



Kent Taylor Civic Hall
200 NE Second Street
McMinnville, OR 97128

City Council Meeting Agenda

Tuesday, January 26, 2021

January Level 10 Meeting **CANCELED**

6:00 p.m. – Executive Session (CLOSED TO THE PUBLIC)

7:00 p.m. – Regular Council Meeting

REVISED 01/25/2021

Welcome! The public is strongly encouraged to participate remotely but there is limited seating at Civic Hall for those who are not able to participate remotely. However, if you are not feeling well, please stay home and take care of yourself. In accordance with Governor Kate Brown's new face covering mandate, all who wish to attend public meetings must wear a face mask or some kind of face covering is required while in the building and you must maintain six feet apart from others.

The public is strongly encouraged to relay concerns and comments to the Council in one of three ways:

- *Email at any time up to 12 p.m. the day of the meeting to Claudia.Cisneros@mcminnvilleoregon.gov;*
- *If appearing via telephone only please sign up prior to the meeting by emailing the City Recorder at Claudia.Cisneros@mcminnvilleoregon.gov as the chat function is not available when calling in zoom;*
- *Join the zoom meeting; send a chat directly to City Recorder, Claudia Cisneros, to request to speak and use the raise hand feature in zoom to request to speak, once your turn is up we will announce your name and unmute your mic.*

You can live broadcasts the City Council Meeting on cable channels Xfinity 11 and 331, Frontier 29 or webstream here:

www.mcm11.org/live

CITY COUNCIL REGULAR MEETING:

You may join online via Zoom Meeting:

<https://mcminnvilleoregon.zoom.us/j/92543837253?pwd=bGZwKysrbDJPOXFyN0oxY1BUZkl0QT09>

Zoom ID: 925-4383-7253

Zoom Password: 139483

Or you can call in and listen via zoom: 1-253- 215- 8782

ID: 925-4383-7253

6:00 PM – EXECUTIVE SESSION - VIA ZOOM (NOT OPEN TO THE PUBLIC)

1. CALL TO ORDER
2. **Executive Session pursuant to ORS 192.660(2)(d):** To conduct deliberations with persons designated by the governing body to carry on labor negotiations.
3. ADJOURNMENT

7:00 PM – REGULAR COUNCIL MEETING – VIA ZOOM & COUNCIL CHAMBERS

1. CALL TO ORDER & ROLL CALL
2. INVITATION TO CITIZENS FOR PUBLIC COMMENT – *The Mayor will announce that any interested audience members are invited to provide comments. Anyone may speak on any topic other than: a matter in litigation, a quasi-judicial land use matter; or a matter scheduled for public hearing at some future date. The Mayor may limit comments to 3*

minutes per person for a total of 30 minutes. The Mayor will read comments emailed to City Recorded and then any citizen participating via Zoom.

3. PRESENTATION

- a. ESCI Fire Department Consolidation Implementation/Strategic Planning Session

4. NEW BUSINESS (Action Items)

- a. Discussion of City Council Joint Statement regarding January 6th, 2021 Capitol's Violence. (moved from 4b.)
- b. Discussion of Letter to Governor Brown in Support of McMinnville's Small Businesses. (moved from 4a.)

5. ADVICE/ INFORMATION ITEMS

- a. Reports from Councilors on Committee & Board Assignments
 1. Councilor Menke's email to City Council regarding Newberg Parkway Presentation (Added 1/25/2021)
- b. Department Head Reports
- c. October 2020 Cash and Investment Report (in packet)

6. RESOLUTION

- a. Consider **Resolution No. 2021-04**: A Resolution authorizing the approval of Cooperative Improvement Agreement No. 34513 and Intergovernmental Agreement No. 34613 with the Oregon Department of Transportation, related to the Three Mile Lane Bridge replacement project.
- b. Consider **Resolution No. 2021-02**: A Resolution approving the award of a Personal Services Contract to Jacobs Engineering Group Inc. for an Infrastructure-Based Time Extension Request (IBTER) Analysis as required by HB 2001 and OAR 660-046-0300. (Revised 1/25/2021)
- c. Consider **Resolution No. 2021-05**: A Resolution authorizing the approval of a cooperative fund exchange agreement between the City of McMinnville and Oregon Department of Transportation (ODOT) known as Fund Exchange Program (FEX) Agreement No. 34653.

7. ADJOURNMENT



**City of McMinnville
Fire Department**
175 NE 1st Street
McMinnville, OR 97128
(503) 435-5800
www.mcminnvilleoregon.gov

STAFF REPORT

DATE: January 19, 2021
TO: Mayor and City Councilors
FROM: Rich Leipfert, Fire Chief
SUBJECT: Fire Department Consolidation Implementation/Strategic Planning Session:



COMMUNITY SAFETY & RESILIENCY

Proactively plan for & responsively maintain a safe & resilient community.

OBJECTIVE/S: Provide exceptional police, municipal court, fire, emergency medical services (EMS), utility services and public works

Report in Brief:

The Fire Department Consolidation Feasibility Report has been completed. The next step in this process is working through an Implementation Strategic Plan. Consultants ESCI will lead the discussion.

Background:

The City of McMinnville and its partners have completed the Fire Department Consolidation Feasibility Study. The plan did identify that consolidating departments is feasible. This next scope of work will include the Implementation Strategic Plan. This will be broken into three phases.

(1) Project initiation & scheduling. (Initial virtual meeting to discuss)

Local Strategic Planning team composition and recruitment

Strategic Planning workshop format and schedule

Logistical Issues

Potential Impediments and organizational issues

(2) Customer-Centered Environmental Assessment

(2A) Stakeholder Focus Meetings

(2B) Public Meetings

Discussion:

The purpose of the presentation is to present information to the Council on next steps. It will seek information from City Council on potential impediments and organizational issues to be addressed in the stakeholder meetings. Council will be informed on the process moving forward and be asked for one elected representative to serve on the stakeholder focus meetings.

Attachments:

Fiscal Impact: No changes



**City of McMinnville
Administration**
230 NE Second Street
McMinnville, OR 97128
(503) 435-5702

www.mcminnvilleoregon.gov

MEMORANDUM

DATE: January 19th, 2021
TO: City Council
FROM: Jeff Towery, City Manager
SUBJECT: Letter of Support to Governor Brown in Support of McMinnville's Small Businesses

Report in Brief:

President Gioia Goodrum of McMinnville Area Chamber of Commerce is asking Governor Brown to consider the reopening of fitness centers and restaurants. Ms. Goodrum is requesting the City Council's approval for a letter of support. Attached are letters Ms. Goodrum has sent Governor Brown, Yamhill County Commissioners, McMinnville City Council and as a sample letter the City of Redmond City Council approved to send to Governor Brown at their January 12th Meeting.

Attachments:

- Letter from President Gioia Goodrum of McMinnville Area Chamber of Commerce to Governor Brown and Director Allen in support of local businesses.
- Letter from President Gioia to Yamhill County Commissioners.
- Letter from President Gioia to McMinnville City Council.
- Sample Letter from Redmond City Council to Governor Brown.



McMINNVILLE AREA
CHAMBER of COMMERCE

417 NW Adams Street
McMinnville, OR 97128

Phone 503 472-6196

chamberinfo@mcminnville.org
www.mcminnville.org

December 17, 2020

The Honorable Kate Brown
Governor
900 Court Street NE, Suite 254 Salem, OR 97301-4047

Mr. Pat Allen
Director
Oregon Health Authority
500 Summer Street, NE, E-20 Salem, OR 97301-1097

Dear Governor Brown and Director Allen:

The McMinnville Area Chamber of Commerce is writing to you in support of our local businesses and those under the current state closure mandates – fitness centers and restaurants.

Since the initial closures in March 2020, businesses in McMinnville, Yamhill County and Oregon have suffered greatly. Oregon small businesses and their employees have been especially hard hit. Most recently the hospitality and fitness center industry closures threaten the livelihood of over 2,000 workers and 110 businesses in McMinnville alone. Our businesses, their employees and our economy will not survive any further closures. In conversations with our local businesses, their greatest concerns center around grant funding, further closures and the worry their business is on the brink of collapse. They need relief, now!

We ask you to help by giving businesses a chance to recover and protect them from incurring further injury from closures. In the last several months, businesses have been asked to go above and beyond to secure the safety of their employees and clientele, and they have done just that. Many have spent hundreds of thousands of dollars to comply with COVID-19 mandates, only to be shut down through no fault of their own. A one-size fits all strategy to shutdowns and restricting commerce without data that shows the outbreaks are happening in those industries, will not ensure the safety of our communities, it will, however, serve to destroy our local economy. A study done by the US Chamber of Commerce and Met Life found that “small businesses anticipate the worst of the pandemic is still ahead...” (<https://www.uschamber.com/sbindex/summary>). FEMA studies show that 40% of businesses do not open following a disaster, another 25% fail within one year and over 90% of companies fail within two years of being struck by disaster. Can the State of Oregon afford to lose 90% of our businesses?

Unemployed workers and their families are suffering as they attempt to obtain financial assistance from a broken unemployment system. Returning these valued employees to work, and allowing them to earn a paycheck, would avoid subjecting them to waiting weeks and, for some, months for unemployment assistance. It could also alleviate the rampant UI fraud Oregon is currently experiencing.

Furthermore, fitness centers are open in other states, where the incidence of cases is almost up to 75% higher than Oregon, for example, New York's cases are 74% higher (https://covid.cdc.gov/covid-data-tracker/#cases_totalcases). Restaurants in Oregon, if kept shuttered, or only allowed take out, will likely not survive the winter. With Oregon being so well known for its farm to table restaurants, fine dining, and world-renowned food culture, it is unthinkable that one of our greatest treasure's existence is threatened because of a perception that is false. Dining-in has not shown to be a cause for the spread of the disease, rather social gatherings, such as family get togethers, are the greatest cause. Over 10,000 restaurants have closed across the country, three of which are here in McMinnville.

According to a report out of New York, only 1.5% of cases over a three-month period were associated with a restaurant, whereas somewhere in the 73% range of spread was caused by social gatherings. For fitness centers, a study by the University of Oregon shows that these businesses do not pose the same risk for COVID-19 spread. In other states, restaurants and fitness centers are open at restricted capacity, allowing additional time for sanitizing and distance between clientele, to ensure a safe environment.

Something must be done to allow our closed businesses to function, employ their workers and keep our economic engine running. We ask that you please let restaurants and fitness centers resume.

Our community looks to your leadership to help our businesses recover and stop the economic devastation in Oregon. The health and mental well-being of our community depends on our economy to be running, and people having the opportunity to engage in appropriate COVID safe behavior. Our businesses have proven they can do what it takes to be compliant, and keep clients, and workers safe.

Please save our business community.

Sincerely,

A handwritten signature in black ink, appearing to read "Gioia Goodrum". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gioia Goodrum
President/CEO
McMinnville Area Chamber of Commerce



MCMINNVILLE AREA
CHAMBER of COMMERCE

417 NW Adams Street
McMinnville, OR 97128

Phone 503 472-6196

chamberinfo@mcminnville.org
www.mcminnville.org

December 14, 2020

Dear Commissioners - Kulla, Starrett, and Olson:

The McMinnville Area Chamber of Commerce is writing to you in support of our local businesses and those under the current state closure mandates – fitness centers and restaurants.

Since the initial closures in March 2020, businesses in Yamhill County and Oregon have suffered greatly. Oregon small businesses and their employees have been especially hard hit. Most recently the hospitality and fitness center industry closures threaten the livelihood of over 2,000 workers and 110 businesses in McMinnville alone. Our businesses, their employees and our economy will not survive any further closures. In conversations with our local businesses, their greatest concerns center around grant funding, further closures and the worry their business is on the brink of collapse. They need relief, now!

We ask you to help by giving businesses a chance to recover and protect them from incurring further injury from closures. In the last several months, businesses have been asked to go above and beyond to secure the safety of their employees and clientele, and they have done just that. Many have spent hundreds of thousands of dollars to comply with COVID-19 mandates, only to be shut down through no fault of their own. A one-size fits all strategy to shutdowns and restricting commerce without data that shows the outbreaks are happening in those industries, will not ensure the safety of our communities, it will, however, serve to destroy our local economy.

Fitness Centers are open in other states, where the incidence of cases are up to 75% higher than Oregon, for example, New York's cases are 74% higher (https://covid.cdc.gov/covid-data-tracker/#cases_totalcases). Restaurants in Oregon, if kept shuttered, or only allowed take out, will likely not survive the winter. With Oregon being so well known for its farm to table restaurants, fine dining, and world-renowned food culture, it is unthinkable that one of our greatest treasure's existence is threatened because of a perception that is false. Dining in has not shown to be a cause for the spread of the disease, rather social gatherings, such as family get togethers, are the greatest cause. According to a report out of New York, only 1.5% of cases over a three-month period were associated with a restaurant, whereas somewhere in the 73% range of spread was caused by social gatherings. Over 10,000 restaurants have closed across the country, three of which are here in McMinnville.

Something must be done to allow our closed businesses to function, employ their workers and keep our economic engine running. We ask that you use the power of your position as our elected officials to get our businesses going again. Appeal to the Governor to allow restaurants and fitness centers to open.

Our community looks to your leadership to help our businesses recover and stop the economic devastation in our community. The health and mental well-being of our community depends on our economy to be running, and people having the opportunity to engage in appropriate COVID safe

behavior. Our businesses have proven they can do what it takes to be in compliance, and keep clients, and workers safe.

Please save our business community. We appreciate all that you do and continue to do on behalf of our county.

Sincerely,

A handwritten signature in black ink, appearing to read "Gioia Goodrum". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gioia Goodrum
President/CEO
McMinnville Area Chamber of Commerce



McMINNVILLE AREA
CHAMBER of COMMERCE

417 NW Adams Street
McMinnville, OR 97128

Phone 503 472-6196

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January 20, 2020

Mayor Scott Hill
Council President Drabkin
Councilor Chenoweth
Councilor Garvin
Councilor Geary
Councilor Menke
Councilor Peralta

Dear Mayor and Councilors:

The McMinnville Area Chamber of Commerce is writing to you in support of our local businesses and those under the current state closure mandates – fitness centers and restaurants.

Something must be done to allow our closed businesses to function, employ their workers and keep our economic engine running. We ask that you use the power of your position as our elected officials to get our businesses going again. Appeal to the Governor to allow restaurants and fitness centers to open with reasonable guidelines for customer safety.

Since the initial closures in March 2020, businesses in Yamhill County and Oregon have suffered greatly. Oregon small businesses and their employees have been especially hard hit. Most recently the hospitality and fitness center industry closures threaten the livelihood of over 2,000 workers and 110 businesses in McMinnville alone. Our businesses, their employees and our economy will not survive any further closures. In conversations with our local businesses, their greatest concerns center around grant funding, further closures and the worry their business is on the brink of collapse. They need relief, now!

Though we are not in support of businesses defying the closure mandate, some business owners who have put their life savings into their business are choosing to open because they are on the brink of losing everything. With a booming housing crisis in Oregon, adding business owners and their workers to the houseless roles will be devastating.

We ask you to help by giving businesses a chance to recover and protect them from incurring further injury from closures. Since March, businesses have been asked to go above and beyond, to secure the safety of their employees and clientele, and they have done just that. Many have spent hundreds of thousands of dollars to comply with COVID-19 mandates, only to be shut down through no fault of their own. A one-size fits all strategy to shutdowns and restricting commerce without data that shows the outbreaks are happening in those industries, will not ensure the safety of our communities, it will, however, serve to destroy our local economy.

It has been suggested that, rather than close certain industries, a more targeted approach be developed. Businesses have already invested time and financial resources to ensure the safety of their clientele, such as Plexiglass dividers, MERV and HEPA filters, Personal Protective Equipment for personnel, sanitizer and OSHA cleaning protocols.

Fitness Centers are open in other states where the incidence of cases are up to or over 75% higher than Oregon, for example, New York's cases are 81% higher (https://covid.cdc.gov/covid-data-tracker/#cases_totalcases).

Restaurants in Oregon, if kept shuttered, or only allowed take out, will likely not survive the winter. With Oregon being so well known for its farm to table restaurants, fine dining, and world-renowned food culture, it is unthinkable that one of our greatest treasure's existence is threatened because of a perception that is false. Dining-in has not shown to be a cause for the spread of the disease, rather social gatherings, such as family get togethers, are the greatest cause. According to a report out of New York, only 1.5% of cases over a three-month period were associated with a restaurant, whereas somewhere in the 73% range of spread was caused by social gatherings. Thousands of restaurants have closed across the country, some of which are here in McMinnville. Restaurants rely on people in seats, and their entire business plan revolves around how many times they can turn over a table. No indoor dining is a death sentence for a business reliant upon it.

Large corporations, and big box stores have been opened and functioning throughout the closures. Soon schools will be opening, and yet, small businesses, the backbone of our economy are forced to shutter their doors, possibly forever. You may recall Third Street in the 1990's, with 60% of the businesses shuttered. McMinnville's downtown is our gem, and, the years of sweat and love put into its revitalization may be for naught, if businesses continue to be closed.

Our community looks to your leadership to help our businesses recover and stop the economic devastation in our community. The health and mental well-being of our community depends on our economy to be running, and people having the opportunity to engage in appropriate COVID safe behavior. Our businesses have proven they can do what it takes to be in compliance, and keep clients, and workers safe.

Please save our business community. We appreciate all that you do and continue to do on behalf of McMinnville.

Sincerely,



Gioia Goodrum
President/CEO
McMinnville Area Chamber of Commerce



CITY OF REDMOND
City Council

411 SW Ninth Street
Redmond, OR 97756

January 12, 2021

Office of Governor Kate Brown
900 Court Street, Suite 254
Salem, OR 97301-4047

Dear Governor Brown;

Redmond, Oregon has more than 1,700 businesses throughout our community. Many of these are small and locally owned. They serve as the backbone of our city. A place where the entrepreneurial spirit runs strong. Many, such as restaurants, gyms, and similar customer-based businesses are facing financial ruin as the public health pandemic continues into its 11th month. Hundreds of service workers are also unemployed.

On behalf of the many small and locally owned businesses in Redmond, Oregon, the Redmond City Council requests those businesses be given the same re-opening consideration you have granted our school district. This would allow small businesses to re-open commerce in a safe manner, following CDC guidelines and demonstrates trust in the wisdom of our small businesses. We also request you continually review the emerging scientific evidence and consider ways in which communities can re-open their fragile economies.

We understand the gravity of the COVID pandemic. COVID is a real and significant global public health crisis that has claimed the lives of more than 350,000 people in this country. Locally, as of January 7, 2021, we have seen 4,322 cases and 24 deaths in Deschutes County, according to the Deschutes County Epidemiology Dept.. These most recent statistics also reported the fourth highest number of positive cases (345) since the pandemic began. We do not support or endorse any businesses or institutions that are operating in conflict with the CDC and related public health guidelines.

However, we believe there needs to be more balance in protecting the health of our citizens and also allowing our businesses to survive economically. Without that balance the economic, social and psychological impacts of these orders can outweigh the health benefits derived. Many of our small business owners and their employees are now scared, angry, frustrated and confused. They feel they have been abandoned by our state government, selectively eliminated from the economy, and left to survive by their own devices. Meanwhile, larger chain and big box stores have crowded aisles and checkout counters.

It has reached a breaking point.

This situation has reached a pivotal juncture, one in which we are likely to see more of our restaurants and small, local businesses fail without additional aid, support, and consideration.

We as local elected officials must respond to their pleas for help and that is why we ask you to put in place a blueprint that allows them to more fully participate in the economy in a manner that respects the public health emergency but allows our small businesses owners to maintain the businesses they have worked so hard to build and sustain. We stand with them.

To that end, we request you consider the following:

- ✓ Adjust guidance for Counties in the “Extreme” category to allow them the flexibility to re-open similar to that which you granted to our school districts.
- ✓ Allow businesses to re-open in a manner that requires masks and physical distancing measures and frequent hand washing.
- ✓ Allow our small businesses to tackle the safety measures with the same spirit they used to carve out their niche in private enterprise.

We are committed to continue to do our part on behalf of safety and small businesses by encouraging every member of our community to follow the health and safety guidelines established by the CDC, OHA, and Deschutes County; and to explore every possible local, county, state, and federal resource available to assist local business impacted by mandatory closures.

The Redmond City Council thanks you for the consideration of our request and we stand ready to meet with you and your team to discuss this further.

Time is of the utmost essence, please help us as we strive to champion our local and small businesses.

Approved by the City Council, this 12th of January, 2021.

With warm regards.



The Redmond City Council
Redmond, Oregon

Let me start by describing how I view our role as City Councilors. We are ~~elected as nonpartisan~~ officials, and while it is my belief that there is really no such thing, when making public statements on behalf of the Council we should be attempting to avoid the traps of the rhetoric that partisans use to further their "team's" agenda. We cannot become unwitting tools in the hands of either party's agenda. We must do our dead level best to communicate and address the community with language that does not intentionally or incidentally convey the messaging of a national party.

One of those traps is the pushing of us as a body to make a public statement that brings in peripheral issues that have nothing to do with the issue being addressed. The storming of the Capitol building in Washington DC on January 6th, 2021 was reprehensible. I have not heard a single person who shares any other view of what happened that day. On that, almost every American agrees and almost every McMinnvillian agrees.

If our goal is to make a statement as the leaders of this community regarding the events of January 6th, we should stay focused on that which we all can agree, and on that which is actually the issue of that day. If it was a March for racial equity or the senseless indefensible death of an unarmed black man at the hands of the police that we were commenting on, then addressing racism would be on point. However, that is not why over 200,000 Trump supporters showed up in Washington DC on January 6. It had nothing to do with race. It had to do with the election and their belief that it was stolen from them. They did not take over the building to make a racial statement they did it to make a statement about their feelings about the election. Some in our community would be happy if we drafted a letter in support of investigations into election fraud while others in our community want us to draft a letter condemning racism and white supremacy. I say we do neither.

I understand the desire to make this about racism and white supremacy. It has been the ongoing objective of some to frame every perceived Trump event as such. And in this case, why not? It is far too easy to do. One of the first images circulated of those in the capitol was of man with a confederate flag and we all know the racist implication and revulsion that many Americans feel at that image. It was reprehensible. In another image there was pictured a short, bearded man standing next to the guy with the horns on his head, the American flag painted across his face and wearing what some have described as a "Chewbacca Bikini". That short, bearded man is a member of the Maryland skinheads. That is an organization of which I can find no common ground whose underlying principles I detest and whose members can rightly be described as racists. In a third widely circulated image was one of the most heinous anti-Semitic sweaters I have ever seen: "Camp Auschwitz" It said in bold easily readable print with an image associated with the Nazi regime and wording that was harder to read underneath it but essentially conveyed that the work done at Auschwitz was good work. There are not words in the English language that adequately describe how utterly offensive that is. Arguably among the list of offensive events and images from that day that sweater could easily have topped the list. With that kind of imagery, it is no wonder some want to make the discussion about the participants and not about the content.

However, to focus on the identified participants and their inappropriate beliefs does an injustice to many and that we must be careful to avoid as City Councilors. Surely all of us would be willing to admit that among any group of 200,000 people there will always be some wingnuts. We live in a town of 35,000ish and I guarantee you we have more than a handful of them here. To make racism and white supremacy a part of our condemnation of this event would be to imply that we believe all those present were racist and white supremacists. That is throwing gasoline on a fire, it is taking a partisan position and it is something we as city leaders should avoid at all cost. We should be using language that brings people together not language that brands a whole segment of our society with a scarlet letter, the letter R. We must remember that there are many people in this community that identify with their cause. According to one article I read 40% of Americans believe this election was stolen, I would wager that if that is accurate then at least that many believe it here in McMinnville. Let me pause for a minute and say that, for the record, the fact that 40% of our electorate believe the results are not only invalid but were fraudulent should be troubling to all of us regardless of party affiliation. By my math that puts us at well over 100 million people who believe that the man currently occupying the White House did not actually win. Ponder that as you go forward and ask yourself where do we go from here? I hope I am wrong, but I worry that things will get worse before they get better. In the meantime, to inappropriately label those present at the event in DC would inadvertently label those who agree with them here in McMinnville with the same scarlet R. Let us not do that to our neighbors, our family members, and our friends. Let us not make the same mistake that too many leaders throughout our country are already making. Let us not be guilty of throwing gas on the fire.

National politics should say on the national scene. That is how you keep these positions nonpartisan. The irony that we are discussing making a statement about an event at the national level when local officials stayed quiet during the last election cycle here in McMinnville does not escape me. If ever a statement should have been made, it was then.

In conclusion, I would lend my support to issuing a statement from the City Council, with help from staff to craft it, with the following talking points:

- 1) We support the Constitutional right to peacefully protest perceived injustices
- 2) We condemn in the strongest possible terms the January 6 2021 takeover of the Capitol building in Washington DC and the threat to our Republic that it represented.
- 3) We support the LE including the Capitol police who sought to protect it and quickly restored order after it happened
- 4) We mourn the deaths of the Capitol police involved.
- 5) We are eternally grateful for, and offer our sincerest condolences to, the families of the fallen officers.

Chris Chenoweth



A collaborative and caring city inspiring an exceptional quality of life.

OFFICE OF THE MAYOR, 230 NE Second Street, McMinnville, Oregon 97128

www.mcminnvilleoregon.gov

Press Release

FOR IMMEDIATE RELEASE - REVISED

January 27, 2021

McMinnville City Council Statement Regarding January 6, 2021 U.S. Capitol Attack

As the City Council for the City of McMinnville, we strive to live up to our City's four values: stewardship, equity, courage, and accountability. On Wednesday, January 6, 2021, we witnessed an affront to those values at the heart of our democracy – the U.S. Capitol.

We are united as steward of our community, stand against white supremacy and attempts to undermine our democracy. We unconditionally and vehemently condemn racism, white supremacy, and any attack on our federal, state, or local governments. The right to peaceful protest is core to our democracy, but there is no place for violence in democratic discourse. We are profoundly saddened by the loss of life and injuries that occurred at the U.S. Capitol, particularly U.S. Capitol Police Officer Brian Sicknick, who died defending the Capitol. We also grieve the untimely death of Officer Howard Liebengood.

We praise the courage of U.S. Senators and Congresspersons, as well as law enforcement, congressional aides, and other employees, who ensured that government business was able to resume and be completed that evening. In all aspects of government, we commit to the peaceful transfer of power as any elected official terms come to a close. The U.S. government and we, as the McMinnville City Council, must continue working to serve as beacons of democracy, where racism and white supremacy have no place.

Yours Sincerely,

Scott A. Hill, Mayor

On behalf of City of McMinnville City Council

Adopted on 1-26-21 at City Council Regular Meeting with majority vote

###

Amended added on 01/29/2021

From: [Amanda Guile-Hinman](#)
To: [Claudia Cisneros](#)
Subject: FW: Presentation documents from today's meeting
Date: Thursday, January 21, 2021 3:01:09 PM
Attachments: [K19909 Newberg Parkway VE Presentation 2021-01-21 v3 - Kelly Amador presentation.pdf](#)
[NDB03 Summary-Exhibits-and-Schedules 20210119 - Bill Ciz presentation.pdf](#)

Amanda Guile-Hinman
City Attorney
City of McMinnville
amanda.guile@mcminnvilleoregon.gov
(503) 434-7303

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From: Remy Drabkin <Remy.Drabkin@mcminnvilleoregon.gov>
Sent: Thursday, January 21, 2021 12:51 PM
To: Amanda Guile-Hinman <Amanda.Guile@mcminnvilleoregon.gov>
Subject: FW: Presentation documents from today's meeting

From: Kellie Menke <Kellie.Menke@mcminnvilleoregon.gov>
Sent: Thursday, January 21, 2021 11:01 AM
To: Remy Drabkin <Remy.Drabkin@mcminnvilleoregon.gov>; Sal Peralta <Sal.Peralta@mcminnvilleoregon.gov>; Zack Geary <Zack.Geary@mcminnvilleoregon.gov>; Adam Garvin <Adam.Garvin@mcminnvilleoregon.gov>; Chris Chenoweth <chenoweth4mac@outlook.com>
Subject: Fwd: Presentation documents from today's meeting

Fellow Councilors,
I thought I would send these Parkway Phase 2 and 3 design options for the Newberg Dundee ByPass out for you to look at. There have been no decisions made on the final design. The design phase is at about 10%. The graphics are just different design concepts and the anticipated cost including land use issues. It seems that it is likely that Phase 3 might go ahead of Phase 2 because of complexity of the Rex Hill interchange. With the improved possibility for federal dollars with the new administration we could have something shovel ready earlier for Phase 3. There are also some timelines in the presentations. Governor Brown has also tentatively budgeted about \$32M for the ByPass, but that could easily change.

Kellie

Get [Outlook for iOS](#)

From: Keri Hinton <hintonk@co.yamhill.or.us>
Sent: Thursday, January 21, 2021 10:42:27 AM
To: Keri Hinton <hintonk@co.yamhill.or.us>
Subject: Presentation documents from today's meeting

This message originated outside of the City of McMinnville.

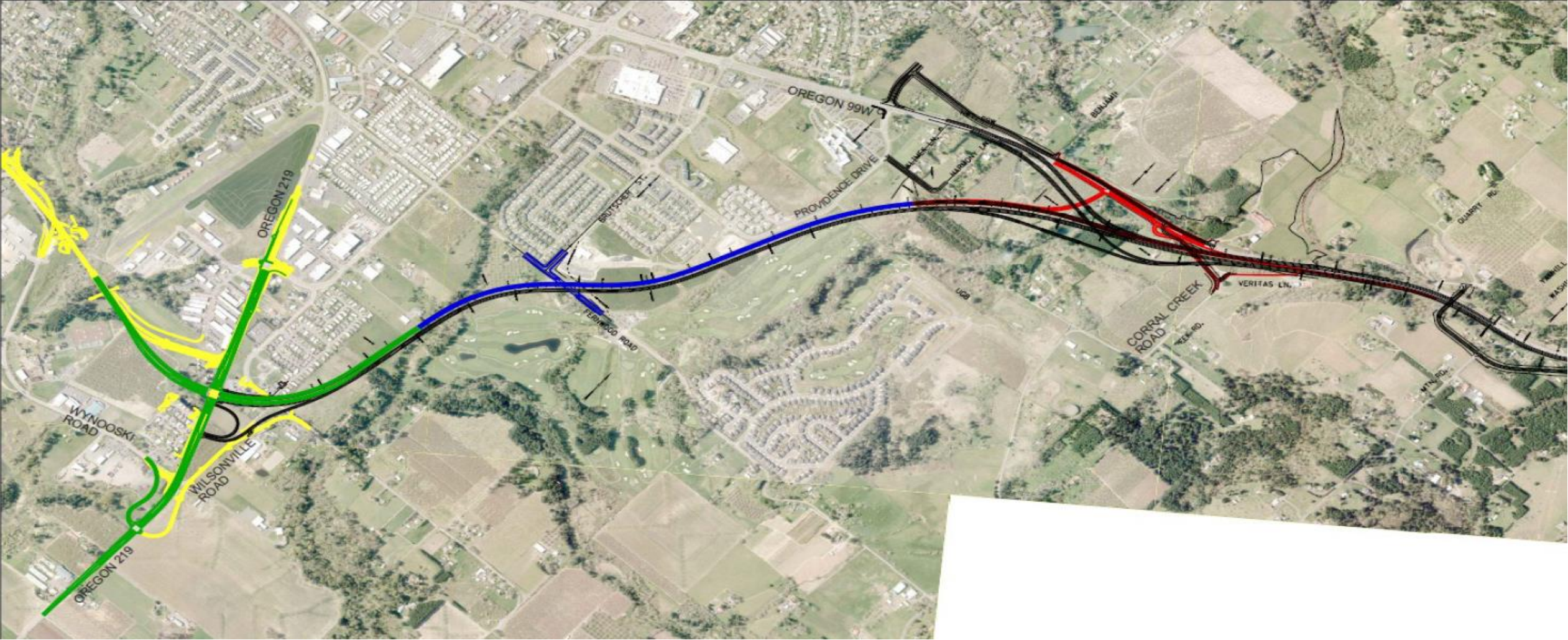
Hi Parkway Committee & Interested Others,

Attached are the maps and information that were presented by Kelly Amador and Bill Ciz this morning at the Parkway Committee. Please note that these options and ideas are still being researched and have not gone through all of the processes that ODOT will put them through to make sure that they are fully vetted. As was suggested in the meeting please reach out to John Huestis or Andrew Walker with suggestions and questions.

