

RESOLUTION No. 2016-3242

A RESOLUTION TO AUTHORIZE THE MAYOR AND CITY MANAGER PRO-TEM TO FINALIZE AND EXECUTE A COOPERATIVE IMPROVEMENT AGREEMENT (NO. 28658) WITH THE OREGON DEPARTMENT OF TRANSPORTATION FOR THE OREGON ROUTE 18: NEWBERG-DUNDEE BYPASS – PHASE 1

RECITALS:

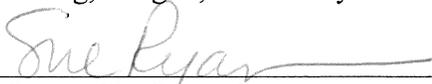
1. The Oregon Department of Transportation (ODOT) is in the process of constructing Phase 1 of the Newberg-Dundee Bypass.
2. The City Council's Goals include an objective to continue to support the completion of Phase 1 and the future build out of the Newberg-Dundee Bypass.
3. The City of Newberg entered into a loan agreement with ODOT (OTIF-0050) on July 1, 2013 to finance our portion of the construction costs of this project. Our portion is estimated to be \$2,211,200.00 or 13.82% of the local match costs.
4. The last construction contract for Phase 1 is scheduled to be awarded in February 2016 with completion in 2017.
5. On December 16, 2015, Oregon Department of Transportation (ODOT) submitted a Cooperative Improvement Agreement that deals with Phase 1 of the Newberg-Dundee Bypass.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. Agreement No. 28658 will remain in effect for the purpose of ongoing maintenance of road facilities and power responsibilities for twenty calendar years. The agreement will be evaluated, reconsidered and/or amended every five years.
2. The City Council does hereby authorize the Mayor and City Manager Pro-Tem to finalize and execute and Agreement with ODOT that sets out the responsibilities associated with design, construction and maintenance of Phase 1 of the Newberg-Dundee Bypass. The draft agreement is attached.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: February 2, 2016.

ADOPTED by the City Council of the City of Newberg, Oregon, this 1st day of February, 2016.


Sue Ryan, City Recorder

ATTEST by the Mayor this 4th day of February, 2016.


Bob Andrews, Mayor

COOPERATIVE IMPROVEMENT AGREEMENT
Oregon Route 18: Newberg-Dundee Bypass - Phase 1
City of Newberg

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 the CITY OF NEWBERG, acting by and through its designated officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. Oregon Jobs and Transportation Act of 2009 (JTA) Program, hereinafter referred to as the "JTA Program", provides funding for preservation and modernization projects chosen by the Oregon Transportation Commission (OTC). On October 21, 2009 the OTC approved funding for the first phase of the Newberg Dundee Bypass project and amended the Statewide Transportation Improvement Program (STIP) to include the project.
2. Oregon Route 99W (OR 99W), Oregon Route 18 (OR 18) and Oregon Route 219 (OR 219), are part of the state highway system under the jurisdiction and control of the OTC. Springbrook Road, Wilsonville Road are part of the city street system under the jurisdiction and control of Agency. This phase of the Newberg-Dundee Bypass will be temporarily routed upon Springbrook Road and will affect the intersection at Wilsonville Road. This Agreement will address only those portions of street system within the corporate limits of the City of Newberg.
3. 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.
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 of state highways routed upon city streets 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 Agency.
5. 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.

