

**IMMEDIATE OPPORTUNITY FUND AGREEMENT
OR 99W Road Improvements
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" or "ODOT" 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. The Oregon Transportation Commission ("OTC") at its July 15, 1988, meeting approved establishing an Immediate Opportunity Fund ("IOF") to support primary economic development in Oregon through the construction and improvement of streets and roads. The OTC, at its meeting on March 19, 2015, revised the guidelines for the use of this fund. IOF funds are limited to: Type A) specific economic development projects that affirm job retention and job creation opportunities; Type B) revitalization of business or industrial centers to support economic development; Type C) preparation of Oregon certified project-ready industrial sites; and Type D) preparation of regionally significant industrial areas.
2. The OTC approved use of Type A IOF funds for the project described in this Agreement on September 10, 2019.
3. Oregon Route (OR) 99W (Pacific Highway West) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission. Northeast Blanchard Lane is a part of the county road system under the jurisdiction and control of Yamhill County.
4. 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.

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. Agency agrees to make roadway improvements near the future development of Willamette Valley Vineyards (WVV) that meets the IOF criteria. The improvements will consist of moving an existing private approach; extending the existing two-way left turn lane from Northeast Blanchard Lane to the relocated approach; constructing a right turn lane in the southbound direction at the relocated approach; improving access turning movement to OR 99W (Pacific Highway West) to enhance mobility

and safety for the increased traffic anticipated from the expansion of WVV, hereinafter 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 Oregon Business Development Department (OBDD) recommends use of Immediate Opportunity Funds for this Project. State agrees to provide Immediate Opportunity Funds not to exceed \$724,500.00 to help finance this Project. Agency and/or others will provide the remaining Project funding.
3. Agency may seek reimbursement for its actual costs to develop the Project, consistent with the terms of this Agreement ("Eligible Costs").
 - a. Eligible Costs are actual costs of Agency to the extent those costs are:
 - i. reasonable, necessary and directly used for the Project, including travel in accordance with the current State of Oregon Department of Administrative Services' rates;
 - ii. permitted by generally accepted accounting principles established by the Governmental Accounting Standards Board, as reasonably interpreted by the State, to be capitalized to an asset that is part of the Project; and
 - iii. eligible or permitted uses of the funds under the Oregon Constitution, the statutes and laws of the state of Oregon, and this Agreement.
 - b. Eligible Costs do NOT include:
 - i. operating and working capital or operating expenditures charged to the Project by Agency;
 - ii. loans or grants to be made to third parties;
 - iii. any expenditures incurred before the OTC approval date or after the Agreement expiration date; or
 - iv. costs associated with the Project that substantially deviate from the Project description in Terms of Agreement, Section 1, unless such changes are approved by ODOT by amendment of this Agreement;
4. This Agreement is effective on the date all required signatures are obtained and shall terminate upon completion of the Project and receipt of documentation of filled and created positions outlined under Agency obligations or ten (10) calendar years whichever is sooner.

STATE OBLIGATIONS

1. Within 30 days of receipt of monthly itemized invoices, State shall reimburse Agency fifty (50) percent of eligible Project costs incurred until the total of \$724,500.00 of approved IOF funds have been paid to Agency or until Project is completed, whichever occurs first.
2. Upon ODOT's receipt of the final invoice, ODOT shall conduct a final on-site review of the Project. ODOT will withhold payment of the final invoice until on-site review is conducted and the Project is approved by the State's Project Manager or designee.
3. State certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of State, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind State.
4. State's Project Manager for this Project is John Maher, STIP Financial Manager, ODOT Region 2, 455 Airport Road, Bldg. B, Salem, Oregon 97301; phone: (503) 986-2614; email: john.d.maher@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.

AGENCY OBLIGATIONS

1. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; obtain all required permits; arrange for all utility relocations or reconstruction; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid documents; provide Project management services, and other necessary functions for sole administration of the contract.
2. **Americans With Disabilities Act Compliance:**
 - a. State Highway: For portions of the Project located on or along the State Highway System or a State-owned facility ("state highway"):
 - i. Agency shall utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - ii. Agency shall follow ODOT's processes for design, construction, or alteration 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;

- iii. At Project completion, Agency shall send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form and to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show 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:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>

- iv. Agency shall 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.
- v. Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Agency shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, disability organizations, and ODOT at least 10 days prior to the start of construction.

