

**POLK COUNTY BOARD OF COMMISSIONERS**

**DATE:** June 14, 2023  
**TIME:** 9:00 a.m.  
**PLACE:** Polk County Courthouse, Dallas, Oregon

THE LOCATION OF THIS MEETING IS ADA ACCESSIBLE. PLEASE ADVISE THE BOARD OF COMMISSIONERS AT (503-623-8173), AT LEAST 24 HOURS IN ADVANCE, OF ANY SPECIAL ACCOMMODATIONS NEEDED TO ATTEND OR TO PARTICIPATE IN THE MEETING VIRTUALLY.

**PAGE:** **AGENDA ITEMS**

1. CALL TO ORDER AND NOTE OF ATTENDANCE
2. ANNOUNCEMENTS
  - (a) Regular meetings of the Board of Commissioners are held on Tuesday and Wednesday each week. Each meeting is held in the Courthouse Conference Room, 850 Main Street, Dallas, Oregon. Each meeting begins at 9:00 a.m. and is conducted according to a prepared agenda that lists the principal subjects anticipated to be considered. Pursuant to ORS 192.640, the Board may consider and take action on subjects that are not listed on the agenda. The Board also holds a department staff meeting at 9:00am on every Monday in the Commissioners Conference Room at 850 Main Street, Dallas, Oregon.
  - (b) The Homeless Prevention Advisory Council will be meeting on June 14, 2023 from 12:00 pm to 1:30 pm located in the first floor conference room at 182 SW Academy St, Dallas Oregon, 97338.
  - (c) A public meeting of the Polk County Board of Commissioners will be held on June 28, 2023, at 9:00 A.M. in the Polk County Courthouse. The purpose of this meeting is to discuss the budget for the fiscal year beginning July 1, 2023 as approved by the Polk County Budget Committee. A summary of the budget is presented below. A copy of the budget may be inspected or obtained at the Board of Commissioners office, Polk County Courthouse, between the hours of 8:00 A.M. and 5:00 P.M. This budget is for an annual budget period and is prepared on a basis of accounting that is consistent with the preceding year.
  - (d) A public meeting of the Polk County 4-H, Master Gardener, Agriculture, Forestry, Extension District will be held on June 28, 2023 at 10:00 am at Polk County Courthouse Conference Room, Dallas, Oregon. The purpose of this meeting is to discuss the budget for the fiscal year beginning July 1, 2023 as approved by the Polk County 4-H, Master Gardener, Agriculture, Forestry, Extension District Budget Committee. A summary of the budget is presented below. A copy of the budget may be inspected or obtained at the Board of Commissioners Office, Polk County Courthouse, between the hours of 8:00 a.m. and 5:00 p.m. This budget is for an annual budget period. This budget was prepared on a basis of accounting that is the same used the preceding year.
  - (e) The Grand Ronde Sanitary District Board is meeting on June 21, 2023 at 9:15 a.m. The meeting will take place in the Polk County Courthouse, 850 Main Street, Dallas, OR, 97338.
3. COMMENTS (for items not on this agenda)
4. APPROVAL OF AGENDA
5. APPROVAL OF THE MINUTES FROM June 7, 2023
6. APPROVAL OF CONSENT CALENDAR
7. LENGTH OF SERVICE AWARDS – Matt Hawkins
  - Tina Andersen, 25 years of service
  - Jeff Isham, 15 years of service
  - Micky Roberts, 15 years of service
  - Debbie Seals, 15 years of service
  - Jared Vorhees, 10 years of service

**CONSENT CALENDAR**

- (a) Polk County Contract No. 23-92, Oregon Department of Human Services  
(Stephanie Gilbert, Family and Community Outreach)
- (b) Notice of Election Canvass, May 16 2023 Special District Election  
(Cole Steckley, Chief Elections Clerk)
- (c) Polk County Contract No. 23-94, Building Codes Division  
(Valerie Patoine, Polk County Assessor)
- (d) Polk County Contract No. 23-95, US Dept of Transportation, Federal Highway Admin, Western  
Federal Land  
(Todd Whitaker, Public Works Director)
- (e) Polk County Contract No. 23-96, ODOT  
(Todd Whitaker, Public Works Director)

**THE BOARD OF COMMISSIONERS WILL MEET IN EXECUTIVE SESSION  
PURSUANT TO ORS 192.660.**

**ADJOURNMENT**

**POLK COUNTY BOARD OF COMMISSIONERS**  
**MINUTES June 7, 2023**

**1. CALL TO ORDER & ATTENDANCE**

At 9:00 a.m., Commissioner Gordon declared the meeting of the Polk County Board of Commissioners to be in session. Commissioner Pope and Commissioner Mordhorst were present.

Staff present: Greg Hansen, Administrative Officer  
Morgan Smith, County Counsel  
Matt Hawkins, Administrative Services Director

**2. ANNOUNCEMENTS**

Regular meetings of the Board of Commissioners are held on Tuesday and Wednesday each week. Each meeting is held in the Courthouse Conference Room, 850 Main Street, Dallas, Oregon. Each meeting begins at 9:00 a.m. and is conducted according to a prepared agenda that lists the principle subjects anticipated to be considered. Pursuant to ORS 192.640, The Board may consider and take action on subjects that are not listed on the agenda. The Board also holds a department staff meeting at 9:00 a.m. on every Monday in the Commissioners Conference Room at 850 Main Street, Dallas, Oregon.

The Homeless Prevention Advisory Council will be meeting on June 14, 2023 from 12:00 pm to 1:30 pm located in the first floor conference room at 182 SW Academy St, Dallas Oregon, 97338.

**3. COMMENTS**

None.

**4. APPROVAL OF AGENDA**

**MOTION: COMMISSIONER POPE MOVED, COMMISSIONER MORDHORST SECONDED,  
TO APPROVE THE AGENDA.**

**MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.**

**5. APPROVAL OF MINUTES OF BOARD MEETING OF May 31, 2023**

**MOTION: COMMISSIONER MORDHORST MOVED, COMMISSIONER POPE SECONDED,  
TO APPROVE THE MINUTES OF May 31, 2023.**

**MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.**

The following items were approved by Motion under **5. APPROVAL OF CONSENT CALENDAR:**

**N/A**

At 9:02 a.m. County Counsel announced that the meeting was recessed to Executive Session pursuant to ORS 192.660(2)(e) To conduct deliberations with persons designated by the governing body to negotiate real property.

**POLK COUNTY BOARD OF COMMISSIONERS**

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Jeremy Gordon, Chair

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Craig Pope, Commissioner

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Lyle Mordhorst, Commissioner

Minutes: Kayla Welser  
Approved: June 14, 2023



# Contract Review Sheet

Staff Contact: \_\_\_\_\_ Department: \_\_\_\_\_

Title: \_\_\_\_\_ Consent Calendar Date: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Effective Dates - From: \_\_\_\_\_ Thru: \_\_\_\_\_

Contract Amount: \$ \_\_\_\_\_

Source Selection:

Sole Source

Personal Services

Competitive Quotes

Special/Exempt Procurement (explain below):

Formal Bid

Request for Proposals

Background/Discussion:

Fiscal Impact:

Recommendation:

Copies of signed contract should be sent to the following:

Name: \_\_\_\_\_ E-mail: \_\_\_\_\_

Name: \_\_\_\_\_ E-mail: \_\_\_\_\_

Name: \_\_\_\_\_ E-mail: \_\_\_\_\_



**Agreement Number 169612**

**AMENDMENT TO  
STATE OF OREGON  
INTERGOVERNMENTAL AGREEMENT**

You can get this document in other languages, large print, braille, or a format you prefer free of charge. Contact the Agreement Administrator at the contact information found on page one of the original Agreement, as amended. We accept all relay calls.

This is amendment number **01** to Agreement Number **169612** between the State of Oregon, acting by and through its Oregon Department of Human Services, hereinafter referred to as “ODHS,” and

**Polk County**  
**Acting by and through its Family and Community Outreach Department**  
**182 SW Academy Street, Suite 220**  
**Dallas, OR 97338**  
**Contact: Brent DeMoe**  
**Telephone: 503-623-9664**  
**E-mail address: [DeMoe.Brent@co.polk.or.us](mailto:DeMoe.Brent@co.polk.or.us)**

hereinafter referred to as “**County**.”

1. This amendment shall become effective on the later of: (I) **July 1, 2023** provided it is (i) approved in writing by the Oregon Department of Justice on or before such date, and (ii) when required, approved in writing by the Oregon Department of Administrative Services, and (iii) is signed by all parties, regardless of the date of the parties’ signatures; or (II) the date this amendment is approved in writing by the Oregon Department of Justice, provided it is (i) when required, approved in writing by the Oregon Department of Administrative Services, and (ii) is signed by all parties, regardless of the date of the parties’ signatures.
2. The Agreement is hereby amended as follows:
  - a. **Section 3., “Consideration.”, Subsection a. only** to read as follows: language to be deleted or replaced is ~~struck through~~; new language is **underlined and bold**.
    - a. The maximum not-to-exceed amount payable to County under this Agreement, which includes any allowable expenses, is ~~\$420,000.00~~ **\$939,075.00**. ODHS will not pay County any amount in excess of the not-to-exceed amount for completing the Work, and will not pay for Work until this Agreement has been signed by all parties.

- b. **For services provided on July 1, 2023 and after, Exhibit A, Part 1, “Statement of Work”,** is hereby superseded and restated in its entirety, as set forth in **Exhibit A, Part 1, “Statement of Work”,** attached hereto and incorporated herein by this reference.
- c. **For services provided on July 1, 2023 and after, Exhibit A, Part 2, “Payment and Financial Reporting”,** is hereby superseded and restated in its entirety, as set forth in **Exhibit A, Part 2, “Payment and Financial Reporting”,** attached hereto and incorporated herein by this reference.
- d. **Exhibit B, Section 4., “Background Checks for Employees and Volunteers.”** to read as follows: language to be deleted or replaced is ~~struck through~~; new language is **underlined and bold**.

**4. Background Checks for Employees and Volunteers.**

- a. ~~The~~ County shall ensure that all employees, volunteers and subcontractors who perform services under this Agreement, or who have access to any information about clients served under this Agreement, are approved by ~~the County’s~~ **ODHS’** Background Check Unit in accordance with Oregon Administrative Rules (OAR) 407-007-0200 through 407-007-0370.
- b. In addition to potentially disqualifying conditions under OAR 407-007-0290, all employees, volunteers, and subcontractors who perform services under this Agreement are subject to OAR 407-007-0290(11)(b).
- c. An employee, volunteer, or subcontractor may be hired on a preliminary basis, in accordance with the requirements and limits described in OAR 407-007-0315, prior to final approval by ~~the County’s~~ **ODHS’** Background Check Unit. An employee, volunteer, or subcontractor hired on a preliminary basis may not have unsupervised contact with individuals receiving services under this Agreement and may only participate in the limited activities described in OAR 407-007-0315. An employee, volunteer, or subcontractor hired on a preliminary basis must be actively supervised at all times as described in OAR 407-007-0315.
- d. Any current employee hired for a new position with ~~the~~ County to perform services under this Agreement, or any current employee, volunteer, or subcontractor who will have access to any information about clients served under this Agreement must be approved by ~~the Agency’s~~ **ODHS’** Background Check Unit at the time the employee, volunteer, or subcontractor accepts the new position or Work. Notwithstanding the requirements of paragraph c. of this Section, a current employee or volunteer who accepts a new position with ~~the~~ County to perform services under this Agreement, may be hired for the new position on a preliminary

basis without active supervision in accordance with the limits and requirements described in OAR 407-007-0315.

