

## Eunice Kim

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**From:** noreply@cityofsalem.net on behalf of mjrrhadley@comcast.net  
**Sent:** Friday, July 13, 2018 10:41 AM  
**To:** Eunice Kim  
**Subject:** Contact Eunice Kim  
**Attachments:** ATT00001.bin

Your Name	John Hadley
Your Email	mjrrhadley@comcast.net
Your Phone	5033997019
Street	2623 Arroyo Ridge Dr. NW
City	salem
State	OR
Zip	97304
Message	<p>I just roughly review the proposed change in State Street and think some of it is good. Except the adding of of street trees between the sidewalk and curb, this in time causes the sidewalk to be pushed up ad can cause the street to be pushed also. Adding bike lanes seems to be the thing now days but adding it on a busy street only causes problems. The bike should be on a less traveled street. The cities making Two of the down town street into a bike prefered street was a mistake very few bikes use them. I have yet to see any one using them. Reducing any of State Street to one lane each way is a mistake. Don't waste our money on planning favorite thing do what is right for the public. Bike lanes should only be added if the PAY FOR THE IMPROVEMENTS!</p>

This email was generated by the dynamic web forms contact us form on 7/13/2018.

## Eunice Kim

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**From:** Roger Hull <rhull@willamette.edu>  
**Sent:** Sunday, July 15, 2018 11:46 AM  
**To:** Eunice Kim  
**Subject:** City Council testimony for Court Street Corridor Plan, case # CA18-02  
**Attachments:** Testimony 16 July 2018.doc

Hello, Kim---

I'm attaching my letter of testimony for the public hearing before City Council on Monday evening, July 16.

Thank you for including this letter in the Council packet.

Sincerely,

Roger

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Roger Hull  
Senior Faculty Curator, Hallie Ford Museum of Art Professor of Art History Emeritus Willamette University

(503) 581-5710 - h  
(503) 569-2629 - c

1658 Court Street NE  
Salem, Oregon 97301

## **Code Amendment State Street Corridor Plan Case No. CA18-02**

Testimony: State Street Corridor Plan. July 16, 2018.

To the Salem City Council:

My Name is Roger Hull. My wife Bonnie and I live at 1658 Court Street, where we have been in residence since 1980. Bonnie led the effort to list the neighborhood as an historic district, and in August 1987 it was entered into the National Register of Historic Places as the Court-Chemeketa Residential Historic District, Marion County, Salem, Oregon. So we're coming up on the 31<sup>st</sup> anniversary of its listing.

As you can see from the materials provided, the south boundary of the Historic District is the alley---and in the case of several lots where there is no alley, the lot lines---running parallel to Court and State Streets between Thirteenth Street and Mill Creek. A long-established residential neighborhood lies to the east of Mill Creek as well, paralleling State Street. It is this south edge of the neighborhood and its immediate proximity to the proposed State Street Corridor Plan that cause us and our neighbors to be concerned about the scale and placement of structures that the new zoning would permit along the north side of State Street.

Our concerns fall into several areas, including: building height; building setbacks from the alley, effective screening between the Corridor area and the

neighborhoods, and alley traffic.

It is our understanding that the federal grant to study and propose a State Street Corridor Plan allowed for the possibility of several Multiple Use zones, but the final plan recommends just two...MU1 and MU2. Our neighborhood is suggesting an additional zone, MU3, for portions of the north side of State Street. An MU3 zone to replace a portion of the proposed MU2 would mitigate if not entirely solve the issues that concern us.

Finally, State Street is a state highway and thus the Corridor project falls within the purview of the Oregon Department of Transportation. ODOT guidelines call for a Section 106 review of potential impacts of highway projects on historic resources. For various reasons, a Section 106 review has not been conducted in this case. It is our belief that a carefully designed MU3 addition to the plan would lessen the need for the ODOT review and would render that issue moot.

Bonnie and I and our neighbors hope you will take the time to seriously consider an amendment to the proposed plan—an amendment that would enhance State Street development and protect historic resources, both matters of importance to the livability and delightfulness of our city.

Thank you very much, and thank you for your service to the City of Salem.

Roger Hull

1658 Court Street NE

## Eunice Kim

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**From:** Thomas Cupani  
**Sent:** Thursday, July 12, 2018 7:47 AM  
**To:** Eunice Kim  
**Subject:** FW: Code Amendment State Street Corridor Plan Case No. CA18-02

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**From:** Tom Andersen  
**Sent:** Wednesday, July 11, 2018 11:01 AM  
**To:** Thomas Cupani <TCupani@cityofsalem.net>  
**Subject:** Fw: Code Amendment State Street Corridor Plan Case No. CA18-02

FYI

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**From:** Tom Andersen  
**Sent:** Wednesday, July 11, 2018 10:55 AM  
**To:** [juliana.inman@gmail.com](mailto:juliana.inman@gmail.com)  
**Subject:** Re: Code Amendment State Street Corridor Plan Case No. CA18-02

Juliana, thank you for your kind invitation, but since this matter is a quasi judicial matter I need to avoid ex parte contact. I have meet with most of the folks you mentioned in your email, including you!, and also taken a tour of the area with City staff, so I fell that I am well informed on this matter.

Best regards,

Tom

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**From:** Juliana Inman <[juliana.inman@gmail.com](mailto:juliana.inman@gmail.com)>  
**Sent:** Monday, July 9, 2018 4:27:35 PM  
**To:** Tom Andersen  
**Subject:** Code Amendment State Street Corridor Plan Case No. CA18-02

Dear Councilor Andersen,

On behalf of Court Chemeketa Residential Historic District residents, I would like to invite you to have a brief walking tour of the District and the project area for the State Street Corridor Plan. We have several neighbors such as Joan Lloyd, Tom O'Connor, John Mangini, Lois Parker, Hazel Patton, Roger Hull or myself who have volunteered to show Councilors the District and discuss the plan before you next week.

Please let me know if you would be willing to take about 30 minutes for a tour starting at 17th and Court Streets, and let me know a couple of times that would work for you so that I can coordinate with one of our volunteers.

Warm regards,

Juliana

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Juliana Inman

1566 Court St, NE  
Salem, OR 97301  
[juliana.inman@gmail.com](mailto:juliana.inman@gmail.com)  
707-888-7555 cell/text

## Amy Johnson

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**From:** Joan Lloyd <jello879@gmail.com>  
**Sent:** Friday, July 13, 2018 4:43 PM  
**To:** CityRecorder  
**Subject:** testimony re: State Street Corridor Plan Case No. CA18-02

**Categories:** Follow-up

Mayor Bennett and City Councilors,

I'm writing to remind you of the importance that the City of Salem and the State of Oregon has emphasized on historic preservation:

There is a historic planner and a Historic Landmarks Commission to oversee and review designs of historic places.

Walking tours of historic places in Salem are listed on the city website.

The Downtown Commercial Core, Oregon State Hospital, the Union Street Railroad Bridge , the Court-Chemeketa Residential Historic District, the Gaiety Hill/ Bush's Pasture Park Residential Historic District and Salem Pioneer Cemetery are listed on the National Register of Historic Places.

Deepwood Museum and Gardens is a non-profit historic place in partnership with the City of Salem.

Four historic photo contests are advertised on the city's website.

Residential Toolbox matching grants, funded by a generous anonymous donor, is administered by the historic planner and Historic Landmarks Commission. Between 2011 and 2017 approximately \$55,000 has been awarded to prevent deterioration of residential properties.

Private non-profits help to preserve history; Gilbert House Children's Museum, the Willamette Heritage Center, Gaiety Hollow Lord and Schryver House and Garden, Lee Mission Cemetery and possibly others.

The State of Oregon has designated Salem as one of six Heritage All-Star Communities.

The State of Oregon legislators voted to have a Special Assessment which lowers taxes for a period of time for eligible projects to protect/preserve historic buildings.

Since the City of Salem has demonstrated interest and investment in historic resources, I believe that you will amend the MU1 zone to protect the Court Chemeketa Residential Historic District from the adverse impacts that you will hear about from other residents.

Joan Lloyd  
1577 Court St NE  
Salem, OR 97301





TO: Salem City Council

July 14, 2018

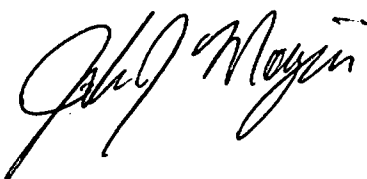
RE: Proposed State Street Corridor Improvements *CA 18-02*

FROM: John Mangini 1598 Court ST NE Salem OR 97301

Dear Council and Mayor,

Thank you for your willingness and support of input on your upcoming proposal. I offer the following:

1. I support your project as do most of the residents of the Court ST Historic District
2. While you have had much input I would like to offer some final input that would make this proposal have a much less adverse impact on the historic district
3. The primary purpose of zoning laws are to segregate uses that are thought to be incompatible with other uses and to prevent new development from harming existing business or residents
4. Lowering the height restriction adjacent to the historic district to 45 feet and restricting usage of the historic district boundry alley as an access way for State St. development is reasonable and will help keep the historic district from major adverse impact
5. Please don't assume this zoning in its present state will not be harmful and help protect the good work done by the city and its Court/Chemeketa Historic District residents



## Eunice Kim

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**From:** L Milan <milanlm@yahoo.com>  
**Sent:** Sunday, July 15, 2018 7:21 PM  
**To:** Eunice Kim  
**Cc:** Nancy Mcdaniel; Joan Lloyd  
**Subject:** Testimony on State Street Corridor Plan for City Coucil Meeting July 16, 2018

David and I walked over to State Street and looked at the property behind Victoria Court. We both feel that the proposed ordinance changing the zoning to MU2 is much better than the zoning now in place which does not have the mandatory setbacks. We support MU2 zoning which requires parking at the side and back of buildings. Overall, we think that MU2 is much better to support and protect our well established neighborhood. I would add that we ask for the same limitation of height 45 ft buildings that the historic district is asking to minimize the impact on neighboring residences. Our neighborhood immediately to the east of the Court/Chemeketa Historic District is a stable community and another important anchor and support for the vibrant mixed use corridor proposed int the State Street Corridor Plan.

We oppose the Four Lane recommendation by the Planning Commission especially in view of the fact that traffic analysis found this option to have the worst performance of the three options. We support the Hybrid Alternative as the best alternative to support a pedestrian and business development friendly environment, have less impact on neighborhood traffic , and ability to phase in improvements. We understand that further traffic analysis will be done on neighborhood impact.

This plan or a parallel effort does need to address how development might impact flooding in neighborhoods near Mill Creek in the impacted area.

We support a this well thought out plan for the future of State Street.

Lorraine Milan and David Greysmith  
1998 Court St. NE  
Salem, Or, 97301

## Amy Johnson

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**From:** noreply@cityofsalem.net on behalf of parker3836@comcast.net  
**Sent:** Saturday, July 14, 2018 2:57 PM  
**To:** CityRecorder  
**Subject:** Contact City Recorder  
**Attachments:** State Street Corridor plan - Alleys - Parker Letter.pdf

Your Name	Craig Parker
Your Email	parker3836@comcast.net
Your Phone	503-990-8778
Street	1496 Court St, NE
City	Salem
State	OR
Zip	97301
Message	Please see the attached comments to be provided to the Salem City Council at their meeting to be held Monday, July 16. Re: Code Amendment State Street Corridor Plan, Case No. CA-18-02. A copy has also been emailed to the Case Manager, Eunice Kim. Thank you. Craig and Lois Parker

This email was generated by the dynamic web forms contact us form on 7/14/2018.

July 13, 2017

To: Case Manager  
Eunice Kim, Planner II  
[Ekim@cityofsalem.net](mailto:Ekim@cityofsalem.net)  
503.540.2308

City Of Salem  
Community Development Dept.  
555 Liberty St SE - Room 305  
Salem, OR 97301

Re: Code Amendment State Street Corridor Plan Case No. CA18-02

We are writing you to express our concerns that the State Street Corridor Plan does not adequately address impacts on the Court Chemeketa Residential Historic District.

We are residents of the historic district located on the south side of Court Street. Our house abuts an alleyway that accesses the properties that are on the north side of State Street. Therefore we are particularly concerned about potential negative impacts on our property and also the overall impact on the historic district. The NEN Neighborhood Plan also has addressed these issues in detail and are referenced below.

We have attended a majority of the neighborhood meetings with the project team and consultants over the past two years. Unfortunately we do not feel that our concerns that were voiced at these meetings have been heard, contrary to what the Plan document implies. In fact, regarding the Road Diet recommendation for State Street it appears that the City has taken an opposite view of the recommended Road Diet from 17th to 24th Street.

On April 1, 2018 we signed a letter to the Salem City Planning Commission along with many other Court Chemeketa residents. We do not feel that many of the concerns voiced in this letter have been addressed other than a response that "we the City will study the issues after the Corridor Plan is approved".

In summary we feel that the State Street Corridor plan needs to formally recognize and support the NEN Neighborhood plan by specifically referencing the following areas:

1. Foster integrity of the historic District boundaries
2. Mitigate overshadowing of buildings adjacent to the District. When NEN proposed a mixed use development, it was not with high density and 55 foot high buildings in mind on the north side of State Street.
3. Address traffic flow and parking use in the District
4. Address the boundary alleyways between Court and State with buffers, setbacks, traffic management, parking in the alley, etc.

We are aware that other residents have addressed these areas in detail before. Therefore we would like to address number 4 (alleyways) here in more detail.

Specifically the Corridor Plan needs to address now the following regarding alley boundaries:

1. Traffic access via alleyways to off-street parking behind buildings on the north side of State Street between 14th and 17th Streets will adversely impact adjoining residential properties. The State Street Corridor Plan has not addressed this issue.

There are two boundary alleys:

First Alley:

- runs parallel to, and between State and Court Streets.
- is only one car width wide.
- narrows after intersecting with second perpendicular alley.
- has residential driveways accessing it.
- is included in two or three south side Court Street private properties.
- has no buffer zone (trees, green scape, barrier) between the alley and residential buildings as per the Corridor plan.
- \_ Has cars now when parking partially block the alley

Second Alley:

- runs between 1496 and 1498 Court Street residences.
- is also one car width wide.
- is constantly used during work week by business workers cutting through to avoid State Street traffic creating a hazard for abutting residences.
- has residential driveways accessing it
- also has no buffer zone between this alley and residential properties.

How will additional traffic, more private vehicles, delivery trucks and garbage trucks emptying huge dumpsters, be accommodated?

How will noise pollution, congestion and blocking of residents' access to their garages off the alleyway be addressed?

How will encroachment of parking into the alley be avoided? Note that this is a current issue with the present parking behind buildings adjacent to the alley where cars are now parking partially into the alley itself.

Also how will the Plan address how private residents back out of their garages or turn onto the alley? How will trash and other utility trucks access the rear of State Street buildings without blocking residential access from the alley?

In the proposed MU-1 zone, there is only a maximum setback of 15 feet from any proposed buildings abutting the alley where residential properties are on the south side of Court Street. This is insufficient. There also should be landscape buffers along the alley and restrictions on commercial use of these alleys.

Suggestions:

1. Establish a third MU zone (MU-3) for the State Street area from 14th to 17th Street with specific mitigations for the above issues. In MU-3 establish 24 foot wide alleys. And provide buffers and setbacks.
2. Prohibit multifamily and commercial use of alley by including language from Superior/Rural overlay district restricting use to multi-family under 3 units and no commercial uses: "Driveways serving uses other than single family and two family shall not be allowed onto the alley".

Note: Parking standards (Chapter 806 Salem Unified Development Code) includes 2 way drive requirements of 22' - 40' width. The alley, which is the boundary of the National Register District, is currently only 16 feet wide. When parking access is from an alley, minimum back-up space from end of parking space to opposite side of the alley should be at least 24 feet. Parking space length is 15' for compact and 19' for standard spaces. Clear area between existing buildings and residential fences is a maximum of 34 feet. Therefore, the existing non-conforming parking spaces lack 5 – 9 feet of required clearance.

We respectfully request that the City Council address these suggestions before approving the State Street Corridor Plan.

Signed:

Craig S.Parker \_\_\_\_\_

Lois K. Parker \_\_\_\_\_

1896 Court Street NE  
Salem, OR 97301

503-990-8778

cc: NEN Neighborhood

## Eunice Kim

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**From:** Hazel Patton <ptn1363@msn.com>  
**Sent:** Friday, July 13, 2018 1:23 PM  
**To:** Eunice Kim  
**Subject:** A question

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi unice,

By chance do you know the height of the Robertson Building which is located on the east side of 12<sup>th</sup> and State?

Thanks

Hazel Patton

Sent from [Mail](#) for Windows 10

## Amy Johnson

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**From:** John L. Poole <jlpoole56@gmail.com>  
**Sent:** Monday, July 16, 2018 8:00 AM  
**To:** Eunice Kim  
**Cc:** Amy Johnson  
**Subject:** Re: Fwd: Re: Shadow Video

Thank you.

On 7/16/2018 7:59 AM, Eunice Kim wrote:

Hi John,

I downloaded the video and am able to view it. I will open it tonight, so you can run it.

Best,

Eunice | 503-540-2308

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**From:** John L. Poole [<mailto:jlpoole56@gmail.com>]  
**Sent:** Monday, July 16, 2018 4:12 AM  
**To:** Eunice Kim <[EKim@cityofsalem.net](mailto:EKim@cityofsalem.net)>  
**Subject:** Re: Fwd: Re: Shadow Video

(RRR)

Hi Eunice,

This email supersedes my email below of last Friday. I made some modifications to my Shadow Study presentation and have exported a new video, CourtStreet\_ShadowStudy\_July\_16\_2018.mp4, that includes a shorter run time of 1' 54".

The new video may be downloaded at:

[https://www.dropbox.com/s/8tcgipoluk0hrhn/CourtStreet\\_ShadowStudy\\_July\\_16\\_2018.mp4?dl=0](https://www.dropbox.com/s/8tcgipoluk0hrhn/CourtStreet_ShadowStudy_July_16_2018.mp4?dl=0)

I want to include the running of this video in my presentation tonight for the Council. Would you please confirm that you are able to download and run this video and then we can do for tonight what we did for the Planning Commission: have the video ready to run so when I go up to the podium, I can launch it and move the move about as it is running.

Thank you for your continuing cooperation,

John



On 7/13/2018 8:07 AM, John L. Poole wrote:

(RRR)

Hi Eunice,

I plan to present to the Council my shadow study video walk through just as I did for the Planning Commission. Below is the email chain with the link the video file for download.

May I impose on you the task for Monday's hearing of having the video ready to run with mouse control when I come up to the podium just like I did for the Planning Commission?

Thank you,

John

----- Forwarded Message -----

**Subject:**Re: Shadow Video  
**Date:**Tue, 3 Apr 2018 16:15:30 -0700  
**From:**John L. Poole <[jlpoole56@gmail.com](mailto:jlpoole56@gmail.com)>  
**Reply-To:**[jlpoole56@gmail.com](mailto:jlpoole56@gmail.com)  
**To:**Eunice Kim <[EKim@cityofsalem.net](mailto:EKim@cityofsalem.net)>, Lisa Anderson-Ogilvie <[LMAnderson@cityofsalem.net](mailto:LMAnderson@cityofsalem.net)>  
**CC:**Juliana Inman <[juliana.inman@gmail.com](mailto:juliana.inman@gmail.com)>

Splendid. See you at 5:30.

On 4/3/2018 4:14 PM, Eunice Kim wrote:

Hi John,

I can help start the video as I anticipate sitting next to the podium.

Eunice | 503-540-2308

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**From:** John L. Poole [<mailto:jlpoole56@gmail.com>]  
**Sent:** Tuesday, April 03, 2018 4:13 PM  
**To:** Eunice Kim <[EKim@cityofsalem.net](mailto:EKim@cityofsalem.net)>; Lisa Anderson-Ogilvie <[LMAnderson@cityofsalem.net](mailto:LMAnderson@cityofsalem.net)>  
**Cc:** Juliana Inman <[juliana.inman@gmail.com](mailto:juliana.inman@gmail.com)>  
**Subject:** Re: Shadow Video

You are very kind to have undertaken this task. Thank you, again.

I am not familiar with how public speakers are chosen, but I suppose I might be called to speak with someone is ready to run the video as I envisioned coming to the podium, introducing myself, and then having the video run and I would ad-lib while it plays. Are you the person who would coordinate the playing of the video, or is that the clerk?

On 4/3/2018 3:53 PM, Eunice Kim wrote:

Hi John,

I just went down to Council Chambers and was able to play your video on the computer there.

Best,

Eunice | 503-540-2308

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**From:** John L. Poole [<mailto:jlpoole56@gmail.com>]  
**Sent:** Tuesday, April 03, 2018 1:39 PM  
**To:** Eunice Kim <[EKim@cityofsalem.net](mailto:EKim@cityofsalem.net)>; Lisa Anderson-Ogilvie <[LMAnderson@cityofsalem.net](mailto:LMAnderson@cityofsalem.net)>  
**Cc:** Juliana Inman <[juliana.inman@gmail.com](mailto:juliana.inman@gmail.com)>  
**Subject:** Re: Shadow Video

Thank you very much. I'll have a USB stick with it on it, as well.

On 4/3/2018 1:38 PM, Eunice Kim wrote:

Hi John,

I have downloaded the video and saved it into a folder that can be accessed from Council chambers. I will check to see if it can be played this afternoon.

Eunice | 503-540-2308

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**From:** John L. Poole  
[\[mailto:jlpoole56@gmail.com\]](mailto:jlpoole56@gmail.com)  
**Sent:** Tuesday, April 03, 2018 1:18 PM  
**To:** Eunice Kim  
<[EKim@cityofsalem.net](mailto:EKim@cityofsalem.net)>; Lisa Anderson-Ogilvie  
<[LMAnderson@cityofsalem.net](mailto:LMAnderson@cityofsalem.net)>  
**Cc:** Juliana Inman  
<[juliana.inman@gmail.com](mailto:juliana.inman@gmail.com)>  
**Subject:** Shadow Video

(RRR)

Hi Kim and Lisa,

I've uploaded a video that runs for 2' 40" to Dropbox at:

[https://www.dropbox.com/s/75sycea8baefzq8/2018-03-12\\_01-03-07.mp4?dl=0](https://www.dropbox.com/s/75sycea8baefzq8/2018-03-12_01-03-07.mp4?dl=0)

It is in MP4 format and is 45.8 MBs in size. I would like to show this video as part of my 3' presentation to the Commission.

Would you please download this and confirm that it can be displayed at the hearing? I could also bring it on a USB stick, as well. Please let me know.

I wish to have had this to you sooner, but the last several days have had higher priority items such as my Section 106 Memorandum.

