBIT C**  
**CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR**

(Contractor completes if Contractor is not a corporation or is a Professional Corporation)

Contractor certifies he/she is independent as defined in Oregon Revised Statutes 670.600 and meets the following standards that the Contractor is:

1. Free from direction and control, beyond the right of the County to specify the desired result; **AND**
2. Are licensed if licensure is required for the services; **AND**
3. Are responsible for other licenses or certificates necessary to provide the services **AND**
4. Are customarily engaged in an “independently established business.”

To qualify under the law, an “independently established business” must meet three (3) out of the following five (5) criteria. **Check as applicable:**

- \_\_\_\_\_ A. Maintains a business location that is: (a) Separate from the business or work of the County; or (b) that is in a portion of their own residence that is used primarily for business.
- \_\_\_\_\_ B. Bears the risk of loss, shown by factors such as: (a) Entering into fixed price contracts; (b) Being required to correct defective work; (c) Warranting the services provided; or (d) Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
- \_\_\_\_\_ C. Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- \_\_\_\_\_ D. Makes significant investment in the business through means such as: (a) Purchasing tools or equipment necessary to provide the services; (b) Paying for the premises or facilities where the services are provided; or (c) Paying for licenses, certificates or specialized training required to provide the services.
- \_\_\_\_\_ E. Has the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

1. A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C is not required to meet the independently established business requirements.
2. Establishing a business entity such as a corporation or limited liability company, does not, by itself, establish that the individual providing services will be considered an independent contractor.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_

**EXHIBIT D**  
**RFP #2018-117**  
**Oak Grove-Lake Oswego Pedestrian/Bicycle Bridge Feasibility Study**  
**Issued November 8, 2018**

**EXHIBIT E**  
**Vendors Response/Negotiated Statement of Work**

## Negotiated Statement of Work

**EXHIBIT F**  
**Rate Schedule**



**DAN JOHNSON**  
DIRECTOR

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

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of a Contract with Murraysmith, Inc. for  
Design Services for ADA Improvements**

<b>Purpose/Outcomes</b>	This contract will provide Design Services for ADA Improvements along Oak Grove Blvd and Sunnyside Road.
<b>Dollar Amount and Fiscal Impact</b>	Total Contract value is \$424,664.00. Oak Grove Blvd: \$111,232.00 for non-contingent items and \$12,938.00 for two contingent tasks. Sunnyside Road: \$285,769.00 for non-contingent items and \$14,725.00 for one contingent tasks.
<b>Funding Source</b>	215-7432-02040-481180-22238 - \$124,170.00 215-7432-02040-481180-22280 - \$300,494.00 County Road Funds
<b>Duration</b>	Contract execution through June 30, 2020
<b>Previous Board Action</b>	None
<b>Strategic Plan Alignment</b>	-Build a strong infrastructure -Ensure safe, healthy and secure communities
<b>Counsel Review</b>	Reviewed and approved by County Counsel.
<b>Contact Person</b>	Joel Howie, Civil Engineering Supervisor, 503-742-4658

**Background:**

The Department of Transportation and Development (DTD), requires services of a qualified consultant to provide survey, right-of-way mapping, and design services for ADA improvements along Oak Grove Boulevard as part of implementing an ADA compliant access route along Oak Grove Boulevard between River Road and Oatfield Road. Also, DTD is planning pavement improvements along Sunnyside Road and desires a qualified consultant to evaluate existing ADA conditions and provide recommendations for ADA improvements and to develop plans, specifications and estimates in advance of the pavement improvements.

On Oak Grove Boulevard, 22 curb ramps (17 intersection corners) are planned to be upgraded and two mid-block crossings will be constructed. On Sunnyside Road, between SE 132<sup>nd</sup> Avenue and SE 162<sup>nd</sup> Avenue, an anticipated total of 36 corners (12 non-signalized and 24 signalized) are planned to be inventoried for compliance and likely replaced to meet current ADA requirements. Each location is planned for construction in the spring of 2020.