- e. There are only two possible fitness determination outcomes of a background check: approval or denial. If the employee, volunteer, or subcontractor is denied, she or he may not have contact with ~~Agency~~ **ODHS** clients under this Agreement and may not have access to information about ~~Agency~~ **ODHS** clients. Employees, volunteers, or subcontractors who are denied do have the right to contest the denial. The process for contesting a denial is described in OAR 407-007-0330.
  - f. For purposes of compliance with OAR 407-007-0200 through 407-007-0370, ~~the~~ County is a “Qualified Entity”, as that term is defined in OAR 407-007-0210, and must comply with all the provisions pertaining to Qualified Entities contained in OAR 407-007-0200 through 407-007-0370.
  - ~~a.g.~~ The criminal records check procedures listed above also apply to County, its owners, managers, and board members regardless if any individual has access to ODHS clients, client information or client funds. County shall establish a personal personnel file and place each criminal records check in named file for possibility of future ODHS review and shall be maintained pursuant to Exhibit B, “Standard Terms and Conditions”, Section 14, “Records, Maintenance, Access.”
- e. **Exhibit B, “Standard Terms and Conditions”, Section 24., “Notice”, ODHS address only** to read as follows: language to be deleted or replaced is ~~struck through~~; new language is **underlined and bold**.
- ODHS:** Office of Contracts & Procurement  
~~635 Capitol Street NE, Suite 350~~ **500 Summer Street NE, E-03**  
Salem, OR 97301  
Telephone: 503-945-5818  
Fax: 503-378-4324
- f. **For services provided on and after the effective date of this amendment, Exhibit C, “Subcontractor Insurance Requirements”** is hereby superseded and restated in its entirety, as set forth in **Exhibit C, “Subcontractor Insurance Requirements”**, attached hereto and incorporated herein by this reference.
3. Except as expressly amended above, all other terms and conditions of the original Agreement and any previous amendments are still in full force and effect. County certifies that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this amendment and with the same effect as though made at the time of this amendment.
4. **Certification.** Without limiting the generality of the foregoing, by signature on this Agreement amendment, the undersigned hereby certifies under penalty of perjury that:



- a.** County acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any “claim” (as defined by ORS 180.750) that is made by (or caused by) County and that pertains to this Agreement or to the project for which the Agreement work is being performed. County certifies that no claim described in the previous sentence is or will be a “false claim” (as defined by ORS 180.750) or an act prohibited by ORS 180.755. County further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against County;
- b.** The information shown in Section 5.a. “County Information” of the original Agreement, as amended is County’s true, accurate and correct information;
- c.** To the best of the undersigned’s knowledge, County has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
- d.** County and County’s employees and agents are not included on the list titled “Specially Designated Nationals” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;
- e.** County is not listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal procurement or Non-procurement Programs” found at: <https://www.sam.gov/SAM>;
- f.** County is not subject to backup withholding because:

  - (1) County is exempt from backup withholding;
  - (2) County has not been notified by the IRS that County is subject to backup withholding as a result of a failure to report all interest or dividends; or
  - (3) The IRS has notified County that County is no longer subject to backup withholding.
- g.** County’s Federal Employer Identification Number (FEIN) provided to ODHS is true and accurate. If this information changes, County shall provide ODHS with the new FEIN within 10 days.

5. **County Information.** This information is requested pursuant to ORS 305.385.

**PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:**

**County Name (exactly as filed with the IRS):** \_\_\_\_\_

Street address: \_\_\_\_\_

City, state, zip code: \_\_\_\_\_

Email address: \_\_\_\_\_

Telephone: \_\_\_\_\_ ( ) \_\_\_\_\_ Fax: \_\_\_\_\_ ( ) \_\_\_\_\_

**Proof of Insurance:** County shall provide the following information upon submission of the signed Agreement amendment. All insurance listed herein must be in effect prior to amendment execution.

Workers' Compensation Insurance Company: \_\_\_\_\_

Policy #: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

**6. Signatures.**

**COUNTY: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY STATE APPROVALS.**

**Polk County acting by and through its Family and Community Outreach Department**  
**By:**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Board of Commissioners Chair

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**State of Oregon, acting by and through its Oregon Department of Human Services**  
**By:**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Approved for Legal Sufficiency:**

Approved via email by Jeffrey Wahl

6/5/2023

Oregon Department of Justice

Date

## EXHIBIT A

### Part 1 Statement of Work

1. **Purpose.** As directed by the Oregon Revised Statutes (ORS) 418.580 through 418.598, County and ODHS execute this Agreement for the provision of Strengthening, Preserving and Reunifying Families (SPRF) services.
2. **Background.**
  - a. The SPRF Program (the “Program”) was created by the Oregon legislature with the goal of reducing trauma to Children who are removed from their Families of origin because of reasons of abuse or neglect, and to resolve those issues by means of offering client-focused services starting at the assessment phase of the case and extending into aftercare services when Children are returned home.
  - b. The overall goals of the Program are to safely and equitably reduce the number of children in the foster care system by reducing the length of stay in foster care, maintaining Children safely at home with their parents or caregivers, reducing the re-referral and reentry rates of Families into the child welfare system, and increasing the timeliness to permanency.
3. **Definitions.** For purposes of this Exhibit A, Part 1, “Statement of Work”, capitalized terms shall have the following meaning:
  - a. “**Child**” means an individual under 21 years of age who qualifies to receive Child Welfare services provided by ODHS.
  - b. “**Client**” means the ODHS Child Welfare participant, adult or Child, who is identified on the referral as being authorized to receive the service(s) provided under this Agreement.
  - c. “**Caseworker**” means ODHS staff who is responsible for the coordination of services of an individual Client with County.
  - d. “**Family**” means, at a minimum but not to the exclusion of, siblings as defined in ORS 419A.004 or other persons living in the same household with a Child, the Child, and:
    - (1) The Child’s parent as defined in ORS 419A.004;
    - (2) The Child’s guardian appointed pursuant to ORS chapter 125; or
    - (3) A person who has a caregiver relationship as defined in ORS 419B.116 with the Child.
4. **Overview.**
  - a. County shall provide navigation services to Clients that includes assisting Clients accessing services in the community or the county, attaining their goals, and assisting with any processes Clients may be involved in (i.e court, mental health, addiction and recovery etc.)

- b.** The goal of the services provided are to teach Clients how to advocate for themselves.
- 5. County Qualification Requirements.** County's staff providing services under this Agreement shall have the following qualifications:
  - a. Family Resource Navigator.** Family Resource Navigators must:
    - (1) Have a bachelor's degree in psychology, social service, counseling, or another related field; or
    - (2) A minimum of four years' experience working with at-risk families, especially those experiencing poverty and homelessness, substance abuse, and mental health disorders or domestic violence.
  - b. Administrative Support Specialist.** Administrative Support Specialist must
    - (1) Have a high school diploma or an equivalent General Education Development (GED) certificate.
    - (2) Six months clerical experience in addition to a high school diploma or a GED is preferred, but not required.
- 6. Location of Services.**
  - a.** Services shall be provided in person at the referring ODHS branch office, the home of the Client, County's office, or at various locations located in the community. The specific location is determined through discussion with the Client, the ODHS Caseworker, and other professionals included by the Caseworker or listed on the referral.
  - b.** During times of national, state, or local emergency, and when requested or prior approved by the ODHS Agreement Administrator or delegate, County may be authorized to hold services either virtually, or via teleconference, or a combination of virtual and in person. County shall abide by all restrictions in effect as prescribed by the national, state, or local authorities and the Agreement Administrator at the time services are provided. Timing will depend on when a determination was made to shift to a virtual event.
- 7. Service Capacity.**
  - (a) Services are expected to last from three to 12 months for all referrals with the average being approximately six to nine months. In cases where additional time is necessary, County shall obtain prior approval from the referring Caseworker.
  - (b) County shall serve 30 Clients per month. ODHS will review Agreement utilization on a monthly basis to determine if an amendment to the Agreement is needed. This information will be used to begin capturing baseline measurements. ODHS will consult with County regularly to ensure sufficient capacity for Client needs.
- 8. Referral Protocols.**
  - a.** ODHS will initiate referrals for services to County based on identified Client needs, and upon acceptance, County shall collaborate with the referring

Caseworker on the most suitable and beneficial service outcome under this Agreement. County shall accept referrals during normal business hours, which are 8:00a.m. to 5:00p.m. PT Monday through Friday.

- i. Upon accepting a referral and prior to performing services, County shall obtain from the referring Caseworker a copy of the Client's protective action, safety plan, or relapse prevention plan.
  - ii. For Child Protective Services (CPS) referrals, County shall initiate contact with the Client within 24 hours of receipt.
  - iii. For non-CPS referrals, County shall initiate contact with the Client within five business days.
  - iv. County shall notify the referring Caseworker within 24 hours of referral initiation in cases where County does not accept referral.
- (b) ODHS will initiate contact with County to make a tentative verbal agreement regarding specific services to be provided, goals, and outcomes for each Client. No services are obligated until ODHS issues and County accepts, the ODHS referral.

**9. Services to be Provided.** All Services provided under this Agreement must be culturally competent, evidenced-based or evidence informed, and Client-focused. Services must be both front-end intervention programs in the home and community to support and maintain in-home placement; and services in the home, community, and with the foster parent, Child, and biological parent(s) to support early reunification programs. Specifically, the following services shall be provided:

- a. County shall:
  - (1) Provide two Full Time Equivalent (FTE) Family Resource Navigators and one FTE Administrative Support to provide services to Clients in Polk County.
  - (2) Select and support County staff who understand the cultural context of Clients and whenever possible offer culturally specific services.
- b. Administrative Support Specialist shall provide data entry, clerical support to Family Resource Navigators, scheduling of Client intakes, preparation of monthly progress reports, and other duties as assigned by County.
- c. Family Resource Navigators shall provide navigation services to Clients as follows:
  - (1) Complete intake process for each accepted referral which includes the following: review the referral for completeness and appropriateness of services, complete intake documents, review service history, and explore barriers to accessing services with Client. Family Resource Navigators shall collaborate with the referring Caseworker throughout the intake process;
  - (2) Develop a service plan for each Client that includes service goals as well as activities for the Client to do in order achieve their goals;

- (3) Maintain regular contact with the Client via face-to-face visits, phone calls, text messages, and e-mail as a means of providing resources, encouragement, and obtaining updates from the Client;
- (4) Teach Clients how to identify appropriate resources, how to access resources, when to access resources, and where to find resource information. Family Resource Navigators shall practice attending and engaging in services such as appointments and other service supports through role play.
- (5) Provide Client transportation services in order to facilitate Client's participation in navigation services. ODHS strongly recommends that all Client transportation services be provided using County's properly licensed and adequately insured vehicles. All vehicles and drivers providing Client transportation under this Agreement are subject to the conditions below. Prior to performing Client transportation services for ODHS Clients, County shall provide the ODHS Agreement Administrator a written certification that all drivers performing Client transportation services under this Agreement meet all of the requirements listed below.
  - (a) Driver Standards. County shall ensure any person performing Client transportation services under this Agreement meets all of the following requirements:
    - i. Is currently and legally licensed to operate the transporting vehicle according to the laws and regulations of the State of Oregon;
    - ii. Does not have the following criminal history:
      - A. Has been convicted or currently under the investigation of a crime in the category of homicide;
      - B. Has been convicted or currently under the investigation of a crime related to a sexual offense; or
      - C. Currently has a pending or unresolved criminal charge as a result of a crime committed within the past two years.
    - iii. Has not been convicted of a crime:
      - A. Listed in ORS 342.143(3)(a)(A), (B) or (C);
      - B. Involving sexual offenses;
      - C. In the past two years, involving child abuse or child neglect;
      - D. In the past two years, involving offenses against persons, violence, threat of violence, or theft;

- E. Involving activity in the past two years, in drugs or alcoholic beverages, including driving under the influence of intoxicants; or
  - F. Been convicted of a crime that bears a substantial relation to the functions and duties under the terms and conditions of the Agreement.
- iv. Has not had a driver's license suspended by the Oregon Division of Motor Vehicles, or a similar agency in another state, for a cause involving the unsafe operation of a motor vehicle or because of sanctions against a driving record within the past two years;
- v. Has not had driving privileges revoked or suspended as a habitual offender under ORS 809.600, or a substantially similar provision in another state within in past two years; or
- vi. Does not have a driving record that has an accumulation of 31 points based on the point system established in OAR 581-053-0050(3)(g) within the past two years.
- vii. Driver shall:
  - A. Not consume any alcoholic beverage regardless of its alcoholic content or any drug that may affect the ability to operate a vehicle safely within eight hours prior to providing Client transportation services;
  - B. Refrain from smoking, this includes the use of e-cigarettes and vaping products, or the use of any tobacco product at any time while providing Client transportation services;
  - C. Secure any articles in the passenger compartment of the transporting vehicle likely to cause injury to the occupants in the event of an accident, sudden stop, or emergency evasive action;
  - D. Ensure vehicle is sufficiently fueled prior to transporting Clients and refrain from refueling the vehicle while transporting Clients;
  - E. Provide adequate lighting, ventilation, and heating in the transporting vehicle appropriate to the environment;
  - F. Not carry, nor shall the vehicle transport, guns, knives, mace, pepper spray or weapons of any type, or any potentially hazardous material when providing Client transportation services; nor shall the County allow any mace, pepper spray or

weapons of any type to be stored in any vehicles used to transport Clients or Families; and

- G. Have telephonic means available and follow all applicable laws regarding use of telephonic devices while driving. Telephonic device shall be used for contacting emergency assistance. Drivers are prohibited from use of a cell phone or other telephonic or electronic device not specifically designed for use while driving while providing Client transportation services under this Agreement.