6. By the authority granted in ORS 810.080 State has the authority to establish marked pedestrian crosswalks on its highway facilities.
7. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
8. Phase 1 of the Newberg-Dundee Bypass (Bypass) will construct two (2) lanes, one (1) in each direction of the four (4) lane Bypass between City of Newberg and City of Dundee; approximately four (4) miles in length. Phase 1 will also include required local circulation improvements needed to accommodate construction of this phase of the Bypass. The Bypass, in Phase 1, will have access points at the two ends, OR 219 in Newberg and OR 99W south of Dundee. The Bypass is designated an expressway and will operate at fifty-five (55) miles per hour. The connection at OR 99W (Dundee) is a temporary connection and may be removed when the Bypass is extended to OR 18 in City of Dayton. The Oregon Transportation Commission shall pass a resolution to designate the portion of Springbrook Road between OR 99W (at the Springbrook Road intersection) and OR 18 (at the OR 219 intersection) as a state highway for use as a state highway. The use of this portion of Springbrook Road as a state highway shall be temporary and jurisdiction shall be restored to Agency when the easterly portion of the Bypass is constructed. This Agreement will address the Project elements constructed within Agency's corporate limits as represented in Exhibit A.
9. By the authority under ORS 377.700 to 377.992 Outdoor advertising signs visible from the portion of Springbrook Road that is under state jurisdiction, is subject to the Oregon Motorist Information Act (OMIA). The OMIA regulates the number, size and placement of outdoor advertising signs visible from the state highway through a permit system administered by State with cooperation and involvement from Agency. The signs on Springbrook Road are business signs and will not require a permit. Any on premise business sign added after the jurisdictional transfer of Springbrook Road will need to be approved by State and Agency to assure conformity to State and Agency codes.

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

City of Newberg/ODOT
Agreement No. 28658

1. This Agreement will supersede the maintenance and power responsibilities of the existing signals located at OR 219 and Springbrook Road and OR 99W and Springbrook Road identified in Agreement No. 28784.
2. Under such authority, State and Agency agree State shall design and construct the following improvements within Agency boundaries as part of the first phase of the Newberg Dundee Bypass project:
 - a. Construct two (2) southbound left turn lanes on OR 99W at Springbrook Road;
 - b. Widen Springbrook Road to three (3) lanes: one (1) northbound lane; one (1) southbound lane; and a center left turn lane between OR 99W and OR 219; and complete all improvements that include, but are not limited to: curb, median, striping, signage, shoulders, sidewalks, Americans with Disability Act (ADA) ramps, landscaping, street trees, and storm drainage conveyance/detention/water quality facilities;
 - c. Install a traffic signal at the intersection of Springbrook Road and Fernwood Road/Second Street;
 - d. Necessary capacity improvements/upgrades to the existing traffic signals at the intersections of: OR 99W and Springbrook Road; Springbrook Road and Hayes Street; and Springbrook Road at OR 219;
 - e. Construct two (2) southbound left turn lanes on Springbrook Road at OR 219;
 - f. Portion of OR 219 between Springbrook Road and the new Bypass signalized intersection on OR 219 shall comply with Agency's Transportation System Plan (TSP);
 - g. Construct Wilsonville Road to the OR 219 intersection in compliance with Agency's Transportation System Plan (TSP);
 - h. Disconnect Wilsonville Road from Springbrook Road;
 - i. Construct a cul-de-sac next to Wilsonville Road for the south terminus of Springbrook Road. New section of street will be named McKern Court. The project will pay for the cost of a change of address for the impacted parties;
 - j. Channelize turning movements from Second Street to OR 219 for right turns only;
 - k. Construct a right turn lane on Wynooski Road at OR 219;
 - l. Install sound walls with graffiti resistant coating at Mountain View, Nut Tree Ranch and Avalon Manufactured Home Parks;

- m. Remove 13th Street between Meridian Street and River Street and construct a cul-de-sac for the south terminus of Meridian Street;
- n. Relocate the intersection of College Street at Waterfront/14th Street;
- o. Construct a new local street frontage road preliminarily named "Weatherly Way" to Agency standards, located on the north side of the Bypass improvements (approximately between Engineers stations 486+00 to 508+00). Improvements to include but are not limited to pavement, curbs, street lighting, signage, sidewalk on one side, street trees (one side), and storm drainage conveyance/detention/water quality facilities;
- p. Reconstruct street improvements on 11th Street between Willamette Street and Wynoski Road. Improvements include but are not limited to sidewalks, landscaping, curb removal/replacement, driveway closures, and driveways; and a two (2) inch overlay at the end of the project;
- q. As mitigation for impacts of the project, and if appropriate warrants are met within five (5) years, construct a traffic signal at the intersection of OR219 and Everest Street;
- r. Construct an access for emergency purposes only from Weatherly Way to the Bypass at Engineer Station "L" 491.00, Left, OR 18 Mile Post 58.044.