- b. Local Roads: For portions of the Project located on Agency roads or facilities that are not on or along a state highway:

- i. Agency shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed and maintained in compliance with the ADA.
- ii. Agency may follow its own processes or may use ODOT's processes for design, construction, or alteration of Project 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 Curb Ramp Inspection form, available at:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>;

Additional ODOT resources are available at the above-identified link. ODOT has made its forms, processes, and resources available for Agency's use and convenience.

- iii. Agency assumes sole responsibility for ensuring that the Project complies with the ADA, including when Agency uses ODOT forms and processes. Agency acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.
 - iv. Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. Agency shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations prior to the start of construction.
- c. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
- i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
 - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- d. Maintenance obligations in this section shall survive termination of this Agreement.
3. Agency shall advertise and award all contracts, and pay all contractor costs. Within two (2) years after the Agreement execution date, unless granted an extension by

State, Agency shall award a contract for construction of Project. Construction must be completed within five (5) years of the Agreement date. If either time limit expires, this Agreement shall terminate immediately with all Parties.

4. Work Performed within ODOT's Right of Way

- a. Prior to the commencement of work, Agency shall obtain, or require its contractor to obtain, permission from the appropriate ODOT District Office to work on or along the state highway. This Agreement does not provide permission to work on or along the state highway.
 - b. If the Project includes traffic control devices (see ODOT's Traffic Manual, Chapter 5, for a description of traffic control devices) on or along a state highway, Agency shall, pursuant to Oregon Administrative Rule (OAR) 734-020-0430, obtain the approval of the State Traffic Engineer prior to design or construction of any traffic control device being installed.
 - c. Agency shall enter into a separate traffic signal agreement with ODOT to cover obligations for any traffic signal being installed on a state highway.
 - d. Agency shall ensure that its electrical inspectors possess a current State Certified Traffic Signal Inspector certificate before the inspectors inspect electrical installations on state highways. The ODOT's District Office shall verify compliance with this requirement before construction. The permit fee should also cover the State electrician's supplemental inspection.
5. Agency shall obtain all required state and federal permits, including any environmental permits, and shall comply with all terms of said permits.

6. Agency Subagreements and Procurements

- a. **Subagreements.** Agency may enter into agreements with contractors or subcontractors (collectively, "subagreements") for performance of the Project.
 - i. All subagreements must be in writing, executed by Agency and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Agency of its responsibilities under this Agreement.
 - ii. Agency shall require all of its contractors performing work under this Agreement to name ODOT as a third party beneficiary of Agency's subagreement with the Contractor and to name ODOT as an additional or "dual" obligee on contractors' payment and performance bonds.
 - iii. Agency shall provide ODOT with a copy of any signed subagreement, as well as any other purchasing or contracting documentation, upon

ODOT's request at any time. Agency must report to ODOT any material breach of a term or condition of a subagreement within ten (10) days of Agency discovering the breach.

b. Insurance.

- i. If the Project or Project work is on or along a state highway, Agency shall require its contractor(s) to meet the minimum insurance requirements provided in Exhibit B. Agency may specify insurance requirements of its contractor(s) above the minimum insurance requirements specified in Exhibit B. Agency shall verify its contractor(s) meet the insurance requirements in Exhibit B.
- ii. Agency shall determine insurance requirements, insurance types and amounts, as deemed appropriate based on the risk of the work outlined within the subagreement. Agency shall specify insurance requirements and require its contractor(s) to meet the insurance requirements. Agency shall obtain proof of the required insurance coverages, as applicable, from any contractor providing services related to the subagreement.
- iii. Agency shall require its contractor(s) to require and verify that all subcontractors carry insurance coverage that the contractor(s) deems appropriate based on the risks of the subcontracted work.

c. Procurements. Agency shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code, Oregon Revised Statute (ORS) 279 A, B, and C, and rules, ensuring that:

- i. All applicable clauses required by federal statute, executive orders and their implementing regulations are included in each competitive procurement; and
- ii. All procurement transactions are conducted in a manner providing full and open competition.

d. Self-Performing Work. Agency must receive prior approval from ODOT for any self-performing work.

e. Conflicts of Interest. Agency's public officials shall comply with Oregon's government ethics laws, ORS 244.010 *et seq.*, as those laws may be subsequently amended.