Thanks,

Keri Hinton
Executive Office Specialist
Yamhill County Board of Commissioner's Office
434 NE Evans St, McMinnville, OR 97128
hintonk@co.yamhill.or.us
Ph: (503) 434-7501
Fax: (503) 434-7553

OR18: Newberg Dundee Bypass Phase 2



Added on 1.25.21

1636124

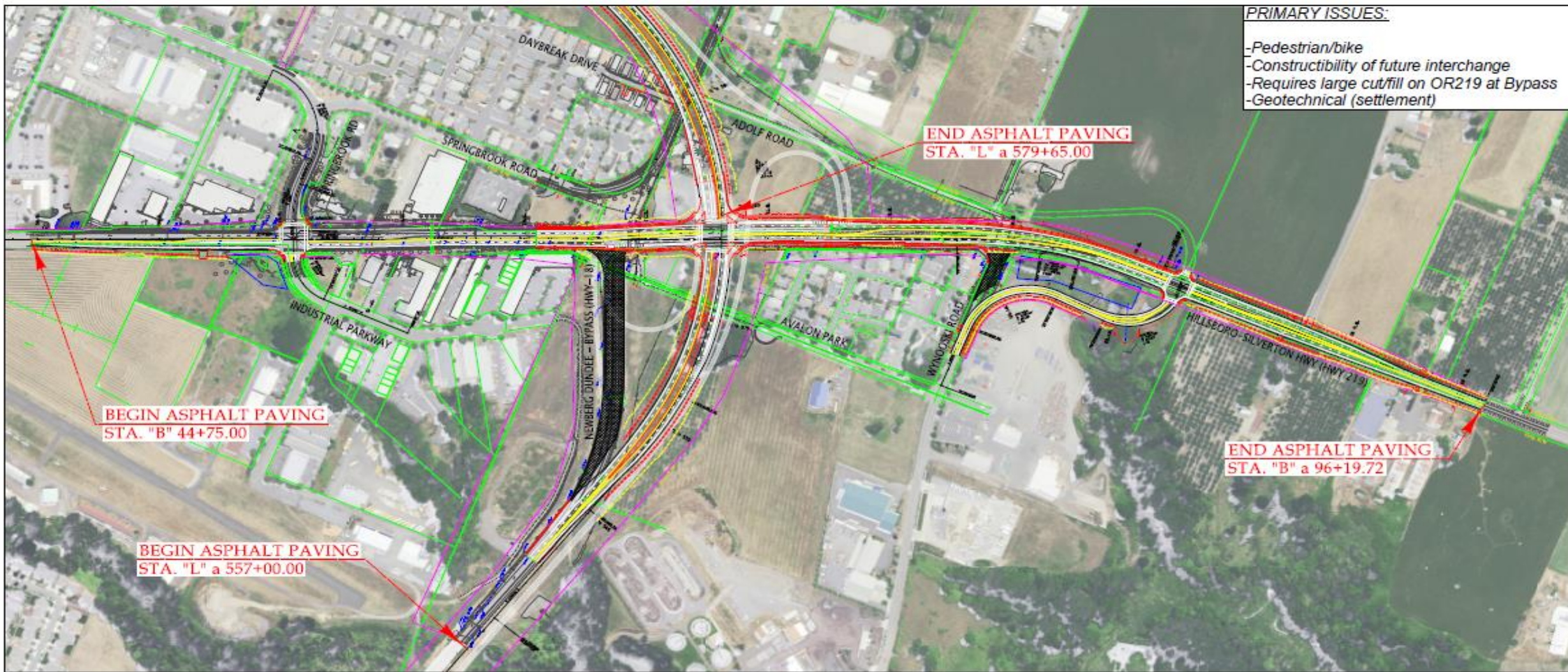
K19909 - OR18: Newberg-Dundee Bypass (Phase 2)

OR219 IMPROVEMENTS DESIGN VERIFICATION ROLL MAP

SEPTEMBER 30, 2020

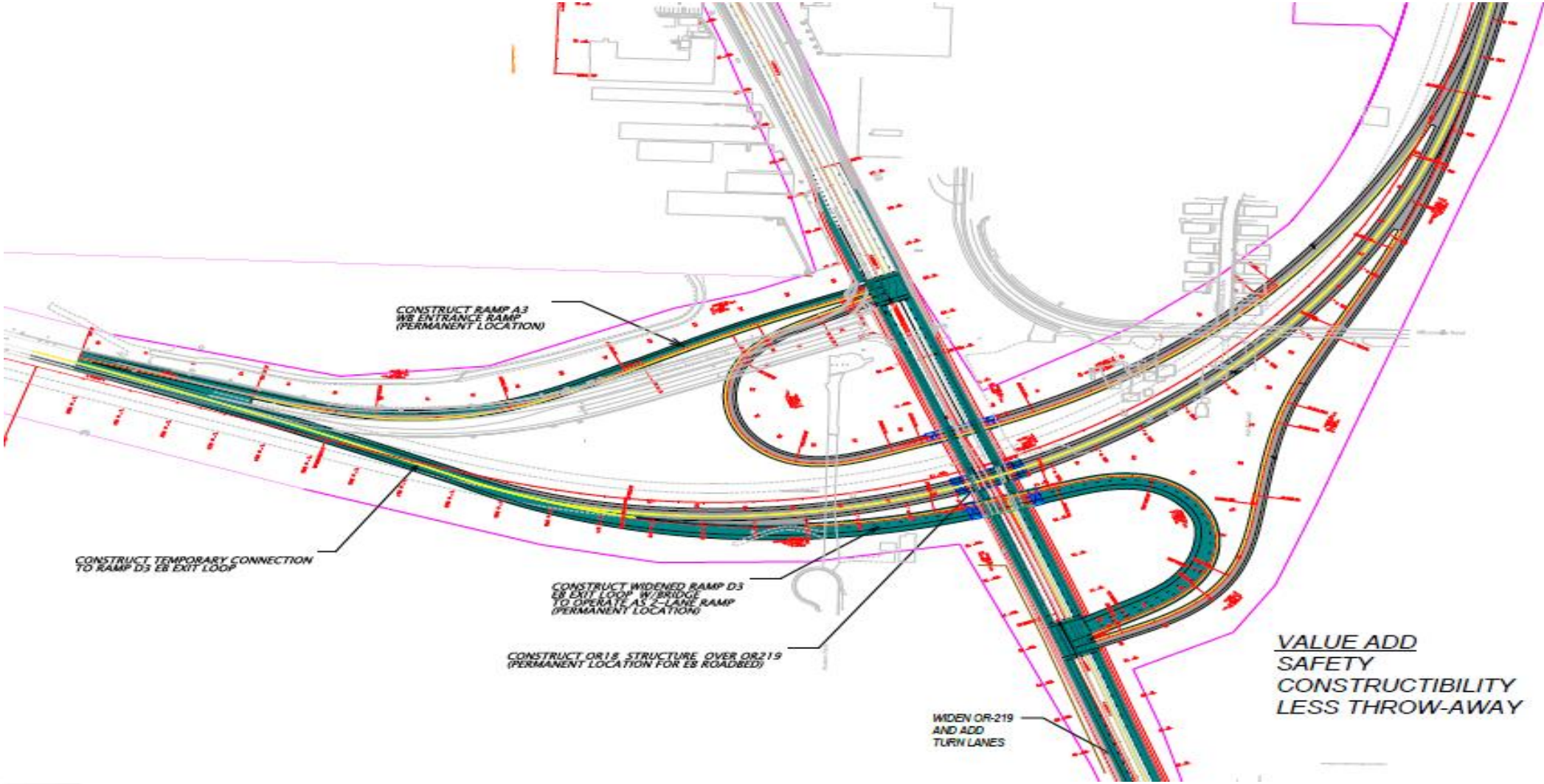


DESIGN VERIFICATION PLAN FOR REVIEW



VE Proposals P1-IS-03 & P4-OO-06

OR219/OR18 Bypass Parclo Interchange Eastbound Roadbed



Added on 1.25.21

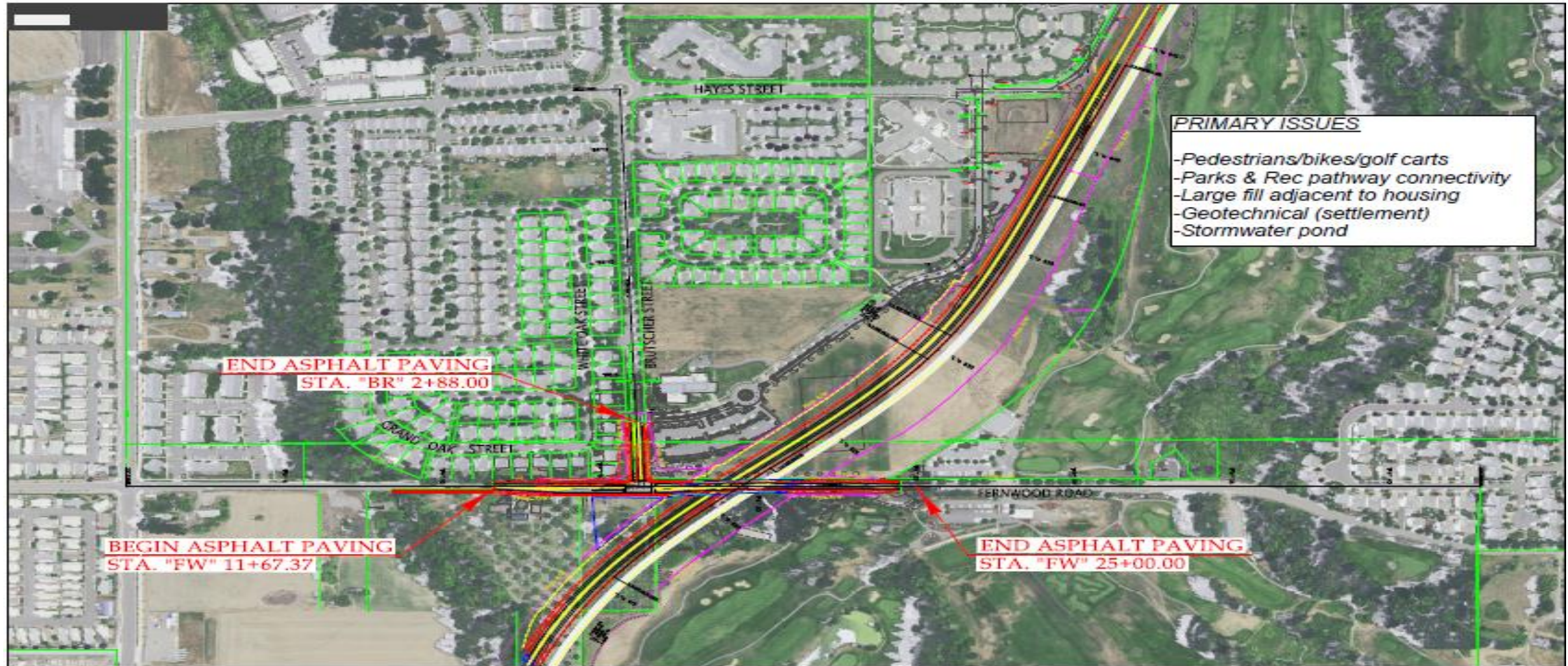
1856124

K19909 - OR18: Newberg-Dundee Bypass (Phase 2)

FERNWOOD VERIFICATION ROLL MAP

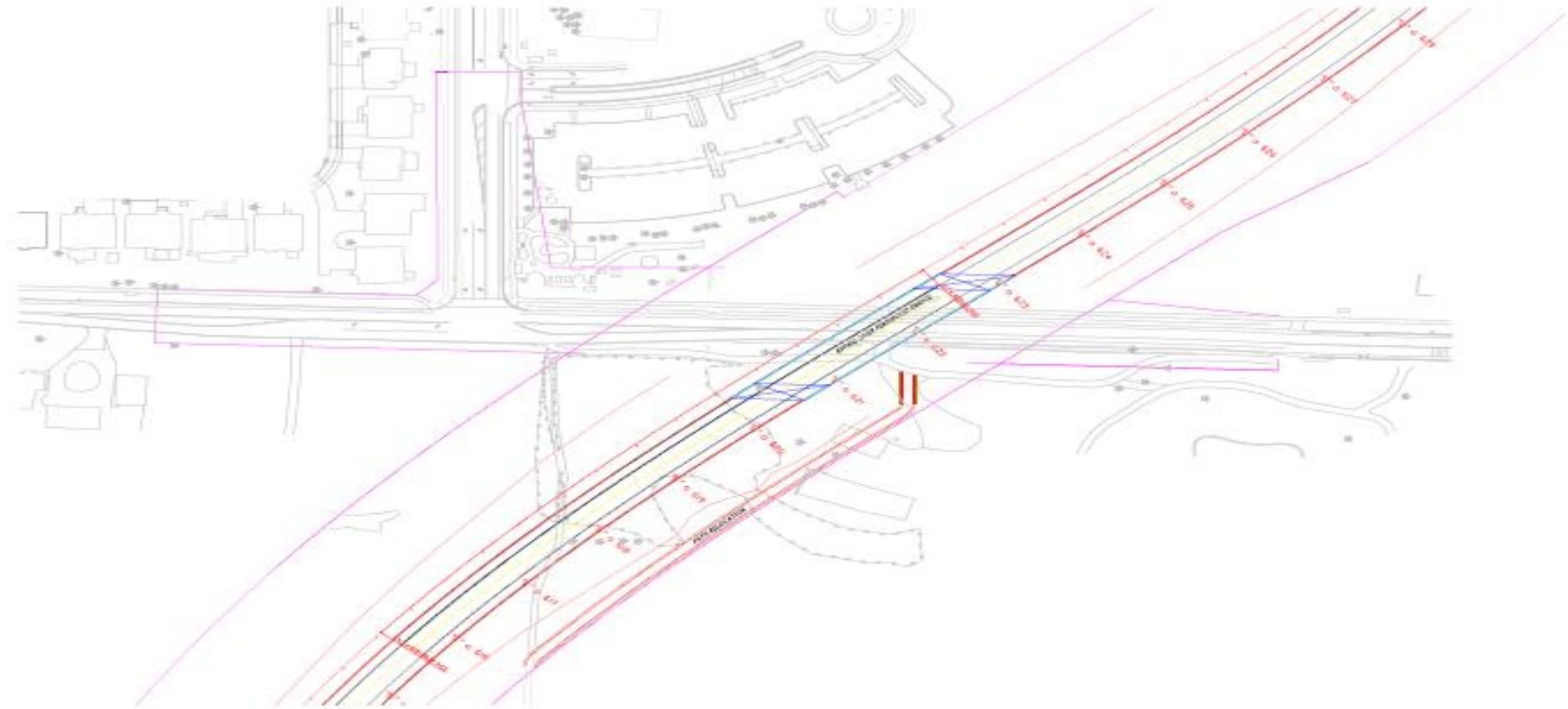
SEPTEMBER 30, 2020

DESIGN VERIFICATION PLAN FOR REVIEW



VE Proposals P2-ST-01 & P4-OO-06

OR18 Bypass Over Fernwood Rd Eastbound Roadbed



Added on 1.25.21

2076124

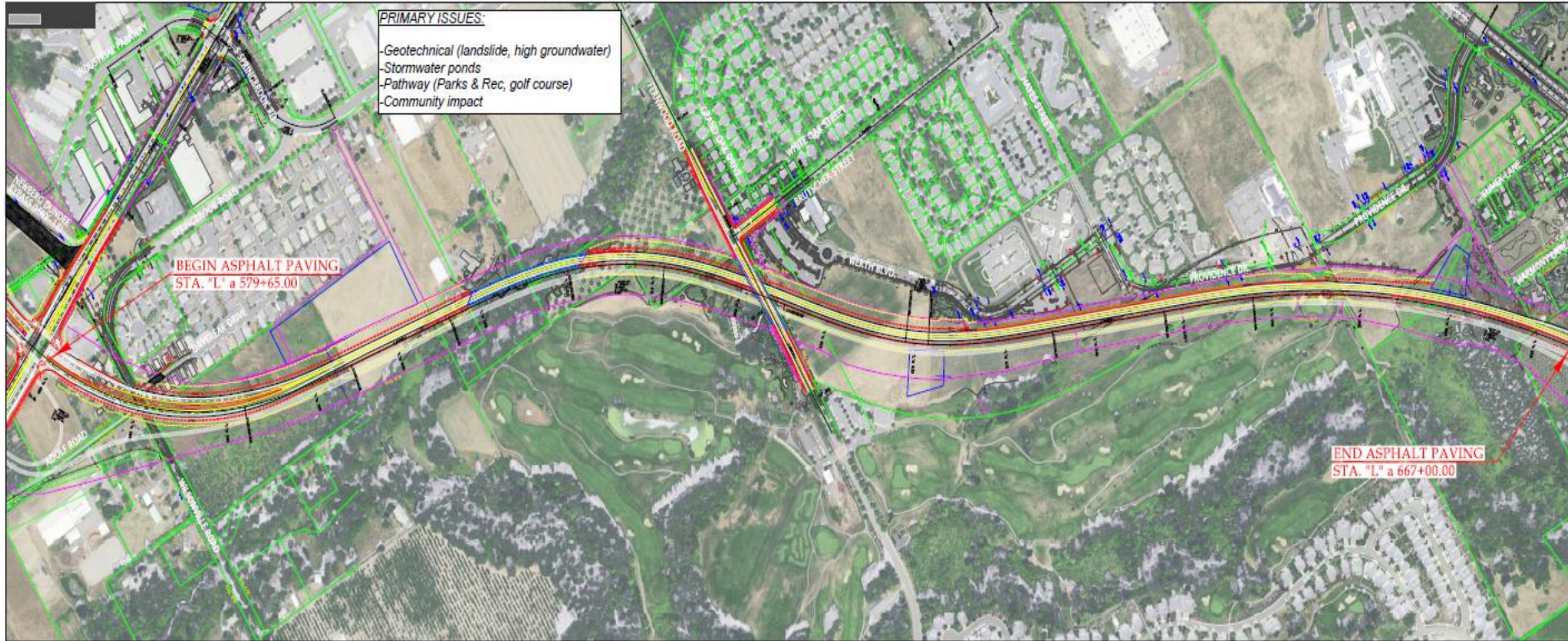
K19909 - OR18: Newberg-Dundee Bypass (Phase 2)

REMAINING PHASE 2 ALIGNMENT DESIGN VERIFICATION ROLL MAP

SEPTEMBER 30, 2020



DESIGN VERIFICATION PLAN FOR REVIEW

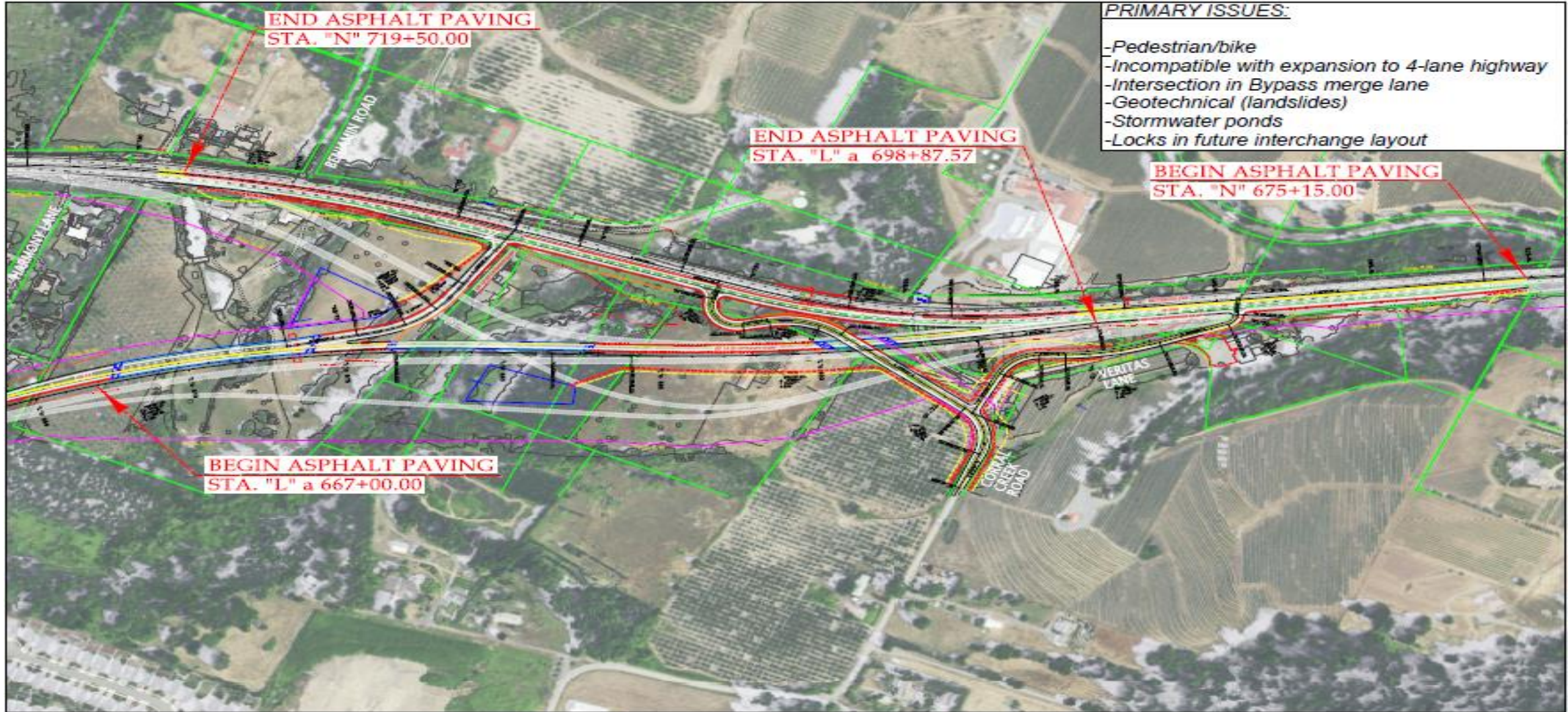


K19909 - OR18: Newberg-Dundee Bypass (Phase 2)

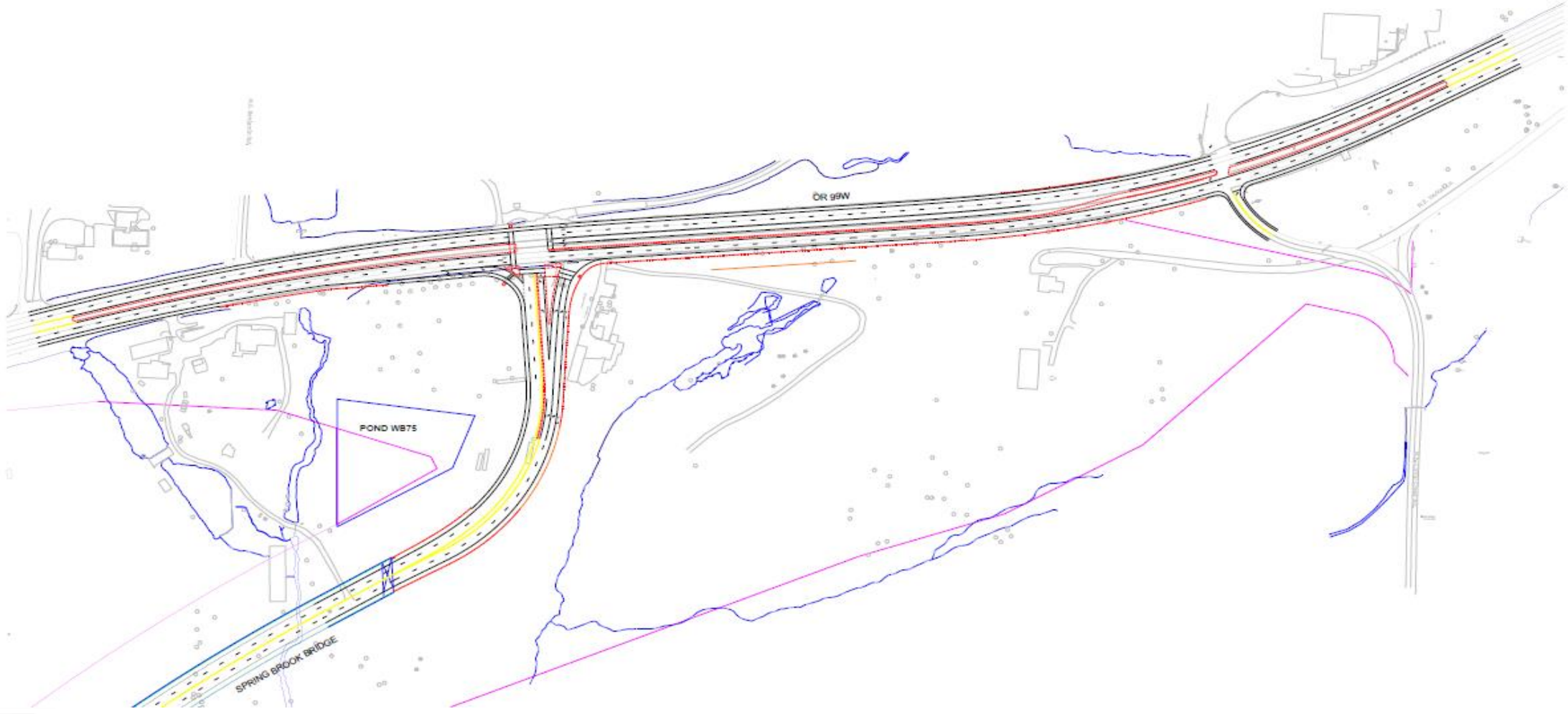
99W IMPROVEMENTS VERIFICATION ROLL MAP

SEPTEMBER 30, 2020

DESIGN VERIFICATION PLAN FOR REVIEW



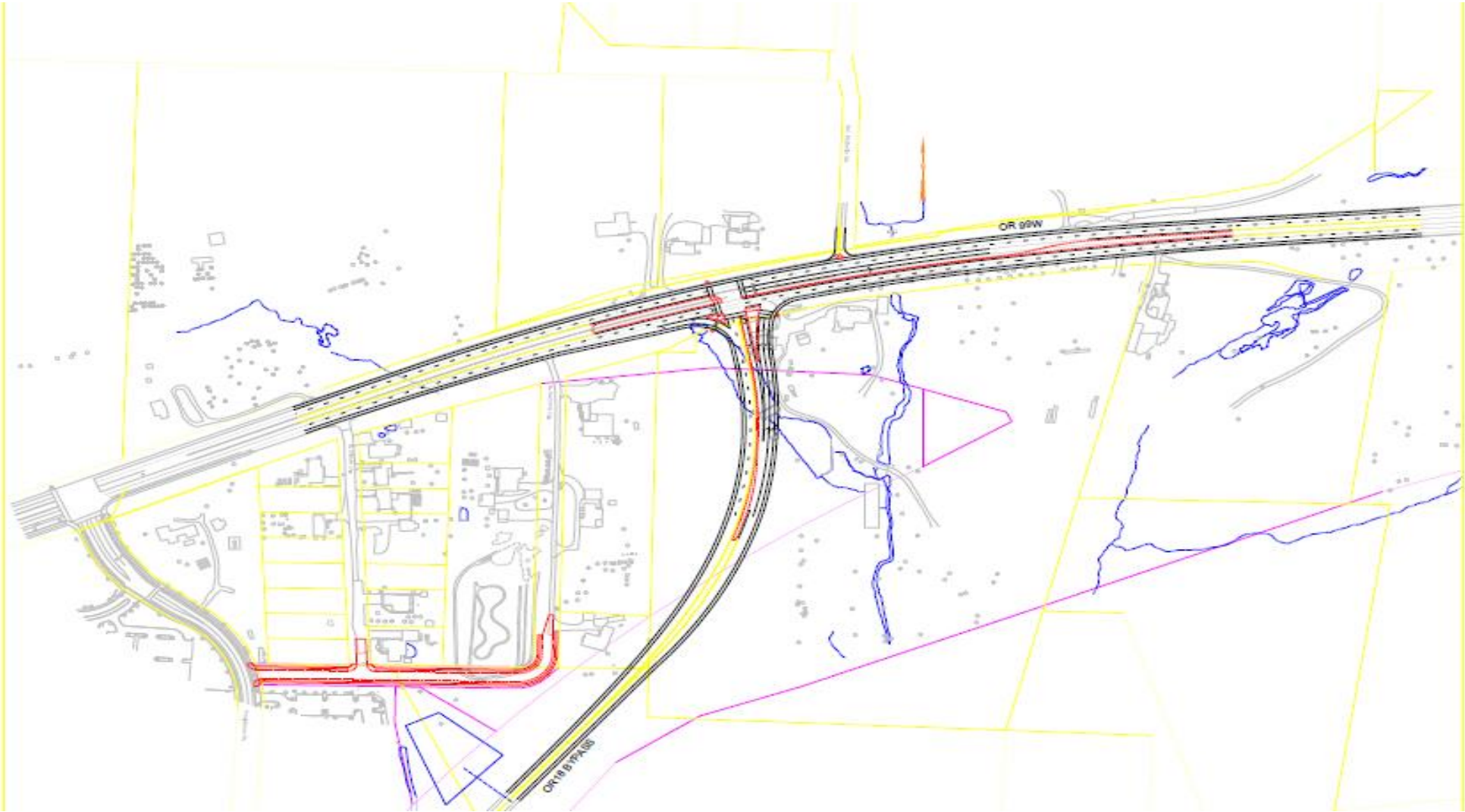
OR99W VE Options P4-OO-06 (Eastbound Roadbed) & P3-MLC-05 (Modified) – Eastern Location Signalized Intersection



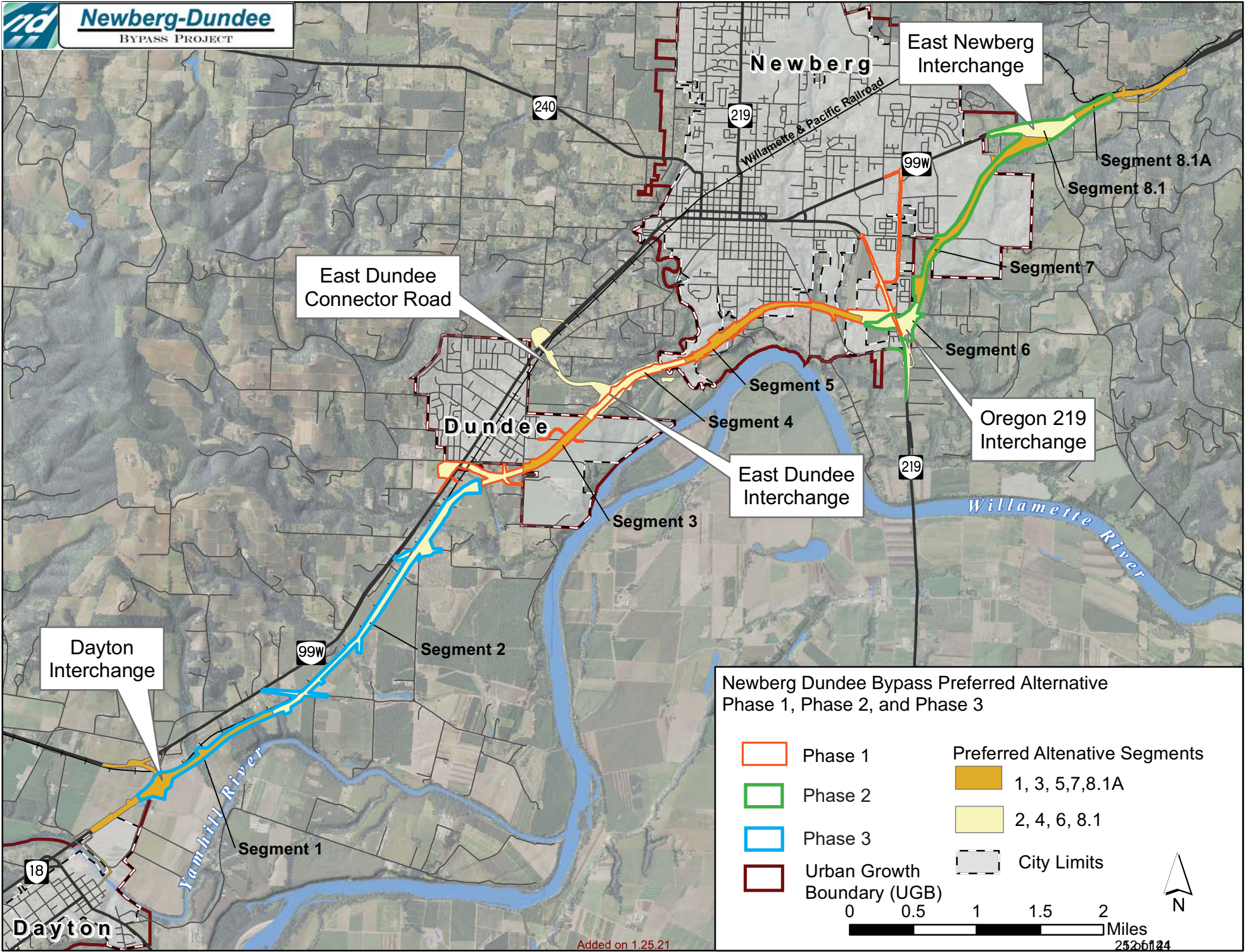
Added on 1.25.21

2306124








OR99W VE Options P4-OO-06 (Eastbound Roadbed) & P3-MLC-05 (Modified) – Western Location Signalized Intersection



Added on 1.25.21



**Newberg Dundee Bypass Preferred Alternative
Phase 1, Phase 2, and Phase 3**

	Phase 1		Preferred Alternative Segments 1, 3, 5, 7, 8.1A
	Phase 2		2, 4, 6, 8.1
	Phase 3		City Limits
	Urban Growth Boundary (UGB)		

