

**RESOLUTION NO. 2655**

**A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF OREGON DEPARTMENT OF TRANSPORTATION PERTAINING TO CITY CONSTRUCTED CONGESTION IMPROVEMENTS TO THE INTERSTATE 5 EXIT 283 SOUTHBOUND ENTRANCE RAMP (CAPITAL IMPROVEMENT PROJECT #4199).**

WHEREAS, the City has planned and budgeted for the completion of Congestion Improvement Projects under Capital Improvement Project #4199, including one project that constructs improvements to the Interstate-5 Exit 283 Southbound Entrance Ramp; and

WHEREAS, the Oregon Department of Transportation (ODOT) owns and manages the property upon which the City of Wilsonville desires to construct said improvements, and requires an Intergovernmental Agreement to be executed between the parties to identify the terms and conditions under which Wilsonville may construct said improvements; and

WHEREAS, Intergovernmental Agreement 32069 for the I-5 Exit 283 Southbound Entrance Ramp Modification, attached hereto and incorporated herein, has been prepared, negotiated, and reviewed by legal staff of parties, and is agreeable to both parties.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Council of the City of Wilsonville authorizes the City Manager to enter into and execute, on behalf of the City of Wilsonville, Intergovernmental Agreement 32069 with the Oregon Department of Transportation.
2. This resolution becomes effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 16<sup>th</sup> day of October 2017, and filed with the Wilsonville City Recorder this date.

  
Tim Knapp, Mayor

ATTEST:

  
\_\_\_\_\_  
Kim Veliz, City Recorder

SUMMARY OF VOTES:

|                         |         |
|-------------------------|---------|
| Mayor Knapp             | Yes     |
| Council President Starr | Excused |
| Councilor Lehan         | Yes     |
| Councilor Akervall      | Yes     |
| Councilor Stevens       | Yes     |

Attachment.

1. Intergovernmental Agreement 32069

# Attachment 1

Misc. Contracts and Agreements  
No. 32069

## INTERGOVERNMENTAL AGREEMENT I-5 Exit 283 Southbound Entrance Ramp Modification

**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 the CITY OF WILSONVILLE, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually as a "Party" and collectively as the "Parties."

### RECITALS

1. 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 or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. Agency desires to improve traffic congestion and reduce delays on and around the Exit 283 southbound ramp of Interstate 5.
3. The Exit 283 southbound ramp of Interstate 5 is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).

**NOW, THEREFORE**, the premises being in general as stated in the foregoing Recitals, the Parties agree to the following:

### TERMS OF AGREEMENT

1. Agency and State agree to Agency designing and constructing the I-5 Exit 283 Southbound Entrance Ramp Modification Project (the "Project"). The location of the Project is approximately as set forth on the map marked "Exhibit A," attached hereto and by this reference made a part hereof.
2. The Project consists of the design and construction of a third stacking lane on the southbound entrance ramp to Interstate 5 at Exit 283 by widening and restriping the existing on-ramp; all necessary retaining walls to ensure work on the Project remains within State right of way; and a new ramp meter signal.
3. The estimated total cost of the Project is \$625,000, which is subject to change. Agency is responsible for all Project costs.
4. This Agreement becomes effective on the date all required signatures are obtained and remains in effect for the purpose of ongoing maintenance and power responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years. The Project shall be completed within ten (10) calendar years following the date of execution of this Agreement.