**Procurement Process:**

This project was advertised in accordance with ORS and LCRB Rules on October 1, 2018. Proposals were opened on October 23, 2018. The County received two (2) Proposals: Murraysmith, Inc. and Westlake Consultants. Upon evaluation of the submitted proposals, a DTD evaluation committee scored Murraysmith, Inc. the highest and recommend a contract be awarded. Following award, DTD



entered into negotiations with Murraysmith, Inc. and developed a final statement of work along with final billing rates and a contract total value.

**Recommendation:**

Staff respectfully recommends that the Board approves and signs this professional services contract with Murraysmith, Inc. for the Design Services for ADA Improvements.

Sincerely,

Joel Howie,  
Project Manager

Placed on the BCC Agenda \_\_\_\_\_ by Procurement



CLACKAMAS COUNTY
PERSONAL/PROFESSIONAL SERVICES CONTRACT

This Personal/Professional Services Contract (this "Contract") is entered into between Murraysmith, Inc. ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County") on behalf of the Department of Transportation and Development.

ARTICLE I.

1. Effective Date and Duration. This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on June 30, 2020. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

2. Scope of Work. Contractor will provide the following personal/professional services: #2018-90 Design Services for ADA Improvements ("Work") for Oak Grove Boulevard and Sunnyside Road, further described in Exhibit A.

3. Consideration. The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed four hundred twenty-four thousand six hundred sixty-four dollars (\$424,664.00), for accomplishing the Work required by this Contract. Contract total includes totals for Oak Grove Boulevard and Sunnyside Road. Tasks within the Oak Grove Boulevard consists of \$111,232.00 for non-contingent items, \$7,089.00 for optional task 2.3- Post Construction Survey, and \$5,849.00 for optional task 6- Construction Phase Services. Tasks within the Sunnyside Road consists of \$285,769.00 for non-contingent items and \$14,725.00 for optional task 3.4- Boundary Resolution. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.

4. Travel and Other Expense. Authorized: [X] Yes [ ] No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: http://www.clackamas.us/bids/terms.html. Travel expense reimbursement is not in excess of the not to exceed consideration.

5. Contract Documents. This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibits A, B, C, D, E, and F.

6. Contractor Data.

Murraysmith, Inc.

Address: 888 SW 5th, suite 1170
Portland, Oregon 97204

Contractor Contract Administrator: Troy Bowers, PE

Phone No.: 503-225-9010

Email: troy.bowers@murraysmith.us

MWESB Certification: [ ] DBE # [ ] MBE # [ ] WBE # [ ] ESB #

Payment information will be reported to the Internal Revenue Service ("IRS") under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Contractor to backup withholding.

## ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the Work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.
5. **EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
6. **GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

- 7. HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- 8. INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, or from any negligent act, or omission of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, and hold harmless the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the negligent errors, omissions, or fault of the Contractor or the Contractor's employees, subcontractors, or agents.
- 9. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits; and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656. (Also see Exhibit C)
- 10. INSURANCE.** Contractor shall provide insurance as indicated on **Exhibit B**, attached hereto and by this reference made a part hereof. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon.
- 11. LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- 12. NOTICES.** Except as otherwise expressly provided in this Contract, 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 the County at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or [procurement@clackamas.us](mailto:procurement@clackamas.us), or to Contractor at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

- 13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the “Work Product”) is the exclusive property of County. County and Contractor intend that such Work Product be deemed “work made for hire” of which County shall be deemed the author. If for any reason the Work Product is not deemed “work made for hire,” Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- 14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the customary professional standards; and (D) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Paragraphs 1, 6, 8, 11, 13, 14, 15, and 21.
- 16. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Paragraphs 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County’s consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor’s warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due

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

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

- 20. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the County is prohibited from paying for such Work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the Work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.
- 21. REMEDIES.** (A) In the event of termination pursuant to Article II Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or

would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.

