

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

RESOLUTION NO. 2019-064

Authorizing Transfer of Sandy River Bridge Approach Right of Way Jurisdiction to the Oregon Department of Transportation (ODOT)

The Multnomah County Board of Commissioners Finds:

- a. Historic Columbia River Highway, eastward from and including the Sandy River Bridge, is under the jurisdiction and control of the Oregon Transportation Commission. Historic Columbia River Highway westward from the west end of the Sandy River Bridge is a part of the county road system under the jurisdiction and control of County.
- b. ORS 382.305 to ORS 382.330 impose obligations on County to maintain, keep in good condition and repair and operate the Sandy River Bridge, including its ramps, approaches and viaducts.
- c. By the authority granted in Oregon Revised Statute (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.
- d. Under the provisions of ORS 366.300, State and County may enter into agreements for the disposition of a section of any state highway that may be eliminated from the original route by reason of relocation or realignment of the highway where the section to be eliminated is needed for the service of a community served thereby.
- e. State transferred to County a portion of Columbia River Highway via Abandonment and Retention Agreement number 653, dated December 21, 1992, and Abandonment and Retention Resolution 653, dated February 17, 1993. The portion transferred to County terminated at the west end of the Sandy River Bridge. State retained jurisdiction of the Sandy River Bridge.
- f. State is preparing to widen and improve the walkway along the Sandy River Bridge. As part of this project, State will maintain the bridge approach elements, wing wall, and walkway at the west end of the bridge, portions of which are within County right of way following the transfer described above.
- g. In order for State to better maintain the bridge approach elements, wing wall, and walkway at the west end of the bridge, County desires to transfer and State desires to accept that portion of County right of way that contains these bridge components.
- h. The Jurisdictional Transfer construction permits issued for the Project required County transfer of all land within the right of way boundaries of the Historic Columbia River Highway (Crown Point Highway No. 125) under Multnomah County jurisdiction, lying Northeasterly of a line at right angles to the center line of the relocated Historic

Columbia River Highway (Crown Point Highway No. 125) at Engineer's Station 539+18.00 and Southwesterly of the West end of the Sandy River Bridge.

- i. In order for ODOT to better maintain the bridge approach elements, wing wall, and walkway at the west end of the bridge, it is now necessary to transfer those permanent right-of-way interests described below to ODOT.

The Multnomah County Board of Commissioners Resolves:

1. It is in the best interest of the County and the Oregon Department of Transportation to transfer jurisdiction of the Sandy River Bridge approach, as described above.
2. The Chair is authorized to execute the Jurisdictional Transfer Agreement and Jurisdictional Transfer Deed, in substantially the form attached hereto as Exhibit A and incorporated by this reference, to transfer to the County's right, title, and interest in the Sandy Bridge approach Right of Way, being those parcels of land described in Exhibits A1 through A4 and depicted in Exhibit B attached to the Jurisdictional Transfer Deed.

ADOPTED this 20th day of June, 2019.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Deborah Kafoury

Deborah Kafoury, Chair

REVIEWED:
JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By *Courtney Lords*
Courtney Lords, Senior Assistant County Attorney

SUBMITTED BY: Kim E. Peoples, Director, Department of Community Services

A157-G0092518

JURISDICTIONAL TRANSFER AGREEMENT
Historic Columbia River Highway, State Highway Number 100
Multnomah County

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 MULTNOMAH COUNTY, acting by and through its elected officials, hereinafter referred to as "Agency," herein each referred to individually as "Party" and collectively as "Parties."

RECITALS

1. Historic Columbia River Highway, eastward from and including the Sandy River Bridge, is under the jurisdiction and control of the Oregon Transportation Commission. Historic Columbia River Highway westward from the west end of the Sandy River Bridge is a part of the county road system under the jurisdiction and control of Agency.
2. By the authority granted in Oregon Revised Statute (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. Under the provisions of ORS 366.300, State and Agency may enter into agreements for the disposition of a section of any state highway that may be eliminated from the original route by reason of relocation or realignment of the highway where the section to be eliminated is needed for the service of a community served thereby.
4. The National Highway System (NHS) was adopted by Congress as part of the National Highway System Designation Act of 1995. The Federal Highway Administration (FHWA) administers this program and must approve all changes to the system and is subject to Title 23, Title 49 of the Federal Regulations and all applicable FHWA policies, including but not limited to 23 USC 131 and the Oregon Motorist Information Act, ORS 377.700 to 377.840 and 377.992. Historic Columbia River Highway is not a part of the NHS, or part of the federal aid primary system in existence on June 1, 1991.
5. Pursuant to ORS 366.220, State may select, locate, establish, designate, construct, maintain, operate and improve or cause to be constructed, maintained, operated and improved a system of state highways within the state, which highways shall be designated by name and by the point of beginning and terminus thereof. The system of state highways shall include such other highways as may from time to time be selected and adopted by resolution of the commission pursuant to law and all