- viii. If a driver is in violation of any provision listed above, or, to the best of the County's knowledge is currently under investigation of such actions, County shall immediately remove each such driver from providing any Client transportation services under this Agreement.

- (b) **Vehicle Standards.** County shall ensure vehicles meet the following standards when being used for Client transportation services under this Agreement:

- i. Vehicle is fully registered and licensed according to the laws of the State of Oregon, and is in good and safe operating condition that meets or exceeds the applicable minimum standards, rules and laws for vehicle safety;
- ii. Vehicle has a clean and uncluttered passenger compartment;
- iii. Vehicle has a properly installed child-safety seat, booster seat, or other device required by law or rule for the transport of children that shall be utilized as required by rule or law, if a child is being transported; and
- iv. Vehicle has seat belts that are properly installed and maintained and used by all occupants of the vehicle at all times the vehicle is in operation.

**10. Updates.** County shall provide the referring Caseworker with immediate verbal (within 24 hours of the incident) updates when significant issues arise during the provision of services. Significant issues are defined as issues that pose a risk to the health, safety, or well-being of the Client, Contractor, or community.

**11. Reports of Abuse and Safety Plan Violations.**

- a. Any concerns about the safety of a child, or the safety and stability of the home environment shall be immediately reported to the local child abuse reporting number.
- b. Contact from alleged offenders shall be immediately reported to the referring Caseworker. County shall not provide services when uncontrolled alleged offenders have continued access to a Child in their home.



- c. Any violation of the protective action, safety plan, or relapse prevention plan shall be reported to the referring Caseworker within 24 hours of observation. For example: the parent's un-willingness or ability to comply with the protective action or safety plan.
- 12. **Client-Driven Outcome Measures.** With ODHS's implementation of performance-based contracting, ODHS will gather end of service Client-driven outcome measures reported out by County and validated by ODHS. For purposes of this Section only, outcome measures mean objective, observable measures of outcomes for services provided to a Client under ORS 418.575 to 418.598. ODHS will utilize this and other data to work with County to support continuous improvement efforts which promote better outcomes for Children and Families.
  - a. The achievement of navigation services for the Client will be based on the following Client-driven outcome measures:
    - (1) **Achieved:** Client accessed all necessary available resources and services.
    - (2) **Partially Achieved:** Client accessed one or more necessary available resources and services.
    - (3) **Not Achieved:** Client did not access any necessary available resources and services.
    - (4) **No Progress:** Client did not engage in services or was not located.
  - b. When a dispute arises regarding whether or not Client-driven outcome measures have been achieved, ODHS will make the final decision.
- 13. **Reporting Requirements.** County shall provide the following reports:
  - a. **Monthly Progress Report.** County shall submit written monthly progress reports via e-mail to the referring Caseworker for each Client served that describes the services provided to the Client and the Client's progress towards their goals outlined in their service plan. Monthly progress reports are due no later than the 10<sup>th</sup> of the following month services were provided.
  - b. **Closing Summary Report.** As this Agreement is performance-based, County shall submit a written closing written report via e-mail to the referring Caseworker that describes the results of Clients achieving the outcome measures as described in Section 13. of this Exhibit A, Part 1, "Statement of Work". Specifically, County shall provide the following information, within 10 calendar day of the last day service is provided to each Client.
    - (1) Progress toward, or final, Client outcomes (to also be included on ODHS invoice); and
    - (2) Next steps or recommendations for further treatment.

## EXHIBIT A

### Part 2 Payment and Financial Reporting

#### 1. Payment Provisions.

- a. As consideration for the services provided by County during the period specified in **Section 1., Effective Date and Duration**, of this Agreement, ODHS will pay to County, a maximum not-to-exceed amount as specified in **Section 3., Consideration** of this Agreement, to be paid as follows:

- (1) For services provided on July 1, 2021 through June 30, 2023, ODHS will pay County at the rate of **\$17,500.00 per month** for the provision of all services as described in Exhibit A, Part 1, “Statement of Work”.
- (2) For services provided on July 1, 2023 and after, ODHS will pay County at the rate of **\$19,225.00 per month** for the provision of all services as described in Exhibit A, Part 1, “Statement of Work”.

b. County Invoice, Completion and Submission:

- (1) County shall submit billings on the approved ODHS invoice form located at: <https://apps.state.or.us/Forms/Served/ce0846.xlsm>.

Instructions and requirements for completion and submission of an invoice are included on the third tab of the Excel invoice document. Invoices must be submitted with all fields properly populated.

- (2) Payment will be made by ODHS to the County monthly on or after the first of each month following the month in which services were performed, subject to receipt and approval by ODHS of the County’s invoice and any required reporting as defined in the Statement of Work for this Agreement.

For questions regarding payments please email  
[ContractInvoice.Support@dhs.oregon.gov](mailto:ContractInvoice.Support@dhs.oregon.gov).

#### 2. Travel and Other Expenses. ODHS will not reimburse County for any travel or other expenses under this Agreement.

## **EXHIBIT C**

### **Subcontractor Insurance Requirements**

County shall require its first-tier contractor(s) (Contractor) that are not units of local government as defined in ORS 190.003, if any, to: (i) obtain the insurance specified under Types and Amounts and meet the requirements under Additional Insured, Continuous Claims Made Coverage, Notice of Cancellation or Change, and Certificate(s) of Insurance before the Contractor(s) perform under contracts between County and the Contractor(s) (the "Subcontracts"), and (ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Local Government. County shall not authorize Contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, County shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. County shall incorporate appropriate provisions in the Subcontracts permitting it to enforce Contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts or pursuing legal action to enforce the insurance requirements. In no event shall County permit a Contractor to work under a Subcontract when the County is aware that the Contractor is not in compliance with the insurance requirements. As used in this Section, a "first-tier" Contractor is a Contractor with which the County directly enters into a Subcontract. It does not include a subcontractor with which the Contractor enters into a contract. If Contractor maintains broader coverage and/or higher limits than the minimums shown in this Exhibit, County requires and shall be entitled to the broader coverage and/or higher limits maintained by Contractor.

### **Insurance Types and Amounts**

#### **1. Workers' Compensation and Employers' Liability.**

- a.** All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide Workers' Compensation Insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain Employers' Liability Insurance coverage with limits not less than \$500,000 each accident.
- b.** If Contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide Workers' Compensation Insurance coverage for its employees as required by applicable workers' compensation laws including Employers' Liability Insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

- c. As applicable, Contractor shall obtain coverage to discharge all responsibilities and liabilities that arise out of or relate to the Jones Act with limits of no less than \$5,000,000 and/or the Longshoremen's and Harbor Workers' Compensation Act.
2. **Commercial General Liability.** Contractor shall provide Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State of Oregon. This insurance must include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this Subcontract, and have no limitation of coverage to designated premises, project, or operation. Coverage must be written on an occurrence basis in an amount of not less than \$5,000,000 per occurrence and not less than \$15,000,000 annual aggregate limit.
3. **Automobile Liability.**  
☒ **Required** ☐ **Not required**  
Contractor shall provide Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$5,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal Automobile Liability Insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.
4. **Professional Liability.**  
☐ **Required** ☒ **Not required**  
Contractor shall provide Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Subcontract by the Contractor and Contractor's subcontractors, agents, officers or employees in an amount not less than \$\_\_\_\_\_ per claim and not less than \$\_\_\_\_\_ annual aggregate limit. If coverage is provided on a claims made basis, then either an extended reporting period of not less than 24 months must be included in the Professional Liability Insurance coverage, or the Contractor and subcontractors shall provide continuous claims made coverage as stated below.
5. **Network Security and Privacy Liability.**  
☐ **Required** ☒ **Not required**  
Contractor shall provide Network Security and Privacy Liability insurance for the duration of the Subcontract and for the period of time in which Contractor (or its business associates or subcontractor(s)) maintains, possesses, stores or has access to State of Oregon or client data, whichever is longer, with a combined single limit of no less than \$\_\_\_\_\_ per claim or incident. This insurance must include coverage for third party claims and for losses, thefts, unauthorized disclosures, access or use of State of Oregon or client data (which may include, but is not limited to, Personally Identifiable Information ("PII"), payment card data, and Protected Health Information ("PHI")) in any format, including coverage for accidental loss, theft, unauthorized disclosure access or use of State of Oregon data.

**6. Physical Abuse and Molestation Insurance Coverage.**

☐ Required ☒ Not required

Contractor shall provide Physical Abuse and Molestation Insurance in a form and with coverage that are satisfactory to County covering damages arising out of actual, perceived, or threatened physical abuse, mental injury, sexual molestation, negligent: hiring, employment, supervision, training, investigation, reporting to proper authorities, and retention of any person for whom Contractor is responsible including but not limited to Contractor and Contractor's employees and volunteers. Policy endorsement's definition of an insured must include the Contractor and the Contractor's employees and volunteers. Coverage must be written on an occurrence basis in an amount of not less than \$\_\_\_\_\_ per occurrence and no less than \$\_\_\_\_\_ annual aggregate. Coverage can be provided by a separate policy or as an endorsement to the Commercial General Liability or Professional Liability policies. These limits must be exclusive to this required coverage. Incidents related to or arising out of physical abuse, mental injury, or sexual molestation, whether committed by one or more individuals, and irrespective of the number of incidents or injuries or the time period or area over which the incidents or injuries occur, must be treated as a separate occurrence for each victim. Coverage must include the cost of defense and the cost of defense must be provided outside the coverage limit.

**7. Excess/Umbrella Insurance.** A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance. When used, all of the primary and umbrella or excess policies must provide all of the insurance coverages required herein, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The umbrella or excess policies must be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, are to be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance.

**8. Additional Coverage Requirements.** Contractor's insurance shall be primary and non-contributory with any other insurance. Contractor shall pay for all deductibles, SIRs, and self-insurance, if any.

**9. Additional Insured.**

- a.** All liability insurance, except for Workers' Compensation, Professional Liability, Pollution Liability and Network Security and Privacy Liability (if applicable), required under this Subcontract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's services to be performed under this Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

- b. Regarding Additional Insured status under the General Liability policy, ODHS requires additional insured status with respect to liability arising out of ongoing operations and completed operations. The Additional Insured Endorsement with respect to liability arising out of Contractor's ongoing operations must be on or at least as broad as ISO Form CG 20 10 and the Additional Insured endorsement with respect to completed operations must be on or at least as broad as ISO form CG 20 37.
10. **Waiver of Subrogation.** Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the County or State of Oregon by virtue of the payment of any loss. Contractor shall obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).
11. **Continuous Claims Made Liability Coverage.** If any of the required liability insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, then Contractor shall maintain Continuous Claims Made Liability coverage, provided the effective date of the Continuous Claims Made Liability coverage is on or before the effective date of this Subcontract, for a minimum of 24 months following the later of: (i) Contractor's completion and County's acceptance of all services required under this Subcontract, or (ii) County's or Contractor's termination of this Subcontract, or (iii) the expiration of all warranty periods provided under this Subcontract.
12. **Certificate(s) and Proof of Insurance.** County shall obtain from the Contractor a Certificate(s) of Insurance for all required insurance before Contractor delivers any goods and performs any Services required under this Subcontract. The Certificate(s) of Insurance must list the State of Oregon, its officers, employees and agents as a certificate holder and as an endorsed Additional Insured. The Certificate(s) of Insurance must also include all required endorsements or copies of the applicable policy language effecting coverage required by this Subcontract. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate(s) of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance, County has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Subcontract.
13. **Notice of Change or Cancellation.** The Contractor or its insurer must provide at least 30 days' written notice to County before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).
14. **Insurance Requirement Review.** Contractor agrees to periodic review of insurance requirements by County under this Subcontract and to provide updated requirements as mutually agreed upon by Contractor and County.
15. **County Acceptance.** All insurance providers are subject to County acceptance. If requested by County, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents, and related insurance documents to County's representatives responsible for verification of the insurance coverages required under this Subcontract.

