

**RESOLUTION NO. 22/23-22
CITY OF DAYTON, OREGON**

A Resolution Approving an Intergovernmental Agreement between the Oregon Department of Transportation (ODOT) and the City of Dayton for the Relocation of the Highway 221 Sewer Lift Station.

WHEREAS, the City of Dayton is relocating and improving a city owned sewer pump station located under the East end of the Palmer Creek Bridge. The pump station is being moved from the North side of OR 221 to the South side along State right of way; and

WHEREAS, OR 221 (SE Salem-Dayton Highway), also known as SE Wallace Road and 3rd Street within the limits of the Project, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). SE Palmer Lane and SE Neck Road are a part of the city street system under the jurisdiction and control of the City of Dayton; and

WHEREAS, by the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, the city may enter cooperative agreements with state agencies for the performance of work on certain types of improvement projects.

The City of Dayton resolves as follows:

- 1) **THAT** the City Manager and appropriate staff are hereby authorized to execute the Intergovernmental Agreement with ODOT (attached hereto as Exhibit A and by this reference incorporated herein); and
- 2) **THAT** this resolution shall become effective immediately upon adoption.

ADOPTED this 20th day of June 2023.

In Favor: Frank, Hildebrandt, Mackin, Maguire, Marquez, Sandoval-Perez, Wildhaber


Opposed: None

Absent: None

Abstained: None



Trini Marquez, Mayor



Date of Signing

ATTESTED BY:



Rochelle Roaden, City Recorder



Date of Enactment

Attachment - Exhibit A

COOPERATIVE IMPROVEMENT AGREEMENT
Highway 221 Sewer Pump Station – City of Dayton

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State;" and the CITY OF DAYTON, 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. OR 221 (SE Salem-Dayton Highway), also known as SE Wallace Road and 3rd Street within the limits of the Project, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). SE Palmer Lane and SE Neck Road are a part of the city street system under the jurisdiction and control of Agency.
2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities, and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
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 Agency.
4. Agency is relocating and improving a city owned sewer pump station located under the East end of the Palmer Creek Bridge. The pump station is being moved from the North side of OR 221 to the South side along State right of way.

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

TERMS OF AGREEMENT

1. Under such authority, State and Agency agree to Agency delivering the Highway 221 Sewer Pump Station Relocation and Improvement Project, hereinafter referred to as "Project". The Project includes replacement of an outdated sanitary sewer pump station and associated components; site work and relocation of equipment to the south side of OR 221; replacement of a section of gravity sewer line along the highway; and replacement of existing concrete sanitary sewers from the south along OR 221. The location of the Project is approximately between mileposts 0.7 and 0.9 on OR 221 and as shown on the sketch maps attached hereto, marked Exhibit A, and by this reference made a part hereof.

2. The Project will be financed entirely by Agency with Agency funds at an estimated cost of \$1,022,000.00. The estimate for the total Project cost is subject to change. Agency shall be responsible for all Project costs beyond the estimate.
3. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance and power responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as seventy-five (75) calendar years, automatically renewable in 20-year increments until the sewer pump station is replaced at a location outside of State right of way. The Project shall be completed within ten (10) calendar years following the date of final execution of this Agreement by both Parties.

AGENCY OBLIGATIONS

1. Agency shall provide to State permanent mylar "as constructed" plans for work on state highways. If Agency redrafts the plans, done in Computer Aided Design and Drafting (CADD) or MicroStation, to get the "as constructed" set, and they follow the most current version of the "ODOT CAD Manual" <https://www.oregon.gov/odot/Engineering/Pages/Drafting.aspx> and the "Contract Plans Development Guide, Volume 1 Chapter 16" http://www.oregon.gov/State/HWY/ENGSERVICES/docs/dev_guide/vol_1/V1-16.pdf, Agency shall provide to State a Portable Document Format (PDF) file and a paper copy of the plan set.
2. Agency, 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 (*other than inspections provided by State*), project management services, and other necessary functions for sole administration of the construction contract entered into for the Project.
3. Agency shall ensure that OR 221 is restored to like or better condition upon completion of the Project. Failure of Agency to do so may result in State requiring Agency to repair or replace highway elements at Agency expense. State's representative will inspect the Project area and confirm acceptance of the condition of OR 221 at Project completion.
4. **Americans with Disabilities Act Compliance:**
 - a. When the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, the Parties shall:
 - i. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of

1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;

- ii. Follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
 - iii. At Project completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>; and
 - iv. 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 Agency and prior to release of any Agency contractor.
- b. Agency 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. Agency 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.
 - c. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
 - i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,

- iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- d. Maintenance obligations in this section shall survive termination of this Agreement.
5. 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.
 6. Agency shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
 7. 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.
 8. 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, OTC 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.
 9. 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 any time at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.

