

**INTERGOVERNMENTAL AGREEMENT**  
**Oregon Route 18: Newberg-Dundee Bypass – Phase 2**  
**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. 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.
2. Oregon Route 219 (Hillsboro-Silverton Highway) and Oregon Route 18 (Salmon River Highway), are part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Wynooski Road, and Wilsonville Road are a part of the county road system under the jurisdiction and control of Agency.
3. Springbrook Road is a city street within the City of Newberg, Oregon currently under the jurisdiction and control of the OTC. Upon completion of all Phase 2 project activities, jurisdiction and control of Springbrook Road and its right-of-way will return to the City of Newberg.
4. State, by ORS 366.220, is vested with complete jurisdiction and control over the roadways of other jurisdictions taken for state highway purposes. By the authority granted by ORS 373.020, the jurisdiction extends from curb to curb, or, if there is no regular established curb, then control extends over such portion of the right of way as may be utilized by State for highway purposes. Responsibility for and jurisdiction over all other portions of a city street remains with the City of Newberg.
5. By the authority granted in ORS 810.080 State has the authority to establish marked pedestrian crosswalks on its highway facilities.
6. By the authority granted in ORS 810.210, State is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where State deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than State, except with its written approval. Traffic signal work on this Project will conform to the current State standards and specifications.

7. Phase 2 of the Newberg-Dundee Bypass will include the realignment of OR 18 with a new connection to OR 219, the addition of a westbound on-ramp and an eastbound off-ramp at OR 18 and OR 219, and construction of an overpass carrying the off-ramp over OR 219. This phase will also include the design and realignment of Wynooski Road to meet the intersection of OR 219 at Wynooski/Wilsonville Road and the widening of OR 219 to add an additional travel lane, sidewalks, Americans with Disabilities Act (ADA) ramps, and drainage.

**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, the Parties agree to State designing and constructing the following improvements as part of the second phase of the Newberg Dundee Bypass project:
  - a. Realign OR 18 with a new connection to OR 219 and complete improvements including, but not limited to: curb, median, striping, signage, traffic signals, shoulders, ADA ramps, landscaping, and drainage.
  - b. Install a traffic signal at the new intersection of NE Wynooski Road and Wilsonville Road.
  - c. Disconnect the current NE Wynooski Road intersection from OR 219 and realign it to meet the intersection of OR 219 at Wilsonville Road.
  - d. Design and construct eastbound exit and westbound entrance ramps at the partial cloverleaf interchange at OR 18 and OR 219.
  - e. Install traffic signals at the eastbound exit ramp at OR 18 and OR 219.
  - f. Design and construct an overpass carrying the eastbound exit ramp over OR 219.
  - g. Modify traffic signals at OR 219 and Springbrook Road.
  - h. Widen OR 219 to add a turn lane and complete all improvements including, but not limited to: curb, median, striping, signage, shoulders, sidewalks, ADA ramps, landscaping, and storm water drainage conveyance/detention/water quality facilities.

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

2. The Project will be financed at an estimated cost of \$62,200,000 in state and federal funds: \$22,200,000 for the preliminary engineering and design phases and \$40,000,000 for the construction phase. The estimate for the total Project cost is

subject to change. State shall be responsible for any nonparticipating costs, and Project costs beyond the estimate.

3. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance and power responsibilities of improvements constructed as part of the Project. The Project shall be completed within five (5) calendar years following the date of final execution of this Agreement by both Parties.

### **AGENCY OBLIGATIONS**

1. Agency understands State shall purchase all right of way required for Project purposes. Right of way purchased by State shall be in accordance to the Uniform Relocation Assistance and Real Property Acquisition Polices Act of 1970, as amended, ORS Chapter 35 and State Right of Way Manual.
2. Upon completion of the Project, State will transfer to Agency, and Agency will accept, any new right of way acquired for Project construction on Agency's road system. The method of conveyance will be coordinated by the State's Region 2 Right of Way Manager.
3. Agency shall, upon Project completion, accept jurisdiction of and maintenance responsibility for Wynooski Road, as well as all improvements constructed or installed on Agency right of way, at its own expense.
4. Agency shall be responsible for and pay to the power company 100 percent of the power costs for the traffic signal to be installed at the new intersection of NE Wynooski Road and Wilsonville Road. Agency shall require the power company to send invoices directly to Agency.
5. Agency shall issue necessary permits or provide permissions to State for construction of Project facilities within Agency's air space and existing right of way through Agency established permitting procedures.
6. Agency, by execution of this Agreement, gives its consent as required by ORS 373.050(1) to any and all closure of streets that intersect the state highway, if any there be in connection with or arising out of the Project covered by the Agreement. 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.
7. Agency agrees to allow State the use of Agency streets for traffic detouring for Project purposes.
8. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.