## **AGENCY OBLIGATIONS**

1. Agency shall design, construct and inspect the Project in conformance with State's current guidelines, including the current edition of the *ODOT Highway Design Manual* and the *Oregon Standard Specifications for Construction Manual*. Agency shall not advertise the Project for bid or construction until it has secured approval from State.
2. Agency, or its consultant's, electrical inspectors shall possess a current State Certified Traffic Signal Inspector certificate in order to inspect electrical installations on state highways. The State District Permitting Office shall verify compliance with this requirement prior to construction.
3. Agency shall provide to State permanent mylar "as constructed" plans for work on state highways. If Agency redrafts the plans, done in Computer Aided Design and Drafting (CADD) or Microstation, to get the "as constructed" set, and they follow the most current version of the "Contract Plans Development Guide, Volume 1 Chapter 16," Agency shall provide to State a Portable Document Format (PDF) file and a paper copy of the plan set.
4. Agency shall, upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from State, forward to State an advance deposit in the amount of \$25,000 for the cost of State's work on the Project. Agency agrees to make additional deposits as needed upon request from State.
5. Upon completion of the Project and receipt from State of an itemized statement of the actual total cost of State's work on the Project, Agency shall pay to State the amount that, when added to Agency's advance deposit, equals 100 percent of State's actual total costs for the Project.
6. 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.
7. 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.
8. 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 (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.

9. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260 ("Claims"), to the extent such Claims are caused, or alleged to be caused, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that State shall, in all instances, except to the extent Claims arise solely from the negligent or willful acts or omissions of the State, be indemnified from and against all Claims cause or alleged to be caused by the contractor or subcontractor.
10. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
11. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without following Oregon public contracting requirements.
12. Agency 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, Agency 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.
13. Agency shall construct the Project in accordance with the requirements of the public contracting laws within ORS Chapters 279A, 279B and 279C.

14. If Agency chooses to assign its contracting responsibilities to a consultant or contractor, Agency shall ensure that the public contracting laws within ORS Chapters 279A, 279B and 279C are followed.
15. Agency, or its contractor, shall follow the Oregon Locate Laws (ORS 757 and OAR 952).
16. Agency or its consultant shall acquire all necessary rights of way according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual. Certification of right of way acquisition work must be made by the Agency (or on behalf of its consultant) doing the work. If Agency acquires the right of way, they shall provide a letter from Agency's legal counsel certifying that 1) the right of way needed for the Project has been obtained and 2) right of way acquisition has been completed in accordance with the right of way requirements contained in this Agreement. The certification form shall be routed through the State's Region 1 Right of Way Office for co-signature and possible audit. If Agency elects to have State perform right of way functions, a separate agreement shall be executed between Agency and State right of way, referencing this Agreement number.
17. Agency shall obtain a permit to "Occupy or Perform Operations upon a State Highway" through the State District 2B office and engineering design review approval from State prior to the commencement of construction. Agency agrees to comply with all provisions of said permit(s), and shall require its developers, contractors, subcontractors, or consultants performing such work to comply with such permit and review provisions.
18. Pursuant to the statutory requirements of ORS 279C.380 Agency shall require their contractor to submit a performance bond to Agency for an amount equal to or greater than the estimated cost of the Project.
19. If Agency enters into a construction contract for performance of work on the Project, then Agency will require its contractor to provide the following:
  - a. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under the resulting contract.
  - b. Contractor and Agency shall name State as a third party beneficiary of the resulting contract.
  - c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State. This insurance will include personal and

advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than \$2,000,000 for each job site or location. Each annual aggregate limit will not be less than \$4,000,000.

- d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than \$1,000,000.
  - e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees as Additional Insured but only with respect to Contractor's activities to be performed under the resulting contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.
  - f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor's or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.
20. Agency is responsible for and ensures that all survey monuments recorded with a county and within or adjacent to the highway right of way shall be preserved in accordance with ORS 209.140 and 209.150. Any such monumentation that is damaged or removed during the course of the Project must be replaced in compliance with ORS Chapter 209 stipulations, the State Right of Way Monumentation Policy, and at Agency's own expense.
21. Agency is also responsible, at its own expense, for replacement of any additional State survey marks or other monumentation not recorded with a county that are damaged or removed during the course of the Project. In the event of such replacement, Agency shall contact State's Geometronics Unit for replacement procedures.
22. If additional right of way is acquired for state highway right of way purposes as a result of the Project, then a right of way monumentation survey is required as defined in ORS 209.150 and 209.155. Agency agrees to provide such a survey, at its own expense, following ORS Chapter 209 stipulations, State Right of Way Monumentation Policy, and State's Geometronics Unit review and approval, and to file the legal survey with the appropriate Agency Surveyor's office as required.

