



DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

September 15, 2016

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Cooperative Improvement Agreement with the Oregon Department of
Transportation for the Otty Street Realignment Project

Purpose/Outcomes	This agreement memorializes roles and responsibilities as agreed to by all parties related to right of way acquisition, construction and maintenance for the Otty Street realignment project.
Dollar Amount and Fiscal Impact	The Agency will reimburse ODOT up to \$21,000 for costs associated with inspection and right of way services.
Funding Source	Clackamas County Development Agency: Clackamas Town Center Urban Renewal District.
Duration	This Agreement will be in effect for twenty (20) years.
Previous Board Action	The Board approved the construction contract on June 16, 2016
Strategic Plan Alignment	Ensure Safe, Healthy and Secure Communities Build a Strong Infrastructure
Contact Person	David Queener, Program Supervisor, Clackamas County Development Agency – (503) 742-4322
Contract No.	N/A

BACKGROUND:

Construction is underway on the realignment of Otty Street to the intersection of 82nd Avenue and Otty Road. In addition to the realignment, a new signal will be installed as well as other improvements with ODOT right of way. Portions of the acquired right of way will need to be transferred to the State following completion of the project.

This three party agreement between the County, Development Agency and ODOT memorializes the roles and responsibilities of each party as it relates to right of way acquisition, construction and maintenance.

The Agreement will remain in effect for twenty (20) years and commits the Agency to reimburse ODOT up to \$21,000 for inspection and right of way service costs.

RECOMMENDATION:

Staff recommends the Board approve and authorize the Chair to sign the Cooperative Improvement Agreement with Oregon Department of Transportation for the Otty Street realignment project.

Respectfully submitted,

Dan Johnson, Manager
Development Agency

**COOPERATIVE IMPROVEMENT AGREEMENT
82nd and OTTY REALIGNMENT PROJECT**

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;" Clackamas County, acting by and through its elected officials, hereinafter referred to as "County;" and the Clackamas County Development Agency, the urban renewal Agency of Clackamas County, acting by and through its duly appointed board, hereinafter referred to as "Agency" all herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. 82nd Avenue (Cascade Highway) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). SE Otty Street and Otty Road are a part of the county road system under the jurisdiction and control of County.
2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 283.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. State, by ORS 366.220, is vested with complete jurisdiction and control over the roadways of other jurisdictions taken for state highway purposes. By the authority granted by ORS 373.020, the jurisdiction extends from curb to curb, or, if there is no regular established curb, then control extends over such portion of the right of way as may be utilized by State for highway purposes. Responsibility for and jurisdiction over all other portions of a county street remains with the County.
4. By the authority granted in ORS 810.210, State is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where State deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than State, except with its written approval. Traffic signal work on this Project will conform to the current State standards and specifications.
5. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
6. State and County entered into Agreement No. 4304 on the September, 8, 1971 for the construction and maintenance of traffic control signals at the intersection of Cascade Highway (82nd Avenue) and Otty Road.

7. Agency is the County's Urban Renewal Agency and is authorized under ORS 457.035 to enter into this Agreement and to perform work on behalf of the County.

