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DIRECTOR

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

August 2, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of an Intergovernmental Agreement with the
Oregon Department of Transportation Related to the Issuance of Trip Permits**

Purpose/Outcome	Approval of an Intergovernmental Agreement that will allow the County to issue certain trip permits on behalf of the State and other counties, and will allow the State to issue certain permits which authorize the use of roads under County jurisdiction.
Dollar Amount and Fiscal Impact	No change.
Funding Source	Road Fund.
Duration	Ten years from the date of execution.
Previous Board Action/Review	None.
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build public trust through good government
Contact Person	Joe Marek, Transportation Safety Program Administrator, (503) 742-0745

Under ORS 818 the State administers a variance permit program that allows use of the roads of this state for travel by oversize/overweight vehicles and loads. The permit program includes Oversize/Overweight Single Trip Permits (OS/OW STPs). Frequently, vehicles and loads are of such weight and dimension that a specific routing must be followed. Such routing includes State highways, county roads and city streets.

State law allows a county to issue a permit that allows use of the roads under its jurisdiction for travel by oversize/overweight vehicles and loads. State law also authorizes the State to issue OS/OW STPs that allow use of roads under County jurisdiction for travel by oversize/overweight vehicles and loads, and authorizes the County to issue OS/OW STPs on routes over roads outside of its jurisdiction.

The State also administers a separate variance permit program that includes Oversize/Overweight Continuous Operations Variance Permits (OS/OW COVP). Under ORS 818.205, an OS/OW COVP authorizes oversize and overweight vehicles and loads to maintain continuous travel on specific routes over State highways, county roads and city streets, thereby allowing the permit holder to obtain a single OS/OW COVP with travel authorizations in multiple jurisdictions for the same movement from the State or a county. The State has adopted rules that establish the fees for OS/OW COVP in Oregon Administrative Rule (OAR) 734-070-0140.

In order to simplify and expedite the issuance of the permits, the parties would like the State to be able to issue OS/OW COVPs and OS/OW STPs that authorize use of roads under the County's jurisdiction for travel by oversize/overweight vehicles and loads. The parties would also like the County to be able to issue OS/OW COVPs and OS/OW STPs on routes outside of its jurisdiction.

RECOMMENDATION

Staff respectfully recommends the Board approve the attached Intergovernmental Agreement with ODOT.

Sincerely,

Mike Bezner
Assistant Director, Department of Transportation and Development

INTERGOVERNMENTAL AGREEMENT
Oversize/Overweight Special Transportation Continuous Operations Variance
Permit Authorization
Clackamas County

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State;" and Clackamas County, through its Department of Transportation and Development,, acting by and through its elected officials, hereinafter referred to as "County," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statutes (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. Under ORS 818 the State administers a variance permit program that allows use of the roads of this state for travel by oversize/overweight vehicles and loads. The permit program includes Oversize/Overweight Single Trip Permits (OS/OW STPs). Frequently, vehicles and loads are of such weight and dimension that a specific routing must be followed. Such routing includes State highways, county roads and city streets.
3. Under ORS 818.200, a county may issue a permit that allows use of the roads under its' jurisdiction for travel by oversize/overweight vehicles and loads.
4. In order to simplify and expedite the issuance of the permits, County desires State to issue OS/OW STPs that authorize use of roads under County jurisdiction for travel by oversize/overweight vehicles and loads.
5. State desires to issue OS/OW STPs that authorize use of roads under County jurisdiction for travel by oversize/overweight vehicles and loads according to the terms of this Agreement.
6. Under ORS 818 the State administers a variance permit program that allows use of the roads of this state for travel by oversize/overweight vehicles and loads. The permit program includes Oversize/Overweight Continuous Operations Variance Permits (OS/OW COVP).
7. Under ORS 818.205, a OS/OW COVP authorizes oversize and overweight vehicles and loads to maintain continuous travel on specific routes over State highways, county roads and city streets, thereby allowing the permit holder to obtain a single OS/OW COVP with travel authorizations in multiple jurisdictions for the same movement from the State or a county. The State has adopted rules that establish the fees for OS/OW COVP in Oregon Administrative Rule (OAR) 734-070-0140.

