

**INTERGOVERNMENTAL AGREEMENT  
FOR RIGHT OF WAY SERVICES**

Commercial Street: Oxford Street SE to Madrona Avenue SE  
City of Salem

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" or "ODOT"; and CITY OF SALEM, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually as "Party" and collectively as "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statute (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. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. Money so deposited shall be disbursed for the purpose for which it was deposited.
3. Commercial Street is a part of the city street system under the jurisdiction and control of Agency.
4. Agency is responsible for delivering the Commercial Street: Oxford Street SE to Madrona Avenue SE project ("Project") under Local Agency Certification Program Supplemental Agreement Number 32428 executed on April 2, 2018 and Amendment Number 01 to Local Agency Certification Program Supplemental Agreement Number executed on June 30, 2020 ("Project Agreement") attached hereto as Exhibit C and by this reference made a part hereof.
5. This Agreement covers a subset of the work set forth in the Project Agreement; therefore, the Project Agreement describes the general scope and funding for the right of way activities carried out under this Agreement. This Agreement further defines the roles and responsibilities of the Parties regarding real property to be used as part of the right of way for the Project, and further refines the details of the scope and funding for these right of way activities

6. As of the Effective Date of this Agreement, there are no local public agencies ("LPAs") certified to independently administer federal-aid projects for right of way services. State is ultimately responsible for the certification and oversight of all right of way activities under this Agreement.

**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, to accomplish the objectives in the Project Agreement, Agency agrees to perform the right of way Services shown in Exhibit A - Special Provisions ("Services"), attached hereto and by this reference made a part hereof.
2. The Parties agree to comply with the terms of this Agreement and the applicable terms of Project Agreement in performing the Services. In the event of a direct conflict, the terms of the Project Agreement will control over any conflicting provision in this Agreement.
3. The funding and payment for the Services are set forth in the Project Agreement. This Agreement commits no additional funding for the Services.
4. Agency shall pay the actual costs of oversight and any ROW Services performed by State on the Project using Agency's matching funds identified in the Project Agreement. If Agency's matching funds are insufficient to cover State's actual costs, Agency is responsible for any additional costs per the terms of the Project Agreement and in accordance with the following:
  - a. Expenditures must be charged according to the appropriate Project phase as listed in Exhibit A.
  - b. Agency agrees to reimburse State for all expenses, including salaries and other personnel expenses (OPE) of State employees performing Services, direct costs, costs of rental equipment used, travel expenses, and per-diem expenditures. Travel expenses shall be reimbursed in accordance with the current Oregon Department of Administrative Services rates.
  - c. For Services provided under this Agreement, Agency may satisfy its funding requirement partially or entirely through a contribution of real property for the Project. Credit for this contribution will only be allowed if the contribution complies with all requirements of 23 CFR 710.501 and 710.507 and if written approval is obtained from State's Active Transportation Section, Program and Funding Services Manager and FHWA prior to the start of the right of way phase of the Project and after review for compliance with State's procedures for donations and contributions.

5. Exhibits Attached and Incorporated.

- a. This Agreement includes the following exhibits, each of which is attached and incorporated into this Agreement by reference as though fully set forth herein:
- Exhibit A – Special Provisions
  - Exhibit B – Resolution Exercising The Power of Eminent Domain
  - Exhibit C - Project Agreement

6. This Agreement becomes effective on the date all required signatures are obtained (“Effective Date”). Services shall begin on or after the Effective Date and shall be completed no later than December 30, 2024, on which date this Agreement automatically expires unless extended by a fully executed amendment.
7. 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 and implemented through Title 49, Part 24, ORS Chapter 35 and the ODOT Right of Way Manual, located at <https://www.oregon.gov/ODOT/ROW/Documents/ROW-Manual.pdf> and incorporated herein by this reference. Each Party will require its contractors and subcontractors, if any, to comply with this provision.

## **STATE OBLIGATIONS**

1. State shall perform the Services assigned to State in Exhibit A.
2. State’s right of way contact person for this Agreement is Regina Thompson, Senior Right of Way Agent, ODOT Region 2, 455 Airport Road SE, Building A; phone: (503) 986-2609; email: [regina.thompson@odot.state.or.us](mailto:regina.thompson@odot.state.or.us), or assigned designee upon individual’s absence. State shall notify the other Party in writing of any contact changes during the term of this Agreement.

## **AGENCY OBLIGATIONS**

1. Agency shall perform the Services assigned to Agency in Exhibit A. All Services provided by Agency shall comply with ODOT’s Right of Way Manual in effect at the time the Services are performed.
2. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of current budget. Agency is willing and able to finance its share of all costs and expenses incurred under this Agreement up to the maximum amount set forth in Terms of Agreement Paragraph 4.
3. Agency’s performance of Services.

- a. In performing Services under this Agreement, Agency may utilize qualified individuals from Agency's staff or the Staff of another local public agency, as described in the ODOT Right of Way Manual and approved by the State's Region Right of Way Office.
  - b. Agency's needed right of way services may be performed by utilizing appraiser Services procured by Agency from State's Qualified Appraiser List (online at: [https://www.oregon.gov/ODOT/ROW/Documents/Appraisal\\_Qualified-Consultant-List.pdf](https://www.oregon.gov/ODOT/ROW/Documents/Appraisal_Qualified-Consultant-List.pdf)) or other right of way related Services procured by Agency from any source of qualified contractors or consultants.
  - c. Contractor selections under Agency Obligations, Paragraphs 3.b above may be based on price alone, price and qualifications, or qualifications alone followed by negotiation. **Federally funded procurements** carried out by Agency for right of way Services must be conducted under State's certification program for consultant selection and must comply with requirements in the [LPA A&E Requirements Guide](#), and must use the State's standard [A&E Contract Template for LPAs](#) which may be modified to include State-approved provisions required by Agency. **State and locally funded procurements** carried out by Agency must comply with applicable State rules and statutes for A&E "Related Services" (Agency may use its own contract document). The LPA A&E Requirements Guide and A&E Contract Template are available at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/LPA.aspx>.
4. If Agency intends to use Agency staff, staff of another local public agency, consultants (except for consultants on State's Qualified Appraiser List), or contractors to perform Services under this Agreement, Agency must receive prior written approval from State's Region Right of Way Office.
  5. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Oregon Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260 ("Claims"), to the extent such Claims are caused, or alleged to be caused, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that State shall, in all instances, except to the extent Claims arise solely from the negligent or willful acts or omissions of State, be indemnified from and against all Claims caused or alleged to be caused by the contractor or subcontractor.
  6. Any such indemnification shall also provide that neither the Agency's contractor or subcontractor nor any attorney engaged by Agency's contractor or subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of

Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.

