



## RESOLUTION 2017-057

### **AUTHORIZING THE CITY MANAGER TO TAKE ACTIONS NECESSARY FOR ACCEPTING THE STATE OF OREGON DEPARTMENT OF TRANSPORTATION (ODOT) REQUEST FOR TRANSFER OF STATE ROAD RIGHT-OF-WAY (PORTIONS OF SW ALEXANDER LANE) INTO CITY JURISDICTION AND MAINTENANCE CONTROL**

**WHEREAS**, Highway 99W is classified as a State Primary Highway, designated as part of the State of Oregon Highway System, and is under the jurisdictional control of the Oregon Transportation Commission (OTC) and the Oregon Department of Transportation (ODOT); and

**WHEREAS**, SW Alexander Lane was originally developed as a frontage road to Highway 99W, a portion of which is located within the right-of-way of Highway 99W and is under the jurisdictional control of the ODOT; and

**WHEREAS**, SW Alexander Lane was redeveloped to meet City road standards under the Vintage Creek Townhomes Development (2002); and

**WHEREAS**, SW Alexander Lane is classified as a local street under the City's current Transportation System Plan (TSP); and

**WHEREAS**, by the authority granted in ORS 366.395, ODOT may relinquish title to any of its real property, which in the opinion of the department, is no longer needed, required or useful by it for department purposes, to any other government body or political subdivision within the State of Oregon, subject to such restrictions, if any, imposed by deed or other legal instrument or otherwise imposed by the State; and

**WHEREAS**, it is generally a City of Sherwood policy to have jurisdiction and maintenance control of all roadways within the City limits with street classifications of arterial, collector, neighborhood or local, with exceptions to this policy being Highway 99W (ODOT jurisdictional control) and Tualatin-Sherwood Road (Washington County jurisdictional control); and

**WHEREAS**, City Public Works staff have performed an inspection of the subject portion of SW Alexander Lane right-of-way and have determined that the majority of the right-of-way transfer pavement material has sufficient design life remaining to recommend acceptance of the transfer without conditions; and

**WHEREAS**, City Public Works staff support transfer of the remaining section of the right-of-way transfer since private site development will be reconstructing the substandard portion of SW Alexander Lane to meet current City standards.

**NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:**

**Section 1.** That the City of Sherwood acknowledges and accepts the obligations for transfer of jurisdiction and maintenance responsibilities for that section of SW Alexander Lane currently under State of Oregon control, as shown on the Jurisdictional Transfer Agreement (Exhibit 1), the Jurisdictional Transfer Legal Description (Exhibit 2) and survey map (Exhibit 3).

**Section 2.** That the City Manager is directed to take all necessary actions to complete the transfer of SW Alexander Lane right-of-way currently under the State of Oregon Department of Transportation jurisdiction control to the City of Sherwood.

**Section 3.** This Resolution shall become effective upon approval and adoption.

**Duly passed by the City Council this 11th day of July, 2017.**

  
\_\_\_\_\_  
Krisanna Clark, Mayor

Attest:

  
\_\_\_\_\_  
Sylvia Murphy, MMC, City Recorder

**JURISDICTIONAL TRANSFER AGREEMENT  
PACIFIC HIGHWAY WEST (ALEXANDER LANE)  
County of Washington  
City of Sherwood**

**THIS AGREEMENT** is made and entered into by and between the STATE OF OREGON, acting by and through its Transportation Commission, hereinafter "State," and the CITY OF SHERWOOD, a municipal corporation of the State of Oregon, acting by and through its Elected Officials, hereinafter "City," each herein referred to individually as a "Party" and collectively as the "Parties."

