

COOPERATIVE MAINTENANCE AGREEMENT
SW Elligsen Rd: SW Parkway Ave Relinquishment and Maintenance
City of Wilsonville

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 WILSONVILLE, hereinafter referred to as "Agency," both herein referred to individually as a "Party" and collectively as the "Parties."

RECITALS

1. SW Elligsen Road is a city street under the control and jurisdiction of the City of Wilsonville except for a portion of SW Elligsen Road, approximately from mile point 12.9 – 12.95, that is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
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. State and Agency are entering into this Agreement to delineate maintenance responsibilities pertaining to the portion of SW Elligsen Road that will be relinquished to Agency.

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 the State will relinquish by Relinquishment Deed a portion of right of way along SW Elligsen Road to Agency, and Agency shall accept said property, as shown in detail in Exhibit A, attached hereto and by this reference made a part hereof. Upon relinquishment to Agency, Agency shall be responsible for maintenance of those portions of right of way as set forth in the map attached hereto as Exhibit B.
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 shall accept all right, title, and interest to the property described and shown in Exhibit A.
2. Agency shall maintain all elements of the relinquished area shown in Exhibit B, including any ADA elements and improvements and the stormwater drainage system within the area.
3. Agency shall notify State in advance of any work Agency may do that would impact the State Highway System with the exception of regular infrastructure maintenance activities. Agency shall schedule regular infrastructure maintenance activities to minimize impacts to the State Highway System.
4. 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.
5. 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.
6. 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.
7. Agency grants State the right to enter onto Agency right of way for the performance of duties set forth in this Agreement.
8. 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.
9. Agency's contact for this Agreement is Zach Weigel, City of Wilsonville City Engineer, 29799 SW Town Center Loop East, Wilsonville, OR 97070, (503)570-1565, weigel@ci.wilsonville.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.

STATE OBLIGATIONS

1. Upon execution of this Agreement, State shall complete the relinquishment process of the property subject to this Agreement to Agency by Relinquishment Deed.
2. State shall have maintenance responsibilities for all elements of the area shown in Exhibit B.
3. 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.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.

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. 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.
9. 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. 73000-00011232

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 WILSONVILLE, by and through its
elected officials

By _____

Date _____

By _____
Counsel

Date _____

Agency Contact:

Zach Weigel
City Engineer
29799 SW Town Center Loop East
Wilsonville, OR 97070
503-570-1565

STATE OF OREGON, by and through
its Department of Transportation

By _____
Region 1 Maintenance and Operations
Manager

Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Right of Way Manager

Date _____

By _____
State Right of Way Manager

Date _____

By _____
Cory Hamilton, District 2B Manager

Date _____

State Contact:

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

EXHIBIT A - Page 1 of 1

File 6349000A
Drawings 1A-22-26 & 5B-34-16
8/10/2020

Relinquish To the City of Wilsonville

A parcel of land lying in the SE¼ of Section 2 and SW¼ of Section 1, Township 3 South, Range 1 West, Willamette Meridian, Washington County, Oregon and being a portion of that property designated as Parcel 2 and described in that Warranty Deed to State of Oregon, by and through its State Highway Commission recorded May 21, 1969 in Book 744, Page 151 of Washington County Book of Records and a portion of that property designated as Parcel 1 and acquired by the State of Oregon, by and through its State Highway Commission in that Final Judgement dated March 12, 1970 as Circuit Court of Oregon Case 30-925 in the County of Washington, said parcel being that portion of said property lying Easterly of a line at right angles to the "SR2" center line at Engineer's Center Line Station 100+16.46.

AND ALSO a portion of that property designated as Parcel 1 and a portion of that Permanent Easement for Slopes, Water, Gas, Electric and Communication Service Lines, Fixtures and Facilities, designated as Parcel 3 and acquired by the State of Oregon, by and through its Department of Transportation in that Stipulated Final Judgement dated October 2, 1997 as Circuit Court of Oregon Case C95-1421CV in the County of Washington and recorded December 16, 1997 as Instrument No. 97-117145 of Washington County Book of Records, said parcel being that portion of said property and permanent easement lying Easterly of a line at right angles to the "SR2" center line at Engineer's Center Line Station 100+16.46.

AND ALSO that property described in that Warranty Deed to State of Oregon, by and through its Department of Transportation recorded September 28, 1995 as Instrument No. 95-069604 of Washington County Book of Records.