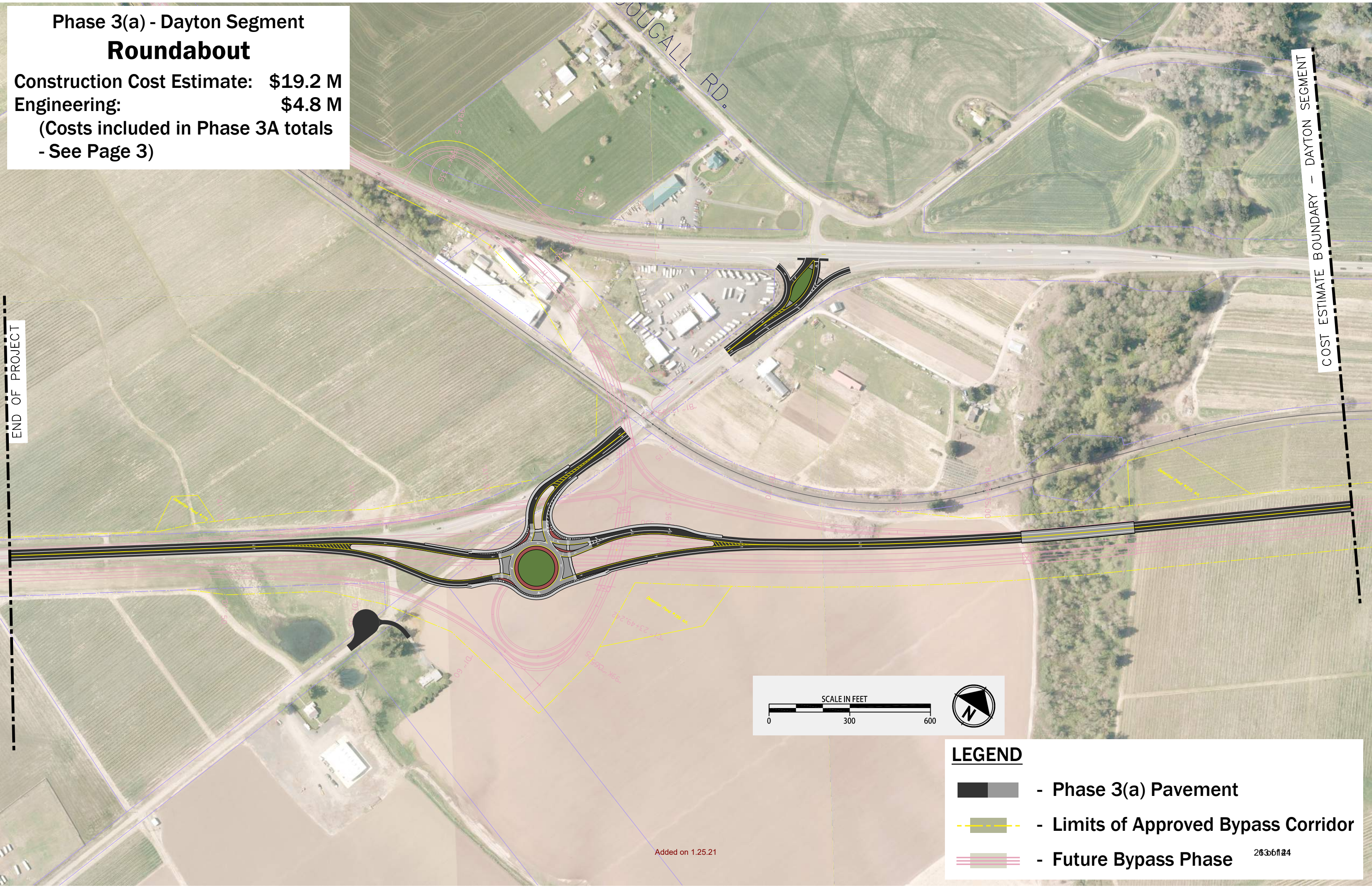
0 0.5 1 1.5 2 Miles

2526124

Phase 3(a) - Dayton Segment

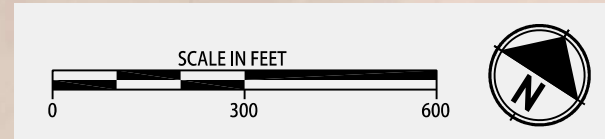
Roundabout

Construction Cost Estimate: \$19.2 M
Engineering: \$4.8 M
(Costs included in Phase 3A totals
- See Page 3)






END OF PROJECT

COST ESTIMATE BOUNDARY - DAYTON SEGMENT



LEGEND

-  - Phase 3(a) Pavement
-  - Limits of Approved Bypass Corridor
-  - Future Bypass Phase

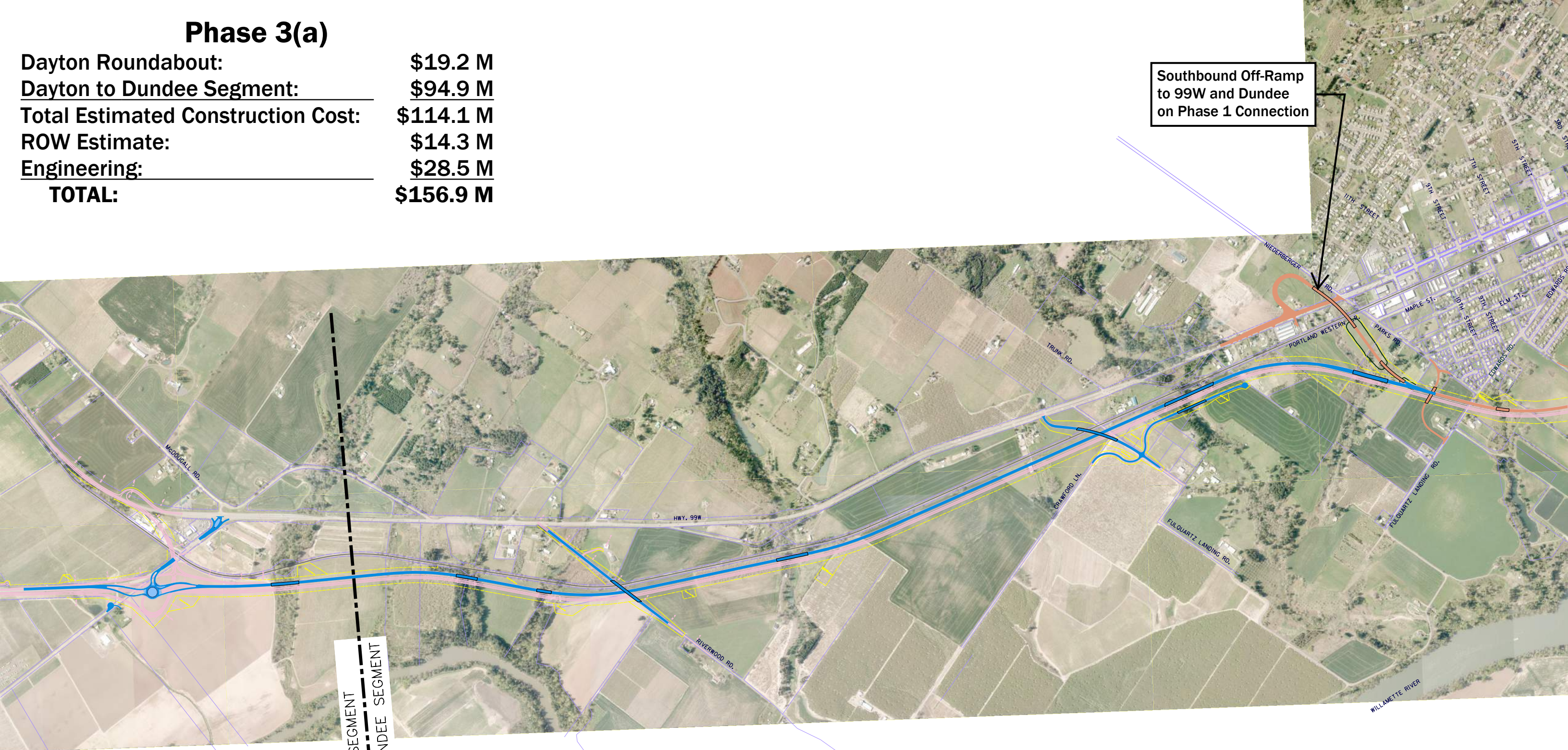
2636124

Added on 1.25.21

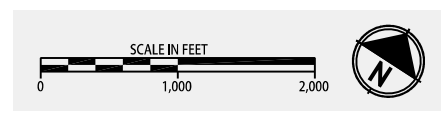
Phase 3(a)

Dayton Roundabout:	\$19.2 M
Dayton to Dundee Segment:	\$94.9 M
Total Estimated Construction Cost:	\$114.1 M
ROW Estimate:	\$14.3 M
Engineering:	\$28.5 M
TOTAL:	\$156.9 M

Southbound Off-Ramp to 99W and Dundee on Phase 1 Connection



DAYTON SEGMENT
DAYTON TO DUNDEE SEGMENT

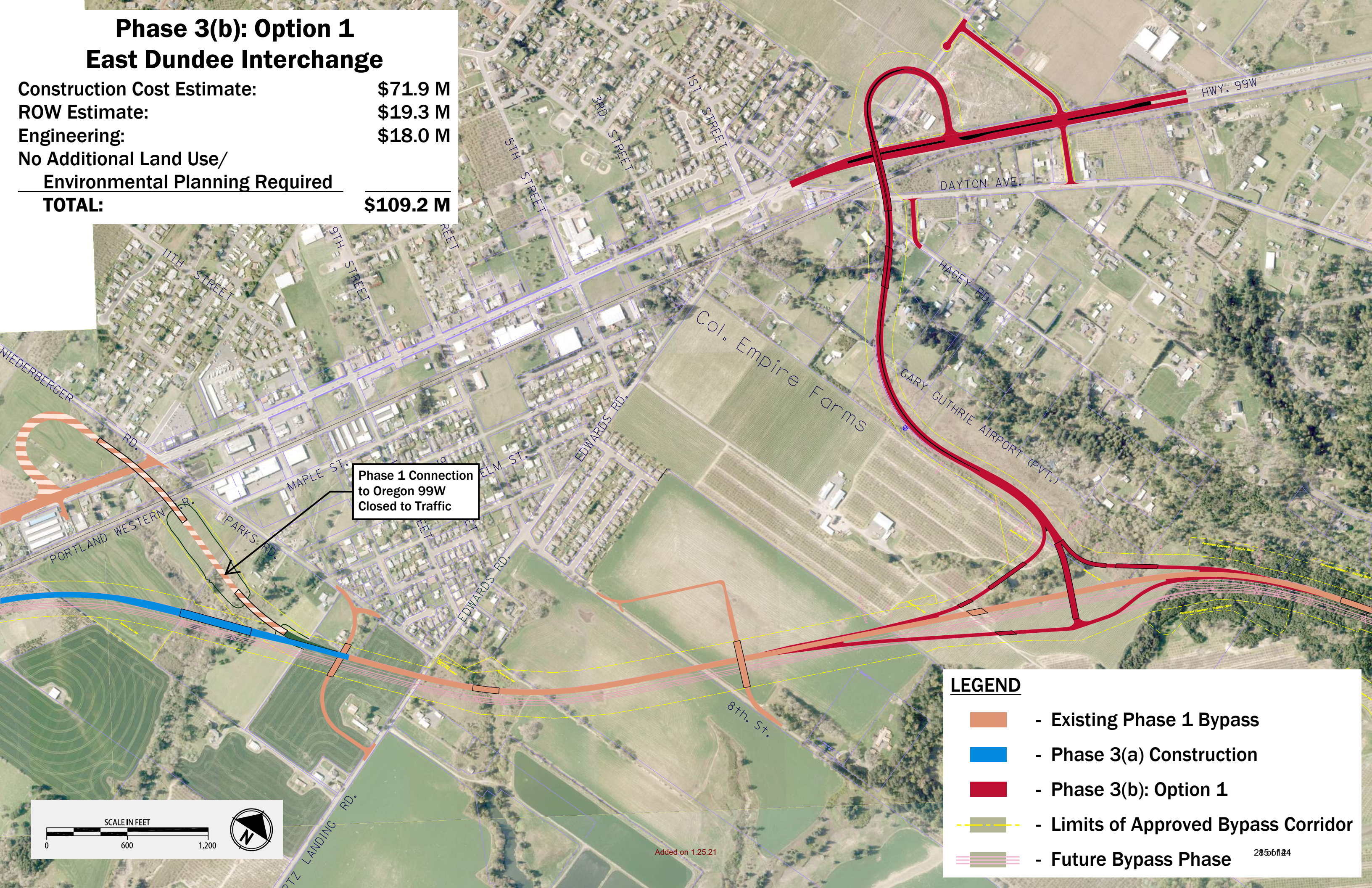


LEGEND

- Existing Phase 1 Bypass
- Phase 3(a) Construction
- Limits of Approved Bypass Corridor
- Future Bypass Phase

Phase 3(b): Option 1 East Dundee Interchange

Construction Cost Estimate:	\$71.9 M
ROW Estimate:	\$19.3 M
Engineering:	\$18.0 M
No Additional Land Use/ Environmental Planning Required	
TOTAL:	\$109.2 M



Phase 1 Connection
to Oregon 99W
Closed to Traffic

LEGEND

- Existing Phase 1 Bypass
- Phase 3(a) Construction
- Phase 3(b): Option 1
- Limits of Approved Bypass Corridor
- Future Bypass Phase







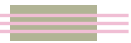
Added on 1.25.21

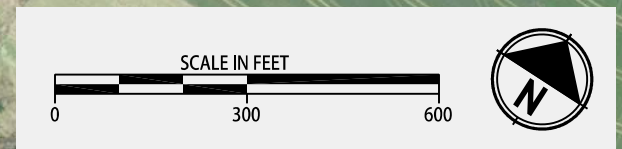
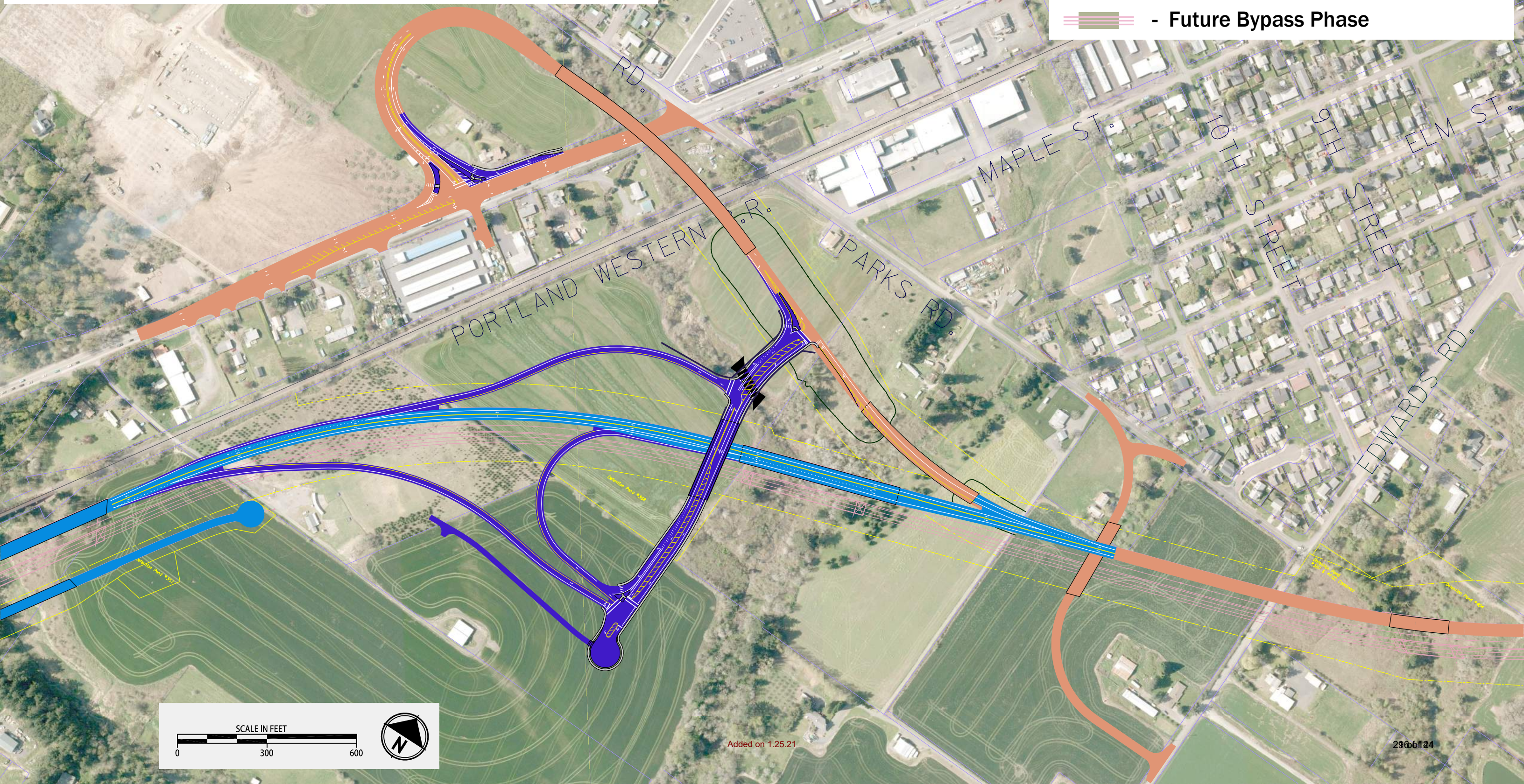
2856124

Phase 3(b): Option 2 - South Dundee Interchange

Construction Cost Estimate:	\$22.5 M
ROW Estimate:	\$1.0 M
Engineering:	\$5.6 M
County Land Use/Environmental Planning (18-24 months):	\$1.0 M
TOTAL:	\$30.1 M

LEGEND

-  - Existing Phase 1 Bypass
-  - Phase 3(a) Construction
-  - Phase 3(b): Option 2
-  - Limits of Approved Bypass Corridor
-  - Future Bypass Phase

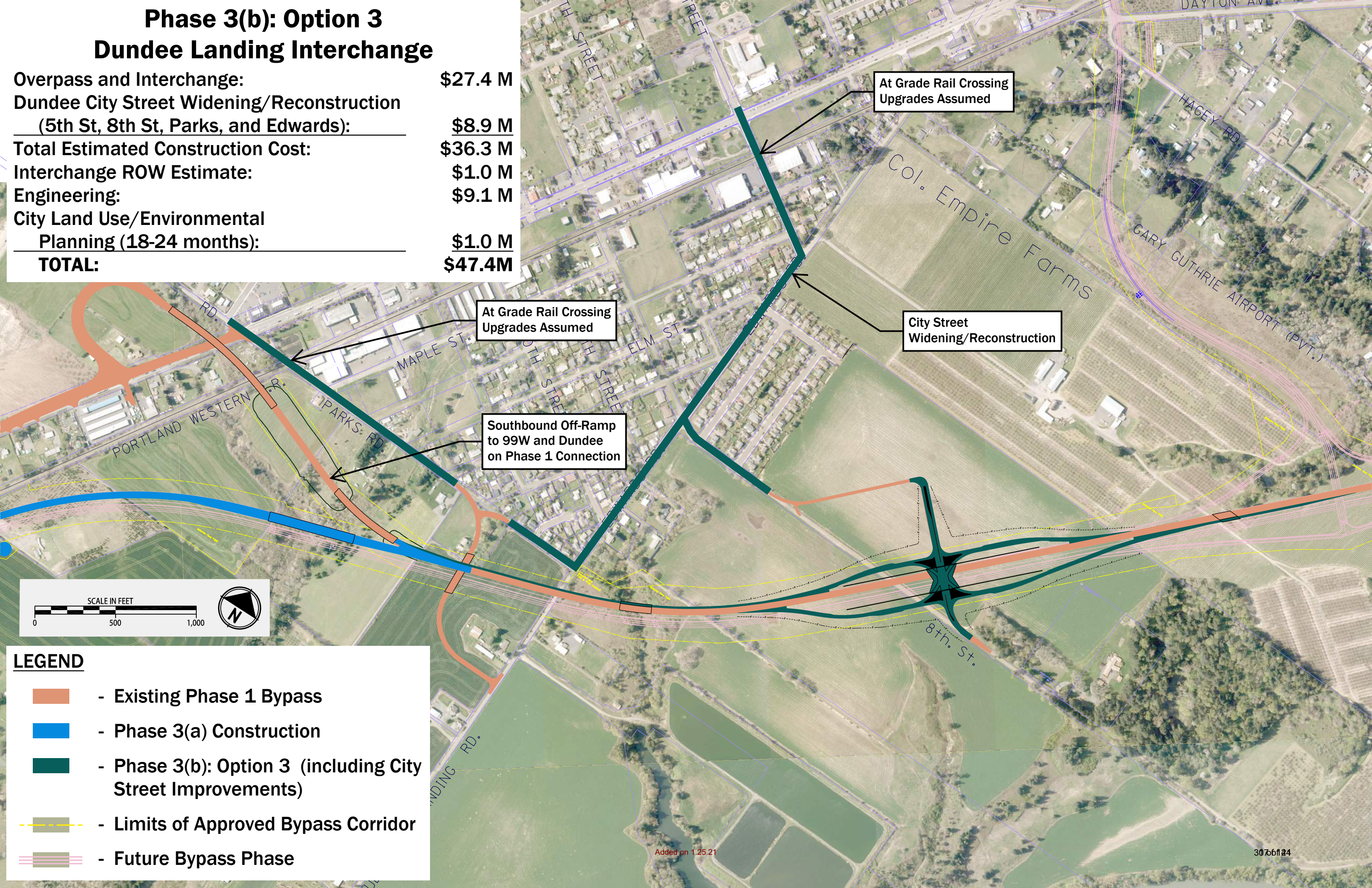


Added on 1.25.21

2906124

Phase 3(b): Option 3 Dundee Landing Interchange

Overpass and Interchange:	\$27.4 M
Dundee City Street Widening/Reconstruction (5th St, 8th St, Parks, and Edwards):	\$8.9 M
Total Estimated Construction Cost:	\$36.3 M
Interchange ROW Estimate:	\$1.0 M
Engineering:	\$9.1 M
City Land Use/Environmental Planning (18-24 months):	\$1.0 M
TOTAL:	\$47.4M

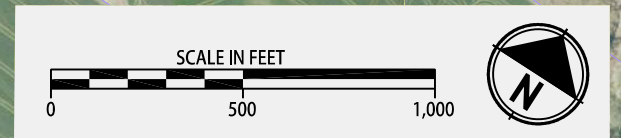


At Grade Rail Crossing
Upgrades Assumed

At Grade Rail Crossing
Upgrades Assumed

City Street
Widening/Reconstruction

Southbound Off-Ramp
to 99W and Dundee
on Phase 1 Connection



LEGEND

- Existing Phase 1 Bypass
- Phase 3(a) Construction
- Phase 3(b): Option 3 (including City Street Improvements)
- Limits of Approved Bypass Corridor
- Future Bypass Phase

Cost Estimate for Phase 3(a) and Dundee Interchange Options

	Phase 3(a) (\$ millions)	Phase 3(a) and East Dundee Interchange (\$ millions)	Phase 3(a) and South Dundee Interchange (\$ millions)	Phase 3(a) and Dundee Landing Interchange (\$ millions)
Dayton Roundabout	\$ 19.2	\$ 19.2	\$ 19.2	\$ 19.2
Dayton to Dundee	\$ 94.9	\$ 94.9	\$ 94.9	\$ 94.9
East Dundee Interchange		\$ 71.9		
South Dundee Interchange			\$ 22.5	
Dundee Landing Interchange and Dundee Street Improvements				\$ 36.3
Right-of-Way, Engineering, and Planning	\$ 42.8	\$ 80.1	\$ 50.4	\$ 53.9
Total Cost	\$ 156.9	\$ 266.1	\$ 187.0	\$ 204.3

Schedule A: Phase 3(a) and Dundee Interchange Selection

Task	2021											
	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	
Traffic Modeling/Analysis/Report	█											
• TPAU Modeling	█	█										
• Traffic Analysis			█	█	█	█						
• City Council Review of Traffic Impacts			█	█								
• Select Dundee Interchange Option					█	█	█					
• Phase 3 Final Report						█	█	█				
Phase 3(a) ready for detailed engineering design (DAP)								█				
East Dundee Interchange and Connector Road ready for detailed engineering design (DAP)								█				
Dundee Landing Interchange ready for Value Engineering and LU/Environmental Approval (see Schedule B)								█				
South Dundee Interchange ready for Value Engineering and LU/Environmental Approval (see Schedule C)								█				

Schedule B: Dundee Landing Interchange Value Engineering, Land Use, and Environmental Approval

Task	2021			2022												2023
	Oct	Nov	Dec	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan
Value Engineering Study																
Dundee TSP Amendment																
• Prepare TSP Amendment																
• Dundee Adoption																
NEPA FEIS Reevaluation																
• Field work																
• Prepare Reevaluation																
• ODOT Review/Revision																
• FHWA Review/Approval																

Schedule C: South Dundee Interchange Value Engineering, Land Use, and Environmental Approval

Task	2021			2022												2023
	Oct	Nov	Dec	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan
Value Engineering Study																
Yamhill County GE/TSP Amendment																
• County Planning Coordination																
• Prepare GE/Amendment																
• Yamhill County Adoption																
NEPA FEIS Reevaluation																
• Field work																
• Prepare Reevaluation																
• ODOT Review/Revision																
• FHWA Review/Approval																

CITY OF MCMINNVILLE - CASH AND INVESTMENT BY FUND
October 2020

FUND #	FUND NAME	GENERAL OPERATING		TOTAL
		CASH IN BANK	INVESTMENT	
01	General	\$1,862,919.85	(\$1,055,948.82)	\$806,971.03
05	Special Assessment	\$867.04	\$185,662.82	\$186,529.86
07	Transient Lodging Tax	\$842.38	\$96,000.00	\$96,842.38
10	Telecommunications	\$908.56	\$1,030.00	\$1,938.56
15	Emergency Communications	\$732.46	\$27,094.81	\$27,827.27
20	Street (State Tax)	\$927.90	\$1,559,655.46	\$1,560,583.36
25	Airport Maintenance	\$766.73	\$464,749.03	\$465,515.76
45	Transportation	\$332.91	\$3,403,760.36	\$3,404,093.27
50	Park Development	\$76.37	\$1,585,441.49	\$1,585,517.86
58	Urban Renewal	\$717.99	\$203,457.26	\$204,175.25
59	Urban Renewal Debt Service	\$562.54	\$107,548.38	\$108,110.92
60	Debt Service	\$308.24	\$273,458.81	\$273,767.05
70	Building	\$804.31	\$1,516,599.13	\$1,517,403.44
75	Wastewater Services	\$522.47	\$2,241,161.80	\$2,241,684.27
77	Wastewater Capital	\$987.04	\$34,060,103.65	\$34,061,090.69
80	Information Systems & Services	\$504.65	\$200,290.98	\$200,795.63
85	Insurance Reserve	\$667.29	\$1,144,290.54	\$1,144,957.83
CITY TOTALS		1,873,448.73	46,014,355.70	47,887,804.43

MATURITY			INTEREST	
DATE	INSTITUTION	TYPE OF INVESTMENT	RATE	CASH VALUE
N/A	Key Bank of Oregon	Checking & Repurchase Sweep Account	0.20%	\$ 1,873,448.73
N/A	Key Bank of Oregon	Money Market Savings Account	0.01%	\$ 13,035,429.45
N/A	State of Oregon	Local Government Investment Pool (LGIP)	0.91%	\$ 30,942,909.74
N/A	State of Oregon	Transportation Bond (LGIP)	0.91%	\$ 1,000,743.01
N/A	State of Oregon	Urban Renewal Loan Proceeds (LGIP)	0.91%	\$ 253,616.10
N/A	MassMutual Financial Group	Group Annuity	3.00%	\$ 781,657.40
				<u>\$ 47,887,804.43</u>
				\$ -



City of McMinnville
Community Development Department
231 NE Fifth Street
McMinnville, OR 97128
(503) 434-7312

www.mcminnvilleoregon.gov

STAFF REPORT

DATE: January 14, 2021
TO: Jeff Towery, City Manager
FROM: Mike Bisset, Community Development Director
SUBJECT: Three Mile Lane Bridge Replacement Project – ODOT Agreements

Report in Brief:

This action is the consideration of a resolution to approve Cooperative Improvement Agreement No. 34513 and Intergovernmental Agreement No. 34613 with the Oregon Department of Transportation, related to the Three Mile Lane Bridge replacement project.

Background:

The Oregon Department of Transportation (ODOT) continues their work on the project to replace the Three Mile Lane Bridge. The bridge was built in 1951 and is approaching the end of its functional lifespan with many components that are in poor condition.

This project will replace the South Yamhill River Bridge on a busy route into and out of McMinnville with a daily average daily traffic volume of 16,000 vehicles. The new bridge will replace the existing 35 foot wide bridge with a wider 48 foot wide bridge. This will better accommodate large trucks, bicycles and pedestrians.

The plan for construction anticipates that the contractor will construct a temporary, two-way detour bridge adjacent to the existing bridge. Then they will move traffic to the detour bridge; tear down the existing bridge; and construct the new permanent bridge in the existing alignment. Lastly, they will move traffic onto the new bridge, and remove the temporary detour bridge. During construction there will likely be times when traffic is impacted in one or both directions.

The new permanent bridge is planned to have wider sidewalks on both sides, as well as on-street bike lanes in both direction.

ODOT is planning to do a significant amount of public outreach regarding the planned work, and traffic impacts, as the project design is completed and construction nears.

The project construction is out to bid, with bids due on January 28, 2021. Project construction will begin in 2021, and is estimated to last four years.

More information regarding the project can be found on ODOT's website:

<https://www.oregon.gov/odot/projects/pages/project-details.aspx?project=19389>

Discussion:

As part of the project design, the City and McMinnville Water and Light (MWL) have coordinated with ODOT to include the installation of several utility lines within the bridge construction contract. ODOT has included in their project construction documents the following City and MWL facilities: construction of a 16” ductile iron sewer force main (City); and a 12” ductile iron water main, four 3” diameter steel conduits for power, and two 2” diameter steel conduits for fiber optic utilities (MWL).

The City and MWL will be responsible for the costs of the construction of their respective utilities, and each agency will be responsible for the long term maintenance of their facilities. The attached Cooperative Improvement (Utility) Agreement No. 34513 addresses the construction of the City’s facilities, and attached Intergovernmental Agreement No. 34613 addresses the maintenance of the City’s facilities.

MWL will enter into separate, similar agreements.

Attachments:

1. Resolution No. 2021-04
2. Cooperative Improvement (Utility) Agreement No. 34513
3. Intergovernmental Agreement No. 34613

Fiscal Impact:

Funding for the construction the City’s facilities is included in the Wastewater Capital Fund (77) budget.

Legal Review:

Legal reviewed the agreements and negotiated with MWL and ODOT/Oregon Department of Justice regarding the terms of the agreements. In particular, the City sought to ensure that it will be sufficiently protected against any damages or delays caused by ODOT and/or ODOT’s contractor(s). ODOT has included the City as an additional insured and indemnitee in the proposed construction contract that will be executed between ODOT and the successful bidder. The City also sought to be named as an obligee in the performance bond required of the successful bidder, as allowed under ORS 279C.380, but ODOT/DOJ refused to do so.

Although the City is not an obligee under the proposed performance bond, the terms of the Cooperative Improvement Agreement represents a compromise between the City and ODOT where ODOT agrees to complete the project and included a recital that the City would be an additional insured and indemnitee under the construction contract.

Recommendation:

Staff recommends the City Council adopt the attached resolution approving Cooperative Improvement Agreement No. 34513 and Intergovernmental Agreement No. 34613 with the Oregon Department of Transportation, related to the Three Mile Lane Bridge replacement project.

RESOLUTION NO. 2021 - 04

A Resolution authorizing the approval of Cooperative Improvement Agreement No. 34513 and Intergovernmental Agreement No. 34613 with the Oregon Department of Transportation, related to the Three Mile Lane Bridge replacement project.

RECITALS:

The Oregon Department of Transportation (ODOT) continues their work on the project to replace the Three Mile Lane Bridge.

As part of the project design, the City and McMinnville Water and Light (MWL) have coordinated with ODOT to include the installation of several utility lines within the bridge construction contract. ODOT has included in their project construction documents the following City and MWL facilities: construction of a 16" ductile iron sewer force main (City); and a 12" ductile iron water main, four 3" diameter steel conduits for power, and two 2" diameter steel conduits for fiber optic utilities (MWL).

The City and MWL will be responsible for the costs of the construction of their respective utilities, and each agency will be responsible for the long term maintenance of their facilities. The attached Cooperative Improvement (Utility) Agreement No. 34513 addresses the construction of the City's facilities, and attached Intergovernmental Agreement No. 34613 addresses the maintenance of the City's facilities.

MWL will enter into separate, similar agreements.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON, as follows:

1. That entry into Cooperative Improvement Agreement No. 34513 and Intergovernmental Agreement No. 34613 with the Oregon Department of Transportation, related to the Three Mile Lane Bridge replacement project, is approved.
2. The City Manager is hereby authorized and directed to execute Cooperative Improvement Agreement No. 34513 and Intergovernmental Agreement No. 34613.
3. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Common Council of the City of McMinnville at a meeting held the 26th day of January 2021 by the following votes:

Ayes: _____

Nays: _____

Approved this 26th day of January 2021.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

COOPERATIVE IMPROVEMENT (UTILITY) AGREEMENT
Project Name OR18 McMinnville Spur: South Yamhill River Bridge Sec.

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 "ODOT"; and the **City of McMinnville**, acting by and through its elected officials, hereinafter referred to as "Agency", both herein referred to individually or collectively as "Party" or "Parties".

RECITALS

1. **McMinnville Spur Highway #483**, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
2. By the authority granted in Oregon Revised Statutes (ORS) [190.110](#), [366.572](#) and [366.576](#), ODOT 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.
3. ODOT, by ORS [366.220](#), is vested with complete jurisdiction and control over the roadways of other jurisdictions taken for state highway purposes. By the authority granted by ORS [373.020](#), the jurisdiction extends from curb to curb, or, if there is no regular established curb, then control extends over such portion of the right of way as may be utilized by ODOT for highway purposes. Responsibility for and jurisdiction over all other portions of a city street remains with the Agency.
4. By the authority granted in ORS [366.425](#), ODOT 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, ODOT shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
5. ODOT is conducting a project to **replace bridge #06758, the South Yamhill River Bridge on the McMinnville Spur Highway #483 ("bridge")**. While the **bridge** is under construction, ODOT will use this opportunity to replace a **sewer** line that is attached to the bridge.
6. ODOT has posted solicitation documents for the replacement of the bridge, Contract Number 15258. The bid opening date is currently set for January 28, 2021. The solicitation documents include the Bid Booklet, the Standard Provisions for Highway Construction and the Special Provisions for Highway Construction. Standard Provisions, section 170, requires a successful bidder to identify as additional insureds and to indemnify, defend and hold harmless: the City of McMinnville and its officers, agents and employees, the City of McMinnville City Council and the City of

McMinnville, acting by and through its Water and Light Commission, for McMinnville Water & Light and its officers, agents and employees.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, ODOT and Agency agree that ODOT or its contractor shall install Agency's non reimbursable **sewer lines** located within the **bridge** hereinafter referred to as "Project." The Project shall be consistent with the items listed on Exhibit B and includes the construction of a new sanitary sewer force main on the new bridge structure and in the adjacent roadway between Cumulus Avenue and Brooks Street and incidental work as specified in the 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.
2. The Project will be financed at an estimated cost of **\$1,134,957.60** in Agency funds. The estimate for the total Project cost is subject to change. Agency shall be responsible for all **Project costs** as described in Exhibit B, attached hereto, and by this reference made a part hereof.
3. Agency and ODOT shall coordinate Change Order(s) affecting the Utility's facilities. The fillable Contract Change Order, form 734-1169, is available at the following web site:

<https://www.oregon.gov/odot/Construction/Pages/Forms.aspx>
4. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.
5. The Parties acknowledge and agrees that each Party, including the ODOT, the Oregon Secretary of State's Office, the federal government, and each Party's duly authorized representatives shall have access to the books, documents, papers, and records of each Party which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting Party.

