

INTERGOVERNMENTAL AGREEMENT
NEWBERG-DUNDEE TRANSPORTATION IMPROVEMENT PROJECT
YAMHILL COUNTY

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereafter referred to as “ODOT”; and YAMHILL COUNTY, acting by and through its elected officials, hereafter referred to as “COUNTY”, collectively, “PARTIES”. A copy of terms used in this Agreement is found at Attachment “C”.

I. RECITALS

1. Whereas, Oregon 99W, also known as the Pacific Highway West, and Oregon 18, also known as the Salmon River Highway, are part of the State Highway System and are under the jurisdiction and control of ODOT.
2. Whereas, Oregon 99W and Oregon 18 connect the Portland metropolitan area to major roads and to the Oregon coast through County and the Cities of Newberg, Dundee and Dayton. These communities and surrounding areas in County have experienced substantial growth in the past decade. This growth and increased regional traffic from Portland to the Oregon coast has resulted in high traffic volumes on Oregon 99W and Oregon 18 causing significant traffic congestion and unsafe driving conditions as identified in the *Bypass Element Location (Tier I) Draft Environmental Impact Statement* (LDEIS) document and supporting technical reports published September 2002.
3. Whereas, County residents and ODOT have discussed ways to relieve traffic congestion on Oregon 99W/Oregon 18 through Newberg and Dundee for many years. ODOT has analyzed percentages of projected local and through-trips and freight trips over a 20-year period, projected build-out of the comprehensive land use plans in the area, and crash data for Oregon 99W and other state and local facilities in the LDEIS document and supporting technical reports published September 2002. The Newberg Dundee Transportation Improvement Project (NDTIP) proposes to address some of these transportation issues. The NDTIP includes roadway, multimodal and land use elements.
4. Whereas, one of the roadway elements in the NDTIP is the construction of a four-lane bypass (Bypass) around Newberg and Dundee that will function as a high-speed statewide expressway and freight route as defined in Oregon Highway Plan (OHP) Policies 1A, 1A.2 and 1C. Interchanges will be designed to meet the minimum access management spacing standards as defined by OAR 734-051-0010 *et seq.* The function of the Bypass is to provide for high-speed continuous-flow movement between urban and regional centers. The Bypass and its interchanges are not intended to serve or support land uses in the immediate vicinity of the facility. It will be fully access controlled.

5. Whereas, ODOT initiated a tiered environmental impact statement (EIS) to consider transportation alternatives for the Bypass project consistent with the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4321 *et seq.* This study has evaluated current and projected traffic impacts to the transportation system and considered impacts on land use patterns, local businesses, major institutions, public facilities and historic resources, analyzed the potential for public transportation and other transportation demand management programs, and analyzed natural, social and economic environmental impacts, including impacts to minority and low-income populations and management of land use impacts on communities and natural resources.
6. Whereas, an LDEIS was published in September 2000 that analyzed numerous approximately 300-foot wide corridors within which to locate a bypass. The Project Oversight Steering Team (POST), recommended Alternative 3J as identified in the LDEIS and requested modifications. ODOT modified Alternative 3J in response to the POST and the recommended alternative for the Bypass is identified as Alternative 3J (Modified) and is graphically shown on the map at Attachment “B” attached hereto and by this reference made a part hereof.
7. Whereas, upon the completion of land use actions necessary to achieve compliance with the statewide planning goals and compatibility with County Comprehensive Plan, and with comprehensive plans for the Cities of Dayton, Dundee and Newberg, and issuance of the Record of Decision, (ROD), ODOT will begin the development of the second tier of the EIS. The second tier will involve the preparation of a Design-level Environmental Impact Statement (DEIS) to evaluate the design level impacts of the Bypass within the selected corridor identified as Alternative 3J (Modified). The second tier study will result in a Design-level Draft Environmental Impact Statement, (DDEIS), and a Design-level Final Environmental Impact Statement, (DFEIS). Funding options and strategies will be considered before the DFEIS is issued.
8. Whereas, the Oregon Transportation Commission, (OTC), has established rules and policies in its State Agency Coordination Program (SAC), OAR 731-015-0005 *et seq.*, to ensure that ODOT land use programs are carried out in compliance with statewide planning goals and in a manner compatible with acknowledged comprehensive plans as required by ORS 197.180 and OAR 660 Division 30. These policies identify procedures for coordination of land use issues with the development of transportation projects. Projects developed as tiered projects pursuant to 40 C.F.R. § 1508.28 require that ODOT develop a formal agreement with local jurisdictions to coordinate the project planning process with the local land use process.
9. Whereas, by the authority granted in ORS 184.618, the OTC can develop comprehensive long-range plans for the state highway system that encompass economic efficiency, orderly development and environmental quality.
10. Whereas, the OTC adopted the OHP in 1999, which includes policies for the development of major improvements and bypass facilities. Those policies require:

