

MEMORANDUM OF UNDERSTANDING
Yamhelas Westsider Trail
Yamhill County

This Memorandum of Understanding (MOU) is made and entered into by and between the State of Oregon by and through its Department of Transportation, hereinafter referred to as "State;" and Yamhill County, a political subdivision of the State of Oregon, hereinafter referred to as "County," both herein referred to individually or collectively as the "Party" or "Parties".

This MOU is entered into to document the intention of the Parties to collaboratively deliver the Yamhelas Westsider Trail (Trail Corridor), and to develop a clear and positive working relationship based on realistic expectations about the future of the Trail Corridor within the County.

- The first phase of the Trail Corridor is identified in the Oregon Department of Transportation's 2012-2015 and 2015-2018 State Transportation Improvement Program (ODOT STIP) cycles as "Yamhelas Westsider Trail – Phase 1" (Key No. 18332).
- The second phase of the of the Trail Corridor is identified in the 2015-2018 ODOT STIP as "Yamhelas Westsider Trail (Phase 2)," (Key No. 21358). The Yamhelas Westsider Trail (Phase 2) project is also identified in the 2018-2021 ODOT STIP.
 - County was awarded a *ConnectOregon VI (CO-VI)* grant (Agreement No. 31632) for the continuation of the Trail Corridor to fund design of three pedestrian bridges (Unnamed Creek No. 1 Bridge, Unnamed Creek No. 2 Bridge, and Stag Hollow Creek Bridge); and fund construction of the Stag Hollow Creek Bridge, in addition to completing limited preliminary engineering of the two other bridges that are not to be constructed during Phase 2.
- The project is hereinafter referred to as "Yamhelas Westsider Trail (Phase 2)," State Key No. 21358.

RECITALS

1. By the authority granted in Oregon Revised Statutes (ORS) 190.110 and 283.110, 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. Approximately 12 miles of the Westside Branch former Union Pacific railroad corridor, from just south of NE Gun Club Road (near McMinnville) to just south of the City of Gaston, are owned and under the jurisdiction and control of County.

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3. The Yamhelas Westsider Trail – Phase 1 project utilized federal Transportation Alternatives Program (TAP) funds, under Title 23, United States Code, for right of way acquisition, limited preliminary engineering, limited environmental clearances and improvement of a trail in the railroad corridor.
4. In order to enable continued development of future phases of the Trail Corridor, referred to as the “Yamhelas Westsider Trail” project, and to ensure its consistency with federal regulations, certain federal statutes, rules, program requirements and grant provisions are applicable.
5. The Parties have an interest in working collaboratively to design and deliver the future phases of this Project regardless of the source of future funds.

NOW THEREFORE, the Parties agree to the following:

1. It is understood that any project that uses federal funds in project development is subject to plans, specifications and estimate (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.
2. It is understood that because federal TAP funds were used to conduct preliminary National Environmental Policy Act (NEPA) work and acquire the railroad right-of-way, each future phase of design and construction of the Trail Corridor must comply with 23 CFR 771 (FHWA’s procedures for implementing NEPA) and 23 CFR 774 (FHWA’s procedures for implementing 23 U.S.C. 138 (Section 4(f) of the U.S. DOT Act)), regardless of the source of funding.
3. It is understood that for each future phase of the Trail Corridor, State, on behalf of FHWA, shall review and process all NEPA documentation and acquire FHWA’s approval of said documents.
4. It is understood that all future development phases of the Trail Corridor need to comply with the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. 12101). Additional ODOT requirements will apply when improvements are to be constructed on or along a State highway.
5. It is understood that the provisions of 23 U.S.C. 313 “Buy America” shall apply to all future phases of Trail Corridor construction. All construction specifications shall include the verbatim language contained in Section 00160.20(a) of the Oregon Standard Specifications for Construction (current edition).
6. It is understood that if additional right of way (ROW) acquisition becomes necessary for any future phase of the Trail Corridor, the requirements contained in the “Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970” (23 CFR 710) will be followed. State shall review acquisition files and co-sign the Right of Way Certificate.

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7. County shall proactively inform ODOT if any of its personnel, or any personnel of any of its retained 3rd parties, are planning to conduct on-site activities which may fall under State's purview of authority within the Trail Corridor, e.g. NEPA. County shall also proactively inform adjacent landowners as a matter of courtesy for any work planned on-site which may disturb adjacent land owners.
8. It is understood that if there are any new changes, or additions, to the Area of Potential Impact (API) for this project that this would cause changes to the environmental permitting clearances for NEPA. It is also understood that there is no additional ROW required for this project and is therefore associated with and within the API of the federal project; Phase 1; K18332.
9. It is further understood that the cost of State's work for project administration and oversight of Trail Corridor projects will be paid from the funds allocated for each future phase of development.
10. State and County will work together to collaboratively design and deliver each phased development project, whether eligible for federal reimbursement or not, along the trail corridor within the limits of the right of way acquired as part of the "Yamhelas Westsider Trail – Phase 1."
11. Nothing in this MOU is intended to amend or replace the Memorandum of Agreement and Acknowledgement of ODOT Assistance signed by the parties and effective December 5, 2017, (Recorded, Document No. 201719693) which remains in full force and effect.