Thank you,

John

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John Laurence Poole  
1566 Court ST NE  
Salem OR 97301-4241  
707-812-1323 office

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John Laurence Poole  
1566 Court ST NE  
Salem OR 97301-4241  
707-812-1323 office

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1566 Court ST NE

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Salem OR 97301-4241  
707-812-1323 office

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John Laurence Poole  
1566 Court ST NE  
Salem OR 97301-4241  
707-812-1323 office

## Eunice Kim

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**From:** Lisa Anderson-Ogilvie  
**Sent:** Friday, July 13, 2018 1:38 PM  
**To:** jlpoole56@gmail.com; Eunice Kim  
**Subject:** RE: State Street Corridor Hearing 7/16 - Document Submission

Mr. Poole,

Your additional testimony will be made available to the City Council for the public hearing. The agenda items you show below with arrows are for the following: 18-317 is for the State Street public hearing, as is indicated in the text to the right; 18-333 is a list of future public hearings that are scheduled for City Council. Perhaps viewing the agenda in [this](#) format will make it clearer. (This is a link to the pdf version of the agenda that is available from that same page, near the top where it says 'published agenda.')

Testimony can either reference the agenda number (2.a) the file number (18-317), the ordinance number (Ord No. 4-18) or simply reference the State Street Corridor Plan. Any testimony that is received by Eunice, myself, the City Recorder, or to the Council directly, that appears in any way related to this plan will be made part of the record and provided to the Council.

Lisa | 503-540-2381

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**From:** John L. Poole [mailto:jlpoole56@gmail.com]  
**Sent:** Friday, July 13, 2018 7:24 AM  
**To:** Lisa Anderson-Ogilvie <LMAAnderson@cityofsalem.net>; Eunice Kim <EKim@cityofsalem.net>  
**Subject:** State Street Corridor Hearing 7/16 - Document Submission

(RRR)

RE: Case No. CA18-02 [State Street Corridor Plan Project]

Dear Lisa and Eunice,

Attached to this email, please find the following:

1. INTER GOVERNMENT AL AGREEMENT - City of Salem, State Street Corridor Plan executed 7/23/2015 consisting of 64 of which sheets 14 and 16 are blank, file named **5a - 2D-14 Signed IGA.pdf**
2. Amendment No. 1 [TGM Grant Agreement No. 30686, TGM File Code 2D-14, EA# TG15LA12] executed 11/16/2016 consisting of 2 sheets, file named **5b - 2D-14 Signed IGA Amendment #1.pdf**
3. State Street Project Salem, Oregon Preliminary Construction Cost Estimate June 2017/Alternative 3Hybrid - consisting of 1 sheet, file named **6d - Appendix C\_StateStreet-HybridDetailCostEstimate.pdf**
4. My letter Request to Attorney General for Memorandum to Ellen Rosenblum, Attorney General for the State dated May 3, 2018 consisting of 8 sheets, file named **Letter\_requesting\_AG\_Opinion\_May\_3\_2018\_signed.pdf**
5. Attorney General Opinion with emails waiving the privilege consisting of 7 sheets, file named: **OregonAG\_Section106\_Memo-privilege\_waived.pdf**

6. Email Chain [Andrew Foltz] re: lack of availability of waived confidential AG opinions on AG web site consisting of 2 sheets, file named **RE\_ Public Records Request for Opinion re\_ National Historic Preservation Act.pdf**
- 7.
8. Complaint: *Poole v. City of Salem et. alia* United States District Court, District of Oregon, Eugene Division Case No. 6:18-cv-1175-AA - consisting of 28 sheets, file named **Complaint\_20180702\_conformed\_service\_copy.pdf**
9. An email chain [Lucinda Jackson] demonstrating that the two blank pages of the Intergovernmental Agreement are intended to be blank and contain no content, consisting of 4 sheets, file named **RE\_ Public Record Request dated June 18, 2018.pdf**

All defendant were served in the above-entitled action on July 6 by 11:00 a.m. For the City of Salem, a copy of the Summons and Complaint was served at 9:12 a.m., Friday, July 6th, on Mireya Alba, an office assistant in the office of the City Attorney, suite 205, who indicated to my process server that she is authorized to accept service and completed for the City's records a small intake form which included the name and contact information of my process server. The above documents and this email should be made a part of the record for all matters concerning the State Street Corridor. I am concerned that the City was served on July 6th, yet the update report released by you to the public on July 9th which notes my letter requesting a Section 106 Review and City Attorney's response fails to mention that a suit is now pending and that the City is in possession of a copy of the Complaint. I understand the City Attorney may be on vacation at the moment. The 5 page Memorandum dated July 5th that we received in the mail references "Case File No. CA 18-02".

I'm finding it a bit confusing that there seem to be several agenda items and/or references on the City's web site possibly related to various aspects of what is pending before the City Council. It might be helpful to the public if there were on the Project's Website an explanation or overview of the various accounts used to track the various pieces of legislation proposed. Or, perhaps a statement stating that a reference to "" will suffice for all matters relating to the State Street Corridor Project and ensure consideration with respect to the notice of public hearing sent dated \*\*? Here's a screenshot showing two files referencing this matter:

Please note: this meeting's minutes have not been finalized yet. Actions taken on legislation and their results are not available

Details

Meeting Name: [City Council](#) Agenda status: Final  
 Meeting date/time: 7/16/2018 6:00 PM Minutes status: Draft  
 Meeting location: Council Chambers  
*Special Meeting*  
 Published agenda: [Agenda](#) Published minutes: Not available  
 Meeting video: Not available  
 Attachments:

Meeting Items (2)

2 records Group Export Show: Legislation only

File #	Ver.	Agenda #	Type	Title
<a href="#">18-317</a>	1	2.a.	Public	State Street Corridor Plan Project Ward(s): 1 and 2 Councilor(s): Kaser and An Hearings
<a href="#">18-333</a>	1	a.	Future	CITY COUNCIL PUBLIC HEARINGS Held in the Council Chambers unless otherwis Agenda SE Monday, July 23, 2018 at 6:00 p.m. Amendments to Salem Revised Code Ch Items August 13, 2018 at 6:00 p.m. 2019-2020 Utility Rate Proposal Monday, October PUBLIC HEARINGS URBAN RENEWAL AGENCY PUBLIC HEARINGS WORK SESSIOI noted BUDGET COMMITTEE MEETINGS Held in the Council Chambers unless oth ASSOCIATION ANNUAL MEETINGS Neighborhood - Annual Meeting Date - Coun

Which one?

Should reference be made to the Case File and Agenda Items?

Thank you,

John

--

John Laurence Poole  
1566 Court ST NE  
Salem OR 97301-4241  
707-812-1323 office



## Eunice Kim

---

**From:** John L. Poole <jlpoole56@gmail.com>  
**Sent:** Monday, July 16, 2018 8:00 AM  
**To:** Eunice Kim  
**Cc:** Amy Johnson  
**Subject:** Re: Fwd: Re: Shadow Video

Thank you.

On 7/16/2018 7:59 AM, Eunice Kim wrote:

Hi John,

I downloaded the video and am able to view it. I will open it tonight, so you can run it.

Best,

Eunice | 503-540-2308

---

**From:** John L. Poole [<mailto:jlpoole56@gmail.com>]  
**Sent:** Monday, July 16, 2018 4:12 AM  
**To:** Eunice Kim <[EKim@cityofsalem.net](mailto:EKim@cityofsalem.net)>  
**Subject:** Re: Fwd: Re: Shadow Video

(RRR)

Hi Eunice,

This email supersedes my email below of last Friday. I made some modifications to my Shadow Study presentation and have exported a new video, CourtStreet\_ShadowStudy\_July\_16\_2018.mp4, that includes a shorter run time of 1' 54".

The new video may be downloaded at:

[https://www.dropbox.com/s/8tcgipoluk0hrhn/CourtStreet\\_ShadowStudy\\_July\\_16\\_2018.mp4?dl=0](https://www.dropbox.com/s/8tcgipoluk0hrhn/CourtStreet_ShadowStudy_July_16_2018.mp4?dl=0)

I want to include the running of this video in my presentation tonight for the Council. Would you please confirm that you are able to download and run this video and then we can do for tonight what we did for the Planning Commission: have the video ready to run so when I go up to the podium, I can launch it and move the move about as it is running.

Thank you for your continuing cooperation,

John

On 7/13/2018 8:07 AM, John L. Poole wrote:

(RRR)

Hi Eunice,

I plan to present to the Council my shadow study video walk through just as I did for the Planning Commission. Below is the email chain with the link the video file for download.

May I impose on you the task for Monday's hearing of having the video ready to run with mouse control when I come up to the podium just like I did for the Planning Commission?

Thank you,

John

----- Forwarded Message -----

**Subject:**Re: Shadow Video  
**Date:**Tue, 3 Apr 2018 16:15:30 -0700  
**From:**John L. Poole <[jlpoole56@gmail.com](mailto:jlpoole56@gmail.com)>  
**Reply-To:**[jlpoole56@gmail.com](mailto:jlpoole56@gmail.com)  
**To:**Eunice Kim <[EKim@cityofsalem.net](mailto:EKim@cityofsalem.net)>, Lisa Anderson-Ogilvie <[LMAAnderson@cityofsalem.net](mailto:LMAAnderson@cityofsalem.net)>  
**CC:**Juliana Inman <[juliana.inman@gmail.com](mailto:juliana.inman@gmail.com)>

Splendid. See you at 5:30.

On 4/3/2018 4:14 PM, Eunice Kim wrote:

Hi John,

I can help start the video as I anticipate sitting next to the podium.

Eunice | 503-540-2308

---

**From:** John L. Poole [<mailto:jlpoole56@gmail.com>]  
**Sent:** Tuesday, April 03, 2018 4:13 PM  
**To:** Eunice Kim <[EKim@cityofsalem.net](mailto:EKim@cityofsalem.net)>; Lisa Anderson-Ogilvie <[LMAAnderson@cityofsalem.net](mailto:LMAAnderson@cityofsalem.net)>  
**Cc:** Juliana Inman <[juliana.inman@gmail.com](mailto:juliana.inman@gmail.com)>  
**Subject:** Re: Shadow Video

You are very kind to have undertaken this task. Thank you, again.

I am not familiar with how public speakers are chosen, but I suppose I might be called to speak with someone is ready to run the video as I envisioned coming to the podium, introducing myself, and then having the video run and I would ad-lib while it plays. Are you the person who would coordinate the playing of the video, or is that the clerk?

On 4/3/2018 3:53 PM, Eunice Kim wrote:

Hi John,

I just went down to Council Chambers and was able to play your video on the computer there.

Best,

Eunice | 503-540-2308

---

**From:** John L. Poole [<mailto:jlpoole56@gmail.com>]  
**Sent:** Tuesday, April 03, 2018 1:39 PM  
**To:** Eunice Kim <[EKim@cityofsalem.net](mailto:EKim@cityofsalem.net)>; Lisa Anderson-Ogilvie <[LMAnderson@cityofsalem.net](mailto:LMAnderson@cityofsalem.net)>  
**Cc:** Juliana Inman <[juliana.inman@gmail.com](mailto:juliana.inman@gmail.com)>  
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**Cc:** Juliana Inman  
<[juliana.inman@gmail.com](mailto:juliana.inman@gmail.com)>  
**Subject:** Shadow Video

(RRR)

Hi Kim and Lisa,

I've uploaded a video that runs for 2' 40" to Dropbox at:

[https://www.dropbox.com/s/75sycea8baefzq8/2018-03-12\\_01-03-07.mp4?dl=0](https://www.dropbox.com/s/75sycea8baefzq8/2018-03-12_01-03-07.mp4?dl=0)

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Thank you,

John

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**CC:**Juliana Inman <juliana.inman@gmail.com>

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## Eunice Kim

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**From:** John L. Poole <jlpoole56@gmail.com>  
**Sent:** Friday, July 13, 2018 7:24 AM  
**To:** Lisa Anderson-Ogilvie; Eunice Kim  
**Subject:** State Street Corridor Hearing 7/16 - Document Submission  
**Attachments:** OregonAG\_Section106\_Memo-privilege\_waived.pdf; 5a - 2D-14 Signed IGA.pdf; 5b - 2D-14 Signed IGA Amendment #1.pdf; 6d - Appendix C\_StateStreet-HybridDetailCostEstimate.pdf; Complaint\_20180702\_conformed\_service\_copy.pdf; RE\_Public Record Request dated June 18, 2018.pdf; Letter\_requesting\_AG\_Opinion\_May\_3\_2018\_signed.pdf; RE\_Public Records Request for Opinion re\_National Historic Preservation Act.pdf

(RRR)

RE: Case No. CA18-02 [State Street Corridor Plan Project]

Dear Lisa and Eunice,

Attached to this email, please find the following:

1. INTER GOVERNMENT AL AGREEMENT - City of Salem, State Street Corridor Plan executed 7/23/2015 consisting of 64 of which sheets 14 and 16 are blank, file named **5a - 2D-14 Signed IGA.pdf**
2. Amendment No. 1 [TGM Grant Agreement No. 30686, TGM File Code 2D-14, EA# TG15LA12] executed 11/16/2016 consisting of 2 sheets, file named **5b - 2D-14 Signed IGA Amendment #1.pdf**
3. State Street Project Salem, Oregon Preliminary Construction Cost Estimate June 2017/Alternative 3Hybrid - consisting of 1 sheet, file named **6d - Appendix C\_StateStreet-HybridDetailCostEstimate.pdf**
4. My letter Request to Attorney General for Memorandum to Ellen Rosenblum, Attorney General for the State dated May 3, 2018 consisting of 8 sheets, file named **Letter\_requesting\_AG\_Opinion\_May\_3\_2018\_signed.pdf**
5. Attorney General Opinion with emails waiving the privilege consisting of 7 sheets, file named: **OregonAG\_Section106\_Memo-privilege\_waived.pdf**
6. Email Chain [Andrew Foltz] re: lack of availability of waived confidential AG opinions on AG web site consisting of 2 sheets, file named **RE\_Public Records Request for Opinion re\_National Historic Preservation Act.pdf**
- 7.
8. Complaint: *Poole v. City of Salem et. alia* United States District Court, District of Oregon, Eugene Division Case No. 6:18-cv-1175-AA - consisting of 28 sheets, file named **Complaint\_20180702\_conformed\_service\_copy.pdf**
9. An email chain [Lucinda Jackson] demonstrating that the two blank pages of the Intergovernmental Agreement are intended to be blank and contain no content, consisting of 4 sheets, file named **RE\_Public Record Request dated June 18, 2018.pdf**

All defendant were served in the above-entitled action on July 6 by 11:00 a.m. For the City of Salem, a copy of the Summons and Complaint was served at 9:12 a.m., Friday, July 6th, on Mireya Alba, an office assistant in the office of the City Attorney, suite 205, who indicated to my process server that she is authorized to accept service and completed for the City's records a small intake form which included the name and contact information of my process server. The above documents and this email should be made a part of the record for all matters concerning the State Street Corridor. I am concerned that the City was served on July 6th, yet the update report released by you to the public on July 9th which notes my letter requesting a Section 106 Review

and City Attorney's response fails to mention that a suit is now pending and that the City is in possession of a copy of the Complaint. I understand the City Attorney may be on vacation at the moment. The 5 page Memorandum dated July 5th that we received in the mail references "Case File No. CA 18-02".

I'm finding it a bit confusing that there seem to be several agenda items and/or references on the City's web site possibly related to various aspects of what is pending before the City Council. It might be helpful to the public if there were on the Project's Website an explanation or overview of the various accounts used to track the various pieces of legislation proposed. Or, perhaps a statement stating that a reference to "" will suffice for all matters relating to the State Street Corridor Project and ensure consideration with respect to the notice of public hearing sent dated \*\*? Here's a screenshot showing two files referencing this matter:

**AT YOUR SERVICE**

Home | Legislation | **Calendar** | City Council | Boards, Commissions, and Committees | People

Please note: this meeting's minutes have not been finalized yet. Actions taken on legislation and their results are not available

**Details**

Meeting Name: [City Council](#)      Agenda status: Final  
 Meeting date/time: 7/16/2018 6:00 PM      Minutes status: Draft  
 Meeting location: Council Chambers  
*Special Meeting*  
 Published agenda: [Agenda](#)      Published minutes: Not available  
 Meeting video: Not available  
 Attachments:

**Meeting Items (2)**

2 records    Group    Export    Show: Legislation only

File #	Ver.	Agenda #	Type	Title
<a href="#">18-317</a>	1	2.a.	Public	State Street Corridor Plan Project Ward(s): 1 and 2 Councilor(s): Kaser and An Hearings
<a href="#">18-333</a>	1	a.	Future	CITY COUNCIL PUBLIC HEARINGS Held in the Council Chambers unless otherwise noted Agenda SE Monday, July 23, 2018 at 6:00 p.m. Amendments to Salem Revised Code Ch Items August 13, 2018 at 6:00 p.m. 2019-2020 Utility Rate Proposal Monday, October PUBLIC HEARINGS URBAN RENEWAL AGENCY PUBLIC HEARINGS WORK SESSION noted BUDGET COMMITTEE MEETINGS Held in the Council Chambers unless oth ASSOCIATION ANNUAL MEETINGS Neighborhood - Annual Meeting Date - Coun

Which one?

Should reference be made to the Case File and Agenda Items?

Thank you,

John

--

John Laurence Poole  
1566 Court ST NE  
Salem OR 97301-4241  
707-812-1323 office

**Subject:** RE: Oregon Department of Transportation Public Records Request  
**From:** Jackson Lucinda D <Lucinda.D.Jackson@doj.state.or.us>  
**Date:** 5/7/2018 4:39 PM  
**To:** "jlpoole56@gmail.com" <jlpoole56@gmail.com>, LEDET Elizabeth <Elizabeth.L.LEDET@odot.state.or.us>  
**CC:** ODOT Public Record Requests <ODOTPRR@odot.state.or.us>, ROCK Michael D <Michael.D.ROCK@odot.state.or.us>

Mr. Poole,

ODOT has decided to waive the privilege in this particular case.

Lucinda Jackson

### Lucinda D. Jackson

Senior Assistant Attorney General | Government Services Section  
Oregon Department of Justice  
1162 Court Street N.E. | Salem, Oregon 97310  
503.947.4530

---

**From:** John L. Poole [mailto:jlpoole56@gmail.com]  
**Sent:** Monday, May 07, 2018 4:38 PM  
**To:** LEDET Elizabeth  
**Cc:** ODOT Public Record Requests; ROCK Michael D; Jackson Lucinda D  
**Subject:** Re: Oregon Department of Transportation Public Records Request

Great. I'd like to await Ms. Jackson's confirmation so that there is no doubt.

Thank you.

On 5/7/2018 4:33 PM, LEDET Elizabeth wrote:

We previously received the okay from DOJ but I have copied Ms. Jackson so she can confirm that for you.

Thank you for checking.

---

**From:** John L. Poole <jlpoole56@gmail.com>  
**Sent:** Monday, May 7, 2018 4:29 PM  
**To:** LEDET Elizabeth <Elizabeth.L.LEDET@odot.state.or.us>  
**Cc:** ODOT Public Record Requests <ODOTPRR@odot.state.or.us>; ROCK Michael D <Michael.D.ROCK@odot.state.or.us>  
**Subject:** Re: Oregon Department of Transportation Public Records Request

Hi Elizabeth,

One of the documents you sent to me started with the following:

ELLEN F. ROSENBLUM  
Attorney General



FREDERICK M. BOSS  
Deputy Attorney General

DEPARTMENT OF JUSTICE  
GENERAL COUNSEL DIVISION

MEMORANDUM

I

THIS DOCUMENT IS A CONFIDENTIAL COMMUNICATION FROM ATTORNEY TO CLIENT. NEITHER THE DOCUMENT NOR ITS CONTENTS SHOULD BE ROUTINELY CIRCULATED BEYOND THE IMMEDIATE ADDRESSEES UNLESS COUNSEL IS FIRST CONSULTED. THIS DOCUMENT SHOULD NOT BE ATTACHED TO OR MADE A PART OF AN AGENDA FOR ANY PUBLIC MEETING, NOR SHOULD IT BE DISCUSSED BY ANY PUBLIC BODY IN OPEN SESSION WITHOUT FIRST CONSULTING WITH COUNSEL.

SENT VIA EMAIL

This second I saw "CONFIDENTIAL COMMUNICATION" I stopped reading, made a partial screen shot, and am sending this back to you because it may have been sent in error to me. I had previously just thumbed through it and saw an attorney had subscribed his/her name to it.

As anxious as I am to read it, I must refrain from doing so as an officer the Court (California). If someone will assure me that the **attorney client privilege** is being waived, I'll proceed to read it. Otherwise, upon your response that the privilege is not being waived, I will remove the attachment from the email and destroy it to protect the confidence.

Know that I play by the rules.

Cordially,  
John

Please let me know.

On 5/7/2018 4:17 PM, LEDET Elizabeth wrote:

Please review this response and cost estimate.

Please contact us if you have any questions.

--

John Laurence Poole  
1566 Court ST NE  
Salem OR 97301-4241  
707-812-1323 office

--

John Laurence Poole  
1566 Court ST NE  
Salem OR 97301-4241  
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\*\*\*\*\*CONFIDENTIALITY NOTICE\*\*\*\*\*

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

\*\*\*\*\*



DEPARTMENT OF JUSTICE  
GENERAL COUNSEL DIVISION

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SENT VIA EMAIL

DATE: April 26, 2018

TO: Michael Rock, Transportation Planning Unit Manager  
Oregon Department of Transportation

FROM: Lucinda D. Jackson, Senior Assistant Attorney General  
Government Services Section *Lucinda D. Jackson*

SUBJECT: Applicability of NHPA Section 106 to the State Street Refinement Plan  
DOJ File No.: 734120-GG0443-18

You have asked whether ODOT should have conducted a review under Section 106 of the National Historic Preservation Act (Section 106) when it gave a Transportation and Growth Management Program (TGM) grant to the City of Salem for the State Street Refinement Plan (SSRP). The short answer is no.

National Historic Preservation Act, Section 106

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to take into account the effects of their undertakings on historic properties. federal agencies must comply with Section 106 when they are either directly involved in a federal activity or indirectly involved through funding, approving, permitting or licensing the undertaking. For purposes of Section 106 an "undertaking" is defined as:

a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried with Federal financial assistance; and those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.<sup>1</sup>

<sup>1</sup> 36 CFR Part 800(16)(y)

If an activity is not an “undertaking” by a federal agency, Section 106 does not apply.

The courts have concluded that “providing federal assistance” means “approving the expenditure of federal funds.” *Lee v. Thornburgh*, 877 F2d 1053, 1056-1057. However, an activity funded by a federal agency is not always an “undertaking.” The general principle appears to be that the federal involvement must be substantial, or the federal assistance or approval must be necessary for the activity to proceed, for the activity to be a federal undertaking to which Section 106 applies.