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. Under such authority, the Parties agree to the Agency's realignment of SE Otty Street with the intersection at 82nd Avenue and SE Otty Road, hereinafter referred to as "Project".
2. The Project includes a new two (2) lane road with sidewalks; landscaping, lighting, detector loops, and storm drainage facilities that will extend from the traffic signal at 82nd Avenue and Otty Road west to SE 80th Avenue. Otty Road east of 82nd Avenue will be widened to include dual westbound left turn lanes with a sidewalk and bike lane added on the north and side from 82nd to Fuller Road. Additional Project information is shown in Paragraphs a), b), and c) below. The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
 - a) The Project will realign SE Otty Street on the west side of SE 82nd Avenue to connect with SE Otty Road on the east side of SE 82nd Avenue. The intent of the project is to enhance accessibility in the area, provide a direct connection between the west side of SE 82nd Avenue and east of I-205, and remove the stop-controlled access at SE Otty Street that is currently located very close to the signalized intersection.
 - b) Otty Street (West of SE 82nd Avenue) – This segment will be realigned to line up with existing SE Otty Road at the SE 82nd Avenue intersection, with improvements on Otty Street extending approximately 400 feet west of SE 82nd Avenue. Otty Street will be widened to three lanes; one westbound through lane, one eastbound left turn lane, one eastbound combined through-right lane, with sidewalks and bike lanes in both directions.
 - c) Otty Road (East of 82nd Avenue) - Otty Road east of SE 82nd Avenue will be widened to provide four lanes; one eastbound through lane, two westbound left turn lanes, and one westbound through-right lane, with sidewalks and bike lanes in each direction. A traffic separator is proposed to be installed in Otty Road to limit access to Property No. 10, as indicated on Exhibit A, to a right-in-/right-out access. The existing traffic signal at SE 82nd Avenue and SE Otty Road will be modified to accommodate the realignment of Otty Street and the construction of westbound dual left turn lanes. The signal is under the jurisdiction of ODOT, and a permit for this work must be obtained from ODOT. The team has started coordination with ODOT on the signal design.
3. The Project will be financed entirely by Agency at an estimated cost of \$3,500,000.

4. The purpose of this Agreement is to address Party responsibilities as they pertain to Project work impacting State's facility (SE 82nd Avenue).
5. Upon execution of this Agreement, all maintenance and power cost responsibilities set forth in Agreement No. 4304 between County and State shall be considered null and void and shall be superseded by the maintenance and power responsibilities set forth in this Agreement.
6. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance and power responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years. The Project shall be completed within ten (10) calendar years following the date of final execution of this Agreement by all Parties.

AGENCY AND COUNTY OBLIGATIONS

1. Agency or its contractor shall construct the Project. Agency or its consultant shall conduct the necessary field surveys, environmental studies, traffic investigations; arrange for relocation or reconstruction of any conflicting utility facilities; obtain all needed right of way; identify and obtain all required permits; and perform all preliminary engineering and design work required to produce plans, specifications, and cost estimates.
2. Agency shall design and construct the Project in conformance with the current edition of the ODOT Highway Design Manual and the Oregon Standard Specifications for Construction Manual. Agency understands the Project shall be designed and constructed to State standards and approved by State prior to advertisement for bid, or construction of Project by Agency.
3. Agency agrees that for all projects on the Oregon State Highway System or State-owned facility any design element that does not meet ODOT Highway Design Manual design standards must be justified and documented by means of a design exception. Agency further agrees that for all projects on the NHS, regardless of funding source; any design element that does not meet AASHTO standards must be justified and documented by means of a design exception. State shall review any design exceptions on the Oregon State Highway System and retains authority for their approval.
4. Agency agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the Manual on Uniform Traffic Control Devices and Oregon Supplement as adopted in Oregon Administrative Rule (OAR) 734-020-0005. Agency must obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a state highway pursuant to OAR 734-020-0430.
5. Agency shall construct the Project in compliance with all applicable requirements of the Americans with Disabilities Act (42 U.S.C. Chapter 126), revised regulations implementing Title II (28 C.F.R. Part 35), and the Rehabilitation Act (29 U.S.C. § 701 et seq.) (collectively, "ADA"), including, but not limited to, ensuring that all sidewalks, curb

cuts, curb ramps, signals, and signal poles installed or modified as part of the Project are ADA-compliant and existing facilities are modified to comply with the ADA when required by law. As part of its maintenance obligations under this Agreement, County shall, at its own expense, periodically inspect the Project and perform any repairs and modifications necessary to ensure ongoing compliance with all ADA requirements.