**RECITALS**

1. Pacific Highway West, State Primary Highway 1W, also designated as Oregon Route 99W (OR 99W) is a part of the State Highway System under jurisdiction and control of the Oregon Transportation Commission (OTC).
2. The frontage road designated 091AX is a southwesterly extension of the Cedar Creek Frontage Road (aka SW Alexander Lane) and lies southeasterly of, and within the right of way of, Pacific Highway West. Frontage road 091AX is part of the State Highway System under the jurisdiction and control of the OTC.
3. Portions of Alexander Lane, Smith Avenue and Meinecke Road are all part of the city street system under jurisdiction and control of City.
4. By the authority granted in ORS 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local government for performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting Parties.
5. By the authority granted in ORS 366.395, State may relinquish title to any of its property not needed by it for highway purposes to any other governmental body or political subdivision within the State of Oregon, subject to such restrictions, if any, imposed by deed or other legal instrument or otherwise imposed by State.
6. Pursuant to ORS 373.010, whenever the routing of any State Highway passes through the corporate limits of any city, State may locate, relocate, reroute, alter or change any routing when in its opinion the interests of the motoring public will be better served.
7. State and City entered into Cooperative Improvement Agreement No. 726, signed May 28, 2002, which provided for improvements to Meinecke Road

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and other streets within the City of Sherwood, construction financing and abandonment and retention of certain streets within State jurisdiction.

8. State transferred jurisdiction of a portion of the Cedar Creek Frontage Road (Alexander Lane) to City by Resolution No. 726, entered into the minutes of the OTC on May 14, 2002.
9. State and City entered into Amendment No. 1 to Agreement 726 on June 27, 2003, to add funding to the original Agreement.
10. For the purpose of furthering the development of a state highway system adapted in all particulars to the needs of the people of the State of Oregon, State now desires to further eliminate from the state highway system a section of the Pacific Highway West, State Primary Highway 1W (OR99W) as described below.

**NOW, THEREFORE**, the premises being in general as stated in the foregoing RECITALS, it is agreed between State and City as follows:

**TERMS OF AGREEMENT:**

1. Subject to the provisions of this Agreement, State and City agree, conditioned upon approval by the OTC, or its designee, that a portion of frontage road 091AX, described herein as "Unit 1," be eliminated as a part of the right of way of Pacific Highway West and the State highway system; that Unit 1 pass to and vest in City; and that City maintain Unit 1 as a part of its city street system as long as needed for the service of persons living thereon or a community is served thereby. If said right of way is no longer used for public street purposes, it shall automatically revert to State. The legal description of Unit 1 is set forth in Exhibit A, attached hereto and by this reference made a part hereof. The location of Unit 1 is approximately as shown on the sketch map marked Exhibit B, attached hereto and by this reference made a part hereof. Unit 1 will not retain the State Route OR 99W designation.
2. This Agreement becomes effective on the date all required signatures are obtained. The Agreement terminates upon acceptance and recording of a Jurisdictional Transfer Document or two calendar years after the effective date of the Agreement, whichever is earlier, unless otherwise extended or renewed by formal written agreement of the Parties. State shall pursue approval by the OTC or designee, and the actual transfer of Unit 1 shall be accomplished by acceptance and recording of the Jurisdictional Transfer Document.

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3. 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.
4. Because Unit 1 is either on the NHS or was part of the federal aid primary system in existence on June 1, 1991, it continues to be subject to the requirements of 23 USC 131 and the Oregon Motorist Information Act, ORS 377.700 to 377.840 and 377.992, after transfer and ODOT retains authority to enforce those laws. In accordance with those laws, State is required to continue regulating outdoor advertising signs, which includes conducting surveillance along these highways. Oversight is the responsibility of the Outdoor Advertising Sign Program in the ODOT Right of Way Program Management Unit.
5. State maintains a State Route system and a US Route system to assist the traveling public in their travels. Designated routes may be composed of both state highway and local roads. Designation and elimination of state routes are under authority of the OTC. US Route designations are administered by the Special Committee on US Route Numbering of the American Association of State Highway and Transportation Officials (AASHTO).

