

COOPERATIVE IMPROVEMENT AGREEMENT
Oregon Route 18: Newberg-Dundee Bypass
Yamhill 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," and YAMHILL COUNTY, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. Oregon Jobs and Transportation Act of 2009 (JTA) Program, hereinafter referred to as the "JTA of 2009 Program," provides funding for preservation and modernization projects chosen by the Oregon Transportation Commission (OTC).
2. Oregon Route 99W (OR 99W), Oregon Route 18 (OR 18) and Oregon Route 219 (OR 219), are part of the state highway system under the jurisdiction and control of the OTC. College Street (within the limits of this project), Wilsonville Road, Waterfront Road, and Wynooski Road are part of the county road system under the jurisdiction and control of Agency.
3. By the authority granted in Oregon Revised Statutes (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.
4. State, by ORS [366.220](#), is vested with complete jurisdiction and control over the roadways of other jurisdictions taken for state highway purposes.
5. By the authority granted in ORS [366.425](#), State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
6. The Newberg-Dundee Bypass (Bypass) will construct two (2) lanes, one (1) in each direction, of the four (4) lane Bypass between the City of Newberg and the City of Dundee ; approximately four (4) miles in length. The Bypass will also include required local circulation improvements needed to accommodate construction of the Bypass. The Bypass will have access points at the two ends, OR 219 in Newberg and OR 99W south of Dundee. The Bypass is designated an expressway and will operate at fifty-five (55) miles per hour. The connection at OR 99W (Dundee) is a temporary connection and will be removed when the Bypass is extended to OR 18 in

the City of Dayton. This Agreement will address the Project elements constructed within Agency's corporate limits and resurfacing of Agency roads used for Project purposes.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, for all elements located within Agency jurisdiction of the Bypass project, State and Agency agree State shall design and construct the following:
 - a. the Wynooski Road bridge structure and its approaches connected to the existing Wynooski Road;
 - b. the College Street reconstruction north of the railroad tracks south to the new frontage road;
 - c. the new frontage road with a cul-de-sac at the southwest end of College Street;
 - d. a new road connection with a cul-de-sac on Waterfront Road;
 - e. a new connection for Waterfront Road and 14th Street;
 - f. closure of the street connection of 13th Street and Meridian Street; and
 - g. construct a new Wilsonville Road connection to Agency standards located at OR 219 at mile point 22.317 (engineer's station B82+75) to the existing Wilsonville Road. This new connection will be a two-lane road within county jurisdiction. Improvements include, but are not limited to, pavement, signage, storm drainage conveyance/detention/water quality facilities, and landscaping. Construction of this new connection will require a portion of the existing Adolf Road to be removed.

Collectively, these improvements shall hereinafter be referred to as "Project." The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

2. The JTA of 2009 Program funds for the Project are limited to \$192,000,000. Agency has entered into an agreement with the Cities of Newberg, McMinnville, Dundee and the Confederated Tribes of the Grand Ronde for a local match share of \$20,000,000. In the event the Project cannot be constructed within the estimated budget, the Parties shall examine alternatives for a reduced scope and/or reevaluate funding obligations. If the Parties agree on changes to the Project scope or funding obligations, then an amendment to this Agreement will be entered into to reflect such changes. If such agreement cannot be reached, State at its sole discretion shall

determine whether the Project scope must be modified to meet the Project budget or to commit additional funds to the Project.

3. The funds available under the JTA of 2009 Program are State Highway Funds. To be eligible for reimbursement under the JTA of 2009 Program, expenditures must comply with the requirements of Article IX, Section 3a of the Oregon Constitution.
4. Agency and State have a joint obligation to ensure timely expenditure of the JTA of 2009 Program funds and to comply with the provisions of the bonds that finance the JTA of 2009 Program.
5. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance responsibilities for the useful life of the facilities constructed as part of the Project. The useful life for the bridge structure is defined as seventy five (75) years; the useful life of the roadway is defined as twenty (20) years. The Project shall be completed within ten (10) calendar years following the date of final execution of this Agreement by both Parties.

AGENCY OBLIGATIONS

1. Agency agrees to allow State the use of Agency roads for the detouring of traffic and for use by construction vehicles for Project purposes.
2. Agency agrees State's contribution for resurfacing and maintenance of Agency roads used for Project detour and construction vehicle purposes shall not exceed \$230,804.
3. Agency agrees State shall acquire all needed right of way for the construction of the Project. The Parties agree to enter into a separate Intergovernmental Agreement for Right of Way Services identifying the roles and responsibilities of the Parties for any right of way activities. Upon completion of the Project, State shall convey to the Agency, and the Agency agrees to accept, the property acquired for the Project necessary for the construction of the bridges and roadway connections referenced in this Agreement. The specific method of conveyance will be coordinated by the Region 2 Right of Way Manager.
4. Agency shall maintain the approaches, guardrail of approaches, bridge deck sidewalk, and lighting for the Wynooski Road Bridge. State shall accept ownership of the Wynooski Road Bridge as described in State Obligations, paragraph 6.
5. Agency shall be responsible for 100 percent of maintenance and power costs associated with the luminaires installed on the Wynooski Road Bridge. Agency shall require the power company to send invoices directly to Agency.
6. Agency shall, upon completion of Project, accept ownership and control of the improvements connected with operation of Agency roads.