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 sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

- 3. The JTA Program funds for the first phase of the Newberg-Dundee Bypass Project are limited to \$192,000,000. Agency has entered into an agreement with Cities of Dundee, McMinnville, Yamhill County and the Confederated Tribes of the Grand Ronde for local match share of \$20,000,000. In the event the Project cannot be constructed within the estimated budget, the Parties shall examine alternatives for a reduced scope and/or reevaluate funding obligations, then an amendment to this Agreement will be entered into to reflect such changes. If such agreement cannot be reached, State at its sole discretion shall determine whether the Project scope must be modified to meet the Project budget or to commit additional funds to the Project.
- 4. The funds available under the JTA Program are State Highway Funds. To be eligible for reimbursement under the JTA Program, expenditures must comply with the requirements of Article IX, Section 3a of the Oregon Constitution.
- 5. After all required signatures are obtained, this Agreement is effective on April 21, 2014 and shall remain in effect for the purpose of ongoing maintenance of road facilities and power responsibilities for the traffic signals installed or improved as part of the Project. The Agreement will remain in effect until the Bypass is

constructed easterly to OR 99W, as outlined in Recitals, paragraph 8. The Project construction is estimated to be completed within two (2) calendar years following the date of final execution of this Agreement by both Parties. The Parties agree to evaluate, reconsider and/or amend all or portions of its terms, obligations, and provisions every five (5) calendar years following the date of final execution of this Agreement by both Parties and any changes shall be by an amendment, signed by both Parties.

6. Agency and State have a joint obligation to ensure timely expenditure of the JTA Program funds and to comply with the provisions of the bonds that finance the JTA Program.
7. State and Agency agree to cooperate to carry out their respective responsibilities under the OMIA.

AGENCY OBLIGATIONS

1. Agency agrees that upon OTC approval of a resolution, the portion of Springbrook Road located between OR 219 and OR 99W from curb to curb will be under State jurisdiction and part of the state highway system consistent with ORS 373.010 and State will be responsible for maintaining the road surface between the curbs, permitting access to the roadway and maintaining the traffic signals.
2. Agency agrees that upon completion of the eastern phase of the Newberg-Dundee Bypass to construct the Bypass from OR 219 to OR 99W near Rex Hill, Agency shall accept jurisdiction of the portion of Springbrook Road between OR 219 and OR 99W and all existing signals.
3. Agency agrees to allow State the use of Agency streets for detouring of traffic for Project purposes, as discussed under State Obligations, paragraph 5.
4. Agency agrees State's contribution for resurfacing and maintenance for minor/normal pavement surface deterioration of Agency streets used for Project detour and construction vehicle purposes is estimated at \$98,950. If it is determined the resurfacing is going to exceed the estimate, State and Agency shall meet to mutually agree upon an estimate and the responsibility of each Party to cover costs.
5. Agency understands State shall purchase right of way from Agency for Project purposes. Right of way purchased by State shall be in accordance to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and 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.
6. 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.