**STATE OBLIGATIONS**

1. Upon adoption of a Resolution by the OTC or its designee providing for elimination of Unit 1, as hereafter defined, as a portion of the state highway system, State shall formally eliminate Unit 1 as a portion of Pacific Highway West 1W and the state highway system. Upon acceptance and recording of a Jurisdictional Transfer Document, all right, title and interest of State, including all jurisdiction, maintenance, and control, shall pass to and vest in City. If said right of way is no longer used for public street purposes, it shall automatically revert to State.
2. State shall retain all property identified as excess acquired by State for highway right of way and other public purposes. State shall convey the "operating" right of way of the frontage road, including any signage, illumination, slope, utility, wetland, water quality and similar easements, if any, to City upon execution of this Agreement and acceptance and recording of the subsequent Jurisdictional Transfer Document.
3. State hereby relinquishes all maintenance and repair responsibilities and liability over Unit 1, and City hereby accepts all maintenance and repair responsibilities and liability for Unit 1 upon execution of this Agreement.

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4. State agrees to furnish City with copies of any maps records, permits and any other related data available that may be required to administer Unit 1 upon City's written request.
5. State agrees that it will notify the Travel Information Council (TIC) of the transfer of jurisdiction when there are any TIC signs on such facility, in accordance with ORS 377.708.
6. State's contact for this Agreement is (insert title, address phone number and e-mail address), 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.

**CITY OBLIGATIONS**

1. City agrees to accept all of State's right, title, and interest in Unit 1, accept jurisdiction and control over Unit 1, and maintain Unit 1, including any signage or illumination and all things and appurtenances within the transferred unit, as a portion of its city street system as long as needed for the service of persons living thereon or a community is served thereby. Any right of way being transferred in which State has any title shall be vested in City only so long as used for public street purposes. If said right of way is no longer used for public street purposes, it shall automatically revert to State.
2. City agrees that the existing access control between Unit 1 and Pacific Highway West will be retained by State to preserve the integrity of the traveled roadway.
3. City shall accept Unit 1 in the condition existing as of the date of this Agreement. City is aware that title to Unit 1 will not be vested in City until the subsequent Jurisdictional Transfer Document is executed by State and recorded with the county in which City is located. However, City shall accept all liability and maintenance responsibilities, as described in paragraph 3 of State Obligations, immediately upon execution of this Agreement.
4. City shall return permit files, utility permit files, right of way maps and as-built files to Salem if any or a portion of Unit 1 reverts to State or in the event that the OTC or designee does not approve the transfer.
5. City shall protect any TIC signs that may exist on Unit 1 from destruction or removal by an intentional act, including construction activity performed by City, in accordance with ORS 377.708. After transfer of jurisdiction, the TIC will retain authority over signs on the streets as though they were still a state highway, including the responsibility to contract with State to repair and maintain the signs.

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6. City shall pass an ordinance or resolution authorizing the City Manager to enter into this Agreement on behalf of City.
7. City's contact for this Agreement is City Manager, 22560 SW Pine Street, Sherwood, Oregon 97140, 503-625-5522, [gallj@sherwoodoregon.gov](mailto:gallj@sherwoodoregon.gov), or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## GENERAL PROVISIONS

1. Unit 1 is relinquished and transferred subject to the rights of any utilities located within Unit 1 and further subject to the rights of the owner of said existing utilities, if any there be, to operate, reconstruct and maintain their utility facilities presently located within Unit 1.
2. This Agreement may be terminated by mutual written consent of both parties. State may terminate this Agreement effective upon notice to City, or at such later date as may be established by State, under any of the following conditions:
  - a. If City fails to provide services called for by this Agreement within the time specified herein or any extension thereof;
  - b. If City 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 the OTC or its designee fails to adopt a resolution approving the Jurisdictional Transfer of Unit 1 to City;
  - d. If City fails to adopt a resolution authorizing the transfer of Unit 1;
  - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that the obligations under this Agreement are prohibited.
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 City with respect to which the other Party may have

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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 City (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 City in such proportion as is appropriate to reflect the relative fault of State on the one hand and of City 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 City 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 City is jointly liable with State (or would be if joined in the Third Party Claim), City 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 City 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 City 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. City'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



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selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

8. If City fails to maintain facilities in accordance with the terms of this Agreement, State, at its option, may maintain the facility and bill City, seek an injunction to enforce the duties and obligations of this Agreement or take any other action allowed by law.
9. All employers, including State and City, 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 City shall ensure that each of its subcontractors complies with these requirements.
10. City 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, City 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.
11. State and City acknowledge and agree that State, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of State and City which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
12. Each Party hereby grants the other Party authority to enter onto each other's right of way for the purpose of performing any required work or maintenance services.
13. 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.