**NOTICE OF ELECTION CANVASS**  
**May 16, 2023 Special District Election**  
**(ORS 255.295 requires this form to be completed and returned by June 30, 2023.**

**Polk County** hereby notifies the Polk County Clerk, Election officer for the District, that the District has canvassed the votes as reported in the certified election results, and has determined that the following is the official result of the **May 16, 2023 Special District Election**:

**Measure #** 27-140

**Yes Votes** \_\_\_\_\_

**No Votes** \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

By \_\_\_\_\_

Title \_\_\_\_\_

This completed form must be returned in person, or by regular mail, fax or e-mail by **June 30, 2023**.

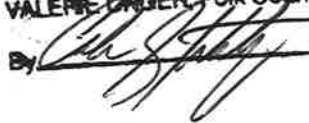
Thank you!

Cole Steckley, Chief Elections Clerk  
850 Main St., Rm. 201  
Dallas OR 97338

[steckley.cole@co.polk.or.us](mailto:steckley.cole@co.polk.or.us)  
503-623-9217 phone  
503-623-0717 fax

27-140 Polk County Measure			
VOTE FOR 1			
	Yes	No	Total Votes Cast
102	315	184	499
106	179	179	358
110	80	111	191
118	829	454	1,283
122	347	196	543
134	1,193	930	2,123
136	826	750	1,576
140	542	471	1,013
146	946	690	1,636
152	896	686	1,582
154	993	652	1,645
156	480	348	828
162	729	457	1,186
166	145	112	257
178	986	590	1,576
182	716	573	1,289
<b>Totals</b>	<b>10,202</b>	<b>7,383</b>	<b>17,585</b>



CERTIFIED TO BE A TRUE AND  
CORRECT COPY OF THE ORIGINAL  
VALERIE LINDER, Polk County Clerk  
By  Deputy



# **INTERGOVERNMENTAL AGREEMENT (2023-2026)**

## **Agent Agreement No. PO-44000-00020537**

This Agent Agreement ("Agreement") is between the State of Oregon acting by and through its Department of Consumer and Business Services, Building Codes Division ("DCBS") and Polk County ("Local Government"), which is the agent of DCBS for the purposes of this Agreement (the "Agent"), each a "Party" and, together, the "Parties". This Agreement replaces Agreement 90G000298, in its entirety.

### **SECTION 1: AUTHORITY**

**1.1** This Agreement is authorized by ORS 190.110 and 446.646(3).

**1.2** CONTRACT ADMINISTRATOR:

DCBS Contract Administrator is:

Warren Jackson  
1535 Edgewater St. NW  
P.O. Box 14470  
Salem, OR 97309-0404  
(503) 949-3516  
warren.d.jackson@dcbs.oregon.gov

Local Government Contract Administrator is:

Jeremy Gordon  
850 Main St.  
Dallas, OR 97338  
(503) 623-8173  
gordon.jeremy@co.polk.or.us

**1.3** PURPOSE:

DCBS has authority under ORS 446.646 to carry out the "duties, functions and powers" of the Manufactured Structure Ownership Records program ("program") regulated in ORS 446.561 to 446.646. ORS 446.646 provides that a Local Government carrying out functions under ORS 446.566 to ORS 446.646 related to a manufactured home ownership documents and trip permits is an Agent of DCBS while performing those functions. Accordingly, DCBS may authorize Local Government to administer portions of the program on behalf of DCBS, including, but not limited to, processing ownership documents, recording security interests and issuing trip permits for manufactured structures. Under this Agreement, Local Government shall function as a vendor processing application for DCBS and through the DCBS system, for a flat fee per processing transaction. Local Government Agents

for DCBS under this Agreement do not have discretionary powers. Further, Local Government may not administer any portions of the program unless it has entered and maintained participation in this Agreement.

**1.4 STATEMENT OF WORK:**

DCBS shall provide a software system, ("Manufactured Home Ownership Document System" or MHODS), with a front-end web site and a backend database that interfaces to a document management system. The front-end web site will be for customers, including but not limited to manufactured structure dealers, lenders, and title companies, to search for information, submit applications, upload documents and pay fees. The back-end database will be for participating counties to use for issuing ownership documents and trip permits and for recording interests in manufactured structures. The document management system shall retain information, according to the established document retention schedule, about ownership and security interests in manufactured structures. Local Government, on behalf of DCBS, shall accept and process all MHODS applications from all applicants in Local Government's county who come directly to Local Government with complete applications from within Local Government's county and may, at its discretion, accept and process complete MHODS applications from applicants outside the Local Government's boundaries. Applications from applicants outside the Local Government's boundaries are accepted and processed under ORS 446.568, 446.571 (1)(a), (b)(A) or (C), or 446.636(1), (3) or (4). Local Government agrees to use the MHODS to enter all ownership document transactions and trip permit fields necessary to complete these transactions. Local Government also agrees to scan all associated documents into the MHODS system for the purposes of creating a record of the transaction. Local Government shall have access to run reports and search for information in the MHODS database.

- 1.5** ORS 446.571 provides that a manufactured structure owner may file an application directly with DCBS "if a Local Government assessor refuses to accept an application in appropriate form as required." If Local Government finds that an application is incomplete, it may request that the customer provide the missing application materials or supporting documentation required by DCBS in rule. However, under this Agreement, Local Government shall process all complete applications for manufactured structures located in its county that come directly to Local Government, and follow administrative rules for administering this program on behalf of DCBS. If Local Government refuses to process an application for a manufactured structure located in its county that is complete under DCBS administrative rules, DCBS will process the application refused by Local Government, but DCBS will consider Local Government's refusal as a breach of this Agreement and may remove Local Government's access to MHODS, as referred to in Section 9.2.5 of this Agreement.

## **SECTION 2: EFFECTIVE DATE AND DURATION**

This Agreement is effective July 1, 2023, or the date in which every party has signed this Agreement. This Agreement remains effective until **June 30, 2026** unless otherwise terminated in accordance with Section 9.

## **SECTION 3: RESPONSIBILITIES OF EACH PARTY**

- 3.1** DCBS shall provide, maintain and upgrade the MHODS software system and document archiving interface. DCBS shall provide a Help Desk to assist manufactured structure dealers, title companies, and escrow companies to navigate the MHODS Web site, and to assist Local Government with MHODS software issues. Local Government will not be considered to be in breach of this Agreement if it is unable to process an application because of a failure or malfunction of the MHODS software system. DCBS will accept and process public records requests related to MHODS and information created or stored by MHODS.
- 3.2** Local Government shall use MHODS to complete all aspects of transactions for recording manufactured structure ownership and security interests, as well as issuing trip permits.

## **SECTION 4: FEES AND COMPENSATION**

- 4.1** The fees collected for MHODS transactions must be deposited with the state weekly through one of the following methods: into a state bank account with deposit slips provided by the state; into a state account by credit card through the DCBS secure fax line; into a state account through ACH transfer; or into a state account by local government investment pool transfer from Local Government's account to DCBS 's account, provided that Local Government complies with the Local Government Public Funds Information Requirements detailed in the Local Government section of the Oregon State Treasury website at [oregon.gov/treasury](http://oregon.gov/treasury). The state shall remit \$35 of each \$55 ownership document application fee, and all of each trip permit application fee, collected by Local Government on behalf of DCBS to Local Government, on a monthly basis. Payment for the previous month will be remitted to Local Government by the end of the following month.
- 4.2** Local Government shall accept application fees only for complete applications that result in the issuance of ownership documents. DCBS shall not issue any refunds of MHODS fees to Local Government or to customers for application fees accepted by Local Government. Local Government shall retain all Local Government fees generated outside of this Agreement.
- 4.3** The maximum not to exceed compensation payable to Local Government under this Agreement is \$10,000.00.

## **SECTION 5: REPRESENTATIONS AND WARRANTIES**

Local Government represents and warrants to DCBS that:

- 5.1** Local Government is a county duly organized and validly existing. Local Government has the power and authority to enter into and perform this Agreement; the making and performance by Local Government of this Agreement (a) have been duly authorized by Local Government, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Local Government's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Local Government is party or by which Local Government may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Local Government of this Agreement, other than those that have already been obtained. This Agreement has been duly executed and delivered by Local Government and constitutes a legal, valid and binding obligation of Local Government enforceable in accordance with its terms;
- 5.2** Local Government has the skill and knowledge possessed by well-informed members of the industry, trade or profession most closely involved in providing the services under this Agreement, and Local Government will apply that skill and knowledge with care and diligence to perform its obligations under this Agreement in a professional manner and in accordance with the highest standards prevalent in the related industry, trade or profession;
- 5.3** Local Government shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement; and
- 5.4** The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided by Local Government.

DCBS represents and warrants to Local Government that:

- 5.5** DCBS has the power and authority to enter into and perform this Agreement; the making and performance by DCBS of this Agreement (a) have been duly authorized by DCBS, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other

administrative agency or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which DCBS is party or by which DCBS may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by DCBS of this Agreement, other than those that have already been obtained. This Agreement has been duly executed and delivered by DCBS and constitutes a legal, valid and binding obligation of DCBS enforceable in accordance with its terms.

- 5.6** DCBS has the skill and knowledge possessed by well-informed members of the industry, trade or profession most closely involved in providing the services under this Agreement, and DCBS will apply that skill and knowledge with care and diligence to perform its obligations under this Agreement in a professional manner and in accordance with the highest standards prevalent in the related industry, trade or profession;
- 5.7** DCBS shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement; and,
- 5.8** The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided by DCBS.

## **SECTION 6: GOVERNING LAW, CONSENT TO JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between DCBS or any other agency or department of the State of Oregon, or both, and Local Government that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a Circuit Court of Marion County, State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. The Parties acknowledge that this is a binding and enforceable Agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HERBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

## **SECTION 7: CONTRIBUTION AND INDEMNIFICATION**

- 7.1** Pursuant to ORS 446.621(4) DCBS is not liable to any person for issuing an ownership document based upon documentation provided under ORS 446.621 (3), and such immunity shall be construed to extend to any agent of DCBS.
- 7.2** If any third party makes any tort claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a "Third-Party Claim") against a Party (the "Notified Party") with respect to which the other Party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third-Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third-Party Claim that have been received by the Notified Party. 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 the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third-Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this Section 7 with respect to the Third-Party Claim.
- 7.3** With respect to a Third-Party Claim for which DCBS is jointly liable with Local Government (or would be if joined in the Third-Party Claim), DCBS 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 Local Government in such proportion as is appropriate to reflect the relative fault of DCBS on the one hand and of Local Government on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of DCBS on the one hand and of Local Government 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. DCBS's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.
- 7.4** With respect to a Third-Party Claim for which Local Government is jointly liable with DCBS (or would be if joined in the Third-Party Claim), Local Government 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 DCBS in such proportion as is appropriate to reflect the relative fault of Local Government on the one hand and of DCBS on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of

Local Government on the one hand and of DCBS 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. Local Government's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

- 7.5 All Other Claims.** For any other claim, suit, class action suit, or proceeding alleging discriminatory or unconstitutional conduct with respect to Local Government's acts or refusal to act under this agreement in Local Government's dealings with persons seeking services under this Agreement, Local Government shall, subject to Article XI, Section 10 of the Oregon Constitution, indemnify and defend the State or Oregon, DCBS, and their officers and employees from and against all claims, suits, actions, losses, damages, liability, costs and expenses of any nature whatsoever arising out of or relating to the acts or omissions of Local Government or its officers, employees, subcontractors, or agents under this Agreement.