In *Morris County Trust for Historic Preservation v. Pierce*,<sup>2</sup> the federal Housing and Urban Development agency (HUD) provided funds to the town of Dover for an Urban Renewal Plan and signed a loan which provided funds to undertake the plan. The federal district court held that the “NHPA ... applied to ongoing Federal actions as long as a Federal agency has the opportunity to exercise authority at any stage of an undertaking where alterations might be made to modify its impacts on historic preservation goals.”<sup>3</sup> Likewise, in *Tyler v. Cisneros*,<sup>4</sup> HUD provided funds to the City of San Francisco and delegated to the City the NHPA compliance. The court found that HUD had continuing authority over the project because it was a signator on an agreement with language providing ongoing authority over the project. In cases that did not involve federal funding, the courts have also held that the federal agency had to exercise continuing control over the activity for Section 106 to apply. For example, where the National Park Service no longer had control over property that it had transferred, the court found that Section 106 did not apply.<sup>5</sup> And in a case where federal funds had been used solely for regional planning and no additional federal funds had been obligated for the construction of the highway, the court held that there was no continuing federal oversight authority and, therefore, no federal undertaking.<sup>6</sup>

### Programmatic Agreement

Under the NHPA, federal agencies can enter into programmatic agreements with state or local agencies to carry out the Section 106 process for federal activities. In the Programmatic Agreement (Agreement)<sup>7</sup> between FHWA and ODOT, ODOT has been delegated authority to determine whether a federal action is an undertaking under Section 106. In the current situation, ODOT is therefore required to determine whether the federal funding provided to the TGM program and to the City of Salem constitutes an undertaking. If ODOT determines that there is no undertaking, then the inquiry ends. Or if ODOT determines that the federal funding is an

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<sup>2</sup> *Morris County Trust for Historic Preservation v. Pierce*, 714 F2d 271 (1983).

<sup>3</sup> *Id.* at 280.

<sup>4</sup> *Tyler v. Cisneros*, 136 F3d 603 (1998).

<sup>5</sup> *Gettysburg Battlefield Preservation Ass'n v. Gettysburg College*, 799 F. Supp. 1571 (1992).

<sup>6</sup> *James River v. Richmond Metropolitan Authority*, 359 F. Supp. 611, 634 (1973).

<sup>7</sup> Stipulation 2: Delegation, B.1., *A Programmatic Agreement Among the Federal Highway Administration, the Advisory Council on Historic Preservation, the Oregon State Historic Preservation Office and the Oregon Department of Transportation Regarding Implementing Section 106 of the National Historic Preservation Act for the Federal-Aid Highway Program in Oregon.*



undertaking but no historic properties are adversely affected, the inquiry ends. ODOT must document this latter determination as required by the Agreement.<sup>8</sup>

### Transportation and Growth Management Program and City of Salem Grant

The TGM program is primarily funded by the Federal Highway Administration (FHWA) under the federal Fixing America's Surface Transportation Act (FAST-Act). FHWA provides the funds to ODOT who, along with the Department of Land Conservation and Development (DLCD), manages the TGM program and awards grants to local jurisdictions.

The TGM program was created to assist local agencies with integrating transportation planning with statewide land use planning. ODOT and DLCD jointly manage the TGM program within Oregon. For the current biennium, each agency's responsibilities are set forth in the *2017-2019 Interagency Agreement Between ODOT and DLCD for the TGM Program* (IAA). This IAA requires that FHWA approve the work and tasks to be provided by ODOT and DLCD to administer the TGM program.<sup>9</sup> Once FHWA approves the IAA statement of work to administer the TGM program, there are no further approvals or oversight by FHWA. ODOT and DLCD then disburse the TGM funds through grants and other assistance programs to local governments.

ODOT and DLCD awarded a TGM grant to the City of Salem in August 2014 and in July 2015 entered into an intergovernmental agreement (SSRP IGA) for the City to develop the State Street Refinement Plan (SSRP). FHWA did not review the City's application or approve it nor did FHWA participate in developing the project scope. The SSRP IGA required that the City develop a complete land use plan and supportive street design for all modes of travel for a segment of State Street, a local city street. This draft plan prepared for the SSRP IGA was completed over six months ago. Even though the SSRP IGA issued pursuant to the TGM grant required the City to produce a plan that included recommended actions for implementing the SSRP, it did not require the City to take any action to approve these changes. I understand that the City is now in the process of considering changes to its zoning code to implement the SSRP and a local citizen has raised the issue regarding the lack of a Section 106 review.

### Discussion

Since a federal agency is not directly involved in this project, our analysis begins with determining whether a federal agency is indirectly involved with this project through funding, approving, permitting or licensing an undertaking. In order to do so, we must consider whether there is a federal undertaking. The first point of federal involvement is when FHWA provides funds to ODOT for the TGM program. One could argue this is a federal undertaking since it is a "program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency." The Advisory Council on Historic Preservation (ACHP)<sup>10</sup> provides some guidance in

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<sup>8</sup> *Id.* Stipulation 4: Stand Review for Program Undertakings, A.2.

<sup>9</sup> See IGA, Terms of Agreement, Paragraph 1.

<sup>10</sup> The ACHP is the federal agency that implements the NHPA.

its "Section 106 Applicant Toolkit"<sup>11</sup> that we must consider. When defining an undertaking for Section 106 review, ACHP suggests that the federal agency, or in this case ODOT who has been delegated authority to make this determination, ask the following questions:<sup>12</sup>

1. Is a federally owned or federally controlled property involved in the project?
2. Will the project that is receiving federal funds, grants, or loans involve any bricks and mortar activities. Will it involve ground disturbance or excavation? If it is a transportation project, does the project include financial assistance from agencies such as the FHWA?
3. Does the project require a federal permit, license, or approval?
4. Does a privately funded undertaking require the use of federal lands?

When FHWA is providing funds to ODOT for the TGM program, the answer to each of these questions is no. Therefore, there is not a federal undertaking when FHWA provides funds to ODOT for the TGM program and a Section 106 review is not required.

The second point of federal involvement we need to analyze is when ODOT and DLCD provide federal funds to a local jurisdiction. Although the nexus between the federal agency and the City in this case is not as direct, it could be argued that the federal undertaking occurred when ODOT funded the City's TGM grant with federal funds. The guidance from FHWA and the ACHP and the case law does not provide a clear answer as to whether the type of funding provided by ODOT to the City is an undertaking subject to Section 106. However, the grant to the City and resulting SSRP did not involve any brick and mortar activities or ground disturbance or excavation. And although the project did include planning for transportation, it is not a transportation project in the sense that a road is being funded and built by FHWA. Therefore, based on ACHP's guidance, the TGM grant provided to the City or the resulting SSRP would not be a federal undertaking.

In addition, the case law cited above indicates that the federal agency has to have continuing control or approval over the activity for the activity to be a federal undertaking. In this case, FHWA's control and approval ended when it approved ODOT and DLCD's statement of work for the administration of the TGM program. Therefore, the federal funding provided to the TGM program for the grant to the City and the resulting SSRP was not a federal undertaking subject to Section 106 review.

LDJ:blt/DM8913967

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<sup>11</sup> <http://www.achp.gov/apptoolkit.html>.

<sup>12</sup> The questions have been summarized for the purpose of this memo.

## **INTERGOVERNMENTAL AGREEMENT**

City of Salem, State Street Corridor Plan

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation (“ODOT” or “Agency”), and City of Salem (“City” or “Grantee”).

### **RECITALS**

1. The Transportation and Growth Management (“TGM”) Program is a joint program of ODOT and the Oregon Department of Land Conservation and Development.

2. The TGM Program includes a program of grants for local governments for planning projects. The objective of these projects is to better integrate transportation and land use planning and develop new ways to manage growth in order to achieve compact pedestrian, bicycle, and transit friendly urban development.

3. This TGM Grant (as defined below) is financed with federal Moving Ahead for Progress in the 21<sup>st</sup> Century (“MAP-21”) funds. Local funds are used as match for MAP-21 funds.

4. By authority granted in Oregon Revised Statutes (“ORS”) 190.110, state agencies may enter into agreements with units of local government or other state agencies to perform any functions and activities that the parties to the agreement or their officers or agents have the duty or authority to perform.

5. City has been awarded a TGM Grant which is conditional upon the execution of this Agreement.

6. The parties desire to enter into this Agreement for their mutual benefit.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **SECTION 1. DEFINITIONS**

Unless the context requires otherwise, the following terms, when used in this Agreement, shall have the meanings assigned to them below:

A. "City's Amount" means the portion of the Grant Amount payable by ODOT to City for performing the tasks indicated in Exhibit A as being the responsibility of City.

B. "City's Matching Amount" means the amount of matching funds which City is required to expend to fund the Project.

C. "City's Project Manager" means the individual designated by City as its project manager for the Project.

D. "Consultant" means the personal services contractor(s) (if any) hired by ODOT to do the tasks indicated in Exhibit A as being the responsibility of such contractor(s).

E. "Consultant's Amount" means the portion of the Grant Amount payable by ODOT to the Consultant for the deliverables described in Exhibit A for which the Consultant is responsible.

F. "Direct Project Costs" means those costs which are directly associated with the Project. These may include the salaries and benefits of personnel assigned to the Project and the cost of supplies, postage, travel, and printing. General administrative costs, capital costs, and overhead are not Direct Project Costs. Any jurisdiction or metropolitan planning organization that has federally approved indirect cost plans may treat such indirect costs as Direct Project Costs.

G. "Federally Eligible Costs" means those costs which are Direct Project Costs of the type listed in Exhibit D incurred by City and Consultant during the term of this Agreement.

H. "Grant Amount" or "Grant" means the total amount of financial assistance disbursed under this Agreement, which consists of the City's Amount and the Consultant's Amount.

I. "ODOT's Contract Administrator" means the individual designated by ODOT to be its contract administrator for this Agreement.

J. "PSK" means the personal services contract(s) executed between ODOT and the Consultant related to the portion of the Project that is the responsibility of the Consultant.

K. "Project" means the project described in Exhibit A.

L. "Termination Date" has the meaning set forth in Section 2.A below.

M. "Total Project Costs" means the total amount of money required to complete the Project.

N. "Work Product" has the meaning set forth in Section 5.I below.

## SECTION 2. TERMS OF AGREEMENT

A. Term. This Agreement becomes effective on the date on which all parties have signed this Agreement and all approvals (if any) required to be obtained by ODOT have been received. This Agreement terminates on February 28, 2017 ("Termination Date").

B. Grant Amount. The Grant Amount shall not exceed \$239,220.

C. City's Amount. The City's Amount shall not exceed \$30,420.

D. Consultant's Amount. The Consultant's Amount shall not exceed \$208,800.

E. City's Matching Amount. The City's Matching Amount is \$32,695 or 12.02% of the Total Project Costs.

## SECTION 3. DISBURSEMENTS

A. Subject to submission by City of such documentation of costs and progress on the Project (including deliverables) as are satisfactory to ODOT, the City may be reimbursed by ODOT for, or may use as part of the City's Matching Amount, as the case may be, only Direct Project Costs that are Federally Eligible Costs that it incurs after the execution of this Agreement up to the City's Amount. Generally accepted accounting principles and definitions of ORS 294.311 shall be applied to clearly document verifiable costs that are incurred.

B. City shall present reimbursement requests, cost reports, progress reports, and deliverables to ODOT's Contract Administrator no less than every other month. City shall submit reimbursement requests or cost reports for 100% of City's Federally Eligible Costs, and shall be reimbursed at 48.20% up to the City's Amount.

C. ODOT shall make interim payments to City for deliverables identified as being City's responsibility in the approved statement of work set out in Exhibit A within 45 days of satisfactory completion (as determined by ODOT's Contract Administrator) of such deliverables.

D. ODOT reserves the right to withhold payment equal to ten percent (10%) of each disbursement until 45 days after ODOT's Contract Administrator's approval of the completion report described Section 5.K(2), at which time the balance due to City under this Agreement shall be payable.

E. Within 45 days after the latter of the Termination Date of this Agreement or City's compliance with Section 5.K. below, ODOT shall pay to City the balance due under this Agreement.

F. ODOT shall limit reimbursement of travel expenses in accordance with current State of Oregon Accounting Manual, General Travel Rules, effective on the date the expenses are incurred.

#### **SECTION 4. CITY'S REPRESENTATIONS, WARRANTIES, AND CERTIFICATION**

A. City represents and warrants to ODOT as follows:

1. It is a municipality duly organized and existing under the laws of the State of Oregon.

2. It has full legal right and authority to execute and deliver this Agreement and to observe and perform its duties, obligations, covenants and agreements hereunder and to undertake and complete the Project.

3. All official action required to be taken to authorize this Agreement has been taken, adopted and authorized in accordance with applicable state law and the organizational documents of City.

4. This Agreement has been executed and delivered by an authorized officer(s) of City and constitutes the legal, valid and binding obligation of City enforceable against it in accordance with its terms.

5. The authorization, execution and delivery of this Agreement by City, the observation and performance of its duties, obligations, covenants and agreements hereunder, and the undertaking and completion of the Project do not and will not contravene any existing law, rule or regulation or any existing order, injunction, judgment, or decree of any court or governmental or administrative agency, authority or person having jurisdiction over it or its property or violate or breach any provision of any agreement, instrument or indenture by which City or its property is bound.

6. The statement of work attached to this Agreement as Exhibit A has been reviewed and approved by the necessary official(s) of City.

B. As federal funds are involved in this Grant, Exhibit D sets forth information required by 2 CFR Subtitle B with guidance at 2 CFR Part 200, and City, by execution of this Agreement, makes the certifications set forth in Exhibits B and C.

C. City understands and agrees that ODOT's obligation hereunder is contingent on ODOT having received funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.

#### **SECTION 5. GENERAL COVENANTS OF CITY**

A. City shall be responsible for the portion of the Total Project Costs in excess of the Grant Amount. City shall complete the Project; provided, however, that City shall not be liable for the quality or completion of that part of the Project which Exhibit A describes as the responsibility of the Consultant.

B. City shall, in a good and workmanlike manner, perform the work on the Project, and provide the deliverables for which City is identified in Exhibit A as being responsible.

C. City shall perform such work identified in Exhibit A as City's responsibility as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform such work. City shall also be responsible for providing for employment-related benefits and deductions that are required by law, including, but not limited to, federal and state income tax withholdings, unemployment taxes, workers' compensation coverage, and contributions to any retirement system.

D. All employers, including City, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126(2). Employers Liability insurance with coverage limits of not less than \$500,000 must be included. City shall require each of its subcontractors, if any, to comply with, and shall ensure that each of its subcontractors, if any, complies with these requirements.

E. City shall not enter into any subcontracts to accomplish any of the work described in Exhibit A, unless it first obtains written approval from ODOT.

F. City agrees to cooperate with ODOT's Contract Administrator. At the request of ODOT's Contract Administrator, City agrees to:

- (1) Meet with the ODOT's Contract Administrator; and
- (2) Form a project steering committee (which shall include ODOT's Contract Administrator) to oversee the Project.

G. City shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, applicable provisions of the Oregon Public Contracting Code. Without limiting the generality of the foregoing, City expressly agrees to comply with: (1) Title VI of Civil Rights Act of 1964; (2) Title V of the Rehabilitation Act of 1973; (3) the Americans with Disabilities Act of 1990 and ORS 659A.142; (4) all regulations and administrative rules established pursuant to the foregoing laws; and (5) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

H. City shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, City shall maintain any other records pertinent to this Agreement in such a manner as to clearly document City's performance. City acknowledges and agrees that ODOT, the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans, and writings of City that are pertinent to this Agreement to perform examinations and audits and make copies, excerpts and transcripts.

City shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

I. (1) All of City's work product related to the Project that results from this Agreement ("Work Product") is the exclusive property of ODOT. ODOT and City intend that such Work Product be deemed "work made for hire" of which ODOT shall be deemed the author. If, for any reason, such Work Product is not deemed "work made for hire", City hereby irrevocably assigns to ODOT all of its rights, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark,



trade secret, or any other state or federal intellectual property law or doctrine. City shall execute such further documents and instruments as ODOT may reasonably request in order to fully vest such rights in ODOT. City forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

(2) ODOT hereby grants to City a royalty free, non-exclusive license to reproduce any Work Product for distribution upon request to members of the public.

(3) City shall ensure that any work products produced pursuant to this Agreement include the following statement:

“This project is partially funded by a grant from the Transportation and Growth Management (TGM) Program, a joint program of the Oregon Department of Transportation and the Oregon Department of Land Conservation and Development. This TGM grant is financed, in part, by federal Moving Ahead for Progress in the 21<sup>st</sup> Century (“MAP-21”), local government, and State of Oregon funds.

“The contents of this document do not necessarily reflect views or policies of the State of Oregon.”

(4) The Oregon Department of Land Conservation and Development and ODOT may each display appropriate products on its “home page”.

J. Single Audit Act Requirements. The TGM Program receives MAP-21 grant funds through the Catalog of Federal Domestic Assistance (“CFDA”) No. 20.205: Highway Planning and Construction and is subject to the regulations of the U.S. Department of Transportation (“USDOT”). City is a sub-recipient. If City expends \$500,000 or more of federal funds (from all sources) in its fiscal year beginning prior to December 26, 2015, City shall have a single organization-wide audit conducted in accordance with the Single Audit Act. If City expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, City shall have a single organization-wide audit conducted in accordance with the provisions of 2 C.F.R. Subtitle B, with guidance at 2 C.F.R. part 200. Copies of all audits must be submitted to ODOT within 30 days of completion. If City expends less than \$500,000 in federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, City is exempt from federal audit requirements for that year. Exhibit D sets out the information required by 2 CFR Subtitle B with guidance at 2 CFR Part 200. Records must be available as provided in Section 5.H. above.

K. Unless otherwise specified in Exhibit A, City shall submit all final products

produced in accordance with this Agreement to ODOT's Contract Administrator in the following form:

- (1) two hard copies; and
- (2) in electronic form using generally available word processing or graphics programs for personal computers via e-mail or on compact diskettes.

L. Within 30 days after the Termination Date, City shall

- (1) pay to ODOT City's Matching Amount less Federally Eligible Costs previously reported as City's Matching Amount. ODOT may use any funds paid to it under this Section 5.L (1) or any of the City's Matching Amount that is applied to the Project pursuant to Section 3.A to substitute for an equal amount of federal MAP-21 funds used for the Project or use such funds as matching funds; and

- (2) provide to ODOT's Contract Administrator, in a format provided by ODOT, a completion report. This completion report shall contain:

- (a) The permanent location of Project records (which may be subject to audit);
- (b) A summary of the Total Project Costs, including a breakdown of those Project costs that are reimbursable hereunder and those costs which are being treated by City as City's Matching Amount;
- (c) A list of final deliverables; and
- (d) City's final disbursement request.

## **SECTION 6. CONSULTANT**

If the Grant provided pursuant to this Agreement includes a Consultant's Amount, ODOT shall enter into a PSK with the Consultant to accomplish the work described in Exhibit A as being the responsibility of the Consultant. In such a case, even though ODOT, rather than City is the party to the PSK with the Consultant, ODOT and City agree that as between themselves:

- A. Selection of the Consultant will be conducted by ODOT in accordance with ODOT procedures with the participation and input of City;

- B. ODOT will review and approve Consultant's work, billings and progress reports after having obtained input from City;
- C. City shall be responsible for prompt communication to ODOT's Contract Administrator of its comments regarding (A) and (B) above; and
- D. City will appoint a Project Manager to:
  - (1) be City's principal contact person for ODOT's Contract Administrator and the Consultant on all matters dealing with the Project;
  - (2) monitor the work of the Consultant and coordinate the work of the Consultant with ODOT's Contract Administrator and City personnel, as necessary;
  - (3) review any deliverables produced by the Consultant and communicate any concerns it may have to ODOT's Contract Administrator; and
  - (4) review disbursement requests and advise ODOT's Contract Administrator regarding payments to Consultant.

#### **SECTION 7. ODOT'S REPRESENTATIONS AND COVENANTS**

- A. [Reserved]
- B. ODOT represents that the statement of work attached to this Agreement as Exhibit A has been reviewed and approved by the necessary official(s) of ODOT.
- C. ODOT will assign a Contract Administrator for this Agreement who will be ODOT's principal contact person regarding administration of this Agreement and will participate in the selection of the Consultant, the monitoring of the Consultant's work, and the review and approval of the Consultant's work, billings and progress reports.
- D. If the Grant provided pursuant to this Agreement includes a Consultant's Amount, ODOT shall enter into a PSK with the Consultant to perform the work described in Exhibit A designated as being the responsibility of the Consultant, and in such a case ODOT agrees to pay the Consultant in accordance with the terms of the PSK up to the Consultant's Amount.

## **SECTION 8. TERMINATION**

This Agreement may be terminated by mutual written consent of all parties. ODOT may terminate this Agreement effective upon delivery of written notice to City, or at such later date as may be established by ODOT under, but not limited to, any of the following conditions:

A. City fails to complete work specified in Exhibit A within the time specified in this Agreement, including any extensions thereof, or fails to perform any of the provisions of this Agreement and does not correct any such failure within 10 days of receipt of written notice or the date specified by ODOT in such written notice.

B. Consultant fails to complete work specified in Exhibit A within the time specified in this Agreement, including any extensions thereof, and does not correct any such failure within 10 days of receipt of written notice or the date specified by ODOT in such written notice.

C. 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 ODOT is prohibited from paying for such work from the planned funding source.

D. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.

In the case of termination pursuant to A, B, C or D above, ODOT shall have any remedy at law or in equity, including but not limited to termination of any further disbursements hereunder. Any termination of this Agreement shall not prejudice any right or obligations accrued to the parties prior to termination.

## **SECTION 9. GENERAL PROVISIONS**

A. Time is of the essence of this Agreement.

B. Except as otherwise expressly provided in this Agreement, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to ODOT or City at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party

may hereafter indicate pursuant to this Section. Any communication or notice so addressed and mailed is in effect five (5) days after the date postmarked. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT's Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

C. ODOT and City are the only parties to this Agreement and are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons (including but not limited to any Consultant) unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

D. Sections 5(H), 5(I), and 9 of this Agreement and any other provision which by its terms is intended to survive termination of this Agreement shall survive.

E. The parties agree as follows:

(a) Contribution.

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 ODOT or Grantee ("Notified Party") with respect to which the other party ("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 the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which ODOT is jointly liable with the Grantee (or would be if joined in the Third Party Claim), ODOT 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 the Grantee in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of the Grantee 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 ODOT on the one hand and of the Grantee 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. The ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including but not limited to the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.

With respect to a Third Party Claim for which the Grantee is jointly liable with ODOT (or would be if joined in the Third Party Claim), the Grantee 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 ODOT in such proportion as is appropriate to reflect the relative fault of the Grantee on the one hand and of ODOT 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 the Grantee on the one hand and of ODOT 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. The Grantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including but not limited to the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

(b) Choice of Law; Designation of Forum; Federal Forum.