7. 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 subcontractors complies with these requirements.
8. Agency shall keep accurate cost accounting records. Agency shall prepare and submit monthly itemized, progress reports and invoices for construction directly to State's Project Manager for review and approval. Such invoices will be in a form identifying the Project, the agreement number, the invoice number or the account number or both, and will itemize all expenses for which reimbursement is claimed.
9. Agency agrees that should any environmental or land-use issues arise at any time during the development or construction of the Project, State may, at its discretion and when exercised in good faith, suspend payments until it is satisfied that the issue has been resolved. However, Agency may use its own funds to continue the Project and shall be reimbursed by State as provided for in this Agreement once State is satisfied that the issue has been resolved.
10. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and/or service demand. Maintenance responsibilities shall survive termination of this Agreement and upon completion of Project and submission of documentation under Agency Obligations, Paragraph 15, for job growth assessment.
11. Agency shall submit to State any change orders that substantially change the submitted scope of work as approved by the OTC and as identified in this Agreement.
12. Agency shall provide to State, in electronic format, permanent "as constructed" plans.
13. 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, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.

14. 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 anytime 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.
15. Because the purpose of the IOF Type A project is to promote job growth, State wishes to assess its investment.
 - a. Therefore, within thirty-six (36) months after completion of the Project, and no later than sixty-six (66) months from execution of this Agreement, Agency shall provide to State documentation from WVV that twenty-three (23) new full-time equivalent (FTE) positions have been created and filled by the expansion of WVV. If such documentation cannot be provided within the above stated time limit, Agency shall reimburse State all IOF Funds distributed to Agency as outlined below.
 - b. The targeted number of new FTE positions is the number approved by the OTC. "New FTE positions" shall mean new positions created, filled and remaining on the payroll for at least one (1) year.
 - c. The verification documentation shall be a letter on company letterhead signed by an official of WVV duly authorized to represent WVV certifying the number of new FTE positions. State, OBDD or the Oregon Secretary of State Audits Division, shall have the right to audit the payroll records of WVV in order to confirm information in the letter.
 - d. If the documentation shows a deficiency in the number of FTE positions, Agency shall reimburse State on a pro-rated basis. The formula for the pro-rated amount of IOF funds paid to Agency will be an amount equal to the number of actual FTE positions divided by the number of projected FTE positions multiplied by total IOF funds available. Reimbursement will be the amount actually distributed less the pro-rated amount.
16. Reimbursements resulting from a failure to provide job documentation, failure to meet job target goals or failure to obtain Project Site Certification shall be paid within three (3) months after the above stated time limit.

- a. All said reimbursements shall include interest equal in rate for the Highway Trust Fund at the State Treasury established on the date of execution of this Agreement. Interest shall accrue from the date of the first withdrawal from the Highway Trust Fund at the State Treasury.
 - b. Agency may wish to enter into a separate agreement with WVV to address pay back of Agency reimbursements to State resulting from WVV's failure to provide documentation or failure to meet job target goals.
 - c. At Agency's request and upon consultation with OBDD, State may grant a time extension on the reimbursement or a time extension to provide additional job growth. Any extension will only be effective upon amendment to this Agreement.
17. 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 such fiscal records and other books, documents, papers, plans and writings of Agency that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts. Agency shall retain and keep all files and records for a minimum of six (6) years after completion of the Project.
 18. 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.
 19. 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.
 20. Agency shall provide State Contact a link to any website created about the Project before costs will be considered eligible for reimbursement. Agency shall notify the State Contact in writing when the link changes during the term of this Agreement.
 21. Agency's Project Manager for this Project is Carrie Martin, Grants and Special Projects Manager, Yamhill County, 535 NE Fifth Street, McMinnville, Oregon 97128; phone: (503) 474-4991; email: martinc@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.

GENERAL PROVISIONS

1. Contribution

- a. 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.
- b. 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 the 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.
- c. 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.

2. This Agreement may be terminated by mutual written consent of both Parties.
3. 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.
4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. 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.
6. Agency agrees to refund to State all Immediate Opportunity Funds paid to Agency in connection with this Project if this Agreement is terminated for any reason prior to completion of Project and receipt of job assessment documentation. Refund to State shall be within three (3) months from termination date.
7. State and Agency hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

8. ODOT and Agency are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.
9. Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or postage prepaid mail, to Agency Contact or State Contact at the address set forth on the signature page of this Agreement, or to such other addresses or facsimile numbers as either Party may hereafter indicate pursuant to the terms of this Agreement. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.
10. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between ODOT (or any other agency or department of the State of Oregon) and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
11. This Agreement may be executed in several counterparts 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. Agency shall perform the Project as an independent contractor and not as an agent or employee of ODOT. Agency has no right or authority to incur or create any obligation for or legally bind ODOT in any way. ODOT cannot and will not control the means or manner by which Agency performs the Project, except as specifically set forth in this Agreement. Agency is responsible for determining the appropriate means and manner of performing the Project. Agency acknowledges and agrees that Agency is not an "officer", "employee", or "agent" of ODOT, as those terms are

used in ORS 30.265, and shall not make representations to third parties to the contrary.