23. If the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, Agency shall:

- a. Utilize ODOT standards to assess and ensure Project compliance with the Americans with Disabilities Act of 1990 (ADA), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
- b. Follow ODOT's processes for design, modification, upgrade, or construction 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;
- c. At Project completion, send an ODOT Curb Ramp Inspection Form 734-5020 to the address on the form and to State's Project Manager for each curb ramp constructed, modified, upgraded, or improved as part of the Project. The completed form is the documentation required from the Agency showing 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:  
<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/HwyConstForms1.aspx>; and
- d. Promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by Agency and prior to release of any Agency contractor.

24. Agency certifies and represents that the individuals signing this Agreement have 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.

25. Agency's Project Manager for this Project is Eric Mende, Capital Projects Engineering Manager, 29799 SW Town Center Loop E, Wilsonville, OR 97070, (503) 570-1538, mende@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. State shall provide oversight, plan review, and project management services as necessary for the completion of the Project.



2. State shall, upon execution of the Agreement, forward to Agency a letter of request for an advance deposit or irrevocable letter of credit in the amount of \$25,000 for State's costs incurred as part of the Project. State may request additional deposits from Agency and shall include with any such additional request an itemized statement of expenditures of the initial \$25,000 and an estimated cost to complete State's work on the Project.
3. Upon completion of the Project, if State's total costs incurred on the Project exceed Agency's advance deposit, State shall send Agency a bill for the amount of such excess costs. If Agency's advanced deposit exceeds State's total costs incurred on the Project, State shall refund to Agency the amount of such excess deposit.
4. Upon completion of the Project, State will have ownership of the Project and is responsible for ongoing maintenance, repair, management, and operational costs associated with the newly constructed ramp.
5. State's Project Manager for this Project is Stacy Stubblefield, Project Manager, 9200 Lawnfield Rd, Clackamas, OR 97015, (971) 673-1343, stacy.stubblefield@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 either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
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 the Project.
  - 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. 32069

**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 \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO FORM**

By \_\_\_\_\_

Date \_\_\_\_\_

**Agency Contact:**

Eric Mende, Capital Projects Engineering Manager  
City of Wilsonville  
29799 SW Town Center Loop E  
Wilsonville, OR 97070  
(503) 570-1538  
mende@ci.wilsonville.or.us

