

Misc. Contracts and Agreements  
No. 32537

**AMENDMENT NUMBER 01  
INTERGOVERNMENTAL AGREEMENT  
FOR RIGHT OF WAY SERVICES**

McGilchrist Street: 12<sup>th</sup> Street – 25<sup>th</sup> Street (Salem)  
City of Salem

This is Amendment No. 01 to the Agreement between the **STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as “State,” and **CITY OF SALEM**, acting by and through its designated officials, hereinafter referred to as “Agency,” entered into on June 5, 2018.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to add funds, update Exhibit A, and identify new State and Agency contacts.

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.**

a. **Exhibit A shall be deleted in its entirety and replaced with the attached Revised Exhibit A. All references to “Exhibit A” shall hereinafter be referred to as “Revised Exhibit A.”**

b. **TERMS OF AGREEMENT, Paragraph 1, Page 1, which reads:**

1. Under such authority, to accomplish the objectives in Agreement No. 32537, State and Agency agree to perform certain right of way activities shown in Special Provisions – Exhibit A, attached hereto and by this reference made a part hereof. For the right of way services State performs on behalf of the Agency, under no conditions shall Agency’s obligations exceed a maximum of \$15,000.00, including all expenses, unless agreed upon by both Parties.

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

1. Under such authority, to accomplish the objectives in Agreement No. 32537, State and Agency agree to perform certain right of way activities shown in Special Provisions – Revised Exhibit A, attached hereto and by this reference made a part hereof. For the right of way services State performs on behalf of the Agency, under no conditions shall Agency’s obligations exceed a maximum of \$304,000, including all expenses, unless agreed upon by both Parties.

c. **AGENCY OBLIGATIONS, Paragraph 8, Page 3, which reads:**

8. Agency’s right of way contact person for this Project is Aaron Kimsey, Sr. Project Manager, City of Salem, Public Works Department, 555 Liberty Street SE, Salem, Oregon 97301-3503; telephone (503) 588-6211; email:

[akimsey@cityofsalem.net](mailto:akimsey@cityofsalem.net), 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.

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

8. Agency's right of way contact person for this Project is, Julie Titchbourne, Engineering Program Manager, City of Salem, Public Works Department, 555 Liberty Street SE, Salem, Oregon 97301-3503; telephone: (503) 588-6211; email: [jtitchbourne@cityofsalem.net](mailto:jtitchbourne@cityofsalem.net), 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.

**e. PAYMENT FOR SERVICES AND EXPENDITURES, Paragraph 1, Page 4, which reads:**

1. In consideration for the services performed by State (as identified in the attached Exhibit A), Agency agrees to pay or reimburse State a maximum amount of \$15,000.00. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to State in accordance with the current Oregon Department of Administrative Services' rates. Any expenditure beyond federal participation will be from, or reimbursed from, Agency funds. Payment in Agency and/or federal funds in any combination shall not exceed said maximum, unless agreed upon by both Parties.

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

1. In consideration for the services performed by State (as identified in the attached Revised Exhibit A), Agency agrees to pay or reimburse State a maximum amount of \$304,000. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to State in accordance with the current Oregon Department of Administrative Services' rates. Any expenditure beyond federal participation will be from, or reimbursed from, Agency funds. Payment in Agency and/or federal funds in any combination shall not exceed said maximum, unless agreed upon by both Parties.
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 2018-2021 Statewide Transportation Improvement Program, (Key No. 20739) that was adopted by the Oregon Transportation Commission on July 20, 2017 (or subsequently approved by amendment to the STIP).

SIGNATURE PAGE FOLLOWS

**CITY OF SALEM**, by and through its  
designated officials

By \_\_\_\_\_  
City Manager

Date \_\_\_\_\_

**APPROVED AS TO FORM**

By \_\_\_\_\_  
Agency Legal Counsel

Date \_\_\_\_\_

**Agency Contact:**

Julie Titchbourne  
Engineering Program Manager  
City of Salem, Public Works Dept.  
555 Liberty Street SE  
Salem, Oregon 97301-3503  
(503) 588-6211  
[jtitchbourne@cityofsalem.net](mailto:jtitchbourne@cityofsalem.net)

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
State Right of Way Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 2 Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 2 Right of Way Program Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

**State Contact:**

Regina Thompson, Senior Right of Way Agent  
ODOT Region 2  
455 Airport Road SE, Bldg. A  
Salem, OR 97301  
(503) 986-2609  
[regina.thompson@odot.state.or.us](mailto:regina.thompson@odot.state.or.us)

**SPECIAL PROVISIONS – REVISED 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, each Party shall provide a status report to the other Party 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:

- 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 Agency.
- 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. State and 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. State and 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. If State performs this function, it will provide the Agency with all pertinent letters, negotiation records and obligations incurred during the acquisition process.
- b. State and Agency shall determine a date for certification of right of way and agree to co-sign 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. State and 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 building 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 Federal Highway Administration (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.