7. Agency shall perform all Services 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 Services under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
8. When Agency is performing Services under this Agreement, Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Agency shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the start of construction.
9. Agency certifies and represents that all individuals signing this Agreement have 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.
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 this 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 State.
11. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the Services under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 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 shall upon State's request provide copies of any required documentation related to the Services as described in Exhibit A.
13. Agency's right of way contact person for this Agreement is Will Kuenzi, PE, Senior Project Manager, City of Salem, 555 Liberty Street SE Room 325, Salem, Oregon 97302; phone: (503)

588-6211; email: wkuenzi@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.

## **GENERAL PROVISIONS:**

1. Termination.
  - a. This Agreement may be terminated by mutual written consent of both Parties.
  - b. 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:
    - i. If either Party fails to provide Services called for by this Agreement within the time specified herein or any extension thereof.
    - ii. If either Party fails to perform any of the other provisions of this Agreement or so fails to pursue the Services 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.
  - c. 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:
    - i. 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.
    - ii. If Agency fails to provide payment of its share of the cost of the Project.
    - iii. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Services under this Agreement is prohibited or State is prohibited from paying for such Services from the planned funding source.
  - d. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
2. All employers that employ subject workers who perform Services 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. Both Parties shall ensure that each of its subcontractors complies with these requirements.
3. 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.

4. 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.
5. 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.
6. 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.
7. Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program

requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

8. Agency and State are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or will be construed to give or provide, any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
9. The Parties hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
10. 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.
11. 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.
12. Survival. All rights and obligations of the Parties under this Agreement will cease upon termination or expiration of this Agreement, other than the rights and obligations of the parties that by their nature or express terms survive termination or expiration of this Agreement.

**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.



CITY OF SALEM, by and through its  
elected officials

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

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**LEGAL REVIEW APPROVAL (If required  
in Agency's process)**

By \_\_\_\_\_  
City's Legal Counsel

Date \_\_\_\_\_

**Agency Contact:**

Will Kuenzi, PE  
Senior Project Manager  
City of Salem  
555 Liberty Street SE, Room 325  
Salem, Oregon 97302

**State Contact:**

Regina Thompson  
Senior Right of Way Agent  
455 Airport Road SE, Building A  
Salem, OR 97301  
(503) 986-2609  
regina.thompson@odot.state.or

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

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

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

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

Date \_\_\_\_\_

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

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By N/A  
Assistant Attorney General

Date \_\_\_\_\_

**Exhibit A**  
**SPECIAL PROVISIONS**  
**Right of Way Services**

**A. Preliminary Phase:** State or Agency shall perform the Services outlined in this Section A during the preliminary right of way phase of the Project as identified below. When Services listed under this Section A are performed by Agency, Agency shall charge the Services as preliminary engineering expenditures.

1. Agency shall prepare preliminary cost estimates.
2. Agency shall make preliminary contacts with property owners.
3. Agency shall gather and prepare data for environmental documents.
4. Agency shall develop access and approach road list.
5. Agency shall help prepare field location and project data as defined in the Project Agreement.
6. Title. Agency shall provide preliminary title reports, if State determines they are needed, before negotiations for acquisition commence.
7. Legal Descriptions:
  - a. Agency shall prepare sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.
  - b. Agency shall prepare 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 Engineering Manual](https://www.oregon.gov/ODOT/ETA/Documents_Geometronics/ROW-Eng-Manual.pdf), located at [https://www.oregon.gov/ODOT/ETA/Documents\\_Geometronics/ROW-Eng-Manual.pdf](https://www.oregon.gov/ODOT/ETA/Documents_Geometronics/ROW-Eng-Manual.pdf) and incorporated herein by reference. 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), which must be determined in accordance with the current ODOT Right of Way Manual.
8. Hazmat:
  - a. 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.

- b. Agency shall conduct a Level 2 Preliminary Site Investigation, according to ODOT's Hazmat Program Procedures Guidebook and other applicable requirements of the Oregon Department of Environmental Quality, 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, Agency will promptly disclose the severity and extent of contamination to State and present a recommendation for remediation to State as set forth in ODOT's Right of Way Manual Section 6.330 paragraph 2.
- c. Agency shall attempt to have the property owner undertake any necessary remediation at the property owner's expense. Other options are set forth in ODOT's Right of Way Manual section 6.330 paragraph 2.b. If Agency undertakes any remediation on the site, Agency will be solely responsible for any liability that may arise from such remediation.

**B. Right of Way Phase:** State or Agency shall perform the Services outlined in this Section B during the acquisition right of way phase of the Project as identified below. When Services listed under this Section B are performed by Agency, Agency shall charge the Services as right of way expenditures.

1. Right of Way Acquisition:

- a. Right of Way Acquisition is the process of obtaining property necessary for the Project, from negotiation to possession of the property, using various sub-processes including, but not limited to, appraisal, negotiation, condemnation, relocation, title closing, and project related property management related to the potential exercise of eminent domain. The basic requirements for carrying out right of way acquisition for the Project are set forth in this Section B.
- b. When performing the right of way acquisition Services, Agency shall provide State with a monthly status report of the Services.
- c. Title to properties acquired shall be in the name of City of Salem.
- d. The Agency shall adopt a resolution of intention and determination of necessity in accordance with ORS 35.235 and ORS 35.610, authorizing acquisition and condemnation ("Resolution"). Agency's Resolution shall be substantially in the form of Exhibit B, attached hereto and by this reference made a part hereof.

2. Real Property and Title Insurance:

- a. 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 ODOT Right of Way Manual, and after obtaining State's concurrence. 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.

3. Appraisal:

- a. Agency shall conduct the valuation process of properties to be acquired. If hazardous materials are located on the property, Agency shall use section 6.330, paragraph 2 in ODOT's Right of Way Manual.
- 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.

4. Negotiations:

- a. Agency shall tender all monetary offers to landowners in writing at the compensation shown in the appraisal review. Agency shall have sole authority to negotiate and make all settlement offers. When settlements for property acquisitions are made for more or less than the approved just compensation amount, a justification is required. Said statement will include the consideration of any property trades, construction obligations and zoning or permit concessions. If Agency performs this function, it will provide State 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 cosign the State's Right of Way Certification form. State and Agency agree possession of all right of way is complete prior to advertising for any construction contract, unless otherwise agreed to by Agency and State.
- c. Agency agrees to file all Recommendations for Condemnation (Form 734-3311 and accompanying documents) with the court at least seventy (70) days prior to the right of way certification date if negotiations have not been successful on those properties.

