

## RESOLUTION No. 2013-3052

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**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF OREGON TO PROVIDE RIGHT OF WAY SERVICES FOR THE N. COLLEGE STREET SIDEWALKS AND BIKE LANES IMPROVEMENT PROJECT**

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### RECITALS:

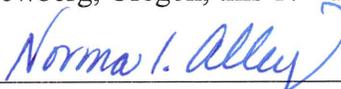
1. On April 17, 2012, the City executed Intergovernmental Agreement (IGA) No. 27928 with the Oregon Department of Transportation (ODOT) to receive the State's right of way services for the acquisition of rights of way and easements needed for the N. College Street Sidewalks and Bike Lane Improvement Project. This IGA provides a maximum of \$117,000.00 for the ODOT right of way services.
2. Due to the federal and state environmental determination that stormwater detention and treatment is required for the project to meet the joint permit application (JPA) requirements, the right of way and easement needs for the project have increased. The increased cost to acquire the rights of way and easements necessitates an amendment to IGA No. 27928, adjusting the estimated cost allocated to \$198,000.00 for the ODOT right-of-way services. The construction phase of the project will have a corresponding funding reduction. There is no change in the total Transportation Enhancement commitment from ODOT at this time, currently at \$880,000.00 for the project.
3. The costs for the construction phase of the project will be re-evaluated in August, 2013, to affirm or modify the project limits and/or adjust the funding commitments from ODOT and the City.

### THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

The Newberg City Council does hereby authorize the city manager to execute an Intergovernmental Agreement (IGA) amendment with ODOT to provide right-of-way services for the North College Street Sidewalks and Bike Lanes Improvement Project. The amendment to IGA No. 27928 is shown in Exhibit "A", which is hereby attached and by this reference incorporated.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: June 18, 2013.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 17<sup>th</sup> day of June, 2013.

  
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Norma I. Alley, MMC, City Recorder

**ATTEST** by the Mayor this 20<sup>th</sup> day of June, 2013.

  
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Bob Andrews, Mayor

## EXHIBIT "A" for Resolution No. 2013-3052

Misc. Contracts and Agreements  
No. 27928

**Oregon Department of Transportation  
AMENDMENT NUMBER 01  
INTERGOVERNMENTAL AGREEMENT  
FOR RIGHT OF WAY SERVICES**

OR 219: Vermillion – Aldercrest Sidewalk and Bike Lanes  
City of Newberg

The **STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as "State," and the **CITY OF NEWBERG**, acting by and through its elected officials, hereinafter referred to as "Agency," entered into an Agreement on April 17, 2012. Said Agreement covers the roles and responsibilities of the Parties regarding the real property to be used as part of right of way for street improvements.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to update language and increase the total funding for the right of way phase of the Project. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

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

1. Under such authority, 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. If the State performs right of way services on behalf of the Agency, under no conditions shall Agency's obligations for said services exceed a maximum of \$117,000, 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. 27316, 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. If the State performs right of way services on behalf of the Agency, under no conditions shall Agency's obligations for said services exceed a maximum of \$198,000, including all expenses, unless agreed upon by both Parties.

**PAYMENT FOR SERVICES AND EXPENDITURES, Paragraph 1, Page 3, 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 \$117,000. 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.

## EXHIBIT "A" for Resolution No. 2013-3052

City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27928, Amendment No. 1

### 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 Exhibit A), Agency agrees to pay or reimburse State a maximum amount of \$198,000. 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 amount, unless agreed upon by both Parties.

### GENERAL PROVISIONS, Paragraph 14, Page 6, which reads:

14. 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.

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

14. This Agreement and attached exhibits and Agreement No. 27316 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.

This Amendment 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 Amendment so executed shall constitute an original.

**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 2012-2015 Statewide Transportation Improvement Program, (Key No. 17382) that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

**EXHIBIT "A" for Resolution No. 2013-3052**

City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27928, Amendment No. 1

**CITY OF NEWBERG**, by and through its  
elected officials

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

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

Date \_\_\_\_\_

**APPROVED AS TO LEGAL FORM**

By \_\_\_\_\_  
City Legal Counsel

Date \_\_\_\_\_

**Agency Contact:**  
Paul Chiu, P.E., Senior Engineer  
City of Newberg, Public Works-Engineering  
PO Box 970  
Newberg, OR 97132  
Phone: (503) 554-1751  
Email: [paul.chiu@newbergoregon.gov](mailto:paul.chiu@newbergoregon.gov)

**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 Manager

Date \_\_\_\_\_

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

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

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

Date \_\_\_\_\_

**State Contact:**  
Melissa J. Mallott, Program Manager  
ODOT, Region 2, Right of Way  
455 Airport Road, SE, Bldg. A  
Salem, OR 97301  
Phone: (503) 986-2772  
Email: [melissa.j.mallott@odot.state.or.us](mailto:melissa.j.mallott@odot.state.or.us)