13. 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 2018-2021 Statewide Transportation Improvement Program, (Key No. 22084) that was adopted by the Oregon Transportation Commission on July 20, 2017 (or subsequently approved by amendment to the STIP).

SIGNATURE PAGE FOLLOWS

Yamhill County / ODOT
Agreement No. 33976

YAMHILL COUNTY, by and through its
elected officials

By [Signature]
Chair

By [Signature]
Vice Chair

By [Signature]
Commissioner

Date 4/29/21

LEGAL REVIEW APPROVAL
(If required by local process)

By [Signature]
County Legal Counsel

Date 4/30/21

Agency Contact:

Carrie Martin
Grants and Special Projects Manager
Yamhill County
535 NE Fifth Street
McMinnville, OR 97128
(503) 474-4991
martinc@co.yamhill.or.us

State Contact:

John Maher, STIP Financial Manager
ODOT Region 2
455 Airport Road, Bldg. B
Salem, Oregon 97301
(503) 986-2614
john.d.maher@odot.state.or.us

STATE OF OREGON, by and through its
Department of Transportation

By [Signature]
Deputy Highway Division Administrator

Date 05/13/2021

APPROVAL RECOMMENDED

By N/A
State Traffic Roadway Engineer

Date _____

Digitally signed by Sonny P.A.
Chickering
Date: 2021.05.11 16:59:39 -07'00'
By [Signature]
Region 2 Manager

Date _____

By [Signature]
Region 2 Project Delivery Manager

Date 5-10-2021

By [Signature]
Area 3 Manager

Date 5-10-2021

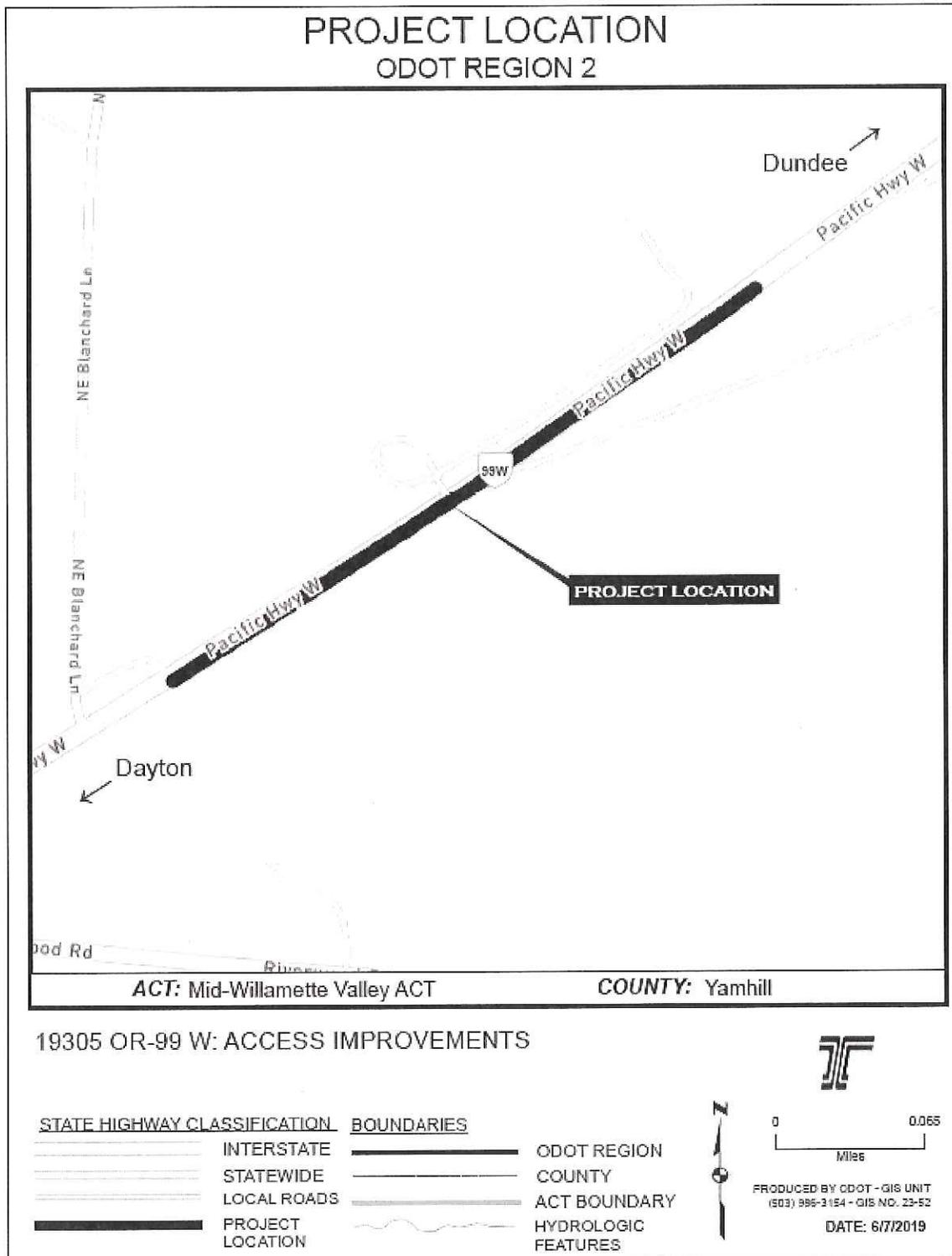
APPROVED AS TO LEGAL SUFFICIENCY
(Required if over \$150,000)

