

COOPERATIVE IMPROVEMENT AGREEMENT

Oregon Route 18 at Christensen Road
Yamhill County

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 YAMHILL COUNTY, 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. Oregon Route 18 (Salmon River Highway) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Christensen Road and Caleb Payne Road are part of the county road 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. By the authority granted in ORS [810.210](#), State is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where State deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than State, except with its written approval. Traffic signal work on this Project will conform to the current State standards and specifications.
4. By the authority granted in ORS [374.305](#) and [374.310](#), State may regulate construction of any approach onto the state highway and require mitigation for approaches that the State determines to be in the best interest of the traveling public.
5. Access management for this project shall follow the guidance and policies of [Oregon Administrative Rule \(OAR\) Chapter 734, Division 51](#), the "[Oregon Transportation Plan](#)," and the "[Oregon Highway Plan](#)."
6. The 1999 Oregon Highway Plan is the highway element of the state transportation system plan required by ORS [184.618\(1\)](#), and the state Transportation Planning Rule. It is a statement of state policy adopted by the Oregon Transportation Commission and serves as the Highway Modal System Plan for the State of Oregon. The description of the state highway system and assigned function of each state highway is part of the Oregon Highway Plan. Oregon Route 18 (OR 18), within the

limits of the project described herein, is designated in the Oregon Highway Plan as an Expressway.

7. The purpose of the Expressway classification is to maintain mobility by providing for safe and efficient high speed and high volume traffic movements. Its primary function is to provide for interurban travel and connections to ports and major recreation areas with minimal interruptions. As an Expressway, the kind and number of accesses allowed on the segment of highway is monitored to maintain the mobility function.
8. This Agreement covers State's plan to install a west-bound left turn lane refuge on OR 18 at the Christensen Road intersection (Mile Point 35.5) to improve safety for the traveling public. In addition, improvements for system connectivity and access to the intersection will be implemented through the modifications of road approach access.

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, the Parties agree that State will design and construct safety improvements at the intersection and vicinity of OR 18 at Christensen Road, hereinafter referred to as "Project." The Project includes installation of a west-bound left turn refuge on OR 18 at Christensen Road; closing the intersection of the west end of Caleb Payne Road with OR 18 to through traffic and converting the end of Caleb Payne Road into a cul-de-sac; and improving road approach access on the intersection of Christensen Road and OR 18 to create a more safe and navigable approach to OR 18. The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof. The access improvement components of the Project are defined in "Exhibit B," attached hereto and by this reference made a part hereof.
2. The Parties agree that Agency has ownership and jurisdiction of Caleb Payne Road, as described in Abandonment and Retention Agreement number 511 between State and Agency dated September 30, 1970. As part of this Project, Agency agrees to the closure of the west end of Caleb Payne Road and the creation of a cul-de-sac, and will transfer to State that portion of Caleb Payne Road as shown inside the blue outline on attached "Exhibit C," which by this reference is made a part hereof.
3. Located on Caleb Payne Road is Agency Bridge number 11841 which provides access to homes on the west end of Caleb Payne Road. In the event of the failure of bridge number 11841, State agrees to work with Agency in opening the west-end connection of Caleb Payne Road at the OR 18 connection to provide access to the homeowners.

4. The Project will be financed at an estimated cost of \$2,025,300 in state funds. The estimate for the total Project cost is subject to change. State shall be responsible for any Project costs beyond the estimate.
5. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of potential bridge failure as described in Terms of Agreement, paragraph 3. The useful life of the Project is defined as twenty (20) calendar years. The Project shall be completed within ten (10) calendar years following the date of final execution of this Agreement by both Parties. Responsibility of State to provide access on Caleb Payne Road to homeowners upon failure of bridge number 11841 will survive any termination of this Agreement.

AGENCY OBLIGATIONS

1. Agency agrees to State acquiring all right of way needed for construction of the Project. County shall, upon completion of Project, accept jurisdiction and control over right of way determined to be Agency's responsibility, as generally depicted and labelled in Exhibits D-1 and D-2, attached hereto and by this reference made a part hereof. Agency shall execute any documents necessary to affect the transfer of the property depicted in Exhibits D-1 and D-2. If said right of way is no longer used for public street purposes, it shall automatically revert to State.
2. Agency agrees to retain the jurisdiction, control and maintenance responsibilities over the current section of Caleb Payne Road which, when the Project is completed, will be closed to through traffic and made into a cul-de-sac.
3. Agency agrees to install appropriate signage on Caleb Payne Road to inform the traveling public of it not being a through road.
4. Agency agrees to gravel surfacing of the west end of Caleb Payne Road from the westernmost driveway through and including the cul-de-sac.
5. Agency agrees to transfer to State its interest in right of way for Caleb Payne Road abutting OR 18 as generally depicted in Exhibit C. State will prepare and Agency shall execute any documents necessary to affect the transfer of the property to the State.
6. Agency agrees to the change in road approach access on Christensen Road as generally depicted in Exhibit B.
7. Agency acknowledges the effect and scope of ORS [105.755](#) and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of Agency.
8. 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.

