

**INTERGOVERNMENTAL AGREEMENT**  
**I-205 Improvement Project: I-5 – OR 213**  
**Impacts to Oregon City Facilities during construction**

**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" or "ODOT," and CITY OF OREGON CITY, acting by and through and its elected officials, hereinafter referred to as "City," each herein referred to individually as a "Party" and collectively as the "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any and all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. By the authority granted in ORS [810.210](#), State is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where State deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than State, except with its written approval. Traffic signal work on this Project will conform to the current State standards and specifications.
3. State is designing and constructing the I-205 Improvement Project: I-5 – OR 213 project that will widen I-205 between I-5 and OR 213, including within Oregon City limits.
4. State and City entered into Misc. Contracts and Agreements Number 33523 that covers payment to the City for City's services on State's I-205 improvement project. That agreement is still in full force and effect.
5. This Agreement covers the responsibilities of each Party with regards to the impacts of the Project on City right of way and property through the construction phase of State's 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 is designing and constructing the I-205 Improvement Project: I-5 – OR 213 Phase 1 and Phase 2, hereinafter referred to as the Project, further shown in the attached Exhibit A. The estimated not-to-exceed (NTE) amount for all services to be provided under this Agreement is five-hundred thousand (\$500,000.00) dollars. The Parties understand and agree that the NTE is an estimate only and that the actual amount of

the services to be performed under this Agreement will not be known until construction of the Project. In the event that the actual amount of services to be performed under this Agreement exceed the estimated NTE, this Agreement shall be amended to change the NTE to reflect the actual costs of the services.

2. ODOT shall complete a Public Outreach and Communications Plan focused on construction. This Plan shall be shared with the City's Communication Coordinator (Kristin Brown, [kbrown@orcify.org](mailto:kbrown@orcify.org)), Public Works Director (John Lewis, [jmlewis@orcify.org](mailto:jmlewis@orcify.org)), and the Parks and Recreation Director (Kendall Reid, [kendallreid@orcify.org](mailto:kendallreid@orcify.org)) in draft form and comments from City staff regarding public outreach shall be taken into account and incorporated when possible. The Plan shall be shared with the City 4 (four) months before construction begins.
3. As part of the Project, State will impact City's Jon Storm Park. State agrees to cover all costs to restore the park to its previous condition. This includes restoration to landscaping, lighting, asphalt and concrete surfaces, picnic table(s), shelter(s), utilities, and other amenities within Jon Storm Park resulting from the Project. Restoration shall be performed by ODOT's contractor with final inspection and approval by the City. The cost to restore Jon Storm Park is estimated to be \$100,000 but this estimate shall not be construed to restrict or otherwise limit costs for restoration as determined by the City.
4. ODOT shall provide restoration to landscaping, lighting, asphalt and concrete surfaces, utilities, and other amenities within Sportcraft Landing Park resulting from the I-205 improvements. Restoration shall be performed by ODOT's contractor with final inspection and approval by the City. The cost to restore Sportcraft Landing Park is estimated to be \$70,000 but this estimate shall not be construed to restrict or otherwise limit costs for restoration as determined by the City.
5. State shall follow City design standards for the park restoration work within the City right of way or any work on City owned and maintained facilities or City facilities under City jurisdiction.
6. State shall work with City to resolve impacts, if any, of interim and temporary closures, limited use of City facilities during construction, and the anticipated increased traffic due to detours through the Oregon City downtown district that lead to significant and excessive congestion, delay, or other public concern. Factors that may be used to determine significant and excessive congestion, delay or comment include, but are not limited to, an increase in accidents based on typical annual average data, stopping queues that block stop controlled or signalized intersections for any period of time, and/or a Level of Service decline that exceeds City Mobility Standards.
7. City shall prepare pre-construction and post-construction street condition reports for Main Street (from 99E to 15<sup>th</sup> Street), Clackamette Drive (from 99E to the south end at Sportcraft Landing), and Dunes Drive (99E to Clackamette Drive) as part of the determination of mitigation values. ODOT shall restore all non-pavement infrastructure damaged by the work and pay for all project costs associated with restoration with a 2"

(inch) inlay and resurface if the pavement condition index drops more than 10 points over the construction period, as demonstrated in the post-construction report compared to the pre-construction report. The cost associated with the pre and post construction reports shall be borne by ODOT and reimbursed under MC&A 33523.