- 22. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 25. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 26. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 27. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:
- (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.
- (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of this Contract.
- (C) The Contractor shall pay employees for Work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default.
- (D) The Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care, or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor





**EXHIBIT A**  
**PERSONAL/PROFESSIONAL SERVICES CONTRACT**

**SCOPE OF WORK**

Contractor shall provide Design Services for ADA Improvements as outlined in the Request for Proposal #2018-90 issued October 23, 2018, hereby attached as incorporated as **Exhibit D**; the Vendors Response and final negotiated Statement of Work hereby attached and incorporated as **Exhibit E**; and the Fee Schedule hereby attached and incorporated as **Exhibit F**.

The County Contract administrator for this Contract is: Joel Howie

**CONSIDERATION**

- a. Consideration Rates – Time and Material as detailed in **Exhibit F**.
- b. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of **(\$424,664.00)**, for accomplishing the Work required by this Contract. Contract total includes totals for Oak Grove Boulevard and Sunnyside Road. Tasks within the Oak Grove Boulevard consists of \$111,232.00 for non-contingent items, \$7,089.00 for optional task 2.3- Post Construction Survey, and \$5,849.00 for optional task 6- Construction Phase Services. Tasks within the Sunnyside Road consists of \$285,769.00 for non-contingent items and \$14,725.00 for optional task 3.4- Boundary Resolution. Invoices shall be submitted to: Clackamas County Department of Transportation and Development, 150, Beaver Creek Road, Oregon City, Oregon 97045 or via email [jhowie@clackamas.us](mailto:jhowie@clackamas.us).
- c. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made to Contractor following the County's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.
- d. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.

**EXHIBIT B  
INSURANCE**

During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below:

**1. Required by County of Contractor with one or more workers, as defined by ORS 656.027.**

**Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.**

**2.  Required by County     Not required by County**

**Professional Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. The policy must provide extending reporting period coverage for claims made within two years after the contract is completed.

**3.  Required by County     Not required by County**

**General Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract.

**4.  Required by County     Not required by County**

**Automobile Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each accident for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

**5. Certificates of Insurance.** Contractor shall furnish evidence of the insurance required in this Contract. The insurance for general liability and automobile liability must include an endorsement naming the County, its officers, elected officials, agents, and employees as additional insureds with respect to the Work under this Contract. Insuring companies or entities are subject to County acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the County. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

**6. Notice of cancellation or change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the County at the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or [procurement@clackamas.us](mailto:procurement@clackamas.us).

**EXHIBIT C**  
**CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR**

(Contractor completes if Contractor is not a corporation or is a Professional Corporation)

Contractor certifies he/she is independent as defined in Oregon Revised Statutes 670.600 and meets the following standards that the Contractor is:

1. Free from direction and control, beyond the right of the County to specify the desired result; **AND**
2. Are licensed if licensure is required for the services; **AND**
3. Are responsible for other licenses or certificates necessary to provide the services **AND**
4. Are customarily engaged in an “independently established business.”

To qualify under the law, an “independently established business” must meet three (3) out of the following five (5) criteria. **Check as applicable:**

- \_\_\_\_\_ A. Maintains a business location that is: (a) Separate from the business or work of the County; or (b) that is in a portion of their own residence that is used primarily for business.
- \_\_\_\_\_ B. Bears the risk of loss, shown by factors such as: (a) Entering into fixed price contracts; (b) Being required to correct defective work; (c) Warranting the services provided; or (d) Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
- \_\_\_\_\_ C. Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- \_\_\_\_\_ D. Makes significant investment in the business through means such as: (a) Purchasing tools or equipment necessary to provide the services; (b) Paying for the premises or facilities where the services are provided; or (c) Paying for licenses, certificates or specialized training required to provide the services.
- \_\_\_\_\_ E. Has the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

1. A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C is not required to meet the independently established business requirements.
2. Establishing a business entity such as a corporation or limited liability company, does not, by itself, establish that the individual providing services will be considered an independent contractor.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_

**EXHIBIT D**  
**RFP #2018-90**  
**DESIGN SERVICES FOR ADA IMPROVEMENTS**  
**Issued October 23, 2018**

**EXHIBIT E**  
**VENDOR RESPONSE AND NEGOTIATED STATEMENT OF WORK**

**FINAL NEGOTIATED STATEMENT OF WORK**

**EXHIBIT F  
FEE SCHEDULE**