- a. Planning for Interchange Management Areas to protect the function of interchanges and to provide safe and efficient operations between connecting roadways and to minimize the need for major improvements to interchanges;
 - b. Development of access management plans to assure the safe and efficient operations of state highways;
 - c. Partnerships with regional and local governments to address highway performance and safety needs prior to adding new facilities to the system; and
 - d. Local and state policy coordination involving land use, local street patterns, access control, design characteristics and jurisdictional transfer to maintain and enhance the utility of state highway investment in a bypass facility.
11. Whereas, the planning and ultimate construction of the Bypass may cause land designated for Exclusive Farm Use and rural development to be subject to development pressures associated with improved accessibility and visibility and reduced travel times. Such development pressures may also compromise the intended transportation function of the proposed Bypass and associated interchanges.
 12. Whereas, expansion of Urban Growth Boundaries (UGB) toward rural interchanges may subject valuable rural lands to development pressures to convert to more intensive urban uses and compromise the function of the Bypass.
 13. Whereas, intensification of urban lands adjacent to the proposed Bypass and associated interchanges may compromise the intended function of the Bypass.
 14. Whereas, County and the Cities of Dundee and Newberg desire to retain the rural development character between Newberg and Dundee.
 15. Whereas, the construction of segments of an approximately eleven-mile fully access controlled facility through rural lands may affect existing roadway access, circulation and operations of existing farms.
 16. Whereas, by the authority granted in ORS 374.305 and OAR Chapter 734, Division 051, ODOT can regulate construction or use on state highway right-of-way, including any approach road to a state highway.
 17. Whereas, by the authority granted in ORS 190.010 and ORS 203.010, County may enter into cooperative agreements with state agencies for the performance of work for certain types of improvements, including cooperative planning efforts for public improvements.
 18. Whereas, by the authority granted in ORS 190.110, 283.110, 366.572 and 366.576, state agencies may enter into agreements with units of local government or other state agencies 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.

NOW THEREFORE, in consideration of the foregoing recitals and mutual covenants, conditions and promises of each part to be kept and performed, it is hereby agreed by and between the Parties as follows:

II. TERMS OF AGREEMENT

1. A project of the scale and magnitude of the NDTIP will require full cooperation and communication between ODOT, County and the affected Cities of Newberg, Dundee and Dayton in order to adequately address project issues, decisions and schedules. As Parties to this Agreement, County and ODOT commit to take the actions needed to maintain the general schedule outlined in Attachment “A” attached hereto and by this reference made a part hereof.
2. It is the intent of this Agreement to meet ODOT’s obligations under the SAC Program, by identifying the process by which ODOT and County can satisfy respective planning obligations so that the development of the recommended Bypass corridor identified as Alternative 3J (Modified) can be made consistent with the OHP. Other agreements may be necessary to proceed with the other elements of the NDTIP and are not part of this Agreement.
3. The Parties expect that separate agreements may be negotiated to address issues that arise during the DEIS. Those issues will be addressed in subsequent Intergovernmental Agreements prior to the completion of the DFEIS.
4. This Agreement shall be funded with Federal, State and City funds.

III. ODOT OBLIGATIONS

- A. Location Level Actions.** ODOT shall, at its own expense, complete the following tasks, before publishing the LFEIS.
1. Assist local governments and other state and federal agencies in developing Alternative Modes and Land Use (AMLU) changes that will help reduce the number of vehicles traveling in the Oregon 99W/Oregon 18 corridor. The AMLU project components will be reviewed by ODOT and County and presented by ODOT for approval by County. ODOT and County will negotiate agreements that address implementation issues for all agreed upon AMLU project components before the LFEIS is published.
 2. Advance and address any conditions or mitigation requirements involving County that may result from the approval of the Location-level land use decisions to the DEIS process.