6. Agency shall provide to State permanent mylar "as constructed" plans for work on state highways. If Agency redrafts the plans, done in Computer Aided Design and Drafting (CADD) or Microstation, to get the "as constructed" set, and they follow the most current version of the "Contract Plans Development Guide, Volume 1 Chapter 16" http://www.oregon.gov/State/HWY/ENGSERVICES/docs/dev_guide/vol_1/V1-16.pdf, Agency shall provide to State a Portable Document Format (PDF) file and a paper copy of the plan set.
7. Agency, or its consultant's, electrical inspectors shall possess a current State Certified Traffic Signal Inspector certificate, in order to inspect electrical installations on state highways. The State District Permitting Office shall verify compliance with this requirement prior to construction.
8. Agency shall cause to be relocated or reconstructed, all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements for the portions of the Project which are on County's right of way.
9. County shall be responsible for and pay to the power company 100 percent of the power costs for the Project illumination and traffic signal at intersection of 82nd/Otty Road/Otty Street. County shall require the power company to send invoices directly to County.
10. County shall be responsible for the maintenance of all County facilities including Otty Road and Otty Street from curb to curb and all Project improvements made on County or Agency right of way on Otty Road and Otty Street. County shall also be responsible for any improvements made to 82nd Avenue beyond the back of sidewalks.
11. County shall maintain the asphaltic concrete pavement surrounding the vehicle detector loops on Otty Road and Otty Street in such a manner as to provide adequate protection for said detector loops.
12. Agency and County shall each perform the services under this Agreement as independent contractors and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
13. Agency and County acknowledge and agree that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency and County which are directly pertinent to the specific Agreement for the purpose of making audit, examination,

excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.

14. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.
15. Any such indemnification shall also provide that neither the Agency contractor and subcontractor nor any attorney engaged by Agency contractor or subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
16. Agency and County 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 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency and County expressly agree 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.
17. Agency shall construct the Project in accordance with the requirements of ORS 276.071 including the public contracting laws within ORS Chapters 279A, 279B and 279C.
18. If Agency chooses to assign its contracting responsibilities to a consultant or contractor, Agency shall inform the consultant or contractor of the requirements of ORS 276.071, to

ensure that the public contracting laws within ORS Chapters 279A, 279B and 279C are followed.

19. Agency and its contractor shall follow the Oregon Locate Laws (ORS 757 and OAR 952).
20. Agency or its consultant shall acquire all necessary rights of way for the Project according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual. Agency shall provide a letter from Agency's Legal Counsel certifying that any right of way acquired on State's facility that is to be relinquished to the State has been acquired in conformance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual. The letter shall be routed through the State Region 1 Right of Way Office.
21. Agency shall perform the following right of way tasks for Legal Descriptions and Real Property and Title Insurance:
 - a. Agency shall provide sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.
 - b. Agency shall provide construction plans and cross-section information for the Project.
 - c. Agency shall write legal descriptions and prepare right of way maps. If the Agency acquires any right of way on a State highway, the property descriptions and right of way maps shall be based upon centerline stationing and shall be prepared in accordance with the current "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide" and the "Right of Way Engineering Manual." The preliminary and final versions of the property descriptions and right of way maps must be reviewed and approved by the State.
 - d. Agency shall specify the degree of title to be acquired (e.g., fee, easement).
 - e. Agency shall ensure that all required documents described in provisions a-d of this Paragraph 21, be sent to State's Right of Way contact and States Project Manager identified in State Obligations, Paragraphs 7 and 8.
 - f. Agency shall determine sufficiency of title (taking subject to). If the Agency acquires any right of way on a State highway, sufficiency of title (taking subject to) shall be determined in accordance with the current "State Right of Way Manual" and the "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide." Agency shall clear any encumbrances necessary to conform to these requirements, obtain Title Insurance policies as required and provide the State copies of any title policies for the properties acquired.
 - g. Agency shall conduct a Level 1 Initial Site Assessment, according to State Guidance, within Project limits to detect presence of hazardous materials on any property purchase, excavation or disturbance of structures, as early in the Project design as possible, but at a minimum prior to property acquisition or approved design.