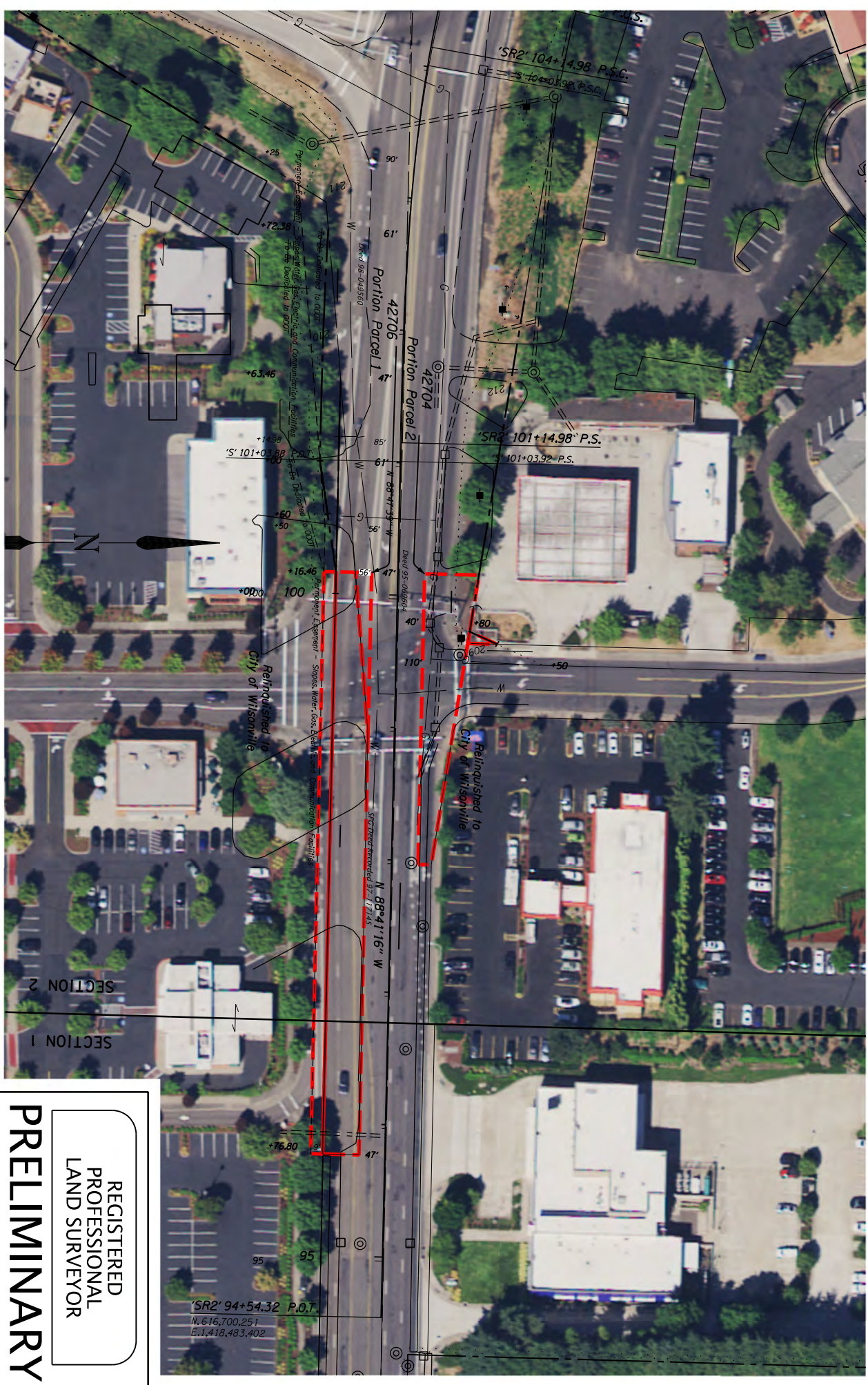
The "SR2" center line is described in the aforementioned Stipulated Final Judgement.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

DIGITALLY SIGNED

OREGON
JUNE 13, 2008
MICHAEL RAEY FALLERT
78960

RENEWS: 12-31-2021



OREGON DEPARTMENT OF TRANSPORTATION

RIGHT OF WAY

RELINQUISHMENT

EXHIBIT B SHEET 1 OF 1

SECTION	STAFFORD INTERCHANGE & I5 PVMT.		
HIGHWAY	PACIFIC		
COUNTY	CLACKAMAS	DRG. NO.	14-22-26, 5B-34-16
FILE	6349000A	SCALE	1" = 100'
		DATE	AUG., 2020

REGISTERED PROFESSIONAL LAND SURVEYOR

PRELIMINARY

OREGON
 JUNE 13, 2008
 MICHAEL RAEY FALLERT
 78960

RENEWS: 12-31-2021

EXHIBIT B – Map of Maintenance Responsibilities

