

**ODOT FLEXIBLE SERVICE AGREEMENT**  
**Intergovernmental Agreement for Equipment and Services with**  
**The Oregon Department of Transportation**

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation and the cities and/or counties signing on to this Agreement, hereinafter referred to collectively as "Agencies". ODOT and Agencies shall be referred to collectively as "Parties".

**RECITALS**

1. By the authority granted in ORS 190.110, 366.572, 366.574 and 366.576, ODOT may enter into cooperative agreements with the counties, cities, and units of local government for the performance of work on certain types of maintenance or improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. ODOT and Agencies own certain equipment and materials, and provides services that may be useful to other Parties for transportation related activities.
3. The Parties agree that sharing equipment, materials, and services is both to their mutual benefit and to the general public's benefit and promotes the cost-effective and efficient use of public resources so long as used for transportation purposes.
4. A previous Intergovernmental Agreement (IGA) for shared services was signed by Multnomah County, the City of Gresham, City of Portland, City of Fairview, City of Troutdale, City of Wood Village and Oregon Department of Transportation in 1991 which expired in 1996. A subsequent three-year IGA for shared services was entered into by Multnomah County, City of Gresham and Oregon Department of Transportation in 1996 and by the provision of a 1999 ADDENDUM, other parties agreed to sign and join the 1996 agreement.
5. The previously mentioned IGA and addendum have expired and have been replaced by the Portland Metropolitan Area Transportation (PMAT) Agreement, executed on August 15, 2002. Said agreement is administered by Multnomah County. The parties to said agreement to-date are Multnomah County, Washington County, Marion County, City of Gresham, City of Wood Village, Clackamas County, City of Salem, City of Portland, Hood River County, Polk County, Columbia County, Wasco County and Benton County.

6. It has been determined that ODOT cannot sign said aforementioned PMAT agreement in its current form. Therefore, in an effort to commit to the obligations in said PMAT agreement, ODOT wishes to enter into this Agreement with Agencies.

## DEFINITIONS

1. The term "Provider" shall be defined as the Party (either ODOT or Agencies) that is supplying the service, equipment or materials.
2. The term "User" shall be defined as the Party (either ODOT or Agencies) that is requesting or receiving services, equipment or materials.

**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, ODOT and Agencies desire to enter into this Agreement to establish procedures for sharing road and highway services, equipment and materials, and to define legal relationships and responsibilities for any services or equipment sharing between ODOT and any of the Agencies. Any services or equipment shared between the Agencies that **do not** involve ODOT should follow the existing PMAT agreement which is administered by Multnomah County, provided that the Agencies are signed parties to the PMAT agreement.
2. The Parties shall make available to each other vehicles, equipment, machinery, materials, related items, and services in the manner and on the terms and conditions provided herein. The vehicles, equipment and machinery covered by this Agreement shall only be such items appropriate for transportation related activities, and shall not include regular automobiles.
3. An Equipment Sharing Catalog will be provided upon request by each entity to the other parties of this Agreement. Said catalog shall describe available equipment and current rental rates. Upon receipt, ODOT's Region 1 Operations/Maintenance Manager will distribute said catalog to the appropriate ODOT personnel. Supplies or materials shall be charged at Provider's invoice cost plus an established administrative fee, or may be replaced by the User. Equipment usage and services shall be charged at Provider's rates used for its internal financial management of personnel and equipment.
4. The tasks associated with the responsibilities referred to above are as defined in the current editions of the ODOT Maintenance Guide, ODOT Maintenance Field Operations Manual, Maintenance Management System (MMS) Manual, Water Quality and Habitat Guide, and Best Management Practices Manual which, by this reference,

are incorporated herein. All services requested of ODOT shall follow procedures addressed in these manuals and will require a Work Order Authorization. All services provided to ODOT shall follow the accepted industry standard, and any specifics identified in the Work Order Authorization, and will require a Work Order Authorization. The Work Order Authorization shall include MMS Activity numbers. Other maintenance services may be included as defined on the Work Order by a MMS Activity number from the current manual edition.

5. The term of this Agreement shall begin upon signature by ODOT and the first Party to execute said Agreement and shall be in effect for a period of five (5) years. The Agreement may be extended at that time by mutual consent of all parties in the form of an amendment to this Agreement.
6. This Agreement may be modified by mutual consent of all Parties and upon execution of amendments to this Agreement stating said modifications. If the total cost of any Work Order under this Agreement exceeds \$100,000, the Department of Justice must review and approve any amendments and/or Work Orders prior to performance of any work. At no time shall total cost under this Agreement for services provided to ODOT (including all Work Orders) exceed a total amount of \$4,000,000 per calendar year for an Agreement total of \$20,000,000 without first obtaining a fully executed amendment to this Agreement.