AGENCY OBLIGATIONS

1. Agency grants ODOT the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
2. Agency shall upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from ODOT, forward to ODOT an advance deposit or irrevocable letter of credit in the amount of **\$1,134,957.60** for the Project, said amount being equal to the estimated total cost for the work performed by ODOT at Agency's request under ODOT Obligations, paragraph 2. Agency agrees to make additional deposits as needed upon request from ODOT. Depending upon the timing of portions of the Project to which the advance deposit contributes, it may be requested by ODOT prior to Preliminary Engineering, purchase of right of way, or immediately upon execution of this Agreement.
3. Upon completion of the Project and receipt from ODOT of an itemized statement of the actual total cost of ODOT's participation for the Project, Agency shall pay any amount which, when added to Agency's advance deposit, will equal 100 percent of actual total ODOT costs for the Project. Any portion of said advance deposit which is in excess of the ODOT's total costs will be refunded or released to Agency.
4. All Agency **sewer lines** and appurtenances installed by ODOT or its contractor will require inspections by Agency. Agency personnel will work directly with ODOT personnel. Agency shall not contact or communicate with ODOT's contractor without ODOT's consent. Agency will provide all necessary documentation to ODOT. ODOT shall present to Agency any Contract Change Order for review and written approval by Agency.
5. Agency, if a City, 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.
6. Agency's Project Manager for this Project is Mike Bisset, 231 NE Fifth St, McMinnville, OR 97128, (503) 474-5138, Mike.Bisset@mcminnvilleoregon.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.

ODOT OBLIGATIONS

1. The ODOT shall deliver the Project as defined in paragraph 1, Terms of Agreement above. ODOT, 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. ODOT shall, upon execution of this Agreement forward to Agency a letter of request for an advance deposit or irrevocable letter of credit in the amount of **\$1,134,957.60** for payment of **Project costs**. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete Project.
3. Upon completion of the Project, ODOT shall either send to Agency a bill for the amount which, when added to Agency's advance deposit, will equal 100 percent of the total state costs for Project or ODOT will refund to Agency any portion of said advance deposit which is in excess of the total ODOT costs for Project.
4. ODOT 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.
5. All employers, including ODOT, 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. ODOT shall ensure that each of its contractors complies with these requirements.
6. ODOT 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 [279C.505](#), [279C.515](#), [279C.520](#), [279C.530](#) and [279B.270](#) incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, ODOT expressly agrees to comply with (i) [Title VI of Civil Rights Act of 1964](#); (ii) [Title V and Section 504 of the Rehabilitation Act 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.
7. ODOT's Project Manager for this Project is Valerie Greenway, Sr. Transportation Project Manager, ODOT- Region 2 Headquarters, 455 Airport Road SE, Building B, Salem, OR 97301, 503-986-2600, Valerie.GREENWAY@odot.state.or.us, or assigned designee upon individual's absence. ODOT 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 either Party upon thirty (30) days notice, in writing and delivered by certified mail or in person.
2. Either Party may terminate this Agreement effective upon delivery of written notice to the other Party, or at such later date as may be established by that Party, under any of the following conditions:
 - a. If the other Party fails to provide the services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If the other Party 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 the other Party fails to correct such failures within ten (10) days or such longer period as the other Party may authorize.
 - c. If either Party fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow that Party, in the exercise of its reasonable administrative discretion, to continue to advance this Project or the terms 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 Agency is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
5. With respect to a Third Party Claim for which ODOT is jointly liable with Agency (or would be if joined in the Third Party Claim), ODOT 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 ODOT 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 ODOT 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. ODOT'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 ODOT had sole liability in the proceeding.

6. With respect to a Third Party Claim for which Agency is jointly liable with ODOT (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 ODOT in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of ODOT 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 ODOT on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
7. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
8. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
9. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

ODOT/City of McMinnville
Agreement No. 34513

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.

CITY OF MCMINNVILLE by and through its
elected officials

By _____

Title _____

Date _____

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

By _____
Agency Counsel

Date _____

Agency Contact:

Mike Bisset
Community Development Director
City of McMinnville
231 NE Fifth Street
McMinnville, OR 97128
503.474.5138
mike.bisset@mcminnvilleoregon.gov

ODOT Contact:

Tammy Saldivar, State Utility Liaison
ODOT – Technical Services
4040 Fairview Ind. Drive SE MS#2
Salem OR 97302
503-986-3658
Tammy.Saldivar@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____

Delivery and Operations Division
Administrator, Karen Rowe

Date _____

APPROVAL RECOMMENDED

By _____
Region 2 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General (If Over
\$150,000)

Date _____

EXHIBIT A – Project Location Map

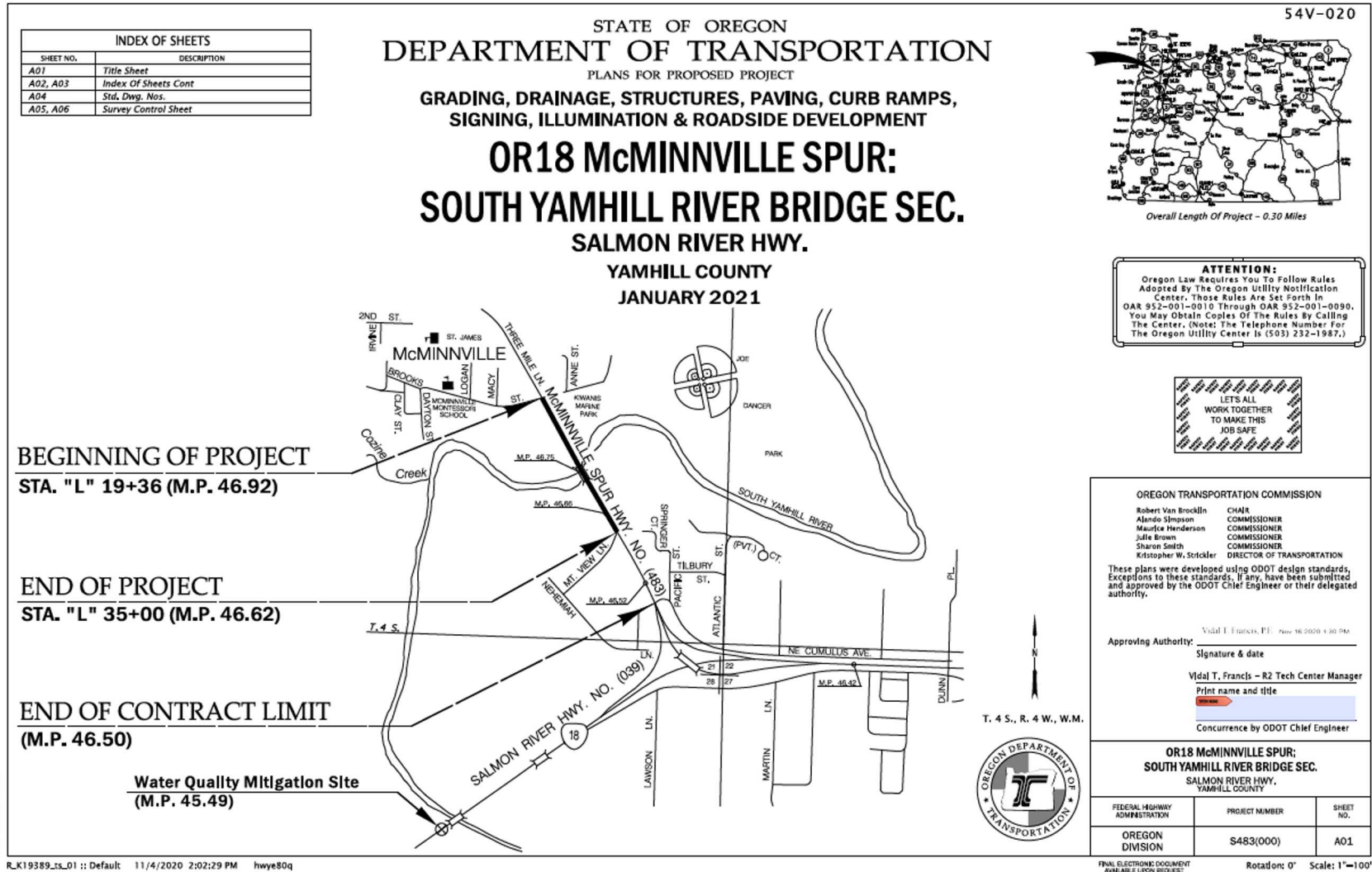


EXHIBIT B

KN - 19389

OR18 McMinnville Spur: South Yamhill River Bridge
 Bridges and Structures
 Yamhill

Engineer's Cost Estimate (Final) - City of McMinnville Items
 Date 10/27/2020
 Note: estimate to be merged into ODOT OR18 Bridge Replacement Project

Spec. No.	Item No.	Item	Bid Unit	Est. Unit	Quantity
TEMPORARY FEATURES AND APPURTENANCES					
00210	10	Mobilization	LS	LS	1
00221	20	Temporary Protection and Direction of Traffic	LS	LS	1
00222	30	Temporary Signs	SQFT	SQFT	355
00224	40	Temporary Barricades, Type III	Each	Each	8
00224	50	Temporary Plastic Drums	Each	Each	6
00224	60	Temporary Striping	LF	LF	1,928
00224	70	Stripe Removal	LF	LF	1,237
00222	80	Portable Changeable Message Signs	Each	Each	6,500
00223	90	Flaggers	Hour	Hour	240
00223	100	Flagger Lighting Station	Each	Each	3
00295	110	Remove Asbestos Material, Non-Friable	LF	LF	8
ROADWORK					
00310	120	Removal of Pipes	LF	LF	55
00490	130	Filling Abandoned Structures	Each	Each	1
DRAINAGE AND SEWERS					
00445	140	Concrete in Blocks	CUYD	CUYD	18
00495	150	Trench Resurfacing	SQYD	SQYD	520
BRIDGE NO. 22688					
00589	160	Utility Attachment on Structures, 16 Inch Sanitary Force Main	LS	LS	1
FORCE MAIN PIPE AND VALVE					
01340	170	12 Inch Connection to 12 Inch Existing Force Main	Each	Each	1
01340	180	16 Inch Connection to 16 Inch Existing Force Main	Each	Each	1
01340	190	20 Inch Connection to 20 Inch Existing Force Main	Each	Each	1
01340	200	12 Inch PVC Force Main Pipe with Restrained Joints and Class B Backfill	Foot	Foot	30
01340	210	16 Inch PVC Force Main Pipe with Restrained Joints and Class B Backfill	Foot	Foot	1,150
01340	220	16 Inch Ductile Iron Force Main Pipe with Restrained Joints and Class B Backfill	Foot	Foot	100
01340	230	16 Inch Ductile Iron Force Main Pipe with Restrained Joints on Structure	Foot	Foot	957
01340	240	16 Inch Ductile Iron Force Main Pipe with Restrained Joints in Casing	Foot	Foot	72
01340	250	30 Inch Steel Pipe Casing	Foot	Foot	72
01340	260	12 Inch Force Main Gate Valve	Each	Each	1
01340	270	16 Inch Force Main Gate Valve	Each	Each	1
01340	280	Ductile Iron Force Main Pipe Bends, 12 Inch	Each	Each	2
01340	290	Ductile Iron Force Main Pipe Transition Coupling, 12 Inch	Each	Each	1
01340	300	Ductile Iron Force Main Pipe Tee, 16x12 Inch	Each	Each	1
01340	310	Ductile Iron Force Main Pipe Bends, 16 Inch	Each	Each	9
01340	320	Ductile Iron Force Main Pipe Coupling, 16 Inch	Each	Each	2
01340	330	Ductile Iron Force Main Pipe Transition Coupling, 16 Inch	Each	Each	1
01340	340	Ductile Iron Force Main Pipe Reducer, 20x16 Inch	Each	Each	1
01340	350	Double-Ball Flexible Expansion Joints, 16 Inch	Each	Each	2
01340	360	Extra Trench Excavation with Class B Backfill	CUYD	CUYD	50

SUB-TOTAL OF ITEMS	\$ 1,096,577.39
Construction Engineering	\$ -
Subtotal of Biddable Items and CE	\$ 1,096,577.39
Contingencies (@3.5%):	\$ 38,380.21
Grand Total	\$ 1,134,957.60

INTERGOVERNMENTAL AGREEMENT
Oregon Route 18 McMinnville Spur: South Yamhill River Bridge
Maintenance Agreement
City of McMinnville

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 "ODOT" or "State;" and the CITY OF MCMINNVILLE, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572 and 366.576 State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. McMinnville Spur Highway No. 483 is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Cumulus Avenue and Brooks Street are part of the city street system under the jurisdiction and control of Agency.
3. State, by ORS 366.220, is vested with complete jurisdiction and control over the roadways of other jurisdictions taken for state highway purposes. By the authority granted by ORS 373.020, the jurisdiction extends from curb to curb, or, if there is no regular established curb, then control extends over such portion of the right of way as may be utilized by State for highway purposes. Responsibility for and jurisdiction over all other portions of a city street remains with the Agency.
4. State is implementing a project to replace bridge number 06758 identified in the Statewide Transportation Improvement Plan (STIP) as OR 18 McMinnville Spur: South Yamhill River Bridge, with key number 19389 ("STIP Project"). Agency, at Agency expense, desires State to include installation of sanitary sewer utilities while constructing the STIP Project.
5. State and Agency intend to enter Cooperative Improvement (Utility) Agreement No. 34513 for installation of a new sanitary sewer force main and appurtenances on the new bridge structure and in the adjacent roadway between Cumulus Avenue and Brooks Street, located on McMinnville Spur Highway No. 483, identified as "Project" by Agreement No. 34513, hereinafter referred to as "Utilities Project".
6. State and Agency enter this maintenance agreement to delineate the obligations of the Parties for ongoing maintenance and cost of operation for the Utilities Project, upon completion of the STIP Project.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, State and Agency agree that upon completion of the STIP Project, Agency shall own and maintain the sanitary sewer force main and appurtenances that are installed and identified as the Project in Agreement No. 34513.
2. This Agreement shall become effective on the date all required signatures are obtained and shall survive the completion of the STIP Project and termination of the Utilities Project Agreement No. 34513.

AGENCY OBLIGATIONS

1. Agency shall, at its own expense, be responsible for the operation of and ongoing maintenance of the new sanitary sewer force main and all appurtenances.
2. Agency's tasks associated with the maintenance responsibilities referred to above are as defined in the current editions of the Oregon Department of Transportation Maintenance Field Operations Manual, Maintenance Management System (MMS) Manual, and the Routine Road Maintenance Water Quality and Habitat Guide, Best Management Practices Manual which are herein incorporated by reference and located at the following address:

<http://www.oregon.gov/ODOT/HWY/OOM/Pages/publications.aspx>

3. Agency must follow State lane closure guidelines including Motor Carrier notification, short-term traffic control, and the Manual on Uniform Traffic Control Devices (MUTCD). Agency shall notify ODOT District 3, one (1) week in advance of any lane closures or impact to the travel lanes.
4. Agency shall obtain a miscellaneous permit to occupy State right of way through the District 3 Office prior to the commencement of maintenance.
5. **Americans with Disabilities Act Compliance:**
 - a. Agency shall ensure that the services it provides under this Agreement ("Services") comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"). Agency shall use ODOT standards to assess whether the Services comply with the ADA, including, but not limited to, ODOT Maintenance Operational Notices MG 100-107 ("MG 100-107"), MG144-03 ("MG144-03"), and MG Activities-2 ("MG Activities2").
 - b. The scope of the Services performed under this Agreement is limited to maintenance activities and shall not include alteration, upgrade, or construction of sidewalks or curb ramps, or installation of pedestrian activated signals.

- c. Agency shall:
- i. Promptly notify ODOT of completion of Services and allow ODOT to inspect completed Services located on or along a state highway for ADA compliance, prior to acceptance of such Services and release of any Agency contractor, and
 - ii. Ensure that temporary pedestrian routes are provided through or around any work zone as provided in MG Activities-2 and Chapters 1 and 5 of the Oregon Temporary Traffic Control Handbook 2011 (“OTTCH”). For Services included in MG Activities-2 “Situations” Paragraph 2, Agency shall provide ODOT with adequate information to allow ODOT to provide advance notice of any temporary pedestrian route to the public, people with disabilities, and disability organizations. The Parties acknowledge that providing advance notice may not be possible in some such circumstances, including but not limited to, when Services are provided on an urgent or emergency basis, or where the nature and location of the Services are unknown until the beginning of the workers’ shift.
- d. ODOT Maintenance Operational Notices MG 100-107, MG144-03, MG Activities-2, and the OTTCH are incorporated herein by reference.
- i. The OTTCH is available at <http://www.oregon.gov/ODOT/Engineering/Pages/OTTCH.aspx> Copies of MG 100-107, MG144-03, and MG Activities-2 are available for inspection at the ODOT District 3 Office located at 855 Airport Road during regular business hours, or at the following locations online:
 - MG 100-107:
https://www.oregon.gov/ODOT/Engineering/DOCS_ADA/MG100-107_w-diagram.pdf
 - MG 144-03:
https://www.oregon.gov/ODOT/Engineering/DOCS_ADA/MG144-03.pdf
 - MG Activities-2:
https://www.oregon.gov/ODOT/Engineering/Doc_TechnicalGuidance/MG-Activities-2.pdf
 - ii. All references to MG 100-107, MG144-03, and MG Activities-2 in this Section refer to the version of the policy in place at the time the Services are performed.
6. Agency 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 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act 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.

7. Agency shall perform the maintenance 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.
8. 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.
9. 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 the State, be indemnified by the contractor and subcontractor from and against any and all Claims.
10. Any such indemnification shall also provide that neither 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 anytime 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.
11. 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 books, documents, papers, and records of Agency 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 final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.

12. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
13. Agency's Project Manager for this Project is Mike Bisset, 231 NE Fifth St, McMinnville, OR 97128; (503) 474-5138; Mike.Bisset@mcminnvilleoregon.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 grants Agency the authority to enter State right of way for the maintenance responsibilities as outlined in this Agreement.
2. State's Project Manager for this Project is Cole Mullis, District 3 Manager, ODOT District 3, 885 Airport Road SE, Building P, Salem, Oregon 97301; (503) 986-2867; Cole.F.Mullis@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. Either Party may terminate this Agreement effective upon delivery of written notice to the other Party, or at such later date as may be established by that Party, under any of the following conditions:
 - a. If the other Party fails to provide the services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If the other Party 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 the other Party fails to correct such failures within ten (10) days or such longer period as the other Party may authorize.
 - c. If either Party fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow that Party, in the exercise of its reasonable administrative discretion, to continue to advance this Project or the terms 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 Agency is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
5. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
6. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would

have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

7. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
8. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
9. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW

CITY OF MCMINNVILLE by and through
its elected officials

By _____

Title _____

Date _____

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

By _____
Agency Legal Counsel

Date _____

Agency Contact:

Mike Bisset
Community Development Director
City of McMinnville
231 NE Fifth Street
McMinnville, OR 97128
503.474.5138
mike.bisset@mcminnvilleoregon.gov

STATE OF OREGON, by and
through
its Department of Transportation

By _____

Region 2 Manager

Date _____

APPROVAL RECOMMENDED

By _____

Region 2 Maintenance Operations
Manager

Date _____

By _____

District 3 Manager

Date _____

State Contact:

Cole Mullis, District 3 Manager
ODOT Maintenance District 3
885 Airport Road SE, Bldg. P
Salem, OR 97301
503-986-2867
Cole.F.Mullis@odot.state.or.us



City of McMinnville
Planning Department
 231 NE Fifth Street
 McMinnville, OR 97128
 (503) 434-7311
www.mcminnvilleoregon.gov

STAFF REPORT

DATE: January 26, 2021
TO: Mayor and City Councilors
FROM: Heather Richards, Planning Director
SUBJECT: Resolution No. 2021-02, A Resolution approving a contract with Jacobs Engineering Group Inc for a IBTER analysis per HB 2001.

STRATEGIC PRIORITY & GOAL:



GROWTH & DEVELOPMENT CHARACTER
 Guide growth & development strategically, responsively & responsibly to enhance our unique character.

OBJECTIVE/S: Strategically plan for short and long-term growth and development that will create enduring value for the community



HOUSING OPPORTUNITIES (ACROSS THE INCOME SPECTRUM)
 Create diverse housing opportunities that support great neighborhoods.

OBJECTIVE/S: Collaborate to improve the financial feasibility of diverse housing development opportunities

Report in Brief:

This is the consideration of Resolution No. 2021-02, a resolution approving a contract with Jacobs Engineering Group Inc to conduct a Infrastructure-Based Time Extension Request analysis per House Bill (HB) 2001 (2019 Oregon Legislative Session) and Oregon Administrative Rule (OAR) 660-046-0300 for the City of McMinnville, in the amount of \$147,992.

The City has received a \$100,000 grant from the Department of Land Conservation and Development for this project. The remaining \$47,992 is budgeted in the FY 2020-2021 Planning Department Long Range Planning Fund.

Background:

The Oregon State Legislature of 2019 adopted HB 2001. HB 2001 is often described as the “Missing Middle Housing” bill. It mandates that all cities with a population of 25,000 or more people must allow the following middle housing types on most, if not all, single family residential lots – duplexes, triplexes, quadplexes, townhomes, and cottage clusters, and do so by June 30, 2022.

In some areas where the subdivision is not built out yet, this could increase density by four times the originally planned for density.

HB 2001 recognized that this type of density increase may impact infrastructure systems that were planned and built for lesser density. The bill included provisions for a infrastructure analysis that would identify deficiencies and a process for applying for an extension of the application of the mandate in that area until the infrastructure could be fixed.

Discussion:

The purpose of the IBTER analysis is to determine if there are infrastructure capacity deficiencies in any areas of McMinnville's residential neighborhoods that would occur due to the implementation of the missing middle housing mandates in HB 2001. If there are capacity deficiencies, the City will need to address and fix those deficiencies prior to the mandated implementation of HB 2001, or request an extension for the fix through an IBTER application. The IBTER application has to be submitted to the Department of Land Conservation and Development by June 30, 2021.

The IBTER analysis and extension application is specific to only water, sewer, storm water and transportation system infrastructure.

If the local government currently permits additional single detached dwellings within the constrained area despite the infrastructure constraint, and plans to continue to do so, the local government will need to demonstrate how allowance for middle housing in the area would constitute the "straw that breaks the camel's back" in terms of infrastructure capacity, or will need to provide other justification for allowing additional single detached dwellings but precluding allowing middle housing in these areas.

IBTER applications will need to identify the infrastructure-constrained area and provide documentation and analysis of the infrastructure constraint; they will need to include a plan to address the infrastructure constraint, thereby providing additional infrastructure capacity to serve middle housing; and they will need to include discussion of how the infrastructure improvements will be financed, along with a schedule for completion of the necessary improvements.

The City of McMinnville has identified two potential areas that may experience infrastructure deficiencies with the passage of HB 2001 – the area around north of Baker Creek Road between Hill Road and NW Pinehurst Drive. With the advent of two recent subdivision approvals consisting of 388 single family lots that could be utilized for middle housing types, and the concerns that arose during the subdivision approvals about transportation capacity, this area will be analyzed for infrastructure deficiencies. The other potential area is the West Hills. With over 250 single family lots still to be developed in this area (many of which are in Water Zone 2), there could be infrastructure capacity issues with increased density on these single family lots as well.

Fiscal Impact:

The total cost of the contract is \$147,992. The City of McMinnville received a grant for \$100,000 from the Department of Land Conservation and Development for this work. The remaining \$47,992 is budgeted and accounted for in the FY 2020-2021 Planning Department Long Range Planning Fund.

Attachments:

- Resolution No. 2021-02
- Copy of Contract with Jacobs Engineering Group Inc.
- OAR 660-046-0300
- HB 2001 - Enrolled

Recommendation:

Staff recommends that the Council approve Resolution No. 2021-02.

RESOLUTION NO. 2021 - 02

A Resolution approving the award of a Personal Services Contract to Jacobs Engineering Group Inc. for an Infrastructure-Based Time Extension Request (IBTER) Analysis as required by HB 2001 and OAR 660-046-0300

RECITALS:

The Oregon State Legislature of 2019 adopted HB 2001. HB 2001, often described as the "Missing Middle Housing" bill mandates that all cities with a population of 25,000 or more people must allow all missing middle housing types on

Understanding that this type of increased density in previously planned single family neighborhoods may cause some infrastructure capacity issues for cities, HB 2001 also outlined an opportunity for cities to apply for an extension on the implementation of infrastructure capacity remedies through an Infrastructure-Based Time Extension Request process.

On August 7, 2020, the Land Conservation and Development Commission adopted Oregon Administrative Rule 660-046-0300 providing the process that cities must follow to analyze the need for and request an Infrastructure-Based Time Extension Request.

The premise behind this process is that cities should study the anticipated impact of the missing middle housing mandate outlined in HB 2001 on their infrastructure systems in different areas of their communities where they feel there may be capacity issues, and then design a solution for the issue. If the city cannot implement the solution by the time that it is mandated to allow the missing middle housing types in that area, it can request an extension.

With some neighborhoods that could have potential infrastructure capacity issues, the City of McMinnville applied for and received a \$100,000 grant from the Department of Land Conservation and Development to assist with the work.

Per OAR 137-048-0200(1)(c), the City of McMinnville is entering into a direct appointment with Jacobs Engineering Group, Inc. for a proposal to conduct the analysis and develop the IBTER application for an extension if necessary, as Jacobs Engineering Group, Inc. has the city's capacity model for wastewater, and is providing a service that was substantially studied in an earlier contract, the fee is less than \$250,000 and the previous contract was selected under OAR 137-048-0220 (Resolution No. 2005-46).

The City has negotiated the type of services, work scope, project team, sub-consultants, fee, and schedule with Jacobs for this project. No future phases are anticipated.

The estimate for this scope of work is \$ 147,992.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON, as follows:

1. That the City Council, acting as the Contract Review Board, is making a direct appointment per OAR 137-048-0200(1)(c), "Continuation of Project with Intermediate Estimated Fee".
2. That entry into a Personal Services Contract with Jacobs Engineering Group Inc for an Infrastructure-Based Time Extension Request (IBTER) Analysis as required by HB 2001 and OAR 660-046-0300, in the amount of \$ 147,992 is hereby approved.
3. The City Manager is hereby authorized and directed to execute the contract with Jacobs Engineering Group Inc.

4. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until revoked or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 26th day of January 2021 by the following votes:

Ayes: _____

Nays: _____

Approved this 26th day of January 2021.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

CITY OF McMinnville, Oregon

**PERSONAL SERVICES CONTRACT
With**

Jacobs Engineering Group Inc,

**For
Infrastructure-Based Time Extension Request (IBTER)**

This Contract is between the CITY OF McMinnville, a municipal corporation of the State of Oregon (City) and Jacobs Engineering Group Inc (Contractor). The City's Project Manager for this Contract is Heather Richards, Planning Director.

The parties mutually covenant and agree as follows:

1. Effective Date and Duration. This contract is effective on the date at which every party has signed the contract and will expire, unless otherwise terminated or extended, on December 31, 2021.

2. Statement of Work. The work to be performed under this contract consists of the services described in Exhibit A, attached hereto and by this reference incorporated herein. The statement of work, including the delivery schedule for the work, is contained in Exhibit A. The Statement of Work reflects both the work anticipated and the fees the Contractor will charge for each component of that work. The work provided will be guided by the Statement of the Work, but the Contractor will, with the approval and direction of the City, perform services in such a way as to ensure constant progress is being made to achieve the City's end goals in the most efficient manner possible.

3. Consideration.

a. City agrees to pay Contractor for actual hours worked, and allowable expenses incurred for accomplishing the work required by this contract, with a total sum not to exceed \$147,992.

b. Contractor will furnish with each invoice for services an itemized statement showing both the work performed and the number of hours devoted to the project by the Contractor and its agents. City will pay the Contractor for services within 30 days of receiving an itemized bill that has been approved by the Project Manager.

c. City certifies that sufficient funds are available and authorized for expenditure to finance the cost of this contract.

4. Additional Services. Additional services, not covered in Exhibit A, will be provided if mutually agreed upon by the parties and authorized or confirmed in writing by the City, and will be paid for by the City as provided in this Contract in addition to the compensation authorized in subsection 3a. If authorized by the City, the additional services will be performed under a series of Task Orders defining the services to be performed, time of performance, and cost for each phase of services.

[CONTINUED ON NEXT PAGE]

CONTRACTOR DATA, CERTIFICATION, AND SIGNATURE

Name (please print):

Jacobs Engineering Group Inc.

Address:

2020 SW 4th Avenue, 3rd Floor

Portland, OR 97201

Social Security #: N/A

Federal Tax ID #: 95-4081636

State Tax ID #: N/A

Citizenship: Nonresident alien Yes No

Business Designation (check one): Individual Sole Proprietorship Partnership
 Corporation Government/Nonprofit

The above information must be provided prior to contract approval. Payment information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer I.D. number provided above. (See IRS 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject you to 31 percent backup withholding.

I, the undersigned, understand that the Standard Terms and Conditions for Personal Services Contracts and Exhibits A, B, C, and D are an integral part of this contract and agree to perform the work described in Exhibit A in accordance with the terms and conditions of this contract; certify under penalty of perjury that I/my business am not/is not in violation of any Oregon tax laws; and certify I am an independent contractor as defined in ORS 670.600.

Signed by Contractor:

Designated Manager



1/22/2021

Signature/Title

Date

NOTICE TO CONTRACTOR: This contract does not bind the City of McMinnville unless and until it has been fully executed by the appropriate parties.

CITY OF McMINNVILLE SIGNATURE

Approved:

City Manager or Designee

Date

Reviewed:

City Attorney or Designee

Date

CITY OF McMinnville
STANDARD TERMS AND CONDITIONS FOR PERSONAL SERVICES CONTRACTS

1. Contractor is Independent Contractor.

a. Contractor will perform the work required by this contract as an independent contractor. Although the City reserves the right (i) to determine (and modify) the delivery schedule for the work to be performed and (ii) to evaluate the quality of the completed performance, the City cannot and will not control the means or manner of the Contractor's performance. The Contractor is responsible for determining the appropriate means and manner of performing the work.

b. The Contractor represents and warrants that Contractor (i) is not currently an employee of the federal government or the State of Oregon, and (ii) meets the specific independent contractor standards of ORS 670.600, as certified on the Independent Contractor Certification Statement attached as Exhibit D.

c. Contractor will be responsible for any federal or state taxes applicable to any compensation or payment paid to Contractor under this contract.

d. If Contractor is a contributing member of the Public Employees' Retirement System, City will withhold Contractor's contribution to the retirement system from Contractor's compensation or payments under this contract and make a corresponding City contribution. Contractor is not eligible for any federal Social Security, unemployment insurance, or workers' compensation benefits from compensation or payments to Contractor under this contract, except as a self-employed individual.

2. Subcontracts and Assignment. Contractor will not subcontract any of the work required by this contract, or assign or transfer any of its interest in this contract, without the prior written consent of the City. Contractor agrees that if subcontractors are employed in the performance of this contract, the Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

3. No Third Party Beneficiaries. City and Contractor are the only parties to this contract and are the only parties entitled to enforce its terms. Nothing in this contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this contract.

4. Successors in Interest. The provisions of this contract will be binding upon and will inure to the benefit of the parties, and their respective successors and approved assigns, if any.

5. Early Termination

a. The City and the Contractor, by mutual written agreement, may terminate this Contract at any time.

b. The City, on 30 days written notice to the Contractor, may terminate this Contract for any reason deemed appropriate in its sole discretion.

c. Either the City or the Contractor may terminate this Contract in the event of a breach of the Contract by the other party. Prior to termination, however, the party seeking the termination will give to the other party written notice of the breach and of the party's intent to terminate. If the Party has not entirely cured the breach within 15 days of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

6. Payment on Early Termination

a. If this contract is terminated under 5(a) or 5(b), the City will pay the Contractor for work performed in accordance with the Contract prior to the termination date. Payment may be pro-rated as necessary.

b. If this contract is terminated under 5(c) by the Contractor due to a breach by the City, then the City will pay the Contractor as provided in subsection (a) of this section.

c. If this contract is terminated under 5(c) by the City due to a breach by the Contractor, then the City will pay the Contractor as provided in subsection (a) of this section, subject to set off of excess costs, as provided for in section 7, Remedies.

7. Remedies

a. In the event of termination under 5(c) by the City due to a breach by the Contractor, the City may complete the work either itself, by agreement with another contractor, or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this contract, the Contractor will pay to the City the amount of the reasonable excess.

b. The remedies provided to the City under section 5 and section 7 for a breach by the Contractor are not exclusive. The City will also be entitled to any other equitable and legal remedies that are available.

c. In the event of breach of this Contract by the City, the Contractor's remedy will be limited to termination of the Contract and receipt of payment as provided in section 5(c) and 6(b).

8. Access to Records. Contractor will maintain, and the City and its authorized representatives will have access to, all books, documents, papers and records of Contractor which relate to this contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records will be made available upon request. Payment for the cost of copies is reimbursable by the City.

9. Ownership of Work. All work products of the Contractor, including background data, documentation, and staff work that is preliminary to final reports, and which result from this contract, are the property of the City. Contractor will retain no ownership interests or rights in the work product. Use of any work product of the Contractor for any purpose other than the use intended by this contract is at the risk of the City.

