

**AMENDMENT NUMBER 02**  
**INTERGOVERNMENTAL AGREEMENT**  
**FOR RIGHT OF WAY SERVICES**  
Yamhelas Westsider Trail: Phase 1  
Yamhill County

This is Amendment No. 02 to Agreement No. 29704 between the **STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as "State," and **YAMHILL COUNTY**, acting by and through its elected officials, hereinafter referred to as "Agency." The Parties entered into an Agreement on August 6, 2014, and Amendment No. 01 on October 14, 2015.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to extend the termination date by Reinstating the Agreement, updating language and Exhibit A.

1. **Effective Date.** This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.
2. **Amendment to Agreement.**

**Special Provisions - Exhibit A shall be deleted in its entirety and replaced with the attached Revised Special Provisions Exhibit A. All references to "Special Provisions - Exhibit A" shall hereinafter be referred to as "Revised Special Provisions Exhibit A."**

**a. TERMS OF AGREEMENT, paragraph 2, page 2, which reads:**

2. The work shall begin on the date all required signatures are obtained and shall be completed no later than October 31, 2016, on which date this Agreement automatically terminates unless extended by a fully executed amendment.

**Shall be deleted in its entirety and replaced with the following:**

2. The work shall begin on the date all required signatures are obtained and shall be completed no later than October 31, 2017, on which date this Agreement automatically terminates unless extended by a fully executed amendment.

**c. AGENCY OBLIGATIONS, paragraph 3, page 2, which reads:**

3. Agency's needed right of way services, as identified in Exhibit A, may be performed by qualified individuals from any of the following sources:
  - a. Agency staff;
  - b. State staff;
  - c. Staff of another local public agency, as described in ODOT's "Right of Way Manual" and approved by the State's Region Right of Way Office;
  - d. Consultants from State's Full Service Architectural and Engineering (A&E) Price Agreement 2 Tier Selection Process. Tier 2 procurements must be requisitioned

through State's Local Agency Liaison (LAL) with solicitation process administered by State Procurement Office. Forms and procedures for Tier 2 process are located at:

<http://www.oregon.gov/ODOT/CS/OPO/docs/fs/tier2guide.doc>;

- e. \*Appraiser services procured by Agency from State's Qualified Appraiser List (on line at:  
<http://www.oregon.gov/ODOT/HWY/ROW/Pages/index.aspx>);
- f. \*Other right of way related services procured by Agency from any source of qualified contractors or consultants.

\*Selections may be based on price alone, price and qualifications, or qualifications alone followed by negotiation. **Federally funded procurements** for Agency for right of way services must be conducted under State's certification program for consultant selection and must comply with requirements in the [LPA A&E Requirements Guide](#) (and must use the State's standard [A&E Contract Template for LPAs](#) which may be modified to include State-approved provisions required by Agency). **State and local funded procurements** by Agency must be in conformance with applicable State rules and statutes for A&E "Related Services."

**Shall be deleted in its entirety and replaced with the following:**

- 3. Agency's needed right of way services, as identified in Revised Exhibit A, may be performed by qualified individuals from any of the following sources:
  - a. Agency staff;
  - b. State staff;
  - c. Staff of another local public agency, as described in ODOT's "Right of Way Manual" and approved by the State's Region Right of Way Office;
  - d. Consultants from State's Full Service Architectural and Engineering (A&E) Price Agreement 2 Tier Selection Process. Tier 2 procurements must be requisitioned through State's Local Agency Liaison (LAL) with solicitation process administered by State Procurement Office. Forms and procedures for Tier 2 process are located at:  
<http://www.oregon.gov/ODOT/CS/OPO/docs/fs/tier2guide.doc>;
  - e. \*Appraiser services procured by Agency from State's Qualified Appraiser List (on line at:  
<http://www.oregon.gov/ODOT/HWY/ROW/Pages/index.aspx>);
  - f. \*Other right of way related services procured by Agency from any source of qualified contractors or consultants.

\*Selections may be based on price alone, price and qualifications, or qualifications alone followed by negotiation. **Federally funded procurements** by Agency for right of way services must be conducted under State's certification program for consultant selection and must comply with requirements in the [LPA A&E Requirements Guide](#) (and must use the State's standard [A&E Contract Template for LPAs](#) which may be modified to include

State-approved provisions required by Agency). **State and local funded procurements** by Agency must be in conformance with applicable State rules and statutes for A&E "Related Services" (and Agency may use its own contract documentation).