5. Relocation:

- a. Agency shall perform any relocation assistance, make replacement housing computations, and do all things as required by applicable state and federal law necessary to relocate any persons displaced by the Project.
- b. Agency shall determine all relocation benefits each property owner is eligible for and shall make all relocation and moving payments.
- 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. When State is providing Services 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. Upon acceptance by Agency the conveyance documents shall be recorded.

### **D. Property Management**

1. Agency shall take possession of all the acquired properties. There shall be no encroachments of buildings or other private improvements allowed upon the State highway right of way.
2. Agency shall dispose of all improvements and excess land consistent with applicable state, federal, and local laws and policies.
3. 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.

### **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 Services related to the condemnation process. Agency agrees to pass a resolution substantially in the form attached hereto as Exhibit B specifically identifying the property being acquired.

## **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. Agency shall identify the existence of any hazardous materials on or in the property prior to the transfer. 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, at no additional cost to the State, all right of way acquired on the Agency's facility, subject to concurrence from the Oregon Transportation Commission and FHWA at the time of the transfer. State shall identify the existence of any hazardous materials on or in the property prior to 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.

**EXHIBIT B**  
**RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN**  
**Right of Way Services**

***(Instructions, please delete before completing form)***Regions: This portion of the document is unlocked. The LPA should block and copy to incorporate this language into their own standard resolution form **OR** fill in an "attested to" line or signature line at the bottom and use this form.

WHEREAS (insert title of agency) may exercise the power of eminent domain pursuant to (Agency's charter) (statutes conferring authority) and the Law of the State of Oregon generally, when the exercise of such power is deemed necessary by the (insert title of agency)'s governing body to accomplish public purposes for which (insert title of agency) has responsibility;

WHEREAS (insert title of agency) has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public;

WHEREAS the project or projects known as (insert Project name) have been planned in accordance with appropriate engineering standards for the construction, maintenance or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, travel safeguarded; and

WHEREAS to accomplish the project or projects set forth above it is necessary to acquire the interests in the property described in "Exhibit A" attached to this Resolution and, by this reference incorporated herein; now, therefore,

BE IT HEREBY RESOLVED by (Agency's Council, Commission, or Board)

1. The foregoing statements of authority and need are, in fact, the case. The project or projects for which the property is required and is being acquired are necessary in the public interest, and the same have been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury;
2. The power of eminent domain is hereby exercised with respect to each of the interests in property described in Exhibit A to this Resolution. Each is acquired subject to payment of just compensation and subject to procedural requirements of Oregon law;
3. ([Insert title of Agency]'s staff and [attorney/counsel] --OR-- (The Oregon Department of Transportation and the Attorney General) are authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the

jurisdiction of any court to decide matters determined above or determinable by the (Agency's Council, Commission, or Board).

4. (insert title of agency) expressly reserves its jurisdiction to determine the necessity or propriety of any acquisition, its quantity, quality, or locality, and to change or abandon any acquisition.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

[insert signature blocks here]

Attachments: Exhibit A to Agency Resolution Exercising the Power of Eminent Domain  
– Property Description



**Exhibit A to Agency Resolution Exercising the Power of Eminent Domain –  
Property Description**

[insert property description]

## **Exhibit C**

### **Project Agreement**

Misc. Contracts and Agreements No. 32428  
Cross Ref. Master Certification Agreement No. 29113

**Oregon Department of Transportation**  
**LOCAL AGENCY CERTIFICATION PROGRAM**  
**Supplemental Project Agreement No. 32428**  
Commercial Street: Oxford Street SE – Winding Way SE (Salem)  
City of Salem

THIS SUPPLEMENTAL PROJECT AGREEMENT (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" or "ODOT," and the CITY OF SALEM acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually as "Party" or collectively as "Parties."

#### **RECITALS**

1. By the authority granted in Local Agency Certification Program Agreement No. 29113, executed on March 9, 2016 (Local Agency Certification Program Agreement) incorporated herein and by this reference made a part hereof, State may enter into this Supplemental Project Agreement with Agency for the performance of work on this improvement Project. The Certification Program allows State to certify a Local Agency's procedures and delegates authority to the certified Local Agency to administer federal-aid projects.
2. Certification status information as of the date of execution of this Agreement:
  - a. Agency is fully certified in the following functional area:
    - "advertise, bid, and award" for construction contracts
  - b. Agency is conditionally certified in the following functional areas:
    - consultant selection (direct appoint, formal and informal processes)
    - design (excluding bridge design)
    - construction contract administration
  - c. Agency is not currently seeking certification in the following functional area(s):
    - bridge design
  - d. Agency has completed or is in the process of completing the number of test project(s) required by ODOT for the Agency to become fully certified in the following functional areas:
    - consultant selection (direct appoint, formal and informal processes)
    - design (excluding bridge design)
    - construction contract administration

Parties are in the process of assessing the Agency's test project(s) and required program documents to transition the Agency from conditional to full certification for these listed functional areas, and anticipate a successful transition. Therefore, the project described in this

Agreement is not one of the test project(s) described in the Local Agency Certification Program Agreement for these listed functional areas.

- e. The Project described in this Agreement is one of the required test projects described in the Local Agency certification Program Agreement that Agency must perform in order to obtain full certification in the following functional areas:
  - consultant selection (direct appoint process)
3. Commercial Street is a part of the Agency's city street system under the jurisdiction and control of Agency.
4. The Project was selected as a part of the All Roads Transportation Safety (ARTS) program and may include a combination of federal and state funds.

**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, State and Agency agree to Agency delivering the Commercial Street: Oxford Street SE – Winding Way SE (Salem) project, hereinafter referred to as "Project." Project includes buffered bike lanes in each direction on Commercial Street, illumination, and installation of median islands and two pedestrian activated flashing beacon systems near Triangle Drive and Waldo Avenue SE. The location of the Project is shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.
2. The total Project cost is estimated at \$1,908,200.00, which is subject to change. Federal funds for this Project shall be limited to \$1,759,742.04. Agency shall be responsible for all remaining costs, including the 7.78 percent match for all eligible costs, any non-participating costs, and all costs in excess of the federal or state funds. Any unused federal or state funds will be retained by State, and will not be available for use by Agency for this Agreement or any other projects. "Total Project Cost" means the estimated cost to complete the entire Project, and includes any federal funds, state funds, local matching funds, and any other funds. Agency will report the final cost of each phase of the Project at the completion of each phase, as well as the Total Project Cost at the end of the Project, to the State's Regional Local Agency Liaison.
3. Federal funds under this Agreement are provided under Title 23, United States Code.
4. Agency must obtain approval from the Region 2 Traffic Manager for changes to the Project's scope, schedule, or budget by submitting request through the Regional Local Agency Liaison. Agency shall be fully responsible for cost increases due to changes to the established Project scope, schedule or budget made prior to approval.
5. If State performs work on the Project, State will provide Agency with a preliminary estimate for the cost of State's work. Prior to the start of each Project phase, State will provide an updated estimate of State's costs from that phase to Agency. Such phases generally consist of Preliminary Engineering, Right of Way, Utility, and Construction. Agency understands that State's costs are estimates only and agrees to reimburse State for actual cost incurred per the Terms of this Agreement.