- h. Agency shall conduct a Level 2 Preliminary Site Investigation, according to State Guidance, of sufficient scope to confirm the presence of contamination, determine impacts to properties and develop special provisions and cost estimates, if the Level 1 Initial Site Assessment indicates the potential presence of contamination that could impact the properties.
 - I. If contamination is found, a recommendation for remediation will be presented to State.
 - II. County shall be responsible for proper treatment and cost of any necessary remediation.
22. When right of way is being acquired in Agency's name, Agency agrees to transfer and State agrees to accept all right of way acquired on the State highway. The specific method of conveyance will be determined by the Agency and the State at the time of transfer and shall be coordinated by the State's Right of Way Manager. Agency agrees to provide State all information and file documentation the State deems necessary to integrate the right of way into the State's highway system. At a minimum, this includes: copies of all recorded conveyance documents used to vest title in the name of the Agency during the right of way acquisitions process, and the Agency's Final Report or Summary Report for each acquisition file that reflects the terms of the acquisition and all agreements with property owners.
23. Agency shall obtain a permit to "Occupy or Perform Operations upon a State Highway" from assigned State District 2B Project Manager as well as land use permits, building permits, and engineering design review approval from State. Agency agrees to comply with all provisions of said permit(s), and shall require its developers, contractors, subcontractors, or consultants performing such work to comply with such permit and review provisions.
24. Pursuant to the statutory requirements of ORS 279C.380 Agency shall require their contractor to submit a performance bond to Agency for an amount equal to or greater than the estimated cost of the Project.
25. If Agency enters into a construction contract for performance of work on the Project, then Agency will require its contractor to provide the following:
 - a. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under the resulting contract.
 - b. Contractor and Agency shall name State as a third party beneficiary of the resulting contract.

- c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than \$ 2,000,000 for each job site or location. Each annual aggregate limit will not be less than \$ 4,000,000.
 - d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than \$1,000,000.
 - e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees as Additional Insured but only with respect to Contractor's activities to be performed under the resulting contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.
 - f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor's or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.
26. County grants Agency and State the right to enter onto County right of way for the performance of duties as set forth in this Agreement.
27. Agency is responsible for and ensures that all survey monuments recorded with a county and within or adjacent to the highway right of way shall be preserved in accordance with ORS 209.140 and 209.150. Any such monumentation that is damaged or removed during the course of the Project must be replaced in compliance with ORS Chapter 209 stipulations, the State Right of Way Monumentation Policy, and at Agency's own expense.
28. Agency is also responsible, at its own expense, for replacement of any additional State survey marks or other monumentation not recorded with a county that are damaged or removed during the course of the Project. In the event of such replacement, Agency shall contact State's Geometronics Unit for replacement procedures.

29. If additional right of way is acquired for state highway right of way purposes as a result of the Project, then a right of way monumentation survey is required as defined in ORS 209.150 and 209.155. Agency agrees to provide such a survey, at its own expense, following ORS Chapter 209 stipulations, State Right of Way Monumentation Policy, and State's Geometronics Unit review and approval, and to file the legal survey with the appropriate County Surveyor's office as required.
30. Agency shall upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from State, forward to State an advance deposit or irrevocable letter of credit in the amount of \$21,000. Said amount being equal to the estimated total cost for work performed by State as further described under State Obligations Paragraph 1. Agency agrees to make additional deposits upon request from State and mutually agreed to by both State and Agency.
31. Upon completion of the Project and receipt from State of an itemized statement of the actual total cost of State's participation for the Project, Agency shall pay any amount which, when added to Agency's advance deposit, will equal 100 percent of actual total mutually agreed State costs for the Project. Any portion of said advance deposit which is in excess of the State's total costs will be refunded or released to Agency.
32. Agency and County each certify and represent that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on its behalf of, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind it.
33. County's right of way contact person for this Project is Kath Rose, Right of Way, Clackamas County Department of Transportation & Development, 150 Beaver Creek Road, DSB, Oregon City, OR 97045, (503) 742-4713, kathros@co.clackamas.or.us, or assigned designee upon individual's absence. County shall notify the other Parties in writing, of any contact information changes during the term of this Agreement.
34. Agency's Project Manager for this Project is David Queener, Senior Project Planner, 150 Beaver Creek Road, Oregon City Oregon 97045, 503-742-4322, davidque@co.clackamas.or.us or assigned designee upon individual's absence. Agency shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State shall, upon execution of the agreement, forward to Agency a letter of request for an advance deposit or irrevocable letter of credit in the amount of \$21,000 for payment of the following services pertaining to work performed on State facilities. State will review the Project plans, perform inspection; perform signal turn-on, timing, and testing, and will perform review, approval and acceptance of right of way acquired on the State Highway to be relinquished by the Agency post-construction. State agrees to not incur costs exceeding \$21,000 without first submitting to Agency a request for additional deposit

accompanied by an itemized statement of expenditures and an estimated cost to complete Project and receiving Agency's approval.