7. Agency shall cause to be relocated or reconstructed, all Agency-owned utility conduits, lines, poles, mains, pipes, 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 except those Agency-owned utilities located upon Springbrook Road that are subject to the terms of Cooperative Improvement (Utility) Agreement No. 30647.
8. Agency shall, with its own forces and at its own expense, perform all maintenance functions, including any graffiti removal or beautification of the sound walls constructed as part of the Project within Agency's right of way, including those walls constructed under Terms of Agreement, paragraph 2 (l).
9. Agency shall, with its own forces and at its own expense, be responsible for all maintenance, power, and irrigation for all landscaping constructed as part of the Project within Agency's right of way.
10. Agency shall, upon completion of Project, be responsible for 100 percent maintenance and power costs associated with the illumination under the 11th Street structure (Bridge No. 22009). Agency shall request power company to send invoices directly to Agency.
11. Agency shall, upon completion of Project, accept ownership and full control of the surface and underground improvements connected with operation of Agency streets. This includes storm sewer and the water quality/detention ponds. Agency shall obtain a permit to occupy or perform operations on a state highway through State's District 3 Office prior to commencement of any work.
12. Agency, by execution of 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.
13. Agency agrees to maintain signs demarking clearance requirements at locations where Project crosses over Agency streets, including College Street, River Street, and Meridian Street. Such signage shall be installed by State and maintained by Agency.
14. Upon Project completion, Agency agrees to maintain the following Agency streets affected by this Project: Weatherly Way, College Street, River Street, 11th Street, 12th Street and McKern Court.
15. Agency shall work with State in good faith to identify appropriate remedies if the traffic that is bound for Wilsonville Road eastbound or to the Bypass from Wilsonville Road westbound causes a failure of an intersection or a quantifiable safety problem as stated in Exhibit B, attached hereto and by this reference made a part hereof.

16. Agency grants State, or its contractor, the right to enter onto and occupy Agency's right of way within the Bypass project limits for the performance of field work, Bypass project construction and maintenance as set forth in this Agreement. All Agency right of way utilized by State or its contractor shall be restored to equal or better condition by State upon completion of the Project.
17. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.
18. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of State, be indemnified by the contractor and subcontractor from and against any and all Claims.
19. Any such indemnification shall also provide that neither the Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
20. Agency shall perform any services 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 include, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
21. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the specific Agreement for the purpose of making audit, examination,

excerpts, and transcripts for a period of six (6) years after completion of the Project. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.

22. 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.
23. Agency's Project Manager for this Project is Kaaren Hofmann, City Engineer, 414 E. First Street, Newberg, Oregon 97132; (503) 537-1223, kaaren.hofmann@newbergoregon.gov, 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 shall prepare a resolution for the OTC to designate the portion of Springbrook Road located between OR 219 and OR 99W from curb to curb as part of the state highway system consistent with ORS 373.010. State will resume responsibilities for maintenance and operations of the roadway between the curbs, permitting access to this portion of Springbrook Road and the traffic signals consistent with ORS 373.020 on the date the resolution is adopted.
2. 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; 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.
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. The Parties have entered into a separate Intergovernmental Agreement No. 29496 for Right of Way Services identifying the roles and responsibilities of the Parties for any right of way activities. 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. State shall reimburse Agency for approved costs associated with the relocation of public utilities upon Agency right of way within the Project area except

those utilities located upon Springbrook Road that are subject to the terms of Cooperative Improvement (Utility) Agreement No. 30647

5. State's contribution for resurfacing and maintenance for minor/normal pavement surface deterioration of Agency streets used for Project detour and construction vehicle purposes is estimated at \$98,950. If it is determined the resurfacing is going to exceed the estimate, State and Agency shall meet to mutually agree upon an estimate and the responsibility of each Party to cover costs.
6. ODOT shall, upon approval of resolution, be responsible for permitting and controlling access control to Springbrook Road. As part of this Project, existing approach roads (Driveways) will be permitted by State by the date the Project is completed. Any new requests for access to the roadway will be addressed through State's established permitting process at the Region 2, District 3 Permit Office.
7. State shall maintain the roadway pavement surfaces, curbing, signal detector loops, signs, and striping upon Springbrook Road between the back of curb to back of curb between OR 219 to OR 99W until construction of the eastern phase of the Newberg-Dundee Bypass is completed and eliminates the temporary routing by the Bypass upon Springbrook Road.
8. State shall be responsible for and pay to the power company 100 percent of the power costs for the traffic signals. State shall require the power company to send invoices directly to State.
9. State shall provide Agency accurate as-built construction plans of the street, storm drainage, waterworks, and wastewater improvements to be maintained by Agency, upon completion of the Project.
10. State shall file a survey and set property corners upon completion of the Project.
11. 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.
12. State shall, upon signal turn on and proper operation, perform all necessary inspection and maintenance of traffic signals on Springbrook Road, including those at OR99W and OR219, and at the intersection of OR219 and Everest Street control the timing established for operation of the traffic signals as well as interconnection, at no cost to Agency.
13. 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 State right of way.