6. Agency shall make all payments for work performed on the Project, including all construction costs, and invoice State for one-hundred (100%) percent of its costs. State shall reimburse Agency invoices at the pro-rated federal share. All costs beyond the federal and state reimbursement and any non-participating costs will be the responsibility of the Agency. State shall invoice Federal Highway Administration (FHWA) and Agency for work provided as part of the Project. Agency agrees to reimburse State for work performed for the project upon receipt of invoice. Failure of Agency to make such payments to State may result in withholding of Agency's proportional allocation of State Highway Trust Funds until such costs are paid. Agency understands that State's costs are estimates only and agrees to reimburse State for the actual amount expended.
7. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project.
8. This Agreement is subject to the terms and provisions of the Local Agency Certification Program Agreement.
9. Information required by 2 CFR 200.331(a)(1) shall be contained in the USDOT FHWA Federal Aid Project Agreement for this Project, a copy of which shall be provided by State to Agency with the Notice to Proceed.

10. Indirect Cost Rate.

- a. As required by 2 CFR 200.331(a)(4), the indirect cost rate(s) for this project at the time the agreement is written is Planning and Development 149.93%, Engineering 126.73%, Transportation 150.12%, and Operations 155.68%. These rates may change during the term of this Agreement upon notice to ODOT and ODOT's subsequent written approval.
- b. If the approved rate(s) change(s) during the term of this Agreement, Agency shall invoice ODOT using the current indirect cost rate(s) for the project on file with ODOT at the time the work is performed. If Agency does not have approved indirect cost rate(s) on file with ODOT at the time the work is performed, Agency shall invoice ODOT using a zero percent (0%) rate.

11. Agency work on this Project:

- a. Agency shall perform the following functional area in which Agency is fully certified and as authorized by the Local Agency Certification Program Agreement:
  - "advertise, bid, and award" the construction contract
- b. While Agency is in the process of transitioning from conditional to full certification, by the terms of this Agreement and for only this Project, Agency is authorized and shall perform as if fully certified in the following functional area:
  - consultant selection (formal and informal processes)
  - design (excluding bridge design)
  - construction contract administration

Agency understands that this Project is subject to the terms and conditions of the Local Agency Certification Program Agreement and may also be subject to the terms of a corrective action plan

and increased monitoring if ODOT's evaluation of Agency's test project(s) or program documents identifies the need for corrective action.

c. Agency understands that this Project is a test project for the following functional area and is subject to the terms and conditions of the Local Agency Certification Program Agreement:

- consultant selection (direct appoint process)

12. State will submit the requests for federal funding to the FHWA. The federal funding for this Project is contingent upon approval of each funding request by FHWA. Any work performed outside the period of performance and scope of work approved by FHWA will be considered nonparticipating and paid for at Agency expense.
13. State's Regional Local Agency Liaison or designee will provide Agency with a written notice to proceed for each phase of the Project when FHWA approval has been secured and funds are available for expenditure on this Project.
14. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.
15. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.
16. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.
17. State may conduct periodic inspections during the useful life of the Project to verify that Project is being properly maintained and continues to serve the purpose for which federal funds were provided.
18. State and Agency Agree that the useful life of the Project is 20 years.
19. By signing this Agreement, Agency agrees to comply with the provisions of the Federal Funding Accountability and Transparency Act (FFATA) and is subject to the following award terms: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>. If, in the preceding fiscal year, Agency received more than 80% of its gross revenues from the federal government, those federal funds exceed \$25,000,000 annually, and the public does not have access to information about the compensation of executives through reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986, Agency shall report the total compensation and names of its top five executives to State. Agency shall report said information to State within 14 calendar days of execution of this Agreement and annually thereafter, utilizing the FFATA form attached hereto as Exhibit "B".

**20. Americans with Disabilities Act Compliance:**

- a. **General:** Agency agrees to comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended by the ADA Amendments Act of 2008



(together "ADA") as identified in paragraph 1 of the **General Provisions** section of Local Agency's Certification Program Agreement, and to utilize ODOT standards to assess and ensure Project compliance with the ADA.

- b. **ADA Design Standards and Construction Specifications:** Agency agrees to comply with ODOT's current ADA-related design standards, construction specifications, and design exception documentation and approval requirements for design, modification, upgrade, or construction of Project sidewalks, curb ramps, and pedestrian activated signals, as applicable to the Project, on both the Oregon State Highway System (state highway) and on the local agency system, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, and current ODOT Curb Ramp Inspection form.
  - i. **ADA Inspection Forms:** Prior to issuing the Second Notification pursuant to Oregon Standard Specification 00180.50(g), or Agency's approved equivalent, Agency agrees to submit an ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Regional Local Agency Liaison for each curb ramp designed, constructed, upgraded, or modified for this Project. The completed form is the required documentation from Agency showing that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form 734-5020 and instructions are available at the following website:  
  
<http://www.oregon.gov/ODOT/CONSTRUCTION/Pages/Forms.aspx>
  - ii. **State inspection:** Agency shall promptly notify State of Project completion and allow State to inspect Project sidewalks, curb ramps, and pedestrian-activated signals, as applicable to the Project, located on or along a state highway prior to acceptance of Project by Agency and prior to release of any Agency contractor.
- c. **Work Zone Access:** Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Agency shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the start of construction.
- d. **Reimbursement:** Unless Agency has an approved design exception, State will only reimburse Agency for work that meets the applicable ODOT standards, regardless of whether the work is on a State-owned or an Agency-owned facility.
- e. **On-going Maintenance Obligation:** Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
  - i. Pedestrian access is maintained as required by the ADA,
  - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
  - iii. Any repairs or removal of obstructions needed to maintain Project features in compliance with the ADA requirements that were in effect at the time of Project construction are

completed by Agency or abutting property owner pursuant to applicable local code provisions,

- iv. Any future alteration work on the Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed; and
- v. Applicable permitting and regulatory actions are consistent with ADA requirements.

f. **Survival:** Maintenance obligations in this section shall survive termination of this Agreement.