For any other claim, suit, class action suit, or proceeding alleging discriminatory or unconstitutional conduct with respect to DCBS's acts or refusal to act under this Agreement in DCBS's dealings with persons seeking services under this Agreement related to the territory within the boundaries of Local Government, DCBS shall indemnify and defend Local Government, and its officers and employees from and against all claims, suits, actions, losses, damages, liability, costs and expenses of any nature whatsoever arising out of or relating to the acts or omissions of DCBS Government or its officers, employees, subcontractors, or agents other than Local Government under this Agreement, up to a maximum of \$500,000.

## **SECTION 8: DEFAULT**

- 8.1** Local Government will be in default under this Agreement upon the occurrence of any of the following events:

Local Government fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement; any representation, warranty or statement made by Local Government in this Agreement or in any documents or reports relied upon by DCBS to measure the delivery of services, the expenditure of funds or the performance by Local Government is untrue in any material respect when made; Local Government (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary

case under the Federal Bankruptcy Code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or proceeding or case is commenced, without the application or consent of Local Government, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of Local Government, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of Local Government or of all or any substantial part of its assets, or (c) similar relief in respect to Local Government under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against Local Government is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

- 8.2** DCBS will be in default under this Agreement If DCBS fails to perform, or discharge any of its agreements or obligations under this Agreement, or any representation, warranty or statement made by DCBS in this Agreement or in any documents or reports relied upon by Local Government to measure the delivery of services, the expenditure of funds or the performance by DCBS is untrue in any material respect when made.

## **SECTION 9: TERMINATION**

- 9.1** This Agreement may be terminated at any time by mutual written consent of the Parties.
- 9.2** DCBS may terminate this Agreement as follows:
- 9.2.1** Upon 30 days' advance written notice to Local Government;
  - 9.2.2** Immediately upon written notice to Local Government, if DCBS fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in DCBS's reasonable administrative discretion, to perform its obligations under this Agreement;
  - 9.2.3** Immediately upon written notice to Local Government, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that DCBS 's performance under this Agreement is prohibited or DCBS is



prohibited from paying for such performance from the planned funding source;

**9.2.4** Immediately upon written notice to Local Government, if Local Government is in default under this Agreement and such default remains uncured 15 days after written notice thereof to Local Government;

**9.2.5** Immediately upon written notice to Local Government, if Local Government refuses to accept an application for a manufactured structure located within Local Government's borders in appropriate form; or

**9.2.6** As otherwise expressly provided in this Agreement.

**9.3** Local Government may terminate this Agreement as follows:

**9.3.1** Upon 30 days advance written notice to DCBS;

**9.3.2** Immediately upon written notice to DCBS, if Local Government fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Local Government's reasonable administrative discretion, to perform its obligations under this Agreement;

**9.3.3** Immediately upon written notice to DCBS, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Local Government's performance under this Agreement is prohibited or Local Government is prohibited from paying for such performance from the planned funding source;

**9.3.4** Immediately upon written notice to DCBS, if DCBS is in default under this Agreement and such default remains uncured 15 days after written notice thereof to DCBS; or

**9.3.5** As otherwise expressly provided in this Agreement.

**9.4** Upon termination of this Agreement, Local Government will immediately cease all activities under this Agreement, unless DCBS expressly directs otherwise in such notice. Upon termination, Local Government will deliver to DCBS all documents, information, works-in-progress, Work Product and other property that are or would be deliverables under the Agreement. And upon DCBS 's reasonable request, Local Government will surrender all documents, research or objects or other tangible things needed to complete the work that was to have been performed by Local Government under this Agreement. Upon receiving a notice of termination of this

agreement the DCBS shall remove all Local Government access to MHODS immediately.

## **SECTION 10: NONAPPROPRIATION**

DCBS's obligation to pay any amounts and otherwise perform its duties under this Agreement, except for remittance of the amounts described in Section 4 of this agreement, is conditioned upon DCBS receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow DCBS, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law limiting the activities, liabilities, or monetary obligations of DCBS.

## **SECTION 11: SUBCONTRACTS**

Local Government shall not subcontract any of Local Government's obligations or services under this Agreement without DCBS's written authorization. The basis for refusing authorization includes, but is not limited to, DCBS's determination that Local Government's request to subcontract would or could constitute a violation of a Collective Bargaining Agreement to which DCBS is a party.

## **SECTION 12: AMENDMENTS**

The terms of this Agreement may not be altered, modified, supplemented, or otherwise amended, except by written agreement of the Parties that is signed by a duly authorized representative of each party, clearly recites the parties' understanding and intent to amend the Agreement, and clearly and with specificity describes the terms to be amended or supplemented.

## **SECTION 13: NOTICE**

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by facsimile, personal delivery, or postage prepaid mail, to a Party's authorized representative at the physical address, fax number set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Section 13. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.

## **SECTION 14: SURVIVAL**

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

## **SECTION 15: SEVERABILITY**

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

## **SECTION 16: COUNTERPARTS**

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

## **SECTION 17: COMPLIANCE WITH LAW**

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local law.

## **SECTION 18: INTENDED BENEFICIARIES**

DCBS and Local Government are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

## **SECTION 19: FORCE MAJEURE**

Neither Party is responsible for any failure to perform, or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. Either party may terminate

this Agreement upon written notice to the other party after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

## **SECTION 20: ASSIGNMENT AND SUCCESSIONS IN INTEREST**

Local Government may not assign or transfer its interest in this Agreement without the prior written consent of DCBS and any attempt by Local Government to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. DCBS's consent to Local Government's assignment or transfer of its interest in this Agreement will not relieve Local Government of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

## **SECTION 21: TIME IS OF THE ESSENCE**

Time is of the essence in each Party's performance of its obligations under this Agreement.

## **SECTION 22: MERGER, WAIVER**

This Agreement and all exhibits and attachments, if any, 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 or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

## **SECTION 23: RECORDS MAINTENANCE AND ACCESS**

Each Party shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, each Party shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of the Party, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document the Party's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of each Party, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Each Party acknowledges and agrees that the other Party and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Each

Party shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Subject to foregoing minimum records retention requirement, each Party shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

## **SECTION 24: HEADINGS**

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

*Signatures on following page*

**SECTION 25: SIGNATURES****Polk County**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

FEIN: 93-6002310*Approved Pursuant to ORS 279A.140***DEPARTMENT OF ADMINISTRATIVE  
SERVICES:**Not Required per OAR 125-246-0365(4)*Approved Pursuant to ORS 291.047***DEPARTMENT OF JUSTICE:**

Template Approved via Email

By: Stephanie A Schor

Title: Senior Assistant Attorney General

Date: January 20, 2023

**State of Oregon acting by and through its  
Department of Consumer and Business  
Services, Building Codes Division**

Reviewed by: \_\_\_\_\_

Dawn Bass

Title: Deputy Administrator

Date: \_\_\_\_\_

Executed by: \_\_\_\_\_

Miriha D. Aglietti

Title: Designated Procurement Officer

Date: \_\_\_\_\_



## Contract Review Sheet

Staff Contact: Todd Whitaker Department: Public Works

Title: Director Consent Calendar Date: \_\_\_\_\_

Contractor Name: US Dept of Transportation, Federal Highway Administration, Western Federal Land

Address: 610 E. Fifth Street

City, State, Zip: Vancouver, WA 98661

Effective Dates - From: 6/14/2023 Thru: 11/30/2024

Contract Amount: \$ 1,124,661.23

Source Selection:

- |  |   |
|--|---|
| <input type="checkbox"/> Sole Source           | <input type="checkbox"/> Personal Services                                      |
| <input type="checkbox"/> Competitive Quotes    | <input checked="" type="checkbox"/> Special/Exempt Procurement (explain below): |
| <input type="checkbox"/> Formal Bid            | <u>Memorandum of Agreement</u>  |
| <input type="checkbox"/> Request for Proposals | _____   |

Background/Discussion:

This agreement replaces Polk County Contract 20-101 with the Western Federal Lands Highway Division for Preliminary Engineering, Environmental Studies, Construction Engineering and Contract Administration for planned improvements to Mitchell St. and Black Rock Rd.

Fiscal Impact:

The County match for this project is 10.27%, this is made up of a cash match of \$523,724.23 and In-Kind contributions of \$600,937.00 for the Dutch Creek Bridge construction that was completed with FEMA Title 42 funds.

Recommendation:

Staff recommends the Board approve the Memorandum of Agreement for Mitchell St. and Black Rock Rd. Federal Lands Access Program (FLAP) Project.

Copies of signed contract should be sent to the following:

Name: Heather Chase E-mail: chase.heather@co.polk.or.us

Name: Matthew Miller E-mail: matthew.miller@dot.gov

Name: \_\_\_\_\_ E-mail: \_\_\_\_\_

# Federal Lands Access Program Project Memorandum of Agreement

**Project / Facility Name:** OR FLAP POLK MITCHELL(1) / MITCHELL STREET AND BLACK ROCK ROAD RECONSTRUCTION

**Project Route:** Mitchell Street and Black Rock Road

**State:** OREGON

**County:** Polk

**Owner of Federal Lands to which the Project Provides Access:** Bureau of Land Management (BLM)

**Entity with Title or Maintenance Responsibility for Facility:** Polk County (COUNTY)

**Type of Work:** The project is to include:

- Preliminary Engineering including environmental studies to support an environmental decision
- Construction Engineering / Contract Administration

This Agreement does not obligate (commit to) the expenditure of Federal funds nor does it commit the parties to complete the project. Rather, this agreement sets forth the respective responsibilities as the project proceeds through the project development process and construction.

This agreement replaces Federal Lands Access Program Project Memorandum of Agreement executed on 6/24/2020.

**Parties to this Agreement:** Polk County (COUNTY) and Federal Highway Administration, Western Federal Lands Highway Division (FHWA-WFL).

The Program Decision Committee approved this project on 11/9/2016.

**AGREED:**

---

Polk County

---

Date

---

Western Federal Lands Highway Division, FHWA-WFL

---

Date



**A. PURPOSE OF THIS AGREEMENT:**

This agreement documents the intent of the parties and sets forth the anticipated responsibilities of each party in the development, construction, and continued maintenance of the subject project. The purpose of the agreement is to identify and assign responsibilities for Project Development, Contract Advertisement, and Construction Administration as appropriate for this project, and to ensure continued maintenance of the facility for public use if improvements are made. The parties understand that any final decision as to design or construction will not be made until after the environmental analysis required under the National Environmental Policy Act (NEPA) is completed (this does not prevent the parties from assigning proposed design criteria to be studied in the NEPA process.) Any decision to proceed with the design and construction of the project will depend on the availability of appropriations at the time of obligation and other factors such as issues raised during the NEPA process, a natural disaster that changes the need for the project, a change in Congressional direction, or other relevant factors.

If Federal Lands Access Program (FLAP) funds are used for the development or construction of this project, the COUNTY agrees to provide a matching share equal to 10.27% of the total cost of the project, as detailed more fully in Section J below. When agencies other than FHWA-WFL will be expending FLAP funds, the parties agree to execute a separate obligating document. No reimbursement will be made for expenses incurred prior to execution of the obligating document.

**B. AUTHORITY:**

This Agreement is entered into between the signatory parties pursuant to the provisions of 23 U.S.C. 204 and COUNTY authority.

**C. JURISDICTION AND MAINTENANCE COMMITMENT:**

COUNTY has jurisdictional authority to operate and maintain the existing facility and will operate and maintain the completed project at its expense.

**D. FEDERAL LAND MANAGEMENT AGENCY COORDINATION:**

COUNTY has coordinated project development with the Bureau of Land Management. The Bureau of Land Management support of the project is documented in the Project Proposal by endorsing the proposal.

Each party to this agreement who has a primary role in NEPA, design or construction should coordinate their activities with the Bureau of Land Management.

**E. PROJECT BACKGROUND / SCOPE:**

Mitchell Street and Black Rock Road are a single route located west of the city of Falls City, Oregon. Approximately half the road is located within the City Limits of Falls City. Within the city, the road

is known as Mitchell Street. The remaining half of the road lies within the jurisdiction of Polk County, where it is known as Black Rock Road. Polk County and Falls City will be the primary partners for the project. The County and City both have maintenance responsibility of the road.