9. Agency shall obtain a miscellaneous permit to occupy State right of way for activities on OR 219 and OR 18 from the State District 3 Permits office prior to commencement of construction.
10. Agency shall contact State's District 3 Permits Office seven (7) working days prior to the commencement of maintenance activities that impact travel lanes or ramps of OR 18. No lane restrictions are permitted unless prior approval from State's District 3 Manager, or designee, is provided.
11. Agency, by execution of this Agreement, gives its consent as required by ORS 373.030(2) and ORS 105.760 to any and all changes of grade within the Agency limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the Project covered by the Agreement.
12. 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.
13. Agency's Project Manager for this Project is Mark Lago, 2060 NE Lafayette Avenue, McMinnville, Oregon, 97128, 503-434-7515 Ext. 3602, [lagom@co.yamhill.or.us](mailto:lagom@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 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 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.
3. 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. Upon completion of the Project, State will transfer, and Agency will accept, any new right of way acquired for the Project construction on the Agency's street

system. The method of conveyance will be coordinated by the State's Region Right of Way Manager.

4. State shall be responsible for all costs associated with construction and installation of the Project.
5. State shall be responsible for illumination, signing, turn-on, and signal timing on the State highway.
6. State shall be responsible for maintenance of Springbrook Road, including signals, until the Project is completed, at which point ODOT intends to transfer jurisdiction, control, and maintenance of Springbrook Road to the City of Newberg.
7. 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.
8. State grants Agency the right to enter onto State right of way for the performance of duties as set forth in this Agreement. Maintenance activities impacting travel lanes or ramps of OR 18 or OR 219 require Agency to contact State's District 3 Permits office seven (7) working days prior to request permission for such work prior to the commencement of work. No lane restrictions are permitted unless prior approval from State's District 3 Manager, or designee, is provided.
9. State's Project Manager for this Project is Andrew Walker, PE, 455 Airport Road SE, Salem, Oregon 97301; 503-986-3153; [Andrew.J.Walker@odot.oregon.gov](mailto:Andrew.J.Walker@odot.oregon.gov), or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## GENERAL PROVISIONS

### 1. Americans with Disabilities Act Compliance:

- a. 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 Parties shall:
  - i. 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. 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, 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>; and

- b. 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.
  - c. Maintenance obligations in this section shall survive termination of this Agreement.
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 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 State is prohibited from paying for such work from the planned funding source.
  4. Agency may terminate this Agreement effective upon delivery of written notice, or at such later date as may be established by Agency or State, under any of the following conditions:
    - a. If State fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
    - b. If State fails to perform any of the other provision 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 fails to correct such failures within ten (10) days or such longer period as Agency may authorize.
  5. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
  6. 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.

7. 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.
8. 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.
9. 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.
10. 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.

11. 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. Notwithstanding this provision, the Parties may enter into a Right of Way Services Agreement in furtherance of the Project.

**Electronic Signatures.** *The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the Contract, Work Orders, and amendments, submitted or exchanged via email are "Electronic Signatures" under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. Agency reserves the right at any time to require the submission of the hard copy originals of any documents.*

**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 2021-2024 Statewide Transportation Improvement Program (STIP), Key #22523 that was adopted by the Oregon Transportation Commission on July 15, 2020 (or subsequently approved by amendment to the STIP). This Project is in the 2018-2021 STIP, Key #19909 that was adopted by the OTC on December 18, 2014 (or subsequently approved by amendment to the STIP).