- 21. Agency shall ensure compliance with the Cargo Preference Act and implementing regulations (46 CFR Part 381) for use of United States-flag ocean vessels transporting materials or equipment acquired specifically for the Project. Strict compliance is required, including but not limited to the clauses in 46 CFR 381.7(a) and (b) which are incorporated by reference. Agency shall also include this requirement in all contracts and ensure that contractors include the requirement in their subcontracts.
- 22. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260 (Claims), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that State shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of State, be indemnified for all Claims caused or alleged to be caused by the contractor or subcontractor.
- 23. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
- 24. This Agreement may be terminated by mutual written consent of both Parties.
- 25. 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 Agency fails to provide payment of its share of the cost of the Project.
  - d. 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.
  - e. 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 if State is prohibited from paying for such work from the planned funding source.
26. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
27. Agency, as a recipient of federal funds, pursuant to this Agreement with State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires State to return funds to the FHWA, hold harmless and indemnify State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
28. State and Agency hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
29. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
30. Agency certifies and represents that each individual 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.
31. 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.
32. This Agreement and the Local Agency Certification Program (Certification Program) Agreement No. 29113, as amended and all attached exhibits constitutes the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and the attached Exhibits will control over Project application and documents provided by Agency to State. 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. Notwithstanding this provision, the Parties may enter into a Right Of Way Services Agreement in furtherance of the Project.

33. State's Regional Local Agency Liaison for this Agreement is Mark Foster, Local Agency Liaison, 3700 SW Philomath Boulevard, Corvallis, Oregon 97333; telephone: (541) 757-4179; email: [mark.a.foster@odot.state.or.us](mailto:mark.a.foster@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.

34. Agency's Project Liaison for this Agreement is Julie Titchbourne, P.E., Program Manager, City of Salem Public Works Department, 555 Liberty Street SE, Room 325, Salem, Oregon 97301-3513; 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.

**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.

Signature Page Follows

City of Salem/ODOT  
Agreement No. 32428

This Project is in the 2018-2021 Statewide Transportation Improvement Program (STIP), (Key #20169) that was adopted by the Oregon Transportation Commission on July 20, 2017 (or subsequently approved by amendment to the STIP).

**CITY OF SALEM**, acting by and through  
its elected officials

By Teren Powers

Title City Manager

Date 03/09/2018

**LEGAL REVIEW APPROVAL** (if required  
in Agency's process)

By [Signature]

Agency Legal Counsel

Date 3/6/18

**Agency Contact:**

Julie Titchbourne, PE  
Program Manager  
City of Salem | Public Works Department  
555 Liberty Street SE, Room 325  
Salem OR 97301-3513  
503-588-6211  
[jtitchbourne@cityofsalem.net](mailto:jtitchbourne@cityofsalem.net)

**State's Regional Local Agency Liaison:**

Mark Foster, Local Agency Liaison  
ODOT Region 2  
3700 SW Philomath Blvd.  
Corvallis, Oregon 97333  
(541) 757-4179  
[Mark.A.Foster@odot.state.or.us](mailto:Mark.A.Foster@odot.state.or.us)

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

By [Signature] for Paul Mather

Highway Division Administrator

Date 4/2/18

**APPROVAL RECOMMENDED**

By [Signature]

Certification Program Manager

Date 3/27/18

By [Signature]

State Traffic Roadway Engineer

Date 3/27/18

By [Signature]