9. 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.
10. 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. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
11. 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.
12. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
13. 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.
14. Agency's Project Manager for this Project is Bill Gille, County Engineer, Yamhill County Public Works Department, 535 NE Fifth Street, McMinnville, Oregon 97128; phone: (503) 434-7365; email: gilleb@co.yamhill.or.us, 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, 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 highway 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, project management services and other necessary functions for sole administration of the construction contract entered into for this Project.
2. State, 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 "[ODOT Right of Way Manual](#)". Title to properties acquired shall be in the name of State. The Parties agree to enter into a separate Intergovernmental Agreement for Right of Way Services identifying the roles and responsibilities of the Parties for any right of way activities.
3. Upon Project completion, as generally depicted in Exhibits D-1 and D-2, State shall transfer to Agency, and Agency accepts, any ownership interests it may have obtained along the original and new alignments of Caleb Payne Road and Christensen Road that are not to be part of OR 18. The method of conveyance will be determined by the Parties at the time of transfer and will be coordinated by the State's Region 2 Right of Way Manager. If said right of way is no longer used for public street purposes, it shall automatically revert to State.
4. In the event of the failure of Caleb Payne Road bridge number 11841, State agrees to work with Agency in opening the west-end connection of Caleb Payne Road at the OR 18 connection to provide access for homeowners in the vicinity.
5. State shall be responsible for all costs associated with construction and installation of the Project.
6. State shall be responsible for signing and inspection associated with the Project along OR 18.
7. State shall provide to Agency permanent mylar "as constructed" plans for work on county roads. State shall provide to Agency a Portable Document Format (PDF) file and a paper copy of the plan set.
8. State shall cause to be relocated or reconstructed, all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements for the portions of the Project which are on OR 18.

9. State's Project Manager for this Project is Melissa Sutkowski, Project Leader, ODOT, Area 3, 885 Airport Road SE, Building P, Salem, Oregon 97301; phone: (503) 986-2639; email: melissa.sutkowski@odot.state.or.us, 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 mutual written consent of both Parties.
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 State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
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. 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.
9. 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.

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. 16118 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, by and through its
elected officials

By [Signature]
Chair

By [Signature]
Commissioner

By [Signature]
Commissioner

Date 1-21-2016

APPROVED AS TO LEGAL SUFFICIENCY

By [Signature]
County Legal Counsel

Date 1-21-16

Agency Contact:

Bill Gille, County Engineer
Yamhill County Public Works
535 NE Fifth Street
McMinnville, OR 97128
Phone: (503) 434-7365
Email: gilleb@co.yamhill.or.us

State Contact:

Melissa Sutkowski, Project Leader
ODOT, Area 3
885 Airport Road SE, Bldg. P
Salem, OR 97301
Phone: (503) 986-2639
Email: melissa.sutkowski@odot.state.or.us

Accepted by Yamhill County
Board of Commissioners on
1-21-16 by Board Order
112-15

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief
Engineer

Date _____

By _____
State Right of Way Manager

Date _____

By _____
Region 2 Manager

Date _____

By _____
Area 3 Manager

Date _____

By _____
Region 2 Right of Way Program
Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

See Previous Page

Yamhill County / State of Oregon – Dept. of Transportation
Agreement No. 30308

YAMHILL COUNTY, by and through its
elected officials

By _____
Chair

By _____
Commissioner

By _____
Commissioner

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
County Legal Counsel

Date _____

Agency Contact:

Bill Gille, County Engineer
Yamhill County Public Works
535 NE Fifth Street
McMinnville, OR 97128
Phone: (503) 434-7365
Email: gilleb@co.yamhill.or.us

State Contact:

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ODOT, Area 3
885 Airport Road SE, Bldg. P
Salem, OR 97301
Phone: (503) 986-2639
Email: melissa.sutkowski@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator

Date 1/27/16

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief
Engineer

Date 1/26/16

By _____
State Right of Way Manager

Date 1-25-2016

By _____
Region 2 Manager

Date 1-22-16

By _____
Area 3 Manager

Date 1/24/16

By _____
Region 2 Right of Way Program
Manager

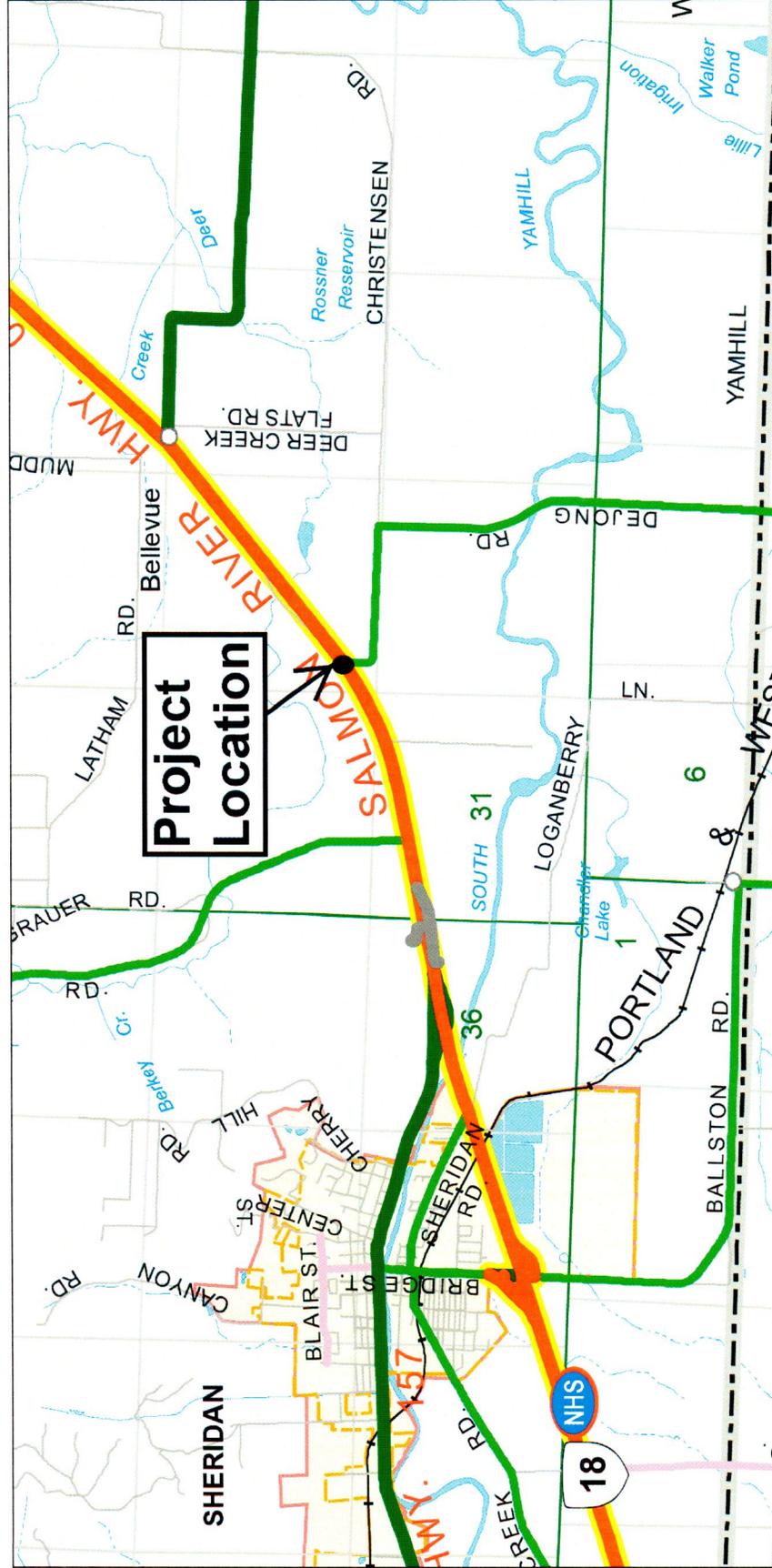
Date 1/20/16

APPROVED AS TO LEGAL
SUFFICIENCY

By _____
Assistant Attorney General