8. ODOT shall provide for continual operation of the City's sanitary sewer force main which conveys wastewater from the Jon Storm Park public dock and restroom to the public sewer gravity system during construction of the Project. ODOT shall protect and keep in good working condition this sanitary sewer force main throughout the construction period and shall be repaired at ODOT's sole expense if the force main is damaged or fails.
9. ODOT shall provide for continual operation of the City's storm sewer and water main appurtenances within Jon Storm Park, Clackamette Drive, 99E, and Main Street during construction of the Project. ODOT shall protect and keep in working condition this storm sewer and water main throughout the construction period and shall be relocated or repaired at ODOT's sole expense if the storm sewer or water system is damaged or fails. All appurtenances must be available to City staff for use during the entire construction period.
10. ODOT shall provide for continual operation of the City's irrigation and water facilities which are in use for Jon Storm Park during construction of the Project. ODOT shall protect and keep in working condition these irrigation and water facilities throughout the construction period and shall be relocated or repaired at ODOT's sole expense if either the irrigation or water facilities are damaged or fail.
11. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and a 2-year period following final payment, or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.

## **CITY OBLIGATIONS**

1. City shall provide inspection services within 24 hours of request from State upon State's completion of restoration work on Jon Storm Park and Sportcraft Landing Park and the cost of those inspections shall be borne by the State and paid under MC&A 33523.
2. City shall maintain the stormwater facilities shown in Exhibit B, attached hereto and by this reference made a part hereof.
3. City shall not enter into any subcontracts for any of the work under this Agreement without obtaining prior written approval from State.
4. City grants State the right to enter onto City right of way for the performance of duties as set forth in this Agreement.
5. City shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without

limitation, the provisions of ORS [279C.505](#), [279C.515](#), [279C.520](#), [279C.530](#) and [279B.270](#) incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, City expressly agrees to comply with (i) [Title VI of Civil Rights Act of 1964](#); (ii) [Title V and Section 504 of the Rehabilitation Act of 1973](#); (iii) the [Americans with Disabilities Act of 1990](#) and ORS [659A.142](#); (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

6. All employers, including City, 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. City shall ensure that each of its contractors complies with these requirements.
7. City shall perform the services 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.
8. City 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 City's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that City shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the City, be indemnified by the contractor and subcontractor from and against any and all Claims.
9. Any such indemnification shall also provide that neither City's contractor and subcontractor nor any attorney engaged by City'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 City's contractor is prohibited from defending the State of Oregon, or that City'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 City's contractor if the State of Oregon elects to assume its own defense.

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10. City 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 City which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State
11. City certifies and represents that the individual signing this Agreement has been authorized to enter into and execute this Agreement on behalf of City, as generally delegated by its governing body, commission, board, officers, members or representatives, and to legally bind City.
12. City's Project Manager for this Project is Josh Wheeler, 625 Center Street, Oregon City, OR 97045, 503-496-1548, [jwheeler@orc.org](mailto:jwheeler@orc.org), or assigned designee upon individual's absence. City shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## **STATE OBLIGATIONS**

1. State shall perform all design and construction for the restoration of Jon Storm Park to its original condition as part of the Project. State shall be responsible for all costs of pre- and post-construction condition reports, the restoration work, including all requested City inspection services. State shall provide interim trail and path access to all pedestrian and bike traffic to the park for any temporary closures or detours. Park restoration work, including the bike/ped facilities, shall be designed and constructed to City park standards.
2. State shall maintain the retaining walls shown in Exhibit B..
3. State shall retain all maintenance and operational responsibility for the I-205/OR99E interchange traffic signals.
4. 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.
5. State shall require its contractor(s) and subcontractor(s) to indemnify, defend, save and hold harmless the City of Oregon City and its elected officials, 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 State's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful

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acts or omissions of the City, be indemnified by the contractor and subcontractor from and against any and all Claims.

