

COOPERATIVE MAINTENANCE AGREEMENT
OR43 Multimodal Transportation Project: Maintenance Services
West Linn

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State," and the CITY OF WEST LINN, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually as a "Party" and collectively as the "Parties."

RECITALS

1. OR-43 (Willamette Drive) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Hidden Springs Road, Old River Road, Lazy River Drive, and Cedar Oak Drive are part of Agency's street system under the jurisdiction and control of Agency.
2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. State, by ORS 366.220, is vested with complete jurisdiction and control over the roadways of other jurisdictions taken for state highway purposes.
4. The Parties are concurrently entering into Agreement Number 32348, under which State is agreeing to deliver on behalf of Agency the OR43 Multimodal Transportation Project (the "Project").
5. State and Agency are entering into this Agreement to delineate power and maintenance responsibilities arising from the Project.

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. State and Agency agree that each Party is responsible for its share of ongoing maintenance of the Project as set forth in this Agreement. The Project location is set forth in the attached Exhibit A.
2. This Agreement becomes effective upon the later of the date all required signatures are obtained and the date of execution of the Project Agreement. If the Parties do not enter into the Project Agreement, this Agreement shall be considered null and

void. This Agreement shall remain in effect for twenty (20) calendar years unless otherwise agreed to by the parties.

AGENCY OBLIGATIONS

1. Agency is responsible for all maintenance and operation of all areas of the Project not located on or along OR43.
2. For areas of the Project located on or along OR43, Agency is responsible for the following:
 - i. All maintenance behind curbs adjacent to motor vehicle travel lanes, as further indicated in the cross section set forth in Exhibit B, attached hereto and by this reference made a part hereof;
 - ii. All maintenance for all signage installed as part of the Project;
 - iii. All maintenance and operation for all illumination and traffic signals installed as part of the Project; and
 - iv. All maintenance and operation of drainage features installed as part of the Project.
3. Agency shall pay all costs associated with maintenance and operation of the Project's drainage facilities. For drainage facilities located on or along OR43, Agency shall invoice State for State's proportional share of runoff as mutually determined by the Parties.
4. For areas of the Project located on or along OR43, Agency shall comply with State maintenance and operation standards.
5. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.
6. Agency shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
7. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination,

excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request.

8. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.
9. Any such indemnification shall also provide that neither the Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
10. Agency grants State the right to enter onto Agency right of way for the performance of duties set forth in this Agreement.
11. Agency certifies and represents that each individual 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.
12. Agency's contact for this Agreement is the City Manager, 22500 Salamo Road, West Linn, OR 97068, (503) 742-6001, citymanager@westlinnoregon.gov, 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.

STATE OBLIGATIONS

1. State is responsible for all maintenance of the OR43 motor lanes from back of curb to back of curb, as further set forth in Exhibit B. State has no responsibility for any maintenance of the cycle track being installed as part of the Project.
2. Upon receipt of invoice from Agency, State shall pay to Agency State's share of all costs associated with maintenance and operation of the Project's drainage facilities located on or along OR43.
3. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
4. State grants authority to Agency to enter upon State right of way for maintenance activities under this Agreement.
5. State's contact for this Agreement is Cory Hamilton, District 2B Manager, 9200 SE Lawnfield Rd, Clackamas, OR 97015, 971-673-6200, cory.d.hamilton@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.
2. 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:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof;
 - b. 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;
 - c. If Agency fails to provide payment of its share of the cost of activities performed under this Agreement;
 - d. 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;

- e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. 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.
5. 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.
6. 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.

7. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
8. If Agency fails to maintain facilities in accordance with the terms of this Agreement, State, at its option, may maintain the facility and bill Agency, seek an injunction to enforce the duties and obligations of this Agreement or take any other action allowed by law.
9. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
10. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

Signature Page to Follow

Agency/State
Agreement No. 32379

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.