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14. 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, if made, 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 or City to enforce any provision of this Agreement shall not constitute a waiver by State or City of that or any other provision.

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

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**CITY OF SHERWOOD**, by and through its  
elected officials

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO FORM**

By \_\_\_\_\_  
City Counsel

Date \_\_\_\_\_

**City Contact:**  
Joseph Gall, ICMA-CM,  
City Manager

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

By \_\_\_\_\_  
Director

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
State Right of Way Manager

Date \_\_\_\_\_

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

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 1 Right of Way Manager

Date \_\_\_\_\_

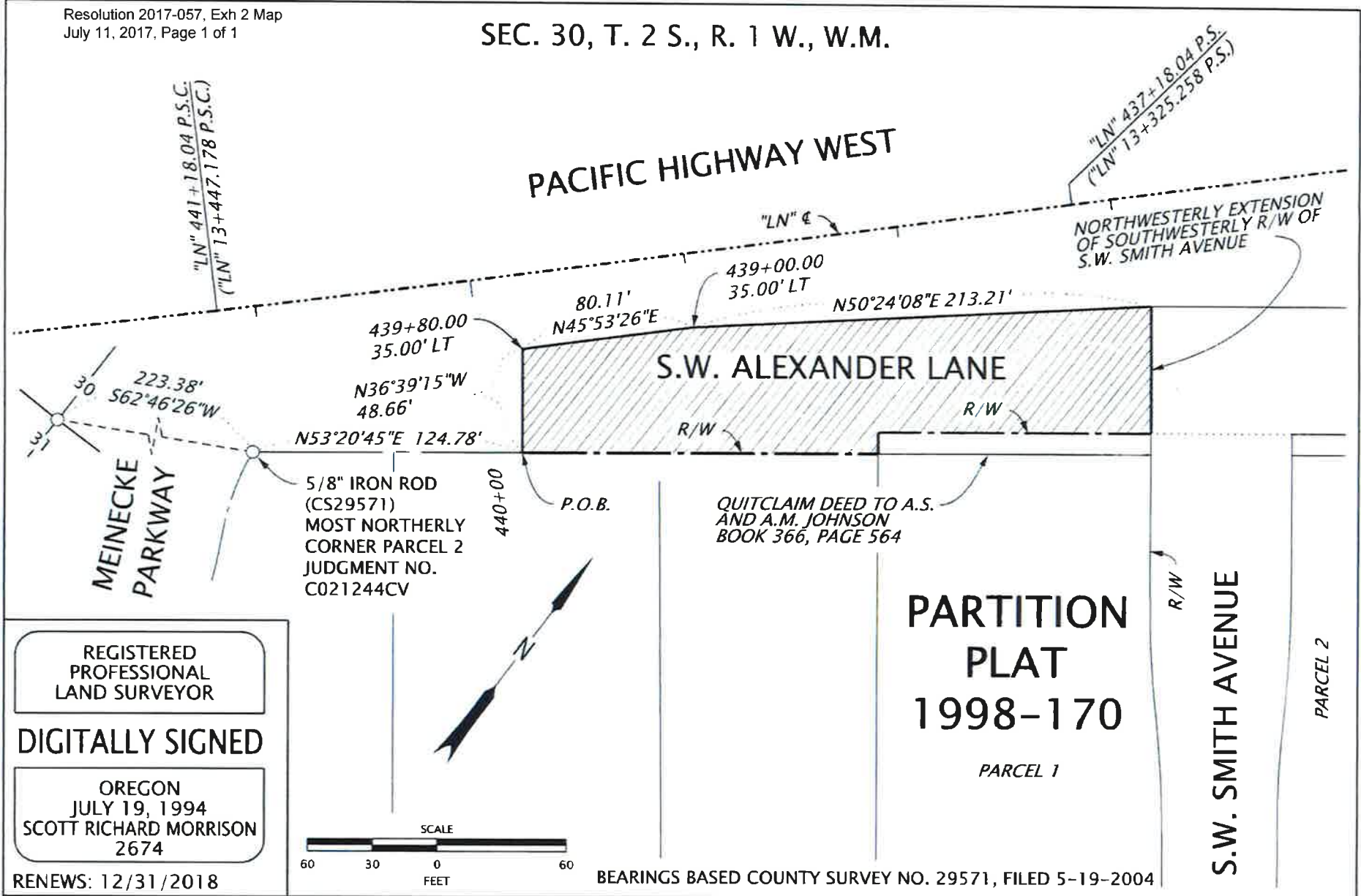
**APPROVED AS TO LEGAL  
SUFFICIENCY**

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


Date \_\_\_\_\_

**State Contact**  
**\*\*insert ODOT's contact info**

SEC. 30, T. 2 S., R. 1 W., W.M.



REGISTERED PROFESSIONAL LAND SURVEYOR  
 DIGITALLY SIGNED  
 OREGON  
 JULY 19, 1994  
 SCOTT RICHARD MORRISON  
 2674  
 RENEWS: 12/31/2018

 OREGON DEPARTMENT OF TRANSPORTATION <b>JURISDICTIONAL</b> <b>TRANSFER NO. 783</b> <b>EXHIBIT B</b>	SECTION	SHERWOOD ACCESS MANAGEMENT BONDING PROJECT CEDAR CREEK FRONTAGE ROAD SECTION	SCALE	1" = 50'
	HIGHWAY	PACIFIC HIGHWAY WEST	DATE	MARCH, 2017
	COUNTY	WASHINGTON COUNTY		SEE DRAWING 1A-23-7

**EXHIBIT A** - Page 1 of 1

**Jurisdictional Transfer No. 783**

Drawing 1A-23-7  
3/29/2017