**Signature Page Follows**

Yamhill County/ODOT  
Agreement No. 73000-00005220

**YAMHILL COUNTY**, by and through its  
designated officials

By *Jessie Berschauer*  
Chair, Board of Commissioners

Date 9/29/22

By *[Signature]*  
COUNTY ADMINISTRATOR

Date 9/29/2022

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By *[Signature]*

Agency's Counsel

Date 9/30/22

**Agency Contact:**

Mark Lago, Public Works Director  
2060 NE Lafayette Avenue  
McMinnville, Oregon, 97128  
503-434-7515 Ext. 3602  
[lago@co.yamhill.or.us](mailto:lago@co.yamhill.or.us)

**State Contact:**

Andrew Walker, PE  
455 Airport Road SE  
Salem, Oregon 97301  
503-986-3153  
[Andrew.J.Walker@odot.oregon.gov](mailto:Andrew.J.Walker@odot.oregon.gov)

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

By *[Signature]*  
McGregor LYNDE (Oct 12, 2022 15:30 PDT)  
Delivery and Operations Division  
Administrator

Date 10/12/22

**APPROVAL RECOMMENDED**

By *Michael Kimlinger*  
Michael Kimlinger (Oct 7, 2022 16:16 PDT)  
Technical Services Manager / Chief Engineer

Date 10/07/2022

By *Michael KIMLINGER*  
Michael KIMLINGER (Oct 7, 2022 15:55 PDT)  
State Traffic Engineer

Date 10/7/2022

By *Georgine Gleason*  
Georgine Gleason (Oct 6, 2022 13:51 PDT)  
State Right of Way Manager

Date 10/6/2022

By *Sonny P.A. Chickering*  
Sonny P.A. Chickering (Oct 4, 2022 11:47 PDT)  
Region 2 Manager

Date 10/4/2022

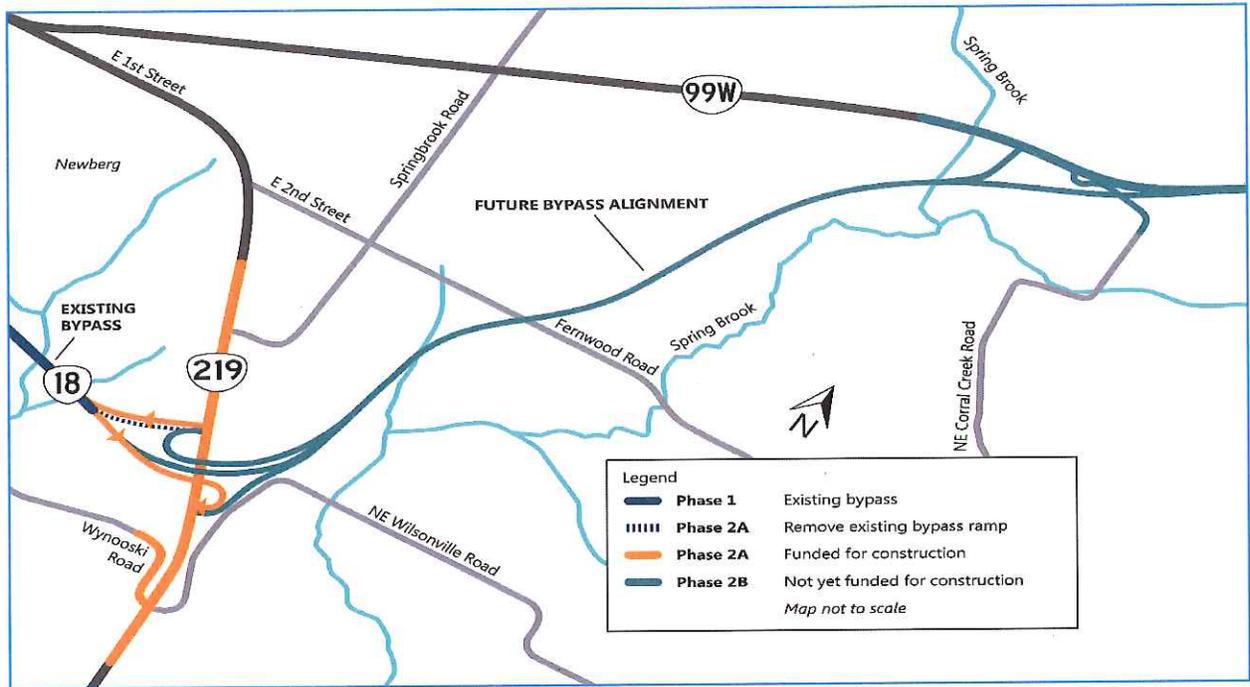
**APPROVED AS TO LEGAL SUFFICIENCY**

By Herbert F. Lovejoy  
Assistant Attorney General

Date 9/1/2022 Email approval retained in files

Accepted by Yamhill County  
Board of Commissioners on  
9/29/22 by Board Order  
# 22-314

### EXHIBIT A – Project Location Maps



**EXHIBIT A – Project Location Maps, cont.**