3. **Counterparts.** This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
4. **Original Agreement.** Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. Agency certifies that the representations, warranties and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

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

This Project is in the 2015-2018 Statewide Transportation Improvement Program, (Key No. 18332) that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently approved by amendment to the STIP).

**SIGNATURE PAGE FOLLOWS**

Yamhill County/ODOT  
Agreement No. 29704-02

YAMHILL COUNTY, by and through its  
elected officials

By Unavailable for signature  
Chair

By [Signature]  
Vice Chair

By Allen Springer  
Commissioner

Date 12-15-16

APPROVED AS TO LEGAL  
SUFFICIENCY

By [Signature]  
County Legal Counsel

Date 12/19/16

**Agency Contact:**

Brett Henry, Parks Manager  
Yamhill County  
616 NE 6<sup>th</sup> Street  
McMinnville, OR 97128  
Phone: (503) 434-7463  
Email: [Henryb@co.yamhill.or.us](mailto:Henryb@co.yamhill.or.us)

STATE OF OREGON, by and through  
its Department of Transportation

By [Signature] for Mike Howe  
State Right of Way Manager

Date 12-28-2016

APPROVAL RECOMMENDED

By [Signature]  
Region 2 Right of Way Program Manager

Date 12-21-16

By Sonny P.A. Chickering  
Region 2 Manager

Date 12-22-16

**State Contact:**

Keith Benjamin, Senior Right of Way Agent  
ODOT Region 2  
455 Airport Road SE, Bldg. A  
Salem, OR 97301  
Phone: (503) 986-2609  
Email: [keith.s.benjamin@odot.state.or.us](mailto:keith.s.benjamin@odot.state.or.us)

Accepted by Yamhill County  
Board of Commissioners on

12-15-16 by Board Order  
# 16-497

**REVISED SPECIAL PROVISIONS EXHIBIT A  
Right of Way Services**

**THINGS TO BE DONE BY STATE OR AGENCY**

1. Pursuant to this Agreement, the work performed on behalf of the Agency can be performed by the Agency, the Agency's consultant, the State or a State Flex Services consultant, as listed under Agency Obligations, paragraph 3 of this Agreement. The work may be performed by Agency staff or any of these representatives on behalf of Agency individually or collectively provided they are qualified to perform such functions and after receipt of approval from the State's Region 2 Right of Way Manager.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.

**A. Preliminary Phase**

1. Agency shall provide preliminary cost estimates.
2. Agency shall make preliminary contacts with property owners.
3. Agency shall gather and provide data for environmental documents.
4. Agency shall develop access and approach road list.
5. Agency shall help provide field location and Project data.

**B. Acquisition Phase**

1. General:
  - a. When doing the Acquisition work, as described in this Section, Agency shall provide State with a status report of the Project monthly.
  - b. Title to properties acquired shall be in the name of the Agency.
  - c. The Agency shall adopt a resolution of intention and determination of necessity in accord with ORS 35.235 and ORS 35.610, authorizing acquisition and condemnation, such approval will be conditioned on passage of a resolution by Agency substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof. If the Oregon Department of Justice is to handle condemnation work, prior approval evidenced by Chief Trial Counsel, Department of Justice, signature on this Agreement is required; and authorization for such representation shall be included in the resolution adopted by the Agency. Prior approval by Oregon Department of Justice is required.

2. Legal Descriptions:

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- a. Agency shall provide sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.
  - b. Agency shall provide construction plans and cross-section information for the Project.
  - c. Agency shall write legal descriptions and prepare right of way maps. If the Agency acquires any right of way on a State highway, the property descriptions and right of way maps shall be based upon centerline stationing and shall be prepared in accordance with the current "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide" and the "Right of Way Engineering Manual." The preliminary and final versions of the property descriptions and right of way maps must be reviewed and approved by the State.
  - d. Agency shall specify the degree of title to be acquired (e.g., fee, easement).
3. Real Property and Title Insurance:
- a. Agency shall provide preliminary title reports, if State determines they are needed, before negotiations for acquisition commence.
  - b. Agency shall determine sufficiency of title (taking subject to). If the Agency acquires any right of way on a State highway, sufficiency of title (taking subject to) shall be determined in accordance with the current "State Right of Way Manual" and the "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide." Agency shall clear any encumbrances necessary to conform to these requirements, obtain Title Insurance policies as required and provide the State copies of any title policies for the properties acquired.
  - c. Agency shall conduct a Level 1 Initial Site Assessment, according to State Guidance, within Project limits to detect presence of hazardous materials on any property purchase, excavation or disturbance of structures, as early in the Project design as possible, but at a minimum prior to property acquisition or approved design.
  - d. Agency shall conduct a Level 2 Preliminary Site Investigation, according to State Guidance, of sufficient scope to confirm the presence of contamination, determine impacts to properties and develop special provisions and cost estimates, if the Level 1 Initial Site Assessment indicates the potential presence of contamination that could impact the properties.
    - If contamination is found, a recommendation for remediation will be presented to State.
  - e. Agency shall be responsible for proper treatment and cost of any necessary remediation.
  - f. Agency shall conduct asbestos, lead paint and other hazardous materials surveys for all structures that will be demolished, renovated or otherwise disturbed.