6. Any such indemnification shall also provide that neither State's contractor and subcontractor nor any attorney engaged by State's contractor and subcontractor shall defend any claim in the name of the City of Oregon City, nor purport to act as legal representative of the City of Oregon City without prior written consent. The City may, at any time at its election assume its own defense and settlement in the event that it determines that State's contractor is prohibited from defending the City, or that State's contractor is not adequately defending the City's interests, or that an important governmental principle is at issue or that it is in the best interests of the City to do so. The City reserves all rights to pursue claims it may have against State's contractor if the City of Oregon City elects to assume its own defense.
7. State's contact for this Agreement is Mandy Putney, 123 NW Flanders Street, Portland, OR 97209, 503-720-4843, Mandy.Putney@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 City, or at such later date as may be established by State, under any of the following conditions:
  - a. If City fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If City 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 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.
  - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

**4. 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 Americans with Disabilities Act of 1990 as amended (together, "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, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form; and
- iii. At Project completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 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. City shall ensure that any portions of the Project under City's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, City ensuring that:

- i. Pedestrian access is maintained as required by the ADA,
- ii. Any complaints received by City identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
- iii. City, 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 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.
5. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or City 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.
  6. With respect to a Third Party Claim for which State is jointly liable with City (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 City in such proportion as is appropriate to reflect the relative fault of State on the one hand and of City 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 City on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
  7. With respect to a Third Party Claim for which City is jointly liable with State (or would be if joined in the Third Party Claim), City 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 City 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 City 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. City's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law,



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including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

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

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that 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 Statewide Transportation Improvement Program (STIP), (Key #22467) that was adopted by the Oregon Transportation Commission on July 15, 2020 (or subsequently by amendment to the STIP).

**Signature Page to Follow**

**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 OREGON CITY**, by and through  
its elected officials

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**LEGAL REVIEW APPROVAL**

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

Date \_\_\_\_\_

**City Contact:**

Josh Wheeler, P.E.  
City of Oregon City  
625 Center Street  
Oregon City, Oregon 97045 503.496.1548  
jwheeler@orcite.org

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

By \_\_\_\_\_  
Urban Mobility Office Deputy Director

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
I-205 Improvements Project Director

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

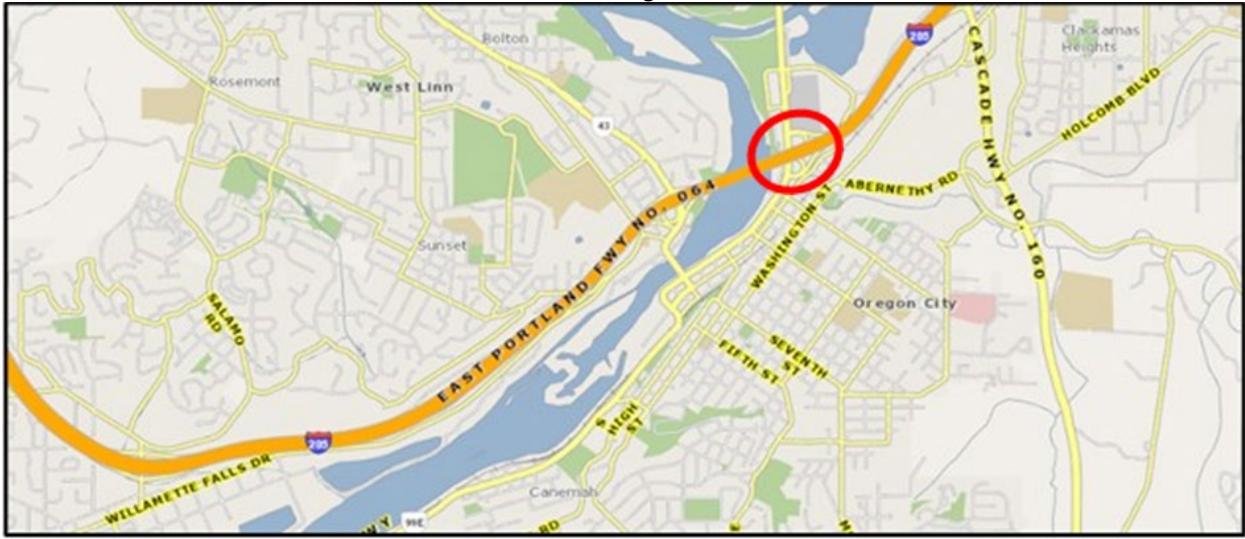
By Herbert Lovejoy  
Assistant Attorney General