B. Design Level Actions. ODOT shall, at its own expense, complete the following tasks after County completes necessary land use actions and Federal Highway Administration (FHWA) issues a ROD on the LFEIS:

1. Initiate consideration of adoption of the corridor location identified as Alternative 3J (Modified) for adoption as a facility plan by the OTC pursuant to OAR 731-015-0065.
2. Develop a DEIS consistent with NEPA requirements. Coordinate public review and comment and public hearing(s) on the DEIS.
3. Select a design alternative for the roadway alignment and address all mitigation requirements and/or conditions of approval associated with the Bypass location land use actions. ODOT shall prepare applications for any additional land use actions, should any be required for, the recommended design alternative and shall prepare any necessary findings of compatibility with each local Comprehensive Plan and Transportation Planning Rule, OAR 660-012 *et seq.* before the DFEIS is issued.
4. Coordinate with County and Cities of Dayton, Dundee and Newberg, affected property owners and other interest groups to jointly prepare Interchange Area Management Plans (IAMPs) for the four interchanges to the Bypass as identified as Alternative 3J (Modified). The IAMPs will be prepared in conformance with the 1999 OHP, Policy 3C, OAR 734-51-0010 *et seq.* and OAR 660-012 *et seq.*
5. The IAMPs will be used to guide land use and transportation actions for the interchange management areas. It is anticipated that the IAMPs will be completed three years after the LFEIS and ROD are issued. The objectives of the plans are to:
 - a. Protect the long-term function of the interchanges to provide accessibility to statewide and regional destinations.
 - b. Provide for types, intensities and location of land uses in the vicinity of the interchanges that are consistent with the design and the long-term function of the interchanges.
 - c. Plan for transportation improvements within the vicinity of the interchanges that protect the long-term function of the interchanges and provide reasonable access to property within the interchange management area.
 - d. Provide for orderly development and access and circulation to properties in the vicinity of the interchanges that minimizes impact on operation of the interchange ramps and the major crossroads.

6. The study areas for the IAMPs are shown in Attachment “B.” Access and circulation alternatives for each interchange will be analyzed during the DEIS phase of the project. This analysis will include (but not be limited to) consideration of the following circulation and access issues:

Dayton Interchange

- a. Access over S. Yamhill River Bridge at Ferry Street, Church Street, or Ash Street.
- b. Access over S. Yamhill River Bridge adjacent to the existing Oregon 18 bridge with connections to the existing Dayton street system and an upgraded Dayton Interchange.
- c. Access over S. Yamhill River Bridge north of Oregon 18 to tie into Foster Road and the existing Dayton Interchange.
- d. Improving circulation at the existing Dayton Interchange.
- e. Improvements to the existing S. Yamhill River Bridge.
- f. Improving internal circulation within the Dayton UGB east of the S. Yamhill River.
- g. An analysis of an at-grade intersection at Kreder Road and Oregon 18.
- h. Eliminating all direct connections between Oregon 18 and the property within the Dayton UGB east of the S. Yamhill River (providing access via an alternative connection(s) like a new bridge or grade separated Kreder Road).
- i. An analysis of a grade separated crossing of Kreder Road and Oregon 18 with no connections.
- j. An analysis of a grade separated crossing of Kreder Road and Oregon 18 with connections.
- k. Constructing a median on Oregon 18 east of the S. Yamhill River to the new bypass interchange and limiting the Kreder Road access (north and south of Oregon 18) to right-in and right-out movements.

East Dundee Interchange

- a. Closure of Dayton Avenue.
- b. Relocation of Dayton Avenue intersection with Oregon 99W.
- c. Closure of Fox Farm Road.
- d. Relocation of Fox Farm Road intersection with Oregon 99W.
- e. Closure of private driveways to Oregon 99W within the interchange management area.
- f. A frontage road system north and south of Oregon 99W to provide access to affected private properties.
- g. Railroad crossing options for the connector road between Oregon 99W and the Bypass interchange.
- h. A grade-separated crossing of the connector road to provide for a Dayton Avenue to Edwards Road connection.

- i. A grade separated crossing(s) within the interchange area to provide for collector road access to the Dundee riverfront area (direct collector road access will not be provided to the Bypass, Bypass interchange, or connector road).
- j. Grade separated crossings within the interchange area to provide for appropriate farm access (direct farm or other local road access will not be provided to the Bypass, Bypass interchange, or connector road).
- k. Design of a “gateway” to Dundee at the intersection of the connector road and Oregon 99W.