10. Compliance with Applicable Law. Contractor will comply with all federal, state, and local laws and ordinances applicable to the work under this contract, including, without limitation, the provisions of ORS 279B.220, 279B.230, and 279B.235, as set forth on Exhibit B. Without limiting the foregoing, Contractor expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 (Pub L No. 101-336), ORS 659A.142, and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

- 11. Indemnity and Hold Harmless**
a. Contractor will defend, save, hold harmless, and indemnify the City, its officers, agents, and employees from all claims, suits, or actions arising to the extent caused by the negligent acts, errors, or omissions of Contractor or its officers, employees, subcontractors, or agents under this contract.
- 12. Insurance.** Contractor will provide insurance in accordance with Exhibit C.
- 13. Waiver.** The failure of the City to enforce any provision of this contract will not constitute a waiver by the City of that or any other provision.
- 14. Errors.** The Contractor will perform such additional work as may be necessary to correct errors in the work required under this contract without undue delays and without additional cost.
- 15. Governing Law.** The provisions of this contract will be construed in accordance with the laws of the State of Oregon and ordinances of the City of McMinnville, Oregon. Any action or suits involving any question arising under this contract must be brought in the appropriate court in Yamhill County, Oregon. Provided, however, if the claim must be brought in a federal forum, then it will be brought and conducted in the United States District Court for the District of Oregon.
- 16. Severability.** If any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the contract did not contain the particular term or provision held invalid.
- 17. Merger Clause.** THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BIND EITHER PARTY UNLESS IN WRITING, SIGNED BY BOTH PARTIES. ANY WAIVER, CONSENT, MODIFICATION, OR CHANGE, IF MADE, WILL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. BY ITS SIGNATURE, CONTRACTOR ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THIS CONTRACT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.
- 18. Standard of Care.** The standard of care applicable to Contractor's/Consultant's Services will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar Services at the time said services are performed.
- 19. Force Majeure.** Consultant is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, pandemics, Government orders or other events beyond the control of Consultant ("Force Majeure Event"). In any such event, Consultant's schedule shall be equitably adjusted. Consultant will not be entitled to additional compensation as a result of or relating to any Force Majeure Event.

EXHIBIT A
STATEMENT OF THE WORK

I. BACKGROUND

The State of Oregon Legislature (State) passed Housing Bill 2001 in 2019 which allows landowners to develop additional units on lands designated for single family residential zoning. This includes duplexes by June 2021 and duplexes, triplexes, fourplexes, cottage clusters, and townhouses by June 2022. The City of McMinnville, Oregon (City) is applying for an Infrastructure-Based Time Extension Request (IBTER) to allow time for implementation of water, wastewater, stormwater, and transportation infrastructure improvements prior to authorizing increased development densities. The IBTER requirements are defined by Oregon Administrative Rules (OARs): 660-046-0300, 660-046-0310, 660-046-0320, 660-046-0330, 660-046-0340, 660-046-0350, 660-046-0360, and 660-046-0370.

II. SCOPE OF WORK

The City has requested that Jacobs (Consultant) provide support to the IBTER by evaluating the impacts of increased housing densities and associated improvement requirements and costs for water distribution, sanitary sewer, stormwater, and transportation systems. This scope of work outlines tasks for the Consultant to support the IBTER process and participate in the City's Technical Advisory Committee (TAC).

The intent of the work is to consider impact to each system related to increased density. The work is not intended to provide comprehensive master plan or capital improvement program updates.

The Scope of Work is outlined below.

Task 1 – Project Management

The purpose of this task is to provide time for Consultant to establish and manage the project scope, schedule, and budget. This task also includes initial review of applicable Oregon Administrative Rules and coordination of the first TAC meeting.

Consultant shall perform the following under this Task:

- Project set-up
- Conduct (1) virtual kick-off meeting and up to (3) virtual check in meetings throughout the project with City Project Manager
- Develop a data request list
- Monthly Invoicing and Status Reports: These will provide brief cost and schedule status report and updated summary project schedule showing actual versus projected. The report shall include a narrative description of progress-to-date, actual costs for each major task, estimates of percent complete, and potential cost variances.

Deliverables and Meetings:

- The kick-off meeting shall include the technical advisory committee (TAC) comprised of McMinnville Water and Light, City planning and engineering staff, and representation from the Department of Land Conservation and Development (DLCD). The meeting will include a discussion of the analysis approach relative to the goals of Housing Bill 2001 and the IBTER application.
- Consultant shall prepare meeting notes from the kick-off meeting.

Assumptions:

- All meetings are assumed to be virtual for the duration of the project.

Task 2 – Infrastructure Planning and Modeling

This task includes review of available planning documents and updates to existing utility and transportation models and model output including:

- Use population data provided by City staff to develop new localized system demands, flow loading, and trips associated with increased densities. Timing of development will be assumed to follow current population trends for the City as published by the Portland State University, Population Research Center.
- Evaluation of existing and future system capacity within the planned Urban Growth Boundary for water distribution, sanitary sewer, stormwater, and transportation systems with impacts from increased densities.
- GIS-based mapping of system capacity limitations for water distribution, sanitary sewer, stormwater, and transportation systems.
- Designation of deficiencies (severity of deficiency) after increased densities are applied.

Deliverables and Meetings:

- The Consultant shall facilitate (1) virtual TAC meeting (TAC Mtg #1) to review capacity limitations. Consultant shall use the output of the model and the mapping to discuss improvement options for evaluation in Task 3.
- Consultant shall develop presentation materials documenting system capacity limitations and meeting notes from TAC Mtg #1.

Assumptions:

- Population and employment data will be provided by City staff in GIS format using zoning polygons. Density increases will follow OAR 660-046-0330(4) which allows consideration of a 1% increase in dwelling units in infill and redevelopment areas, and a 3% increase in undeveloped or underdeveloped areas. Higher assumptions are possible with “quantifiable validation” per (4)(d).

- This scope of work excludes evaluation of water and wastewater treatment systems.
- This task excludes updates to model networks and excludes model calibration. For the stormwater system, the modeling will rely on a simplified stormwater network and hydrologic evaluation using City GIS.

Task 3 – Infrastructure Improvement Evaluation

This task will focus on cost review of improvement options for deficient locations focusing on areas impacted by increased densities. Up to two improvement alternatives will be considered to eliminate deficiencies in the water distribution, sanitary sewer, stormwater, and transportation systems. Improvement alternatives will focus on high level concepts including infrastructure upsizing or alternate routing.

Cost estimates will include present worth capital costs and life cycle costs using Class 5 cost estimates as defined by the American Association of Cost Engineering (AACE). This class of cost estimate is used for preliminary screening of improvement alternatives where project development is less than 2-percent. Improvement alternatives will also be scored for constructability constraints, environmental impacts, and operation and maintenance requirements.

Deliverables and Meetings:

- Consultant shall facilitate (1) virtual TAC meeting to review improvement alternatives, costs, and scoring (TAC Mtg #2). Consultant shall present improvement alternatives and solicit feedback on preferred alternatives from TAC members.
- Consultant shall develop presentation materials documenting the improvement evaluation and meeting notes from TAC Mtg #2.

Assumptions:

- Evaluation of improvement alternatives will be based on desktop analysis (GIS mapping and modeling). The scope excludes field investigation.

Task 4 –IBTER Documentation

This task will focus on documentation of the system deficiencies and improvement analysis from Tasks 2 and 3. Additionally, the task includes a high-level review of potential funding sources for system improvements to provide a recommendation for the IBTER application.

- Consultant shall request information from City and McMinnville Water and Light on potential funding sources including private development interest.
- Consultant shall research and summarize additional potential public funding sources.

Deliverables and Meetings:

- Consultant shall facilitate (1) virtual TAC meeting (TAC Mtg #3) to review private and public funding mechanisms for system improvements.
- Consultant shall summarize findings of the IBTER infrastructure evaluation and funding review in a draft and final technical memorandum providing recommendations on time extension requirements.
- If an IBTER is recommended, Consultant shall participate in (1) virtual City Council Meeting to assist City staff in summarizing recommendations.

Assumptions:

- City staff will be the authors of the IBTER application utilizing the technical memorandum and recommendations provided by Consultant from this task.
- The scope excludes evaluation and updates of City or McMinnville Water and Light rate and SDC structures although these items may be listed as potential sources of funding.

III. COMPENSATION

The budget for this scope of work is provided in Exhibit A1. Work will be billed on a time and materials basis. Consultant shall not exceed budget without written consent from the City.

IV. SCHEDULE

The proposed project schedule is provided in Exhibit A2.

Exhibit A1. Budget and Hours	Shad Roundy	Thomas Walsh	Sven MacAller	Neha Rathi	Charlie Wence	Kristi Steiner	Dawn Bierbaum		
City of McMinnville IBTER Review	Project Manager/ Technical Lead	Water/Wastewater/ Stormwater	Water/Wastewater/ Stormwater	Transportation	Transportation	Documentation, Assistant PM	Project Assistant	Jacobs	Jacobs
Hourly Rates (2021)	\$232	\$154	\$153	\$214	\$159	\$173	\$129	Labor Hours	Labor (\$)
Task/Subtask	Hours							Total	Total
1 - Project Development and Management	10	4	0	4	0	22	16	56	\$9,663
2 - Infrastructure Planning and Modeling	32	92	64	44	80	8	0	320	\$54,895
3 - Infrastructure Improvement Evaluation	32	68	48	44	48	8	0	248	\$43,662
4 - IBTER Documentation	28	64	0	28	40	64	0	224	\$39,773
TOTAL	102	228	112	120	168	102	16	848	\$147,992

Exhibit A2. Proposed Project Schedule	2021					
Task/Subtask	Jan	Feb	Mar	Apr	May	June
1 - Project Development and Management						
Project Setup						
Kick-off Meeting	★ Kick-off Meeting					
Check-in Meetings (3)		★	★	★	Checkin Mtgs	
Data Request						
Monthly Invoicing (6)						
2 - Infrastructure Planning and Modeling						
Document Review						
Develop model demands, flow loading, trips, etc						
Existing and buildout modeling						
Deficiency mapping and descriptions						
TAC Mtg #1			★ TAC Mtg#1			
Meeting materials and notes						
3 - Infrastructure Improvement Evaluation						
Two improvement alternatives						
Cost estimates (capital and life cycle)						
TAC Mtg #2				★ TAC Mtg#2		
Meeting materials and notes						
4 - IBTER Documentation						
Financial Review						
TAC Mtg #3				★ TAC Mtg#3		
Draft memo					★ TM Draft	
Final memo						★ TM Final
City Council Meeting						★ City Council Mtg

EXHIBIT B
COMPLIANCE WITH APPLICABLE LAW

279B.220 Conditions concerning payment, contributions, liens, withholding. Every public contract shall contain a condition that the contractor shall:

(1) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.

(2) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.

(3) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

(4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167. [2003 c.794 §76a]

279B.230 Condition concerning payment for medical care and providing workers' compensation.

(1) Every public contract shall contain a condition that the contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

(2) Every public contract shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. [2003 c.794 §76c]

279B.235 Condition concerning hours of labor; compliance with pay equity provisions; employee discussions of rate of pay or benefits. (1) Except as provided in subsections (3) to (6) of this section, every public contract subject to this chapter must provide that:

(a) A contractor may not employ an employee for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires otherwise, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, the contractor shall pay the employee at least time and a half pay for:

(A)(i) All overtime in excess of eight hours in any one day or 40 hours in any one week if the work week is five consecutive days, Monday through Friday; or

(ii) All overtime in excess of 10 hours in any one day or 40 hours in any one week if the work week is four consecutive days, Monday through Friday; and

(B) All work the employee performs on Saturday and on any legal holiday specified in ORS 279B.020.

(b) The contractor shall comply with the prohibition set forth in ORS 652.220, that compliance is a material element of the contract and that a failure to comply is a breach that entitles the contracting agency to terminate the contract for cause.

(c) The contractor may not prohibit any of the contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

(2) A contractor shall give notice in writing to employees who work on a public contract, either at the time of hire or before work begins on the contract, or by posting a notice in a location frequented by

employees, of the number of hours per day and days per week that the contractor may require the employees to work.

(3) A public contract for personal services, as described in ORS 279A.055, must provide that the contractor shall pay the contractor's employees who work under the public contract at least time and a half for all overtime the employees work in excess of 40 hours in any one week, except for employees under a personal services public contract who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

(4) A public contract for services at a county fair, or for another event that a county fair board authorizes, must provide that the contractor shall pay employees who work under the public contract at least time and a half for work in excess of 10 hours in any one day or 40 hours in any one week. A contractor shall notify employees who work under the public contract, either at the time of hire or before work begins on the public contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the contractor may require the employees to work.

(5)(a) Except as provided in subsection (4) of this section, a public contract for services must provide that the contractor shall pay employees at least time and a half pay for work the employees perform under the public contract on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time the employee works in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

(b) A contractor shall notify in writing employees who work on a public contract for services, either at the time of hire or before work begins on the public contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the contractor may require the employees to work.

(6) This section does not apply to public contracts:

(a) With financial institutions as defined in ORS 706.008.

(b) Made pursuant to the authority of the State Forester or the State Board of Forestry under ORS 477.406 for labor performed in the prevention or suppression of fire.

(c) For goods or personal property. [2003 c.794 §77; 2005 c.103 §8f; 2015 c.454 §4]

**EXHIBIT C
INSURANCE**

(The Project Manager must answer and initial 2, 3, and 4 below).

During the term of this contract, Contractor will maintain in force at its own expense, each insurance noted below:

1. **Workers Compensation** insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers. (Required of contractors with one or more employees, unless exempt under ORS 656.027).

 Required by City I am exempt. Signed _____

2. **Professional Liability** insurance with a combined single limit of not less than
 \$1,200,000, \$2,000,000, or \$3,000,000 each claim, incident, or occurrence. This is to cover damages caused by error, omission, or negligent acts related to the professional services to be provided under this contract. The coverage must remain in effect for at least
 one year two years after the contract is completed.

 Required by City Not required by City By: _____

3. **General Liability** insurance, on an occurrence basis, with a combined single limit of not less than
 \$1,200,000, \$2,000,000, or \$3,000,000 each occurrence for Bodily Injury and Property Damage. It must include contractual liability coverage. This coverage will be primary and non-contributory with any other insurance and self-insurance.

 Required by City Not required by City By: _____

4. **Automobile Liability** insurance with a combined single limit, or the equivalent of not less than
 \$1,000,000, \$2,000,000, or \$3,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles.

 Required by City Not required by City By: _____

5. **Notice of cancellation or change.** There will be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without prior written notice from the Contractor or its insurer(s) to the City.

6. **Certificates of insurance.** As evidence of the insurance coverages required by this contract, the Contractor will furnish acceptable insurance certificates to the City at the time the Contractor returns the signed contracts. For general liability insurance and automobile liability insurance, the certificate will provide that the City, and its agents, officers, and employees, are additional insureds, but only with respect to Contractor's services to be provided under this contract. The certificate will include the cancellation clause, and will include the deductible or retention level. Insuring companies or entities are subject to City acceptance. If requested, complete copies of commercial general liability, business automobile liability, and excess/umbrella liability insurance policies will be provided to the City. The Contractor will be financially responsible for all pertinent deductibles, self-insured retentions, and self-insurance.

EXHIBIT D
CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR
(Contractor complete A or B below, Project Manager complete C below.)

A. CONTRACTOR IS A CORPORATION

CORPORATION CERTIFICATION: I am authorized to act on behalf of the entity named below, and certify under penalty of perjury that it is a corporation.		
Jacobs Engineering Inc.		1/22/2021
— Entity	Signature	Date

B. CONTRACTOR IS INDEPENDENT.

Contractor certifies he/she meets the following standards:	
<p>1. The individual or business entity providing services is free from direction and control over the means and manner of providing the services, subject only to the right of the person for whom the services are provided to specify the desired results,</p> <p>2. The individual or business entity is licensed under ORS chapters 671 or 701 if the individual or business entity provides services for which a license is required by ORS chapters 671 or 701,</p> <p>3. The individual or business entity is responsible for obtaining other licenses or certificates necessary to provide the services,</p> <p>4. The individual or business entity is customarily engaged in an independently established business, as any three of the following requirements are met (please check three or more of the following):</p> <p>___ A. The person maintains a business location i) that is separate from the business or work location of the person for whom the services are provided or ii) that is in a portion of the person's residence and that portion is used primarily for the business.</p> <p>___ B. The person bears the risk of loss related to the business or the provision of services as shown by factors such as i) the person enters into fixed-price contracts, ii) the person is required to correct defective work, iii) the person warrants the services provided, or iv) the person negotiates indemnification agreements or purchases liability insurance, performance bonds, or errors and omissions insurance.</p> <p>___ C. The person provides contracted services for two or more different persons within a 12 month period or the person routinely engages in business advertising, solicitation, or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.</p> <p>___ D. The person makes a significant investment in the business, through means such as i) purchasing tools or equipment necessary to provide the services, ii) paying for the premises or facilities where the services are provided, or iii) paying for licenses, certificates, or specialized training required to provide the services.</p> <p>___ E. The person has the authority to hire other persons to provide or to assist in providing the services and has the authority to fire those persons.</p>	
— Contractor Signature	Date

(Project Manager complete C below.)

C. CITY APPROVAL

ORS 670.600 Independent contractor standards. As used in various provisions of ORS chapters 316, 656, 657, 671, and 701, an individual or business entity that performs services for remuneration will be considered to perform the services as an “independent contractor” if the standards of this section are met. The contractor meets the following standards:

1. The Contractor is free from direction and control over the means and manner of providing the services, subject only to the right of the City to specify the desired results,
2. The Contractor is responsible for obtaining licenses under ORS chapters 671 and 701 when these licenses are required to provide the services,
3. The Contractor is responsible for obtaining other licenses or certificates necessary to provide the services,
4. The Contractor has the authority to hire and fire employees to provide or assist in providing the services, and
5. The person is customarily engaged in an independently established business as indicated in B. 4 above.

— Project Manager Signature
Date

OFFICE OF THE SECRETARY OF STATE
BEV CLARNO
SECRETARY OF STATE
JEFF MORGAN
INTERIM DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR
800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

PERMANENT ADMINISTRATIVE ORDER

LCDD 14-2020
CHAPTER 660
LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

FILED
08/07/2020 9:18 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Adopt OARs in accordance with HB 2001 (2019)

EFFECTIVE DATE: 08/07/2020

AGENCY APPROVED DATE: 08/05/2020

CONTACT: Casaria Taylor	635 Capitol Street	Filed By:
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casaria.taylor@state.or.us	Salem, OR 97031	Rules Coordinator

RULES:

660-046-0300, 660-046-0310, 660-046-0320, 660-046-0330, 660-046-0340, 660-046-0350, 660-046-0360, 660-046-0370

ADOPT: 660-046-0300

RULE TITLE: Purpose of Infrastructure-Based Time Extension Request Process

NOTICE FILED DATE: 06/26/2020

RULE SUMMARY: This rule outlines the purpose of the infrastructure-based time extension request (IBTER) process as provided in Oregon Laws 2019, chapter 639, section 4.

RULE TEXT:

OAR 660-046-0300 to OAR 660-046-0370 establish the form and substance of the IBTER application and review process. The purpose of these rules is to provide submittal requirements, including required data and analyses that a local government must submit with an IBTER, prescribe when a local government is eligible for a time extension in response to an IBTER, and to provide the evaluation process and criteria that the department will use to review IBTERs and issue Time Extensions.

STATUTORY/OTHER AUTHORITY: ORS 197.040, OR Laws 2019, chapter 639, section 4(6)

STATUTES/OTHER IMPLEMENTED: ORS 197.758, OR Laws 2019, chapter 639, sections 3 and 4

ADOPT: 660-046-0310

RULE TITLE: Entities Eligible to Apply

NOTICE FILED DATE: 06/26/2020

RULE SUMMARY: This rule describes which local governments are eligible to submit an IBTER as provided in Oregon Laws 2019, chapter 639, section 4.

RULE TEXT:

Local governments, as defined in OAR 660-046-0320, may submit an IBTER.

STATUTORY/OTHER AUTHORITY: ORS 197.040, OR Laws 2019, chapter 639, section 4(6)

STATUTES/OTHER IMPLEMENTED: ORS 197.758, OR Laws 2019, chapter 639, sections 3 and 4

ADOPT: 660-046-0320

RULE TITLE: Definitions

NOTICE FILED DATE: 06/26/2020

RULE SUMMARY: This rule defines terms and phrases that are used in section 660-046-0310 through 660-046-0370.

RULE TEXT:

In addition to the definitions in OAR 660-046-0020 and in ORS 197.015 and ORS 197.758, the following definitions apply to OAR 660-046-0300 to OAR 660-046-0370. In the event of a conflict, these definitions will take precedence.

(1) "Acceptable service levels" means measures of public facility adequacy defined by common engineering standards of practice, adopted as a policy for a utility, identified by designated authority from the decision-making body of a local government, identified in an adopted utility master plan or special area utility plan, or as necessary to comply with state or federal law.

(2) "IBTER" means an infrastructure-based time extension request submitted by a local government for an extension of time to adopt land use regulations or amend a comprehensive plan as provided for under Oregon Laws 2019, chapter 639, section 4.

(3) "Infill and redevelopment areas" means areas with lot sizes of less than one-half an acre that are zoned to allow detached single family dwellings and that are either vacant or developed with detached single family dwellings.

(4) "Infrastructure" means urban water, sanitary sewer, stormwater, and transportation systems.

(5) "Local governments" means a city outside a metropolitan service district, with a population of more than 10,000 and less than 25,000; a city inside a metropolitan service district, with a population of more than 1,000 and less than 25,000; any city with a population of 25,000 or more; or any unincorporated portion of a county within a metropolitan service district that is provided with sufficient urban services as defined in ORS 195.065. No other unincorporated areas within urban growth boundaries are included in this definition.

(6) "Significant infrastructure deficiency" means a local government has met the burden of proof to demonstrate a situation or situations where the following exists:

(a) A local government or service provider is unable to provide acceptable service levels within a developed, or developing, area zoned to allow detached single-family dwellings; or

(b) A local government or service provider anticipates that it will be unable to provide acceptable service levels by December 31, 2023, based either on extrapolated current development rates alone, or based on extrapolated current rates and additional anticipated middle housing development.

(c) There is no single service level for demonstrating a significant infrastructure deficiency for transportation infrastructure. Supporting information regarding the magnitude and severity of the deficiency must support a determination that the deficiency has a significant impact on transportation function or safety in the affected area. Higher street classifications, traffic volumes, and impacts to the function of transportation corridors, rather than a single intersection, will help to support the significance of the transportation deficiency. The severity of safety issues may be supported with information such as crash data, posted speed limits, sight distance at intersections, or similar information.

(7) "Time extension" is an IBTER as granted by the department.

(8) "Undeveloped or underdeveloped areas" means areas with lot sizes greater than one-half an acre that are zoned to allow single family detached dwellings and are currently developed at a density of two dwelling units per acre or less.

STATUTORY/OTHER AUTHORITY: ORS 197.040, OR Laws 2019, chapter 639, section 4(6)

STATUTES/OTHER IMPLEMENTED: ORS 197.758, OR Laws 2019, chapter 639, sections 3 and 4

ADOPT: 660-046-0330

RULE TITLE: Parameters

NOTICE FILED DATE: 06/26/2020

RULE SUMMARY: This rule describes parameters to guide local government preparation of IBTER applications.

RULE TEXT:

(1) Infrastructure, as defined in OAR 660-046-0320(4) and as described in more detail in OAR 660-046-0340, is eligible as a basis for an IBTER application. An infrastructure deficiency is not significant if it would be addressed with infrastructure improvements required in conjunction with the development of a single-family dwelling.

(2) If a local government is currently unable to issue any new permits for residential development due to a jurisdiction-wide significant infrastructure deficiency, the local government must address that situation through the moratorium process provided in ORS 197.505 through ORS 197.540. The department will not approve IBTER applications that address this type of situation.

(3) If a local government intends to continue permitting new single family detached dwellings or other development allowed by the current zoning within the area that has a significant infrastructure deficiency while deferring middle housing development within the area, the local government shall demonstrate that the additional infrastructure demand created by middle housing development would cause an unacceptable service level of the infrastructure, or shall provide other valid justification for allowing other development in the subject area while prohibiting middle housing development until the significant infrastructure deficiency is addressed.

(4) For the purpose of estimating the additional impacts of middle housing development on infrastructure, the local government may assume the following increases in residential development that would create additional impacts upon an area that is significantly infrastructure deficient over the period ending December 31, 2023:

(a) The local government shall prepare the baseline estimate for the number of dwelling units per acre produced within a residential zoning district by following the process described in ORS 197.296(5)(a)(A). A local government may add units produced by middle housing allowances, as described in subsections (b) through (f) to estimate residential infrastructure demand within a specified area. A local government may include additional infrastructure demand from other existing uses within the service area, such as higher density housing, schools, businesses, industrial uses, or other uses to estimate a total infrastructure service demand within the area that has a significant infrastructure deficiency.

(b) Infill and redevelopment areas may assume a one percent increase in the number of dwelling units produced due to middle housing allowances within the specified residential zone(s), above the baseline estimate described in subsection (a) prior to adoption of middle housing allowances. If some types of middle housing are currently allowed in a residential zone, the local government must adjust the anticipated increase for that area to an estimated fraction of one percent representing additional housing production from the middle housing types that are not currently allowed.

(c) Undeveloped and underdeveloped areas may assume a three percent increase in the number of dwelling units produced due to middle housing allowances within the specified residential zone(s), above the baseline estimate described in subsection (a) prior to adoption of middle housing allowances. If some types of middle housing are currently allowed in a residential zone, the local government must adjust the anticipated increase to an estimated fraction of three percent representing additional housing production from the middle housing types that are not currently allowed.

(d) The local government may project an increase in anticipated middle housing residential development above the thresholds identified in subsections (b) or (c) if it provides quantifiable validation of such an increase. For local governments located outside a metropolitan service district, the standards for demonstration of a quantifiable validation are provided in subsection (e). For local governments within a metropolitan service district, the standards for demonstration of a quantifiable validation are provided in subsection (f).

(e) A local government located outside a metropolitan service district may provide a quantifiable validation by demonstrating an actual increase in residential dwelling units produced above the rates anticipated in subsections (b) and (c), within a zone that allows densities that are no higher than those that would be allowed with adopted middle housing provisions. The evidence may be derived from an existing zone within the local government's jurisdiction, or

from another local government within 25 miles of the subject local government.

(f) A local government located inside a metropolitan service district may provide a quantifiable validation by demonstrating an actual increase in residential dwelling units produced above the rates anticipated in subsections (b) and (c), within a zone that allows densities that are no higher than those that would be allowed with adopted middle housing provisions. The evidence may be derived from an existing zone within the local government's jurisdiction, or from another local government within the metropolitan service district.

STATUTORY/OTHER AUTHORITY: ORS 197.040, OR Laws 2019, chapter 639, section 4(6)

STATUTES/OTHER IMPLEMENTED: ORS 197.758, OR Laws 2019, chapter 639, sections 3 and 4

ADOPT: 660-046-0340

RULE TITLE: Infrastructure-Specific Application Thresholds

NOTICE FILED DATE: 06/26/2020

RULE SUMMARY: This rule specifies the circumstances that would justify a time extension based on infrastructure deficiencies for each infrastructure type.

RULE TEXT:

This rule specifies the circumstances that would justify a time extension for each infrastructure type.

(1) Transportation. A local government may use the following circumstances to justify a transportation-based IBTER:

(a) Areas where the supporting roadways, intersections, or both are operating or anticipated to operate over capacity, not meet currently acceptable service levels, or have existing geometric/safety limitations. Supporting information regarding the magnitude and severity of the deficiency must support a determination that the deficiency has a significant impact on transportation function or safety in the affected area. This type of transportation IBTER applies only to areas where mitigation is planned and is either within the jurisdiction and financial capacity of the local government, or is planned, financed, and scheduled in partnership with county, state, or other governmental or private partners.

(b) Areas that lack adequate emergency vehicle access per current adopted Fire Code standards, and for which mitigation in conjunction with development is not feasible.

(2) Stormwater. A local government may use the following circumstances to justify a stormwater-based IBTER:

(a) Lack of stormwater infrastructure, or adequately-sized stormwater infrastructure, such as storm drainage pipes, curb and gutters, catch basins and inlets, lateral storm connections, regional stormwater facilities, and discharge outfalls that results in not meeting an acceptable service level. An acceptable service level may include metrics for water quantity discharge, water quality, or both.

(b) A downstream stormwater conveyance system deficiency, resulting in localized ponding or flooding and storm pipe back-ups caused by pipes, culverts, or catch basins in disrepair; these problems may be compounded by high groundwater; compacted underlying soils; or backwater from nearby waterways during high flows; any of which that results in not meeting an acceptable service level.

(3) Water and Sewer. A local government may use the following circumstances to justify a water or sanitary sewer IBTER:

(a) A significant infrastructure deficiency in localized (not citywide) water or sanitary sewer service that results in unacceptable service levels for water or sewer services. For example, maintaining minimum water pressure in a water system or exceeding the capacity of existing infrastructure within a sanitary sewer system.

(b) A localized (not citywide) combined sewer/stormwater system that will exceed capacity as a result of new middle housing units. As further justification the local government shall demonstrate how it would mitigate the deficiency with respect to wastewater capacity and stormwater controls, if both aspects would not meet acceptable service levels. In this case, the local government shall include descriptions and justifications for the IBTER consistent with the requirements for each of the infrastructure types.

STATUTORY/OTHER AUTHORITY: ORS 197.040, OR Laws 2019, chapter 639, section 4(6)

STATUTES/OTHER IMPLEMENTED: ORS 197.758, OR Laws 2019, chapter 639, sections 3 and 4

ADOPT: 660-046-0350

RULE TITLE: Application Submittal Timeline and Requirements

NOTICE FILED DATE: 06/26/2020

RULE SUMMARY: This rule describes the information and analysis required in an IBTER application, as well as the application deadlines as provided in Oregon Laws 2019, chapter 639, section 4.

RULE TEXT:

(1) Local governments requesting a time extension must file IBTER applications with the department as follows:

(a) By December 31, 2020 for local governments subject to ORS 197.758(3).

(b) By June 30, 2021 for local governments subject to ORS 197.758(2).

(2) Completeness review. Upon receipt of an IBTER application, the department will conduct a preliminary completeness review within 30 calendar days of receipt and notify the local government of any additional materials from section (3) that are required to make a complete application. Within one week of receiving notification of an incomplete application, the local government shall notify the department if it will provide all, some, or none of the requested additional information. If no additional information will be provided by the local government, the review period specified in OAR 660-046-0360(2) will begin upon receipt of the notification from the local government. If additional information is to be provided, the review period specified in OAR 660-046-0360(2) will begin on the date of receipt of the additional information. The local government must submit all requested materials within 60 calendar days of receipt of a request for additional materials. If the local government does not submit some or all of the requested completeness materials within the 60-day period, the review period specified in OAR 660-046-0360(2) will begin on the 61st day from the notification of incompleteness, and the department will evaluate the application based on the information that the local government has submitted by the end of the 60-day period.

(3) Required materials. A complete IBTER application from a local government shall include the information described in subsections (a) through (g):

(a) A narrative, graphics, tabular data, and other information as necessary to provide a general description of the significant infrastructure deficiency, including:

(A) A description of the infrastructure and the current system capacity. Relevant information from adopted utility master plans, special area utility plans, capital improvement plans, or similar documents and studies. Also, an identification of the service level that will not be met, including identification of the adopted utility master plan or other authority which establishes the service level.

(B) A description of the significant infrastructure deficiency. The application shall clarify if capacity is exceeded currently, or is anticipated by December 31, 2023, based on current development trends; or if the infrastructure is only expected to exceed capacity based on additional impacts from middle housing development pursuant to OAR 660-046-0330(4).

(C) If the local government finds significant infrastructure deficiency would be caused only by additional middle housing development in the area and plans to continue issuing permits for other types of development within the area, a detailed analysis of how and why existing infrastructure can continue to meet the needs of other types of development, but not middle housing.

(D) A description of assumptions used to calculate or estimate system capacity. This includes analysis of current impacts on the infrastructure system; impacts from additional development anticipated to occur based on current zoning; and impacts anticipated from the allowance for middle housing in the areas where it is not currently allowed, as more fully described in OAR 660-046-0330(4).

(E) Documentation of the significant infrastructure deficiency sufficient to allow the department to verify that the deficiency exists, including (but not necessarily limited to) items such as; maintenance and complaint records, photographs, modeling results (if available), crash data, a deficiency documented in an adopted utility master plan, or other evidence of deficiency.

(b) The name of the service provider if the Infrastructure is owned or operated by another provider, along with a

description of any agreements between the local government and service provider for infrastructure improvements.

(c) A vicinity map showing the boundary of the impacted areas for which the IBTER is requested. If the local government identifies more than one significant infrastructure deficiency (sewer and transportation, for example), the map should show the boundary of each deficiency separately and any areas of overlap.

(d) A regional map, if applicable, showing the significant infrastructure deficiency that otherwise provides service to the area where an IBTER is being requested.

(e) If the local government is subject to ORS 197.758(2), a description of the local government's plan for middle housing implementation in the impacted area, including identification of areas intended for duplex-only provisions, and, as applicable, standards to be applied in goal-protected and constrained areas, and areas intended to accommodate triplexes, quadplexes, townhomes, and cottage cluster developments.

(f) A remediation plan that describes the proposed infrastructure improvement(s) intended to remedy the significant infrastructure deficiency so that the local government may implement middle housing provisions. For each infrastructure improvement project, the description should include, at a minimum:

(A) The proposed period of time needed to address the significant infrastructure deficiency, including phasing and contingencies, if applicable.

(B) A discussion of the options initially considered for addressing the significant infrastructure deficiency, along with an explanation of how the proposed approach is the most expeditiously feasible approach available to address the deficiency.

(C) Explanation of how the improvement project will provide acceptable service levels to anticipated middle housing.