(1) The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

(2) Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

(3) Notwithstanding Section 9.E (b)(2), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section 9.E(b)(3) applies to a claim brought against the State of Oregon only to the extent Congress has appropriately

abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section 9.E(b)(3) is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

(c) Alternative Dispute Resolution.

The parties shall attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the Agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding mediation or non-binding arbitration) to resolve the dispute short of litigation.

F. This Agreement and attached Exhibits (which are by this reference incorporated herein) 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 modification or change of terms of this Agreement shall bind either party unless in writing and signed by all parties and all necessary approvals have been obtained. Budget modifications and adjustments from the work described in Exhibit A must be processed as an amendment(s) to this Agreement and the PSK. No waiver or consent shall be effective unless in writing and signed by the party against whom such waiver or consent is asserted. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

G. 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.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives are duly authorized, have read this Agreement, understand it, and agree to be bound by its terms and conditions.





City

City of Salem

By: Kacey Duncan  
(Official's Signature)

Kacey Duncan, Interim City Manager  
(Printed Name and Title of Official)

Date: 7/21/15

ODOT

STATE OF OREGON, by and through  
its Department of Transportation

By: Jerri Bohard  
Jerri Bohard, Division Administrator  
Transportation Development Division

Date: 7/23/15

*Jc*  
*7-23-15*  
  
*ME*  
*7-23-15*

ATTORNEY GENERAL'S OFFICE

Approved as to legal sufficiency by the  
Attorney General's office.

By: Approved by Lynn Nagasako  
(Official's Signature)

Date: via e-mail dated July 2, 2015

Contact Names:

Lisa Anderson-Ogilvie  
City of Salem  
555 Liberty Street SE, Room 205  
Salem, OR 97301-3503  
Phone: 5035886173  
Fax: 503-361-2202  
E-Mail: LMAnderson@cityofsalem.net

Naomi Zwerdling, Contract Administrator  
Transportation and Growth Management Program  
455 Airport Rd. SE Bldg. B,  
Salem, OR 97310-5395  
Phone: 503-986-2836  
Fax: 503-986-2840  
E-Mail: Naomi.zwerdling@odot.state.or.us



**EXHIBIT A**  
**STATEMENT of WORK and DELIVERY SCHEDULE**  
**for**  
**TGM 2D-14**  
**City of Salem**  
**State Street Corridor Plan**

	<b><u>Agency Project Manager</u></b> <b><u>("APM")</u></b>		<b><u>Consultant Project Manager</u></b>
Name: Address: Phone: Fax: Email:	Naomi Zwerdling ODOT Region 2 455 Airport Road SE, Bldg B Salem, OR 97301 503-986-2836 503-986-2840 Naomi.Zwerdling@odot.state.or.us	Name: Address: Phone: Fax: Email:	Bridget Wieghart Parsons Brinckerhoff 400 SW Sixth Avenue, Suite 802 Portland, OR 97204 503-478-2812 503-274-1412 wieghart@pbworld.com
	<b><u>City Project Manager</u></b>		
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**Acronyms and Definitions**

Agency/ODOT	Oregon Department of Transportation
APM	Agency Project Manager
City	City of Salem
GIS	Geographic Information Systems
HCM	Highway Capacity Manual
HSM	Highway Safety Manual
LOS	Level of Service
LTS	Level of Traffic Stress
MMLOS	Multi-modal Level-of-Service
MWVCOG	Mid-Willamette Valley Council of Governments
NEN	Northeast Neighbors Neighborhood Association
PMT	Project Management Team

Project	State Street Refinement Plan project
SAC	Stakeholder Advisory Committee
SAMTD	Salem Area Mass Transit District
SESNA	South East Salem Neighborhood Association
SSRP	State Street Refinement Plan
TAC	Technical Advisory Committee
TPAU	ODOT's Transportation Planning Analysis Unit
TSP	Transportation System Plan
UDC	City of Salem Unified Development Code
V/C	<b>Volume to Capacity</b>

#### **A. PROJECT DESCRIPTION and OVERVIEW of SERVICES**

Agency is contracting with Consultant for Services in connection with the following project (the "Project"):

##### **Project Purpose and Transportation Relationship and Benefit**

The State Street Refinement Plan Project is intended to revitalize a section of State Street in the City of Salem ("City") into a vibrant, attractive, walkable mixed-use corridor through planning for coordinated land use and transportation improvements. Zone changes, land use regulations and design standards will be developed to encourage pedestrian-friendly and mixed-use development or redevelopment. The zone changes and land use improvements can influence the creation of alternative street design cross sections within the constrained right-of-way on State Street that can accommodate facilities and amenities to make people walking and biking feel welcome and comfortable.

##### **Study Area**

The Project study area (the "Study Area") is approximately a mile of the State Street corridor and adjacent lands, from 12<sup>th</sup> Street to the 25<sup>th</sup> Street, as shown in the attached map (see attached State Street Refinement Plan Project Area map).

The Study Area includes 1.5 blocks on either side of State Street between 12<sup>th</sup> to 25<sup>th</sup> Streets for the purposes of the land use analysis. For traffic analysis purposes, close parallel streets will be included as agreed between ODOT, the City and the Consultant during the course of the Consultant's performance of the Services.

##### **Background**

The State Street corridor is an important commercial and transportation corridor in the City. State Street is designated a major arterial in the City's Transportation System Plan ("TSP"), which was most recently updated in 2014. The Study Area is home to a variety of offices, retail stores, restaurants, and other businesses, as well as a mix of housing and institutional uses by the State of Oregon, Willamette University, the Salem-Keizer School District and others. State

Street is a four-lane street that connects to downtown Salem and carries up to 24,000 vehicles per day.

There are many land use issues that make the State Street corridor unattractive, auto-oriented and unwelcoming. There are several vacant or underutilized properties on State Street, as well as numerous surface parking lots and parking areas in front of buildings. These conditions detract from the overall vitality and attractiveness of the area and tend to discourage walking. Additionally, much of the development is single-story, single-use buildings, which do not create a vibrant environment.

The current zoning also makes it difficult to develop mixed-use buildings, particularly in the Commercial Retail (“CR”) zone where a conditional use permit is required to develop housing. In addition, while the City has traditionally used overlay zones with design standards to establish pedestrian-oriented, mixed-use districts, many of the existing overlays have cumbersome or confusing standards and processes. These issues have been identified by local officials as well as community members who have participated in the *Looking Forward* neighborhood planning process. The Northeast Neighbors Neighborhood Association (“NEN”) and the Southeast Salem Neighborhood Association (“SESNA”) border the Study Area. The draft *NEN-SESNA Neighborhood Plan* includes the following goal: “...Revitalize State Street as a vibrant, mixed-use corridor that encourages walking activity, is safe and attractive, creates a distinctive sense of place, and serves as an asset to surrounding neighborhoods...” In addition, the Salem City Council’s economic development strategy, adopted as part of the City Council goals for Fiscal Years 2013-2015, is to “...develop a plan for redevelopment of State Street from 12<sup>th</sup> Street to the State Penitentiary and/or from 12<sup>th</sup> to 17<sup>th</sup>...”

In addition to land use challenges, the street configuration contributes to an auto-oriented corridor. As a major arterial, State Street should have a 96-foot right-of-way, according to the 2014 TSP, and include four travel lanes, bike lanes, a planter strip and sidewalks. The actual right-of-way of State Street varies from approximately 100 feet near 12th Street NE to 60 feet near 19th Street SE. Due to this constrained right-of-way in many sections, improvements to the State Street corridor have not advanced, resulting in a lack of sufficient bicycle and pedestrian facilities and amenities. The State Street Corridor, which includes Mill Creek, is also prone to flooding, which presents additional challenges.

Recent planning efforts, including the *Looking Forward* neighborhood planning process for NEN and SESNA, have identified specific transportation barriers that make the State Street corridor uninviting and potentially unsafe for people walking, biking, using transit and driving. For example, State Street lacks dedicated bicycle facilities west of 24th Street – a project identified in the 2014 TSP – and very few areas include planter strips to buffer pedestrians from traffic. The lack of sufficient facilities deters people from biking or walking in the State Street Corridor. To address these and other identified issues, the draft *NEN-SESNA Neighborhood Plan* recommends that the City develop “alternative street designs for major and minor arterial

streets that pass through developed neighborhoods and lack sufficient right-of-way to meet current design standards.” Bicycle facilities, wider sidewalks, and street trees are recommended in the alternative designs, and State Street is listed as one of the streets for which alternative designs should be considered.

This Project will result in land use regulations for the Study Area that remove barriers to mixed-use development and provide simple design standards that promote pedestrian-oriented development. The land use regulations will either revise an existing mixed-use zone or create a new zone that permits a mix of uses, including residential and commercial uses. Design standards will be incorporated in the new or revised zone that address building design, parking, landscaping, walking and biking access and connectivity. The land use regulations must be developed for adoption into the City’s Unified Development Code (“UDC”), and must be drafted in a manner that allows them to be applied to other areas of the City where similar development is desired.

The zone changes and new land use regulations can result in alternative cross sections that illustrate how the constrained right-of-way on State Street can accommodate facilities and amenities to make the street feel welcome and comfortable, including wider sidewalks, street trees, bicycle facilities, and other improvements. Lane reconfigurations or reductions could also be considered. These designs will allow for context sensitive street design that is tailored to the existing constrained built environment. The preferred cross sections will be recommended for adoption into the City’s 2014 TSP as special street cross sections for State Street. The preferred cross sections will serve as models for how other similarly-constrained streets in the City, such as Center Street NE, could be improved for bicycles and pedestrians.

### **Project Objectives**

The objectives for this Project are to undertake a comprehensive analysis of the area and to use that information to develop a complete land use plan and supportive street design that can provide a welcoming environment for all modes of travel and support and enhance the district’s economic vitality and marketability. The Project goals include the following:

- 1 Establish a vision for the community’s desired future for Study Area, along with specific objectives and guiding principles to help achieve the vision.
- 2 Facilitate the revitalization of the Study Area as a viable and sustainable business district.
- 3 Provide for a mix of housing types, work places, shops and parks for people of all ages and incomes to support the creation of an attractive, distinctive place and enhancing the relationship between buildings and the public realm.
- 4 Strengthen the economic vitality of the Study Area by removing barriers to mixed-use development, enhancing walkability, bicycle infrastructure, landscape and streetscape elements, aesthetics and function of streets and enhance site access from adjacent neighborhoods.
- 5 Help to create the balanced multimodal transportation system called for in the City’s 2014 TSP, where the streets better accommodate a variety of modes to offer attractive options to driving for those who live, shop and travel through the corridor.

- 6 Support the creation of a place where everyone has the opportunity to meet their mobility needs without discrimination due to age, income, or ability, and where people can more safely meet their daily needs within a short distance on foot, by bicycle or by bus.
- 7 Consider local as well as regional transportation needs to promote more efficient traffic flow and safety within and through the Study Area.
- 8 Support City planning efforts to identify and enhance opportunities for infill, growth and redevelopment.
- 9 Actively engage property owners, businesses, residents and stakeholders, in all phases of the Project.

### **Project Management and Roles**

The City shall manage the Project. The City shall provide existing and readily available data, review and comment on Project deliverables, coordinate meeting logistics, advertise meetings, coordinate mailings, and participate in Project committees.

The City shall ensure involvement of City staff, Neighborhood Associations, active transportation advocates, Planning Commission and City Council members throughout the Project (e.g., through periodic updates and committee assignments) to help assure that final products have the City's and community's support. The City's Project Manager shall summarize comments received from other City and ODOT reviewers on draft products and provide guidance where there is conflict between comments from reviewers.

Consultant shall perform the Project technical tasks, prepare content for meetings and facilitate Project meetings. Consultant shall distribute Project deliverables and other materials to the City and APM by e-mail, unless hardcopy is specified in a subtask. Consultant shall coordinate Project work with Project committees, the City and the APM as needed, to incorporate input received at meetings and in review of Project deliverables. Consultant shall participate in Project management calls (up to twice per month) to maintain the Project schedule.

Consultant shall prepare Project status reports as supporting documentation to accompany Consultant's invoice for each billing period.

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### **Methods of Analysis**

Assessment of transportation conditions, deficiencies, needs, and development of facility designs should consider established and generally accepted methods, published guidelines and policies, including the following:

- *Salem Transportation System Plan*
- Salem Public Works Design Standards
- Salem City Construction Standards & Specifications
- Draft *NEN-SESNA Neighborhood Plan*
- National Association of City Transportation Officials Urban Street Design Guide

- American Association of State Highway Transportation Officials (“AASHTO”) Guide for the Development of Bicycle Facilities
- AASHTO Guide for the Planning, Design, and Operation of Pedestrian Facilities
- AASHTO Policy on Geometric Design of Highways and Streets
- Manual on Uniform Traffic Control Devices
- ODOT Analysis Procedures Manual
- Salem Area Mass Transit District (“SAMTD”) Long Range and Strategic Plans
- Oregon Bicycle and Pedestrian Design Guide
- Main Street: When a Highway Runs Through It
- National Association of City Transportation Officials Urban Bikeway Design Guide
- Institute of Transportation Engineers Designing Urban Walkable Thoroughfares
- Road Diet Handbook
- Federal Highway Administration (“FHWA”) Road Diet Information Guide

Consultant shall note where deviations from adopted City or AASHTO standards are needed to accommodate improvements in the Study Area.

### **Written and Graphic Deliverable Requirements**

Project deliverables and meeting materials must be developed to integrate into Public Event Presentations and into the final State Street Refinement Plan (“SSRP”). Deliverables must be prepared in a graphic narrative format (i.e., using graphics with the minimum amount of text to address the objective of the task and to present conclusions).

All written (text) and graphic deliverables must be submitted in electronic versions. It is expected that draft deliverables will be written in such a manner that they are substantially complete and require only minor revisions.

Electronic versions of written (text) deliverables must be in Microsoft Word-compatible (.doc or .docx) or Portable Document (.pdf) format. Written deliverables must include the project name, a title that refers to the contract deliverable, draft number, and date of preparation.

Electronic versions of base and plan maps and Project documents may be in color. Maps, aerial photos, and other graphic material prepared for Project deliverables must be suitable for enlargement to create wall displays for Project meetings and presentations. Display-sized maps for Project meetings must be printed in color when important to public comprehension and must be temporarily mounted on foam core or similar material to allow display on an easel or wall; display of graphics by projector only is not acceptable.

The following text must appear in the final version of all final deliverables:

This Project is partially funded by a grant from the Transportation and Growth Management (“TGM”) Program, a joint program of the Oregon Department of



Transportation and the Oregon Department of Land Conservation and Development. This TGM grant is financed, in part, by federal Moving Ahead for Progress in the 21<sup>st</sup> Century (“MAP-21”), local government, and State of Oregon funds.

The contents of this document do not necessarily reflect views or policies of the State of Oregon.

Final plans, headers and footers, graphics, etc. must not include Consultant names and logos, Transportation and Growth Management Program or ODOT logos or Project codes, etc. These items must only be on the acknowledgement page.

### **Expectations About Traffic Analysis**

An Oregon-registered professional engineer (civil or traffic) must perform or oversee all traffic analysis Services. Final memoranda containing traffic analysis must be Professional Engineer stamped. Traffic analysis software must follow Highway Capacity Manual (“HCM”) 2010 procedures. Signalized intersection volume to capacity (“V/C”) ratios require HCM 2000 for computation. Traffic analysis must comply with ODOT’s Analysis Procedures Manual available at: <http://www.oregon.gov/ODOT/TD/TP/Pages/apm.aspx> unless established City procedures conflict. Consultant shall coordinate traffic analysis with the City as needed. Consultant shall submit methodology memoranda prior to beginning any traffic analysis.

The City shall provide any Geographic Information Systems (“GIS”) layers used for inventory and graphic deliverables [i.e. volumes, Level of Traffic Stress (“LTS”)] to both Transportation Planning Analysis Unit (“TPAU”) and the GIS Unit.

### **Meeting Requirements**

The City shall provide all meeting arrangements, including scheduling, providing comments on meeting materials, timely distribution of agendas and meeting materials, providing copies of materials for distribution at meetings, reserving a suitable location, advertising, posting notice, and mailing notice as required. The City shall schedule Stakeholder Advisory Committee (“SAC”), and Technical Advisory Committee (“TAC”) meetings to occur on the same day. Consultant shall develop technical meeting materials, prepare meeting agendas, lead meetings, and facilitate discussion of relevant issues.

Meeting locations must be accessible by the physically disabled. Meeting notices must include an offer to make accommodations for the disabled with sufficient advance notice, with contact information for such notification.

Notice of Project meetings must include reference to the Project Website where the Project background, schedule, and deliverable products are posted.

The City shall prepare a summary of each meeting and provide that summary to the Consultant

and APM within one week after the meeting. The meeting notes must include the following:

- Summary notes with key points raised during the meeting;
- How the City and Consultant intend to address these points; and
- An assessment of the implications of these points for Project scope and schedule.

### **Public Involvement**

The City shall issue press releases, place advertisements in media, process and send mail and e-mail, place articles and announcements in City publications, identify stakeholders and conduct similar activities to support public involvement efforts for the Project. Consultant shall prepare text and graphics for public involvement material, as more particularly specified in this Statement of Work and Delivery Schedule (“SOW”).

Public Involvement must allow the community an opportunity to fully engage in the State Street planning process. The City shall consider, and work with Consultant to address “environmental justice” issues; for purposes of this WOC, “environmental justice” is defined as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. “Fair treatment” means that no group of people, including a racial, ethnic, or a socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies. “Meaningful involvement” means that: (1) Potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and health; (2) The public's contribution can influence the regulatory agency's decision; (3) The concerns of all participants involved will be considered in the decision making process; and (4) The decision makers seek out and facilitate the involvement of those potentially affected.

The City shall provide for Spanish translation of key outreach materials throughout the Project.

The public involvement program must include specific steps to provide opportunities for participation by federal Title VI communities. City and Consultant shall utilize the ODOT Title VI (1964 Civil Rights Act) Plan guidance to identify Title VI populations, formulate public involvement strategies, and report outreach efforts to and participation by Title VI communities.

### **Task 1: Project Reconnaissance and Kickoff**

#### **Subtasks**

#### **1.1 Public Involvement Strategy Memorandum, Stakeholder Interviews and Summaries and Interested Parties List**

The City shall identify past and concurrent planning and urban design processes within the

Study Area and coordinate with Consultant to identify key stakeholders and issues addressed in these previous efforts. The City shall contact City elected officials and appointed bodies to determine how they want to be involved in the process. City shall identify stakeholders (organizations, constituencies, individuals, and key officials) and conduct between 12 and 15 interviews with these stakeholders to identify key issues of concern, obtain input on the corridor vision and goals and determine how their organizations want to be involved in the process. Between four and six of these interviews must be with agencies, organizations or institutions that serve Title VI populations in the corridor. The City shall provide the preliminary list of stakeholders and questions to the Consultant for review and comment prior to the interviews.

The City shall provide a draft Public Involvement Strategy Memorandum for discussion at the Project Kick-Off Meeting. The draft Public Involvement Strategy Memorandum must summarize the results of initial contacts for this Project, identify Title VI populations (i.e., low income, transportation disadvantaged, and minority populations in the Study Area) based on U.S. census data, identify locations for placement of outreach displays and project-related materials, describe a process for informing and involving business and property owners in the Study Area, and suggest other methods for connecting with a wide range of users in the Study Area. The Consultant shall review the draft Public Involvement Strategy Memorandum and provide comments on the draft to the City. The City shall prepare a final Public Involvement Strategy Memorandum based on Consultant and APM input.

The City shall establish and maintain an Interested Parties List of individuals and organizations that express interest in the Project or that own key properties or sites within the Study Area. Contacts on the Interested Parties List must be informed by the City via email of upcoming Public Events and opportunities to review Project deliverables.

## **1.2 SAC Roster**

The City shall form a SAC and prepare a roster with names, representations, and contact information for SAC members. Some of the members might be identified through the stakeholder interview process. The SAC will meet periodically to provide on-going guidance throughout the Project. Consultant shall attend all SAC meetings, and shall provide technical support for the SAC meetings as needed. Potential SAC members include representatives from:

- NEN
- SESNA
- Active Transportation advocate
- Architects or Developers
- Property Owners
- Business Owners
- Transit Riders or SAMTD Board Member
- Planning Commission
- City Council

- Willamette University
- School District
- Social Service Organizations

### **1.3 TAC Roster**

The City shall form a TAC and prepare a TAC roster with names, job titles, and contact information for TAC members. The TAC will meet periodically to review Project deliverables and provide guidance on work tasks. The TAC is expected to be made up of representatives of at least the following City departments and other agencies:

- City Public Works- Engineering, Traffic Engineering, Environmental Services (Street Trees)
- City Planning Division
- City Urban Development Department
- SAMTD
- Oregon Department of Land Conservation & Development
- Oregon Department of Administrative Services
- Public safety representative
- Bicycle and Pedestrian representative

### **1.4 Project Kickoff and Refined Project Schedule**

The City shall arrange and Consultant shall lead a Project Kickoff Meeting with City staff to review Project objectives and background, a work plan, methods for public participation from Public Involvement Strategy Memorandum, schedule, Study Area refinement, key deliverables and other items related to management of Project. City and Consultant shall coordinate on a transfer of existing and readily available data and documentation relevant to the Project from the City to the Consultant, at the Project Kickoff Meeting.

The Project Kickoff Meeting must include a tour of the Study Area to visit key sites that illustrate issues that will need to be addressed in the Project. The City shall provide logistics for the tour, including identification of tour stops and travel arrangements.

The City and Consultant shall establish protocols for coordination of the Project with other ongoing projects and initiatives relevant for the Project, at the Project Kickoff Meeting. Five or six Consultant staff must attend and participate in the Project Kickoff Meeting.

Consultant shall prepare a Refined Project Schedule using MS Project compatible software, and deliver it to the City and APM within two weeks after the Project Kick off Meeting, based on the discussion. Consultant shall schedule tasks concurrently, to minimize time.

### **1.5 Background Information**

The City shall provide background data and documents to the Consultant including information about existing conditions, planned improvements, forecasts of future conditions, and previous

assessments of potential improvements in the Study Area for review and approval by the Consultant. Background data and documents provided to the Consultant must include alternatives for improvements in the Study Area developed as part of the City's 2014 TSP and the 2015 *NEN-SESNA Neighborhood Plan*. The Consultant shall review the background data and documents and summarize missing information. The Consultant shall provide the summary of missing information to the City.