8. In order to simplify and expedite the issuance of the permits, County desires State to issue OS/OW COVPs that authorize use of roads under County jurisdiction for travel by oversize/overweight vehicles and loads.
9. State desires to issue OS/OW COVPs that authorize use of roads under County jurisdiction for travel by oversize/overweight vehicles and loads according to the terms of this Agreement.
10. County desires to issue OS/OW COVPs as a Level III Participant in the COVP Program, as described in OAR 734-070-0110 (11)(c).
11. County desires to issue Oversize/Overweight Continuous Trip Permits (OS/OW CTPs).

NOW THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

TERMS OF AGREEMENT

1. County grants State authority to issue OS/OW STPs for travel over roads which are under the jurisdiction of County, in accordance with the terms of this Agreement.
2. County grants State, and State's authorized agents, authority to issue OS/OW COVPs for travel over roads which are under the jurisdiction of County, in accordance with the terms of this Agreement.
3. State is not authorized to issue any other type of oversize/overweight variance permit under this agreement.
4. State grants County authority to issue OS/OW COVPs and OS/OW CTPs in accordance with the terms and conditions of this agreement.
5. This Agreement becomes effective upon the date all required signatures are obtained and shall automatically **terminate ten (10) years** from the date of execution, unless extended by a fully executed amendment.
6. Each Party will be responsible for their own costs associated with this Agreement.

COUNTY OBLIGATIONS

1. County shall provide State with a list of the roads under County jurisdiction on which travel by oversize/overweight vehicles and loads is permitted. The list shall include the maximum weights allowable for the road or road segment, and allowable dimensions, based on vertical and horizontal clearances, for the road or road segment. The information will be included in the Joint-State County blanket document maintained in the electronic routing manual, and shall be deemed County's written

authorization for travel by oversize/overweight vehicles and loads on the County road or road segment identified.

2. County shall provide State with a list of County employees, including at least one primary and secondary contact, who are authorized to designate those roads under County jurisdiction on which travel by oversize/overweight vehicles and loads is permitted. County shall provide State written notice of changes in authorized employees at least two (2) weeks prior to the change. In the event a motor carrier requests a route or routes, or vehicle or load size or dimension, that are not included in the Joint-State blanket document, State shall contact the County designee for approval.
3. In the event County is contacted by State as described in Paragraph 2 of County Obligations, County shall respond within two (2) business hours of initial contact. If County fails to respond within two (2) business hours, State will issue the OS/OW STP authorizing travel on state highways only and will direct the motor carrier to obtain a separate OS/OW STP for travel on County roads from the County.
4. County shall provide State with a list of the roads under County jurisdiction on which travel by oversize/overweight vehicles and loads is permitted on OS/OW COVPs. The list shall include the maximum weights allowable for the road or road segment, and allowable dimensions, based on vertical and horizontal clearances, for the road or road segment. County shall provide State written notice of changes in authorized roads at least four (4) weeks prior to the change.
5. For issuance of OS/OW COVPs and OS/OW CTPs, County shall utilize State database information to support the preparation of variance permits for motor carriers. County shall assist motor carriers in understanding the permit conditions and restrictions imposed by the OS/OW COVPs and OS/OW CTPs which are issued by County. County is required to use all language, attachments, and maps provided by ODOT for each OS/OW COVP and OS/OW CTP issued or renewed under this Agreement. County shall mail annual renewal notices of Continuous Operation Variance Permits issued under this Agreement to motor carriers approximately 3 months prior to their permit expirations and process any permit renewals submitted.
6. County shall issue or renew OS/OW COVPs and OS/OW CTPs to any qualifying motor carrier upon request and payment of fees.
7. County shall provide and maintain computer systems, hardware, and software to maintain access to the State database of motor carrier records and computer systems necessary to conduct agreed upon OS/OW COVP and OS/OW CTPs processing.
8. For purposes of issuing OS/OW COVPs or OS/OW CTPs, County shall not request, collect, or maintain personal information of the motor carrier, except for purposes of identification in collecting the required fees.
9. County shall protect data obtained from State's database. The information obtained by County pursuant to this Agreement shall be used by County only for the purposes