By Matthew Shoop via email
Assistant Attorney General

Date August 5, 2020

Accepted by Yamhill County
Board of Commissioners on
4/29/21 by Board Order
21-152

EXHIBIT A – Project Location Map



B.O. 21-152
 Exhibit "A"

EXHIBIT B
Subagreement Insurance Requirements

1. GENERAL.

- a. If the Project is on or along a state highway, Agency shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to ODOT. Agency shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Agency shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Agency shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Agency permit work under a subagreement when Agency is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which the Agency is a Party.
- b. The insurance specified below is a minimum requirement that the contractor within the subagreement shall meet. Agency may determine insurance types and amounts in excess to the minimum requirement as deemed appropriate based on the risks of the work outlined within the subagreement.
- c. Agency shall require the contractor(s) to require that all of its subcontractors carry insurance coverage that the contractor deems appropriate based on the risks of the subcontracted work. Contractor shall obtain proof of the required insurance coverages, as applicable, from any subcontractor providing Services related to the Contract.

2. TYPES AND AMOUNTS.

a. WORKERS COMPENSATION.

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide **Workers' Compensation Insurance** coverage for those workers, unless they meet the

requirement for an exemption under ORS 656.126(2). The coverage shall include Employer's Liability Insurance with limits not less than \$500,000 each accident. **Contractor shall require compliance with these requirements in each of its subcontractor contracts.**

b. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance shall be issued on an occurrence basis covering bodily injury and property damage and shall include personal and advertising injury liability, products and completed operations, and contractual liability coverage. When work to be performed includes operations or activity within 50 feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass or crossing, the Contractor shall provide the Contractual Liability – Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy.

Amounts below are a minimum requirement as determined by ODOT:

Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

c. AUTOMOBILE Liability Insurance: Automobile Liability.

Automobile Liability Insurance covering Contractor's business-related automobile use covering all owned, non-owned, or hired vehicles for bodily injury and property. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Amount below is a minimum requirement as determined by ODOT:

Coverage shall be written with a combined single limit of not less than \$1,000,000.

d. ADDITIONAL INSURED.

The Commercial General Liability Insurance and Automobile Liability Insurance must include the **"State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees"** as an endorsed Additional Insured but only with respect to the contractor's activities to be performed under the Subcontract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations. Additional Insured

Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to the Agency.

e. "TAIL" COVERAGE.

If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance or pollution liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of twenty-four (24) months following the later of: (i) the contractor's completion and Agency's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing twenty-four (24) month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then the contractor may request and ODOT may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If ODOT approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

f. NOTICE OF CANCELLATION OR CHANGE.

The contractor or its insurer must provide thirty (30) days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

g. CERTIFICATE(S) OF INSURANCE.

Agency shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) **"State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees"** as an endorsed Additional Insured in regards to the Commercial General Liability and Automobile Liability policies and ii) that all liability insurance coverages shall be primary and non-contributory with any other insurance and self-insurance, with exception of Workers' Compensation.

The Agency shall immediately notify ODOT of any change in insurance.