The City shall gather, map, and prepare a photo catalogue of the following existing conditions and provide to Consultant for analysis:

#### Land Use and Zoning

- zoning;
- existing land use;
- real estate market conditions, including the number of observed vacancies and observed properties for sale;
- location, type and estimated number of parking spaces;
- known non-conforming uses;
- known zoning code violations and variances; and
- building footprints, building heights, and other relevant site design characteristics.

#### Streets

- lane configuration and widths;
- high level analysis of roadway pavement condition;
- curb radii measurements;
- location of existing right-of-way and required right-of-way per City's 2014 TSP street designations;
- GIS sidewalk mapping on Study Area streets;
- location, length, and spacing of driveways;
- location of transit stops, size of transit stops, related transit amenities, service frequency, service span, sidewalk access, American's with Disabilities Act-compliant curb cuts or ramps, and ridership (on's and off's);
- any known access easement agreements;
- location of traffic signals;
- location of marked and unmarked pedestrian street crossings and closed crosswalks;
- location of one-way streets;
- location of bicycle facilities;
- location of transit stops;
- available Americans with Disabilities Act information;
- Study Area crash data;
- present conditions compared to City's standards for arterials;
- trees, utility poles and underground utilities;
- recent transportation studies relevant to the Study Area;
- signal timing data;

- obstructions within the sidewalk area; and
- street light locations.

The City shall review and summarize previous planning efforts related to the configuration of State Street in the Study Area, including alternatives for improvements in the Study Area developed as part of the City's 2014 TSP and the *Salem-Keizer Area Metropolitan Planning Organization Regional Transportation System Plan (2011)*.

### **1.6 Project Website**

The City shall develop a Project website within City's existing website to provide Project information (the "Project Website"). The City shall develop initial material for the Project Website, including an overview of Project objectives, an information graphic of the schedule showing major Project tasks and public meetings and tentative dates from Refined Project Schedule for upcoming public meetings.

The Project Website must include a comment form to allow visitors to provide input on land use and transportation-related deficiencies, needs, and potential solutions in the Study Area. The City shall update the Project Website as meeting dates are established or new Project material becomes available. The City shall compile all public comments received through the Project Website or by other means, and periodically provide these comments to Consultant.

### **1.7 Project Management Team ("PMT") Meetings**

The PMT includes the City, Consultant and APM and may include others as determined by the City or APM. The purpose of the PMT is to coordinate the Project and guide project management decisions. The City shall schedule and lead the calls. The PMT is expected to meet by conference call once or twice per month or on an as-needed basis for a total of 20 to 25 one-hour meetings throughout the Project.

### **1.8 Progress Reports and Schedule Updates**

Consultant shall provide monthly progress reports (18) which include updates on the status of deliverables, upcoming work and identify scope, budget or schedule issues. Consultant shall update the Refined Project Schedule and distribute updated schedule to City and APM for approval three to four times throughout the Project.

### **City Deliverables**

- 1.A Public Involvement Strategy Memorandum, Stakeholder Interviews and Summaries and Interested Parties List
- 1.B SAC Roster
- 1.C TAC Roster
- 1.D Project Kickoff Meeting
- 1.E Background Information
- 1.F Project Website

- 1.G PMT Meetings
- 1.H Review and comment on draft Consultant deliverables

### **Consultant Deliverables**

- 1.A Comments on Public Involvement Strategy Memorandum, Stakeholder Interviews and Summaries and Interested Parties List
- 1.B Comments on SAC Roster
- 1.C Project Kickoff Meeting and Refined Project Schedule
- 1.D Background Information
- 1.E PMT Meetings (20-25)
- 1.F Progress Reports (18) and Schedule Updates (3 to 4)

## **Task 2: Identify and Analyze Existing Conditions and Forecast Conditions**

### **Subtasks**

#### **2.1 Property and Business Owner Survey and Summary**

The City shall prepare and distribute a survey of property and business owners in the Study Area. The City must provide a draft of the survey materials to the Consultant and the Consultant shall review and provide comments on the draft survey materials. The purpose of the Property and Business Owner Survey is to:

- Introduce Project and Project objectives;
- Engage the Study Area property and business owners to get their input on issues and opportunities related to land use, zoning, and transportation in the State Street corridor; and
- Solicit information related to any potential or planned private improvements by developers in the Study Area;

The City shall prepare a summary of the Property and Business Owner Survey results and provide to Consultant.

#### **2.2 Land Use and Zoning Analysis Memorandum**

Consultant shall prepare a Land Use and Zoning Analysis Memorandum, for review and comment by City and APM, which includes the following:

- Existing land use (including vacant and underutilized properties and parking lots);
- Property ownership;
- Key land use issues and opportunities;
- Key urban design issues that are prevalent throughout the Study Area (such as building setbacks, location of parking, etc.);
- Existing zoning;
- Barriers in existing zoning to the development or redevelopment of pedestrian-friendly, mixed-use projects; and

- Review of existing mixed-use zones and mixed-use overlay zones in Salem (review format and describe advantages and disadvantages of zones and overlays).

### **2.3 Transportation Operations and Safety Analysis Memorandum**

Consultant shall prepare a Transportation Operations and Safety Analysis Memorandum, which will involve an assessment of existing and future conditions and provide the memorandum to the City and APM for their review and comment. Consultant's analysis in this memorandum must include the following:

- Volume of vehicles, bicyclists, or pedestrians at study intersections (defined below);
- Transit service frequency, transit service span, and transit routes;
- Safety issues;
- Vehicular level-of-service ("LOS");
- LTS for bicyclists as outlined in the ODOT APM
- Simplified (qualitative) LOS for pedestrians
  1. Will follow ODOT APM if methodology is available
  2. If not, will apply multi-modal level-of-service ("MMLOS") criteria in a qualitative assessment
- An assessment of vehicular LOS, delay, and queuing due to turning vehicles; and
- Qualitative assessments of walkability and bikability.

Consultant shall coordinate vehicle, bicycle, pedestrian and transit traffic analysis methodology with the City and TPAU as needed.

Consultant shall prepare and submit a Methodology Memorandum for existing and future conditions to the City and APM for review. APM will forward the Methodology Memorandum to TPAU for comment prior to beginning of traffic analysis. The Methodology Memorandum will become part of the Transportation Operations and Safety Analysis Memorandum.

#### Traffic Counts

ODOT will provide traffic counts at the following intersections and road segments. Counts must include people walking and biking, and vehicle classification information.

Weekday AM and PM Peak period counts:

- State Street/12<sup>th</sup> Street SE
- State Street/13<sup>th</sup> Street SE
- State Street/14<sup>th</sup> Street SE
- State Street/17<sup>th</sup> Street SE
- State Street/21<sup>st</sup> Street SE
- State Street/23<sup>rd</sup> Street SE
- State Street/24<sup>th</sup> Street NE
- State Street/25<sup>th</sup> Street SE
- State Street/25<sup>th</sup> Street NE



- Court Street/12<sup>th</sup> Street SE
- Court Street/13<sup>th</sup> Street SE
- Mission Street/17<sup>th</sup> Street SE
- Center Street/17<sup>th</sup> Street NE

Weekday 24-hour tube counts:

- State Street, the eastbound one-way segment between 12<sup>th</sup> and 13<sup>th</sup> Streets
- Court Street, the westbound one-way segment between 12<sup>th</sup> and 13<sup>th</sup> Streets
- State Street, the segment with existing on-street parking between 13<sup>th</sup> and 17<sup>th</sup> Streets
- State Street, the narrowest segment between 17<sup>th</sup> and 25<sup>th</sup> Streets with no existing on-street parking.
- Chemeketa Street, parallel road between 17<sup>th</sup> and 25<sup>th</sup> Streets

Intersections to be studied

The following Study Area intersections must be included in the Consultant's existing and future conditions transportation analysis:

1. State Street/12<sup>th</sup> Street SE
2. State Street/13<sup>th</sup> Street SE
3. State Street/14<sup>th</sup> Street SE
4. State Street/17<sup>th</sup> Street SE
5. State Street/21<sup>st</sup> Street SE
6. State Street/23<sup>rd</sup> Street SE
7. State Street/24<sup>th</sup> Street NE
8. State Street/25<sup>th</sup> Street SE
9. State Street/25<sup>th</sup> Street NE
10. Court Street/12<sup>th</sup> Street SE
11. Court Street/13<sup>th</sup> Street SE

Up to four additional intersections must be studied by the Consultant on parallel routes such as Mission Street, Center Street or D Streets if the road diet option is analyzed in detail in task 6. In that case, ODOT will conduct counts on those four intersections, if they aren't already available.

Existing operations and safety

Consultant shall conduct the existing conditions traffic analysis for motorized and non-motorized modes. The vehicular operational analysis of Study Area intersections must include LOS and V/C based on a Synchro model developed for the Study Area intersections using HCM 2010 methodology with the exception of signalized intersection V/C reporting which requires HCM 2000. Consultant shall identify street facilities where traffic demand is at or near capacity of the facility compared to the local LOS standards. The operation and function of the streets must be described in a way that is easily understood by the public.

Consultant shall obtain five years of vehicle, bicycle, pedestrian and transit crash data from

Agency's Crash Analysis and Reporting Unit. At a minimum, intersection crash rates for vehicles, bicycle, pedestrian and transit must be compared to published 90<sup>th</sup> percentile rates in Agency's Analysis Procedure Manual Table 4-1.

Consultant shall assess the comfort and desirability of the State Street corridor for people walking, biking and taking transit. Consultant's analysis must include the following:

1. Width of sidewalks and the location of obstructions within
2. Distance from curb to travel lane
3. Location, size, and health of street trees
4. Location and character of lighting (e.g. whether it is of pedestrian scale)
5. Location of open and closed crosswalks
6. Location of curb extensions
7. Locations and width of bicycle facilities
8. Location of conflicts with bicycle facilities (e.g. back-out parking and right turn lanes)
9. Location of transit stops and character of the stops
10. Accessibility of transit stops

#### Future operations

Consultant shall identify planned improvements including projects in the City's 2014 TSP, SAMTD transit services, and planned or anticipated public works projects that have potential to affect the physical characteristics of the State Street corridor.

Consultant shall prepare a forecast of future conditions (No build), which must include forecast traffic volumes and an assessment of the resulting implications for the following:

- Vehicular LOS, V/C, delay, and queuing (95<sup>th</sup> percentile);
- Impact on transit service provision; and
- Impact on the suitability and desirability for walking and cycling along State Street.

Consultant's forecast of future travel demand must be based on existing comprehensive plan designations and future land use assumptions for the Study Area developed by Mid-Willamette Valley Council of Governments ("MWVCOG") for the regional travel demand model. No modifications to the model are assumed as part of this task. The City shall obtain at its expense, and Consultant shall utilize, the MWVCOG travel demand model to determine future travel forecasts. The City shall obtain Base Year (2015) and Future year (2035) model plots from MWVCOG, at City's expense, and provide to Consultant. Consultant shall use the Base Year and Future Year model plots to develop future traffic (vehicle, pedestrian, bicycle and transit) volume projections. Consultant shall estimate the future pedestrian, bicycle and transit volumes based on the forecast mode split from the model and post-processing based on counts and research. Traffic volume forecasts must be coordinated with forecasts developed for the City's 2014 TSP.

Consultant shall develop post-processed Future Year motor vehicle volumes.

## **2.4 Urban Design, Land Use Design, and Zoning Analysis and Transportation and Streetscape Conditions Booklet**

Consultant shall prepare a draft Urban Design, Land Use Design, and Zoning Analysis and Transportation and Streetscape Conditions Booklet (the “Conditions Booklet”), for review and comment by City and APM. The Conditions Booklet must document existing conditions and opportunities and illustrate different approaches to land use, zoning, existing transportation and streetscape conditions within the Study Area. The Conditions Booklet must use graphical representations and must include the information from the Transportation Operations and Safety Analysis Memorandum. The Conditions Booklet must be analogous to an executive summary that briefly highlights key issues and approaches for future zoning, land use, development and zoning in the Study Area. The Conditions Booklet must be used to inform the public of the existing conditions within the Study Area and seek public input.

Items described in the Conditions Booklet must include the following:

- Land use:
  1. existing land uses; and
  2. examples of different land use or design approaches to mixed-use corridors from other communities.
  3. opportunities for an activity node or small gathering places such as pocket parks and food cart pods;
  4. locations for possible outdoor seating and cafes;
  5. building types (heights, etc.) and setbacks from the street;
  6. location of parking lots and on-site parking areas (should on-site parking areas be required to be located to the side or rear of buildings); and
  7. locations for potential redevelopment.
  
- Zoning regulations:
  1. barriers to pedestrian-friendly, mixed-use development and redevelopment in existing zoning along the State Street corridor;
  2. parking requirements (e.g., shared parking, exemptions and adjustments, a parking district, in lieu of parking fees, credits for on-street spaces, etc.);
  3. examples of approaches to zoning that encourage pedestrian-friendly, mixed-use development (include examples of simple design standards that promote pedestrian-friendly development); and
  4. possible locations of mixed-use zoning (entire State Street corridor versus specific nodes).
  
- Transportation and streetscape:
  1. holistic patterns of development and traffic;
  2. City plans and right of way maps of area;
  3. key transportation issues and opportunities
  4. existing traffic conditions, including sidewalk widths and locations, landscaping, traffic volumes, transportation network, bicycle facilities and transit service and facilities;

5. multimodal crash data;
6. comfort and desirability of the walking environment for pedestrians (including location of crosswalks and closed crosswalks, curb extensions, street trees, pedestrian-scale lighting);
7. comfort and desirability of bike facilities; and
8. comfort and desirability of transit stop accommodations and possible improvement.

Consultant shall provide a draft Conditions Booklet to the City and APM for review and comment.

### **2.5 Memorandum #1: Economic Analysis**

Consultant shall provide input to the identification and evaluation of land use and zoning options that reflect viable redevelopment opportunities and market-supported uses. The evaluation must be based upon examination of economic information provided by the City and readily-available sources, discussion with property and business owners, and discussions with the TAC to provide economic development and redevelopment expertise in evaluating and vetting recommendations for land use alternatives and facility improvements. Consultant's economic analysis and findings must be documented in Memorandum #1.

### **2.6 Draft Memorandum #2: Evaluation Criteria**

The City shall develop Draft Memorandum #2 for review and comment by the Consultant and APM. Draft Memorandum #2 must identify qualitative and quantitative criteria that must be used to evaluate alternatives developed for the Study Area. Draft Memorandum #2 must include a range of evaluation criteria that reflect likely community concerns about the impact of alternatives on livability, development or redevelopment potential, travel conditions by mode (safety, comfort, and accessibility of people walking, biking, riding transit, or driving), aesthetics, and economic vitality. Draft Memorandum #2 must include performance measures for all modes of travel that will be measured by traffic analysis conducted for Project in a later task, including traffic volumes, travel time through the corridor, and intersection operation.

### **2.7 Initial Outreach Presentation Materials**

Consultant shall prepare draft summary presentation materials for the upcoming TAC, SAC, and Public Events for review and comment by the City. The Consultant's presentation must include a map of the Study Area, a Refined Project Schedule and a summary of earlier Task 2 Services. Consultant shall develop these presentation materials in a manner suitable for posting on the Project Website and for its eventual incorporation into the SSRP. The Consultant's presentation materials must be developed using a graphic narrative format (graphics with the minimum amount of text to convey the message).

### **2.8 TAC Meeting #1**

The City shall arrange and Consultant shall attend and lead TAC Meeting #1, in order to accomplish the following:

- Review Project goals and objectives, work tasks and deliverables, and schedule;
- Review Draft Memorandum #1: Economic Analysis;
- Review and solicit input on Draft Memorandum #2: Evaluation Criteria;
- Review existing and forecast conditions in the Study Area identified in Land use and Zoning Analysis Memorandum and the Transportation Operations and Safety Analysis Memorandum;
- Review and solicit input on previous planning efforts;
- Review the Conditions Booklet; and
- Solicit input on potential alternatives for redevelopment, zoning, and improving conditions for people walking, bicycling, and taking transit in the Study Area.

Consultant staff appropriate for this task must attend TAC Meeting #1.

The City shall provide a summary that identifies committee members who participated in TAC Meeting #1 as well as City and Consultant action items, within one week of the conclusion of TAC Meeting #1.

#### **City Deliverables**

- 2.A Property and Business Owner Survey and Summary
- 2.B Most recent 5-year Crash data
- 2.C Base Year (2015) and Future year (2035) model plots (in collaboration with MWVCOG)
- 2.D Draft Memorandum #2: Evaluation Criteria
- 2.E TAC Meeting #1
- 2.F Review and comment on draft Consultant deliverables

#### **Consultant Deliverables**

- 2.A Comments on Draft Property Owner Survey
- 2.B Land Use and Zoning Analysis Memorandum
- 2.C Transportation Operations and Safety Analysis Memorandum (including the Methodology Memorandum)
- 2.D Conditions Booklet
- 2.E Memorandum #1: Economic Analysis
- 2.F Review and Comment on Memorandum #2
- 2.G Initial Outreach Presentation Materials
- 2.H TAC Meeting #1

### **Task 3: Public Outreach #1**

#### **Subtasks**

##### **3.1 Initial Project Outreach**

The City shall prepare and distribute material for Initial Public Outreach for the Project,

including text for a press release and informational flyers distributed by mail and e-mail to property owners, residents, and business owners in the Study Area, and others on the Interested Parties List.

### **3.2 SAC Meeting #1**

The City shall arrange and Consultant shall attend and lead SAC Meeting #1. The purpose of SAC Meeting #1 is to:

- Introduce the Project;
- Discuss Project objectives, schedule, SAC roles and responsibilities;
- Discuss SAC members hopes and concerns for the Study Area;
- Discuss Draft Memorandum #1: Economic Analysis;
- Discuss and solicit feedback on conceptual design, land use, and zoning ideas in the draft Conditions Booklet; and.
- Discuss and solicit feedback on opportunities, constraints, and major findings in the draft Conditions Booklet.

The City shall provide a summary that identifies stakeholders who participated in SAC Meeting #1 and their key issues and concerns as well as City and Consultant action items, within one week of the conclusion of SAC Meeting #1. A minimum of two members of the Consultant team must attend SAC Meeting #1.

### **3.3 Neighborhood Association Update #1**

The City shall provide a summary of Project progress to NEN and SESNA.

### **3.4 Publicity for Public Event #1**

The City shall prepare Publicity Material for Public Event #1, including press releases, text and graphics suitable for advertisements. The City shall provide logistics, prepare and send mailings, post announcements and place advertisements to publicize Public Event #1.

### **3.5 Presentation Material for Public Event #1**

Consultant shall prepare the agenda and presentation materials for Public Event #1, including graphical display boards. Presentation material for Public Event #1 must include material to facilitate public input on existing conditions, deficiencies and needs, potential improvements and evaluation criteria for the Project. Consultant shall coordinate with the City as needed to review and approve the format for Public Event #1.

Consultant shall provide presentation materials for Public Event #1 to the City at least 10 working days prior to Public Event #1 for review. The City shall provide comments on these presentation materials at least five working days before Public Event #1. Consultant shall revise these presentation materials for Public Event #1 to reflect comments received from the City.

### **3.6 Public Event #1**

The City shall arrange and Consultant shall attend, lead and facilitate Public Event #1 to seek public input on existing conditions, deficiencies and needs, potential improvements, desired land uses and associated zoning and evaluation criteria for the Project. Arrangements by the City for Public Event #1 must include the following: room scheduling and planning, refreshments, a sound system, room set-up and Americans with Disabilities Act accommodations.

The City shall prepare a comment form, Title VI forms and a sign-in sheet. The City shall provide copies of the draft Conditions Booklet prepared in Task 2.

### **3.7 Memorandum #3: Summary of Public Input**

The City shall prepare Memorandum #3 that summarizes comments received from participants at TAC Meeting #1, SAC Meeting #1, Neighborhood Association Update #1, the Project Website and through other means up to and including Public Event #1. The City shall provide Memorandum #3 to the Consultant and APM within a week after Public Event #1.

#### **City Deliverables**

- 3.A Initial Project Outreach
- 3.B SAC Meeting #1
- 3.C Neighborhood Association Update #1
- 3.D Publicity for Public Event #1
- 3.E Public Event #1
- 3.G Memorandum #3: Summary of Public Input
- 3.H Review and comment on draft Consultant deliverables

#### **Consultant Deliverables**

- 3.A SAC Meeting #1
- 3.B Presentation Material for Public Event #1
- 3.C Public Event #1

## **Task 4: Tier 1 Screening of Land Use Options and Street Design**

### **Subtasks**

#### **4.1 Final Memorandum #2: Evaluation Criteria**

The City shall revise Draft Memorandum #2 to address comments from the TAC and SAC and general public.

#### **4.2 Draft Memorandum #4: Tier 1 Screening of Land Use Options and Street Design**

Consultant shall prepare a draft Memorandum #4, detailing and screening land use options (which must include design standards) and resulting supportive street design, and provide this memorandum to the City and APM for review and comment. Land use options and resulting street design must show alternatives for land use, zoning, urban design, configuration of

sidewalk and streetscape elements, auto lanes and bicycle facilities, transit facilities, on-street parking, and other street design elements within the Study Area. Street design standards must be presented in a matrix format.

### Land Use Options

Consultant shall develop at least three, and up to six, land use options that meet the Project objectives and address identified issues. Land use options must be in the form of a new or revised mixed-use zone or zones with land use (e.g., permitted, conditional, and prohibited uses) and urban design (e.g., setbacks, building heights, parking, and design standards) components, and they must be applicable to other areas of the City where mixed-use development is desired or currently exists. Land use options can include variations in the mix of uses permitted, development and design standards, location of mixed-use zoning (entire length of State Street corridor versus specific nodes), and allowed densities, among other factors. Land use options must not be in the form of an overlay zone.

Land use options must include maps that illustrate where the potential new or revised zoning would be located in the Study Area. Land use options must include sufficient detail to describe and depict intended outcomes. Land use options are expected to represent potential opportunities for near term and longer range improvements that will enhance the identity, livability, and function of the Study Area.

### Tier 1 Screening of Land Use Options

Consultant shall conduct a qualitative screening of land use options that describes their performance using the high level evaluation criteria established in Revised Memorandum #1.

### Street Designs

Consultant shall develop two alternative street designs resulting from land use options for each of the following distinct sections of State Street: 1) the one-way portion between 12th and 13th streets, including the examination of the intersection (curb radius) of 13th and State Street, 2) the portion with existing on-street parking between 13th and 17th streets, and 3) the narrowest portion between 17th Street and 25th Street with no existing on-street parking. Alternative street designs can be conceptual in nature but must be shown in simple cross section diagrams and overhead views (plan views) showing the location of alternative designs relative to its existing alignment, nearby structures, intersections and driveways, and adjacent off-street parking areas. Plan views will be stand alone for each alternative design on each of the three segments; no transitions between sections are considered. Plan view graphics must consist of lines depicting traveled way edges, sidewalk and lane lines overlain on an aerial photograph and no additional intersections will be evaluated.