#### **SCOPE OF WORK**

1. ODOT's District Managers, or their approved designees, may request services from Agencies on an as-needed basis for work performed on ODOT-owned and maintained highways and highway right of way. Service requests shall be a written request in the form of a Work Order Authorization, attached hereto as Exhibit A and made a part of this Agreement. The Work Order Authorization may be signed by ODOT's District Manager, or their approved designee. Each Work Order Authorization shall be issued pursuant to this Agreement and the provisions of this Agreement shall be incorporated into each Work Order Authorization. Both parties shall sign the Work Order Authorization before commencement of work. Under emergency conditions, the Work Order Authorization may be faxed. Both parties shall sign the faxed Work Order Authorization before work begins. An original signed Work Order Authorization shall be completed and returned to the originating party within ten (10) working days.
2. Agencies may request services from ODOT on an as-needed basis for work performed on city or county owned and maintained streets or roads and city or county right of way. Service requests shall be a written request in the form of a Work Order Authorization, as shown on Exhibit A. The Work Order Authorization may be signed by the Agencies Public Works Director, Street Foreman, or their approved designee. Each Work Order Authorization shall be issued pursuant to this Agreement and the provisions of this Agreement shall be incorporated into each Work Order Authorization. Both parties shall sign the Work Order Authorization before commencement of work. Under emergency conditions, the Work Order Authorization may be faxed. Both

parties shall sign the faxed Work Order Authorization before work begins. An original signed Work Order Authorization shall be completed and returned to the originating party within ten (10) working days. Upon execution of this Agreement, Agencies shall provide the names and titles of the individuals authorized to sign the Work Order Authorizations to ODOT on the signature page attached to this Agreement.

3. The User shall provide instructions to the Provider's employees concerning work to be performed under the Work Order, and the Provider shall direct and supervise its employees who are assigned to assist the User.

## **REIMBURSEMENT INSTRUCTIONS**

1. Provider shall submit an estimate for specific services, use of materials, or rental of equipment to the User at the request of the User. Provider shall maintain an accurate cost accounting system, track expenditures and provide monthly statements to User for actual costs incurred for work performed under this Agreement. Provider shall quarterly total all costs due based on the monthly statements of accounts sent to User and submit an invoice to User for payment within 45 days of receipt of the invoice. User shall reimburse Provider for materials, equipment and services based on invoice plus administrative fee for materials and supplies and the Provider's rates used for its internal financial management of personnel and equipment. User may replace materials or supplies with a like quantity and amount, as determined by Provider. If User elects to replace said materials, replacement shall be made within 45 days of the invoice date.
2. Billings to ODOT shall be submitted to ODOT's Region 1 Operations/Maintenance Manager at 123 NW Flanders St., Portland, OR 97204. Billings to Agencies shall be submitted to the contact person and address provided on the individual Agency signature page.
3. Under no condition shall ODOT's total obligation for payments exceed \$20,000,000 during the term of this Agreement.
4. Under no condition shall an individual Agency's total obligation for payments exceed \$500,000 during the term of this Agreement unless the signature page for the specific Agency identifies a different annual maximum amount.

## **EXPENDITURE AUTHORIZATION**

1. All Parties certify, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within their current appropriation or limitation of their current biennial budget. No Party shall be indebted or liable for any obligation created by this Agreement in excess of the debt limitation as stated in Article XI, Section 7, of the Oregon Constitution. No Party shall assume any debts of the other Parties in violation of Article XI, Section 8, of the Oregon Constitution.

2. No Party shall be liable for any expenditure under this Agreement without proper appropriation pursuant to ORS Chapter 291 and ORS Chapter 294 respectively.