10. 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 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, 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.
11. Agency shall construct the Project in accordance with the requirements of ORS 276.071 including the public contracting laws within ORS Chapters 279A, 279B and 279C.
12. If Agency chooses to assign its contracting responsibilities to a consultant or contractor, Agency shall inform the consultant or contractor of the requirements of ORS 276.071, to ensure that the public contracting laws within ORS Chapters 279A, 279B and 279C are followed.
13. Agency or its contractor shall follow the Oregon Locate Laws (ORS 757 and OAR 952).
14. Agency or its consultant shall acquire all necessary rights of way according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual. Certification of right of way acquisition work must be made by Agency (or on behalf of its consultant) doing the work. If Agency acquires the right of way, it shall provide a letter from Agency's legal counsel certifying that 1) the right of way needed for the Project has been obtained and 2) right of way acquisition has been completed in accordance with the right of way requirements contained in this Agreement. The certification form shall be routed through the State Region 2 Right of Way Office for co-signature and possible audit. If Agency elects to have State perform right of way functions, a separate agreement shall be executed between Agency and State, referencing this Agreement number.
15. Agency shall obtain a permit to "Occupy or Perform Operations upon a State Highway" from assigned State District 3 Project Manager prior to the commencement of construction as well as land use permits, building permits, and engineering design

review approval from State. Agency agrees to comply with all provisions of said permit(s), and shall require its developers, contractors, subcontractors, or consultants performing such work to comply with such permit and review provisions.

16. Agency shall notify State's District 3 Office 48 hours prior to performing any construction, maintenance, or operations activities that will or may impact travel lanes of OR 221 within the Project area. Lane restrictions shall not be allowed unless Agency has received prior written approval from the District 3 Manager or designee. Agency equipment or operations shall not block State access to the underside of the bridge along the South side of OR 221.
17. Agency shall provide Project preliminary and final plans and specifications to State's District 3 Office for review and written concurrence.
18. Agency shall submit traffic control plans to State's District 3 Office prior to closing any traffic lanes on OR 221 or commencing work on the Project.
19. Pursuant to the statutory requirements of ORS 279C.380, Agency shall require their contractor to submit a performance bond to Agency for an amount equal to or greater than the estimated cost of the Project.
20. If Agency enters into a contract for performance of work under this Agreement, Agency agrees to comply with the following:
 - a. Contracts:
 - i. All contracts must be in writing, executed by Agency, and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the contract. Use of a contract does not relieve Agency of its responsibilities under this Agreement.
 - ii. Agency shall require all of its contractors performing work under this Agreement to name State as a third-party beneficiary of the resulting contract with the contractor.
 - iii. Agency shall provide State with a copy of any signed contract upon request by State. This paragraph 10.a.iii shall survive expiration or termination of this Agreement.
 - iv. Agency must report to State any material breach of a term or condition of a contract within ten (10) days of Agency discovering the breach.
 - b. Contract Indemnification:
 - i. To the fullest extent permitted by law, and except to the extent otherwise void under ORS 30.140, Agency shall require each of its contractors 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, the

Oregon Transportation Commission, and the Oregon Department of Transportation, Developer, and Developer's contractors, and their respective officers, members, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever (hereinafter, referred to individually and collectively as "Claims") to the extent such Claims result from, arise out of, or relate to the activities or omissions of Agency's contractor, subcontractor(s), or their respective officers, employees, or agents under the resulting contract or otherwise related to the Project.

- ii. Any such indemnification shall also provide that Agency's contractor shall ensure that neither Agency's contractor(s) or its subcontractor(s) nor any attorney engaged by any Agency contractor or subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that any Agency contractor or subcontractor is prohibited from defending the State of Oregon, or that any Agency contractor or subcontractor 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(s) and subcontractor(s) if the State of Oregon elects to assume its own defense.

c. Contract Insurance:

- i. Agency shall require the other party or parties to each of its contracts, that are not units of local government as defined in ORS 190.003, to meet the minimum insurance requirements provided in Exhibit B, attached hereto and by this reference made a part hereof.
- ii. Agency shall perform a risk assessment for the work to be performed under its contract(s) and determine insurance types and amounts as appropriate based on the risk of the work outlined within each contract, and shall require its contractor(s) to carry such insurance, except that the required insurance types and amounts may not be less than those identified in Exhibit B. Agency may specify insurance requirements for its contractor(s) above the minimum insurance requirements specified in Exhibit B.
- iii. Agency shall obtain proof of the required insurance coverages, as applicable, from any contractor it hired to provide services related to the contract.