(D) Potential funding source(s), including funding commitments from other governmental agencies or private parties, and schedule for project completion.

(E) Depiction of the area that will be remedied by the project.

(F) Proposed timeline and associated mapping to demonstrate any phasing of the remediation plan where there are several improvement projects identified.

(G) A map of all other areas within the local government where middle housing will be implemented during the extension period.

(H) If a local government proposes a bond measure or similar financial mechanism that requires voter approval as a means to fund an infrastructure improvement project, a local government may also propose a contingency plan for funding the infrastructure improvement.

(g) A narrative detailing how the application is in compliance with the Review Criteria in OAR 660-046-0360(3). In response to criterion in OAR 660-046-0360(3)(d), the local government shall provide a map of the local government's jurisdictional area, depicting US Census tract scores based on the Oregon Housing and Community Services Department's Notice of Funding Availability Scoring Criteria Map:

(<https://geo.maps.arcgis.com/apps/webappviewer/index.html?id=2cb211dbdd3d4cf497d8190283f1402f>). The map identifies census tracts within communities that score low, medium, or high in relation to access to opportunity. Those tracts identified as high opportunity areas have a relatively low poverty rate, high labor market engagement index, and a low unemployment rate. Low opportunity areas have a relatively high poverty rate, low labor market engagement index, and a high unemployment rate. The narrative addressing criterion in OAR 660-046-0360(3)(d) must refer to the mapped areas in relation to the review criterion.

STATUTORY/OTHER AUTHORITY: ORS 197.040, OR Laws 2019, chapter 639, section 4(6)

STATUTES/OTHER IMPLEMENTED: ORS 197.758, OR Laws 2019, chapter 639, sections 3 and 4

ADOPT: 660-046-0360

RULE TITLE: Review Process, Review Criteria and Appeal Process

NOTICE FILED DATE: 06/26/2020

RULE SUMMARY: This rule describes the IBTER review process and review criteria, including the review timelines provided in Oregon laws 2019, chapter 639, section 4. This rule also specifies the process for public comment and appeal of IBTER decisions.

RULE TEXT:

(1) Review and decision-making authority. The department reviews IBTERs for consistency with the review criteria and compliance with the procedural requirements in OAR 660-046-0360. The department will deny an IBTER that does not meet either the review criteria or comply with the procedural requirements. The department has final decision-making authority for IBTERs. The Land Conservation and Development Commission has decision-making authority for appeals of the department's decision.

(2) Posting for Public Comment. The department will post a timely and complete IBTER on the department's website along with the review criteria provided in section (5) and a statement that any person may file a comment regarding the IBTER no more than 21 days after the posting of the IBTER.

(3) Valid Comments. Any person may file a comment with the Department. In order to be considered valid, a comment must:

(a) Be in writing and filed with the Department no more than 21 days after the Department posting of the IBTER on the department's website;

(b) Address one or more of the five review criteria in section (5); and

(c) Provide the person's mailing address.

(4) Department Decision. The Department shall review the IBTER along with any valid comments and shall approve, approve with conditions of approval under section (7), or deny an IBTER. The department will mail the decision to the local government submitting the IBTER and any person that submitted valid comments. The department will issue a decision on an IBTER as follows:

(a) Within 90 days of receipt of a complete application for local governments subject to ORS 197.758(3);

(b) Within 120 days of receipt of a complete application for local governments subject to ORS 197.758(2).

(5) Review criteria. The department shall consider the following criteria in the review of IBTERs:

(a) Whether the identified deficiency is a significant infrastructure deficiency, consistent with the parameters and infrastructure-specific thresholds established in OAR 660-046-0330 and OAR 660-046-0340.

(b) Whether the IBTER has adequately described and documented the identified significant infrastructure deficiency and has established a boundary for the requested extension area(s), as required by OAR 660-046-0350. The boundary for the requested time extension is a specific area where there is an identified significant infrastructure deficiency.

(c) Whether the proposed remediation plan is likely to be effective and presents the most expeditiously feasible course of action to enable implementation of middle housing provisions.

(d) Whether, in relation to the opportunity area map provided per OAR 660-046-0350(3)(g) and any other available data sources regarding income, race, or ethnicity within the jurisdiction, the local government has demonstrated that correction of the significant infrastructure deficiency will either help to overcome patterns of segregation by income, race, or ethnicity, and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics, or, at minimum, will not serve to perpetuate these inequities. To assist with this evaluation, local governments may demonstrate that the IBTER is consistent with a plan of actions over time by the local government and community partners that will reduce barriers to opportunity for all community residents, in all areas within the local government's jurisdiction.

(e) Whether the time period proposed for the IBTER is the minimum necessary to remedy the significant infrastructure deficiency.

(6) Response to Comments. The department's decision under section (4) shall include a response to each valid comment.

(7) Conditions of Approval. The department may impose conditions in time extensions that it deems necessary to satisfy the review criteria or to ensure the time extension is consistent with the intent of OAR chapter 660, division 46, ORS 197.758, and Oregon Laws 2019, chapter 639, section 4.

(8) Appeals.

(a) Within 21 days of the mailing of the department's decision the local government submitting the IBTER or a person that submitted a valid comment may file an appeal, in writing, of the decision to the Land Conservation and Development Commission. The appellant shall simultaneously provide a copy of the appeal to each recipient of the department's decision as indicated by the department's certificate of service.

(b) Appeals must identify the specific findings and analysis that are alleged to be made in error in relation to the applicable criterion or criteria. A challenge to a condition of approval under section (7) must specify how the condition is inconsistent with the intent of OAR chapter 660, division 46, ORS 197.758, and Oregon Laws 2019, chapter 639, section 4. An appellant may submit written materials in support of the appeal.

(c) The local jurisdiction or a party that submitted a valid comment may file a written response to the appeal with the Department within 21 days of the filing of the appeal.

(d) The Commission shall hold an appeal hearing within 120 days of the filing of the appeal. The appeal hearing shall be a contested case hearing. In making its decision the Commission may consider:

(A) All materials in the record that led to the Department decision under section (4);

(B) Any written materials submitted in support of the appeal under subsection (8)(b);

(C) Any timely written responses filed in response to the appeal under subsection(8)(c);

(D) The department staff report and recommendation to the Commission; and

(E) Oral arguments and evidence presented at the appeal hearing.

(e) The Commission shall issue a final order rejecting or upholding the appeal within 30 days of the appeal hearing.

STATUTORY/OTHER AUTHORITY: ORS 197.040, OR Laws 2019, chapter 639, section 4(6)

STATUTES/OTHER IMPLEMENTED: ORS 197.758, OR Laws 2019, chapter 639, sections 3 and 4

ADOPT: 660-046-0370

RULE TITLE: Duration of Time Extension

NOTICE FILED DATE: 06/26/2020

RULE SUMMARY: This rule describes the allowed duration of approved time extensions, as well as requirements for the submittal and review of an amended remediation plan.

RULE TEXT:

(1) As provided in OAR 660-046-0350(3)(f)(A), the IBTER must specify when the local government intends to correct the significant infrastructure deficiency. The IBTER must provide a detailed timeline for a complete plan of action that will remedy the significant infrastructure deficiency, which may include phased infrastructure improvements and contingent actions and timelines based on circumstances outside the control of the local government.

(2) If, for reasons beyond the control of the local government, the local government cannot complete an approved remediation plan by the deadline specified in the time extension decision, the local government, prior to the expiration date of a time extension, may prepare an amended remediation plan and submit the plan for department consideration. With the exception of application deadlines specified in OAR 660-046-0350(1), the amended remediation plan must be consistent with the provisions of OAR 660-046-0300 through OAR 660-046-0370. The amended remediation plan must explain why the initial approved plan could not be completed on schedule. Department review of the amended remediation plan is not subject to the completeness review period specified in OAR 660-046-0350(2), nor the required decision timelines in OAR 660-046-0360(4). Otherwise, the review process and criteria for the amended remediation plan must be consistent with the requirements of OAR 660-046-0360. Additionally, the department shall evaluate the following considerations in review of any amended remediation plan:

- (a) Whether the local government anticipated or reasonably should have anticipated the contingencies causing delay in the initial remediation plan;
- (b) Whether additional delay in the enactment of middle housing allowances is warranted; and
- (c) Whether the allowance for middle housing in the subject area would provide an opportunity for other parties to construct the necessary infrastructure as needed in association with middle housing development.

(3) Upon the expiration date of a time extension, the local government must either enact development code regulations implementing middle housing or apply the model code, as applicable, per OAR 660-046-0100 or OAR 660-046-0200.

STATUTORY/OTHER AUTHORITY: ORS 197.040, OR Laws 2019, chapter 639, section 4(6)

STATUTES/OTHER IMPLEMENTED: ORS 197.758, OR Laws 2019, chapter 639, sections 3 and 4

Enrolled
House Bill 2001

Sponsored by Representative KOTEK; Representatives FAHEY, HERNANDEZ, MARSH, MITCHELL, POWER, STARK, WILLIAMS, ZIKA (Presession filed.)

CHAPTER

AN ACT

Relating to housing; creating new provisions; amending ORS 197.296, 197.303, 197.312 and 455.610 and section 1, chapter 47, Oregon Laws 2018; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS chapter 197.

SECTION 2. (1) As used in this section:

(a) "Cottage clusters" means groupings of no fewer than four detached housing units per acre with a footprint of less than 900 square feet each and that include a common courtyard.

(b) "Middle housing" means:

(A) Duplexes;

(B) Triplexes;

(C) Quadplexes;

(D) Cottage clusters; and

(E) Townhouses.

(c) "Townhouses" means a dwelling unit constructed in a row of two or more attached units, where each dwelling unit is located on an individual lot or parcel and shares at least one common wall with an adjacent unit.

(2) Except as provided in subsection (4) of this section, each city with a population of 25,000 or more and each county or city within a metropolitan service district shall allow the development of:

(a) All middle housing types in areas zoned for residential use that allow for the development of detached single-family dwellings; and

(b) A duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings.

(3) Except as provided in subsection (4) of this section, each city not within a metropolitan service district with a population of more than 10,000 and less than 25,000 shall allow the development of a duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings. Nothing in this subsection prohibits a local government from allowing middle housing types in addition to duplexes.

(4) This section does not apply to:

(a) Cities with a population of 1,000 or fewer;

(b) Lands not within an urban growth boundary;

(c) Lands that are not incorporated and also lack sufficient urban services, as defined in ORS 195.065;

(d) Lands that are not zoned for residential use, including lands zoned primarily for commercial, industrial, agricultural or public uses; or

(e) Lands that are not incorporated and are zoned under an interim zoning designation that maintains the land's potential for planned urban development.

(5) Local governments may regulate siting and design of middle housing required to be permitted under this section, provided that the regulations do not, individually or cumulatively, discourage the development of all middle housing types permitted in the area through unreasonable costs or delay. Local governments may regulate middle housing to comply with protective measures adopted pursuant to statewide land use planning goals.

(6) This section does not prohibit local governments from permitting:

(a) Single-family dwellings in areas zoned to allow for single-family dwellings; or

(b) Middle housing in areas not required under this section.

SECTION 3. (1) Notwithstanding ORS 197.646, a local government shall adopt land use regulations or amend its comprehensive plan to implement section 2 of this 2019 Act no later than:

(a) June 30, 2021, for each city subject to section 2 (3) of this 2019 Act; or

(b) June 30, 2022, for each local government subject to section 2 (2) of this 2019 Act.

(2) The Land Conservation and Development Commission, with the assistance of the Building Codes Division of the Department of Consumer and Business Services, shall develop a model middle housing ordinance no later than December 31, 2020.

(3) A local government that has not acted within the time provided under subsection (1) of this section shall directly apply the model ordinance developed by the commission under subsection (2) of this section under ORS 197.646 (3) until the local government acts as described in subsection (1) of this section.

(4) In adopting regulations or amending a comprehensive plan under this section, a local government shall consider ways to increase the affordability of middle housing by considering ordinances and policies that include but are not limited to:

(a) Waiving or deferring system development charges;

(b) Adopting or amending criteria for property tax exemptions under ORS 307.515 to 307.523, 307.540 to 307.548 or 307.651 to 307.687 or property tax freezes under ORS 308.450 to 308.481; and

(c) Assessing a construction tax under ORS 320.192 and 320.195.

(5) When a local government makes a legislative decision to amend its comprehensive plan or land use regulations to allow middle housing in areas zoned for residential use that allow for detached single-family dwellings, the local government is not required to consider whether the amendments significantly affect an existing or planned transportation facility.

SECTION 4. (1) Notwithstanding section 3 (1) or (3) of this 2019 Act, the Department of Land Conservation and Development may grant to a local government that is subject to section 2 of this 2019 Act an extension of the time allowed to adopt land use regulations or amend its comprehensive plan under section 3 of this 2019 Act.

(2) An extension under this section may be applied only to specific areas where the local government has identified water, sewer, storm drainage or transportation services that are either significantly deficient or are expected to be significantly deficient before December 31, 2023, and for which the local government has established a plan of actions that will remedy the deficiency in those services that is approved by the department. The extension may not extend beyond the date that the local government intends to correct the deficiency under the plan.

(3) In areas where the extension under this section does not apply, the local government shall apply its own land use regulations consistent with section 3 (1) of this 2019 Act or the model ordinance developed under section 3 (2) of this 2019 Act.

(4) A request for an extension by a local government must be filed with the department no later than:

- (a) **December 31, 2020, for a city subject to section 2 (3) of this 2019 Act.**
- (b) **June 30, 2021, for a local government subject to section 2 (2) of this 2019 Act.**
- (5) **The department shall grant or deny a request for an extension under this section:**
 - (a) **Within 90 days of receipt of a complete request from a city subject to section 2 (3) of this 2019 Act.**
 - (b) **Within 120 days of receipt of a complete request from a local government subject to section 2 (2) of this 2019 Act.**
- (6) **The department shall adopt rules regarding the form and substance of a local government's application for an extension under this section. The department may include rules regarding:**
 - (a) **Defining the affected areas;**
 - (b) **Calculating deficiencies of water, sewer, storm drainage or transportation services;**
 - (c) **Service deficiency levels required to qualify for the extension;**
 - (d) **The components and timing of a remediation plan necessary to qualify for an extension;**
 - (e) **Standards for evaluating applications; and**
 - (f) **Establishing deadlines and components for the approval of a plan of action.**

SECTION 5. ORS 197.296 is amended to read:

197.296. (1)(a) The provisions of subsections (2) to (9) of this section apply to metropolitan service district regional framework plans and local government comprehensive plans for lands within the urban growth boundary of a city that is located outside of a metropolitan service district and has a population of 25,000 or more.

(b) The Land Conservation and Development Commission may establish a set of factors under which additional cities are subject to the provisions of this section. In establishing the set of factors required under this paragraph, the commission shall consider the size of the city, the rate of population growth of the city or the proximity of the city to another city with a population of 25,000 or more or to a metropolitan service district.

(2) At periodic review pursuant to ORS 197.628 to 197.651 or at any other legislative review of the comprehensive plan or regional framework plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional framework plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.

(3) In performing the duties under subsection (2) of this section, a local government shall:

(a) Inventory the supply of buildable lands within the urban growth boundary and determine the housing capacity of the buildable lands; and

(b) Conduct an analysis of **existing and projected** housing need by type and density range, in accordance with **all factors under** ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed for each needed housing type for the next 20 years.

(4)(a) For the purpose of the inventory described in subsection (3)(a) of this section, "buildable lands" includes:

(A) Vacant lands planned or zoned for residential use;

(B) Partially vacant lands planned or zoned for residential use;

(C) Lands that may be used for a mix of residential and employment uses under the existing planning or zoning; and

(D) Lands that may be used for residential infill or redevelopment.

(b) For the purpose of the inventory and determination of housing capacity described in subsection (3)(a) of this section, the local government must demonstrate consideration of:

(A) The extent that residential development is prohibited or restricted by local regulation and ordinance, state law and rule or federal statute and regulation;

(B) A written long term contract or easement for radio, telecommunications or electrical facilities, if the written contract or easement is provided to the local government; and

(C) The presence of a single family dwelling or other structure on a lot or parcel.

(c) Except for land that may be used for residential infill or redevelopment, a local government shall create a map or document that may be used to verify and identify specific lots or parcels that have been determined to be buildable lands.

(5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity *[and need]* pursuant to subsection [(3)] **(3)(a)** of this section must be based on data relating to land within the urban growth boundary that has been collected since the last *[periodic]* review or *[five]* **six** years, whichever is greater. The data shall include:

(A) The number, density and average mix of housing types of urban residential development that have actually occurred;

(B) Trends in density and average mix of housing types of urban residential development;

(C) **Market factors that may substantially impact future urban residential development;**
and

[(C) Demographic and population trends;]

[(D) Economic trends and cycles; and]

[(E)] **(D)** The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.

(b) A local government shall make the determination described in paragraph (a) of this subsection using a shorter time period than the time period described in paragraph (a) of this subsection if the local government finds that the shorter time period will provide more accurate and reliable data related to housing capacity *[and need]*. The shorter time period may not be less than three years.

(c) A local government shall use data from a wider geographic area or use a time period *[for economic cycles and trends]* longer than the time period described in paragraph (a) of this subsection if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to paragraph (a) of this subsection. The local government must clearly describe the geographic area, time frame and source of data used in a determination performed under this paragraph.

(6) If the housing need determined pursuant to subsection (3)(b) of this section is greater than the housing capacity determined pursuant to subsection (3)(a) of this section, the local government shall take one or *[more]* **both** of the following actions to accommodate the additional housing need:

(a) Amend its urban growth boundary to include sufficient buildable lands to accommodate housing needs for the next 20 years. As part of this process, the local government shall consider the effects of measures taken pursuant to paragraph (b) of this subsection. The amendment shall include sufficient land reasonably necessary to accommodate the siting of new public school facilities. The need and inclusion of lands for new public school facilities shall be a coordinated process between the affected public school districts and the local government that has the authority to approve the urban growth boundary[;].

(b) Amend its comprehensive plan, regional framework plan, functional plan or land use regulations to include new measures that demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate housing needs for the next 20 years without expansion of the urban growth boundary. A local government or metropolitan service district that takes this action shall *[monitor and record the level of development activity and development density by housing type following the date of the adoption of the new measures; or]* **adopt findings regarding the density expectations assumed to result from measures adopted under this paragraph based upon the factors listed in ORS 197.303 (2) and data in subsection (5)(a) of this section. The density expectations may not project an increase in residential capacity above achieved density by more than three percent without quantifiable validation of such departures. For a local government located outside of a metropolitan service district, a quantifiable vali-**

ation must demonstrate that the assumed housing capacity has been achieved in areas that are zoned to allow no greater than the same authorized density level within the local jurisdiction or a jurisdiction in the same region. For a metropolitan service district, a quantifiable validation must demonstrate that the assumed housing capacity has been achieved in areas that are zoned to allow no greater than the same authorized density level within the metropolitan service district.

[(c) Adopt a combination of the actions described in paragraphs (a) and (b) of this subsection.]

(c) As used in this subsection, “authorized density level” has the meaning given that term in ORS 227.175.

(7) Using the **housing need** analysis conducted under subsection (3)(b) of this section, the local government shall determine the overall average density and overall mix of housing types at which residential development of needed housing types must occur in order to meet housing needs over the next 20 years. If that density is greater than the actual density of development determined under subsection (5)(a)(A) of this section, or if that mix is different from the actual mix of housing types determined under subsection (5)(a)(A) of this section, the local government, as part of its periodic review, shall adopt measures that demonstrably increase the likelihood that residential development will occur at the housing types and density and at the mix of housing types required to meet housing needs over the next 20 years.

(8)(a) A local government outside a metropolitan service district that takes any actions under subsection (6) or (7) of this section shall demonstrate that the comprehensive plan and land use regulations comply with goals and rules adopted by the commission and implement ORS 197.295 to 197.314.

(b) *[The]* A local government shall determine the density and mix of housing types anticipated as a result of actions taken under subsections (6) and (7) of this section and monitor and record the actual density and mix of housing types achieved **following the adoption of these actions**. The local government shall compare actual and anticipated density and mix. The local government shall submit its comparison to the commission at the next periodic review or at the next legislative review of its urban growth boundary, whichever comes first.

(9) In establishing that actions and measures adopted under subsections (6) and (7) of this section demonstrably increase the likelihood of higher density residential development, the local government shall at a minimum ensure that land zoned for needed housing is in locations appropriate for the housing types identified under subsection (3) of this section, *[and]* is zoned at density ranges that are likely to be achieved by the housing market using the analysis in subsection (3) of this section **and is in areas where sufficient urban services are planned to enable the higher density development to occur over the 20-year period**. Actions or measures, or both, may include but are not limited to:

- (a) Increases in the permitted density on existing residential land;
- (b) Financial incentives for higher density housing;
- (c) Provisions permitting additional density beyond that generally allowed in the zoning district in exchange for amenities and features provided by the developer;
- (d) Removal or easing of approval standards or procedures;
- (e) Minimum density ranges;
- (f) Redevelopment and infill strategies;
- (g) Authorization of housing types not previously allowed by the plan or regulations;
- (h) Adoption of an average residential density standard; and
- (i) Rezoning or redesignation of nonresidential land.

(10)(a) The provisions of this subsection apply to local government comprehensive plans for lands within the urban growth boundary of a city that is located outside of a metropolitan service district and has a population of less than 25,000.

(b) At periodic review pursuant to ORS 197.628 to 197.651 or at any other legislative review of the comprehensive plan that requires the application of a statewide planning goal relating to buildable lands for residential use, a city shall, according to rules of the commission:

- (A) Determine the estimated housing needs within the jurisdiction for the next 20 years;
- (B) Inventory the supply of buildable lands available within the urban growth boundary to accommodate the estimated housing needs determined under this subsection; and
- (C) Adopt measures necessary to accommodate the estimated housing needs determined under this subsection.

(c) For the purpose of the inventory described in this subsection, “buildable lands” includes those lands described in subsection (4)(a) of this section.

SECTION 6. ORS 197.303 is amended to read:

197.303. (1) As used in ORS [197.307] **197.295 to 197.314**, “needed housing” means all housing on land zoned for residential use or mixed residential and commercial use that is determined to meet the need shown for housing within an urban growth boundary at price ranges and rent levels that are affordable to households within the county with a variety of incomes, including but not limited to households with low incomes, very low incomes and extremely low incomes, as those terms are defined by the United States Department of Housing and Urban Development under 42 U.S.C. 1437a. “Needed housing” includes the following housing types:

- (a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;
- (b) Government assisted housing;
- (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;
- (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; and
- (e) Housing for farmworkers.

(2) For the purpose of estimating housing needs, as described in ORS 197.296 (3)(b), a local government shall use the population projections prescribed by ORS 195.033 or 195.036 and shall consider and adopt findings related to changes in each of the following factors since the last periodic or legislative review or six years, whichever is greater, and the projected future changes in these factors over a 20-year planning period:

- (a) Household sizes;**
- (b) Household demographics in terms of age, gender, race or other established demographic category;**
- (c) Household incomes;**
- (d) Vacancy rates; and**
- (e) Housing costs.**

(3) A local government shall make the estimate described in subsection (2) of this section using a shorter time period than since the last periodic or legislative review or six years, whichever is greater, if the local government finds that the shorter time period will provide more accurate and reliable data related to housing need. The shorter time period may not be less than three years.

(4) A local government shall use data from a wider geographic area or use a time period longer than the time period described in subsection (2) of this section if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to subsection (2) of this section. The local government must clearly describe the geographic area, time frame and source of data used in an estimate performed under this subsection.

[2] **(5)** Subsection (1)(a) and (d) of this section does not apply to:

- (a) A city with a population of less than 2,500.
- (b) A county with a population of less than 15,000.

[3] **(6)** A local government may take an exception under ORS 197.732 to the definition of “needed housing” in subsection (1) of this section in the same manner that an exception may be taken under the goals.

SECTION 7. ORS 197.312, as amended by section 7, chapter 15, Oregon Laws 2018, is amended to read:

197.312. (1) A city or county may not by charter prohibit from all residential zones attached or detached single-family housing, multifamily housing for both owner and renter occupancy or manufactured homes. A city or county may not by charter prohibit government assisted housing or impose additional approval standards on government assisted housing that are not applied to similar but unassisted housing.

(2)(a) A single-family dwelling for a farmworker and the farmworker's immediate family is a permitted use in any residential or commercial zone that allows single-family dwellings as a permitted use.

(b) A city or county may not impose a zoning requirement on the establishment and maintenance of a single-family dwelling for a farmworker and the farmworker's immediate family in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other single-family dwellings in the same zone.

(3)(a) Multifamily housing for farmworkers and farmworkers' immediate families is a permitted use in any residential or commercial zone that allows multifamily housing generally as a permitted use.

(b) A city or county may not impose a zoning requirement on the establishment and maintenance of multifamily housing for farmworkers and farmworkers' immediate families in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other multifamily housing in the same zone.

(4) A city or county may not prohibit a property owner or developer from maintaining a real estate sales office in a subdivision or planned community containing more than 50 lots or dwelling units for the sale of lots or dwelling units that remain available for sale to the public.

(5)(a) A city with a population greater than 2,500 or a county with a population greater than 15,000 shall allow in areas within the urban growth boundary that are zoned for detached single-family dwellings the development of at least one accessory dwelling unit for each detached single-family dwelling, subject to reasonable local regulations relating to siting and design.

(b) As used in this subsection[.]:

(A) "Accessory dwelling unit" means an interior, attached or detached residential structure that is used in connection with or that is accessory to a single-family dwelling.

(B) "**Reasonable local regulations relating to siting and design**" does not include owner-occupancy requirements of either the primary or accessory structure or requirements to construct additional off-street parking.

(6) **Subsection (5) of this section does not prohibit local governments from regulating vacation occupancies, as defined in ORS 90.100, to require owner-occupancy or off-street parking.**

SECTION 8. Section 1, chapter 47, Oregon Laws 2018, is amended to read:

Sec. 1. (1) For purposes of this section:

(a) A household is severely rent burdened if the household spends more than 50 percent of the income of the household on gross rent for housing.

(b) A regulated affordable unit is a residential unit subject to a regulatory agreement that runs with the land and that requires affordability for an established income level for a defined period of time.

[(c) A single-family unit may be rented or owned by a household and includes single-family homes, duplexes, townhomes, row homes and mobile homes.]

(2)(a) The Housing and Community Services Department shall annually provide to the governing body of each city in this state with a population greater than 10,000 the most current data available from the United States Census Bureau, or any other source the department considers at least as reliable, showing the percentage of renter households in the city that are severely rent burdened.

(b) The Housing and Community Services Department, in collaboration with the Department of Land Conservation and Development, shall develop a survey form on which the governing body of

a city may provide specific information related to the affordability of housing within the city, including, but not limited to:

(A) The actions relating to land use and other related matters that the governing body has taken to increase the affordability of housing and reduce rent burdens for severely rent burdened households; and

(B) The additional actions the governing body intends to take to reduce rent burdens for severely rent burdened households.

(c) If the Housing and Community Services Department determines that at least 25 percent of the renter households in a city are severely rent burdened, the department shall provide the governing body of the city with the survey form developed pursuant to paragraph (b) of this subsection.

(d) The governing body of the city shall return the completed survey form to the Housing and Community Services Department and the Department of Land Conservation and Development within 60 days of receipt.

(3)(a) In any year in which the governing body of a city is informed under this section that at least 25 percent of the renter households in the city are severely rent burdened, the governing body shall hold at least one public meeting to discuss the causes and consequences of severe rent burdens within the city, the barriers to reducing rent burdens and possible solutions.

(b) The Housing and Community Services Department may adopt rules governing the conduct of the public meeting required under this subsection.

(4) No later than February 1 of each year, the governing body of each city in this state with a population greater than 10,000 shall submit to the Department of Land Conservation and Development a report for the immediately preceding calendar year setting forth separately for each of the following categories the total number of units that were permitted and the total number that were produced:

- (a) Residential units.
- (b) Regulated affordable residential units.
- (c) Multifamily residential units.
- (d) Regulated affordable multifamily residential units.
- (e) Single-family *[units]* **homes**.
- (f) Regulated affordable single-family *[units]* **homes**.
- (g) Accessory dwelling units.**
- (h) Regulated affordable accessory dwelling units.**
- (i) Units of middle housing, as defined in section 2 of this 2019 Act.**
- (j) Regulated affordable units of middle housing.**

SECTION 9. ORS 455.610 is amended to read:

455.610. (1) The Director of the Department of Consumer and Business Services shall adopt, and amend as necessary, a Low-Rise Residential Dwelling Code that contains all requirements, including structural design provisions, related to the construction of residential dwellings three stories or less above grade. The code provisions for plumbing and electrical requirements must be compatible with other specialty codes adopted by the director. The Electrical and Elevator Board, the Mechanical Board and the State Plumbing Board shall review, respectively, amendments to the electrical, mechanical or plumbing provisions of the code.

(2) Changes or amendments to the code adopted under subsection (1) of this section may be made when:

- (a) Required by geographic or climatic conditions unique to Oregon;
- (b) Necessary to be compatible with other statutory provisions;
- (c) Changes to the national codes are adopted in Oregon; or
- (d) Necessary to authorize the use of building materials and techniques that are consistent with nationally recognized standards and building practices.

(3) Notwithstanding ORS 455.030, 455.035, 455.110 and 455.112, the director may, at any time following appropriate consultation with the Mechanical Board or Building Codes Structures Board,

amend the mechanical specialty code or structural specialty code to ensure compatibility with the Low-Rise Residential Dwelling Code.

(4) The water conservation provisions for toilets, urinals, shower heads and interior faucets adopted in the Low-Rise Residential Dwelling Code shall be the same as those adopted under ORS 447.020 to meet the requirements of ORS 447.145.

(5) The Low-Rise Residential Dwelling Code shall be adopted and amended as provided by ORS 455.030 and 455.110.

(6) The director, by rule, shall establish uniform standards for a municipality to allow an alternate method of construction to the requirements for one and two family dwellings built to the Low-Rise Residential Dwelling Code in areas where the local jurisdiction determines that the fire apparatus means of approach to a property or water supply serving a property does not meet applicable fire code or state building code requirements. The alternate method of construction, which may include but is not limited to the installation of automatic fire sprinkler systems, must be approved in conjunction with the approval of an application under ORS 197.522.

(7) For lots of record existing before July 2, 2001, or property that receives any approval for partition, subdivision or construction under ORS 197.522 before July 2, 2001, a municipality allowing an alternate method of construction to the requirements for one and two family dwellings built to the Low-Rise Residential Dwelling Code may apply the uniform standards established by the director pursuant to subsection (6) of this section. For property that receives all approvals for partition, subdivision or construction under ORS 197.522 on or after July 2, 2001, a municipality allowing an alternate method of construction to the requirements for one and two family dwellings built to the Low-Rise Residential Dwelling Code must apply the uniform standards established by the director pursuant to subsection (6) of this section.

(8) The director, by rule, shall establish uniform standards for a municipality to allow alternate approval of construction related to conversions of single-family dwellings into no more than four residential dwelling units built to the Low-Rise Residential Dwelling Code that received occupancy approval prior to January 1, 2020. The standards established under this subsection must include standards describing the information that must be submitted before an application for alternate approval will be deemed complete.

(9)(a) A building official described in ORS 455.148 or 455.150 must approve or deny an application for alternate approval under subsection (8) of this section no later than 15 business days after receiving a complete application.

(b) A building official who denies an application for alternate approval under this subsection shall provide to the applicant:

(A) A written explanation of the basis for the denial; and

(B) A statement that describes the applicant's appeal rights under subsection (10) of this section.

(10)(a) An appeal from a denial under subsection (9) of this section must be made through a municipal administrative process. A municipality shall provide an administrative process that:

(A) Is other than a judicial proceeding in a court of law; and

(B) Affords the party an opportunity to appeal the denial before an individual, department or body that is other than a plan reviewer, inspector or building official for the municipality.

(b) A decision in an administrative process under this subsection must be completed no later than 30 business days after the building official receives notice of the appeal.

(c) Notwithstanding ORS 455.690, a municipal administrative process required under this subsection is the exclusive means for appealing a denial under subsection (9) of this section.

(11) The costs incurred by a municipality under subsections (9) and (10) of this section are building inspection program administration and enforcement costs for the purpose of fee adoption under ORS 455.210.

SECTION 10. (1) It is the policy of the State of Oregon to reduce to the extent practicable administrative and permitting costs and barriers to the construction of middle housing, as defined in section 2 of this 2019 Act, while maintaining safety, public health and the general welfare with respect to construction and occupancy.

(2) The Department of Consumer and Business Services shall submit a report describing rules and standards relating to low-rise residential dwellings proposed under ORS 455.610, as amended by section 9 of this 2019 Act, in the manner provided in ORS 192.245, to an interim committee of the Legislative Assembly related to housing no later than January 1, 2020.

SECTION 11. Section 12 of this 2019 Act is added to and made a part of ORS 94.550 to 94.783.

SECTION 12. A provision in a governing document that is adopted or amended on or after the effective date of this 2019 Act, is void and unenforceable to the extent that the provision would prohibit or have the effect of unreasonably restricting the development of housing that is otherwise allowable under the maximum density of the zoning for the land.

SECTION 13. A provision in a recorded instrument affecting real property is not enforceable if:

(1) The provision would allow the development of a single-family dwelling on the real property but would prohibit the development of:

- (a) Middle housing, as defined in section 2 of this 2019 Act; or
- (b) An accessory dwelling unit allowed under ORS 197.312 (5); and

(2) The instrument was executed on or after the effective date of this 2019 Act.

SECTION 14. (1) Sections 2, 12 and 13 of this 2019 Act and the amendments to ORS 197.296, 197.303, 197.312 and 455.610 and section 1, chapter 47, Oregon Laws 2018, by sections 5 to 9 of this 2019 Act become operative on January 1, 2020.

(2) The Land Conservation and Development Commission, the Department of Consumer and Business Services and the Residential and Manufactured Structures Board may take any actions before the operative date specified in subsection (1) of this section necessary to enable the commission, department or board to exercise, on or after the operative date specified in subsection (1) of this section, the duties required under sections 2, 3 and 10 of this 2019 Act and the amendments to ORS 455.610 by section 9 of this 2019 Act.