CITY OF WEST LINN, by and through its
elected officials

By *[Signature]*
City Manager

Date 2-12-18

By *[Signature]*
Counsel

Date 2-12-18

Agency Contact:

City Manager
22500 Salamo Road
West Linn, OR 97068
Phone: (503) 742-6001
citymanager@westlinnoregon.gov

STATE OF OREGON, by and through
its Department of Transportation

By *[Signature]*
Region 1 Maintenance and Operations
Manager

Date 22718

State Contact:

Cory Hamilton, District 2B Manager
9200 SE Lawnfield Rd
Clackamas, OR 97015
971-673-6200
cory.d.hamilton@odot.state.or.us

EXHIBIT A – Project Location Map

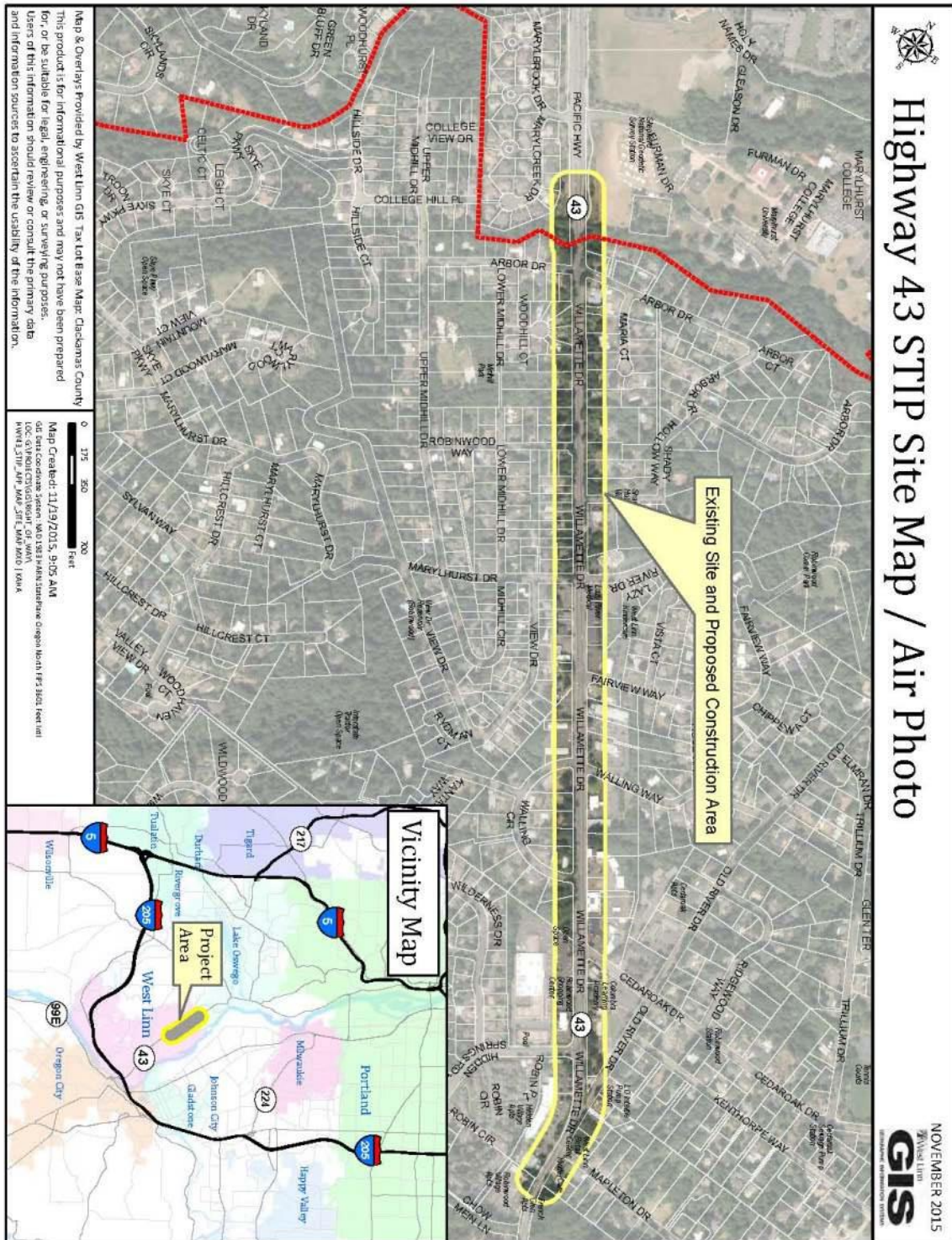


EXHIBIT B – Respective Maintenance Cross-Section