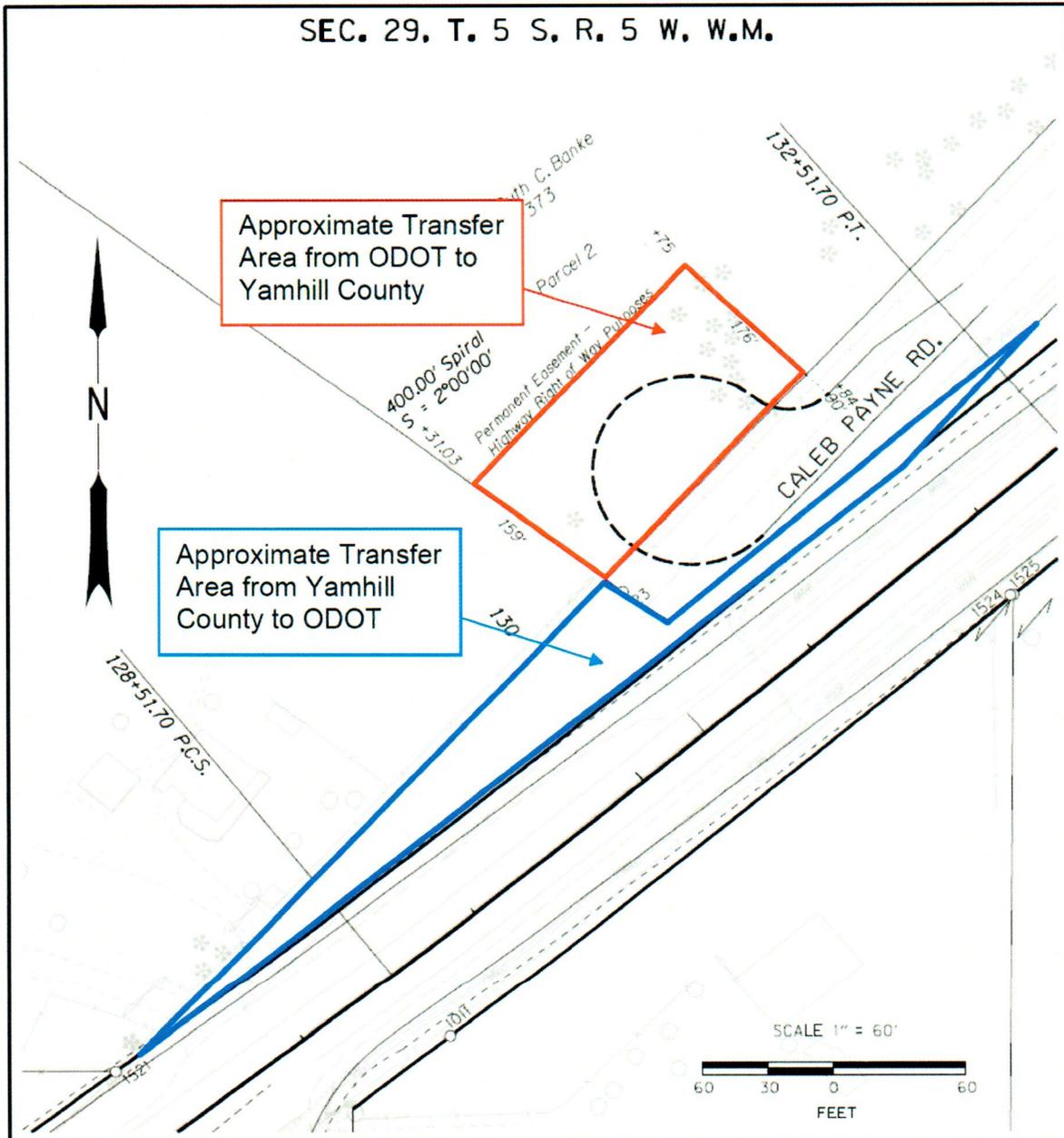
Date 1/19/16

Exhibit A – Project Location Map
OR 18 at Christensen Road



B.D. 10-15

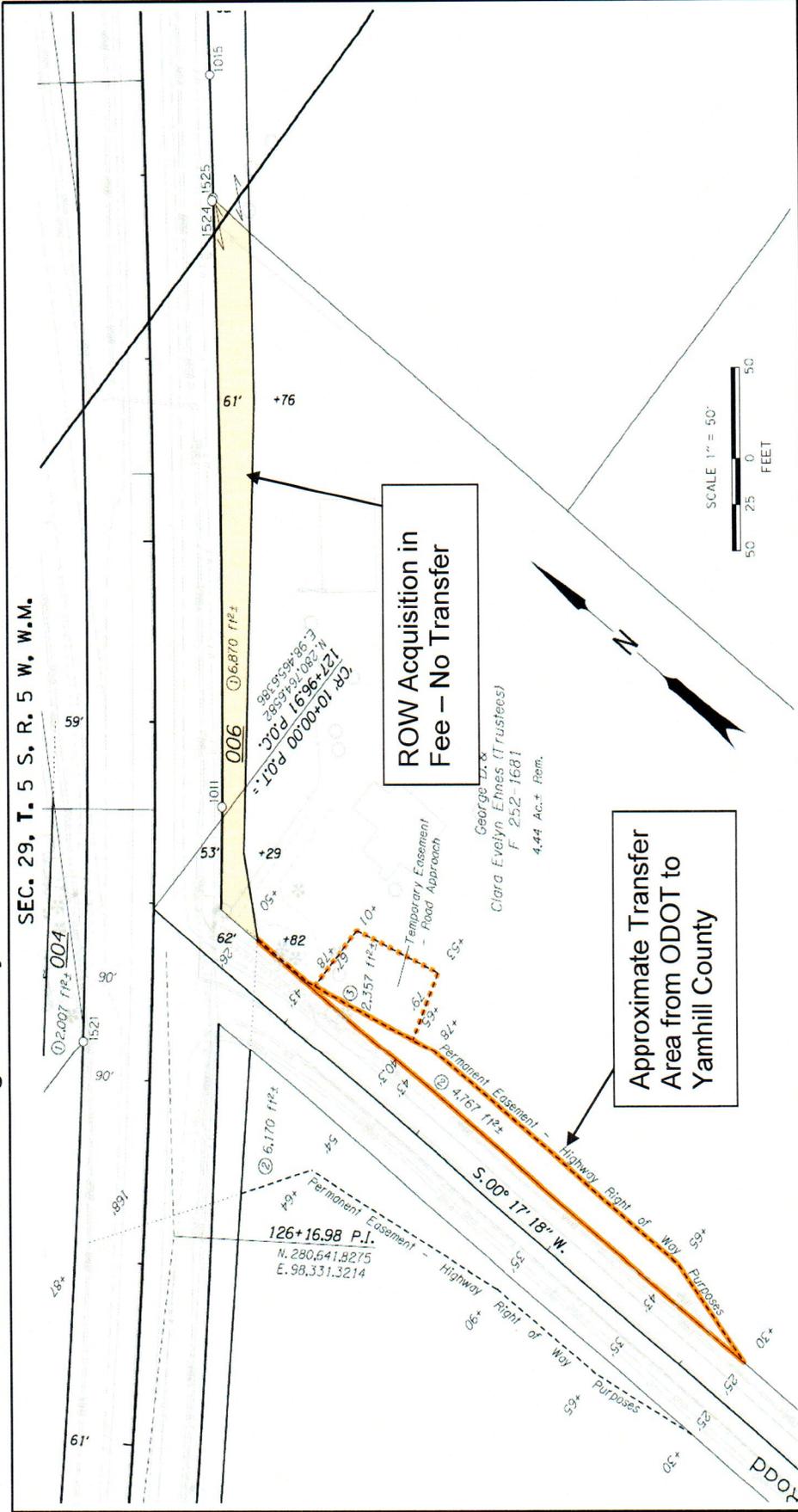
Exhibit C
 Right of Way Transfer from Yamhill County to ODOT



 OREGON DEPARTMENT OF TRANSPORTATION RIGHT OF WAY ENGINEERING SKETCH MAP	Section	FFQ-OR18 @ Christensen Road		
	Highway	Salmon River		
	County	Yamhill	Scale	1" = 60'
	Purpose	Place Purpose	Date	August, 2014

Exhibit D-2
Right of Way Transfer from ODOT to Yamhill County

SEC. 29, T. 5 S. R. 5 W. W.M.



OREGON DEPARTMENT OF TRANSPORTATION RIGHT OF WAY ENGINEERING SKETCH MAP	Section	FFO-OR18 @ Christensen Road	Scale	1" = 50'
	Highway	Salmon River	Date	August, 2014
	County	Yamhill	File	7711 006
	Purpose	Acquire Right of Way		See Drawing 11B-7-34

B.O. 10-15