of performing its duties and responsibilities under this Agreement. County shall allow only its authorized employees to access the database records to obtain information necessary to perform its functions under this Agreement. No other use, sale, or access by unauthorized persons, shall be allowed. County shall provide, upon request, individual motor carriers their own account-specific data without the express written consent of State. No individual or other entity shall access or otherwise utilize any information contained in the database for any purpose not permitted or authorized by the State of Oregon acting through State. County shall immediately notify State of any breach or potential breach of security of State data obtained by County pursuant to this Agreement. For the purpose of this Agreement, a breach of security is the unauthorized release or inadvertent public exposure of data in any format that has the potential to materially compromise the security, confidentiality or integrity of personal information maintained by the person. County will bear the expense of any notification to the entities impacted by the breach or potential breach where notification is required by statute; and, County will bear the cost of any judgments, fines or settlement amounts payable to impacted parties resulting from a security breach to State data that is caused by County users or systems.

10. County shall notify State within 24 business hours when a County representative is no longer authorized to issue OS/OW COVPs or OS/OW CTPs under this agreement.
11. County shall allow a minimum of 10 business days to complete security protocols when a new County representative is authorized to issue OS/OW COVPs or OS/OW CTPs under this agreement.
12. County may change its Level of participation in the Continuous Operations Variance Permit Program as defined in OAR 734-070-0070 (11), upon 30 days written notice to State.
13. County certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of County, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind County.
14. County's Contact for this Agreement is: Mike Bezner, Assistant Director of Transportation, 150 Beaver Creek Road, Oregon City, OR 97045 Ph: 503-742-4651, Email: mbezner@co.clackamas.or.us County shall notify State in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State shall issue OS/OW STPs under this Agreement only for travel over specified County roads or road segments.
2. Unless otherwise directed by County, in each OS/OW STP issued by State for travel on County roads, State shall include the same general and special provisions State requires for travel on state highways. The routes and maximum weights and

dimensions that may be authorized in OS/OW STPs issued by the State for travel on County roads shall be those contained in the Joint-State County blanket document maintained in the electronic routing manual or those obtained from the authorized County employee under Paragraph 2 of County Obligations.

3. State and State's authorized agents shall issue OS/OW COVPs only for travel over specified County roads.
4. Unless otherwise directed by County, State shall, in issuing the OS/OW COVPs, stipulate the same general and special provisions for County roads as it does for state highways. The routes and maximum weights and dimensions which may be specified in OS/OW COVPs for County roads shall be those obtained from the authorized County employee.
5. State shall provide verbal and written instruction to County on the procedures and requirements for issuance of OS/OW COVPs and OS/OW CTPs.
6. State shall provide the necessary technical assistance to create the electronic interface with the State's database and will otherwise provide sufficient training to designated County staff to enable their satisfactory participation in the activities included under this agreement. State reserves the right to change and upgrade computer systems. State shall provide to County an electronic interface to allow County electronic access to State's database of motor carrier records including but not necessarily limited to the over-dimension permitting system, carrier name and address records, vehicle records, tax, and carrier financial account records.
7. State's Contact for this Agreement is: Audrey Lawson, Interim Over-Dimension Permit Manager, ODOT- Motor Carrier Transportation Division, 3930 Fairview Industrial Dr. SE, Salem OR, 97302, Ph: 503-378-6653, Email: Audrey.l.lawsom@odot.state.or.us or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