TERMS AND CONDITIONS

1. It is the intent of State and County to document in this MOU how they intend to coordinate their efforts to deliver future phases of the Trail Corridor project, and in particular the "Yamhelas Westsider Trail (Phase 2)," and to document certain requirements that are applicable to each future phase.
2. State and County intend to adhere to a mutually agreed communication protocol to ensure federal compliance for this phase ["Yamhelas Westsider Trail (Phase 2); and for all future phases; see the exhibit marked "Attachment A," by this reference made a part hereof.
3. State and County intend that, if an impasse or disagreement should occur on issues pertaining to the MOU, a collaborative process will be initiated to resolve the difference. A collaborative process may be requested by either Party and will conform to the best practices for mediation, as prescribed by the Oregon Resolution Program.

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4. This MOU shall become effective when all required signatures have been obtained and shall remain in effect until all design and construction phases have been successfully delivered for the Trail Corridor acquired under the project identified in the ODOT STIP as Yamhelas Westsider Trail – Phase 1.
5. The terms of this MOU shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written agreement signed by the Parties.
6. The terms of this MOU may be terminated by mutual written consent of the Parties.
7. This MOU is not intended to create a legally binding Agreement.
8. This MOU 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 MOU so executed shall constitute an original.

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

YAMHILL COUNTY, a political subdivision of the
State of Oregon

By [Signature]
Yamhill County Administrator

Date 8/28/19

STATE OF OREGON, by and through its
Department of Transportation

By [Signature]
Highway Division Administrator

Date 9/30/19

Agency Contact:

Kenneth Huffer, County Administrator
Yamhill County
535 NE Fifth Street
McMinnville, OR 97127
Phone: (503) 434-7501
Email: hufferk@co.yamhill.or.us

State Contact:

Andrew Blair, Local Agency Liaison
ODOT, Region 2
455 Airport Road SE, Bldg. B
Salem, OR 97301
Phone: (503) 986-2681
Email: Andrew.Blair@odot.state.or.us

APPROVAL RECOMMENDED

By [Signature]
Region 2 Manager

Date 9-25-19

By [Signature]
Region 2 Planning and Development
Manager

Date 9-25-19

ATTACHMENT A

Communication Protocol

This Communication Protocol may be provided to external parties to help ensure good communication between all stakeholders. This Communication Protocol is to help keep the overarching project, this specific Yamhelas Westside Trail (Phase 2); K21358), and all future phases of the Trail Corridor in compliance with federal regulations to which it is subject as a result of having used federal (TAP) dollars to purchase the right-of-way. Federal environmental requirements for the entire Trail Corridor project (not only this phase) are currently being managed under ODOT's Programmatic Categorical Exclusion (PCE).

Communication is to be proactive in order to align all project activities and stakeholders whether activities are planned, ongoing, on-site, or off-site. That means that the County shall notify ODOT in advance of any planned activities on-site where County forces or third parties may be involved which may impact the environment, PCE designation, or any federal (NEPA) requirements to which all phases of this Trail Corridor project are subject.

Andrew Blair (Local Area Liaison; LAL) is the Contract Administrator who acts as Yamhill County's primary point of contact. The LAL is responsible for: issuing notices & remedies, final inspections, and transmitting the Buy America certifications at project close. All communication relating to the Yamhelas Westside (Phase 2) is to go through the LAL as the main point of contact.

All environmental-related communication must go through the LAL and through Donna Hinze (ODOT Regional Environmental Coordinator; REC) who has federal oversight authority. That means County and its Contractors/Consultants/Sub-Contractors must request any and all NEPA-related clearances and permits for any planned site activity through the LAL (as the primary point of contact), and/or through the REC (who may authorize permits, delegate authority for clearances and conduct periodic site visits). The LAL will generally liaise closely with County and the REC, for all things environmentally related.

For everything that pertains to the Connect Oregon VI Agreement No. 31632 for Phase 2 of the project, County is to include the LAL, as a primary point of contact, and ensure Katie Thiel (Connect Oregon Program Manager) is kept in CC. Alternately, if Katie Thiel (or other ODOT official) elects to correspond with County directly, the County is to keep the LAL in CC in all its responses. The Connect Oregon program is generally responsible for answering all funding related questions, reimbursing Yamhill County's eligible project costs, and for amendments to the Agreement. The LAL will generally liaise closely with the County and the Connect Oregon program staff for all things related to amendments, notices & remedies, Monthly Progress Reports (MPRs), and Requests for Change Orders (RFCOs).