**Jurisdictional Transfer to City of Sherwood**

A parcel of land lying in the SW¼SE¼ of Section 30, Township 2 North, Range 1 West, W.M., Washington County, Oregon and being a portion of that certain frontage road lying within the right of way boundaries of the Pacific Highway West and commonly known as S.W. Alexander Lane; the said parcel being that portion of said right of way boundaries lying Southwesterly of the Northwesterly extension of the Southwesterly right of way line of S.W. Smith Avenue; and Easterly of the following described line:

Commencing at the most Northerly corner of that property designated as Parcel 2 and acquired by the State of Oregon, by and through its Department of Transportation in that Stipulated Final Judgment dated October 17, 2002, entered as Circuit Court Case No. C021244CV, Washington County, Oregon, said corner being marked by a 5/8 inch iron rod as shown on County Survey No. CS 29571, filed May 19, 2004, Washington County, Oregon, said iron rod being North 62° 46' 26" East of the South one quarter corner of Section 30, Township 2 South, Range 1 West, W.M., Washington County, Oregon; thence from said iron rod along the Southeasterly right of way of the Pacific Highway West North 53° 20' 45" East 124.78 feet to the point of beginning of said described line; thence leaving said Southeasterly right of way line North 36°39'15" West 48.66 feet to a point opposite and 35.00 feet Southeasterly of the center line of the North bound lane of said Pacific Highway West at Engineer's Station "LN" 439+80.00; thence North 45°53'26" East 80.11 feet to a point opposite and 35.00 feet Southeasterly of said center line at Engineer's Station "LN" 439+00.00; thence North 50°24'08" East 213.22 feet to the Northwesterly extension of the Southwesterly right of way line of S.W. Smith Avenue and the terminus of said described line.

Bearings are based on County Survey No. 29571, filed May 19, 2004, Washington County, Oregon.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

**DIGITALLY SIGNED**

OREGON  
JULY 19, 1994  
SCOTT RICHARD MORRISON  
2674

RENEWS: 12/31/2018