highways adopted and classified as secondary state highways which are subject to and qualified for construction, improvement, betterment and maintenance as are other state highways. State may by a resolution of the commission may classify and reclassify the highways comprising the state highway system as primary and secondary highways. Secondary highways may consist of newly established highways, reclassified primary highways and county roads selected pursuant to ORS 366.290.

6. The permanent vehicle capacity of identified freight routes shall not be permanently reduced after a jurisdictional transfer, per ORS 366.215. Reduction of vehicle carrying capacity means a permanent reduction in the horizontal or vertical clearance of a highway section by a permanent obstruction to motor vehicles located on usable right of way, per Oregon Administrative Rule (OAR) 731-012-0010. Historic Columbia River Highway is not a designated freight route and is not subject to these provisions.
7. Freight movements within cities will not be restricted after a highway segment is transferred per ORS 374.329. Historic Columbia River Highway between mile point 0 and mile point 0.07 is located within a city and is subject to this provision.
8. State transferred to Agency a portion of Columbia River Highway via Abandonment and Retention Agreement number 653, dated December 21, 1992, and Abandonment and Retention Resolution 653, dated February 17, 1993. The portion transferred to Agency terminated at the west end of the Sandy River Bridge. State retained jurisdiction of the Sandy River Bridge.
9. State is preparing to widen and improve the walkway along the Sandy River Bridge. As part of this project, State will maintain the bridge approach elements, wing wall, and walkway at the west end of the bridge, portions of which are within Agency right of way following the transfer described above.
10. In order for State to better maintain the bridge approach elements, wing wall, and walkway at the west end of the bridge, Agency desires to transfer and State desires to accept that portion of Agency right of way that contains these bridge components.

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. Transfer of Jurisdiction and Control

State and Agency agree that upon approval of a Jurisdictional Transfer Resolution by the Oregon Transportation Commission (OTC), jurisdiction and control of the land described in Exhibit A and shown on Exhibit B, attached hereto and by this reference made a part hereof (such land hereinafter referred to as "Unit A"), shall vest in State;

and that State shall control, operate and maintain Unit A as a part of its State Road System.

2. Transfer of Property Interests

State and Agency agree that all property rights, title, interests and access rights in Unit A shall be conveyed from Agency to State by recording a Jurisdictional Transfer Conveyance Document after the OTC approves the Jurisdictional Transfer Resolution. State's interest in Unit A is subject to the rights of any utilities permitted by Agency within Unit A.

3. Construction of Improvements

Unit A shall be transferred to State in its current condition.

4. Effective Date

This Agreement becomes effective on the date all required signatures are obtained. The Agreement terminates upon the adoption of the OTC Jurisdictional Transfer Resolution and recording of the Jurisdictional Transfer Conveyance Document or two (2) calendar years after the effective date of the Agreement, whichever is earlier, unless otherwise extended or renewed by a formal amendment executed between the Parties.

STATE OBLIGATIONS

1. State shall prepare and present a Jurisdictional Transfer Resolution and Highway Plan Amendment to the OTC to add Unit A to the Historic Columbia River Highway (State Highway number 100) and the state highway system. Jurisdiction, control and maintenance responsibilities of Unit A shall vest with State at the time the OTC approves the Jurisdictional Transfer Resolution. All property rights, title and interest of Unit A, as described in Exhibit A and shown in Exhibit B, shall be transferred to State when the Jurisdictional Transfer Conveyance Document is recorded.
2. State agrees to accept jurisdiction and control of Unit A to operate and maintain as a portion of the state highway system, including all things and appurtenances within the transferred right of way, except those maintenance responsibilities specifically required of Agency in Agency Obligations paragraph 5.
3. State agrees to accept all Agency property rights and interests as described in Exhibits A and B upon the recording of the Jurisdictional Transfer Conveyance Document.