The road is currently a narrow, two lane gravel road of varying width. It crosses the Little Luckiamute River over a single lane, structurally deficient bridge. The road is anticipated to see large amounts of logging traffic in the upcoming years and is in need of improvement to avoid failures, as it does not provide an all-weather access for the vehicles that use the road and creates the need for constant maintenance.

The proposed project begins at the intersection of Mitchell Street and Park Street, and ends approximately 0.95 miles to the west, just past an intersection with an unnamed logging road to Lower Berry Quarry.

The purpose of the project is to improve the road to an all-weather road that provides two-way travel. The project will also upgrade the crossing of the Little Luckiamute River bridge to current standards. The County will be replacing the culverts at Dutch Creek with a new two-lane bridge prior to construction of the FHWA delivered project.

ROW acquisition will be needed for this project, estimated at 2.95 acres. As many as twenty properties are estimated to be effected, with twelve different owners. It's anticipated that utility relocation will be needed and that there will be environmental issues associated with the project including wetlands, fish passage, and stream encroachments.

#### **F. PROJECT BUDGET:**

This is the anticipated budget for the project based on information developed to date. Federal Lands Access Program funds in conjunction with matching funds provided by COUNTY will fund this project as detailed in Section K.

<b>Item</b>	<b>Total</b>	<b>Comments</b>
Preliminary Engineering including scoping and NEPA (PE)	\$1,900,000	
Construction Engineering (CE)	\$950,000	
Construction (CN)	\$7,600,937	\$7,000,000 for WFL project. Includes \$600,937 from County delivered Dutch Creek project.
Construction Modifications (CM) Contingency	\$500,000	Reserved for construction phase.
<b>TOTAL</b>	<b>\$10,950,937</b>	

**G. ROLES AND RESPONSIBILITIES:**

**COUNTY**

- Will appoint a representative who will be the primary contact for FHWA-WFL's Project Manager
- Will provide appropriate match to all FLAP funds expended on the project even if the project is terminated prior to completion.
- Will be responsible for the acquisition of any rights-of-way and / or easements necessary to complete the project.
- Will replace culverts at Dutch Creek with a new two-lane bridge.
- Will be responsible for post-construction Oregon DSL permit requirements (including monitoring, annual reporting, and corrective action, if necessary) for revegetation of riprap revetment. (Note FHWA will conduct monitoring and reporting for the first year)
- Will review the Plans, Specifications, and Estimate package.
- Will provide project concurrence prior to project advertisement.
- Will attend the Pre-Construction meeting.
- Upon completion of construction, a final inspection will be convened by FHWA-WFL with attendees from COUNTY, and if it is determined the project has been constructed in substantial conformity with approved plans and specifications, COUNTY will provide written confirmation of its acceptance of the constructed project.

**FHWA-WFL**

- Will be responsible for project development, permitting, and construction administration and oversight of the work.
- Will be responsible for FHWA decisions that may be not be delegated.
- Will obtain, or require the construction contractor to obtain, all necessary permits.
- Will seek input from COUNTY throughout the development process.
- Will identify utilities in conflict with the proposed project and prepare documents needed to coordinate relocation work.
- Will appoint a Project Engineer during the Construction Phase to oversee and inspect the work to ensure a quality product. The construction will be governed by the FP-14, Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects as modified by the project Special Contract Requirements. The Project Engineer is FHWA's designated contact during the construction phase.
- Will conduct a Pre-Construction meeting.
- Will conduct final project inspections.
- Will prepare revegetation plan, as-built report, and conduct the first year of monitoring and reporting per Oregon DSL permit requirements.

**H. ROLES AND RESPONSIBILITIES – MILESTONE SCHEDULE:**

<b>Responsible Lead</b>	<b>Product/Service</b>	<b>Schedule Finish</b>
FHWA-WFL	30% Design	October 2019
FHWA-WFL	NEPA Determination	April 2020
FHWA-WFL	70% Design	September 2020
FHWA-WFL	NEPA Decision	November 2022
COUNTY	ROW	October 2023
FHWA-WFL	100% PS&E	September 2023
FHWA-WFL	Advertise/Award	October 2023 / December 2023
FHWA-WFL	Construction	January 2024 – November 2024

#### **I. PROPOSED DESIGN STANDARDS:**

Preferred design alternatives will be determined through the NEPA process.

<b>Criteria</b>		<b>Comments</b>
Standard	Roadway Design Manual AASHTO – A Policy on Geometric Design	
Functional Classification	Rural Local Road	
Surface Type	Asphalt	
Design Volume	2250 ADT (start of project), 571 ADT (end of project)	20-year projection

Design exceptions to standards, will be documented and sent to the COUNTY for concurrence.

#### **J. FUNDING:**

The project is funded by the Federal Lands Access Program administered by FHWA-WFL, with matching funds provided by the BLM and the COUNTY.

<b>Funding Source</b>	<b>Amount</b>	<b>%</b>	<b>Comments</b>
Federal Lands Access Funds	\$9,826,275.77	89.73%	

Funding Source	Amount	%	Comments
Local Matching Share (COUNTY)	\$1,124,661.23	10.27%	
Total Projected Costs	<b>\$10,950,937.00</b>	100%	

**K. MATCHING SHARE REQUIREMENTS:**

The purpose of this section is to document the intent of COUNTY to meet its match requirement for the subject project as authorized under section 23 USC 201(b)(7)(B).

All FLAP expenditures associated with this project will need to be matched by a Non- Federal source, by other Federal funds other than those made available under Titles 23 and 49 of the United States Code, or by funds made available under 23 U.S.C. 202 and 203. The matching requirement under the FAST Act will be met by COUNTY.

COUNTY and other agencies have committed to the project. The forms of match shall be those consistent with the 'Federal-Aid Guidance Non-Federal Matching Requirements' and as approved by FHWA-WFL. In the state of OREGON, 10.27% of the total project cost.

This project is authorized to use a Tapered Match. Under this approach, the non-Federal match is imposed over the entire project rather than individual progress payments. Timing of all fund transfers are specified in the Funding Plan. Tapered Match is authorized because it will result in an earlier completion date.

Estimated costs and fiscal year (FY) for the funding are based on the best budgeting and scheduling information known at the time. The final match will be determined based on actual expenditures at the conclusion of project work. Matching cash funds in FHWA-WFL receipt may need to be supplemented, or returned, once actual expenditures are determined. As noted under Modifications, if costs increase over the amount within this agreement, FHWA-WFL will consult with the agency providing Match before granting approval.

Maintain all project records, including source documentation for all expenditures and in-kind contributions, for a period of three (3) years from the date of final acceptance. If any litigation claim, negotiation, or audit has been started before expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues that arise from it.

The following agencies have agreed to contribute the amounts shown which will reduce the federal share by the same amount. The Funding Plan is as follows:

Agency	Phase	Form	Due	Value	Comments
COUNTY	PE	CASH	Received	\$108,862.00	
COUNTY	PE	CASH	07/15/2023	\$86,268.00	
COUNTY	CN	CASH	07/15/2023	\$328,594.23	
COUNTY	CN	In-Kind	Received	\$600,937.00	FEMA Title 42 funded Dutch Creek Bridge construction

**L. PROJECT TEAM MEMBERS – POINT OF CONTACT:**

The following table provides the points of contact for this project. They are to be the first persons to deal with any issues or questions that arise over the implementation of each party's role and responsibility for this agreement.

NAME / TITLE	ORGANIZATION	TELEPHONE NO. / E-MAIL
Stephen Kahl, Civil Engineer	Polk County	(503) 623-9287 <a href="mailto:kahl.stephen@co.polk.or.us">kahl.stephen@co.polk.or.us</a>
Todd Whitaker, Public Works Director	Polk County	(503) 623-9287 <a href="mailto:whitaker.todd@co.polk.or.us">whitaker.todd@co.polk.or.us</a>
Matt Miller, Project Manager	Federal Highway Administration-Western Federal Lands Highway Division	360-619-7832 <a href="mailto:matthew.miller@dot.gov">matthew.miller@dot.gov</a>
Kirk Loftsgaarden, Project Manager Branch Chief	Federal Highway Administration-Western Federal Lands Highway Division	360-619-7512 <a href="mailto:kirk.loftsgaarden@dot.gov">kirk.loftsgaarden@dot.gov</a>

**M. CHANGES / AMENDMENTS / ADDENDUMS:**

The agreement may be modified, amended, or have addendums added by mutual agreement of all parties. The change, amendment, or addendum must be in writing and executed by all of the parties.

The types of changes envisioned include, but are not limited to, changes that significantly impact scope, schedule, or budget; changes to the local match, either in type or responsibility; change that alter the level of effort or responsibilities of a party. The parties commit to consider suggested changes in good faith. Failure to reach agreement on changes may be cause for termination of this agreement.

A change in composition of the project team members does not require the agreement to be amended.

It is the responsibility of the project team members to recognize when changes are needed and to make timely notifications to their management in order to avoid project delivery delays.

**N. ISSUE RESOLUTION PROCEDURES MATRIX:**

Issues should be resolved at the lowest level possible. The issue should be clearly defined in writing and understood by all parties. Escalating to the next level can be requested by any party. When an issue is resolved, the decision will be communicated to all levels below.

COUNTY	FHWA-WFL	Time
Stephen Kahl, Civil Engineer	Matt Miller, Project Manager	15 Days
Todd Whitaker, Public Works Director	Kirk Loftsgaarden, Project Manager Branch Chief	15 Days
Craig Pope, County Commissioner	Brent Coe, Chief of Engineering	10 Days

**O. TERMINATION:**

This agreement may be terminated by mutual written consent of all parties. This agreement may also be terminated if either the NEPA process or funding availability requires a change and the parties are not able to agree to the change. Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination. If Federal access funds have been expended prior to termination, the party responsible for the match agrees to provide a match in the applicable percentage of the total amount expended on the project prior to the termination.



## Contract Review Sheet

Staff Contact: Todd Whitaker Department: Public Works

Title: Director Consent Calendar Date: \_\_\_\_\_

Contractor Name: ODOT

Address: 455 Airport Road SE

City, State, Zip: Salem, OR 97301

Effective Dates - From: June 2023 Thru: June 2033

Contract Amount: \$ 71,715.41 (10.27% of estimated project cost of \$698,300)

### Source Selection:

- |  |   |
|--|---|
| <input type="checkbox"/> Sole Source           | <input type="checkbox"/> Personal Services                                      |
| <input type="checkbox"/> Competitive Quotes    | <input checked="" type="checkbox"/> Special/Exempt Procurement (explain below): |
| <input type="checkbox"/> Formal Bid            | <u>Agreement</u>  |
| <input type="checkbox"/> Request for Proposals | _____   |

### Background/Discussion:

Bridge No. 53C122, located on Helmick Road near Sarah Helmick State Park is in need of restoration to continue to provide service. This project was selected for funding through the Local Bridge Program and may include a combination of state and federal funds. This Agreement is for the preliminary design only and will be delivered by ODOT.

### Fiscal Impact:

The total estimated budget for preliminary engineering is \$698,300, of which Polk County is responsible for the local match of 10.27%, or \$71,715.41

### Recommendation:

Staff recommends the Board approve the Agreement with ODOT for preliminary engineering services associated with the rehabilitation of Bridge No. 53C122.

Copies of signed contract should be sent to the following:

Name: Heather Chase E-mail: chase.heather@co.polk.or.us

Name: Maile Boals E-mail: Maile.Boals@odot.oregon.gov

Name: \_\_\_\_\_ E-mail: \_\_\_\_\_



**ODOT Delivered Federal Project  
On Behalf of Polk County**

Luckiamute River Helmick Road Bridge No. 53C122 (Polk County)  
Key Number: 22656

THIS AGREEMENT ("Agreement") is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State" or "ODOT," and POLK COUNTY, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually as "Party" and collectively as "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572, and 366.576, state agencies may enter into cooperative agreements with counties, cities, and units of local governments 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. Helmick Road is a part of the county road system under the jurisdiction and control of Agency.
3. Agency has agreed that State will deliver this project on behalf of Agency.
4. The Project was selected as a part of the Local Bridge Program, and may include a combination of federal and state funds. "Project" is defined under Terms of Agreement, Paragraph 1 of this Agreement.
5. The Stewardship and Oversight Agreement On Project Assumption and Program Oversight By and Between Federal Highway Administration, Oregon Division and the State of Oregon Department of Transportation ("Stewardship Agreement") documents the roles and responsibilities of State with respect to project approvals and responsibilities regarding delivery of the Federal Aid Highway Program. This includes State's oversight and reporting requirements related to locally administered projects. The provisions of that agreement are hereby incorporated and included by reference.