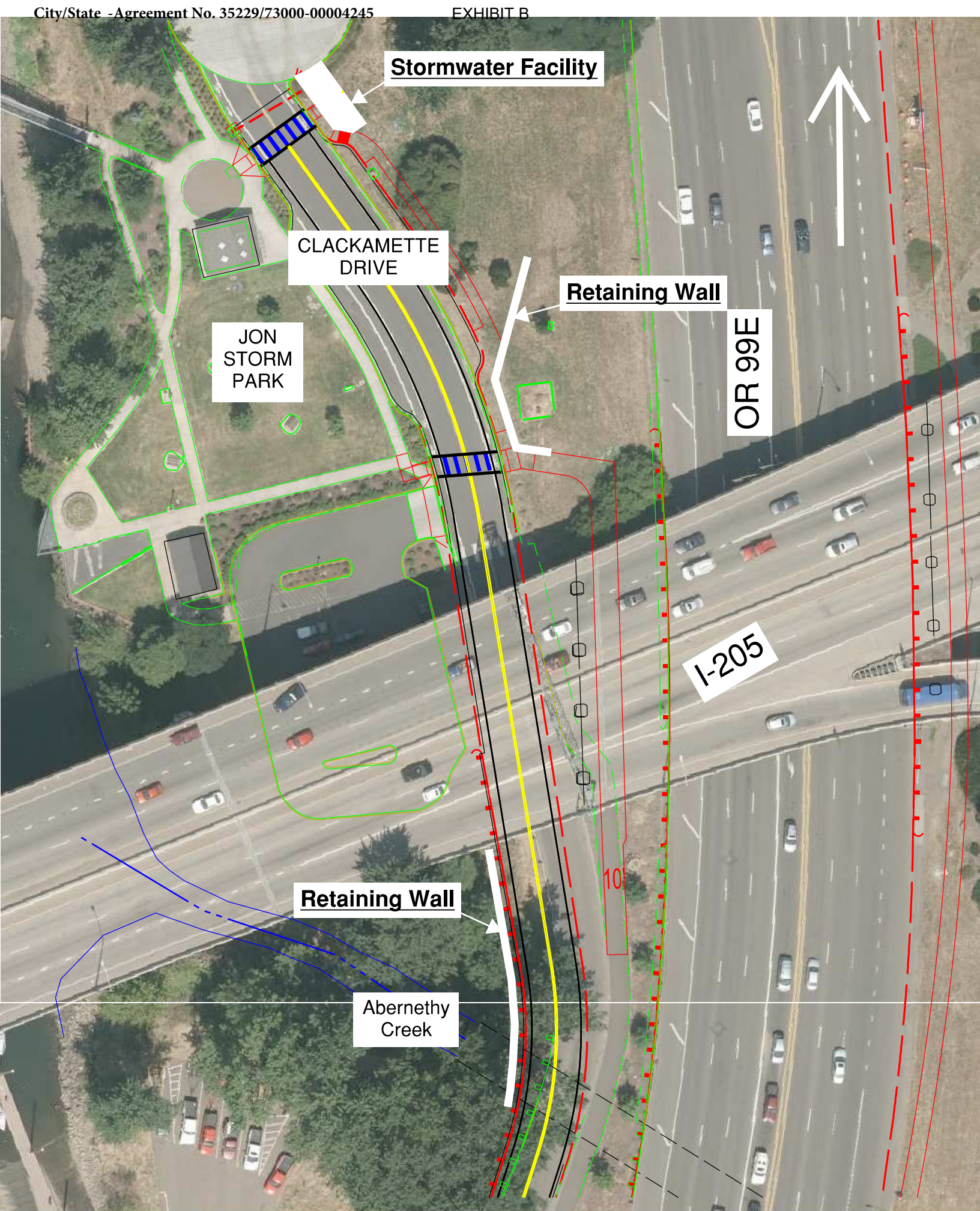
Date via email dated September 24, 2021

**State Contact:**

Mandy Putney  
123 NW Flanders Street  
Portland, OR 97209  
503.720.4843  
Mandy.Putney@odot.state.or.us

## Exhibit A – Project Location





**Stormwater Facility**

**CLACKAMETTE DRIVE**

**JON STORM PARK**

**Retaining Wall**

**OR 99E**

**I-205**

**Retaining Wall**

**Abernethy Creek**

Retaining Walls = ODOT maintenance responsibility

Stormwater Facility = City maintenance responsibility