## **EQUIPMENT AND SERVICES**

1. Each Party shall make available to the other Party vehicles, equipment, machinery, employees, related items and services in the manner and on the terms and conditions provided herein.
2. Services and equipment shall be provided upon reasonable request at mutually convenient times and locations. Each Party retains the right to refuse to honor a request if the services or equipment are needed for other purposes, if providing the equipment would be unduly inconvenient or if for any other reason the Party determines in good faith that it is not in its best interest to provide a particular item or service at the requested time. It is up to the discretion of the Provider as to whether an operator shall be provided with the equipment.
3. The User shall take proper precaution in its operation, storage, and maintenance of the Provider's equipment. Equipment shall be used only for its intended purpose. User shall permit the equipment to be used only by properly trained and supervised operators and shall be responsible for equipment repairs necessitated by misuse or negligent operation. User shall perform and document required written maintenance checks prior to and after use and shall provide routine daily maintenance of equipment during the period in which the equipment is in User's possession. User shall not, however, be responsible for scheduled maintenance or repairs other than repairs necessitated by misuse or negligent operation. User shall be responsible for damage to rented equipment considered beyond normal wear and tear, including repairs necessitated by misuse or negligent operation; however, shall not be responsible for scheduled maintenance and related normal repairs
4. If a piece of equipment requires repair while in use, a Provider mechanic and a User mechanic shall assess the problem and, in consultation with each other, determine which party is responsible for repair. In the event an agreement cannot be reached, ODOT's appropriate District Manager, or designee, and the other Party's authorized representative shall determine the responsible party.
5. The Provider shall endeavor to provide equipment in good working order and to inform User of any information necessary for the proper operation of the equipment. The equipment, however, is provided "as is", with no representations or warranties as to its fitness for a particular purpose. User shall be solely responsible for selecting the proper equipment for its needs and inspecting equipment prior to use. It is acknowledged by the Parties that the Provider is not in the business of selling, leasing, renting, or otherwise providing equipment to others and that the parties are acting only for their mutual convenience and efficiency.



6. The Parties shall provide equipment storage space to each other, at no charge, upon rental request when mutually convenient. It is recognized that such storage is for the benefit of the party requesting it. The Party storing the equipment shall be responsible only for providing a reasonably safe and secure area.
7. Service and usage times, established for the purpose of record keeping and rental charges, shall be defined as "hours used on the job". In the event the equipment being used does not have an hour meter, the User shall document the number of hours used performing an activity.
8. The Parties shall use their individual internal rental rates for labor and equipment. These rates may be adjusted only once per State fiscal year.
9. The Parties shall maintain accurate and up-to-date records of all rentals of equipment and operators. Said records will be kept available for inspection by representatives of each Party for a period of three years following termination of this Agreement.
10. The Parties shall furnish fuel, maintenance, and insurance for their equipment; however, fuel for vehicles and equipment shall be provided by the User during the period in which the equipment or vehicle is in the User's possession. Equipment shall be returned to the Provider with a like amount of fuel as when it was furnished to the User.

#### **GENERAL PROVISIONS**

1. The Parties hereby grant the other Parties authority to enter onto their right-of-way for the purpose of performing the maintenance services as stated on the Work Order.
2. The Parties shall only assign personnel to work on the other's right-of-way that have similar job experience on public right-of-way.
3. The Parties acknowledge and agree that each of the other Parties, the Oregon Secretary of State's office, and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of each Party that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts. The Parties shall retain and keep all files and records for a minimum of three years following termination of the Agreement.
4. All Parties 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 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof; Without limiting the generality of the foregoing, all Parties expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations

and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

5. Each Party represents that this Agreement is signed by personnel who have been authorized to do so by that Party.
6. Provider personnel assigned to assist User shall not be considered employees of User. Each Party shall be responsible for the following items in regard to their own employees:
  - a) Payment of all wages and benefits that its employees are entitled to receive through their employment including, but not limited to, vacation, holiday and sick leave; other leaves with pay; medical, dental, life, and accident insurance; other insurance coverage; overtime; Social Security; Workers' Compensation; unemployment compensation, and retirement benefits.
  - b) Withholding Social Security, federal and state taxes, and other regular deductions from wages paid to employees.
  - c) Administration of applicable civil service statutes and rules, classification and compensation plans, collective bargaining agreements, and other laws and agreement governing personnel relations with employees.
7. The Parties to this Agreement are of equal authority. Each Party acts independently in the performance of its obligations and functions under this Agreement, and no Party shall be considered the agent of another Party.
8. To the extent permitted by Article XI, Section 7 and Section 10 of the Oregon Constitution and by the Oregon Tort Claims Act, each Party shall indemnify each other Party against liability for damage to life or property arising from the indemnifying Party's own activities under this Agreement, provided that a Party will not be required to indemnify the other Party for any such liability arising out of the wrongful acts of employees or agents of that other Party.
9. Notwithstanding the foregoing defense obligations under paragraph 8 above, no Party nor any attorney engaged by any Party(s) shall defend any claim in the name of the any Party(s) or any agency/department/division of such other Party(s), nor purport to act as legal representative of the any Party(s) or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of any such other Party(s). Each Party may, at anytime at its election assume its own defense and settlement in the event that it determines that the other Party(s) is/are prohibited from defending it, or other Party(s) is/are not adequately defending its interests, or that an important governmental principle is at issue or that it is in the best interests of the Party(s) to do so. Each Party reserves all rights to pursue any claims it may have against the other Parties if it elects to assume its own defense.