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

By \_\_\_\_\_

Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_

State Traffic Engineer

Date \_\_\_\_\_

By \_\_\_\_\_

District 2B Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_

Assistant Attorney General

Date \_\_\_\_\_

**State Contact:**

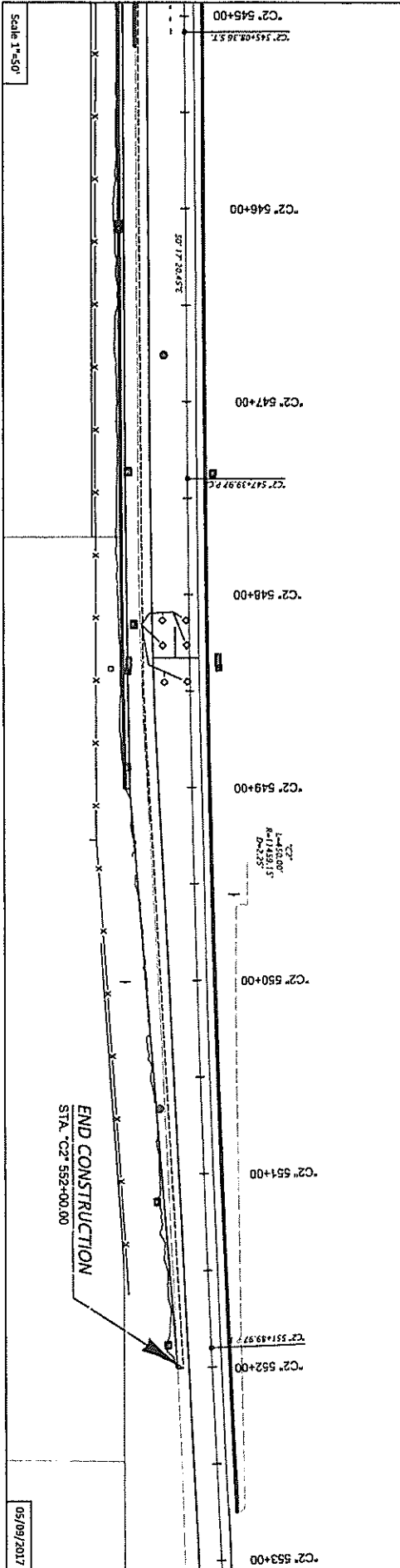
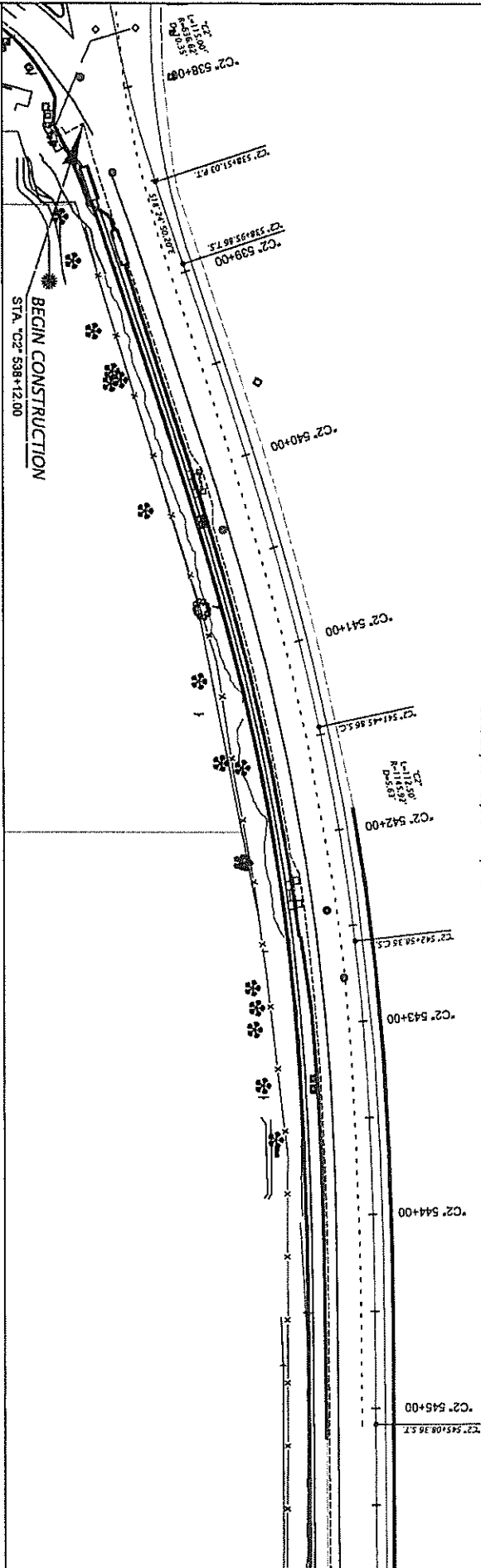
Stacy Stubblefield, Project Manager  
Oregon Department of Transportation,  
District 2B  
9200 SE Lawnfield Rd  
Clackamas, OR 97015  
(971) 673-1343  
stacy.stubblefield@odot.state.or.us



# Exhibit A - Work Area

## I-5: Exit 283 SB Ramp Modifications

Sec. 23, T. 3 S., R. 1 W., W.M.



05/09/2017