**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, Agency and State agree to State delivering the Luckiamute River Helmick Road Bridge project, hereinafter referred to as "Project," on behalf of Agency. The Project includes design activities for a future construction project to address rehabilitation needs and preserve the historic integrity of the Luckiamute River Helmick Road Bridge, No. 53C122. The location of the Project is approximately as shown on the map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

2. The Parties anticipate State delivering the right of way and construction phases of the Project at a later date. Upon full funding and the addition of these phases to the Project in the Statewide Transportation Improvement Program (STIP), this Agreement may be amended to include right of way and construction phase work, and to add their respective costs. If the Parties do not amend this Agreement to add right of way and construction phase work, the right of way, construction, and maintenance provisions in this Agreement will not apply.
3. Agency agrees that, if State hires a consultant to design the Project, State will serve as the lead contracting agency and contract administrator for the consultant contract related to the work under this Agreement.
4. Project Costs and Funding.
  - a. The Total Project Cost is estimated at \$698,300.00, which is subject to change. Federal funds for this Project shall be limited to \$626,584.59, subject to future amendments to this Agreement as discussed in Terms of Agreement, Paragraph 2. Agency shall be responsible for all remaining costs, including any non-participating costs, all costs in excess of the federal funds, and the 10.27 percent (%) match for all eligible costs. Any unused funds obligated to this Project will not be paid out by State, and will not be available for use by Agency for this Agreement or any other projects. "Total Project Cost" means the estimated cost to complete the entire Project, and includes any federal funds, state funds, local matching funds, and any other funds.
  - b. With the exception of Americans with Disabilities Act of 1990 as amended (together, "ADA")-related design standards and exceptions, State shall consult with Agency on Project decisions that impact the Total Project Cost involving the application of design standards, design exceptions, risks, schedule, and preliminary engineering charges, for work performed on roadways under local jurisdiction. State will allow Agency to participate in regular meetings and will use all reasonable efforts to obtain Agency's concurrence on plans. State shall consult with Agency prior to making changes to Project scope, schedule, or budget. However, State may award a construction contract up to ten (10) percent (%) over engineer's estimate without prior approval of Agency.
  - c. Federal funds under this Agreement are provided under Title 23, United States Code.
  - d. ODOT does not consider Agency to be a subrecipient or contractor under this Agreement for purposes of federal funds. The Catalog of Federal Domestic Assistance (CFDA) number for this Project is 20.205, Highway Planning and Construction.
  - e. State will submit requests for federal funding to the Federal Highway Administration (FHWA). The federal funding for this Project is contingent upon approval of each

funding request by FHWA. Any work performed outside the period of performance or scope of work approved by FHWA will be considered nonparticipating and paid for at Agency expense.

- f. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project.
5. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.
6. Termination.
- a. This Agreement may be terminated by mutual written consent of both Parties.
  - b. State may terminate this Agreement upon 30 days' written notice to Agency.
  - c. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
    - i. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
    - ii. If Agency fails to perform any of the other provisions of this Agreement, 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.
    - iii. If Agency fails to provide payment of its share of the cost of the Project.
    - iv. If State fails to receive funding, appropriations, limitations, or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
    - v. 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.
  - d. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
7. Americans with Disabilities Act Compliance.
- a. When the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals, or triggers an obligation to address curb ramps or pedestrian signals, the Parties shall:

- i. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the ADA, including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
- ii. Follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, and providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection Form 734-5020;
- iii. At Project completion, send a completed ODOT Curb Ramp Inspection Form to the address on the form as well as to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

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

- b. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
  - i. Pedestrian access is maintained as required by the ADA;
  - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed;
  - iii. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered;
  - iv. Any future alteration work on the Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed; and
  - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- c. Maintenance obligations in this section shall survive termination of this Agreement.

- 8. State shall ensure compliance with the Cargo Preference Act and implementing regulations (46 CFR Part 381) for use of United States-flag ocean vessels transporting materials or equipment acquired specifically for the Project. Strict compliance is

required, including, but not limited to, the clauses in 46 CFR 381.7(a) and (b) which are incorporated by reference. State shall also include this requirement in all contracts and ensure that contractors include the requirement in their subcontracts.

9. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
10. The Parties acknowledge and agree that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Parties which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after completion of the Project and final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting party.
11. The Special Provisions and Federal Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are incorporated by this reference and made a part hereof. The Federal Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
12. Agency shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements, and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires State to return funds to FHWA, hold harmless and indemnify State for an amount equal to the funds received under this Agreement.
13. Agency and State are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
14. State and Agency hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal, or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
15. Notwithstanding anything in this Agreement or implied to the contrary, the rights and obligations set out in the following paragraphs of this Agreement shall survive Agreement expiration or termination, as well as any provisions of this Agreement that by their context are intended to survive: Terms of Agreement Paragraphs 4.e (Funding), 6.d (Termination), 7.c (ADA maintenance), 10-15, 18 (Integration, Merger; Waiver); and

Attachment 2, Paragraphs 1 (Project Administration), 7, 9, 11, 13 (Finance), and 37-41 (Maintenance and Contribution).

16. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members, or representatives, and to legally bind Agency.
17. This Agreement may be executed in several counterparts all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
18. This Agreement and attached Exhibits constitute the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and the attached exhibits will control over Project application and documents provided by Agency to State. 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 with all necessary approvals 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. Notwithstanding this provision, the Parties may enter into a Right of Way Services Agreement in furtherance of the Project.
19. State's Contract Administrator for this Agreement is Valerie Greenway, Senior Transportation Project Manager; 455 Airport Road SE, Salem, Oregon 97301; 971-304-5021; Valerie.greenway@odot.oregon.gov, 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.
20. Agency's Contract Administrator for this Agreement is Todd Whitaker, P.E., Polk County Public Works Director; 820 SW Ash Street, Dallas, Oregon 97338-2151; 503-623-9287; whitaker.todd@co.polk.or.us, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

**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.

This Project is in the 2021-2024 STIP, (Key No. 22656) that was adopted by the Oregon Transportation Commission on July 15, 2020 (or subsequently by amendment to the STIP).

**SIGNATURE PAGE FOLLOWS**

Polk County/ODOT  
Agreement No. 73000-00016515

**POLK COUNTY**, by and through its  
elected officials

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

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

By \_\_\_\_\_  
Agency Counsel

Date \_\_\_\_\_

**Agency Contact:**

Todd Whitaker, P.E., Polk County  
Public Works Director  
820 SW Ash Street  
Dallas, Oregon 97338-2151  
503-623-9287  
[whitaker.todd@co.polk.or.us](mailto:whitaker.todd@co.polk.or.us)

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

By \_\_\_\_\_  
Region 2 Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 2 Project Delivery Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

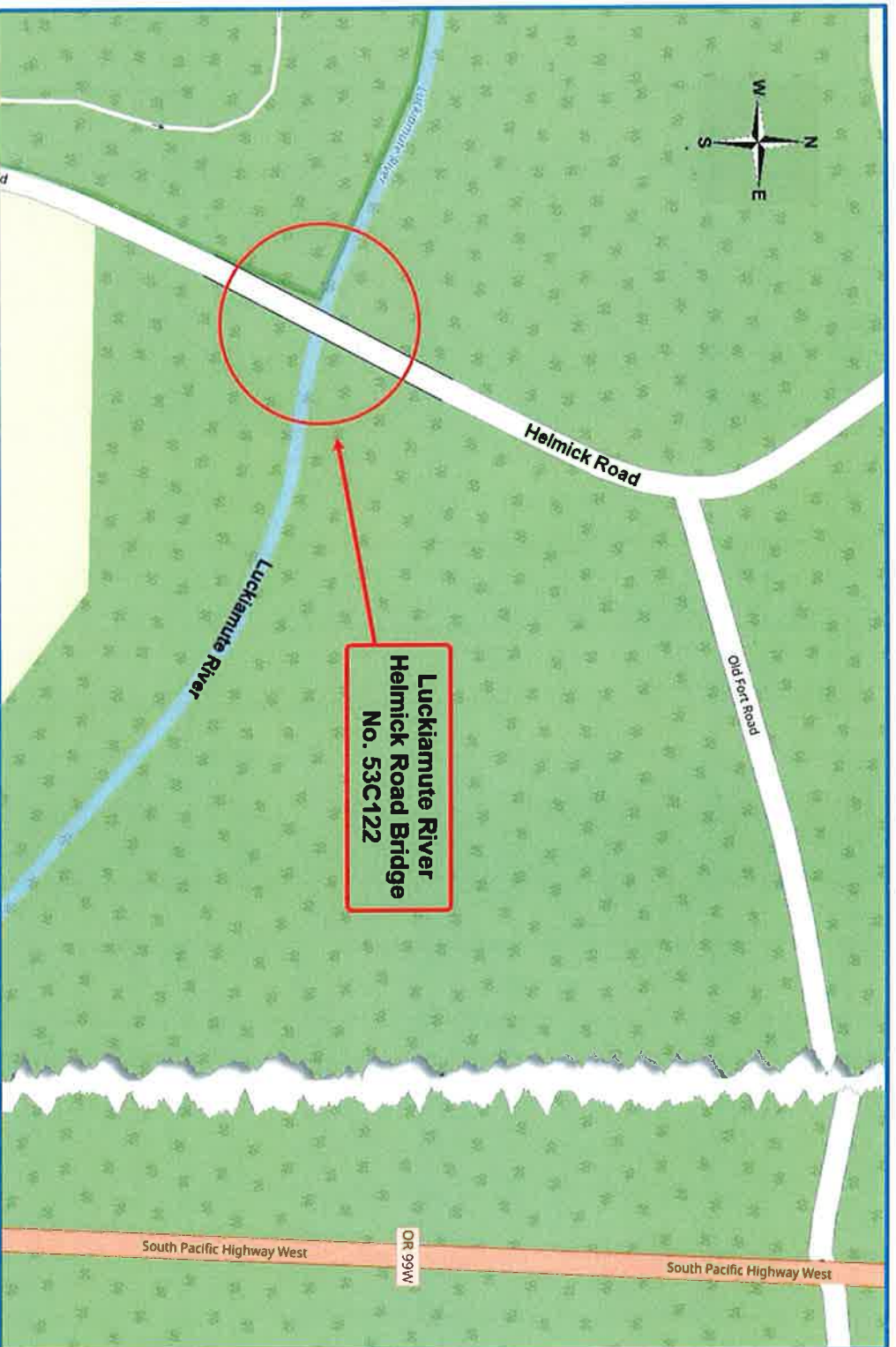
By Janet Borth via email \_\_\_\_\_  
Assistant Attorney General

Date 3/23/23 – Email approval retained in file

**State Contact:**

Valerie Greenway, Senior  
Transportation Project Manager  
455 Airport Road SE  
Salem, Oregon 97301  
971-304-5021  
[Valerie.greenway@odot.oregon.gov](mailto:Valerie.greenway@odot.oregon.gov)

**EXHIBIT A – Project Location Map**  
Luckiamute River – Helmick Road Bridge No. 53C122





**ATTACHMENT NO. 1 to AGREEMENT NO. 73000-00016096  
SPECIAL PROVISIONS**

1. State or its consultant shall conduct all work components necessary to complete the Project, except for those responsibilities specifically assigned to Agency in this Agreement.
  - a. State or its consultant shall conduct preliminary engineering and design work required to produce final plans, specifications, and cost estimates in accordance with current state and federal laws and regulations; obtain all required permits; acquire necessary right of way and easements; and arrange for all utility relocations and adjustments.
  - b. State will advertise, bid, and award the construction contract. Upon State's award of the construction contract, a consultant hired and overseen by the State shall be responsible for contract administration and construction engineering and inspection, including all required materials testing and quality documentation. State shall make all contractor payments.
  - c. State will perform project management and oversight activities throughout the duration of the Project. The cost of such activities will be billed to the Project.
  - d. State will notify within ninety (90) days of the issuance of Second Notification pursuant to Oregon Standard Specification 00180.50(g):
    - i. State's Local Agency Bridge Inspection Coordinator, Richard.J.King@odot.oregon.gov and bridge@odot.oregon.gov to ensure the initial inspection will be scheduled; and
    - ii. State will schedule an inspection with the agency, State's Project Manager under this Agreement, and State's Region Senior Structural Designer, or State's Senior Local Bridge Standards Engineer.
  - e. State will submit to Agency the following documents:
    - i. As-constructed Bridge Drawings,
    - ii. Foundation Report,
    - iii. Hydraulic Report including scour analysis,
    - iv. Pile Records and Drill Logs (if applicable), and
    - v. Final Load Rating with a stamped report
2. State and Agency agree that the useful life of this Project is defined as twenty-five (25) years.

3. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.

**ATTACHMENT NO. 2 TO AGREEMENT NO. 73000-00016515  
FEDERAL STANDARD PROVISIONS**

**PROJECT ADMINISTRATION**

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e., county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will act for Agency in other matters pertaining to the Project. Prior to taking such action, State will confer with Agency concerning actions necessary to meet federal obligations. State and Agency shall each assign a person in responsible charge "liaison" to coordinate activities and assure that the interests of both Parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.
3. State will provide or secure services to perform plans, PS&E, construction contract advertisement, bid, award, contractor payments and contract administration. A State-approved consultant may be used to perform preliminary engineering, right of way and construction engineering services.
4. Agency may perform only those elements of the Project identified in the special provisions.

**PROJECT FUNDING REQUEST**

5. State shall submit a separate written Project funding request to FHWA requesting approval of federal-aid participation for each project phase including a) Program Development (Planning), b) Preliminary Engineering (National Environmental Policy Act - NEPA, Permitting and Project Design), c) Right of Way Acquisition, d) Utilities, and e) Construction (Construction Advertising, Bid, and Award). Any work performed prior to FHWA's approval of each funding request will be considered nonparticipating and paid for at Agency expense. State, its consultant, or Agency shall not proceed on any activity in which federal-aid participation is desired until such written approval for each corresponding phase is obtained by State. State shall notify Agency in writing when authorization to proceed has been received from FHWA. All work and records of such work shall be in conformance with FHWA rules and regulations.

**FINANCE**

6. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount for the federal funds and any portion of the Project which is not covered by federal funding, unless otherwise agreed to and specified in the intergovernmental Agreement (Project Agreement). Agency must obtain written approval from State to use in-

kind contributions rather than cash to satisfy all or part of the matching funds requirement. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Project Agreement. State will also determine and clearly state in the Project Agreement if recipient is a subrecipient or contractor, using the criteria in 2 CFR 200.331.

7. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent (100%) of all costs in excess of the total matched federal funds. Agency shall pay one hundred percent (100%) of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds or allocations of State Highway Trust Funds to Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration that result in items being declared non-participating by FHWA, such items deemed non-participating will be negotiated between Agency and State. Agency agrees that costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon by the Parties.
8. Agency's estimated share and advance deposit.
  - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
  - b) Agency's construction phase deposit shall be one hundred ten percent (110%) of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid, must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is cancelled. Any balance of a cash deposit in excess of amount needed, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
  - c) Pursuant to Oregon Revised Statutes (ORS) 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool) with an Irrevocable Limited Power of Attorney sent to State's Active Transportation Section, Funding and Program Services Unit, or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash or check submitted to the Oregon Department of Transportation.
9. If Agency makes a written request for the cancellation of a federal-aid project, Agency shall bear one hundred percent (100%) of all costs incurred as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear one hundred percent (100%) of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all costs, whether

incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.

10. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
11. Agency shall, upon State's written request for reimbursement in accordance with Title 23, CFR part 630.112(c) 1 and 2, as directed by FHWA, reimburse State for federal-aid funds distributed to Agency if any of the following events occur:
  - a) Right of way acquisition is not undertaken, or actual construction is not started, by the close of the twentieth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized for right of way acquisition. Agency may submit a written request to State's Liaison for a time extension beyond the twenty (20) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
  - b) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized. Agency may submit a written request to State's Liaison for a time extension beyond the ten (10) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
12. State shall, on behalf of Agency, maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that the Project is completed in conformance with approved plans and specifications.
13. State shall submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. State shall pay all reimbursable costs of the Project. Agency may request a statement of costs-to-date at any time by submitting a written request. When the final total cost of the Project has been computed, State shall furnish Agency with an itemized statement. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal one hundred percent (100%) of the final total cost of the Project. Any portion of deposits made in excess of the final total cost of the Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the final total cost of the Project.

## **DESIGN STANDARDS**

14. Agency and State agree that minimum design standards on all local agency jurisdictional roadway or street projects on the National Highway System (NHS) and projects on the non-NHS shall be the American Association of State Highway and Transportation Officials (AASHTO) standards and be in accordance with State's Oregon Bicycle and Pedestrian Design Guide (current version). State or its consultant shall use either AASHTO's A Policy on Geometric Design of Highways and Streets (current version) or State's Resurfacing, Restoration and Rehabilitation (3R) design standards for 3R projects. State or its consultant may use AASHTO for vertical clearance requirements on Agency's jurisdictional roadways or streets.
15. Agency agrees that if the Project is on the Oregon State Highway System or a State-owned facility, design standards shall be in compliance with standards specified in the current ODOT Highway Design Manual and related references. Construction plans for such projects shall be in conformance with standard practices of State and all specifications shall be in substantial compliance with the most current Oregon Standard Specifications for Highway Construction and current Contract Plans Development Guide.
16. State and Agency agree that for all projects on the Oregon State Highway System or a 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. State and Agency further agree 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 retain authority for said approval. FHWA shall review any design exceptions for projects subject to Project of Division Interest and retains authority for their approval.
17. ODOT 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. State or its consultant shall, on behalf of Agency, 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.

## **PRELIMINARY AND CONSTRUCTION ENGINEERING**

18. Preliminary engineering and construction engineering may be performed by either a) State, or b) a State-approved consultant. Engineering work will be monitored by State to ensure conformance with FHWA rules and regulations. Project plans, specifications, and cost estimates shall be performed by either a) State, or b) a State-approved consultant. State shall review and approve Project plans, specifications, and cost estimates. State shall, at Project expense, review, process, and approve or submit for approval to the federal regulators, all environmental statements. State shall offer Agency the opportunity to review the documents prior to advertising for bids.

19. Architectural, engineering, photogrammetry, transportation planning, land surveying, and related services (A&E Services) as needed for federal-aid transportation projects must follow State's processes to ensure federal reimbursement. State will award, execute, and administer the contracts. State's personal services contracting process and resulting contract document will follow Title 23 CFR part 172, 2 CFR part 1201, ORS 279A.055, 279C.110, 279C.125, OAR 731-148-0130, OAR 731-148-0220(3), OAR 731-148-0260 and State Personal Services Contracting Procedures, as applicable and as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or the State approved consultant prior to receiving authorization from State to proceed.
20. The State, or its consultant responsible for performing preliminary engineering for the Project, shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
21. State shall prepare construction contract and bidding documents, advertise for bid proposals, award all construction contracts, and administer the construction contracts.
22. Upon State's award of a construction contract, State shall perform quality assurance and independent assurance testing in accordance with the FHWA-approved Quality Assurance Program found in State's Manual of Field Test Procedures, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
23. State shall, as a Project expense, assign a liaison to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). State's liaison shall process reimbursement for federal participation costs.

#### **DISADVANTAGED BUSINESS ENTERPRISES (DBE) OBLIGATIONS**

24. State and Agency agree to incorporate by reference the requirements of 49 CFR part 26 and State's DBE Program Plan, as required by 49 CFR part 26 and as approved by USDOT, into all contracts entered into under this Project Agreement. The following required DBE assurance shall be included in all contracts:

*"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR part 26 in the award and administration of federal-aid contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b))."*

25. State and Agency agree to comply with all applicable civil rights laws, rules, and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
26. The Parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders, and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR parts 1.11, 140, 635, 710, and 771; Title 49 CFR parts 24 and 26; , 2 CFR 1201; Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, the provisions of the FAPG and *FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide*. State and Agency agree that FHWA-1273 Required Contract Provisions shall be included in all contracts and subcontracts verbatim and not by reference.

## **RIGHT OF WAY**

27. Right of way activities shall be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FAPG, CFR, and the *ODOT Right of Way Manual*, Title 23 CFR part 710 and Title 49 CFR part 24.
28. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of the Project. State or its consultant may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project in accordance with the *ODOT Right of Way Manual*, and with the prior approval from State's Region Right of Way Office.
29. If the Project has the potential of needing right of way, to ensure compliance in the event that right of way is unexpectedly needed, a right of way services agreement will be required. State, at Project expense, shall be responsible for requesting the obligation of Project funding from FHWA. State, at Project expense, shall be entirely responsible for Project acquisition and coordination of the right of way certification.
30. State or its consultant shall ensure that all Project right of way monumentation will be conducted in conformance with ORS 209.155.
31. State and Agency grant each other authority to enter onto the other's right of way for the performance of non-construction activities such as surveying and inspection of the Project.

## **RAILROADS**

32. State shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through the State's Liaison, who will contact State's Railroad Liaison on behalf of Agency. Only those costs allowable under Title 23 CFR part 140 subpart I, and Title 23 part 646 subpart B shall be included in the Total



Project Costs; all other costs associated with railroad work will be at the sole expense of Agency, or others.

## **UTILITIES**

33. State or its consultant shall follow State established statutes, policies, and procedures when impacts occur to privately or publicly-owned utilities. Policy, procedures, and forms are available through the State Utility Liaison or State's Liaison. State or its consultant shall provide copies of all signed utility notifications, agreements, and Utility Certification to the State Utility and Railroad Liaison. Only those utility relocations, which are eligible for reimbursement under the FAPG, Title 23 CFR part 645 subparts A and B, shall be included in the Total Project Costs; all other utility relocations shall be at the sole expense of Agency, or others. Agency may send a written request to State, at Project expense, to arrange for utility relocations and adjustments lying within Agency jurisdiction. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. Agency shall not perform any utility work on State highway right of way without first receiving written authorization from State.

## **GRADE CHANGE LIABILITY**

34. Agency, if a county, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the county.
35. Agency, if a city, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
36. Agency, if a city, by execution of the Project Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the city limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, in connection with or arising out of the Project covered by the Project Agreement.

## **MAINTENANCE RESPONSIBILITIES**

37. Agency shall, at its own expense, maintain, operate, and provide power as needed upon Project completion at a minimum level that is consistent with normal depreciation and/or service demand and throughout the useful life of the Project. The useful life of the Project is defined in the Special Provisions. State may conduct periodic inspections during the life of the Project to verify that the Project is properly maintained and continues to serve the purpose for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of the Project Agreement. In the event the Project will include or affect a state highway, this provision does not address maintenance of that state highway.

## **CONTRIBUTION**

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

## **ALTERNATIVE DISPUTE RESOLUTION**

41. The Parties shall attempt in good faith to resolve any dispute arising out of this Project 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.

## **WORKERS' COMPENSATION COVERAGE**

42. All employers, including Agency, that employ subject workers who work under this Project 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 five hundred thousand dollars (\$500,000) must be included. State and Agency shall ensure that each of its contractors complies with these requirements.

## **LOBBYING RESTRICTIONS**

43. Agency certifies by signing this Agreement that:

- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY,  
AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

By signing this Agreement, Agency agrees to fulfill the responsibility imposed by 2 CFR Subpart C, including 2 CFR 180.300, 180.355, 180.360, and 180.365, regarding debarment, suspension, and other responsibility matters. For the purpose of this provision only, Agency is considered a participant in a covered transaction. Furthermore, by signing this Agreement, Agency is providing the certification for its principals required in Appendix to 2 CFR part 180 – Covered Transactions.