FINANCIAL RESPONSIBILITY

1. Each Party will be responsible for their own costs associated with this Agreement.
2. State shall collect the fee established in ORS 818.270 for both the State and County for the issuance of each OS/OW STP issued through this Agreement. The fees collected on behalf of County shall be transmitted monthly to County.
3. State, and State's authorized agents, shall collect the fee established in OAR 734-070-0140 for both the State and County for the issuance of each OS/OW COVP Permit issued through this Agreement. The fees collected on behalf of County shall be transmitted monthly to County.
4. Upon issuance of OS/OW COVPs or OS/OW CTPs, County shall collect the permit fees shown on the OS/OW COVP or OS/OW CTP being issued, as established for

each permit type in ORS 818.270, ORS 818.205 (6), and OAR 734-070-0140 (3). County shall not collect additional service fees for issuing the permit.

5. County will charge and retain up to \$5.00 for each OS/OW COVP or OS/OW CTP issued or renewed by County under this Agreement for the authorization and use of State highways. The remaining fees will be remitted to State as described below.
6. County will charge and retain up to \$2.75 for each OS/OW COVP issued or renewed by County under this Agreement for the authorization and use of roads under the jurisdiction of **Clackamas** County.
7. County will charge and retain up to \$2.00 for each OS/OW COVP issued or renewed by County under this Agreement for authorization and use of roads under the jurisdiction of road authorities other than the State or **Clackamas** County. The remaining fees will be remitted to State as described below.
8. State will charge County up to \$1.00 for each jurisdiction authorized on OS/OW COVPs or OS/OW CTPs issued or renewed by County under this Agreement, if the permit was sent to a State DMV, Highway Division, or Motor Carrier Transportation Division location.
9. County shall remit State's fees to State no more than 60 days after the billing date. If State's fees are not received by State within 60 days of billing date, County's ability to issue or renew OS/OW COVPs or OS/OW CTPs shall be suspended until all fees are paid.

GENERAL PROVISIONS

1. The Parties certify, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within their current appropriation or limitation of current biennial budget.
2. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
3. The Parties may terminate this Agreement effective upon delivery of written notice to either Party, or at such later date as may be established by the Parties, under any of the following conditions:
 - a. If either Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If either Party fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.

- c. If either Party fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow either Party, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this agreement.
 - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if either Party is prohibited from paying for such work from the planned funding source.
4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
 5. Both Parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof; Without limiting the generality of the foregoing, County 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.
 6. Each Party shall perform the services under this Agreement as an independent contractor and shall be exclusively responsible for all cost and expenses related to its employment of individuals to perform the work under this Agreement, including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
 7. All employers that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. County shall ensure that each of its contractors complies with these requirements.
 8. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or County 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.

9. With respect to a Third Party Claim for which State is jointly liable with County (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by County in such proportion as is appropriate to reflect the relative fault of State on the one hand and of County on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of County on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
10. With respect to a Third Party Claim for which County is jointly liable with State (or would be if joined in the Third Party Claim), County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of County on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of County on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. County'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.
11. 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.
12. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
13. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure

of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

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

Clackamas County, by and through its elected officials

By _____

Date _____

By _____

Date _____

By _____

Date _____

**APPROVED FOR LEGAL SUFFICIENCY
(If required in County's process)**

By _____
County Counsel

Date _____

Clackamas County Contact

Mike Bezner
Assistant Director of Transportation
150 Beaver Creek Rd.
Oregon City, OR 97045
Ph: 503-7424651
Email: Mbezner@co.clackamas.or.us

STATE OF OREGON, by and through its Department of Transportation

By _____

Division Administrator, Motor Carrier
Transportation Division

Date _____

APPROVAL RECOMMENDED

By _____

Motor Carrier Services Section Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By: Lucinda Jackson via email
Assistant Attorney General

Date: 05-01-2018

State Contact:

Audrey L. Lawson
Interim Manager Over Dimension Permits
ODOT – Motor Carrier Transportation
Division
3930 Fairview Industrial Dr. SE
Salem, OR 97302
503-378-6653
Audrey.l.lawson@odot.state.or.us