Asbestos surveys must be conducted by an AHERA (asbestos hazard emergency response act) certified inspector.

4. Appraisal:

- a. Agency shall conduct the valuation process of properties to be acquired.
- b. Agency shall perform the Appraisal Reviews to set Just Compensation.
- c. Agency shall recommend Just Compensation, based upon a review of the valuation by qualified personnel.

5. Negotiations:

- a. Agency shall tender all monetary offers to land-owners in writing at the compensation shown in the appraisal review. Agency shall have sole authority to negotiate and make all settlement offers. Conveyances taken for more or less than the approved Just Compensation will require a statement justifying the settlement. Said statement will include the consideration of any property trades, construction obligations and zoning or permit concessions.
- b. State and Agency shall determine a date for certification of right of way and agree to cosign the State's Right of Way Certification form. State and Agency agree possession of all right of way shall occur prior to advertising for any construction contract, unless exceptions have been agreed to by Agency and State.
- c. Agency agrees to file all Recommendations for Condemnation at least seventy (70) days prior to the right of way certification date if negotiations have not been successful on those properties.

6. Relocation:

- a. Agency shall perform any relocation assistance, make replacement housing computations, and do all things necessary to relocate any displaced parties on the Project.
- b. Agency shall make all relocation and moving payments for the Project.
- c. Agency shall facilitate the relocation appeal process.

**C. Closing Phase**

1. Agency shall close all transactions. This includes drawing of deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and making all payments. If State is working as a consultant for the Agency, State shall submit all signed Final Report packets, information required by the Uniform Act, and agreements to the Agency.

2. Agency shall record conveyance documents, only upon acceptance by appropriate agency.

**D. Property Management**

1. Agency shall take possession of all the acquired properties. There shall be no encroachments of buildings or other private improvements allowed upon the State highway right of way.
2. Agency shall dispose of all improvements and excess land consistent with Agency prevailing laws and policies.

**E. Condemnation**

1. Agency may offer mediation if the Agency and property owners have reached an impasse.
2. Agency shall perform all administrative functions in preparation of the condemnation process, such as preparing final offer and complaint letters.

3. Agency shall perform all legal and litigation work related to the condemnation process. Agency is responsible for passage of a resolution substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof, specifically identifying the property being acquired.
4. When State shall perform legal or litigation work related to the condemnation process, Agency acknowledges, agrees and undertakes to assure that no member of Agency's board or council, nor Agency's mayor, when such member or mayor is a practicing attorney, nor Agency's attorney nor any member of the law firm of Agency's attorney, board or council member, or mayor, will represent any party, except Agency, against the State of Oregon, its employees or contractors, in any matter arising from or related to the Project which is the subject of this Agreement.

#### **F. Transfer of Right of Way to State**

When right of way is being acquired in Agency's name, Agency agrees to transfer and State agrees to accept all right of way acquired on the State highway. The specific method of conveyance will be determined by the Agency and the State at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. Agency agrees to provide the State all information and file documentation the State deems necessary to integrate the right of way into the State's highway system. At a minimum, this includes: copies of all recorded conveyance documents used to vest title in the name of the Agency during the right of way acquisition process, and the Agency's Final Report or Summary Report for each acquisition file that reflects the terms of the acquisition and all agreements with the property owner(s).

#### **G. Transfer of Right of Way to Agency**

When right of way is being acquired in State's name, State agrees to transfer and Agency agrees to accept all right of way acquired on the Agency's facility, subject to concurrence from FHWA at the time of the transfer. The specific method of conveyance will be determined by the State and the Agency at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. If requested, State agrees to provide Agency information and file documentation associated with the transfer.

B.D. 116-497