7. Agency shall, at its own expense, maintain and periodically inspect any sidewalks, and curb ramps on the portions of the Project under Agency's maintenance jurisdiction upon Project completion and throughout the useful life of the Project to ensure continuing compliance with the ADA. This provision shall survive termination of this Agreement.
8. Agency agrees to maintain the frontage road constructed as part of the Project with its own forces and at its own expense.
9. Agency shall, upon completion of the new Wilsonville Road connection, accept ownership and control of the new alignment and its associated improvements.
10. Agency grants State or its contractor, the right to enter onto and occupy Agency right of way within the Bypass project limits for the performance of field work and Bypass project construction and maintenance as set forth in this Agreement.
11. 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.
12. 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.
13. 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 completion of Project. Copies of applicable records shall be made
14. Agency acknowledges the effect and scope of ORS [105.755](#) and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of Agency.
15. Agency certifies and represents that the individual(s) signing this Agreement has 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.

16. Agency's Project Manager for this Project is John Phelan, Public Works Director, Yamhill County Public Works, 2060 Lafayette Avenue, McMinnville, Oregon 97128-9398; telephone: (503) 434-7374; email: phelanj@co.yamhill.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, or its consultant, shall conduct the necessary field surveys, environmental studies, traffic investigations, preliminary engineering and design work required to produce and provide final plans, specifications and cost estimates for the highway Project; identify and obtain all required permits; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid and contract documents; advertise for construction bid proposals; award all contracts; pay all contractor costs, provide technical inspection, project management services and other necessary functions for sole administration of the construction contract entered into for this Project.
2. State understands all Agency road improvements in Terms of Agreement, paragraph 1 shall be designed to City of Newberg's city street design standards.
3. The Parties agree to:
 - a. Utilize ODOT standards to assess and ensure Project compliance with the Americans with Disabilities Act of 1990 (ADA), including ensuring that all sidewalks, and curb ramps meet current ODOT Highway Design Manual standards.
 - b. Follow ODOT's processes for design, modification, upgrade, or construction of sidewalks, and curb ramps, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, and current ODOT Curb Ramp Inspection form;
 - c. At Project completion, complete an ODOT Curb Ramp Inspection Form 734-5020 for each curb ramp constructed, modified, upgraded, or improved as part of the Project. The completed form is the documentation required to show that each curb ramp is constructed to ODOT's 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>
4. State, or its consultant, shall acquire all necessary rights of way for the Project 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. The Parties agree to enter into a separate Intergovernmental Agreement for Right of Way Services identifying the roles and responsibilities of the Parties for any right of way activities.

5. In consideration for the use of Agency's road system as detour and for construction equipment use during Project construction, State agrees to pay Agency \$230,804 for resurfacing said detour routes, upon Project completion.
6. State shall, upon completion of Project, accept ownership of the Wynooski Road Bridge.
7. State shall, at its own expense, be responsible for and perform bridge inspections required by the National Bridge Inspection Standards for the Wynooski Road Bridge structure. State shall perform inventory and inspection reporting to FHWA and load rating and posting.
8. State shall cause to be relocated or reconstructed all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements for the portions of the Project which are on Agency right of way. State shall reimburse Agency for such relocations or reconstructions.
9. State and Agency shall meet to mutually agree upon design of facilities being turned over to Agency under this Agreement.
10. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
11. State's Project Manager for this Project is Kelly Amador, Senior Project Leader, ODOT, Area 3, 885 Airport Road SE, Building P, Salem, Oregon 97301-4788; telephone: (503) 986-2874; email: Kelly.l.amador@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 mutual written consent of both Parties.
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.

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.

This Project is in the 2015-2018 Statewide Transportation Improvement Program (STIP), Key #17099 and 19803 that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently approved by amendment to the STIP).

Signature Page Follows

YAMHILL COUNTY, by and through its
designated officials

By [Signature]
Chair

By [Signature]
Vice Chair

By Richard L. Olsen
Commissioner

Date 3/23/17

APPROVED AS TO LEGAL SUFFICIENCY

By [Signature]
County Legal Counsel

Date 3/23/17

Agency Contact:

John Phelan, Public Works Director
2060 Lafayette Ave
McMinnville, OR 97128-9398
503-434-7374
phelanj@co.yamhill.or.us

State Contact:

Kelly Amador, Area 3 Senior Project Leader
885 Airport Rd, SE, Building P
Salem, Oregon 97301
503-986-2874
Kelly.l.amador@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief
Engineer

