

**AMENDMENT NUMBER 01**  
**ODOT FLEXIBLE SERVICE AGREEMENT**  
**Intergovernmental Agreement for Equipment and Services with**  
**The Oregon Department of Transportation**

The **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "ODOT," and the cities and counties which have signed on to this Agreement, hereinafter referred to collectively as "Agencies," all herein referred to individually or collectively as "Party" or "Parties", entered into an Agreement on March 13, 2006. Said Agreement covers 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.

It has now been determined by ODOT and Agencies that the Agreement referenced above shall be amended to extend the term of the Agreement, correct and update standard language, update contact information and update the Exhibit A. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

**ODOT Flexible Services Maintenance Agreement Signature Page shall be considered null and void and replaced with the attached Revised ODOT Flexible Services Maintenance Agreement Signature Page. All references to "ODOT Flexible Services Maintenance Agreement Signature Page" shall hereinafter be referred to as "Revised ODOT Flexible Services Maintenance Agreement Signature Page."**

**The Exhibit A, Work Order Authorization, shall be deleted in its entirety and replaced with the attached Revised Exhibit A, Work Order Authorization. All references to "Exhibit A, Work Order Authorization" shall hereinafter be referred to as "Revised Exhibit A, Work Order Authorization."**

**TERMS OF AGREEMENT, Paragraph 5, Page 3, which reads:**

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.

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**Shall be deleted in its entirety and replaced with the following:**

5. The term of this Agreement shall be extended by this Amendment 1 and shall begin upon the signature by ODOT and the first Party to execute this Amendment and shall terminate 10 years from that amended execution date. Participation in this Agreement will be viewed as terminated unless a Party to the Agreement has also signed this Amendment 1 after March 13, 2011. No activity after March 13, 2011 shall be considered as billable under this Agreement without a Party's execution of this Amendment 1. After the March 13 date lapses, the Agreement may still be extended by mutual consent of the Parties by signing this Amendment 1 to this Agreement at any time during the term established by this Amendment 1. Any Party's current Equipment Sharing Catalogue already on file for this Agreement shall remain active if the Party is a signer to this Amendment 1.

**TERMS OF AGREEMENT, Paragraph 6, Page 3, which reads:**

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.

**Shall be deleted in its entirety and replaced with the following:**

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 \$150,000, 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, Paragraph 1, Page 3, which reads:**

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

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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.

**Shall be deleted in its entirety and replaced with the following:**

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 Revised Exhibit A Work Order Authorization 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. A copy of the signed Work Order Authorization shall additionally be sent by the originating party to Ted Miller, ODOT's Region 1 Operations Manager, 123 NW Flanders Street, Portland, OR 97209, Telephone: 503.731.8559; email: Theodore.C.Miller@odot.state.or.us or assigned designee upon individual's absence.

**SCOPE OF WORK, Paragraph 2, Page 3, which reads:**

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

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the individuals authorized to sign the Work Order Authorizations to ODOT on the signature page attached to this Agreement.

**Shall be deleted in its entirety and replaced with the following:**

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 the attached Revised Exhibit A Work Order Authorization. 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. A copy of the signed Work Order Authorization shall additionally be sent by the originating party sent to Ted Miller, ODOT's Region 1 Operations Manager, 123 NW Flanders Street, Portland, OR 97209, Telephone: 503.731.8559; email: Theodore.C.Miller@odot.state.or.us or assigned designee upon individual's absence.

**REIMBURSEMENT INSTRUCTIONS, Paragraph 2, Page 4, which reads:**

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.

**Shall be deleted in its entirety and replaced with the following:**

2. Billings to ODOT shall be submitted to Ted Miller, ODOT's Region 1 Operations Manager, 123 NW Flanders Street, Portland, OR 97209, Telephone: 503.731.8559; email: Theodore.C.Miller@odot.state.or.us or assigned designee upon individual's absence. Billings to Agencies shall be submitted to the contact person and address provided on the individual Agency signature page.

**Insert new EXPENDITURE AUTHORIZATION, Paragraph3, to read as follows:**

3. Agencies certify, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within

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their current appropriation or limitation of the current biennial budget. Agencies shall not be indebted or liable for any obligation created by this Agreement in excess of the debt limitation of Article XI, Section 10, of the Oregon Constitution.

**EQUIPMENT AND SERVICES, Paragraph 9, Page 6, which reads:**

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.

**Shall be deleted in its entirety and replaced with the following:**

9. All 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 six (6) years following termination of the Agreement.

**Insert new EQUIPMENT AND SERVICES, Paragraph 11, to read as follows:**

11. The user is responsible for any damage to rented equipment considered to be beyond normal wear and tear.

**GENERAL PROVISIONS, Paragraph 3, Page 6, which reads:**

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.

**Shall be deleted in its entirety and replaced with the following:**

3. The Parties acknowledge and agree that each Party, 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. All Parties shall retain and keep all files and records for a minimum of six (6) years following termination of the Agreement.