Oregon 219 Interchange

- a. Closure of Springbrook Road intersection with Oregon 219.
- b. Relocation of Springbrook Road intersection with Oregon 219.
- c. Closure of Adolph Lane intersection with Oregon 219.
- d. Closure of Sandoz Road intersection with Oregon 219.
- e. Closure of 9th Street intersection with Oregon 219.
- f. Closure of Wyooski Road intersection with Oregon 219.
- g. Relocation of Wyooski Road intersection with Oregon 219.
- h. Closure of 2nd Street intersection with Oregon 219.
- i. Realignment of Wilsonville Road connection to Springbrook Road.
- j. Closure of direct farm accesses to Oregon 219 south of Wyooski Road.
- k. A frontage road system to support farm access south of Wyooski Road and east of Oregon 219.
- l. A grade separated crossing of Fernwood Road with the bypass.
- m. A frontage road system between 2nd Street and Wyooski Road, east and west of Oregon 219.
- n. Access to the County industrial areas south of Wyooski Road.
- o. Access to the City water and wastewater treatment facilities south of Wyooski Road.
- p. Traffic signal analysis at the existing or a new Oregon 219 and Wyooski Road intersection.
- q. Traffic signal analysis at the intersection of Oregon 219 and a new 7th Street connection.

East Newberg Interchange

- a. Closure of Klimek Lane.
- b. Closure of Corral Creek Road.
- c. Analysis of Reconstructing Corral Creek Road as a right-in right-out intersection.
- d. Closure of Veritas Lane.
- e. Reconstructing Veritas Lane as a right-in right out intersection.
- f. A frontage road system between Veritas Lane and the intersection of Oregon 99W and the Northern Arterial north and south of Oregon 99W.
- g. Access across Springbrook Creek south of Oregon 99W.
- h. A frontage road system south of Oregon 99W to Providence Drive on the new hospital property.

- i. A grade separated crossing of the bypass just south of the East Newberg Interchange (possibly tying into Providence Drive).
 - j. Traffic signal analysis at the intersection of Oregon 99W and the Northern Arterial.
 - k. Closure of all private driveways to Oregon 99W within the interchange management area and reorientation of these accesses to a frontage road system.
7. The IAMPs will also address land use and development issues within ½ mile of the Interchanges outside the UGB and ¼ mile inside the UGB. ODOT shall prepare proposed plan and ordinance amendments and supporting information and analysis to support adoption of the IAMPs by the affected local governments including County.
 8. Initiate review of the IAMPs for consideration for adoption by the OTC as a facility plan and part of the OHP after County adopts IAMPs for each interchange.
 9. In coordination with the affected jurisdictions and property owners, develop access management plans for segments of Oregon 99W, Oregon 219 and Oregon 18 that lie outside of the Interchange Area Management Planning areas. Tentative boundaries for the relevant statewide highway segments are shown in Attachment “B.” Access management standards will be based on the highway classification and spacing standards set forth in Policy 3A of the OHP. For Oregon 99W, access management planning will be undertaken in a two-step approach:
 - a. The first step is to look at what can be done in the interim period before the bypass is constructed to improve access spacing and improve operations with Oregon 99W classified and functioning as a statewide highway.
 - b. The second step is to examine and develop an access management plan consistent with access spacing standards to serve the highway after the bypass is built given the assumption that the roadway will either be classified by ODOT and function as a district highway or be managed and function like a district highway by the County or Cities.
 10. Follow the ODOT procedures established to consider and negotiate a jurisdictional transfer of the bypassed portion of Oregon 99W based on Action 2C.3 of the OHP, including:
 - a. A determination by the OTC that the existing state highway is needed or is not needed to meet the functional needs of the state system. ODOT will facilitate a process where comments from the affected jurisdictions and the public are solicited before making this determination;
 - b. Should the OTC determine that the highway segment is no longer required for the state system, then ODOT will initiate negotiations with County to

address compensation, roadway conditions, access management, maintenance, and operational standards for the roadway and the extent and legal standing of any existing access rights and access management controls.

11. Initiate discussions with County and Cities of Dayton, Dundee and Newberg to determine how to finance construction of the Bypass and supporting improvements associated with the corridor identified as Alternative 3J (Modified). ODOT will prepare a financing strategy and will coordinate with OTC review or adoption of the financing strategy. It is anticipated that the financing strategy will be adopted by the OTC approximately three years after the LFEIS and ROD is issued.

IV. COUNTY OBLIGATIONS

A. Location Level Actions. The County shall, at its own expense, complete the following tasks before ODOT publishes the LFEIS:

1. Coordinate with ODOT and other local, state and federal agencies in developing AMLU changes that will help reduce the number of vehicles traveling in the Oregon 99W/Oregon 18 corridor. County and ODOT will negotiate IGAs to address implementation issues for development of all agreed upon AMLU project components before the LFEIS is published.