2. Upon completion of the Project, State shall either send to Agency a bill for the amount which, when added to Agency's advance deposit(s), will equal 100 percent of the total agreed to state costs for Project. State will refund to Agency any portion of said advance deposit which is in excess of the total State costs for Project.
3. State grants authority to Agency to enter upon State right of way for the construction of this Project as provided for in miscellaneous permit to be issued by State District 2B Office.
4. State shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
5. State shall be responsible for maintaining any Project improvements on 82nd Avenue from back of sidewalk to back of sidewalk. Maintenance shall also include Project traffic signals and associated illumination, and all detector loops. and all cross walk markings.
6. State shall maintain the asphaltic concrete pavement surrounding the vehicle detector loops installed on 82nd Avenue in such a manner as to provide adequate protection for said detector loops.
7. State's Right of Way contact person for this Project is Shannon Fish, Region 1 Right of Way Project Manager, 123 NW Flanders Street, Portland Oregon 97209, 503-731-8433, shannon.fish@odot.state.or.us , or assigned designee upon individual's absence. State shall notify the other Parties in writing of any contact changes during the term of this Agreement.
8. State's Project Manager for this Project is Loretta Kieffer, District 2B Access Management Coordinator, 9200 SE Lawnfield Road. Clackamas, Oregon 97015, Phone; 971-673-6228, Loretta.L.KIEFFER@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by any Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
2. State may terminate this Agreement effective upon delivery of written notice to Agency and County, or at such later date as may be established by State, under any of the following conditions:

- a. If Agency fails to complete the Project within the time specified herein or any extension thereof.
 - b. If Agency or County fail to perform any of the other provisions of this Agreement, or so fail to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fail to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If Agency fails to provide the funding for this Project, including payment to State for the work performed by State at Agency's request.
 - 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 State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
 4. 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. Each Party shall ensure that each of its contractors complies with these requirements.
 5. 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 a Party with respect to which any other Party may have liability, the notified Party must promptly notify the other Parties in writing of the Third Party Claim and deliver to the other Parties 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.
 6. With respect to a Third Party Claim for which State is jointly liable with any other Party (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 any other Party or Parties in such proportion as is appropriate to reflect the relative fault of State on the one hand and of the other Party or Parties 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 the other Party or Parties 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.

7. With respect to a Third Party Claim for which Agency or County is jointly liable with State (or would be if joined in the Third Party Claim), Agency and 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 Agency and 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 Agency and 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. Agency and County's contribution amount(s) 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.
8. 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.
9. 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.
10. 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 any Party unless in writing and signed by all 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 their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

Clackamas County, by and through its elected officials

By _____
County Commissioner

Date _____

By _____

Date _____

Clackamas County Development Agency, by and through its duly appointed board

By _____
Chair, Development Agency

Date _____

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Counsel

Date _____

Agency and County Contact:

David Queener, Senior Project Planner
Clackamas County Development Agency
150 Beavercreek Road
Oregon City, Oregon 97045
(503) 742-4322
davidque@co.clackamas.or.us

State Contact:

Loretta Kieffer
District 2B Access Management
9200 SE Lawnfield Rd.
Clackamas, OR 97015
Phone; 971-673-6228
Loretta.L.KIEFFER@odot.state.or.us

STATE OF OREGON, by and through its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief Engineer

Date _____

By _____
Region 1 Manager

Date _____

By _____
District 2B Manager

Date _____

By _____
State Traffic Engineer

Date _____

By _____
State Right of Way Manager

Date _____

By _____
Region Right of Way Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

EXHIBIT A – Project Location Map

