

INTERGOVERNMENTAL AGREEMENT
OR 18: Oldsville Road – Ash Road
City of McMinnville and 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;" CITY OF MCMINNVILLE, acting by and through its designated officials, hereinafter referred to as "City," and YAMHILL COUNTY, acting by and through its designated officials, hereinafter referred to as "County," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. Salmon River Highway (OR 18) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). SE Cirrus Avenue, SE Norton Lane, Oldsville Road and Ash Road are part of the city street system under the jurisdiction and control of City. Cruickshank Road is part of the county road system under the jurisdiction and control of County.
2. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities and units of local governments 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. 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.
4. Traffic control devices that are part of the Project will conform to current State standards and specifications, including but not limited to the Manual on Uniform Traffic Control Devices (MUTCD). The Oregon Administrative Rules (OAR) Chapter 734, Division 55, governs the location, installation, and maintenance of signs, miscellaneous facilities, and miscellaneous operations on the State highway right of way.

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. The existing signal maintenance agreement no. 27150 shall remain in full force and effect for maintenance and power responsibilities for the signals at OR 18 and Norton Lane and OR 18 and Cumulus Connector Lane.

2. Under such authority, the Parties agree to State performing the OR 18: Oldsville Road to Ash Road project, hereinafter referred to as "Project." The project includes:

OR 18: Oldsville Road to Ash Road:

- a. Resurfacing of the pavement to repair cracking, improving smoothness and rideability, and:
 - i. Norton Lane: upgrading signals
 - ii. Cumulus Connector Lane: upgrading signals

OR 18 and Cruickshank Road:

- a. Improving right turn lane.

Specific elements of the Project include, but are not limited to Americans with Disabilities Act (ADA) curb ramps and pedestrian signals, and intersection safety improvements. 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.

3. The Project will be financed at an estimated cost of \$11,663,500.00 in federal and state funds. 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.
4. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years. The Project shall be completed within three (3) calendar years following the date of final execution of this Agreement by both Parties.
5. City and County shall, at its own cost and expense, be responsible for the ongoing general maintenance of the Project elements identified under City Obligations and County Obligations, Paragraph 1, respectively.

CITY OBLIGATIONS

1. City shall, at its own expense, be responsible for the cost and responsibility of ongoing maintenance, including surface repairs, sweeping, removal of vegetation, litter and graffiti on SE Cirrus Avenue and SE Norton Lane.
2. City shall contact State's District 3 Permits Office seven (7) working days prior to the commencement of construction or maintenance activities that impact travel lanes of OR 18. No lane restrictions are permitted unless prior approval from State's District 3 Manager or designee is provided.

3. City hereby grants State, and its contractor, the right to enter onto and occupy City right of way within the Project limits for the performance of duties as set forth in this Agreement.
4. City, by execution of 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
5. City shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
6. All employers, including City, 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. City shall ensure that each of its contractors complies with these requirements.
7. City acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of City which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after completion of Project. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
8. City certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of City, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind City.
9. City's Project Manager for this Project is Jeff Gooden, Project Engineer City of McMinnville Public Works, 231 NE Fifth Street, McMinnville, Oregon 97128; phone: (503) 474-7312; email: jeff.gooden@mcminnvilleoregon.gov, or assigned designee upon individual's absence. City shall notify the other Party in writing of any contact information changes during the term of this Agreement.

COUNTY OBLIGATIONS

1. County shall, at its own expense, be responsible for the cost and responsibility of ongoing maintenance, including surface repairs, sweeping, removal of vegetation, litter and graffiti at the intersection of Cruickshank Road and OR 18.