- iv. Agency shall require its contractor(s) to require and verify that all subcontractors carry insurance coverage that the contractor(s) deems appropriate based on the risk of the subcontracted work.
 - d. Agency shall include provisions in each of its contracts requiring its contractors to comply with the indemnification and insurance requirements in subparagraphs b and c of this AGENCY OBLIGATIONS, Paragraph 18.
21. Agency shall be responsible for and perform 100 percent (100%) of maintenance and operations activities for the facility constructed under this Agreement.
22. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
23. Agency is responsible for and ensures that all survey monuments recorded with a county and within or adjacent to the highway right of way shall be preserved in accordance with ORS 209.140 and 209.150. Any such monumentation that is damaged or removed during the course of the Project must be replaced in compliance with ORS Chapter 209 stipulations, the State Right of Way Monumentation Policy, and at Agency's own expense.
24. Agency is also responsible, at its own expense, for replacement of any additional State survey marks or other monumentation not recorded with a county that are damaged or removed during the course of the Project. In the event of such replacement, Agency shall contact State's Geometronics Unit for replacement procedures.
25. If additional right of way is acquired for state highway right of way purposes as a result of the Project, then a right of way monumentation survey is required as defined in ORS 209.150 and 209.155. Agency agrees to provide such a survey, at its own expense, following ORS Chapter 209 stipulations, State Right of Way Monumentation Policy, and State's Geometronics Unit review and approval, and to file the legal survey with the appropriate Agency surveyor's office as required
26. 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.
27. Agency's Project Manager for this Project is Rochelle Roaden, Dayton City Manager; P.O. Box 339, 416 Ferry Street, Dayton, Oregon 97114; 503-864-2221; RRoaden@daytonoregon.gov, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State shall review and approve all Project plans prior to construction by Agency or its contractor.

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2. State grants authority to Agency to enter upon State right of way for the construction of this Project as provided for in miscellaneous permit to be issued by State District 3 Office.
3. At Project completion, State shall inspect OR 221 in the Project area for acceptance of its return to like or better condition.
4. State's Project Manager for this Project is Cole Mullis, District Manager; 885 Airport Road SE, Salem, Oregon 97301; 503-986-2867; cole.f.mullis@odot.oregon.gov, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by either party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
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. If Agency fails to maintain facilities in accordance with the terms of this Agreement, State, at its option, may maintain the facility and bill Agency, seek an injunction to enforce the duties and obligations of this Agreement, or take any other action allowed by law.
9. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
10. This Agreement and attached Exhibits 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

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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 Follows

City of Dayton/ODOT
Agreement No. 73000-00015421

CITY OF DAYTON, by and through its
elected officials

By Rochelle Roaden

Date 4/22/23

Mayor By Irini Masqued

Date 6-22-2023

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

By [Signature]
Agency Counsel

Date 6/13/23

Agency Contact:
Rochelle Roaden, Dayton City Manager
P.O. Box 339, 416 Ferry Street
Dayton, Oregon 97114
503-864-2221
RRoaden@daytonoregon.gov

State Contact:
Cole Mullis, Development and Project
Delivery Manager
885 Airport Road SE
Salem, Oregon 97301
503-986-2867
cole.f.mullis@odot.oregon.gov

STATE OF OREGON, by and through
its Department of Transportation

By _____
Delivery and Operations Division
Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Region 2 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