Region 2 Manager

Date 3-26-18

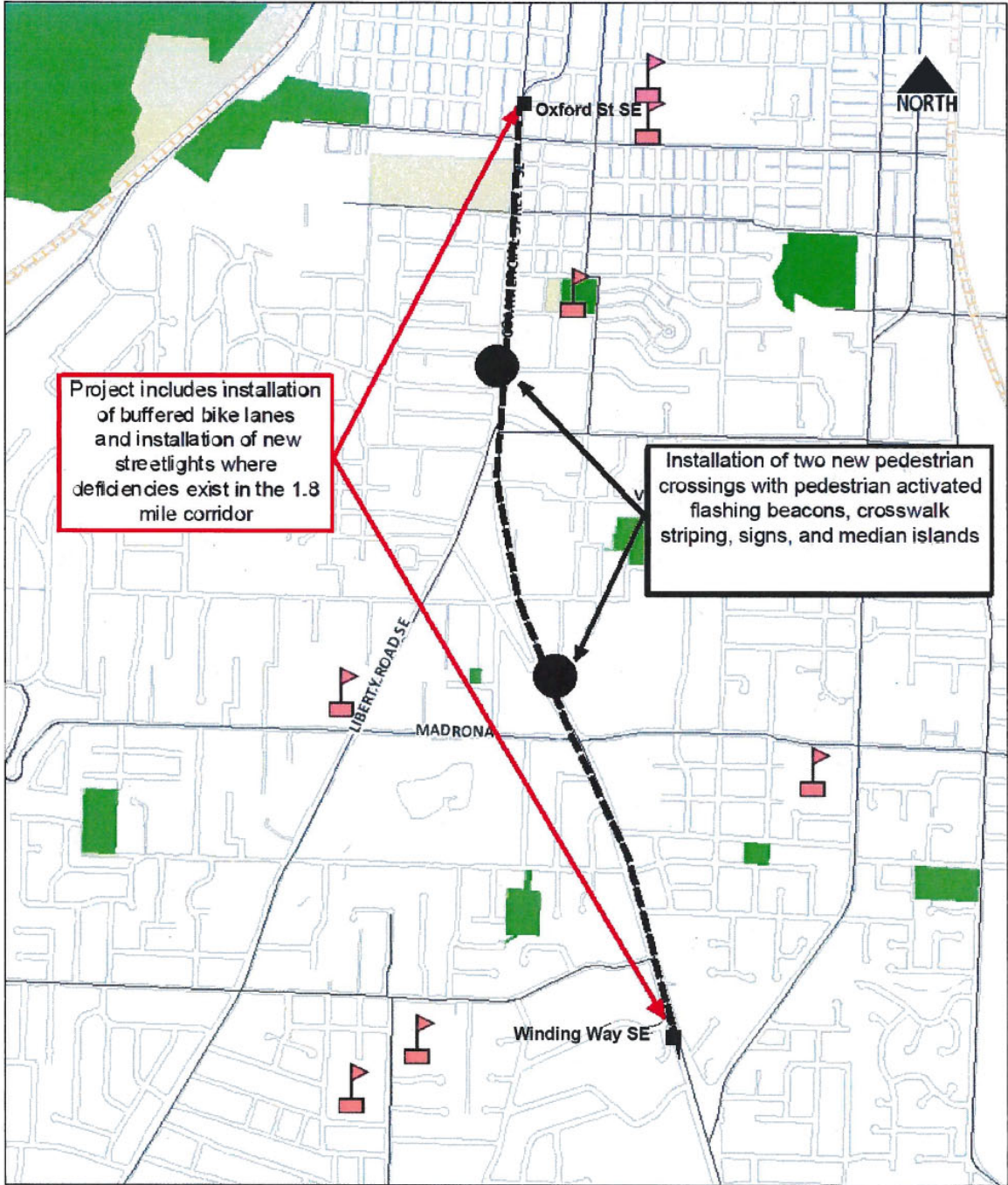
**APPROVED AS TO LEGAL  
SUFFICIENCY**

By Jennifer O'Brien via email

Assistant Attorney General

Date 2/28/2018

Exhibit A – Project Location Map





**Exhibit B**  
**Federal Funding Accountability and Transparency Act (FFATA)**  
**Subaward Reporting**

(For purposes of this Exhibit, references to "your organization" shall mean "Agency" and references to "ODOT" shall mean "State.")

The Oregon Department of Transportation (ODOT) is required to fulfill a federal requirement for contracting under the Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting System (FSRS). FFATA reporting is a requirement for subawards (also known as subrecipients) of federal awards in excess of \$25,000,000. Your organization will enter into an agreement with ODOT where the funding source is a federal grant with a subrecipient relationship. Your organization is required to submit the information below to the Oregon Department of Transportation within fourteen calendar days of execution of the Agreement and annually thereafter, if applicable. (See the following page for further details.)

**Legal entity name:**

---

**Data Universal Number System (DUNS) number:**

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**Executive compensation**

Executive compensation information is also required to determine whether or not the following information must be reported in FSRS:

- a. In your organization's previous fiscal year, did your organization receive 80% or more of its annual gross revenue and \$25,000,000 or more in federal procurement contracts, subcontracts, loans, grants, subgrants, cooperative agreements and federal financial assistance awards subject to the Transparency Act? (Include parent organization, all branches, and all affiliates worldwide.)

☐ Yes ☐ No If "yes," proceed to b. If "no," no further action is required and submittal of this form is not required.

- b. Does the public have access to information about the compensation of the senior executives in your organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?

☐ Yes ☐ No If "yes," provide a link to the SEC: <http://www.sec.gov> where this information is located and return form to the ODOT contact shown at the bottom of this form.

Provide link here:

If "no," provide compensation information below.

**Names and annual compensation amounts of the five most highly compensated executives:**

1.	\$
2.	\$
3.	\$
4.	\$
5.	\$

**Business entity contact information (person completing form):**

Type name	Title	Date
Return completed form to: Jeff Flowers, Program and Funding Services Manager; Oregon Department of Transportation; 555 13 <sup>th</sup> Street NE; Salem, OR 97301; <a href="mailto:Jeffrey.A.FLOWERS@odot.state.or.us">Jeffrey.A.FLOWERS@odot.state.or.us</a>		

734-5075 (10-28-2016)

11

**Background on FFATA requirements**

The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The intent of the Act is to empower every American with the ability to hold the government accountable for each spending decision. The end result is to reduce wasteful spending in the government. The FFATA legislation requires information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is [www.USASpending.gov](http://www.USASpending.gov).

**Definition of compensation**

Your organization is considered a subrecipient of federal funds. Unless your organization is exempt, FFATA requires you to report total compensation for each of your five most highly compensated executives for the preceding completed year. Total compensation means the cash and non-cash dollar value earned by the executive during the subrecipient's preceding fiscal year and includes the following: salary and bonus; awards of stock, stock options, and stock appropriation rights; earnings for services under non-equity incentive plans; change in pension value; above-market earnings on deferred compensation which is not tax-qualified; and other compensation as defined in 2 CFR Part 170, Section 170.330(b)(5)(vi).

More detailed information about the FFATA can be found at: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>

**If you have any questions, contact:**

Jeff Flowers  
Program and Funding Services Manager  
Oregon Department of Transportation  
555 13th Street NE  
Salem, OR 97301  
[Jeffrey.A.FLOWERS@odot.state.or.us](mailto:Jeffrey.A.FLOWERS@odot.state.or.us)  
Telephone: 503-986-4453



**COOLEY Laura I**

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**From:** RONDEMA Jessica M on behalf of MATHER Paul R  
**Sent:** Wednesday, March 28, 2018 2:37 PM  
**To:** BRYANT Robert W; CHICKERING Sonny P; HAMLIN Stefan C; LARA Jennifer; MOORE Lucinda M \* Luci; PAPPE Robert G; COOLEY Steven B; KIM David; READING Frank H; SIPP Craig A; WINDSHEIMER Rian M; CORDER Cheryl D \* Cheri; EILERTSON Holly J; HAAS Patty; HARRINGTON Leah D; MCCORMICK Leann M; WARNER Victoria \*Vickie; HILL Lisa A; NICHOLS Peggy S  
**Cc:** SCHERZINGER Richard B; VANHESS Roxanne L \* ODOT; BAKER Courtney  
**Subject:** Delegated Signature Authority

Good afternoon,

I will be away from the office from April 2<sup>nd</sup> through April 12<sup>th</sup>; during my absence Lucinda Moore will have delegated signature authority.

Please continue to email signature requests to Jessica Rondema, and she will obtain appropriate signatures.

Thank you,  
Paul

**AMENDMENT NUMBER 01**  
**LOCAL AGENCY CERTIFICATION PROGRAM**  
**Supplemental Project Agreement No. 32428**  
Commercial Street: Oxford Street SE to Madrona Avenue SE (Salem)  
City of Salem

This is Amendment No. 01 to the Agreement entered into on April 2, 2018, between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State" or "ODOT;" and CITY OF SALEM, acting by and through its designated officials, hereinafter referred to as "Agency;" both herein referred to individually or collectively as "Party" or "Parties."

It has now been determined by State and Agency that the Supplemental Project Agreement referenced above shall be amended to revise the Project name and scope; update ADA certification status and compliance; and update language in various terms of agreement.

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. **RECITALS, Paragraph 2 (d) which reads:**

d. Agency has completed or is in the process of completing the number of test project(s) required by ODOT for the Agency to become fully certified in the following functional areas:

- consultant selection (direct appoint, formal and informal processes)
- design (excluding bridge design)
- construction contract administration

Parties are in the process of assessing the Agency's test project(s) and required program documents to transition the Agency from conditional to full certification for these listed functional areas, and anticipate a successful transition. Therefore, the project described in this Agreement is not one of the test project(s) described in the Local Agency Certification Program Agreement for these listed functional areas.