2. County shall contact State's District 3 Permits Office seven (7) working days prior to the commencement of construction or maintenance activities that impact travel lanes of OR 18. No lane restrictions are permitted unless prior approval from State's District 3 Manager or designee is provided.
3. County grants State access to Cruickshank Road as needed for use as a detour route for local traffic during construction of the Project. It is anticipated the detour route will only be necessary for night work during the road closure of OR 18 between Mile Point 48.59 to Mile Point 49.91 (approximately three (3) weeks). Any additional detour use will need to be approved by County's Project Manager upon receipt of email request from ODOT.
4. County, by execution of this Agreement, gives its consent as required by ORS 373.030(2) and ORS 105.755, to any and all changes of road grade within the City limits on those roads affected by Project, and 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.
5. County hereby grants State, and its contractor, the right to enter onto and occupy County right of way within the Project limits for the performance of duties as set forth in this Agreement.
6. County shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
7. County certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of County, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind County.
8. County's Project Manager for this Project is Mark Lago, Yamhill County Public Works Director, 2060 Lafayette Avenue, McMinnville, Oregon 97128; phone: (503) 434-7515; email: lacom@co.yamhill.or.us, or assigned designee upon individual's absence. County shall notify the other Parties 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 shall be responsible for all costs, except maintenance responsibilities assigned to City and County, associated with the construction and installation of the Project.
3. State shall conduct all right of way activities in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, Federal-Aid Policy Guide, Code of Federal Regulations (CFR) and the ODOT Right of Way Manual, and Title 23 CFR Part 710 and Title 49 CFR Part 24.
4. State shall contact YCOM (503) 434-6500, First Student School Bus Services (503) 434-5631, Western Oregon Waste (503) 472-3176, US Postal Service (503) 472-1877; McMinnville Public Works (503) 434-7316, and McMinnville Engineering Department (503) 434-7312, 7 days prior to any road closures. No lane restrictions are permitted unless prior approval is obtained from the City of McMinnville.
5. Upon Project completion, State shall transfer any ownership interests State may have obtained along City or County facilities. The method of conveyance will be determined by the Parties at the time of transfer and will be coordinated by the State's Region 2 Right of Way Manager.
6. State shall restore all connecting roads and streets to like or better condition upon completion of Project.
7. State understands any additional detour needs for Project purposes other than those stated in County Obligations, Paragraph 3, require prior approval from County. State shall make such requests via email to County's Project Manager.
8. State grants authority to City and County to enter upon State right of way for the purpose of routine maintenance within the limits of this Project.
9. 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.
10. State's Project Manager for this Project is Paul Welch, Area 3 Transportation Project Manager, 455 Airport Road SE, Building B, Salem, Oregon 97301; Telephone: 503.302.8926; email: Paul.Welch@odot.oregon.gov, or assigned designee upon individual's absence. State shall notify the other Part 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, shared use path, 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, shared use path, 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, shared use path, 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. City and County shall ensure that any portions of the Project under City's or County's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, City and County ensuring that:
 - i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by either City or County identifying sidewalk, curb ramp, shared use path, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. City, County, 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 all Parties.
- 3. State may terminate this Agreement effective upon delivery of written notice to City and County, or at such later date as may be established by State, under any of the following conditions:
 - a. If City or County fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If City or County 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. City or County may terminate this Agreement effective upon delivery of written notice to State, or at such later date as may be established by City or County, 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 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 City or County fails to correct such failures within ten (10) days or such longer period as may be authorized.
- 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 a Party with respect to which any other Party may have liability, the notified Party must promptly notify the other Parties in writing of the Third Party Claim and deliver to the other Parties 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 any City or County (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 any City or County in such proportion as is appropriate to reflect the relative fault of State on the one hand and of City and County respectively 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 City or County respectively 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 City or County is jointly liable with State (or would be if joined in the Third Party Claim), City and County respectively 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 City or County respectively 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 City and County respectively 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. City and County's contribution amount(s) 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.

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 #21548) that was adopted by the Oregon Transportation Commission on July 15, 2020 (or subsequently by amendment to the STIP).

Signature Page to Follow

Accepted by Yamhill County
Board of Commissioners on
_____ by Board Order

City of McMinnville/Yamhill County / ODOT
Agreement No. 73000-00011934

YAMHILL COUNTY, by and through its
designated officials

By 
Public Works Director

Date 1/24/23

**LEGAL REVIEW APPROVAL (If required
in Agency's process)**

By _____
County's Legal Counsel

Date _____

CITY OF McMINNVILLE, by and through
its designated officials

By Jeffrey R. Towery Digitally signed by Jeffrey R. Towery
Date: 2023.02.13 14:37:38 -08'00'

Title: _____

Date _____

By _____
Title: _____

Date _____

**LEGAL REVIEW APPROVAL (If required
in City's process)**

By 
City's Legal Counsel

Date 2/14/2023

City Contact:

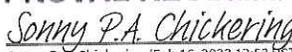
Jeff Gooden
Public Works Department
City of McMinnville
231 NE Fifth Street
McMinnville, OR 97128
(503) 474-7312
Jeff.gooden@mcminnvilleoregon.gov

STATE OF OREGON, by and through
its Department of Transportation

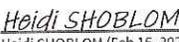
By 
McGregor LYNDE (Feb 22, 2023 15:25 PST)
Delivery & Operations Division
Administrator

Date 02/22/2023

APPROVAL RECOMMENDED

By 
Sonny P.A. Chickering (Feb 16, 2023 13:53 PST)
Region 2 Manager

Date 02/16/2023

By 
Heidi SHOBLUM (Feb 16, 2023 11:02 PST)
State Traffic Roadway Engineer

Date 02/16/2023

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Janet Borth, via email
Assistant Attorney General

Date January 13, 2023

County Contact:

Mark Lago, Public Works Director
Yamhill County Public Works
2060 Lafayette Avenue
McMinnville, Oregon 97128
(503) 434-7515
lago@co.yamhill.or.us

State Contact:

Paul Welch
Transportation Project Manager
ODOT, Region 2
455 Airport Road SE, Building B
Salem, Oregon 97301
(503) 302-8926
Paul.welch@odot.oregon.gov

Accepted by Yamhill County
Board of Commissioners on
2.2.23 by Board Order
B.O. 23-40

EXHIBIT A