Alternatives for street configuration must implement City standards for street and facility design to the extent feasible, though it is recognized that the purpose of Project is to develop alternative street designs for the State Street corridor. Deviations from those standards will likely be made



to provide for context sensitive design solutions where conditions in the Study Area require them. Consultant shall note elements of street configuration that vary from City standards and why those deviations are proposed. The street designs must include vehicle, bicycle, and pedestrian facilities; these facilities must be, to the greatest extent feasible, contained within the existing State Street right-of-way; the use of property outside of the right-of-way can be proposed with approval from City.

#### Tier 1 Screening (Qualitative Assessment) of Two Street Design Alternatives

As part of this task, Consultant shall coordinate with the City and MWVCOG as needed to develop assumptions for four model runs of the regional travel demand model for two street design alternatives for the full corridor based on two land use options.

- Land Use Option #1 for two street design alternatives
  1. Two through lanes in both directions; and
  2. Road diet (i.e., one through lane in each direction)
- Land Use Option #2 for two street design alternatives
  3. Two through lanes in both directions
  4. Road diet (i.e., one through lane in each direction)

The City shall obtain four Future Year (2035) model plots from MWVCOG, at City's expense, and provide these to Consultant. Consultant shall perform a high level analysis based on the link volumes and engineering judgment of the two land use options for the associated two street design alternatives. Each alternative must be screened for its impact on the travel characteristics in the Study Area and impacts to adjacent streets and neighborhoods.

This task does not include traffic operations analyses for any of the alternatives. Intersection level traffic analysis must be completed in Task 6.

Consultant shall prepare summary graphic narratives of street design and zoning options for Draft Memorandum #4, including the Tier 1 Screening of each alternative using evaluation criteria established in Revised Memorandum #1.

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#### **4.3 Draft Land Use Options and Street Design Booklet**

Consultant shall prepare a draft Land Use Options and Street Design Booklet (the "Design Booklet") to illustrate the land use options and alternative street designs and Tier 1 Screening for non-technical reviewers.

Consultant shall provide this draft Design Booklet to the City and APM for review and comment.

#### **4.4 Alternative Land Use Options and Street Design Presentation Materials**

Consultant shall prepare draft presentation materials summarizing Draft Memorandum #4 for

upcoming TAC Meeting #2, SAC Meeting #2, and Public Event #2 for review and comment by City. These presentation materials must be developed in a manner suitable for posting on the Project Website and for its eventual incorporation into the SSRP using a graphic narrative format (graphics with the minimum amount of text to convey the message).

#### **4.5 TAC Meeting #2**

The City shall arrange and Consultant shall attend and lead TAC Meeting #2 to:

1. Review Evaluation Criteria for the Project identified in Memorandum #3;
2. Review and solicit input on Draft Memorandum #4 including street design and land use options for Study Area and the results of the Tier 1 Screening
3. Review Land Use Options and Street Design Booklet; and
4. Solicit input on feasibility of implementation of options and steps that may be needed to implement them.

The City shall provide a summary that identifies committee members who participated in TAC Meeting #2 as well as City and Consultant action items, within one week of the conclusion of TAC Meeting #2. Two to three Consultant staff shall attend this meeting.

#### **City Deliverables**

- 4.A Final Memorandum #2: Evaluation Criteria
- 4.B TAC Meeting #2
- 4.C Review and comment on draft Consultant deliverables

#### **Consultant Deliverables**

- 4.A Draft Memorandum #4: Tier 1 Screening of Land Use Options and Street Design
- 4.B Draft Land Use Options and Street Design Booklet
- 4.C Alternative Land Use Options and Street Design Presentation Materials
- 4.D TAC Meeting #2

#### **Task 5: Public Outreach #2**

##### **Subtasks**

##### **5.1 SAC Meeting #2**

The City shall arrange and Consultant shall attend and lead SAC Meeting #2.

The purpose of SAC Meeting #2 is to:

- Review Land Use Options and Street Design Booklet summarizing Draft Memorandum #4, and
- Obtain stakeholder feedback on the results of Tier 1 Screening analysis.

The City shall provide Consultant and APM with a summary that identifies key issues and concerns, within one week of the conclusion of SAC Meeting #2. At least two Consultants must attend SAC Meeting #2.

## **5.2 Publicity for Public Event #2**

The City shall prepare publicity material for Public Event #2, including press releases, text and graphics suitable for advertisements, and identify effective methods of publicizing Public Event #2. The City shall provide logistics, prepare and send mailings, post announcements and place advertisements to publicize Public Event #2.

The City shall prepare publicity material for Public Event #2 at least four weeks before Public Event #2, issue a press release, post announcements and place advertisements in local media for Public Event #2.

## **5.3 Presentation Materials for Public Event #2**

Consultant shall prepare an agenda and presentation materials for Public Event #2, including graphical display boards and a copy of the draft Design Booklet prepared in Task 4. Consultant shall coordinate with the City as needed to review and approve the format for Public Event #2.

Consultant shall provide presentation materials for Public Event #2 to the City for review, at least 10 working days prior to Public Event #2. The City shall provide comments on the draft presentation materials at least five working days before Public Event #2. Consultant shall revise the draft presentation materials for Public Event #2 to reflect comments received from City.

## **5.4 Public Event #2**

The City shall arrange and Consultant shall attend, lead and facilitate Public Event #2 to seek public input and consensus on land use options, supportive street design and Tier 1 Screening. Arrangements by the City for Public Event #2 must include: room scheduling and planning, providing refreshments, providing a sound system, room set-up, and Americans with Disabilities Act accommodations.

The City shall prepare a comment form, Title VI forms and a sign-in sheet. The City shall provide copies of the draft Design Booklet prepared in Task 4.

## **5.5 Memorandum #5: Summary of Tasks 4 and 5 Public Input**

The City shall prepare Memorandum #5 that summarizes comments received from participants at Public Event #2, the Project Website, and through other means since completion of Task 3. Memorandum #5 must assess the implications of these comments for methods, deliverables, and schedule remaining in the Project. The City shall provide Memorandum #5 to the Consultant and APM within one week after Public Event #2.

## **5.6 Final Memorandum #4: Tier 1 Screening of Land Use Options and Street Design**

The City shall provide a single set of non-contradictory comments to Memorandum #4 based on TAC, SAC and public input, and provide the comments to the Consultant. Consultant shall

address the comments and incorporate revisions into Memorandum #4 and provide the final form of the memorandum to the City and APM, within 20 business days of receipt.

**City Deliverables**

- 5.A SAC Meeting #2
- 5.B Publicity for Public Event #2
- 5.C Public Event #2
- 5.D Memorandum #5: Summary of Tasks 4 and 5 Public Input
- 5.E Review and comment on draft Consultant deliverables

**Consultant Deliverables**

- 5.A SAC Meeting #2
- 5.B Presentation Material for Public Event #2
- 5.C Public Event #2
- 5.D Final Memorandum #4: Tier 1 Screening of Land Use Options and Street Design

**Task 6: Tier 2 Evaluation of Preferred Land Use Option and Street Design Alternative**

**Subtasks**

**6.1 Draft Memorandum #6: Preferred Land Use Option and Street Design Alternative**

Consultant shall recommend a preferred land use option, based on the results of Task 4 and Task 5 input and City guidance. Consultant shall develop, for each of three sections of the State Street corridor, one supportive street design alternative.

The City shall select the preferred land use option. The preferred land use option must be depicted in overhead views (plan view), street view and perspective. The plan view must show building locations and proposed land uses on each parcel. The preferred land use option and the street design alternative may be hybrids or combinations of the land use options and street designs developed and considered in Tasks 4 and 5. The preferred land use option and supporting street design alternative will represent the highest priority opportunity for future changes that would help achieve the Project objectives for the Study Area.

The street design alternative supporting the preferred land use option must show changes in configuration of streetscape, landscaping, pedestrian improvements, travel lanes, transit facilities, bicycle facilities, and other street elements within the Study Area. The street design alternative must be shown in cross section diagrams and overhead views (plan views). The City shall advise as to the preferred combination of cross sections for one combined corridor street design alternative.

Consultant shall prepare Draft Memorandum #6 which must contain the following:

- Tier 2 Evaluation of Preferred Land Use Option

- Demonstrate performance against Evaluation Criteria from Memorandum #1;
- Identify key parcels and locations that would spur additional redevelopment;
- Draft UDC language and must include a table of uses, development standards, and design standards with graphics that illustrate those design standards;
- Show how the proposed zoning and its implications on land use and urban design would be accommodated in the Study Area; and
- Identify off-street parking requirements and options for meeting parking needs.
- Street Design Alternative
  - Show how the street design alternative would be accommodated within the existing right-of-way and at street intersections;
  - Identify design and street configuration elements that vary from City standards and why those deviations are recommended;
  - Show where alteration of existing public and private approaches (driveways) would be required, and where opportunities exist for landscaped medians or where opportunities exist to alter existing public and private approaches to improve operation of the street or to mitigate safety concerns;
  - Identify projects for amendment into the TSP;
  - Include a high level cost estimate of street design alternative. The cost estimate must include demolition, pavement, curb, sidewalk, signing & striping, drainage and landscaping; and
  - Outline general implementation strategy, such as potential phasing approach that identifies conceptual packages of near term and longer term improvements.

## **6.2 Draft Memorandum #7: Tier 2 Evaluation of Street Design Alternative**

Consultant shall prepare Draft Memorandum #7 which must include a Tier 2 Evaluation of the preferred street design alternative using evaluation criteria established in Memorandum #1. Draft Memorandum #7 must be written using graphical representations to summarize the evaluation and describe future conditions with proposed improvements.

This Tier 2 Evaluation must include the changes in land use from Preferred Land Use Option and the resulting change to traffic operation, multimodal assessment, and safety analysis. This Tier 2 Evaluation may include other criteria excluded from Tier 1 Screening in Task 4 such as cost estimates, right-of-way issues, vehicle congestion, queuing, and non-auto-congestion review standards. This Tier 2 Evaluation must also develop mitigation measures to address issues identified at specific locations.

The Tier 2 Evaluation must include an assessment of travel conditions for people walking, bicycling, or taking transit on State Street in the Study Area for the preferred alternative.

### Detailed Traffic Analysis

Consultant shall also prepare a traffic operations analysis as part of this subtask. The traffic operations analysis must summarize the methods and results of the traffic operations analysis. The traffic analysis must include a traffic signal progression analysis of the existing traffic signals within the Study Area.

Consultant shall coordinate with the City and MWVCOG as needed to develop assumptions for a model run of the regional travel demand model for the preferred street design alternative. Consultant shall make recommendations regarding zone disaggregation and added street network for the model for the future year model based on the preferred land use alternative. The City shall obtain one Future Year (2035) model plot from MWVCOG, at City's expense, and provide to Consultant. Traffic analysis for the street design alternative must use the travel demand model results (Salem Keizer Area Transportation System Model) to generate traffic forecasts at intersections on State Street in the Study Area. Consultant shall conduct detailed traffic analysis using the model to evaluate intersection operations on State Street in the Study Area. The preferred alternative must be analyzed for its impact on the travel characteristics in the Study Area, including traffic volumes, intersection operation (LOS), vehicle queuing lengths, travel time, impacts to adjacent streets and neighborhoods (cut-through traffic), and impacts to all travel modes.

Traffic operations analysis conducted for Draft Memorandum #7 must utilize only one consistent set of assumptions for future land uses in the Study Area. These assumptions must be based on the preferred land use option.

#### Multimodal Assessment

The Consultant's multi-modal assessment must include the same measures as used in Task 2.3 for walking, bicycling, and transit:

1. Transit service frequency, transit service span, and transit routes;
2. LTS for bicyclists as outlined in the ODOT Analysis Procedures Manual;
3. Simplified (qualitative) LOS for pedestrians; and
  - a. Will follow ODOT Analysis Procedures Manual if methodology is available
  - b. If not, will apply MMLOS criteria in a qualitative assessment
4. Qualitative assessments of walkability and bikability.

#### Safety Analysis

Consultant shall prepare a safety analysis. The safety analysis must include a predictive safety assessment of the one alternative based on the Highway Safety Manual ("HSM") methodology and consideration of factors not covered by the HSM.

### **6.3 Presentation Material for TAC and SAC Meetings #3**

Consultant shall prepare draft summary presentation materials for the upcoming TAC and SAC Meetings #3 for review and comment by the City. These presentation materials must summarize the Preferred Land Use Option and Street Design Alternatives in Draft Memorandum #6 and the Tier 2 Evaluation from Draft Memorandum #7. Presentation materials must be developed in a manner suitable for posting on the Project Website and for its eventual incorporation into the SSRP using a graphic narrative format (graphics with the minimum amount of text to convey the message).

#### **6.4 TAC Meeting #3**

The City shall arrange and Consultant shall attend and lead TAC Meeting #3 to:

1. Review preferred land use option and street design alternatives;
2. Review recommendations resulting from the Tier 2 Evaluation;
3. Solicit input on steps that may be needed to implement preferred land use option and street design alternatives; and
4. Solicit TAC member support.

The City shall provide a summary that identifies TAC members who participated in TAC Meeting #3 as well as City and Consultant action items, within one week of the conclusion of TAC Meeting #3. Two to three Consultant staff must attend TAC Meeting #3.

#### **6.5 SAC Meeting #3**

The City shall arrange and Consultant shall attend and lead SAC Meeting #3 on the same day as the TAC #3 to:

1. Review preferred land use option and street design alternatives,
2. Review recommendations resulting from the Tier 2 Evaluation;
3. Solicit input on steps that may be needed to implement preferred land use option and street design alternatives; and
4. Solicit SAC member support.

The City shall provide the Consultant and APM with a summary that identifies key issues and concerns, within one week of the conclusion of SAC Meeting #3. At least two Consultant staff persons must attend this meeting.

#### **City Deliverables**

- 6.A Draft Memorandum #7: Tier 2 Evaluation of Street Design (Four future year (2035) model plots (in collaboration with MWVCOG based on preferred land use alternative and street networks)
- 6.B TAC Meeting #3
- 6.C SAC Meeting #3
- 6.D Review and comment on draft Consultant deliverables

#### **Consultant Deliverables**

- 6.A Draft Memorandum #6: Preferred Land Use Option and Street Design Alternative
- 6.B Draft Memorandum #7: Tier 2 Evaluation of Street Design Alternative
- 6.C Presentation Material for TAC and SAC Meetings #3
- 6.D TAC Meeting #3
- 6.E SAC Meeting #3

## **Task 7: Public Outreach #3**

### **Subtasks**

#### **7.1 Publicity for Public Event #3**

The City shall prepare publicity material for Public Event #3, including press releases, text, and graphics suitable for advertisements. The City shall provide logistics, prepare and send mailings, post announcements, and place advertisements to publicize Public Event #3.

#### **7.2 Presentation Material for Public Event #3**

Consultant shall prepare presentation materials for Public Event #3, including an agenda, graphical display boards, a comment form, a sign-in sheet and a one-page informational handout. The Consultant's presentation material for Public Event #3 must include material to facilitate public input on the preferred land use option and street design alternatives developed in Task 6. Consultant shall coordinate with the City as needed to review and approve the format for Public Event #3.

Consultant shall provide presentation materials for Public Event #3 to the City at least 10 working days prior to Public Event #3 for review. The City shall provide comments on these presentation materials at least five working days before Public Event #3. Consultant shall revise the presentation materials for Public Event #3 to reflect comments received from the City.

#### **7.3 Public Event #3**

The City shall arrange, and Consultant shall attend, lead and facilitate Public Event #3 to seek public input on the preferred land use option and street design alternatives developed in Task 6. Arrangements by the City for Public Event #3 must include: room scheduling and planning, refreshments, a sound system, room set-up, and Americans with Disabilities Act accommodations. At least four members of the Consultant team must attend Public Event #3.

#### **7.4 Memorandum #8: Summary of Task 6 and 7 Public Input**

The City shall prepare Memorandum #8 that summarizes comments received from participants at Public Event #3, the Project Website and through other means since completion of Task 5. Memorandum #8 must assess the implications of these comments for Project methods, deliverables, and schedule remaining in the Project. The City shall provide Memorandum #8 to the Consultant within two weeks after Public Event #3.

#### **7.5 Recommended Project Land Use and Street Design Booklet and Street-Level Graphics**

Consultant shall prepare a Recommended Project Land Use and Street Design Booklet (the "Recommended Design Booklet"), summarizing the following items:

- Final recommendations based on refined zoning regulations;
- Short term projects for immediate implementation;



- Long term incremental improvement projects that can be constructed as financing becomes available or in conjunction with private investment actions;
- Phasing;
- Implementation strategies;
- Cost estimates; and
- Tier 2 Evaluation process.

The Recommended Design Booklet must use easily understandable graphical representations and include the information from the Task 6 analysis, input from the SAC and TAC, public input and City direction.

The revised zoning regulations (code language) must follow the format of the UDC and must be applicable to other areas of the city where mixed-use development is desired or currently exists. The recommended street design (cross sections) must be in a format that can be adopted into the TSP and must include specific transportation projects that can be adopted as TSP amendments.

Consultant shall also prepare two to three graphics of land use, key design treatments and street-related public amenities included in the final design. The City shall provide Consultant with direction on which key design and land use treatments and street-related public amenities must be illustrated in the graphics. Consultant shall provide the City with draft graphics and revise those graphics based on comments and guidance from the City.

#### **7.6 Final Memorandum #6: Preferred Land Use Option and Street Design Alternative**

The City shall provide a single set of non-contradictory comments on Memorandum #6 to the Consultant, which incorporates feedback from the TAC, SAC and public. Consultant shall provide a revised Memorandum #6 which incorporates these comments within 20 business days of receipt of the consolidated comments from the City.

#### **7.7 Final Memorandum #7: Tier 2 Evaluation of Street Design Alternative**

The City shall provide a single set of non-contradictory comments on Memorandum #7 to the Consultant, which incorporates feedback from the TAC, SAC and public. The Consultant shall revise and provide Final Memorandum #7 that addresses these comments within 20 business days of receipt of the consolidated comments from the City.

#### **City Deliverables**

- 7.A Publicity for Public Event #3
- 7.B Public Event #3
- 7.C Memorandum #8: Summary of Task 6 and 7 Public Input
- 7.D Review and comment on draft Consultant deliverables

#### **Consultant Deliverables**

- 7.A Presentation Material for Public Event #3

- 7.B Public Event #3
- 7.C Recommended Project Land Use and Street Design Booklet and Street-Level Graphics
- 7.D Final Memorandum #6: Preferred Land Use Option and Street Design Alternative
- 7.E Final Memorandum #7: Tier 2 Evaluation of Street Design Alternative

## **Task 8: Draft SSRP and Adoption**

### **Subtasks**

#### **8.1 Draft SSRP**

Consultant shall compile and synthesize text and graphics developed in this Project into a Draft SSRP. The Draft SSRP must address and incorporate comments received on Draft Memorandum #8 and relevant public input received from meetings, public events and the Project Website.

The Draft SSRP must include a strategy for implementation based on consideration of likely private and public costs, funding sources, financing methods, pattern and timing or phasing of development and redevelopment and other relevant factors. Implementing policies and ordinances must be included in an appendix.

#### **8.2 TAC Meeting #4**

The City shall arrange and lead TAC Meeting #4 to review the Draft SSRP and solicit input on any outstanding issues or concerns related to adoption or implementation of the Draft SSRP, including its implementing policies and ordinances. Consultant shall attend TAC Meeting #4 and answer questions that are raised at the meeting as needed.

The City shall provide a summary that identifies committee members who participated in the meeting as well as City and Consultant action items, within one week of the conclusion of TAC Meeting #2.

#### **8.3 Neighborhood Association Update #2**

The City shall arrange logistics and scheduling for Neighborhood Association Update #2, and meet with NEN and SESNA.

Neighborhood Association Update #2 must focus on the Draft SSRP. The City shall complete a memorandum that identifies stakeholders who participated in the meetings and their key issues and concerns, within one week of the conclusion of the meetings.

#### **8.4 Revised Draft SSRP**

The City shall revise the Draft SSRP to respond to comments from TAC members, stakeholders, and other reviewers.

Consultant shall prepare updated graphics as needed to support the City for the Revised Draft SSRP.

The City shall provide red-lined edits to plan figures prior to the update.

#### **8.5 Joint Planning Commission and City Council Work Session**

The City shall arrange and lead a Joint Planning Commission and City Council Work Session to present the Revised Draft SSRP, including its implementing policies and ordinances, and solicit input. Consultant shall attend this work session and answer technical questions as needed.

#### **8.6 Final Draft SSRP**

The City shall revise the Revised Draft SSRP to respond to comments from the Planning Commission and City Council.

Consultant shall prepare updated graphics as needed to support the City for the Final Draft SSRP. The City shall provide red-lined edits to plan figures prior to the update.

#### **8.7 Planning Commission Meeting**

The City shall arrange and lead a Planning Commission meeting to present the Final Draft SSRP, including its implementing policies and ordinances, and seek Planning Commission recommendation for approval. Consultant shall attend the Planning Commission meeting and answer technical questions as needed.

#### **8.8 City Council Meeting**

The City shall arrange and lead a City Council meeting to present and seek approval of the Final Draft SSRP, including its implementing policies and ordinances. Consultant shall attend the City Council meeting and answer technical questions as needed.

#### **8.9 Final SSRP**

The City shall prepare a Final SSRP, which incorporates any City Council actions. Consultant shall prepare updated graphics and analysis as needed to support the City for publication of the SSRP. The City shall provide red-lined edits to plan figures prior to the update.

The City shall provide three hard copies and two CDs of the Final SSRP to the APM. An electronic version must be provided to the APM in both MSWord and pdf formats.

#### **8.10 Title VI Report**

The City shall prepare and submit to the APM a report delineating Title VI activities and documenting Project processes and outreach for all low income, race, gender and age groups.

