

**INTERGOVERNMENTAL AGREEMENT
FOR RIGHT OF WAY SERVICES**

City of Prineville: 2nd Street Extension Project

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 Prineville, acting by and through its elected officials, hereinafter referred to as "City", collectively referred to as the "Parties".

RECITALS:

1. By the authority granted in ORS 190.110, 283.110, 366.572 and 366.576, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. That certain 2nd Street is a City street, under the jurisdiction and control of City, and City may enter into an agreement for the acquisition of real property by ODOT. Said real property is to be used as part of right of way for City's 2nd Street Extension Project. Hereinafter, all acts necessary to accomplish services in this Agreement shall be referred to as "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, City wishes to retain the services of ODOT to perform the Project identified in Recitals, Paragraph 2, shown in Special Provisions Exhibit A and located approximately as shown on Exhibit B, exhibits attached hereto and by this reference made a part hereof. Under no conditions shall City's obligations for said services exceed a maximum of \$200,000, including all expenses, unless agreed upon by both Parties.
2. The work shall begin on the date all required signatures are obtained and shall be completed no later than three (3) years after execution of the Agreement, on which date this Agreement automatically terminates unless extended by a fully executed amendment.
3. The process to be followed by the Parties in carrying out this Agreement is set out in the Special Provisions Exhibit A.
4. It is further agreed both Parties will strictly follow the rules, policies and procedures of the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" as amended, ORS Chapter 35, ODOT Right of Way Manual, and Federal Highway Administration Federal Aid Policy Guide.

ODOT OBLIGATIONS:

1. ODOT shall perform the work described for it in Special Provisions Exhibit A.
2. With the exception of work related to appraisals, ODOT shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from City.
3. 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.
4. ODOT's Project Manager for this Agreement is Mary Lauzon, Senior Right of Way Agent, 63085 N. Highway 97, Ste. 102, Bend, OR 97701, (541) 388-6200, or assigned designee upon individual's absence.

CITY OBLIGATIONS:

1. City shall perform the work described for it in Special Provisions Exhibit A.
2. City certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within City's current appropriation or limitation of current budget. City is willing and able to finance all, or its pro-rata share of all, costs and expenses incurred in the Project up to its maximum.
3. City's right of way contact person for this Agreement is Mike Wilson, 327 NE Third St., Prineville, OR 97754, (541) 447-2378, or assigned designee upon individual's absence.
4. Prior to the initiation of acquisitions, City shall adopt a resolution of intention and determination of necessity in accord with ORS 35.610, authorizing acquisition and condemnation. The resolution will include that ODOT, through the Department of Justice, will handle the condemnations, if any.

PAYMENT FOR SERVICES and EXPENDITURES:

1. In consideration for the services performed by ODOT, City agrees to pay or reimburse ODOT a maximum amount of \$200,000. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to ODOT in accordance with the current State Department of Administrative Services' rates. City shall be responsible for all Project costs. Payment by City shall not exceed said maximum, unless agreed upon by both Parties.
2. ODOT shall upon execution of this Agreement, forward to City either: 1) a request to sign an irrevocable limited power of attorney to access the Local Government Investment Pool account of the City, or 2) a letter of request for an advance deposit. City shall make any

advance deposit to the Department of Transportation's Financial Services Branch, in an amount equal to the estimate of costs to be incurred by ODOT for the Project. The preliminary estimate of costs is \$200,000. Additional deposits, if any, shall be made as needed upon request from ODOT and acceptance by City. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete Project.

- a. City agrees to pay or reimburse all salaries and payroll reserves of ODOT employees working on Project, direct costs, costs of rental equipment used, and per-diem expenditures, plus 10 percent surcharge on salary costs to cover administrative costs of Right of Way Section.
- b. ODOT shall present invoices for 100 percent of actual costs incurred by ODOT on behalf of the Project directly to City's right of way contact for review and approval. Such invoices shall be in a form identifying the Project and agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one month duration, based on actual expenses incurred.
- c. Upon completion of right of way acquisition and receipt from ODOT of a final itemized statement, City shall pay an amount which, when added to said advance deposit, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project shall be refunded to City.

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, under any of the following conditions:
 - a. If either Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If either 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 fails to correct such failures within ten (10) days or such longer period as may be authorized.
2. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
3. City acknowledges and agrees that ODOT, 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 City 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. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.

4. Both Parties agree to 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, which hereby are incorporated by reference. Without limiting the generality of the foregoing, both Parties expressly agree 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.
5. All employers, 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. Both Parties shall ensure that each of its subcontractors complies with these requirements.
6. 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.
7. 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.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

The Project is not in the Oregon Department of Transportations biennial budget or the Statewide Transportation Improvement Program.