AGENCY OBLIGATIONS

1. Upon approval of the OTC Jurisdictional Transfer Resolution, Agency agrees to transfer to State all right, title, and interest of Unit A as described on Exhibit A and shown on Exhibit B.

2. Agency agrees to furnish State any maps, records, permits, and other related data available that may be required to administer the operation of Unit A as a part of the state highway system.
3. Agency represents and warrants that it is not aware of any adverse title issues, encroachments, illegal approaches or driveways, or HAZMAT issues with respect to Unit A.
4. If the OTC approves the Jurisdictional Transfer Resolution, the rights and obligations of Agency set out in this section of this Agreement shall survive Agreement expiration or termination.
5. Notwithstanding Agency's transfer to State of Unit A, Agency shall continue to maintain the portions of the metal guardrail located within Unit A in its current configuration.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties. 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 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 if State is prohibited from paying for such work from the planned funding source.
 - d. If OTC fails to adopt a Jurisdictional Transfer Resolution to transfer Unit A from Agency to the state highway system.
2. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
3. 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.

4. 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 County 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.
5. 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 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.
6. 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.
7. All employers, including State and 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. State and County shall ensure that each of its subcontractors complies with these requirements.

8. 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 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, 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 as amended by the ADA Amendments Act of 2008 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.
9. 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.
10. In the event of a conflict or discrepancy between the map shown on Exhibit B and the written legal description set forth in Exhibit A, the written legal description shall prevail.
11. 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.
12. This Agreement and attached exhibits A and B 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

ODOT/AGENCY
JT Agreement No. 843

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.

MULTNOMAH COUNTY, by and through its elected officials

By _____

Title _____

Date _____

By _____

Title _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
County Counsel

Date _____

County Contact:
Ian Cannon, County Engineer
1620 SE 190th Avenue
Portland, OR 97233
503.988.5050
ian.b.cannon@multco.us

STATE OF OREGON, by and through its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
State Right of Way Manager

Date _____

By _____
Region 1 Manager

Date _____

By _____
Region 1 Right of Way Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By Bonnie Heitsch via email dated 5/17/19

State Contact
Tina Gutierrez, Region 1 Right of Way
Project Manager
123 NW Flanders Street
Portland, OR 97209
503.731.8443
tina.gutierrez@odot.state.or.us

To Be Relinquished

All land within the right of way boundaries of the Historic Columbia River Highway (County Road No. 917, also known as, Crown Point Highway No. 125) under Multnomah County jurisdiction, lying Northeasterly of a line at right angles to the centerline of said relocated Historic Columbia River Highway (County Road No. 917, also known as, Crown Point Highway No. 125) at Legal Centerline Station 539+18.00 per Survey Number 59069, Multnomah County Survey Records.

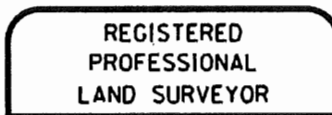
Said right of way boundaries referred to above lies in the SE¼ of Section 25, Township 1 North, Range 3 East, W.M., Multnomah County, Oregon.

The centerline of the relocated Historic Columbia River Highway (County Road No. 917, also known as, Crown Point Highway No. 125) is described as follows.

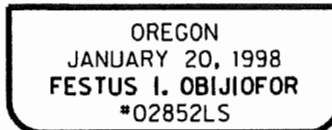
Beginning at Legal centerline Station 531+49.89, said station being 191.57 feet North, and 699.48 feet East of a 4-1/4 inch diameter brass disk marking the Southeast corner of the David F. Buxton D.L.C. No. 59, Township 1 North, Range 3 East, W.M., Multnomah County, Oregon; thence North 61° 59' 16" East 1223.50 feet to Legal centerline Station 543+73.39.

Bearings are based on the Oregon Coordinate Reference System, Portland Zone, NAD 83(2011) EPOCH 2010.00

This parcel of land contains 2,373 square feet, more or less.