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

d. Agency has completed or is in the process of completing the number of test project(s) required by ODOT for the Agency to become fully certified in the following functional areas:



- consultant selection (direct appoint, formal and informal processes)
- design (excluding bridge design)
- construction contract administration

Parties are in the process of assessing the Agency's test project(s) and required program documents to transition the Agency from conditional to full certification for these listed functional areas, and anticipate a successful transition.

**c. Insert new RECITALS, Paragraph 2 (f) to read as follows:**

- f. Agency has had its Americans with Disabilities Act (ADA)-related design exception and curb ramp inspection processes reviewed and approved by ODOT and FHWA for use on federally funded projects.

**d. Insert new RECITALS, Paragraph 5, to read as follows:**

5. The original Project name, which was "Commercial Street: Oxford Street SE - Winding Way SE (Salem)," is updated to "Commercial Street: Oxford Street SE to Madrona Avenue SE (Salem)" to reflect changes in Project scope and location.

**e. TERMS OF AGREEMENT, Paragraph 1 which reads:**

1. Under such authority, State and Agency agree to Agency delivering the Commercial Street: Oxford Street SE – Winding Way SE (Salem) project, hereinafter referred to as "Project." Project includes buffered bike lanes in each direction on Commercial Street, illumination, and installation of median islands and two pedestrian activated flashing beacon systems near Triangle Drive and Waldo Avenue SE. The location of the Project is shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

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

1. Under such authority, State and Agency agree to Agency delivering the Commercial Street: Oxford Street SE to Madrona Avenue SE (Salem) project, hereinafter referred to as "Project." Project includes buffered bike lanes in each direction on Commercial Street; illumination infill on Commercial Street from Oxford Street SE to Madrona Avenue SE; installation of a bicycle signal near Alice Avenue S; and installation of a median island and pedestrian activated flashing beacon system near Triangle Drive SE. The location of the Project is shown on the sketch map attached hereto, marked "Revised Exhibit A," and by this reference made a part hereof.

**f. TERMS OF AGREEMENT, Paragraph 6 which reads:**

6. Agency shall make all payments for work performed on the Project, including all construction costs, and invoice State for one-hundred (100%) percent of its

costs. State shall reimburse Agency invoices at the pro-rated federal share. All costs beyond the federal and state reimbursement and any non-participating costs will be the responsibility of the Agency. State shall invoice Federal Highway Administration (FHWA) and Agency for work provided as part of the Project. Agency agrees to reimburse State for work performed for the project upon receipt of invoice. Failure of Agency to make such payments to State may result in withholding of Agency's proportional allocation of State Highway Trust Funds until such costs are paid. Agency understands that State's costs are estimates only and agrees to reimburse State for the actual amount expended.

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

6. Agency shall make all payments for work performed on the Project, including all construction costs, and invoice State for one-hundred (100%) percent of its costs. State shall reimburse approved Agency invoices at the pro-rated federal share of 92.22 percent. All costs beyond the federal and state reimbursement and any non-participating costs are the responsibility of the Agency, and will not be reimbursed by State. State shall invoice Federal Highway Administration (FHWA) and Agency for work provided as part of the Project. Agency agrees to reimburse State for work performed for the project upon receipt of invoice. Failure of Agency to make such payments to State may result in withholding of Agency's proportional allocation of State Highway Trust Funds until such costs are paid. Agency understands that State's costs are estimates only and agrees to reimburse State for the actual amount expended.

**g. TERMS OF AGREEMENT, Paragraph 10 (a), which reads:**

10. Indirect Cost Rate.

- a. As required by 2 CFR 200.331(a)(4), the indirect cost rate(s) for this project at the time the agreement is written is Planning and Development 149.93%, Engineering 126.73%, Transportation 150.12%, and Operations 155.68%. These rates may change during the term of this Agreement upon notice to ODOT and ODOT's subsequent written approval.

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

10. Indirect Cost Rate.

- a. As required by 2 CFR 200.331(a)(4), the indirect cost rate(s) for this project at the time the agreement is written is Planning and Development 170.69%, Engineering 129.96%, Transportation 141.97%, and Operations 169.89%. These rates may change during the term of this Agreement upon notice to ODOT and ODOT's subsequent written approval.

**h. TERMS OF AGREEMENT, Paragraph 20, which reads:**

**20. Americans with Disabilities Act Compliance:**

- a. **General:** Agency agrees to comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended by the ADA Amendments Act of 2008 (together, "ADA") as identified in paragraph 1 of the **General Provisions** section of Local Agency's Certification Program Agreement, and to utilize ODOT standards to assess and ensure Project compliance with the ADA.
- b. **ADA Design Standards and Construction Specifications:** Agency agrees to comply with ODOT's current ADA-related design standards, construction specifications, and design exception documentation and approval requirements for design, modification, upgrade, or construction of Project sidewalks, curb ramps, and pedestrian activated signals, as applicable to the Project, on both the Oregon State Highway System (state highway) and on the local agency system, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, and current ODOT Curb Ramp Inspection form.
  - i. **ADA Inspection Forms:** Prior to issuing the Second Notification pursuant to Oregon Standard Specification 00180.50(g), or Agency's approved equivalent, Agency agrees to submit an ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Regional Local Agency Liaison for each curb ramp designed, constructed, upgraded, or modified for this Project. The completed form is the required documentation from Agency showing that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form 734-5020 and instructions are available at the following website:  
<https://www.oregon.gov/ODOT/CONSTRUCTION/Pages/Forms.aspx>
  - ii. **State inspection:** Agency shall promptly notify State of Project completion and allow State to inspect Project sidewalks, curb ramps, and pedestrian-activated signals, as applicable to the Project, located on or along a state highway prior to acceptance of Project by Agency and prior to release of any Agency contractor.
- c. **Work Zone Access:** Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Agency shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the start of construction.
- d. **Reimbursement:** Unless Agency has an approved design exception, State will only reimburse Agency for work that meets the applicable ODOT

standards, regardless of whether the work is on a State-owned or an Agency-owned facility.

- e. **On-going Maintenance Obligation:** Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
  - i. Pedestrian access is maintained as required by the ADA,
  - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
  - iii. Any repairs or removal of obstructions needed to maintain Project features in compliance with the ADA requirements that were in effect at the time of Project construction are completed by Agency or abutting property owner pursuant to applicable local code provisions,
  - iv. Any future alteration work on the Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed; and
  - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- f. **Survival:** Maintenance obligations in this section shall survive termination of this Agreement.