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 3, which authorizes the Director and Deputy Director, Highways to approve and execute all agreements pertaining to real property transactions.

On July 7, 2005, the Director and Deputy Director, Highways approved Subdelegation Order No. 4, in which the Director and Deputy Director, Highways delegates authority to the Technical Services Manager/Chief Engineer to approve and execute all agreements pertaining to real property transactions.

Pursuant to a Letter of Authority dated February 22, 2002, the Technical Services Manager/Chief Engineer authorized the Right of Way Manager to approve and execute with other governmental jurisdictions to employ Right of Way Section Staff.

CITY OF PRINEVILLE, by and through its
elected officials

By _____
Mayor

Date _____

By _____
City Recorder

Date _____

APPROVED AS TO FORM

By _____
City Legal Counsel

Date _____

City Contact:
Mike Wilson
City of Prineville
327 NE Third ST.
Prineville, OR 97754
(541) 447-2378

STATE OF OREGON, by and through its
Department of Transportation

By _____
State Right of Way Manager

Date _____

Approval Recommended

By _____
Region 4 Manager

Date _____

By _____
Region 4 Right of Way Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

SPECIAL PROVISIONS EXHIBIT A
ITEMS TO BE COMPLETED BY ODOT OR CITY

A. Preliminary Phase (insert either ODOT or City on each line)

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

B. Acquisition Phase (insert either ODOT or City on each line)

1. General:

- a. When doing the Acquisition work, ODOT shall provide City with a status report of the Project upon request.
- b. Title to properties acquired shall be in the name of the City.
- c. Prior to the initiation of acquisitions, City shall adopt a resolution of intention and determination of necessity in accord with ORS 35.610, authorizing acquisition and condemnation. If the State Department of Justice is to handle condemnation work, that information needs to be included in the resolution adopted by the City. Prior approval by Department of Justice has been obtained.

2. Legal Descriptions:

- a. City shall provide sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.
- b. City shall provide construction plans and cross-section information for the Project.
- c. ODOT shall write legal descriptions and prepare right of way maps.
- d. City shall specify the degree of title to be acquired (e.g., fee, easement).

3. Real Property and Title Insurance:

- a. ODOT shall provide preliminary title reports, if ODOT determines they are needed, before negotiations for acquisition commence.

- b. ODOT shall determine sufficiency of title (taking subject to).
- c. City shall conduct Level 1 testing for presence of hazardous material prior to right of way appraisals being contracted.
- d. City shall conduct reasonable testing up to Level 2, if requested.

If contamination is found, a copy of the recommendation for remediation report will be forwarded to ODOT.

- e. City shall be responsible for any necessary remediation.

4. Appraisal:

- a. ODOT shall conduct the valuation process of properties to be acquired.
- b. ODOT shall recommend just compensation, based upon a review of the valuation by qualified personnel.
- c. Property trades, construction obligations, and zoning or permit concessions are to be evaluated as part of the Just compensation offer and should be coordinated through ODOT.

5. Negotiations:

- a. ODOT shall tender an initial monetary offer to land-owners in writing at the compensation shown in the appraisal review. Conveyances taken for more than the approved figure will be documented by an Administrative Justification for the increase in compensation up to 15% over the initial offer. If a settlement is possible for more than 15% over the initial offer, ODOT will consult with City regarding possible settlement or condemnation. ODOT it will provide the City with all pertinent letters, negotiation records and obligations incurred during the acquisition process.
- b. City and ODOT shall jointly determine a date for certification of right of way. ODOT agrees to file all Recommendations for Condemnation at least 70 days prior to that date if negotiations have not been successful on those properties.

6. Relocation:

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

C. Closing Phase (insert either ODOT or City on each line)

1. ODOT shall close all transactions. This includes drawing deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and making all payments. If City is handling the closing, ODOT shall submit all signed Final Report packets, information required by the Uniform Act, and agreements to the City.
2. ODOT shall record conveyance documents, only upon acceptance by appropriate agency.

D. Property Management (insert either ODOT or City on each line)

1. City shall take possession of all the acquired properties.
2. City shall dispose of all improvements and excess land.

E. Condemnation (insert either ODOT or City on each line)

1. ODOT may offer mediation if parties have reached an impasse.
2. ODOT shall perform all administrative functions in preparation of the condemnation process, such as preparing final offer and complaint letters.
3. ODOT shall perform all legal work related to the condemnation process. (If ODOT is doing this for another agency, the Department of Justice must approve in advance).
4. ODOT shall perform all litigation work related to condemnation. (If ODOT is doing this for another agency, the Department of Justice must approve in advance)