#### **City Deliverables**

- 8.A TAC Meeting #4
- 8.B Neighborhood Association Update #2
- 8.C Revised Draft SSRP
- 8.D Joint Planning Commission and City Council Work Session

- 8.E Final Draft SSRP
- 8.F Planning Commission Meeting
- 8.G City Council Meeting
- 8.H Final SSRP
- 8.I Title VI Report

**Consultant Deliverables**

- 8.A Draft SSRP
- 8.B TAC Meeting #4
- 8.C Revised Graphics for Revised Draft SSRP
- 8.D Joint Planning Commission and City Council Work Session
- 8.E Revised Graphics for Final Draft SSRP
- 8.F Planning Commission Meeting
- 8.G City Council Meeting
- 8.H Revised Graphics for Final Draft SSRP

**SCHEDULE**

<b>Task</b>	<b>Title</b>	<b>Due Date</b>
1	Project Reconnaissance and Kickoff	August - November 2015
2	Identify and Analyze Existing Conditions and Forecast Conditions	December 2015 - February 2016
3	Public Outreach #1	February 2016
4	Tier 1 Screening of Land Use Options and Street Design	March 2016 – April 2016
5	Public Outreach #2	May 2016
6	Tier 2 Evaluation of Preferred Land Use Option and Street Design Alternative	June - August 2016
7	Public Outreach #3	September 2016
8	Draft SSRP and Adoption	October 2016 - February 2017

**CONSULTANT DELIVERABLE TABLE**

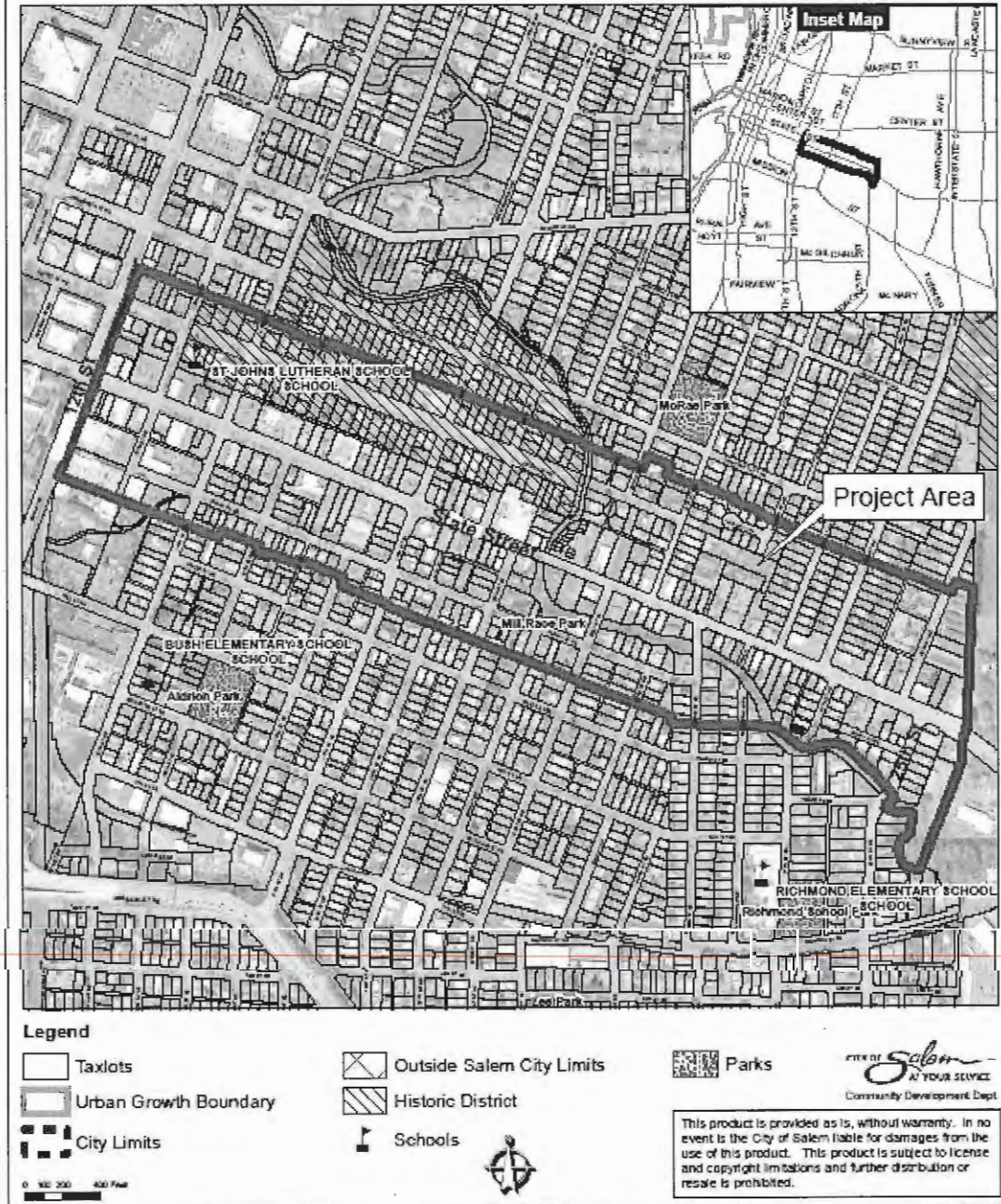
<b>Task</b>	<b>Deliverable</b>	<b>Total Fixed Amount Payable to Consultant Per Deliverable</b>	<b>Total Amount Per Task</b>
<b>1</b>	<b>Project Reconnaissance and Kickoff</b>		<b>\$21,640</b>
1.A	Comments on Public Involvement Strategy Memorandum, Stakeholder Interviews and Summaries and Interested Parties List	\$950	

<b>Task</b>	<b>Deliverable</b>	<b>Total Fixed Amount Payable to Consultant Per Deliverable</b>	<b>Total Amount Per Task</b>
1.B	Comments on SAC Roster	\$360	
1.C	Project Kickoff Meeting and Refined Project Schedule	\$7,490	
1.D	Background Information	\$1,840	
1.E	Project Management Meetings (20-25 @ \$200 per meeting)	\$5,000	
1.F	Progress Reports (18) and Schedule Updates (4)	\$6,000	
<b>2</b>	<b>Identify and Analyze Existing Conditions and Forecast Conditions</b>		<b>\$47,330</b>
2.A	Comments on Draft Property Owner Survey	\$520	
2.B	Land Use and Zoning Analysis Memorandum	\$7,180	
2.C	Transportation Operations and Safety Analysis Memorandum	\$13,170	
2.D	Conditions Booklet	\$12,260	
2.E	Memorandum #1: Economic Analysis	\$8,430	
2.F	Review and Comment on Memorandum #2	\$2,450	
2.G	Initial Outreach Presentation Materials	\$1,440	
2.H	TAC Meeting #1	\$1,880	
<b>3</b>	<b>Public Outreach #1</b>		<b>\$8,990</b>
3.A	SAC Meeting #1	\$2,370	
3.B	Presentation Material for Public Event #1	\$3,960	
3.C	Public Event #1	\$2,660	
<b>4</b>	<b>Land Use Options and Street Design and Tier 1 Screening</b>		<b>\$30,330</b>
4.A	Draft Memorandum #4: Tier 1 Screening of Land Use Options and Street Design	\$18,870	
4.B	Draft Land Use Options and Street Design Booklet	\$6,980	
4.C	Alternative Land Use Options and Street Design and Presentation Materials	\$2,630	
4.D	TAC Meeting #2	\$1,850	
<b>5</b>	<b>Public Outreach #2</b>		<b>\$10,840</b>
5.A	SAC Meeting #2	\$1,320	
5.B	Presentation Material for Public Event #2	\$3,690	
5.C	Public Event #2	\$2,220	

<b>Task</b>	<b>Deliverable</b>	<b>Total Fixed Amount Payable to Consultant Per Deliverable</b>	<b>Total Amount Per Task</b>
5.D	Final Memorandum #4: Tier 1 Screening of Land Use Options and Street Design	\$3,610	
<b>6</b>	<b>Tier 2 Evaluation of Preferred Land Use Option and Street Design Alternative</b>		<b>\$43,270</b>
6.A	Draft Memorandum #6: Preferred Land Use Option and Street Design Alternative	\$20,160	
6.B	Draft Memorandum #7: Tier 2 Evaluation of Street Design Alternative	\$17,810	
6.C	Presentation Material for TAC and SAC Meetings #3	\$2,590	
6.D	TAC Meeting #3	\$1,660	
6.E	SAC Meeting #3	\$1,050	
<b>7</b>	<b>Public Outreach #3</b>		<b>\$25,780</b>
7.A	Presentation Material for Public Event #3	\$3,680	
7.B	Public Event #3	\$2,580	
7.C	Recommended Project Land Use and Street Design Booklet and Street-Level Graphics	\$13,110	
7.D	Final Memorandum #6: Preferred Land Use Option and Street Design Alternative	\$4,190	
7.E	Final Memorandum #7: Tier 2 Evaluation of Street Design Alternative	\$2,220	
<b>8</b>	<b>Draft SSRP &amp; Adoption</b>		<b>\$20,620</b>
8.A	Draft SSRP	\$9,760	
8.B	TAC Meeting #4	\$1,170	
8.C	Revised Draft SSRP (Revised Graphics)	\$4,110	
8.D	Joint Planning Commission and City Council Work Session	\$860	
8.E	Final Draft SSRP (Revised Graphics)	\$1,960	
8.F	Planning Commission Meeting	\$860	
8.G	City Council Meeting	\$860	
8.H	Final Draft SSRP (Revised Graphics)	\$1,040	
	<b>TOTAL</b>		<b>\$208,800</b>



## State Street Refinement Plan Project Area



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**EXHIBIT B (Local Agency or State Agency)**

**CONTRACTOR CERTIFICATION**

Contractor certifies by signing this contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this contract,
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

**AGENCY OFFICIAL CERTIFICATION (ODOT)**

Department official likewise certifies by signing this contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

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**EXHIBIT C**

Federal Provisions  
Oregon Department of Transportation

**I. CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION**

Contractor certifies by signing this contract that to the best of its knowledge and belief, it and its principals:

- |  |  |
|--|--|
| <ul style="list-style-type: none"><li>1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;</li><li>2. Have not within a three-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a</li></ul> | <p>criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property;</p> |
|--|--|

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this contract had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

#### EXCEPTIONS:

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this contract, the Contractor is deemed to have signed this certification.

#### II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

1. By signing this contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Oregon Department of Transportation determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous

certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.

4. The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-3400) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The Contractor agrees by entering into this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by entering into this contract that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

### III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

#### **Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

##### Instructions for Certification

1. By signing and submitting this contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this contract is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is

suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

- a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

**IV. EMPLOYMENT**

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranting, Department shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the contract, any professional or technical personnel who are or have been at any time during the period of this contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be

entitled to rely on the accuracy, competence, and completeness of Contractor's services.

**V. NONDISCRIMINATION**

During the performance of this contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this contract. Contractor, with regard to the work performed after award and prior to completion of the contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contract covers a program set forth in Appendix B of the Regulations.
2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this contract, Contractor agrees as follows:
  - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment,

without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.

- b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
  - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such

direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

#### VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

#### DBE POLICY STATEMENT

**DBE Policy.** It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this contract.

**Required Statement For USDOT Financial Assistance Agreement.** If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

**DBE Obligations.** The Oregon Department of Transportation (ODOT) and its contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither ODOT nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as ODOT deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this contract.

**Records and Reports.** Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

**DBE Definition.** Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

#### CONTRACTOR'S DBE CONTRACT GOAL

DBE GOAL   0   %

By signing this contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the contract for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

#### VII. LOBBYING

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal

agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

FOR INQUIRY CONCERNING ODOT'S  
DBE PROGRAM REQUIREMENT  
CONTACT OFFICE OF CIVIL RIGHTS  
AT (503)986-4354.



**EXHIBIT D**

Information Required by 2 CFR Subtitle B with guidance at 2 CFR Part 200

1. Federal Award Identification: 0000(221)
2. Grantee Name (which must match the name associated with 3 below): City of Salem
3. Grantee's unique entity identifier (i.e. DUNS number): 079977534
4. Federal Award Identification Number (FAIN): 0000(221)
5. Federal Award Date: July 1, 2013
6. Period of Performance Start and End Date: From July 2015 to November 2016
7. Total Amount of Federal Funds Obligated by this Agreement: \$239,220
  - A. Total Amount of Federal Award: \$239,220  
Federal award project description: 2013-15 Transportation and Growth Management Program  
Name of Federal awarding agency: FHWA  
Contact information for awarding official: Linda Swan  
Indirect cost rate: 161.72%
    - i.a. CFDA Number and Name: 20.205 - Highway Planning and Construction
    - i.b. Amount: \$239,220
    - ii.a. CFDA Number and Name: \_\_\_\_\_
    - ii.b. Amount: \_\_\_\_\_
    - iii.a. CFDA Number and Name: \_\_\_\_\_
    - iii.b. Amount: \_\_\_\_\_
  - B. Total Amount of Federal Award: \_\_\_\_\_  
Federal award project description: \_\_\_\_\_  
Name of Federal awarding agency: \_\_\_\_\_  
Contact information for awarding official: \_\_\_\_\_  
Indirect cost rate: \_\_\_\_\_
    - i.a. CFDA Number and Name: \_\_\_\_\_
    - i.b. Amount: \_\_\_\_\_
    - ii.a. CFDA Number and Name: \_\_\_\_\_
    - ii.b. Amount: \_\_\_\_\_
    - iii.a. CFDA Number and Name: \_\_\_\_\_
    - iii.b. Amount: \_\_\_\_\_
  - C. Total Amount of Federal Award: \_\_\_\_\_  
Federal award project description: \_\_\_\_\_  
Name of Federal awarding agency: \_\_\_\_\_

Contact information for awarding official:

Indirect cost rate: \_\_\_\_\_  
i.a. CFDA Number and Name: \_\_\_\_\_  
i.b. Amount: \_\_\_\_\_  
ii.a. CFDA Number and Name: \_\_\_\_\_  
ii.b. Amount: \_\_\_\_\_  
iii.a CFDA Number and Name: \_\_\_\_\_  
iii.b Amount: \_\_\_\_\_

8. Total Amount of Federal Funds Obligated to Grantee: \$239,220

9. Is Award R&D?                       Yes         No



EXHIBIT D  
ELIGIBLE PARTICIPATING COST

DESCRIPTION

**PERSONNEL SERVICES**

*Salaries* - Straight time pay for regular working hours in a monthly period. Includes standard labor distributions like Social Security Taxes, Workers' Compensation Assessments and Medical, Dental, Life Insurance. Excludes mass transit tax, vacation leave, sick leave and compensatory time taken.

*Overtime* - Payments to employees for work performed in excess of their regular work shift.

*Shift Differential* - Payments to employees in addition to regular pay, for shift differential work as described in labor contracts or Personnel Rules.

*Travel Differential* - Payments to employees in addition to regular pay for travel time to and from work on projects in excess and beyond an 8 hour day as described in labor contracts or Personnel Rules

**SERVICES AND SUPPLIES**

**In-State Travel - Per Rates Identified in State Travel Handbook**

*Meals & Misc.* - Payment for meals incurred while traveling within the State of Oregon.

*Lodging & Room Tax* - Payment for lodging, including room taxes, incurred while traveling within the State of Oregon. Fares, Taxi, Bus, Air, Etc.

*Per Diem* - Payment for per diem incurred while traveling within the State of Oregon.

*Other* - Payment for other miscellaneous expense, incurred while traveling within the State of Oregon

*Private Car Mileage* - Payment for private car mileage while traveling within the State of Oregon.

**Office Expense**

*Direct Project Expenses Including:*

*Photo, Video & Microfilm Supplies* - Payment for photography, video and microfilm supplies such as film for cameras, blank video tapes, storage folders, etc.

*Printing, Reproduction & Duplication* - Expenditures for services to copy, print, reproduce and/or duplicate documents.

*Postage* - Payment for direct project postage.

*Freight & Express Mail* - Payment for direct project freight services on outgoing shipments.

**Telecommunications**

*Phone Toll Charges (long-distance)* - Payment for telephone long distance charges.

**Publicity & Publication**

*Publish & Print Photos* - Payment for printing and publishing photographs to development of publicity and publications.

*Conferences* (costs to put on conference or seminars)

**Equipment \$250 - \$4,999**

NOT ELIGIBLE

**Employee Training, Excluding Travel**

NOT ELIGIBLE

**Training In-State Travel**

NOT ELIGIBLE

**CAPITOL OUTLAY**

NOT ELIGIBLE



## AMENDMENT NO. 1

The State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as "ODOT" or "Agency", and City of Salem, hereinafter referred to as "City", entered into an intergovernmental agreement on July 23, 2015 ("Agreement"). Said Agreement covers a Transportation and Growth Management grant for City of Salem, State Street Corridor Plan.

It has now been determined by ODOT and City that the Agreement referenced above, although remaining in full force and effect, shall be amended to extend the agreement end date, and revise the schedule in the Statement of Work. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

### **Paragraph A of Section 2 (Terms of Agreement); which currently reads:**

Term. This Agreement becomes effective on the date on which all parties have signed this Agreement and all approvals (if any) required to be obtained by ODOT have been received. This Agreement terminates on February 28, 2017 ("Termination Date")."

### **Shall be amended to read:**

Term. This Agreement becomes effective on the date on which all parties have signed this Agreement and all approvals (if any) required to be obtained by ODOT have been received. This Agreement terminates on January 31, 2018 ("Termination Date")."

**Exhibit A, the Statement of Work, shall be amended to delete the schedule in its entirety and replaced with the following:**

### **Project Schedule**

Task	Title	Due Date
1	Project Reconnaissance and Kickoff	August - November 2015
2	Identify and Analyze Existing Conditions and Forecast Conditions	December 2015 - February 2016
3	Public Outreach #1	March 2016
4	Tier 1 Screening of Land Use Options and Street Design	March 2016 - August 2016
5	Public Outreach #2	September 2016

Task	Title	Due Date
6	Tier 2 Evaluation of Preferred Land Use Option and Street Design Alternative	September 2016 - February 2017
7	Public Outreach #3	March 2017
8	Draft SSRP and Adoption	April 2017 - October 2017

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

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

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives are duly authorized, have read this Agreement, understand it, and agree to be bound by its terms and conditions.

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

By *Jerry R. Schaefer*  
 Division Administrator or designee  
 Transportation Development Division  
 Date 11/18/16 11/17/16  
*11-16-16* *me* *11-16-16*

City of Salem  
 By *Naomi Zwerdling*  
 Official's Signature  
 Date 11/14/2016

**Contact Names:**

Lisa Anderson-Ogllvie  
 City of Salem  
 555 Liberty Street SE, Room 205  
 Salem, OR 97301-3503  
 Phone: 5035886173  
 Fax: 503-361-2202  
 E-Mail: LMAnderson@cityofsalem.net

Naomi Zwerdling, Contract Administrator  
 Transportation and Growth Management Program  
 455 Airport Rd. SE Bldg. B,  
 Salem, OR 97310-5395  
 Phone: 503-986-2836  
 Fax: 503-986-2840  
 E-Mail: Naomi.zwerdling@odot.state.or.us

State Street Project Salem, Oregon Preliminary Construction Cost Estimate June 2017		Alternative 3 Hybrid			
Work Item	Price per unit	Unit	Qty	Cost	Description/Notes
<b>Removal of Structures and Obstructions</b>					
REMOVAL OF CURBS	\$ 6.00	FOOT	4,440	\$ 26,640.00	includes areas of replaced curb and 25% of existing curbs
REMOVAL OF WALKS AND DRIVEWAYS	\$ 12.00	SQYD	8,200	\$ 98,400.00	
REMOVAL OF SURFACINGS	\$ 11.50	SQYD	2,350	\$ 27,025.00	
PAVEMENT LINE REMOVAL	\$ 0.40	FOOT	10,735	\$ 4,294.00	
REMOVAL OF INLETS	\$ 450.00	EACH	5	\$ 2,250.00	
<b>Surfacing</b>					
CONCRETE CURBS	\$ 25.00	FOOT	4,760	\$ 119,000.00	includes all new curb and replacement of 25% of existing curbs.
CONCRETE DRIVEWAYS	\$ 7.00	SQFT	31,325	\$ 219,275.00	
CONCRETE WALKS	\$ 5.00	SQFT	83,755	\$ 418,775.00	
EXTRA FOR NEW SIDEWALK RAMPS	\$ 1,200.00	EACH	48	\$ 57,600.00	
LEVEL 3, 1/2 INCH ACP MIXTURE	\$ 85.00	TON	670	\$ 56,950.00	
AGGREGATE BASE	\$ 40.00	TON	1,140	\$ 45,600.00	
<b>Storm Drainage</b>					
CONCRETE INLETS, TYPE G-2	\$ 2,000.00	EACH	5	\$ 10,000.00	
MINOR ADJUSTMENT OF MANHOLES	\$ 950.00	EACH	12	\$ 11,400.00	
Water Quality & Treatment	\$ 50,000.00	LS	1	\$ 50,000.00	unknown stormwater detention and treatment requirements
<b>Signing</b>					
Signing Lump Sum	-	LS	1	\$ 32,000.00	includes signs, foundation & posts
<b>Striping</b>					
Pavement Marking Lump Sum	-	LS	1	\$ 15,890.00	includes longitudinal pavement markings (paint), pavement bar, pavement legend (arrows, bike lane stencils)
<b>Landscaping</b>					
Tree & Tree grate	\$ 1,000.00	EACH	9	\$ 9,000.00	for the landscape strip between 12th & 13th
Irrigation	\$ 1,775.00	LS	1	\$ 1,775.00	for the landscape strip between 12th & 13th
<b>Traffic</b>					
Traffic Signal	\$ 70,000.00	EACH	7	\$ 490,000.00	assumes relocation of a traffic signal pole due to change in curb return; Alt 1: NW & SE corners of 17th; Alt 2&3: 14th all corners, 17th all except SE
Pedestrian Pole, button & foundation	\$ 2,000.00	EACH	4	\$ 8,000.00	assumes relocation of a pedestrian push button pole. Alt 2 & 3: at all 4 corners of 14th
Rectangular Rapid Flashing Beacon	\$ 12,550.00	EACH	2	\$ 25,100.00	installed at new four lane pedestrian crossings without refuge islands

Bid Item Subtotal:		\$1,728,974.00
Temporary Traffic Control	8%	\$138,317.92
Temporary Erosion & Sediment Control	5%	\$86,448.70
Subtotal:		\$1,953,740.62
Mobilization & construction survey	12%	\$234,448.87
Subtotal:		\$2,188,189.49
Contingency	40%	\$875,275.80
<b>Construction Total:</b>		<b>\$3,063,500.00</b>
Preliminary Engineering:	15%	\$459,525.00
Construction Management:	15%	\$459,525.00

Note: the following items have not been included in this estimate;  
Right of Way  
Street Lighting  
Replacement Bridge or Bridge widening at Mill Creek

State Street Project Salem, Oregon Preliminary Construction Cost Estimate August 2017		Pedestrian Crossings only			
Work Item	Price per unit	Unit	Qty	Cost	Description/Notes
<b>Removal of Structures and Obstructions</b>					
REMOVAL OF CURBS	\$ 6.00	FOOT	50	\$ 300.00	for bulb out
REMOVAL OF WALKS AND DRIVEWAYS	\$ 12.00	SQYD	-	\$ -	
REMOVAL OF SURFACINGS	\$ 11.50	SQYD	134	\$ 1,541.00	for bulb out & median island at 25th
PAVEMENT LINE REMOVAL	\$ 0.40	FOOT	-	\$ -	
REMOVAL OF INLETS	\$ 450.00	EACH	-	\$ -	
PAVEMENT LINE REMOVAL	\$ 0.40	FOOT	230	\$ 92.00	striping at median island at 25th
<b>Surfacing</b>					
CONCRETE CURBS	\$ 25.00	FOOT	190	\$ 4,750.00	for bulb out & median island at 25th
CONCRETE DRIVEWAYS	\$ 7.00	SQFT	-	\$ -	
CONCRETE WALKS	\$ 5.00	SQFT	670	\$ 3,350.00	for bulb out & median island at 25th
EXTRA FOR NEW SIDEWALK RAMPS	\$ 1,200.00	EACH	6	\$ 7,200.00	
LEVEL 3, 1/2 INCH ACP MIXTURE	\$ 85.00	TON	21	\$ 1,785.00	for bulb out & median island at 25th
AGGREGATE BASE	\$ 40.00	TON	39	\$ 1,560.00	for bulb out & median island at 25th
<b>Storm Drainage</b>					
CONCRETE INLETS, TYPE G-2	\$ 2,000.00	EACH	0	\$ -	
MINOR ADJUSTMENT OF MANHOLES	\$ 950.00	EACH	0	\$ -	
Water Quality & Treatment	\$ 50,000.00	LS	0	\$ -	
<b>Signing</b>					
SIGNS	\$ 60.00	SQFT	120	\$ 7,200.00	signs only
<b>Striping</b>					
PAVEMENT BAR: TYPE AB	\$ 5.00	SQFT	710	\$ 3,550.00	
LONGITUDINAL PAVEMENT MARKINGS - PAINT	\$ 0.25	FOOT	460	\$ 115.00	
<b>Landscaping</b>					
Tree & Tree grate	\$ 1,000.00	EACH	-	\$ -	
Irrigation	\$ 1,775.00	LS	-	\$ -	
<b>Traffic</b>					
Traffic Signal	\$ 70,000.00	EACH	-	\$ -	
Pedestrian Pole, button & foundation	\$ 2,000.00	EACH	-	\$ -	
Rectangular Rapid Flashing Beacon	\$ 12,550.00	EACH	3	\$ 37,650.00	

Bid Item Subtotal:		\$69,093.00
Temporary Traffic Control	8%	\$5,527.44
Temporary Erosion & Sediment Control	5%	\$3,454.65
Subtotal:		\$78,075.09
Mobilization & construction survey	12%	\$9,369.01
Subtotal:		\$87,444.10
Contingency	40%	\$34,977.64
<b>Construction Total:</b>		<b>\$122,500.00</b>

Preliminary Engineering:	15%	\$18,375.00
Construction Management:	15%	\$18,375.00

Note: the following items have not been included in this estimate;  
Right of Way  
Street Lighting  
Replacement Bridge or Bridge widening at Mill Creek  
Drainage  
Traffic Signals  
Landscaping

OFFICE  
COPY

RECV 02 JUL '18 12:05 USDC-ORE

John L. Poole  
1566 Court Street NE  
Salem, Oregon 97301  
(707) 812-1323  
Plaintiff *pro se*

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION

JOHN L. POOLE,

Case No.: 6:18-cv-1175-AA

Plaintiff,

v.