SECTION 15. In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Land Conservation and Development, for the biennium beginning July 1, 2019, out of the General Fund, the amount of \$3,500,000 for the purpose of providing technical assistance to local governments in implementing section 3 (1) of this 2019 Act and to develop plans to improve water, sewer, storm drainage and transportation services as described in section 4 (2) of this 2019 Act. The department shall prioritize technical assistance to cities or counties with limited planning staff or that commit to implementation earlier than the date required under section 3 (1) of this 2019 Act.

SECTION 16. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.

Passed by House June 20, 2019

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate June 30, 2019

.....
Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2019

Approved:

.....M,....., 2019

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2019

.....
Bev Clarno, Secretary of State



City of McMinnville
Community Development Department
231 NE Fifth Street
McMinnville, OR 97128
(503) 434-7312

www.mcminnvilleoregon.gov

STAFF REPORT

DATE: January 20, 2021
TO: Jeff Towery, City Manager
FROM: Mike Bisset, Community Development Director
SUBJECT: ODOT Fund Exchange Program (FEX) Agreement No. 34653

Report in Brief:

This action is the consideration of a resolution authorizing the approval of a cooperative fund exchange agreement between the City of McMinnville and Oregon Department of Transportation (ODOT) known as Fund Exchange Program (FEX) Agreement No. 34653.

Background:

In 2013, the City entered into an Oregon Transportation Infrastructure Bank (OTIB) loan agreement (attached) with the State of Oregon to cover the City's \$3,209,600.00 portion of the Newberg-Dundee Bypass project. Section 2.10 of the loan agreement allows of the use of the City's federal transportation fund allotment to cover the loan principal and interest payments.

Discussion:

The attached Fund Exchange Program (FEX) Agreement No. 34653 provides for the exchange of \$201,248 of the City's federal allocation to cover the City's 2021 OTIB loan principal and interest payment, which will be due in early 2021. Per the agreement, the City will receive \$100 in state funds for every \$100 of federal funds exchanged.

Attachments:

1. Proposed Resolution No. 2021-05
2. ODOT Fund Exchange Program (FEX) Agreement No. 34653
3. Oregon Transportation Infrastructure Bank (OTIB) loan agreement

Recommendation:

Staff recommends that the City Council adopt the attached resolution authorizing the City Manager to execute Fund Exchange Program (FEX) Agreement No. 34653.

RESOLUTION NO. 2021 – 05

A Resolution authorizing the approval of a cooperative fund exchange agreement between the City of McMinnville and Oregon Department of Transportation (ODOT) known as Fund Exchange Program (FEX) Agreement No. 34653.

RECITALS:

The Oregon Department of Transportation allows the City to exchange its allocation of Federal Transportation Funds for State revenues. It is to the City’s benefit to exchange the funds because the requirements attached to Federal projects do not apply to State revenues.

The agreement will provide for the exchange of \$201,248 of the City’s federal allocation to cover the City’s 2020 Oregon Transportation Infrastructure Bank loan principal and interest payment (Newberg-Dundee Bypass project). Per the agreement, the City will receive \$100 in state funds for every \$100 of federal funds exchanged.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON, as follows:

1. That entry into an agreement with the State of Oregon, Department of Transportation, for the exchange of the City’s \$201,248 allocation of Federal Highway Funds for \$201,248 of State funds is approved.
2. The City Manager is hereby authorized and directed to execute the agreement between the State of Oregon, acting by and through its Department of Transportation, and the City of McMinnville.
3. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Common Council of the City of McMinnville at a meeting held the 26th day of January 2021 by the following votes:

Ayes: _____

Nays: _____

Approved this 26th day of January 2021.

MAYOR

Approved as to form:

Attest:

City Attorney

City Recorder

GRANT AGREEMENT
OREGON DEPARTMENT OF TRANSPORTATION
FUND EXCHANGE PROGRAM (FEX)
Newberg-Dundee Bypass Project
Oregon Transportation Infrastructure Bank (OTIB) Loan #0048
City of McMinnville

This Grant Agreement (“Agreement”) is made and entered into by and between the **State of Oregon**, acting by and through its Department of Transportation (“ODOT”), and the **CITY OF McMINNVILLE** acting by and through its Governing Body, (“Recipient”), both referred to individually or collectively as “Party” or “Parties.”

- 1. Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law (the “Effective Date”). The availability of Grant Funds (as defined in Section 3) shall end two (2) years after the Effective Date (the “Availability Termination Date”).
- 2. Agreement Documents.** This Agreement consists of this document and the following documents:
 - a. Exhibit A: Project Description**
 - b. Exhibit B: Recipient Requirements**
 - c. Exhibit C: Subagreement Insurance Requirements**
 - d. Exhibit D: Documentation provided by Recipient prior to execution of the Agreement (i.e. application, Part 1 of the Project Prospectus)**

Exhibits A, B and C are attached to this Agreement. Exhibit D is incorporated by reference. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits; Exhibit A; Exhibit B; Exhibit C; Exhibit D.

- 3. Project Cost; Grant Funds.** To assist in funding the Project, Recipient has requested ODOT to exchange 2020 federal funds, which have been allocated to Recipient, for state funds based on the ratio of \$100 state for \$100 federal.

Based on this ratio, Recipient exchanges \$201,248.00 federal funds for \$201,248.00 state funds (the “Grant Funds”).

- 4. Project.**
 - a. Use of Grant Funds.** The Grant Funds shall be used solely for the Project described in Exhibit A (the “Project”) and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless ODOT approves such changes by amendment pursuant to Section 4(c).

b. Eligible Costs. Recipient may seek reimbursement for its actual costs to develop the Project, consistent with the terms of this Agreement (“Eligible Costs”).

i. Eligible Costs are actual costs of Recipient to the extent those costs are:

A. reasonable, necessary and directly used for the Project;

B. permitted by generally accepted accounting principles established by the Governmental Accounting Standards Board, as reasonably interpreted by the State, to be capitalized to an asset that is part of the Project;

C. eligible or permitted uses of the Grant Funds under the Oregon Constitution, the statutes and laws of the state of Oregon, and this Agreement.

D. Recipient shall ensure the purchase or production of aggregate is highway related and exclusively used for highway work; and

E. Purchased equipment shall be used exclusively for highway purposes for the useful life of the equipment. Recipient shall clearly describe how it plans to use said equipment on highways and for highway purposes. In the event that the equipment is not used for highway purposes, Recipient shall pay to ODOT the fair market rental value for Recipients non-highway use of the equipment. The useful life and the fair market rental value of the equipment shall be determined by ODOT, based on the type and condition of equipment.

ii. Eligible Costs do NOT include:

A. operating and working capital or operating expenditures charged to the Project by Recipient;

B. loans or grants to be made to third parties;

C. any expenditures incurred before the Effective Date or after the Availability Termination Date; or

D. costs associated with the Project that substantially deviate from Exhibit A, Project Description, unless such changes are approved by ODOT by amendment of this Agreement;

E. right of way costs; or

F. costs to adjust, reconstruct or relocate utilities.

c. Project Change Procedures.

i. If Recipient anticipates a change in scope or Availability Termination Date, Recipient shall submit a written request to their ODOT Contact. The request for change must be submitted before the change occurs.

- ii. Recipient shall not proceed with any changes to scope or Availability Termination Date before the execution of an amendment to this Agreement executed in response to ODOT's approval of a Recipient's request for change. A request for change may be rejected at the sole discretion of ODOT.

5. Reimbursement Process

- a. ODOT shall reimburse Recipient for 100 percent of Eligible Costs up to the Grant Fund amount provided in **Section 3**. ODOT shall reimburse Eligible Costs within forty-five (45) days of ODOT's receipt and approval of a request for reimbursement from Recipient.
- b. Each reimbursement request shall be submitted on letterhead to the ODOT Contact and include the Agreement number, the start and end date of the billing period, and itemize all expenses for which reimbursement is claimed. Recipient shall provide to ODOT proof of payment and backup documentation supporting Recipient's reimbursement requests.
- c. ODOT reserves the right to request documentation of expenditures to ensure funds were used on state gas tax eligible purchases. ODOT also reserves the right to conduct on-site reviews upon completion of Project to ensure funds were used on State gas tax eligible projects.
- d. ODOT's obligation to disburse Grant Funds to Recipient is subject to the satisfaction, with respect to each disbursement, of each of the following conditions precedent:
 - i. ODOT has received funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - ii. Recipient is in compliance with the terms of this Agreement.
 - iii. Recipient's representations and warranties set forth in Section 6 are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
- e. Recovery of Grant Funds.
 - i. Recovery of Misexpended Funds. Any Grant Funds disbursed to Recipient under this Agreement that are expended in violation of one or more of the provisions of this Agreement ("Misexpended Funds") must be returned to ODOT. Recipient shall return all Misexpended Funds to ODOT no later than fifteen (15) days after ODOT's written demand for the same.
 - ii. Recovery of Grant Funds upon Termination. If this Agreement is terminated under any of Sections 9(b)(i), 9(b)(ii), 9(b)(iii) or 9(b)(vi), Recipient shall return to ODOT all Grant Funds disbursed to Recipient within 15 days after ODOT's written demand for the same.

- 6. **Representations and Warranties of Recipient.** Recipient represents and warrants to ODOT as follows:

- a. Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient’s Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.
- b. Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors’ rights generally.
- c. No Solicitation.** Recipient’s officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- d. No Debarment.** Neither Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from any federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify ODOT immediately if it is debarred, suspended or otherwise excluded from any federally assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.
- e. Compliance with Oregon Taxes, Fees and Assessments.** Recipient is, to the best of the undersigned(s) knowledge, and for the useful life of the Project will remain, current on all applicable state and local taxes, fees and assessments.

7. Records Maintenance and Access; Audit.

- a. Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Recipient shall ensure that each of its subrecipients and subcontractors complies with these requirements. ODOT, the Secretary of State of the State of Oregon (the “Secretary”) and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the Grant Funds, or the Project for the purpose of making audits and examinations. In addition, ODOT, the Secretary

and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of ODOT and the Secretary to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.

- b. Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for a period of six (6) years after final payment. If there are unresolved audit questions at the end of the period described in this section, Recipient shall retain the records until the questions are resolved.
- c. Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by ODOT under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit ODOT to verify how the Grant Funds were expended.

This Section 7 shall survive any expiration or termination of this Agreement.

8. Recipient Subagreements and Procurements

- a. Subagreements.** Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, “subagreements”) for performance of the Project.
 - i.** All subagreements must be in writing, executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
 - ii.** Recipient shall require all of its contractors performing work under this Agreement to name ODOT as a third-party beneficiary of Recipient’s subagreement with the Contractor and to name ODOT as an additional or “dual” obligee on contractors’ payment and performance bonds.
 - iii.** Recipient shall provide ODOT with a copy of any signed subagreement, as well as any other purchasing or contracting documentation, upon ODOT’s request at any time. Recipient must report to ODOT any material breach of a term or condition of a subagreement within ten (10) days of Recipient discovering the breach.
- b. Subagreement indemnity; insurance.**
 - i.** *Recipient’s subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless State of Oregon, the Oregon Transportation Commission and its members, the Department of Transportation, their officers, agents and employees 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 the other party to Recipient’s subagreement*

or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that ODOT shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of ODOT, be indemnified by the other party to Recipient's subagreement(s) from and against any and all Claims.

- ii. Any such indemnification shall also provide that neither Recipient's subrecipient(s), contractor(s) nor subcontractor(s), nor any attorney engaged by Recipient's subrecipient(s), contractor(s) nor subcontractor(s) shall defend any claim in the name of ODOT 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 may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient's subrecipient is prohibited from defending the State, or that Recipient's subrecipient is not adequately defending the State's interests, or that an important governmental principle is at issue or that it is in the best interests of the State to do so. The State reserves all rights to pursue claims it may have against Recipient's subrecipient if the State of Oregon elects to assume its own defense.
 - iii. If the Project or Project work is on or along a state highway, Recipient shall require its contractor(s) to meet the minimum insurance requirements provided in Exhibit C. Recipient may specify insurance requirements of its contractor(s) above the minimum insurance requirements specified in Exhibit C. Recipient shall verify its contractor(s) meet the insurance requirements in Exhibit C.
 - iv. Recipient shall determine insurance requirements, insurance types and amounts, as deemed appropriate based on the risk of the work outlined within the subagreement. Recipient shall specify insurance requirements and require its contractor(s) to meet the insurance requirements. Recipient shall obtain proof of the required insurance coverages, as applicable, from any contractor providing services related to the subagreement.
 - v. Recipient shall require its contractor(s) to require and verify that all subcontractors carry insurance coverage that the contractor(s) deems appropriate based on the risks of the subcontracted work.
- c. **Procurements.** Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code, Oregon Revised Statute (ORS) 279 A, B, and C, and rules, ensuring that:
- i. All applicable clauses required by federal statute, executive orders and their implementing regulations are included in each competitive procurement; and
 - ii. All procurement transactions are conducted in a manner providing full and open competition.
- d. **Self-Performing Work.** Recipient must receive prior approval from ODOT for any self-performing work.

- e. **Conflicts of Interest.** Recipient's public officials shall comply with Oregon's government ethics laws, ORS 244.010 *et seq.*, as those laws may be subsequently amended.

9. Termination

- a. **Mutual Termination.** This Agreement may be terminated by mutual written consent of the Parties.
- b. **Termination by ODOT.** ODOT may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by ODOT in such written notice, under any of the following circumstances:
 - i. If Recipient fails to perform the Project within the time specified in this Agreement, or any extension of such performance period;
 - ii. If Recipient takes any action pertaining to this Agreement without the approval of ODOT and which under the provisions of this Agreement would have required ODOT's approval;
 - iii. If Recipient fails to perform any of its other obligations under this Agreement, and that failure continues for a period of 10 calendar days after the date ODOT delivers Recipient written notice specifying such failure. ODOT may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action;
 - iv. If ODOT fails to receive funding, 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;
 - v. If Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
 - vi. If the Project would not produce results commensurate with the further expenditure of funds.
- c. **Termination by Either Party.** Either Party may terminate this Grant Agreement upon at least ten (10) days' notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Grant Agreement.
- d. **Rights upon Termination; Remedies.** Any termination of this Grant Agreement shall not prejudice any rights or obligations accrued before termination. The remedies set forth in this Grant Agreement are cumulative and are in addition to any other rights or remedies available at law or in equity.

10. GENERAL PROVISIONS

- a. **Contribution.**
 - i. 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 ODOT or Recipient

- 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.
- ii. With respect to a Third Party Claim for which ODOT is jointly liable with Recipient (or would be if joined in the Third Party Claim), ODOT 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 Recipient in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of the Recipient 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 ODOT on the one hand and of Recipient 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. ODOT'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 ODOT had sole liability in the proceeding.
 - iii. With respect to a Third Party Claim for which Recipient is jointly liable with ODOT (or would be if joined in the Third Party Claim), Recipient 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 ODOT in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of ODOT 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 Recipient on the one hand and of ODOT 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. Recipient'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.
- b. Dispute Resolution.** 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.
 - c. Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
 - d. Duplicate Payment.** Recipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any

agency of the State of Oregon or the United States of America or any other party, organization or individual.

- e. **No Third-Party Beneficiaries.** ODOT and Recipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.
- f. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email or mailing the same, postage prepaid, to Recipient Contact or ODOT Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 10(f). Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.
- g. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between ODOT (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- h. **Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act 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. Recipient agrees to comply with the requirements of ORS 366.514, Use of Highway Fund for footpaths and bicycle trails.
- i. **Insurance; Workers' Compensation.** All employers, including Recipient, that employ subject workers who provide services 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. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Recipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.

- j. Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of ODOT. Recipient has no right or authority to incur or create any obligation for or legally bind ODOT in any way. ODOT cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of ODOT, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- k. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- l. Counterparts.** This Agreement may be executed in two or more counterparts, each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- m. Integration and Waiver.** This Agreement, including all Exhibits, constitutes 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. The delay or failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. Recipient, by the signature below of its authorized representative, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

THE PARTIES, by execution of this Agreement, acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

The Program and Funding Services Manager approved the Fund Exchange on **December 7, 2020**

Signature Page to Follow

CITY OF McMINNVILLE, by and through its
elected officials

By _____
(Legally designated representative)

Name _____
(printed)

Date _____

By _____

Name _____
(printed)

Date _____

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

By _____
Recipient's Legal Counsel

Date _____

Recipient Contact:

Mike Bisset, Director
City of McMinnville Community Dev.
231 NE Fifth Street
McMinnville, Oregon 97218
(503) 474-5138
Mike.Bisset@mcminnvilleoregon.gov

STATE OF OREGON, by and through its
Department of Transportation

By _____
Region 2 Manager

Name Sonny Chickering
(printed)

Date _____

APPROVAL RECOMMENDED

By Michael Kimlinger
State Traffic-Roadway Engineer

Date December 8, 2020

APPROVED AS TO LEGAL SUFFICIENCY

By Sam Zeigler, via email dated
Assistant Attorney General

Date January 20, 2021 approval retained in file

ODOT Contact:

Shelly White-Robinson
Region 2 Special Program Coordinator
455 Airport Road SE, Building B
Salem, Oregon 97301
(971) 707-3924
Shelly.white-robinson@odot.state.or.us

EXHIBIT A

Agreement No. 34653

Project Name: Newberg-Dundee Bypass Project
Oregon Transportation Infrastructure Bank (OTIB) Loan 0048

A. PROJECT DESCRIPTION

On July 1, 2013, State and Recipient entered into Oregon Transportation Infrastructure Bank (OTIB) Loan Agreement #0048 to finance Recipient's portion of the costs of construction of the Newberg-Dundee Bypass project (the "OTIB Loan"). A payment of \$201,248.00 on the OTIB Loan is due and payable on or before January 25, 2021 (the "January Payment"). At Recipient's request, ODOT is exchanging \$201,248.00 of Recipient's 2020 Surface Transportation Block Grant funds ("the "State Proceeds") that State will apply to satisfy the January payment. Notwithstanding anything to the contrary in Section 5 of this Agreement, State will apply the State Proceeds of the January Payment upon execution of this Agreement.

Recipient acknowledges that such Project improvements funded under this Agreement may trigger other Recipient responsibilities under the Americans with Disabilities Act. Recipient agrees that it is solely responsible for ensuring Americans with Disabilities Act compliance pursuant to Exhibit B, Recipient Requirements, Section 4.

EXHIBIT B

Recipient Requirements

1. Recipient shall comply with all applicable provisions of ORS 279C.800 to 279C.870 pertaining to prevailing wage rates and including, without limitation, that workers on the Project shall be paid not less than rates in accordance with ORS 279C.838 and 279C.840 pertaining to wage rates and ORS 279C.836 pertaining to having a public works bond filed with the Construction Contractors' Board.
2. Recipient shall notify ODOT's Contact in writing when any contact information changes during the Agreement.
3. Recipient shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. If the Project or any portion is destroyed, insurance proceeds will be paid to ODOT, unless Recipient has informed ODOT in writing that the insurance proceeds will be used to rebuild the Project.
4. **Americans with Disabilities Act Compliance**
 - a. **State Highway:** For portions of the Project located on or along the State Highway System or a State-owned facility ("state highway"):
 - i. Recipient shall 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, pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - ii. Recipient shall follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
 - iii. At Project completion, Recipient shall send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form and 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>
 - iv. Recipient shall promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a

state highway prior to acceptance of Project by Recipient and prior to release of any Recipient contractor.

- v. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, disability organizations, and ODOT at least 10 days prior to the start of construction.
- b. Local Roads:** For portions of the Project located on Recipient roads or facilities that are not on or along a state highway:
- i. Recipient shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed and maintained in compliance with the ADA.
 - ii. Recipient may follow its own processes or may use ODOT's processes for design, construction, or alteration of Project sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>;

Additional ODOT resources are available at the above-identified link. ODOT has made its forms, processes, and resources available for Recipient's use and convenience.
 - iii. Recipient assumes sole responsibility for ensuring that the Project complies with the ADA, including when Recipient uses ODOT forms and processes. Recipient acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.
 - iv. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations prior to the start of construction.
- c.** Recipient shall ensure that any portions of the Project under Recipient's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Recipient ensuring that:
- i. Pedestrian access is maintained as required by the ADA,

- ii. Any complaints received by Recipient identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Recipient, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the Project in compliance with the ADA requirements that were in effect at the time the Project 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.
- d. Maintenance obligations in this Section 4 shall survive termination of this Agreement.

5. Work Performed within ODOT’s Right of Way

- a. Prior to the commencement of work, Recipient shall obtain, or require its contractor to obtain, permission from the appropriate ODOT District Office to work on or along the state highway. This Agreement does not provide permission to work on or along the state highway.
- b. If the Project includes traffic control devices (see ODOT’s Traffic Manual, Chapter 5, for a description of traffic control devices) on or along a state highway, Recipient shall, pursuant to Oregon Administrative Rule (OAR) 734-020-0430, obtain the approval of the State Traffic Engineer prior to design or construction of any traffic control device being installed.
- c. Recipient shall enter into a separate traffic signal agreement with ODOT to cover obligations for any traffic signal being installed on a state highway.
- d. Recipient shall ensure that its electrical inspectors possess a current State Certified Traffic Signal Inspector certificate before the inspectors inspect electrical installations on state highways. The ODOT’s District Office shall verify compliance with this requirement before construction. The permit fee should also cover the State electrician's supplemental inspection.

6. General Standards

The Project shall be completed within industry standards and best practices to ensure that the functionality and serviceability of the Program’s investment meets the intent of the application and the Program.

7. Land Use Decisions

- a. Recipient shall obtain all permits, “land use decisions” as that term is defined by ORS 197.015(1) (2020), and any other approvals necessary for Recipient to complete the Project by the Project completion deadline identified in Exhibit A (each a “Land Use Decision” and collectively, “Land Use Decisions”).

- b.** If at any time before the Availability Termination Date identified in Section 1 of this Agreement ODOT concludes, in its sole discretion, that Recipient is unlikely to obtain one or more Land Use Decisions before the Availability Termination Date, ODOT may (i) suspend the further disbursement of Grant Funds upon written notice to Recipient (a “Disbursement Suspension”) and (ii) exercise any of its other rights and remedies under this Agreement, including, without limitation, terminating the Agreement and recovering all Grant Funds previously disbursed to Recipient.
- c.** If after a Disbursement Suspension ODOT concludes, in its sole discretion and based upon additional information or events, that Recipient is likely to timely obtain the Land Use Decision or Decisions that triggered the Disbursement Suspension, ODOT will recommence disbursing Grant Funds as otherwise provided in this Agreement.
- d.** This Section 7 is in addition to, and not in lieu of, ODOT’s rights and remedies under Section 5.e (“Recovery of Grant Funds”) of this Agreement.

8. Website

Recipient shall provide ODOT a link to any website created about the Project identified in Exhibit A before any costs being considered eligible for reimbursement. Recipient shall notify the ODOT Contact in writing when the link changes during the term of this Grant Agreement.

EXHIBIT C

Subagreement Insurance Requirements

1. GENERAL.

- a. If the Project is on or along a state highway, Recipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, “TAIL” COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to ODOT. Recipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Recipient permit work under a subagreement when Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, “first tier” means a subagreement in which the Recipient is a Party.
- b. The insurance specified below is a minimum requirement that the contractor within the subagreement shall meet. Recipient may determine insurance types and amounts in excess to the minimum requirement as deemed appropriate based on the risks of the work outlined within the subagreement.
- c. Recipient shall require the contractor(s) to require that all of its subcontractors carry insurance coverage that the contractor deems appropriate based on the risks of the subcontracted work. Contractor shall obtain proof of the required insurance coverages, as applicable, from any subcontractor providing Services related to the Contract.

2. TYPES AND AMOUNTS.

a. WORKERS COMPENSATION.

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide **Workers' Compensation Insurance** coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employer's Liability Insurance with limits not less than \$500,000 each accident. **Contractor shall require compliance with these requirements in each of its subcontractor contracts.**

b. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance shall be issued on an occurrence basis covering bodily injury and property damage and shall include personal and advertising injury liability, products and completed operations, and contractual liability coverage. When work to be performed

includes operations or activity within 50 feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass or crossing, the Contractor shall provide the Contractual Liability – Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy. Amounts below are a minimum requirement as determined by ODOT:

Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

c. AUTOMOBILE Liability Insurance: Automobile Liability.

Automobile Liability Insurance covering Contractor’s business-related automobile use covering all owned, non-owned, or hired vehicles for bodily injury and property. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Amount below is a minimum requirement as determined by ODOT:

Coverage shall be written with a combined single limit of not less than \$1,000,000.

d. ADDITIONAL INSURED.

The Commercial General Liability Insurance and Automobile Liability Insurance must include the “**State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees**” as an **endorsed** Additional Insured but only with respect to the contractor’s activities to be performed under the Subcontract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations. Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to the Recipient.

e. “TAIL” COVERAGE.

If any of the required insurance policies is on a “claims made” basis, such as professional liability insurance or pollution liability insurance, the contractor shall maintain either “tail” coverage or continuous “claims made” liability coverage, provided the effective date of the continuous “claims made” coverage is on or before the effective date of the Subcontract, for a minimum of twenty-four (24) months following the later of : (i) the contractor’s completion and Recipient’s acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing twenty-four (24) month requirement, if the contractor elects to maintain “tail” coverage and if the maximum time period “tail” coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then the contractor may request and ODOT may grant approval of the maximum “tail “ coverage period reasonably available in the marketplace. If ODOT approval is granted, the contractor shall maintain “tail” coverage for the maximum time period that “tail” coverage is reasonably available in the marketplace.

f. NOTICE OF CANCELLATION OR CHANGE.

The contractor or its insurer must provide thirty (30) days' written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

g. CERTIFICATE(S) OF INSURANCE.

Recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) **“State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees”** as an endorsed Additional Insured in regards to the Commercial General Liability and Automobile Liability policies and ii) that all liability insurance coverages shall be primary and non-contributory with any other insurance and self-insurance, with exception of Workers' Compensation..

The Recipient shall immediately notify ODOT of any change in insurance coverage.

Loan Agreement

Between

State of Oregon acting by and through its Department of Transportation

And

City of McMinnville

Dated July 1, 2013

THIS LOAN AGREEMENT, is made and entered into effective on the 1st day of July, 2013, by and between the State of Oregon, acting by and through its Department of Transportation (the "State"), and the Borrower (as defined below). The reference number for this Loan Agreement is OTIF-0048. Terms not otherwise defined herein shall have the meanings assigned to them by Section 1.01 of this Loan Agreement.

WITNESSETH:

WHEREAS, the State, in accordance with the Act, will provide funds in the Oregon Transportation Infrastructure Fund for the purpose of making loans to Municipalities, including the Borrower, to finance a portion of the cost of transportation projects;

WHEREAS, the Borrower, along with Other Applicants, has made timely application to the State for a loan to finance all or a portion of the construction cost of a Oregon Department of Transportation transportation project, and the Oregon Transportation Commission and the State have approved the Borrower's application for a loan to finance a portion of the construction cost of such project;

WHEREAS, the Borrower has agreed to make payments sufficient to pay when due the principal of and interest on the Loan from the State pursuant to the terms of the Note and this Loan Agreement;

NOW, THEREFORE, for and in consideration of the Loan by the State, the Borrower agrees to perform its obligations under this Loan Agreement in accordance with the conditions, covenants and procedures set forth herein:

ARTICLE 1

DEFINITIONS

Section 1.01. Definitions. The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the meanings assigned to them below:

"Act" means ORS 367.010 to 367.060 and related provisions, as the same may be from time to time amended and supplemented.

"Applicants" means collectively Yamhill County, the City of McMinnville, the City of Newberg, and the City of Dundee. "Applicant" means Yamhill County, the City of McMinnville, the City of Newberg, or the City of Dundee, individually without distinction,

"Authorized Officer" means, in the case of the Borrower, the person or persons authorized pursuant to a resolution or ordinance of the governing body of the Borrower to act as an authorized officer of the Borrower to perform any act or execute any document relating to the Loan or this Loan Agreement and whose name is furnished in writing to the State.

"Borrower" means the City of McMinnville, and its successors and permitted assigns.

"Borrower's Portion" means the percentage of the Costs of the Project for which Borrower is responsible as determined pursuant to Section 5.06.

"Business Day" means any day other than

(i) a Saturday, Sunday or legal holiday,

(ii) a day on which banking institutions in Salem, Oregon are closed, or

(iii) a day on which the New York Stock Exchange is closed.

"Costs of the Project" means the total costs of the Project as shown on Exhibit B to this Agreement.

"Counsel" means an attorney at law or firm of attorneys at law (who may be, without limitation, of counsel to, or an employee of, the State or the Borrower) duly admitted to practice law before the highest court of any state.

"Event of Default" means any occurrence or event specified in Section 7.01 hereof.

"Loan" means the loan evidenced by the Note and made by the State to the Borrower to finance or refinance a portion of the Costs of the Project pursuant to this Loan Agreement. The Loan may be funded by the State from amounts held in the OTIF.

"Loan Agreement" or "Agreement" means this loan agreement, including the Exhibits attached hereto, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

"Loan Closing Date" means the date on which all conditions to closing specified in Section 4.01 are satisfied by Borrower (or waived by State).

"Loan Prepayment" means, as to any payment, the amount paid by the Borrower that is in excess of the amount required to be paid as a Loan Repayment.

"Loan Repayment(s)" means the scheduled payment(s) of principal and interest required to be made by the Borrower pursuant to the provisions of the Note and this Loan Agreement.

"Maturity Date" means the date on which the Loan is payable in full, which date shall be, January 25, 2036.

"Municipality" means a city, county, road district, school district, special district, metropolitan service district or an intergovernmental entity organized under ORS 190.010.

"Note" means the promissory note of the Borrower substantially in the form of Exhibit D, as it may be amended, extended or renewed.

"Other Applicants" means the Applicants other than the Borrower.

"ODOT" means the Oregon Department of Transportation.

"Oregon Transportation Infrastructure Bank" or "OTIB" means the program authorized by Section 350 of the National Highway System Designation Act of 1995, 23 U.S.C. 101 note, Public Law 104-59, and a cooperative agreement between the Federal Highway Administration, Federal Transit Administration, of the United States Department of Transportation and the Oregon Department of Transportation dated August 20, 1996.

"Oregon Transportation Infrastructure Fund" or "OTIF" means the fund created by the Act. Loans from the OTIF may include OTIB loans or loans to finance transportation projects from any accounts established within the OTIF.

"Project" means the transportation project of ODOT described in Exhibit A, a portion of the Costs of the Project of which is financed or refinanced by the State through the making of the Loan under this Loan Agreement.

"Project Completion Date" means the earlier of

(i) the date on which all of the proceeds of the Loan, including any investment earnings derived from the investment of such proceeds, have been spent; or

(ii) the date on which ODOT completes construction of the Project; or

(iii) December 1, 2016.

"Project Completion Deadline" means December 1, 2016.

"Rule" or "Rules" means Oregon Administrative Rules, chapter 731, division 30, as they may be supplemented, modified or amended from time to time.

"State" means the State of Oregon, acting by and through its Department of Transportation.

"Transportation project" has the meaning assigned to that term by the Rule.

Section 1.02. General Rules. Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, agencies and districts. Words importing one gender shall include the other gender.

ARTICLE II

LOAN

Section 2.01. Loan Amount. On the Loan Closing Date the State hereby agrees to make to the Borrower, and the Borrower agrees to borrow and accept from the State, a Loan in the maximum aggregate principal amount of Three Million Two Hundred Nine Thousand Six Hundred and No/100 Dollars (\$3,209,600.00). A disbursement under this Loan Agreement shall not exceed the product of the Borrower's Portion multiplied by the amount of the disbursement request.

Section 2.02. Use of Loan Proceeds. The Borrower shall use the proceeds of the Loan strictly in accordance with Section 5.01 hereof. Borrower shall be responsible to pay a portion of only those specified construction costs incurred by ODOT that are listed in Exhibit B which do not include

- (i) costs in excess of one-hundred percent (100%) of the total cost of the Project,
- (ii) the purchase of equipment and other property not directly related to the Project,
- (iii) construction or repair of facilities owned or operated by private parties,
- (iv) costs incurred prior to the date of the Loan, except as provided in Section 5.01,
- (v) administrative and oversight expenses of the Borrower or the Oregon Department of Transportation not related to the construction of the Project, and
- (vi) design and preliminary construction engineering costs related to the Project.

Section 2.03. Loan Term. The term of the Loan is set forth in the Note. The term of the Loan commences on the date of the first disbursement of the Loan and ends on the Maturity Date, which is January 25, 2036.

Section 2.04. Interest. The principal balances due under the Note shall bear interest at the rate of Two and 26/100 percent (2.26%) per annum. Interest shall be computed on the basis of a 360-day year, consisting of twelve (12), thirty (30) day months. Interest shall be due and payable in arrears and shall accrue on the outstanding principal balance from the date hereof until the principal amount of the Note, together with accrued unpaid interest thereon, is paid in full.

Section 2.05. Loan Repayments.

The Loan shall be due and payable in scheduled payments as set forth in the Note.

Section 2.06. Loan Prepayments; General.

(a) *Optional Prepayment* Subject to the following terms and conditions, the Borrower may make Loan Prepayments upon prior written approval of the State:

(1) The Borrower shall provide prior written notice of not less than one hundred twenty (120) days to the State; and

(2) The Borrower shall pay to the State all or a portion of the principal amount of the Loan outstanding plus the unpaid interest accrued on such amount to the date of prepayment.

(b) *General.* Loan Repayments and Loan Prepayments shall be applied first to any accrued interest (in the case of Loan Prepayments, on the portion of the Loan prepaid), and then to principal payments on the Loan. In the case of a Loan Prepayment that does not prepay all the principal of the Loan, the State shall determine, in its sole discretion, the method by which such Loan Prepayment shall be applied to the outstanding principal payments.