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

**20. Americans with Disabilities Act Compliance:**

- a. **General:** Agency agrees to comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA") as identified in paragraph 1 of the **General Provisions** section of the Local Agency Certification Program Agreement.
- b. **ADA Design Standards, Construction Specifications, and Inspections:** Agency agrees to comply with the design and construction standards and the design exception documentation and approval requirements agreed to in the **Standards** section of the Local Agency Certification Program Agreement. In addition, with respect to ADA-related design standards, design exception approvals, construction specifications, and inspections, Agency agrees to comply with the following:
  - i. For portions of the Project on or along the Oregon State Highway System (state highway), Agency shall apply ODOT's current ADA-related design standards, construction specifications, and design exception documentation and approval requirements for design, construction, or alteration of Project sidewalks, curb ramps, and pedestrian-activated signals, as applicable to the Project, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, and providing a temporary pedestrian accessible route

- plan and current ODOT Curb Ramp Inspection form. Agency further agrees to utilize ODOT standards to assess and ensure Project compliance with the ADA, and to document ramp inspections per subsection (c.)(i.) below. Design exceptions on State-owned facilities must be approved by State. For project locations on or along State-owned portions of the National Highway System ("NHS") design exceptions must be approved by State and/or FHWA.
- ii. For portions of the Project not on or along a state highway, including locally-owned portions of the NHS, Agency shall apply its own ADA-compliant design standards, construction specifications, design exception documentation and approval process, and inspection documentation process, as approved by State and FHWA for use on federally funded projects.
- c. **ADA Inspection Forms:** Prior to issuing the Second Notification, per Oregon Standard Specification 00180.50(g) or Agency's approved equivalent, Agency agrees to submit to State the following:
- i. For all curb ramps constructed or altered as part of this Project on or along a state highway, submit completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Regional Local Agency Liaison. The completed form is the required documentation from Agency that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form 734-5020 and instructions are available at the following website:  
<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>
  - ii. For all curb ramps not located on or along a state highway, Agency shall complete and keep on file Agency's ODOT- and FHWA-approved ADA curb ramp inspection form (or other approved document) to show that each Project curb ramp meets Agency's curb ramp standards and is ADA compliant or conforms to Agency's approved ADA design exception.
- d. **State inspection:** Agency shall promptly notify State of Project completion and allow State to inspect Project sidewalks, curb ramps, and pedestrian-activated signals, as applicable to the Project, located on or along the a state highway prior to acceptance of Project by Agency and prior to release of any Agency contractor.
- e. **Work Zone Access:** Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone in accordance with the applicable ODOT or Agency Standards, as set forth in subsections (a) through (c) above. For any work zone on or along the state highway, any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian facility.



Agency shall also ensure that advance notice of any temporary pedestrian route on or along the state highway is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the start of construction in accordance with ODOT standards and processes.

- f. **Reimbursement:** Unless Agency has an approved design exception, State will only reimburse Agency for work that meets the applicable ODOT or Agency standards as set forth in subsections (a) through (c) above, regardless of whether the work is on a State-owned or an Agency-owned facility.
- g. **On-going Maintenance Obligation:** Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
  - i. Pedestrian access is maintained as required by the ADA,
  - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
  - iii. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
  - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
  - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- h. **Survival:** Maintenance obligations in this section shall survive termination of this Agreement.

i. **TERMS OF AGREEMENT, Paragraph 22, which reads:**

- 22. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260 (Claims), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that State shall, in all instances, except to the extent Claims arise

from the negligent or willful acts or omissions of State, be indemnified for all Claims caused or alleged to be caused by the contractor or subcontractor.

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

22. To the fullest extent permitted by law, and except to the extent otherwise void under ORS 30.140, Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260 (hereinafter, referred to individually and collectively as "Claims"), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that State shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of State, be indemnified for all Claims caused or alleged to be caused by the contractor or subcontractor.

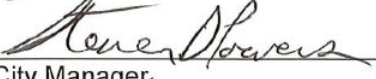
**j. Insert new TERMS OF AGREEMENT, Paragraph 35 to read as follows:**

35. The rights and obligations set out in Terms of Agreement, paragraphs 16-17, 20.g-h, 22-23, 26-29, and 35 of this Agreement shall survive Agreement expiration or termination, as well as any provisions of this Agreement that by their context are intended to survive.
2. **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.
3. **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.

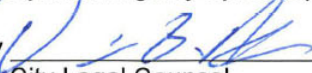
**SIGNATURE PAGE TO FOLLOW**

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

By   
City Manager

Date 04/27/2020

**LEGAL REVIEW APPROVAL**  
(If required in Agency's process)

By   
City Legal Counsel

Date 4/27/2020

**Agency Contact:**

Andrea Mather, P.E.  
Project Engineer  
City of Salem, Public Works Dept.  
555 Liberty Street NE, Room 325  
Salem, OR 97301  
(503) 588-6211  
[amather@cityofsalem.net](mailto:amather@cityofsalem.net)

**State Contact:**

Kumar Rethnasamy, Project Manager  
ODOT Region 2, Area 3  
455 Airport Road SE, Bldg B  
Salem, OR 97301  
(503) 986-2692  
[kumar.rethnasamy@odot.state.or.us](mailto:kumar.rethnasamy@odot.state.or.us)

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

By   
Highway Division Administrator

Date 6/30/2020

**APPROVAL RECOMMENDED**

By Tiffany Hamilton (via email)  
Certification Program Manager

Date June 30, 2020

By Michael Kimlinger Jun 29 2020 12:08 PM  
State Traffic-Roadway Engineer

Date \_\_\_\_\_

By Sonny P.A. Chickering Digitally signed by Sonny P.A.  
Chickering  
Date: 2020.06.15 10:19:03 -0700  
Region 2 Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By Rachel E. Bertoni (via email)  
Assistant Attorney General

Date: February 12, 2020



REVISED EXHIBIT A – Project Location Map

**COMMERCIAL STREET SE**  
**OXFORD STREET SE - MADRONA AVE SE**  
**PN: 717508 - KN: 20169**



— BUFFERED BIKE LANES AND ILLUMINATION IMPROVEMENTS

**CITY OF Salem**  
**AT YOUR SERVICE**  
PUBLIC WORKS DEPARTMENT

ENGINEERING DIVISION  
555 Liberty Street SE, Room 325  
Salem, OR 97301-3513  
Phone 503-588-6211  
[www.cityofsalem.net](http://www.cityofsalem.net)

October 2019

G:\Group\Engineering\Projects\CPV17504 Commercial St Oxford to Windy Way\Design\AutoCAD Drawings\MISC\PROJECT LOCATION.dwg (LOCATION MAP (2) tab)

EXHIBIT A