10. All employers under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers, unless such employers are exempt under ORS 656.126. All employers shall ensure that each of its contractors complies with these requirements.
11. Any Party may terminate its participation by providing at least thirty (30) days written notice to the other Parties. Any amounts due and owing by a terminating Party shall be paid within thirty (30) days of termination. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
12. The Provider shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from the User.
13. Nothing herein shall be deemed to restrict authority of any of the Parties to enter into separate Agreements governing the terms and conditions for providing equipment or services on terms different than specified herein.
14. No Party to this Agreement shall be indebted or liable for an obligation created by this Agreement in excess of the debt limitation as stated in Article XI, Section 10, of the Oregon Constitution.
15. This Agreement and attached exhibit constitute the entire Agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind any Party unless in writing and signed by all Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.
16. 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.

**SIGNATURE PAGE TO FOLLOW**

**IN WITNESS WHEREOF**, the parties hereto have set their hands as of the day and year hereinafter written.



The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

On November 10, 2004, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates to the Deputy Director, Highways; the authority to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission such as the Traffic Safety Performance Plan, or in a line item in the biennial budget approved by the Director.

**APPROVAL RECOMMENDED:**

By [Signature]  
State Highway Maintenance Engineer  
Date 4/11/06

By [Signature]  
Region 1 Manager  
Date 3/30/06

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

By [Signature]  
Deputy Director, Highways  
Date 4/11/06

**APPROVED AS TO FORM AND AS AN  
AGREEMENT TO AGREE:**

By [Signature]  
Assistant Attorney General  
Date 4/6/06

## WORK ORDER AUTHORIZATION

☐ State Requesting \_\_\_\_\_ to Perform Work      ☐ \_\_\_\_\_ Requesting State to Perform Work

Agreement No. 20656 Work Order No. \_\_\_\_\_

Under the terms of Agreement No. 20656 between the Oregon Department of Transportation (State) and \_\_\_\_\_, which is hereby incorporated by reference, the following Project work is authorized:

Project Name: ☐ Flexible Maintenance Services

State Work Order Coordinator: \_\_\_\_\_

Agency Work Order Coordinator \_\_\_\_\_

Total Authorized Amt. this Work Order (or replacement amount) \$

Expenditure Acct. No (if any).: \_\_\_\_\_

Work Order Start Date: \_\_\_\_\_ Work Order End Date: \_\_\_\_\_

Effective Date: No Work shall occur until signed by all parties.	State Totals
Expenditure Account No.(if any)	No.
A. Amount authorized for this Work Order – or replacement value	\$
B. Amount authorized on prior Work Orders	\$
C. Total Amount authorized for all Work Orders (A+B=C)	\$
D. Agreement Not-to-Exceed amount	\$
E. Amount remaining on Agreement (D-C=E)	\$

SCOPE OF WORK (tasks, hours per task, estimated cost per task, and staff assigned to do the work and their hourly rate). Work necessary to complete Project as described in original Agreement scope of work: (Indicate which services are to be used by checking appropriate box(es)).

Maintenance Services and Equipment Rental: *(List work shown below)*

☐ Patching (100-102, 107-108) ☐ Shouldering (111-112, 119) ☐ Ditching (120) ☐ Sweeping (116-117) ☐ Vegetation Control (131) ☐ Striping (140-141, 147) ☐ Winter Maintenance (170-171, 179-181, 192) ☐ Brushing (132-133) ☐ Signing (142-143) ☐ Landscaping (136) ☐ Drainage (121) ☐ Guardrail Repair (151) ☐ Bridge Repair (163, 169) ☐ Hazardous Material Spills (149) ☐ Equipment Rental (specify equipment) ☐ Surveying

General Description of Project:

ACCEPTANCE OF TERMS AND ACTION APPROVED BY STATE: I acknowledge and certify that the work in this work order authorization is within the scope of work of the original Agreement.

State's \_\_\_\_\_ (approp. title) \_\_\_\_\_ Date \_\_\_\_\_

## ACCEPTANCE OF TERMS BY LOCAL AGENCY

Name / Title	Date
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APPROVED AS TO LEGAL SUFFICIENCY: If work exceeds \$100,000, signature required

Asst. Attorney General  
cc:

EXHIBIT A  
Work Order – Local Agency  
Rev. Rev. 02-21-03