Section 2.07. Unconditional Obligation. Except as provided in Section 2.10, the obligation of the Borrower to make the Loan Repayments and all other payments required hereunder and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part contained herein is payable solely from the sources of repayment described in Section 2.10 hereto and shall be absolute and unconditional and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, while any payments under this Loan Agreement remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of the purpose, any change in the laws of the United States of America or of the State of Oregon or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the State to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project, this Loan Agreement, the State's loan agreement with any Other Applicant, or any intergovernmental agreement related to the Project or any rights of set off, recoupment, abatement or counterclaim that the Borrower might otherwise have against the State, or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights. The Borrower shall not be obligated to make any payments required to be made by any other Applicants or any Municipality, or any other borrower under any separate loan agreement.

Section 2.08. Disclaimer of Warranties and Indemnification. The Borrower acknowledges and agrees that:

(a) the State makes no warranty or representation, either expressed or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portions thereof or any other warranty or representation with respect thereto;

(b) in no event shall the State or its commissioners, officers, agents or employees be liable or responsible for any direct, incidental, indirect, special, consequential, punitive or other damages in connection with or arising out of this Loan Agreement or the Project or the existence, furnishing, functioning or use of the Project; and

(c) to the extent authorized by law, the Borrower shall indemnify, save, hold harmless and defend the State and its commissioners, officers, agents and employees, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Borrower or its officers, employees, agents or subcontractors pursuant to the terms of this Loan Agreement; provided, however, that the provisions of this clause (c) are not intended to and shall not be construed as a waiver of any defense or limitation on damages provided for under and pursuant to Chapter 30 of the Oregon Revised Statutes or the laws of the United States of America or other laws of the State of Oregon.

Section 2.09. Termination of Availability Hereunder. Ninety (90) days after the Project Completion Deadline, the State's obligation to make any further disbursements of the Loan hereunder shall terminate.

Section 2.10. Sources of Repayment of Borrower's Obligations.

(a) The State and the Borrower agree that the amounts payable by the Borrower under this Loan Agreement, including, without limitation, the amounts payable by the Borrower pursuant to Section 2.05, Section 2.06, Section 2.08(c) and Section 7.04 of this Loan Agreement, are payable from the sources of repayment described in subsections (b) and (c) of this Section 2.10. Nothing herein shall be deemed to prevent the Borrower from paying the amounts payable under this Loan Agreement from any other legally available source.

(b) The amounts payable by the Borrower under this Loan Agreement are payable from the following:

(i) Borrower's federal surface transportation program allocation being exchanged for state funding on a dollar for dollar basis without deduction;

(ii) Borrower's proceeds from the Jobs and Transportation Act;

(iii) Any other funds payable from the Oregon Department of Transportation to Borrower; and

(iv) Any other funds legally available to the Borrower.

(c) The Borrower acknowledges that the State of Oregon is entitled to withhold any amounts due to the Borrower from the State of Oregon, including but not limited to any amounts due to the Borrower from the State of Oregon pursuant to ORS 366.785 to 366.820, and to apply

any such amounts to payments due under this Loan Agreement if the Borrower defaults on payments due under this Loan Agreement.

Section 2.11. Loan Fee. The Borrower shall pay to the State a one-time loan fee equal to one percent (1%) of the Loan. This fee shall be in addition to any interest charged on the Loan. The Borrower may elect to (check the appropriate box):

Pay the entire amount of this loan fee on the Loan Closing Date; or

Authorize the State to deduct the loan fee from the Loan proceeds disbursed to Borrower;

provided however that if the Loan is not fully disbursed, the State shall refund to the Borrower the portion of the loan fee allocated to the undisbursed portion of the Loan.

Section 2.12. Late Fee. If the payment of any Loan Repayment required under the Note is delinquent more than fifteen (15) days, the Borrower shall pay to the State a late charge of five percent (5%) of the delinquent Loan Repayment in addition to the Loan Repayment due under the Note.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF BORROWER

The Borrower represents and warrants to the State as follows:

Section 3.01. Organization and Authority.

(a) The Borrower is a Municipality.

(b) Based on information received from ODOT and to the best of Borrower's knowledge, the Oregon Department of Transportation (ODOT), the entity that will own, manage and operate the Project for which the Borrower is providing funding hereunder for the Borrower's Portion of the Costs of the Project, has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate and maintain the Project, other than licenses and permits relating to the Project which the ODOT expects to receive in the ordinary course of business, to carry on its activities relating thereto, and to undertake and complete the Project.

(c) Based on information received from ODOT and to the best of Borrower's knowledge, the Project is a project which ODOT may undertake pursuant to Oregon law and for which the Borrower is authorized by law to borrow money.

(d) The proceedings of the Borrower's governing members and voters, if necessary, approving this Loan Agreement and the Note and authorizing the execution, issuance and

delivery of this Loan Agreement and the Note on behalf of the Borrower and authorizing Borrower to finance the Borrower's Portion of the Costs of the Project have been duly and lawfully adopted in accordance with the laws of Oregon, and such proceedings were duly approved and published, if necessary, in accordance with applicable Oregon law, at a meeting or meetings which were duly called pursuant to necessary public notice and held in accordance with applicable Oregon law and at which quorums were present and acting throughout.

(e) This Loan Agreement and the Note are duly authorized by a resolution or ordinance of the Borrower which was adopted in accordance with ORS 367.035(4) and in accordance with applicable law and the Borrower's requirements for filing public notices and holding public meetings.

(f) This Loan Agreement and the Note have been duly authorized, executed and delivered by an Authorized Officer of the Borrower, and, assuming that the State has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered, this Loan Agreement, this Loan Agreement and the Note constitute the legal, valid and binding obligation of the Borrower in accordance with its terms.

(g) Based on information received from ODOT and to the best of Borrower's knowledge, the information contained in Exhibit A and Exhibit B is true and accurate in all respects.

Section 3.02. Full Disclosure. There is no fact that the Borrower has not disclosed to the State in writing, on the Borrower's application for the Loan or otherwise, that materially adversely affects the properties, activities, prospects or the condition (financial or otherwise) of the Borrower or the ability of the Borrower to finance the Borrower's Portion of the Costs of the Project or make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement. Neither the Borrower's application for the Loan nor the Borrower's representations and warranties in this Loan Agreement contain any untrue statement of a material fact or omits any statement or information which is necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Based on information received from ODOT and to the best of Borrower's knowledge, there is no fact that the Borrower has not disclosed to the State in writing, on the Borrower's application for the Loan or otherwise, that materially adversely affects the properties, activities, prospects or the condition (financial or otherwise) of the Project

Section 3.03. Pending Litigation. There are no proceedings pending, or, to the knowledge of the Borrower threatened, against or affecting the Borrower, in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect

(a) The Project or the Borrower's ability to finance Borrower's Portion of the Costs of the Project,

(b) Properties, activities, prospects or the condition (financial or otherwise) of the Borrower or

(c) The ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

Section 3.04. Compliance with Existing Laws and Agreements. The authorization, execution and delivery of this Loan Agreement by the Borrower, the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder and the consummation of the transactions provided for in this Loan Agreement, and the financing by Borrower of the Borrower's Portion of the Costs of the Project will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Borrower pursuant to, any existing ordinance or resolution, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument (other than any lien and charge arising under this Loan Agreement or any of the documents related hereto) to which the Borrower is a party or by which the Borrower or any of its property or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Borrower was established or any laws, ordinances, resolutions, rules, regulations or court orders to which the Borrower or its properties or operations is subject.

Section 3.05. No Defaults. No event has occurred and no condition exists that, upon authorization, execution and delivery of this Loan Agreement or receipt of the amount of the Loan, would constitute an Event of Default hereunder. The Borrower is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party or by which it or its properties may be bound, which violation would materially adversely affect the

(a) Project,

(b) Properties, activities, prospects or the condition (financial or otherwise) of the Borrower or

(c) The ability of the Borrower to finance the Borrower's Portion of the Costs of the Project or to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

Section 3.06. Governmental Consent. The Borrower has obtained or will obtain all permits and approvals required by any governmental body or officer for the making, observance or performance by the Borrower of its duties, covenants, obligations and agreements under this Loan Agreement or for Borrower providing the financing (or refinancing thereof) for the Borrower's Portion of the Costs of the Project; and the Borrower has complied or will comply with all applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Loan Agreement or Borrower providing the financing (or refinancing thereof) for the Borrower's Portion of the Costs of the Project. No consent, approval or authorization of, or filing,

registration or qualification with, any governmental body or officer that has not been obtained is required on the part of the Borrower as a condition to the authorization, execution and delivery of this Loan Agreement.

Section 3.07. Compliance with Law. The Borrower:

Is in compliance with all laws, ordinances, rules and regulations to which it is subject, non-compliance with which would materially adversely affect the condition (financial or otherwise) of the Borrower or the ability of the Borrower to provide financing for the Borrower's Portion for the Costs of the Project.

Section 3.08. The Project.

(a) Based on information received from ODOT and to the best of Borrower's knowledge, the Project is feasible. There will be adequate funds available to repay the Loan.

(b) Based on information received from ODOT and to the best of Borrower's knowledge, the Project is in compliance with the Rules.

Section 3.09. Costs of the Project.

(a) Based on information received from ODOT and to the best of Borrower's knowledge, costs of the Project is a reasonable and accurate estimation.

(b) The principal amount of the Loan is not in excess of the Borrower's Portion of the Costs of the Project.

Section 3.10. Term of the Loan. Based on information received from ODOT and to the best of Borrower's knowledge, the term of the Loan is not in excess of the useful life of the Project.

ARTICLE IV

CONDITIONS TO LOAN AND DISBURSEMENTS

Section 4.01. Conditions Precedent to Loan. The State shall be under no obligation to make the loan pursuant to the terms hereof unless the Borrower delivers to the State, on or prior to June 30, 2013, the following documents in form and substance satisfactory to the State and its Counsel:

(a) An opinion of Borrower's Counsel to the effect that:

(i) The Borrower is duly formed and operating under applicable State of Oregon law,

(ii) The Borrower has full legal right and authority to execute and deliver the Loan Agreement and to observe and perform its duties, covenants, obligations and agreements hereunder and to provide financing for the Borrower's Portion of the Costs of the Project,

(iii) The Loan Agreement has been authorized pursuant to official action of the Borrower that has been adopted and authorized in accordance with applicable Oregon law,

(iii) The Loan Agreement has been duly authorized and executed and delivered by Authorized Officers of the Borrower and constitutes the legal, valid and binding obligations of the Borrower enforceable in accordance with its terms,

(iv) The authorization, execution and delivery of the Loan Agreement by the Borrower, the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder, the consummation of the transactions contemplated herein and the financing by the Borrower of the Borrower's Portion of the Costs of the Project do not and will not contravene any existing law, rule or regulation or any existing order, injunction, judgment, or decree of any court or governmental or administrative agency, authority or person having jurisdiction over the Borrower or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing agreement to which the Borrower is a party or by which the Borrower or its property or assets is bound,

(v) All approvals, consents or authorizations of, or registrations or filings with, any governmental or public agency, authority or person required on the part of the Borrower in connection with the authorization, execution, delivery and performance of the Loan Agreement and its undertaking to provide a portion of the financing for the Project have been obtained or made to the extent it is possible to obtain or make them on or prior to the Loan Closing Date, and

(vi) There is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either State of Oregon or federal) questioning the creation, organization or existence of the Borrower, the validity, legality or enforceability of the Loan Agreement or the Borrower's authority to finance Borrower's Portion of the Costs of the Project (such opinion or portions of such opinion may be given by one or more counsel).

(b) Counterpart of this Loan Agreement duly executed and delivered by an Authorized Officer of the Borrower;

(c) The Note duly executed and delivered by an Authorized Officer of the Borrower;

(d) Copy of the official action of the governing body of the Borrower authorizing the execution and delivery of this Loan Agreement and the documents, instruments and agreements required by this Loan Agreement, certified by an Authorized Officer of the Borrower;

(e) Such other certificates, documents, opinions and information as the State may require.

Section 4.02. Conditions to Disbursement.

(a) On the Loan Closing Date, the State will authorize disbursement of Loan funds in the amount of Borrower's Portion of the Costs of the Project incurred by ODOT that will be reimbursed by Borrower pursuant to Section 5.06. If, as of the Loan Closing Date, the Project is not completed and the aggregate amount of the Loan disbursed is less than the maximum Loan amount available under Section 2.01, the State shall make subsequent Loan disbursements directly to ODOT on the 15th day of each quarter following initial Loan disbursement, each in an amount equal to Borrower's Portion of the Costs of the Project incurred during the previous quarter. Such quarterly disbursements shall continue until the earlier of (a) the date the Project is completed, (b) the Project Completion Deadline or (c) the date there is no further availability under this Loan Agreement. The State's obligation to make any disbursement is subject to satisfaction of the conditions set forth in this Section 4.02, and in no event shall the aggregate of all Loan disbursements made hereunder exceed the maximum aggregate principal amount set forth in Section 2.01.

(b) The obligation of the State to make any disbursement to ODOT on behalf of the Borrower is subject to the following conditions:

(i) All the conditions set forth in Section 4.01 of this Loan Agreement have been satisfied;

(ii) There shall exist no Event of Default or event, omission or failure of a condition which would constitute an Event of Default after notice or lapse of time or both;

(iii) All representations and warranties of the Borrower made in this Loan Agreement shall be true and correct on the date of disbursement with the same effect as if made on such date;

(iv) [reserved]

(v) There is availability of sufficient moneys in the OTIF for use in the Project;
and

(vi) The State receives:

(1) A requisition executed by the Borrower in substantially the form of Exhibit F and

(2) Any other written evidence of materials and labor furnished to or performed upon the Project, itemized receipts or invoices for the payment of the same, and releases, satisfactions and other signed statements and forms as the State may require as a condition for making disbursements of the Loan. Nothing herein contained shall require the State to pay any amounts for labor or materials unless satisfied that such claims are reasonable and

that such labor and materials were actually expended and used in connection with the Project.

(c) Further, the State shall have no obligation to make any disbursement to ODOT on behalf of the Borrower if:

(i) On or before disbursement, there has been a change in the Act so that the Project is no longer eligible for financial assistance authorized by this Loan Agreement;

(ii) If ODOT does not receive sufficient funding, appropriations, limitation, allotments and other expenditure authority to allow ODOT or OTIF, in the exercise of its reasonable administrative discretion, to provide such funding;

(iii) The requisition is submitted by the Borrower after the Project Completion Deadline; or

(iv) The closing(s) for the loans to be made by the State to the Other Applicants for the Project, which together with the Loan to the Borrower total the maximum aggregate amount of \$16,000,000, have not occurred.

ARTICLE V

COVENANTS OF BORROWER

Section 5.01. Use of Proceeds. The Borrower will apply the proceeds of the Loan:

(a) To finance the Borrower's Portion of Costs of the Project; and

(b) With the advance written approval of the State, to reimburse the Oregon Department of Transportation the Borrower's Portion of Costs of the Project, which portion was paid or incurred in anticipation of reimbursement by the Borrower.

Section 5.02. Source of Repayment. The Loan shall be paid from the sources of repayment described in Section 2.10 of this Loan Agreement. Such sources shall be applied to the punctual payment of the principal of and the interest on the Loan, and all other amounts due under this Loan Agreement according to the terms hereof.

Section 5.03. Performance Under Loan Agreement. The Borrower covenants and agrees to cooperate with the State in the observance and performance of the respective duties, covenants, obligations and agreements of the Borrower and the State under this Loan Agreement.

Section 5.04. [reserved]

Section 5.05. Construction Accounting and Reporting to Borrower. ODOT shall keep and periodically provide construction cost accounting records pertaining to the Project to Borrower in

support of the payment requisition(s) to be made by Borrower to the ODOT in connection with the Project.

Section 5.06. Proportionality Formula for Payment Requisitions. At the time of the first payment requisition from Borrower, ODOT shall state its estimate of the total Costs of the Project. The Borrower and the Other Applicants will be paying to ODOT a portion of the Costs of the Project, which portion shall not in the aggregate exceed (in the dollar equivalent) \$16,000,000. As between the Borrower and the Other Applicants, an Applicant shall pay its portion of the aggregate payments made by all the Applicants for the Costs of the Project in accordance with the applicable percentage set forth below:

Yamhill County	64.15%
City of McMinnville	20.06%
City of Newberg	13.82%
City of Dundee	1.97%

The Borrower Portion of the Costs of the Project and the portion of the Costs of the Project for each of the Other Applicants shall be determined by multiplying the applicable percentage set forth above for an Applicant by \$16,000,000 divided by the Costs of the Project estimated by ODOT at the time of the first payment requisition. These percentages for the Borrower and the Other Applicants, as well as ODOT's share of the Costs of the Project, shall remain constant during the Project with respect to all payment requisitions. For example:

If the Costs of the Project are estimated by ODOT at the time of the first payment requisition to be \$215,497,360, then the combined share of the Costs of the Project to be paid by the Borrower and the Other Applicants for the first and all subsequent requisitions will be 7.4247 percent of the Costs of the Project up to a maximum aggregate payment of \$16,000,000. If the first requisition is in the amount of \$10,000,000, then the portion of such requisition payable by Borrower and the Other Applicants shall be \$742,470 allocated to Borrower and the Other Applicants as follows:

Yamhill County	4.76295%	\$476,294.51
City of McMinnville	1.48939%	\$148,939.48
City of Newberg	1.02609%	\$102,609.35
City of Dundee	<u>.14627%</u>	<u>\$14,626.66</u>
Totals	7.4247%	\$742,470.00

Section 5.07. [reserved]

Section 5.08. Records; Accounts. The Borrower shall keep accurate records and accounts for the revenues and funds that are the sources of repayment of the Loan (the "Repayment Revenues Records"), as a part of its other records and accounts (the "General Records"). Such Repayment Revenues Records and General Records shall be maintained in accordance with generally accepted accounting principles as established by the Government Accounting Standards Board as in effect from time to time and shall be audited annually by an independent accountant,

as part of the annual audit of the Borrower. Such Repayment Revenues Records and General Records shall be made available for inspection by the State and the federal government (including but not limited to Federal Highway Administration, Federal Transit Administration) at any reasonable time, and a copy of such annual audit(s) therefor, including all written comments and recommendations of such accountant, shall be furnished to the State within two hundred ten (210) calendar days of the close of the fiscal year being so audited.

Section 5.09. [reserved]

Section 5.10. [reserved]

Section 5.11. [reserved]

Section 5.12. Notice of Material Adverse Change. The Borrower shall promptly notify the State of any material adverse change in the properties, activities, prospects or the condition (financial or otherwise) of the Borrower or in the ability of the Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

Section 5.13. [reserved]

Section 5.14. Financial Statements; Reports. The Borrower shall deliver to the State in form and detail satisfactory to the State:

(a) As soon as reasonably possible and in any event within ninety (90) days after the close of each fiscal year of the Borrower, unaudited statements of revenues, expenditures, cash flows, and changes in retained earnings for such period and for the portion of the fiscal year ended with such period, all in comparative form and all in reasonable detail and certified by the chief financial officer of the Borrower, subject to year-end audit adjustments.

(b) Such other statement or statements or reports as to the Borrower as the State may reasonably request.

Section 5.15. Compliance with Applicable Laws. ODOT will comply with the requirements of all applicable laws, rules, regulations and orders of any governmental authority that relate to ODOT's construction of the Project. In particular, but without limitation, the Borrower shall comply with the following, as applicable:

- a. The National Environmental Policy Act (NEPA), and other environmental laws and requirements;
- b. The Uniform Relocation Assistance Act (Right of Way);
- c. The Civil Rights Act of 1964 and other civil rights laws and requirements including the DBE program;
- d. The Davis Bacon Act and other labor laws and requirements;

- e. The Common Rule (49 C.F.R.19) with respect to procurement;
- f. The Brooks Act;
- g. Competitive Bidding Requirements and state labor standards and wage rates found in Oregon Public Contracting Code, ORS 279A, 279B and 279C, as applicable;
- h. Buy America;
- i. Manual of Uniform Traffic Control Devices;
- j. The Americans with Disabilities Act (ADA) and other federal and state laws prohibiting discrimination against persons with disabilities;
- k. OAR, Chapter 731, Division 30, as amended from time to time at the discretion of the State;
- l. State municipal bonding requirements found in ORS Chapters 280, 286A, and 287A.

Section 5.16. Continuing Representations. The representations of the Borrower contained herein shall be true at the time of the execution of this Loan Agreement and at all times during the term of this Loan Agreement.

ARTICLE VI

ASSIGNMENT

Section 6.01. Assignment and Transfer by State.

(a) The Borrower expressly acknowledges that, other than the right, title and interest of the State under Sections 2.08 and 7.04 of this Loan Agreement, all right, title and interest of the State in, to and under this Loan Agreement either has been or may, at the sole discretion of the State, be assigned and that if any Event of Default shall occur and if this Loan Agreement has been assigned, the assignee, shall be entitled to act hereunder in the place and stead of the State. The Borrower consents to assignment of this Loan Agreement. The Borrower is only required to observe and perform its covenants, agreements and obligations under this Loan Agreement and the Note and, if and when requested by the State, to cooperate with the State to enable the State to comply with the State's covenants, agreements or obligations arising out of such assignment. This Loan Agreement, including, without limitation, the right to receive payments required to be made by the Borrower hereunder and to compel or otherwise enforce observance and performance by the Borrower of its other duties, covenants, obligations and agreements hereunder, may be sold by the State to a third party or may be further transferred, assigned and reassigned in whole or in part by such third party to one or more assignees or subassignees at any time subsequent to its execution without the necessity of obtaining the consent of, but after giving prior written notice to, the Borrower.

In the event of the assignment of this Loan Agreement, the State shall retain the right to compel or otherwise enforce observance and performance by the Borrower of its duties, covenants, obligations and agreements under Section 3.06 of this Loan Agreement; provided, however, that in no event shall the State have the right to accelerate the outstanding balance

payable pursuant to the Loan Agreement in connection with the enforcement of Section 3.06 of this Loan Agreement.

(b) The Borrower hereby approves and consents to any assignment, sale or transfer of this Loan Agreement that the State deems to be necessary in connection with any pooled loan program of the State.

Section 6.02. Assignment by Borrower. This Loan Agreement may not be assigned by the Borrower without the prior written consent of the State. The State may grant or withhold such consent in its sole discretion. In the event of an assignment of this Loan Agreement by Borrower and assumption of the obligations hereunder, Borrower shall pay, or cause to be paid, to the State any fees or costs incurred by the State as the result of such assignment, including but not limited to, attorney fees or costs of in-house Counsel.

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.01. Event of Default. If any of the following events occurs, it is hereby defined as and declared to be and to constitute an "Event of Default":

(a) Failure by the Borrower to pay, or cause to be paid, any Loan Repayment required to be paid hereunder on the due date thereof; or

(b) Failure by the Borrower to make, or cause to be made, any required payments of principal and interest on any bonds, notes or other obligations of the Borrower for borrowed money (other than the Loan), after giving effect to the applicable grace period; or

(c) Any representation made by or on behalf of the Borrower contained in this Loan Agreement, or in any agreement, instrument, certificate or document furnished in compliance with or with reference to this Loan Agreement or the Loan, is false or misleading in any material respect; or

(d) A petition is filed by or against the Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Borrower such petition shall be dismissed within twenty (20) calendar days after such filing, and such dismissal shall be final and not subject to appeal; or the Borrower shall become insolvent or bankrupt or make an assignment for the benefit of its creditors; or a custodian (including without limitation, a trustee, receiver, custodian, liquidator, or the like of Borrower or any of its property) shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) calendar days; or

(e) [reserved]

(f) [reserved]

(g) Failure by the Borrower to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in subsections (a) through (f) of this Section, which failure shall continue for a period of thirty (30) calendar days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower by the State, unless the State agrees in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the State may not unreasonably withhold its consent to an extension of such time up to one hundred twenty (120) calendar days of the written notice referred to above if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Event of Default is corrected.

Section 7.02. Notice of Default. The Borrower shall give the State prompt telephone notice of the occurrence of any Event of Default referred to in Section 7.01(d) hereof and of the occurrence of any other event or condition that constitutes an Event of Default at such time as any senior administrative or financial officer of the Borrower becomes aware of the existence thereof. Any telephone notice pursuant to this Section 7.02 shall be confirmed in writing as soon as is practicable by the Borrower.

Section 7.03. Remedies on Default. Whenever an Event of Default referred to in Section 7.01 hereof shall have occurred and be continuing, the State shall have the right to take any action permitted or required pursuant to the Loan Agreement and to take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any duty, covenant, obligation or agreement of the Borrower hereunder, including, without limitation,

(a) Declaring all Loan Repayments and all other amounts due hereunder to be immediately due and payable, and upon notice to Borrower the same shall become due and payable without further notice or demand,

(b) Appointment of a receiver,

(c) Refusal to disburse any Loan proceeds,

(d) Barring the Borrower from applying for future OTIF assistance, or

(e) Withholding other State of Oregon funds, including but not limited to, the Borrower's apportionment of State Highway Fund revenues due under ORS 366.762 to 366.768 and ORS 366.785 to 366.820, to the extent permitted by Section 2.10(c).

Section 7.04. Attorney Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Agreement shall be entitled to recover from the other its reasonable attorney fees, costs and

expenses at trial and on appeal. Reasonable attorney fees shall not exceed the rate charged to the State by its attorneys. The Borrower shall, on demand, pay to the State reasonable expenses incurred by the State in the collection of Loan payments.

Section 7.05. Application of Moneys. Except as otherwise provided in any other provision of this Loan Agreement, any moneys collected by the State pursuant to Section 7.03 hereof shall be applied in the following order:

- (a) to pay any attorney fees or other fees, costs and expenses incurred by the State,
- (b) to pay interest due and payable on the Loan, and
- (c) to pay principal due and payable on the Loan.

Section 7.06. No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to the State is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. To entitle the State to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article VII.

Section 7.07. Retention of State's Rights. Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof or anything else to the contrary contained herein, the State shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Borrower at law or in equity, as the State may, in its discretion, deem necessary to enforce the obligations of the Borrower to the State pursuant to Sections 2.08(c), 3.06, and 7.04 hereof.

Section 7.08. Default by the State. In the event of any default by the State under any covenant, agreement or obligation of this Loan Agreement, the Borrower's remedy for such default shall be limited to injunction, special action, action for specific performance or any other available equitable remedy designed to enforce the performance or observance of any duty, covenant, obligation or agreement of the State hereunder as may be necessary or appropriate.

ARTICLE VIII

MISCELLANEOUS

Section 8.01. Notices. All notices hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed, postage prepaid, to the Borrower and the State at the addresses set forth below or at such other address of which such party shall have notified in writing the other parties hereto:

If to the State: Oregon Department of Transportation
Financial Services -- MS21
355 Capitol St. NE
Salem, OR 97301-3871
Attn: Chief Financial Officer

If to the Borrower: City of McMinnville
230 NE Second
McMinnville, OR 97128
Attn: City Manager

Any notice so addressed and mailed shall be effective five (5) days after mailing. Any notice given by personal delivery shall be effective when actually delivered.

Section 8.02. Successors and Assigns; No Third Party Beneficiaries.

(a) This Loan Agreement shall inure to the benefit of and shall be binding upon the State and the Borrower and their respective successors and assigns.

(b) The State and the Borrower are the only parties to this Loan Agreement and are the only parties entitled to enforce its terms. Nothing in this Loan Agreement gives or provides any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name in this Loan Agreement and expressly described as intended beneficiaries of the terms of this Loan Agreement.

Section 8.03. Severability. In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 8.04. Amendments, Supplements and Modifications. This Loan Agreement may not be amended, supplemented or modified without the prior written consent of the State and the Borrower. This Loan Agreement may not be amended, supplemented or modified in a manner that is not in compliance with the Act or the Rules.

Section 8.05. Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8.06. Headings. The Section headings in this Loan Agreement are intended to be for reference purposes only and shall in no way modify or restrict any of the terms or provisions hereof.

Section 8.07. No Construction against Drafter. Both parties acknowledge that they are each represented by and have sought the advice of counsel in connection with this Loan Agreement and the transactions contemplated hereby and have read and understand the terms of this Loan Agreement. The terms of this Loan Agreement shall not be construed against either party as the drafter hereof.

Section 8.08. Choice of Law; Designation of Forum; Federal Forum.

(a) The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Loan Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

(b) Any party bringing a legal action or proceeding against any other party arising out of or relating to this Loan Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

(c) Notwithstanding Section 8.08(b), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity.

Section 8.09. Loan not an Obligation of the United States of America. The covenants, agreements and obligations of the State contained in this Loan Agreement shall not be construed to be covenants, agreements or obligations of the United States of America.

Section 8.10. Consents and Approvals. Whenever the written consent or approval of the State shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by the State unless otherwise provided by law or by rules, regulations or resolutions of the State or unless expressly delegated.

Section 8.11. [reserved]

Section 8.12. Further Assurances. The Borrower shall, at the request of the State, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Loan Agreement.

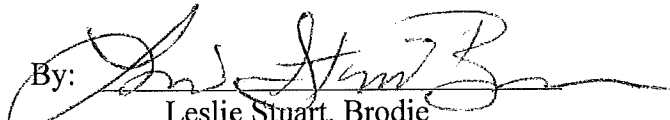
Section 8.13. Merger; No Waiver. This Loan Agreement and attached exhibits (which are by this reference incorporated herein) constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or

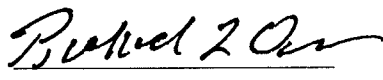
written, not specified herein regarding this Loan Agreement. No waiver of any provision of this Loan Agreement or consent shall be binding unless in writing and signed by the party against whom it is being enforced and (if against the State) all necessary State approvals have been obtained. Such waiver or consent, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of the State to enforce any provision of this Loan Agreement shall not constitute a waiver by the State of that or any other provision.

IN WITNESS WHEREOF, the State and the Borrower have caused this Loan Agreement to be executed and delivered as of the date first above written.

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

CITY OF MCMINNVILLE
(Borrower)

By: 
Leslie Stuart. Brodie
Chief Financial Officer

By: 
Title: MAYOR

Approved for legal sufficiency.

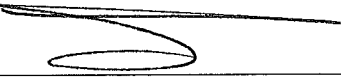

Lynn T. Nagasako, Sr. AAG
Date: 6/26/13

Exhibit A to Loan Agreement

Project Description

Borrower: City of McMinnville

ODOT will construct Phase 1 of the Newberg-Dundee Bypass.

The Bypass encompasses a section of Oregon 99W that extends northeast across Yamhill County from the Oregon 99W/Oregon 18 intersection to Rex Hill east of Newberg. The Bypass corridor will be at least 330' wide, be located along the south sides of Newberg and Dundee, and be approximately 11 miles long. The eastern terminus is located east of Newberg in the Rex Hill area of Oregon 99W at mile post 20.08. The western terminus is located where Oregon 99W intersects with Oregon 18 (McDougal Corner) west of Dundee near Dayton at Oregon 18 mile post 51.84.

The Bypass includes the following proposed interchanges:

- Dayton Interchange – located at the junction of Oregon 99W and Oregon 18 and represents the western terminus of the Bypass; it replaces the existing Oregon 18/Oregon 99W intersection at McDougal Corner and the South Dundee Interchange.
- East Dundee Interchange – located between Dundee and Newberg; a new connector road will link the interchange at Oregon 99W to the Bypass.
- Oregon 219 Interchange – located in south Newberg along Oregon 219.
- East Newberg Interchange - located southwest of Rex Hill; this interchange will be the eastern terminus of the Bypass

Phase 1 of the Bypass will begin at a new signalized intersection on Oregon 219, traveling through south Newberg into Dundee. South of Dundee, Phase 1 will leave the eventual full Bypass alignment, proceeding west, parallel to the Dundee city limits, and cross over the Willamette and Pacific Railroad and Oregon 99W. After crossing over Oregon 99W, Phase 1 of the Bypass will loop around and connect to Oregon 99W at a new signalized intersection.

Other Phase 1 improvements include:

- Additional southbound left turn lane on Oregon 99W at Springbrook Road.
- Widening Springbrook Road to three lanes (one northbound lane, one southbound lane, and a center left turn between Oregon 99W and Oregon 219)

Exhibit B to Loan Agreement

Approved Project Budget

Borrower: City of McMinnville

Borrower's Portion of the Costs of Project (in dollars): \$3,209,600

Sources	
ODOT/JTA	\$192,000,000
STIP	12,000,000
Confederated Tribes of Grand Ronde	4,000,000
City of Dundee (OTIB Loan)	315,200
City of McMinnville (OTIB Loan)	3,209,600
City of Newberg (OTIB Loan)	2,211,200
Yamhill County (OTIB Loan)	10,366,640
Total	\$224,102,640.00
Uses	
Construction	\$166,067,919
Preliminary Engineering	8,557,662
Right of Way	45,291,168
Utility Relocation	4,025,891
Loan Fees	\$160,000
Total	\$224,102,640.00

Exhibit C to Loan Agreement

[Reserved]

Exhibit F to Loan Agreement

Payment Requisition

TO: Oregon Transportation Infrastructure Bank
Oregon Department of Transportation
Financial Services, MS – 21
355 Capitol Street, NE
Salem, Oregon 97301-3871

RE: Oregon Transportation Infrastructure Fund, Loan Number OTIF-0048

On behalf of the City of McMinnville, I hereby request that the Oregon Transportation Infrastructure Fund (OTIF) disburse to the Oregon Department of Transportation the following amount from the account established in the OTIF for this Loan:

[Insert Amount]

The foregoing disbursement is for Costs of the Project as such term is defined in, and which are permitted under, the Loan Agreement dated July 1, 2013, between the State of Oregon acting by and through its Department of Transportation and the City of McMinnville. I have attached all necessary documentation as required by Section 4.02(b)(vi) of the Loan Agreement. No Event of Default has occurred or is continuing under the Loan Agreement.

DATED this _____ day of _____, _____.

CITY OF MCMINNVILLE

By: _____

Authorized Officer

Name & Title (print): _____

Attachments