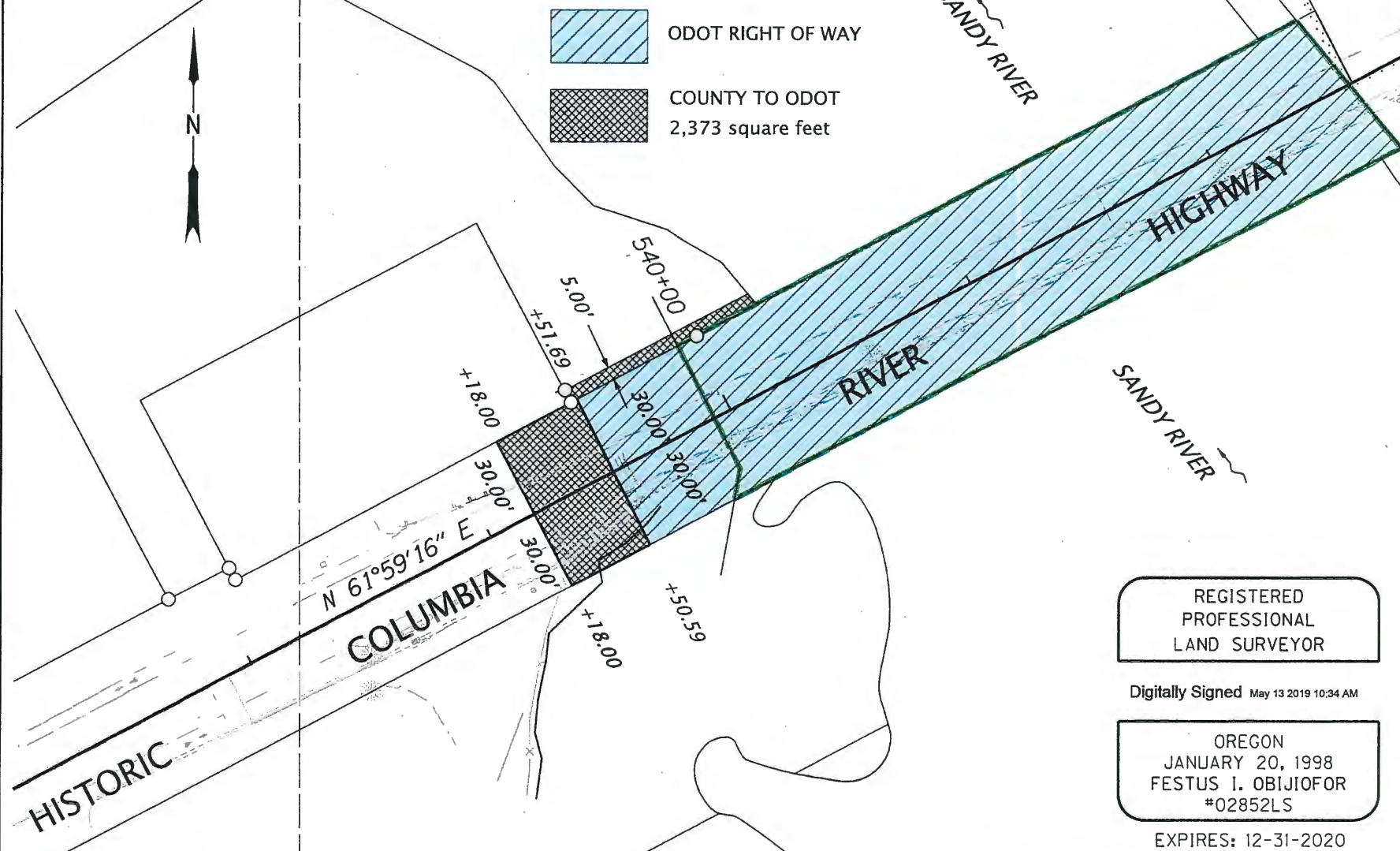
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EXPIRES: 12-31-2020

SEC. 25, T. 1N, R. 3E, W.M.

EXHIBIT B




REGISTERED
PROFESSIONAL
LAND SURVEYOR

Digitally Signed May 13 2019 10:34 AM

OREGON
JANUARY 20, 1998
FESTUS I. OBIJIOFOR
#02852LS

EXPIRES: 12-31-2020

 <p>OREGON DEPARTMENT OF TRANSPORTATION RIGHT OF WAY ENGINEERING EXHIBIT B</p>	SECTION	US30: TROUTDALE (SANDY RIVER) BRIDGE	SCALE	1" = 50'
	HIGHWAY	HISTORIC COLUMBIA RIVER (CROWN POINT)	DATE	May, 2019
	COUNTY	MULTNOMAH	FILE	JT843
	PURPOSE	JURISDICTIONAL TRANSFER		EXHIBIT 1 OF 1