14. As stated in Exhibit B, State agrees to monitor the performance of the local street network and, if traffic that is bound for Wilsonville Road eastbound or traffic bound to the Bypass from Wilsonville Road westbound causes a failure of an intersection of a quantifiable safety problem State shall work with the Agency to determine the appropriate remedy. The remedy shall be forwarded through all appropriate approvals and be advanced immediately as a project for final design and construction.
15. State's Project Manager for this Project is Kelly Amador, 885 Airport Road SE, Building P, Salem, Oregon 97301-4788; (503) 986-2900, Kelly.L.Amador@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, or at such later date as may be established by State or Agency, 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 fails to correct such failures within thirty (30) days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. 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 thirty (30) days or such longer period as Agency may authorize.
4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. 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.
6. 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.
7. 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.

8. 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.
9. 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.
10. This Agreement and attached exhibits, and Agreement No. 29496 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 2010-2013 Statewide Transportation Improvement Program, Key #17099 that was approved by the Oregon Transportation Commission on December 16, 2010 (or subsequently approved by amendment to the STIP).

Signature Page Follows

City of Newberg/ODOT
Agreement No. 28658

CITY OF NEWBERG, by and through its
designated officials
BY AUTHORITY OF RESOLUTION NO. 2016- 3242

By [Signature]
Mayor

Date 2/3/16

By [Signature]
City Manager

Date 2/2/16

APPROVED AS TO LEGAL SUFFICIENCY

By [Signature]
City Attorney

Date 2/2/16

Agency Contact:
Kaaren Hofmann, City Engineer
City of Newberg
P.O. Box 970
414 E. First Street
Newberg, Oregon 97132
(503) 537-1223
Kaaren.hofmann@newbergoregon.gov

State Contact:
Kelly Amador, Senior Project Leader
ODOT Region 2, Area 3
455 Airport Road SE, Building P
Salem, Oregon 97301- 4788
(503) 986-2900
Kelly.L.Amador@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief
Engineer

Date _____

By _____
State Traffic Engineer

Date _____

By _____
State Right of Way Manager

Date _____

By _____
Region 2 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

Exhibit B



Oregon

Kate Brown, Governor

Department of Transportation

Office of the Director
355 Capitol St NE
Salem, OR 97301

January 4th, 2016

Newberg Planning Commission Chair Gary Bliss
414 East First St.
Newberg Oregon, OR 97132

Subject: Wilsonville Road Impacts

Dear Chairman Bliss,

At the December 10, 2015 Planning Commission hearing, there was significant discussion about the level of mitigation that might be required after the completion of the “no through” intersection currently under consideration by the Commission. In the ODOT submission of the Transportation System Plan (TSP) amendment, the following statement was made:

“ODOT commits, with the City’s assistance, to continue, to monitor the performance of the local street network along the Bypass route. If deficiencies above the anticipated impact of this amendment are identified, ODOT further commits to pursuit of a project as appropriate mitigation for that impact”.

There was much speculation about the actual projects that would result from the commitment. ODOT continues to believe that the marginal impacts between the design currently in the TSP and the proposed modification will be relatively small. We cannot, however, predict where those impacts might occur. I will expand on what is meant by the commitment.

If the traffic that is bound for Wilsonville Road eastbound or to the Bypass from Wilsonville Road westbound is causing a failure of an intersection, or a quantifiable safety problem, ODOT would work with the City to determine the appropriate remedy for that specific failure. The remedy would be forwarded through all appropriate approvals and be advanced immediately as a project for final design and construction. Overall Phase 1 project saving will be used to fund these improvements. Right now we expect the savings to range from between \$3.0 and \$6.5 million.

Sincerely,

Matthew L. Garrett
Director