

**INTERGOVERNMENTAL AGREEMENT**  
**OR 18: Ash Road – McDougal Junction**  
**Lafayette Highway Detour**  
**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 the 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 Route (OR) 99W (Pacific Highway West) and OR 18 (Salmon River Highway) are a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Highway 154 (Lafayette Highway), between OR 18 and OR 99W, is 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, 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.
3. State is conducting a project to repair Yamhill River Bridge (Bridge Number 08003) and preserve pavement on OR 18 (Key No. 18567). The purpose of this Agreement is to obtain Agency's permission to use Lafayette Highway as a detour route for the bridge repair and pavement preservation project.

**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, State and Agency agree that Agency shall grant State access to Agency's right of way from May 1, 2019 through June 30, 2019, in order for State to establish a detour route, hereinafter referred to as "Detour Project," as required to complete State's OR 18: Ash Road to McDougal Junction project, hereinafter referred to as "State Project." The responsibilities of the Detour Project are as outlined in "Exhibit A," attached hereto and made a part hereof by this reference. The location of the detour is approximately as shown on the sketch map marked "Exhibit B," attached hereto and made a part hereof by this reference.
2. State is solely responsible for all costs associated with the Detour Project. Agency shall not be liable for any expenditure under this Agreement.

3. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project or two (2) calendar years following the date all required signatures are obtained, whichever is sooner.

#### **AGENCY OBLIGATIONS**

1. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement. Agency grants permission for State to use Lafayette Highway, between OR 18 and OR 99W, as a designated detour route as described in Exhibit A during the performance of the State Project.
2. Agency agrees to Agency Responsibilities described in Exhibit A. Except as specifically provided herein, Agency retains all statutory jurisdiction and road authority over Lafayette Highway between OR 18 and OR 99W.
3. 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.
4. Agency's Project Manager for this Project is John Phelan, Director of Public Works, Yamhill County, 2060 Lafayette Avenue, McMinnville, Oregon, 97128; (503) 434-7374; [phelani@co.yamhill.or.us](mailto:phelani@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 shall perform the work and agrees to the responsibilities described under State Responsibilities in Exhibit A.
2. State 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, State 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.
3. State shall perform the work under this Agreement 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.

Yamhill County / State - Oregon Department of Transportation  
Agreement No. 33013

4. All employers, including State, 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 shall ensure that each of its subcontractors complies with these requirements.
5. 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.
6. State's Project Manager for this Project is Melissa Sutkowski, Project Leader, ODOT Area 3, 455 Airport Road SE Bldg B, Salem, Oregon 97301; (503) 986-2639; [melissa.sutkowski@odot.state.or.us](mailto:melissa.sutkowski@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. Either Party may terminate this Agreement effective upon delivery of written notice to the other Party, or at such later date as may be established by the terminating Party, under any of the following conditions:
  - a. If the other Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If the other Party 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 the terminating Party fails to correct such failures within ten (10) days or such longer period as the terminating Party may authorize.
  - c. 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.
  - d. 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 either Party 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.

Yamhill County / State - Oregon Department of Transportation  
Agreement No. 33013

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.

Yamhill County / State - Oregon Department of Transportation  
Agreement No. 33013

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.

The Project is in the 2018-2021 Statewide Transportation Improvement Program (STIP) (Key #18567) that was adopted by the Oregon Transportation Commission on July 20, 2017 (or subsequently approved by amendment to the STIP).

**SIGNATURE PAGE TO FOLLOW**

Yamhill County / State - Oregon Department of Transportation  
Agreement No. 33013

YAMHILL COUNTY, by and through its  
elected officials

By [Signature]  
Chair

By [Signature]  
Vice Chair  
Unavailable for signature

By \_\_\_\_\_  
Commissioner

Date 8/23/18

APPROVED FOR LEGAL SUFFICIENCY  
(if required by local process)

By [Signature]  
Agency Legal Counsel

Date 8/23/18

**Agency Contact:**  
John Phelan, Director of Public Works  
Yamhill County  
2060 Lafayette Avenue  
McMinnville, OR 97128  
(503) 434-7374  
[phelani@co.yamhill.or.us](mailto:phelani@co.yamhill.or.us)

STATE OF OREGON, by and through  
its Department of Transportation

By [Signature]  
for Region 2 Manager

Date 8/29/2018

APPROVAL RECOMMENDED

By [Signature]  
Region 2 Project Delivery Manager

Date \_\_\_\_\_

By [Signature]  
Area 3 Manager

Date 8/29/18

**State Contact:**  
Melissa Sutkowski, Project Leader  
ODOT Region 2 Area 3  
455 Airport Road SE Bldg B  
Salem, OR 97301  
(503) 986-2639;  
[melissa.sutkowski@odot.state.or.us](mailto:melissa.sutkowski@odot.state.or.us)

APPROVED FOR LEGAL SUFFICIENCY

Herbert F. Lovejoy via email on 8/14/18  
Assistant Attorney General

Accepted by Yamhill County  
Board of Commissioners on  
8/23/18 by Board Order  
# 18-307

**EXHIBIT A**  
**State and Agency Agreement No. 33013**

**1. Timeframe of Applicability:**

- a. Lafayette Highway will be used as a detour during a window of twelve (12) consecutive calendar days between May 1, 2019 and June 30, 2019.
- b. Lafayette Highway will be used as a detour from Monday at 9:00 a.m. through Friday at 6:00 a.m. during the consecutive twelve (12) day window.
- c. Lafayette Highway will not be used as a detour from Friday at 6:00 a.m. to Monday at 9:00 a.m. during the consecutive twelve (12) day window.

**2. State Responsibilities under this Agreement:**

- a. State will station flaggers during the detour at OR 18 and OR 99W to direct traffic and minimize delays.
- b. State will repair any roadway damage that is mutually agreed to be directly attributed to the use of Lafayette Highway as the detour route.

**3. Agency Responsibilities under this Agreement:**

Agency will continue operation of Lafayette Highway during the consecutive twelve (12) day window when the detour route is not in effect.

**4. Incident Response:**

State will provide incident response for traffic incidents on Lafayette Highway during the times that State uses Lafayette Highway as a detour.

**EXHIBIT B**  
**Detour Project Location Map**