B. Design Level Actions. After completing the land use actions required for the corridor location decision and FHWA issuance of a ROD on the LFEIS, County shall, at its own expense, complete the following tasks during the DEIS phase:

1. Participate in the DEIS process and provide input on the consistency of the alignment alternatives with the Bypass location land use decisions.
2. Coordinate with ODOT to ensure that all mitigation requirements and/or conditions of approval associated with the Bypass location land use decision are addressed during the DEIS phase.
3. Conduct public hearings, if needed, for any additional land use actions that may be required based on the DEIS and appropriate ODOT land use applications.
4. Coordinate with ODOT, affected Cities, property owners and other interest groups to jointly prepare IAMPs for the four interchanges to the Bypass. Study areas for the IAMPs are shown in Attachment “B.” The objectives of the plans, applicable access standards and rules, and access and circulation options to be analyzed for each interchange are described in Section III.B.4, 5, 6, 7 of this Agreement and are not repeated here. It is anticipated that the IAMPs will be completed approximately three years after the LFEIS and ROD are issued.

5. Conduct public hearings to consider the adoption of the IAMPs as elements of the Yamhill County Transportation System Plan.
6. Coordinate with ODOT, affected jurisdictions and property owners to develop and adopt access management plans for segments of Oregon 99W, Oregon 219 and Oregon 18 that lie outside of the interchange area management planning areas for the Bypass. Tentative boundaries for the relevant statewide highway segments are shown in Attachment "B." Access management standards will be based on the highway classification and spacing standards set forth in Policy 3A of the OHP. A two-step approach will be taken for access management planning on Oregon 99W as outlined in Section III.B.9 of this Agreement and is not repeated here.
7. Coordinate with ODOT to consider, if necessary, the jurisdictional transfer of the bypassed portion of Oregon 99W as outlined in Section III.B.10 of this Agreement.

V. GENERAL PROVISIONS

1. Notices: Any notices required under this Agreement shall be written and may be delivered by hand, facsimile, or regular prepaid U.S. mail. Such notices, if sent by mail, will be deemed given and received five (5) days after deposit in the United States mail. All other notices will be deemed given and received when delivered at the address below, or such alternative address as a party may later designate:

**Oregon Department of Transportation
Attn: Alan Fox, Project Leader
885 Airport Road SE, Bldg P
Salem, Oregon 97301-4788
Fax: 503-986-2695**

**Yamhill County Planning
Attn: Mike Brandt
401 NE Evans Street
McMinville, Oregon 97128
Fax: 503-434-7544**

Any party may change the address or facsimile number to which notices are to be directed, by notice to the other party in the manner specified above.

2. Dispute Resolution. The Parties agree that they shall make good faith efforts to resolve any dispute, claim or controversy arising between them under this Agreement, by amicable negotiations, and agree to provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate resolution of any and all disputes. Prior to pursuing any other remedies, according to the provisions of paragraph a and b below, and prior to initiating any legal action in any court on a matter related to the

subject of this Agreement, the Parties agree to exhaust the following dispute resolution methods:

- (a) **Negotiation.** The Parties will attempt in good faith to first resolve any dispute, claim or controversy arising out of or relating to this Agreement through negotiation with representatives of the other party. If the dispute is not resolved by these good-faith negotiations, then the matter shall proceed to mediation.
 - (b) **Mediation.** The Parties agree that they will engage in formal mediation of their differences if they fail to resolve them through informal negotiations.
 - (i) Either party may commence mediation by providing the other Party a written request for mediation, citing the failure of informal negotiations to resolve concerns, restating the specific issue(s) relative to the dispute, and specifying the relief requested.
 - (ii) The Parties will cooperate with one another in mutually selecting a mediator from the Oregon State Mediator Roster.
 - (iii) The Parties shall further cooperate in case assessment activities and in scheduling the mediation proceedings. The Parties agree that they will participate in mediation in good faith, and that they will share equally in the costs.
3. **Governing Law.** This Agreement shall be governed by applicable Federal and State of Oregon laws.
4. **Amendment.** Any amendment or modification of this Agreement shall be effective or binding on the Parties only if it is in writing and signed by all Parties hereto.
5. **No Third Party Beneficiaries.** This Agreement is solely for the benefit of the Parties hereto and does not give any other third party, including any other governmental entity, any remedy, claim, liability, cause of action or other right.
6. **Severability.** If a court finds any provision of this Agreement invalid or unenforceable under applicable law of any jurisdiction, the remaining provisions shall not be affected. Any such invalidity or unenforceability shall not invalidate or render unenforceable that provision in any other jurisdiction. In the event a court finds a provision invalid or unenforceable, the Parties agree to amend the Agreement so as to affect the original intent of the Parties as closely as possible.
7. **Drafting Interpretation.** Preparation of this Agreement has been a joint effort of the Parties, and the resulting document shall not be construed more severely against one of the Parties than against another.