EXHIBIT A – Project Location Maps
Project Location

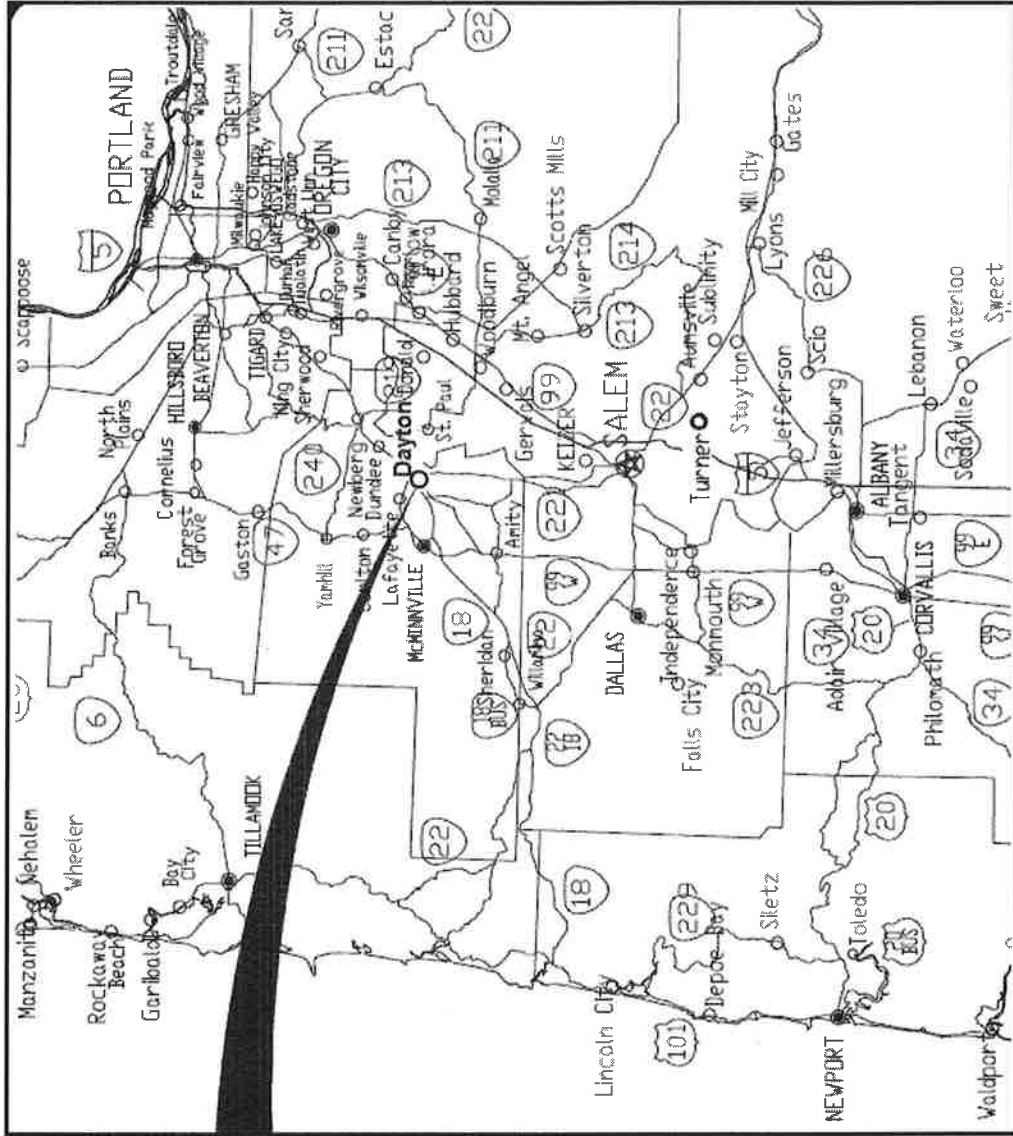


EXHIBIT A, Cont. – Project Location Maps
Project Location

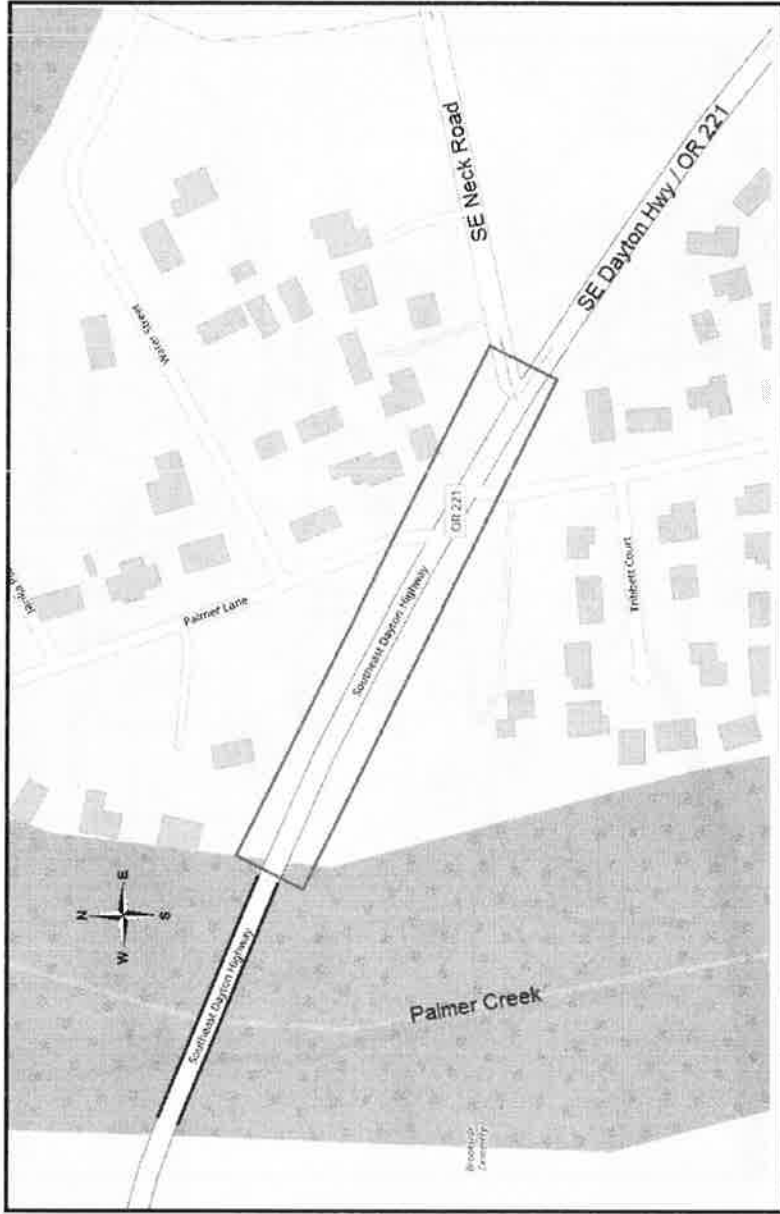


EXHIBIT A, Cont. – Project Location Maps
Project Location Detail

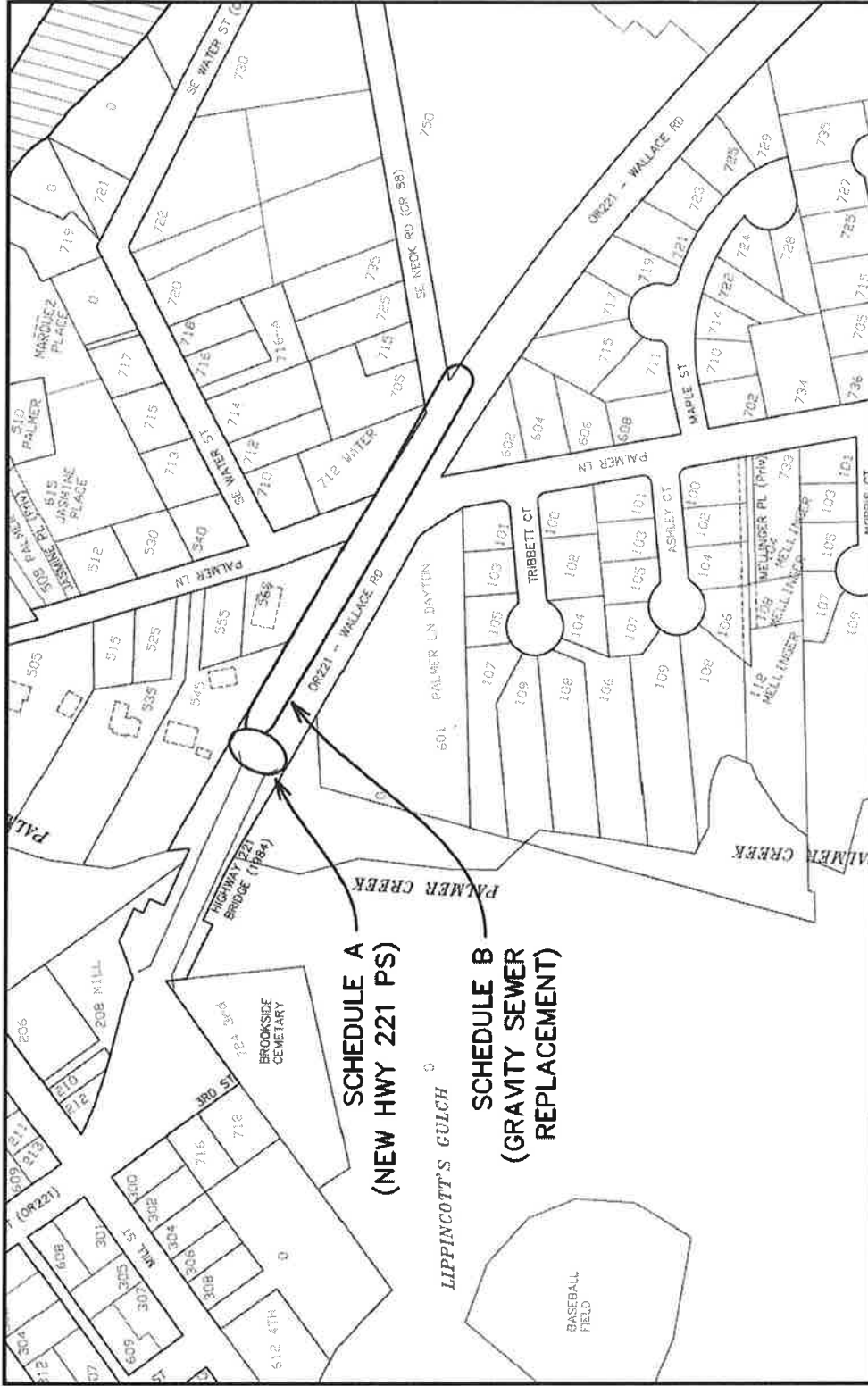


EXHIBIT B
Agency Contract Insurance Requirements

1. GENERAL.

- a. Agency shall require, in its contracts with entities that are not units of local government as defined in ORS 190.003 (if any), that its contractors: 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 contract commences, and ii) maintain the insurance in full force throughout the duration of the contract. 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 Agency. Agency shall not authorize work to begin under the contract until the insurance is in full force. Thereafter, Agency shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Agency shall incorporate appropriate provisions in the contract permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Agency permit work under a contract when Agency is aware that the contractor is not in compliance with the insurance requirements. All references to "contractor" in this Exhibit E refer to Agency's contractor as identified in this Paragraph 1.a.
- b. The insurance specified below is a minimum requirement that Agency shall require its contractor to meet, and shall include such requirement in Agency's contract with its contractor. Agency may determine insurance types and amounts in excess of the minimum requirement as deemed appropriate based on the risks of the work outlined within the contract.