**GENERAL PROVISIONS, Paragraphs 8 and 9, shall be deleted in its entirety and shall be identified as RESERVED.**

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**Insert new GENERAL PROVISIONS, Paragraphs 17 through 22, to read as follows:**

17. 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 ODOT or any other Party or Parties 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.
18. With respect to a Third Party Claim for which the ODOT is jointly liable with any other Party or Parties (or would be if joined in the Third Party Claim), the ODOT 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 the Agency in such proportion as is appropriate to reflect the relative fault of the ODOT on the one hand and of the 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 the ODOT on the one hand and of the 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. The ODOT'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 the ODOT had sole liability in the proceeding.
19. With respect to a Third Party Claim for which any other Party or Parties is jointly liable with the ODOT (or would be if joined in the Third Party Claim), the Party or Parties 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 the ODOT in such proportion as is appropriate to reflect the relative fault of the Party or Parties on the one hand and of the ODOT 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 the Party or Parties on the one hand and of the ODOT 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. The Agency's contribution amount in any instance is capped to

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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.

20. 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.
21. The Agencies shall require any 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 Agencies' contractor or any of the officers, agents, employees or subcontractors of the contractor( "Claims"). It is the specific intention of the Parties that the ODOT shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the ODOT, be indemnified by the contractor and subcontractor from and against any and all Claims.
22. Any such indemnification shall also provide that neither the Agencies' contractor and subcontractor nor any attorney engaged by Agencies' 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 anytime at its election assume its own defense and settlement in the event that it determines that Agencies' contractor is prohibited from defending the State of Oregon, or that Agencies' 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 Agencies' contractor if the State of Oregon elects to assume its own defense.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that its signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways to approve and sign agreements over \$75,000 when the

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work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission, or in a line item in the biennial budget approved by the Director. The Director may also delegate to other Administrators the authority to execute intergovernmental agreements over \$75,000 for specific programs such as transportation safety, growth management and public transit.

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
State Highway Maintenance Engineer

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 1 Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 1 Maintenance and Operations  
Manager

Date \_\_\_\_\_

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

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

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

APPROVED AS TO FORM

*Paula Menger*  
CITY ATTORNEY



**REVISED****ODOT Flexible Services Maintenance Agreement Signature Page**

IN THE WITNESS WHEREOF, the Public Entity \_\_\_\_\_  
 (Party) has caused THIS AGREEMENT to be executed by its duly authorized  
 representatives as the date of their signatures below:

_____ <u>Signature of Officer</u>	_____ <u>Date</u>	_____ <u>Officer's title</u>
_____ <u>Signature of Officer</u>	_____ <u>Date</u>	_____ <u>Officer's title</u>
_____ <u>Signature of Counsel</u>	_____ <u>Date</u>	_____ <u>Counsel's title</u>

**Name and Title of the Agency's Authorized Signer for Work Orders:**

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

\_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

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

Name, Title, Address, Phone and email of **additional contact for coordination** of this Agreement and/or Work Order Authorizations:

**Agency's maximum annual total obligation, if different than established in Reimbursement Instructions, Paragraph 4, shall be \$\_\_\_\_\_.**

Send the **original AGREEMENT Signature Page** (this page), and the **EQUIPMENT SHARING CATALOG** (See: page 2, revised paragraph 5) or **Updates** to:

Theodore C. Miller, ODOT Region 1 Operations/Maintenance Manager  
 ODOT Region 1, 123 NW Flanders Street, Portland, OR 97209,  
 Telephone: 503.731.8559, Email: Theodore.C.Miller@odot.state.or.us

# **REVISED EXHIBIT A WORK ORDER AUTHORIZATION**

☐ ODOT Requesting          to Perform Work

☐          Requesting ODOT to Perform Work

Agreement No. 20,656\_ Work Order No.

Under the terms of Agreement No. 20,656 between the Oregon Department of Transportation (ODOT) and          , which is hereby incorporated by reference, the following Project work is authorized:

Project Name: ☐ Flexible Maintenance Services

Total Authorized Amt. this Work Order \$          Expenditure Acct. No.:

Work Order Start Date:          Work Order End Date:

<b>Effective Date: No Work shall occur until signed by all parties.</b>	<b>Totals</b>
Expenditure Account No.	No.
A. Amount authorized for this Work Order	\$
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. Specify the Party responsible for providing materials and the Party responsible for material costs associated with the Project or services). Work necessary to complete Project or services 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)

General Description of Project: \_\_\_\_\_

This Work Order Authorization 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 Work Order Authorization so executed shall constitute an original.

--SIGNATURE PAGE TO FOLLOW--

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

\_\_\_\_\_  
ODOT's 2\_ District Manager

\_\_\_\_\_  
Date

**ACCEPTANCE OF TERMS BY LOCAL AGENCY:**

\_\_\_\_\_  
Name / Title

\_\_\_\_\_  
Date

**APPROVED AS TO LEGAL SUFFICIENCY:** If work exceeds \$150,000, signature required

\_\_\_\_\_  
Asst. Attorney General

\_\_\_\_\_  
Date

cc: ODOT R1 Maintenance District # 2\_ Manager  
Ted Miller, ODOT's Region 1 Operations/Maintenance Manager, 123 N.W. Flanders St., Portland, OR 97209  
Support Service, Procurement Office (OPO) for General Files

**EXHIBIT A**

Work Order – Local Agency  
Rev. 02-22-2011