Date _____

By _____
State Traffic/Roadway Engineer

Date _____

By _____
State Right of Way Manager

Date _____

By _____
Region 2 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

Accepted by Yamhill County
Board of Commissioners on
3-23-17 by Board Order
17-89

Yamhill County / State
Agreement No. 2000

YAMHILL COUNTY, by and through its
designated representative
By [Signature]
By [Signature]
Vice-Civil

By [Signature]
Commissioner
Date 3/22/17

APPROVED AS TO LOCAL JURISDICTION
By [Signature]
County Legal Counsel
Date 7/25/17

Agency Contact
John Pielini, Public Works Director
2000 Lafayette Ave
McMinnville, OR 97120-0300
503-484-7874
jpielini@co.yamhill.or.us

State Contact
Kelly Anniston, Area 3 Senior Project Leader
806 Airport Rd, SE, Building P
Salem, Oregon 97301
503-600-2074
kelly.anniston@ecdotd.state.or.us

STATE OF OREGON, by and through
its Department of Transportation
By [Signature]
Highway Division Administrator
Date 4/10/17

APPROVAL REQUIREMENTS
By [Signature]
Technical Services Director/Chief
Engineer
Date 4/15/17

By [Signature]
State Traffic Advisory Board
Date 4/05/17

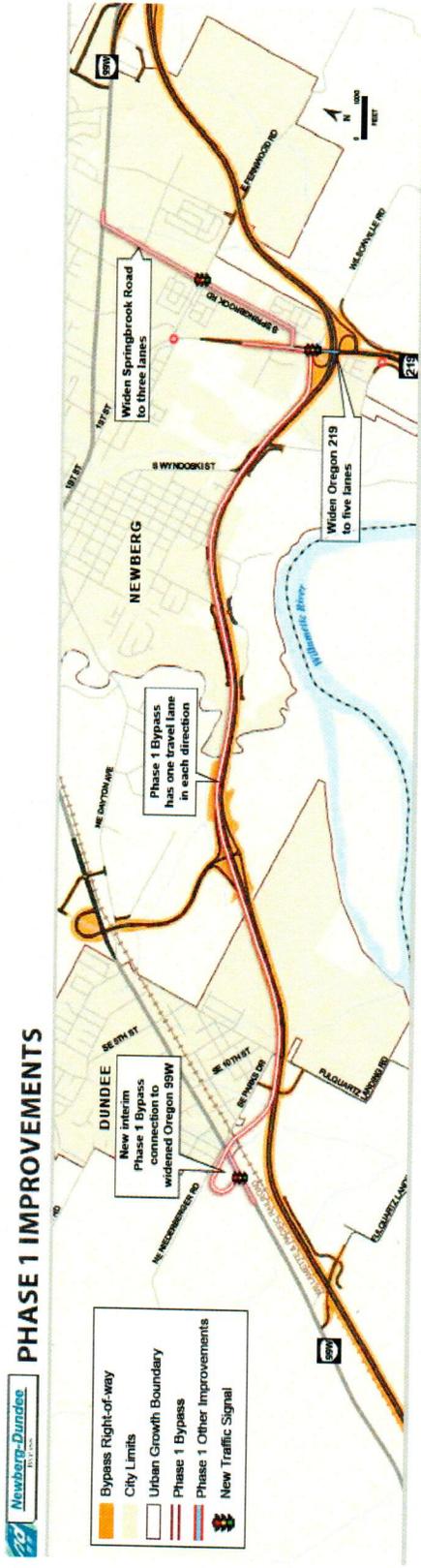
By [Signature]
State Right of Way Manager
Date 3/30/17

By [Signature]
for Region 2 Manager
Date 03/30/2017

APPROVED AS TO LOCAL
SUFFICIENCY
By [Signature]
Assistant Attorney General
Date 3/28/2017

Accepted by Yamhill County
Board of Commissioners on
3/22/17 by Board Order
17-08

Exhibit A – Project Location Map



EILERTSON Holly J

From: CHICKERING Sonny P
Sent: Tuesday, March 28, 2017 9:16 AM
To: ODOT All Region 2 Managers
Cc: MATHER Paul R; LEE Jane S; EILERTSON Holly J; ODOT Central Authorization Unit
Subject: Signing Authority for March 29 - 31, 2017
Attachments: HWY 06 Chickering Delegation 7-2015.pdf

While I am out of the office March 29 - March 31, 2017 I designate Vivian Payne as Acting Region 2 Manager with full delegated authority by rule/statute under Delegation Order HWY 06.

For this specific time period only, Vivian may sign any financial transactions (e.g. invoices, procurement, IGA, contracts) within the limits of the Delegation Order, but she will need to attach a copy of this e-mail and Delegation Order to all such documents.

For anything HR related (e.g requests for in-state travel, temp appointments, WOC, hiring or terminations), Appointing Authority Signature will have to wait until my return, or go to Highway Division Administrator Paul Mather for his approval and signature.

Sonny P.A. Chickering, PE
Oregon Dept. of Transportation
Northwest (Region 2) Manager
541-517-1955