8. Effective Date. This Agreement shall be effective upon the execution by all Parties and shall terminate upon adoption of IAMP or December 31, 2008, unless terminated earlier by mutual agreement or extended in writing.
9. Workers Compensation. All employers 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. All Parties shall ensure that each of its subcontractors complies with these requirements.
10. Termination. This Agreement may be terminated by mutual consent of all Parties upon 30 days written notice. ODOT may terminate this Agreement effective upon delivery of written notice to County, or at such later date as may be established by ODOT, under any of the following conditions, but not limited to these conditions.
 - a) If County fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b) If 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 ODOT fail to correct such failures within 10 days or such longer period as ODOT may authorize.
 - c) If ODOT fails to receive funding, or appropriations, limitations or other expenditure authority sufficient to allow ODOT, 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 if ODOT is prohibited from paying for such work from the planned funding source.

Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

11. To the extent allowable by the Oregon Constitution and limitations of the Oregon Tort Claims Act, the Parties hereto agree to indemnify and save the other harmless from any claims, liability, or damages resulting from any error, omission, or act of negligence on the part of the indemnifying party, its officers, agents, or employees relative to the responsibilities of the indemnifying party in performance of this Agreement. Should a third party challenge this Agreement, before the Land Use Board of Appeals, ODOT agrees to intervene on behalf of the County. Each Party will cooperate reasonably and in good faith in the investigation and defense of any such claim. Nothing in this Agreement shall be construed as a waiver or relinquishment by any party of any defense, immunity,

or privilege that otherwise may be available under the laws of the respective states or the respective laws of the state of the Assisting Party or the Requesting Party.

Notwithstanding the foregoing defense obligations under paragraph 11 above, neither Party nor any attorney engaged by either Party shall defend any claim in the name of the other Party or any agency/department/division of such other Party, nor purport to act as legal representative of the other Party or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of such other Party. The Parties may, at anytime at its election assume its own defense and settlement in the event that it determines that the other Party is prohibited from defending it, or that other Party is not adequately defending it's interests, or that an important governmental principle is at issue or that it is in the best interests of the Party to do so. The Parties reserve all rights to pursue any claims it may have against the other if it elects to assume its own defense.

12. All Parties acknowledge and agree that County, ODOT, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of County which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after completion of the NDTIP. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT, unless the request is from County, in which case the costs are reimbursable by County.
13. All Parties 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 279.312, 279.314, 279.316, 279.320 and 279.555, which hereby are incorporated by reference. Without limiting the generality of the foregoing, all Parties expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Acts 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.
14. Scope of Agreement. 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 all 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 ODOT or County to enforce any provision of this Agreement shall not constitute a waiver by ODOT or County of that or any other provision.

15. Signatory Authority.

- (a) County has taken all acts necessary to authorize the execution of this Agreement and that the undersigned has full power and authority to enter into this Agreement and that this Agreement shall bind Yamhill County to its terms.
- (b) ODOT has taken all acts necessary to authorize the execution of this Agreement and that the undersigned has full power and authority to enter into this Agreement and that this Agreement shall bind ODOT to its terms.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

The Oregon Transportation Commission approved the development of this Project in the 2002 - 2003 State Transportation Improvement Program in May 2002, Key No. 09320.

The Oregon Transportation Commission on June 18, 2003 approved Delegation Order No. 2 which authorizes the Director to approve and execute agreements for day to day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

Signature Page to Follow

On September 16, 2002, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates authority to the Deputy Director, Highway Division to approve and execute agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

STATE OF OREGON, by and through its
Department of Transportation

By _____
Deputy Director, Highway Division

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief Engineer

Date _____

By _____
Region 2 Manager

Date _____

By _____
Mid-Willamette Valley Area Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

YAMHILL COUNTY, by and through its
Elected Officials

By _____

Title _____

Date _____

By _____

Title _____

Date _____

By _____

Title _____

Date _____

APPROVED AS TO SUFFICIENCY

By _____
County Legal Counsel

Date _____

County contact:
Mike Brandt
Planning Director
401 NE Evans Street
McMinnville OR 97128-9398

BEH:tjh/GENI8854