

**INTERGOVERNMENTAL AGREEMENT
OR 153: Salt Creek (Ash Swale) Bridge
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 "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. By the authority granted in Oregon Revised Statute (ORS) 190.110 and 366.576, ODOT may enter into agreements with any county, city, town or road district for the construction, reconstruction, improvement, repair or maintenance of any road, highway or street, with mutually agreed upon terms and conditions, 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.
2. Oregon Route (OR) 153 is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). The roadway SW Lancefield Road is a part of the county road system under the jurisdiction and control of Agency. Each Party maintains the roadway system under its control.

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. State is replacing the Salt Creek (Ash Swale) Bridge (bridge # 05041) and improving the roads approaching the bridge to include safety improvements at the intersection of SW Lancefield Road and OR 153, hereinafter referred to as "Project." The Parties agree the Project's safety improvements at the intersection of SW Lancefield Road and OR 153 include removing the "Y" intersection and replacing it with a "T" intersection with SW Lancefield Road matching the vertical grade of OR 153 at the intersection. The location of the Project is approximately as shown on the sketch maps attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. The Project preliminary engineering phase will be financed by State at an estimated cost of \$800,000.00 in federal and state funds. The estimate for the Project cost is subject to change. Agency is not contributing funds to the Project.
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 ten (ten) calendar years following the date all required signatures are obtained, whichever is sooner.

AGENCY OBLIGATIONS

1. Agency acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of Agency.
2. Agency grants State the right to enter onto Agency right of way for performance of duties for the Project.
3. Agency retains maintenance responsibilities for SW Lancefield Road, including the Project improvements on its county road system. Agency maintenance responsibilities for SW Lancefield Road, including Project improvements, survive termination of this Agreement.
4. **Americans with Disabilities Act Compliance:**
 - a. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA. 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 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.
 - b. Maintenance obligations in this section shall survive termination of this Agreement.
5. Agency consents to closure of roads that intersect the state highway in connection with or arising out of the Project.
6. Agency acknowledges that road closures for the Project will divert traffic and require detour routes. The Project's expected detour route for OR 153 (Bellevue-Hopewell Highway) will redirect eastbound traffic to OR 18 (Salmon River Highway) and

westbound traffic to OR 99W (Pacific Highway West). Agency acknowledges redirected traffic may choose to use an alternate route through Agency roads during Project road closures, including State and its contractors.

7. 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.
8. Agency's Project Manager for this Project is Bill Gille, PE, County Engineer, Yamhill County Road Department, 2060 Lafayette Avenue, McMinnville, Oregon 97127; phone: 503-434-7365; email: gilleb@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. Americans with Disabilities Act Compliance:

When the project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, the State shall:

- a. 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;
- b. 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;
- c. At Project completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as 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>.

2. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance preliminary engineering costs of

this Agreement within State's current appropriation or limitation of the current biennial budget.

3. 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.
4. State retains maintenance responsibilities for OR 153, and agrees that Agency shall have ongoing maintenance responsibilities for Project improvements on SW Lancefield Road.
5. State's Project Manager for this Project is Paul Welch, Project Manager, ODOT Region 2 Area 3, 455 Airport Road SE, Building B, Salem, Oregon 97303; phone: (503) 986-2702; email: Paul.Welch@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 perform any of the provisions called for by this Agreement within the time specified herein or any extension thereof.
 - b. 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.
 - c. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or 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 2018-2021 Statewide Transportation Improvement Program (STIP), (Key Number 20445) that was adopted by the Oregon Transportation Commission on July 20, 2017 (or subsequently by amendment to the STIP).

SIGNATURE PAGE TO FOLLOW

Yamhill County / Oregon Dept. of Transportation
Agreement No. 33720

YAMHILL COUNTY, by and through its
elected officials

By [Signature]
Chair

By [Signature]
Vice Chair

By [Signature]
Commissioner

Date 4-23-20

LEGAL REVIEW APPROVAL
(if required in Agency's process)

By [Signature]
Agency Legal Counsel

Date 4/23/20

Agency Contact:

Bill Gille, PE, County Engineer
Yamhill County Road Department
2060 Lafayette Avenue
McMinnville, OR 97127
phone: 503-434-7365
email: gilleb@co.yamhill.or.us

State Contact:

Paul Welch, Project Manager
ODOT Region 2 Area 3
455 Airport Road SE, Building B
Salem, OR 97303
phone: (503) 986-2702
email: paul.welch@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By [Signature]
Deputy Highway Division Administrator

Date 5/5/2020

APPROVAL RECOMMENDED

By [Signature]
State Traffic Roadway Engineer

Date 5/5/2020

By Sonny Chickering (via email)
Region 2 Manager

Date 5/5/2020

By [Signature]
Region 2 Project Delivery Manager

Date 5/4/2020

By [Signature]
Region 2, Area 3 Manager

Date 5-1-20

APPROVED AS TO LEGAL SUFFICIENCY

By Herbert F. Lovejoy (via email)
Assistant Attorney General

Date April 10, 2020

Accepted by Yamhill County
Board of Commissioners on
4/23/2020 by Board Order
20-133

EXHIBIT A Project Location Maps



SW Lancefield Road at OR 153