- c. Agency shall require each of its contractors 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 Agency's 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. PROFESSIONAL LIABILITY.

Architecture and Engineering (A&E) and Related Services:

Professional liability insurance is required for A&E design services and A&E-related services, except that professional liability coverage may be waived by Agency for low-risk related services, such as public involvement or outreach.

General:

Professional liability insurance must cover damages caused by negligent acts, errors, or omissions of contractor and contractor's subcontractors, agents, officers, or employees related to the professional services to be provided under the contract.

Coverage shall be written with a per claim, incident, or occurrence limit, or the equivalent, of not less than \$1,000,000 \$2,000,000 \$5,000,000.

Annual aggregate limits shall not be less than \$2,000,000 \$4,000,000 \$10,000,000.

If this insurance is provided on a "claims made" basis, contractor shall maintain continuous claims made liability coverage or shall acquire tail coverage to continue the same coverage for a duration of at least **2 years**, unless 3 years or 5 years is specified, after completion of the contract or for the foregoing extended period beyond contract expiration or termination. Evidence of any required extended period coverage will be a condition of final payment under the contract.

c. 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 fifty (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 State:

Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 \$2,000,000 \$5,000,000 per occurrence.

Annual aggregate limit shall not be less than \$2,000,000 \$4,000,000 \$10,000,000.

d. 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 damage. Amount below is a minimum requirement as determined by State:

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

This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability).

e. EXCESS/UMBRELLA LIABILITY.

A combination of primary and Excess/Umbrella Liability Insurance may be used to meet the required limits of insurance.

f. ADDITIONAL INSURED.

The liability insurance coverages, except Professional Liability or Workers' Compensation/Employer's Liability, if included, must endorse 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 contract. 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 Agency.

g. "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 contract, for a minimum of twenty-four (24) months following the later of: (i) the contractor's completion and Agency's acceptance of all Services required under the contract or, (ii) the expiration of all warranty periods provided under the contract. 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 State may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If State

approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail coverage is reasonably available in the marketplace.

3. NOTICE OF CANCELLATION OR CHANGE.

The contractor or its insurer must provide thirty (30) days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s). **Agency shall immediately notify State of any change in insurance coverage.**

4. CERTIFICATE(S) OF INSURANCE.

Agency shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the contract. The certificate(s) or an attached endorsement must endorse: 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 Professional Liability and Workers' Compensation/Employer's Liability.