COMPLAINT

CITY OF SALEM, OREGON  
DEPARTMENT OF TRANSPORTATION,  
FEDERAL HIGHWAY ADMINISTRATION,  
OREGON STATE HISTORIC  
PRESERVATION OFFICE, ADVISORY  
COUNCIL FOR HISTORIC  
PRESERVATION

Defendants.

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**Introduction**

1. This action concerns government agencies' repeated refusals to "Stop, Look & Listen" (Council On Environmental Quality Executive Office Of The President And Advisory Council On Historic Preservation, *NEPA and NHPA - A Handbook for Integrating NEPA and Section 106*, March 2013; *San Carlos Apache Tribe v. U.S.*, 417 F.3d 1091, 2097 (9th Cir., 2005), *Presidio Historical Ass'n v. Presidio Trust*, 811 F.3d 1154, 1169 (9th Cir., 2016) ) and

identify and assess impacts on federally recognized historic resources as specified under the National Historic Preservation Act (“NHPA”) (National Historic Preservation Act, Pub. L. No. 89-665, as amended by Pub. L. No. 96-515 codified as 54 U.S.C. 300101 *et seq.*). The NHPA established a framework where historically significant properties and districts may be placed on the *National Register of Historic Places* (54 U.S.C. § 300311; Chapter 3021—National Register of Historic Places 54 U.S.C. § 302101 *et seq.*) maintained by the National Register Division of the National Park Service. Historic resources listed on the National Register are entitled the protection of a NHPA Section 106 Review<sup>1</sup> when there is any federal undertaking (54 U.S.C. § 300320) that affects or potentially affects the resources. The word “undertaking” is defined broadly as:

In this division, the term “undertaking” means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including — ... (2) those carried out with Federal financial assistance 54 U.S.C. § 300320(2)

2. The NHPA was enacted in 1966 and its sister legislation, the National Environmental Policy Act of 1969 (“NEPA” Pub.L. 91–190 codified as 42 U.S.C. § 4321 *et seq.*), was enacted in 1969. The NHPA and NEPA were products of the Johnson Administration which recommended the creation of a national historic preservation program embodied in the NHPA and NEPA. The acts were in response to the Kennedy administration’s accelerated destruction of natural and cultural resources by launching urban renewal, laying waste to historic slums with the expectation that cities of the future would rise on their ruins.<sup>2</sup>

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1 Originally the NHPA was codified at 16 U.S.C. 470 and it was subsequently recodified under the National Park Service and Related Programs (128 STAT. 3094 PUBLIC LAW 113–287—DEC. 19, 2014) at Title 54 - NATIONAL PARK SERVICE AND RELATED PROGRAMS, Subtitle III - National Preservation Programs, DIVISION A - HISTORIC PRESERVATION, CHAPTER 3001 – POLICY. Hence the current citation to the codified version is: 54 U.S.C. 300101 *et seq.* Section 106, formerly codified as 54 U.S.C. 470f is now codified as 54 U.S.C. 306108.

2 King, Thomas F., *Cultural Resource Laws & Practice*, 4<sup>th</sup> ed., AltaMira Press 2013) at p. 19.



3. Fifty years after the enactment of the NHPA, the conflict between urban renewal of “[a]dding housing targeted to somewhat more affluent professionals” (*Economic Analysis - State Street Corridor Plan*, TGM 2D-14: Technical Memo dated January 8, 2016 DRAFT Version 2<sup>3</sup>) adjacent to State of Oregon’s office buildings on one hand and National Register listed historic resources on the other, is playing out within the City of Salem, Oregon. In June 2014, Defendant City of Salem applied for a federal grant to underwrite its previously identified “opportunity area” referred to as the “State Street Corridor”. On July 2015, defendants City of Salem and State of Oregon through its Department of Transportation entered into an *INTERGOVERNMENTAL AGREEMENT - City of Salem, State Street Corridor Plan* (“Intergovernmental Agreement”) where \$239,220 of federal monies was awarded for a Study Area defined as:

### **Study Area**

The Project study area (the "Study Area") approximately a mile of the State Street corridor and adjacent lands, from 12th Street to the 25th Street, as shown in the attached map (see attached State Street Refinement Plan Project Area map).

The Study Area includes **1.5 blocks on either side** of State Street between 12th to 25th Streets for the purposes of the land use analysis. For traffic analysis purposes, **close parallel streets** will be included as agreed between ODOT, the City and the Consultant during the course of the Consultant's performance of the Services. [*Id. Boldface added.* ]

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3 This Technical Memorandum along with the majority of PDFs available to the public fails to disclose federal funding despite the *Agreement's, infra.*, notification requirement at paragraph (I)(3) which provides:

(3) City shall ensure that any work products produced pursuant to this Agreement include the following statement:

"This project is partially funded by a grant from the Transportation and Growth Management (TGM) Program, a joint program of the Oregon Department of Transportation and the Oregon Department of Land Conservation and Development. This TGM grant is financed, in part, by federal Moving Ahead for Progress in the 21st Century ("MAP-21 "), local government, and State of Oregon funds

4. Defendant City of Salem eventually consumed \$289,950 worth of a federal “carrot” (*Lee v. Thornburgh*, 877 F.2d 1053 (D.C. Cir., 2003)) performing many studies with hired consultants. Part of the project’s goal is to draft “at least least three, and up to six” (*Agreement*, p. 36) new zoning classifications to be applied within the Study Area. Defendant City of Salem has only produced two new proposed zoning classifications neither of which consider historic resources listed on The National Register. The two proposed zoning classifications’ application to the Study Area are explicitly designed to “incentivize development” (Commissioner Ian Levin, Planning Commission hearing, May 1, 2018 ). Moreover, the proposed legislation is designed to spur development (“Eunice [City of Salem Project Manager] said, ‘well, what can we do? What can the City do to help?’” - Stakeholder Advisory Committee member and real estate broker Jennifer Martin sharing her previous dialogue with Eunice Kim, City of Salem Community Development Department, at the Stakeholder Advisory Committee Meeting #4, January 23, 2018) and reduce barriers for new building permits (“Developers prefer zoning to be simple” - Stakeholder Advisory Committee Meeting #2 Summary Notes, August, 2016).

5. The proposed zoning classifications will grant additional property rights to owners that will entitle the owners to a *ministerial* issuance of a building permit *as a matter of right* (U.S. Const. amend. V), rather than by discretion, and in doing so the federal opportunity to “stop, look & listen” is gone. The enactment of the new zoning classifications and the rezoning of the State Street Corridor will be a windfall of increased value to property owners.

6. Plaintiff is informed and believes that Defendants Oregon Department of Transportation, Federal Highway Administration, Oregon State Historic Office, and Advisory Council For Historic Preservation did not know until 2018 that historic resources listed on The National Register are within the Study Area, they learned only after plaintiff started making

requests for a Section 106 Review. Said state and federal defendants now know and refuse, and continue to refuse to follow the federal standards, i.e. Section 106 Review “the stick”, *Lee v. Thornburgh, op. cit.*, that the NHPA attaches to \$289,950.

7. Defendant City of Salem who *has known for all times pertinent to this Complaint* that the National Register Court Chemeketa Residential Historic district is within the Study Area funded by federal dollars, and misinformed and misled the public. Plaintiff is informed and believes that Defendant City of Salem failed to alert Defendants Oregon Department of Transportation, Federal Highway Administration, Oregon State Historic Office, and Advisory Council For Historic Preservation that historic resources listed on The National Register are within the Study Area until Plaintiff made requests for a Section 106 Review.

#### **Jurisdiction**

8. This case arises under the Administrative Procedures Act 5 U.S.C. 501 *et seq.* which authorizes a federal court to find unlawful and set aside any final agency action that is “arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.” *Id.* §§ 702, 706. This case concerns federal questions under National Historic Preservation Act ( Public Law 89-665) 54 U.S.C. 300101 *et seq.*, 28 U.S.C. § 1331.

#### **Venue**

9. Venue in this district is appropriate under 28 U.S.C. § 1391(d) & (e) because it is the district in which the defendant City of Salem exists, defendant ODOT and SHPO maintain their headquarters, and defendant FHWA maintains its Oregon office and in which “a substantial part of the events or omissions giving rise to the claim occurred.”

## **Parties**

10. Plaintiff resides at and owns the real property commonly referred to as 1566 Court Street NE, Salem, County of Marion, State of Oregon. Plaintiff is admitted to practice before the 9<sup>th</sup> Circuit Court of Appeals and an active member of the California State Bar in good standing.

11. Defendant City of Salem (“City of Salem”) is a municipal corporation under the laws of the State of Oregon and is within Marion County.

12. Defendant Oregon Department of Transportation (“ODOT”) is an agency of the State of Oregon, duly organized and existing in the laws of the State of Oregon and maintains its principal office in the City of Salem, Marion, County.

13. Defendant Oregon State Historic Preservation Office (“SHPO”, pronounced “shippo”) is a sub-agency, or office, of the Oregon Department of Parks and Recreation and was established in 1967 in accordance with the NHPA.

14. Defendant Advisory Council for Historic Preservation (“ACHP”) is an independent federal agency and established in 1967 in accordance with the NHPA.

15. Defendant U.S. Department of Transportation is a federal agency. The Department, through its sub-agency the Federal Highway Administration (“FHWA”), is responsible for implementing MAP-21 and Fixing America's Surface Transportation Act (FAST-Act).

## **Background**

16. In 1987, a residential district consisting of an irregularly shaped area of approximately 38.57 acres and containing approximately 147 resources within the City of Salem, was nominated and duly placed on the National Register of Historic Places maintained by the

National Parks Service pursuant to the NHPA. The District is bounded by Mill Creek, 13th Street, and the alleyways between Court Street NE and State Street, The district is known as the National Register Court Chemeketa Residential District (“District”).

17. On or about December, 2011, Defendants ODOT, SHPO, ACHP and FHWA entered into:

A PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY ADMINISTRATION, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE OREGON STATE HISTORIC PRESERVATION OFFICE AND THE OREGON DEPARTMENT OF TRANSPORTATION REGARDING IMPLEMENTING **SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT FOR THE FEDERAL-AID HIGHWAY PROGRAM IN OREGON** (“Programmatic Agreement”) [**boldface** added].

18. The stated purpose of the Programmatic Agreement was to delegate the duty to monitor funds to assure “compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (16 USC 470), and the implementing regulations 36 CFR Part 800”. The Programmatic Agreement provides for the public, which includes Plaintiff, in the following ways (extracts below are alphabetized “a” through “e” here):

- a) ODOT, on behalf of FHWA, consistent with 36 CFR 800.2(d) will provide the public with information about an undertaking and its effects on historic properties and seek public comment (Stipulation 1(F): Applicability and General Requirements, p. 2)
- b) Coordinate the appropriate level of public involvement consistent with ODOT's public involvement procedures and meeting obligations under 36 CFR 800. (Stipulation 4(A) [Initiate the Section 106 Process](3): Standard Review for Program Undertaking, p. 6)
- c) Identify, invite and document all consulting parties including Tribe, the SHPO and members of the public.(Stipulation 4(A)(4): Standard Review for Program Undertaking, p. 6)
- d) ODOT will ensure that public involvement procedures are followed so that adequate public input is received regarding a resolution to the adverse effect. (Stipulation 4(E) [Resolution of Adverse Effect](4): Standard Review for Program Undertaking, p. 6)
- e) Public Participation and Notification. ODOT will consider the views of the public in all determinations of eligibility and assessments of adverse effect in a manner consistent with its public involvement plan for individual project actions and appropriate to the

nature, location and complexity of the project. Comments and considerations of the public will be included in the Section 106 documentation. Stipulation 7: Additional Provisions (B)

19. On July 6, 2012, President Obama signed into law MAP-21 provisioning over \$105 billion. On December 4, 2015, President Obama signed the Fixing America's Surface Transportation (FAST) Act, reauthorizing surface transportation programs through Fiscal Year 2020 and provisioning for \$305 billion. Monies from the MAP-21 program and/or FAST program were allocated to Defendant ODOT which, in turn, funded grant programs within the State of Oregon.

20. In April, 2013, two neighborhood associations in the City of Salem, Northeast Neighbors (NEN) and Southeast Salem Neighborhood Association (SESNA), partnered with defendant City of Salem to create a NEN-SESNA Neighborhood Plan titled *Looking Forward* and consisting of ninety-one pages. *Looking Forward* identified three opportunity areas, one of which was designated *State Street Corridor*. The boundary of the State Street Corridor opportunity is depicted in map form in Figure 31 on page 58 of the NEN-SESNA NEIGHBORHOOD PLAN and conforms to the *Agreement's* definition of the Study Area.

21. In the month of June, 2014, the City of Salem, by and through its Urban Planning Administrator, Lisa Anderson-Ogilvie, applied for a grant through ODOT's TRANSPORTATION AND GROWTH MANAGEMENT Program ("TGM"). In the grant application ("Grant Application"), the boundary lines of the *Looking Forward* opportunity described as the *State Street Corridor* were redrawn and reduced to specifically exclude the District. The Grant Application failed to identify or disclose that a National Register district was within the Study Area, The Grant Application was and is not available for download at the

project's webs site and it is not available in the project's file maintained at the Community Development Office file. Plaintiff only obtained a copy of the Grant Application through a public records request to ODOT. The redrawn map in the Grant Application fails to identify the District as a National Register District, but only references the District in cross hatches which in the Legend of the map is defined as a "Historic District." The dark cross hatches appear within the hundreds, if not thousands, of property lines. The redrawn map includes an estimated 1.7 million square feet of property. The Grant Application's summary description states:

This project aims to revitalize State Street into a vibrant, attractive, walkable mixed-use corridor through coordinated land use and transportation improvements. It will result in street cross sections that illustrate how State Street can be transformed within its constrained right-of-way into a welcoming environment for all transportation modes. **Zoning regulations and design standards will also be developed to encourage pedestrian-friendly redevelopment and mixed-use development.**

[**Boldface** added.]

22. On or about February, 2015, the City of Salem adopted the *Looking Forward* plan and published and continues to publish a booklet dated March 2015 and advertise the larger *State Street Corridor* opportunity area instead of reduced boundary area depicted in the Grant Application.

23. On May 23, 2017, Plaintiff acquired title to 1566 Court Street NE, upon which stands a qualified historic resource within the District by that Warranty Deed filed May 23, 2017, as instrument number 2017-00025827 in the County of Marion, State of Oregon. The house on plaintiff's property is designated as "Primary Significant (Contributing)" to the District and is identified as number 25 on Section 7, page 30, of the Nomination; this designation is the highest classification within the District. In addition, Plaintiff owns eight feet of property half way

underneath the abutting alley right of way, which land is contained within narrowed boundaries of defendant City of Salem's clandestine attempt to redefine the Study Area.

24. On September 9, 2017, a resident within the District wrote Kimberly Fitzgerald, an Historic Preservation Officer for Defendant City of Salem asking:

Hi Kimberly,

I am contacting you on behalf of the friends of the Court Chemeketa Residential Historic District. We are a group of neighbors who get together from time to time to support the values of the district. We recently had a meeting to talk about the State Street Development proposal by the city, and we had a few concerns (mainly height, traffic and alley) about the possible detrimental impact of that project on the district. We also had several hopes about the possible beneficial impact (increased livability and viability of the historic district and attractiveness and safety of State street) of that project on the district. So now we are in the process of reaching out to different partners to increase awareness and collaboration around this development.

From your vantage point, what are your thoughts about the impact of the State street plan as it currently stands? I wonder if it might be a good idea for a few of us to come and meet with you to discuss? Do you have any advice for us on how navigate and work with the development project and the historic district? I am a community representative on the advisory board for state street, so I have been keeping up with and contributing to the project in that way.

25. On September 13, 2017, Ms. Fitzgerald responded:

So I am familiar with the State Street project, in that I work with Eunice Kim here in the Community Development Department, and she's the project manager. In fact, I know that she's been planning on scheduling a meeting with just the folks in the historic district fairly soon, as a number of the residents have had ongoing questions regarding the project while she was out on maternity leave. She's still on a reduced schedule, but once she's back and has had a chance to schedule this meeting, she'll let you know and I think that she would really appreciate your help getting the word out to any neighbors that might be interested in attending.

Regarding your request to meet with me, while I am happy to talk with you, I don't want to waste your time, and I want to be very clear about the limits of my ability to assist you with your concerns. Unfortunately--under the National Historic Preservation Act, Goal 5 (and related state preservation statutes) and our local SRC 230, **there is no federal, state or local legal nexus for the establishment of historic design standards within areas that are not designated, but are adjacent to National Register Historic Districts.** Oregon has some pretty strong owner consent requirements even for properties that are



designated (see ORS 197.772), so trying to implement regulations beyond the boundary of a legally established and designated National Register Historic District is not a realistic or feasible tool for you to use to effectively accomplish your goals here for your neighborhood. [Boldface added.]

26. On or about the Fall of 2017, Defendant SHPO responded to an inquiry asking “if there were any regulations about the zones that abut a historic district” and Defendant SHPO replied there are “regulations about the zones that abut a historic district”, but that those regulations would only come into play if there were federal funding.

27. On January 23, 2018, defendant City of Salem conducted a steering committee meeting. At the meeting, defendant City of Salem attempted to substitute its unqualified judgment for the results that a Section 106 Review would bring to light. At the meeting, project manager Eunice Kim acknowledged that the proposed zoning would have impact by stating:

we heard loud and clear that the residents, particularly to the north thought that was too high and **would have a negative impact** on their properties so we proposed to reduce that to 55'

...

we **heard about impacts** beyond height, we proposed to increase the setback between the mixed-use zones and abutting residential zones, so we increased it from five to ten feet in the Mixed Use-1 zone

...

**we proposed...** additional setback based on the height of the building. So if you are 15' tall, you need to be 10' back, but as you go higher, you have to further away from a residential zone.

...

we're going to recommend a parking management **study be done after this is implemented**

...

We are trying to accommodate the concern of height. We're not very likely to go with 35' high because we are taking away a lot of rights of property owners. You could do 70' mixed us in a CO zone. ... **We are going to be encouraging development with these new zones**

28. Defendant City of Salem claim that owners could build to 70' under the current zoning is a straw man. The current zoning of CO and CR has parking standards that make any development of something over two stories on 1 acre or less parcels impossible unless the

building has either of the two very expensive options of underground parking or building on top of multilevel parking structure on less than 60% of the property area. Plaintiff is informed and believes that the current zoning has been in place for over 50 years and the highest buildings adjacent to the residential zones is only two stories because building that includes underground or multi-level parking is not economically justifiable in this area.

29. On February 26, 2018, plaintiff submitted to Eunice Kim, Project Manager the following request:

I would like the opportunity to review the entire file(s) for the State Street Corridor project. Could you give me some sort of ball park estimate as to the size of the files, e.g. 4 files with about 1500 pages? When I have that estimate, I could then request a time to come to your office to view the file that is mutually convenient, take notes, and possibly some photos.

30. On February 26, 2018, defendant replied to Plaintiff's request to visit the file:

All of the project deliverables are located on the project website at:  
<https://www.cityofsalem.net/Pages/state-street-corridor-plan-to-revitalize-the-street.aspx>

Unlike quasi-judicial land use cases, there is no physical case file with all of the project documents in it. If you would like to see previous versions of a specific deliverable, you can request them through a public records request. The process and fee for making such a request is explained here:

<https://www.cityofsalem.net/Pages/public-records-request.aspx>

The City has been working on this project since 2015, so there are many documents. If there is a specific document you are looking for, please let me know. I could email it to you. I'm happy to help.

31. On March 12, 2018, Plaintiff requested the City Council of Defendant City of Salem undertake a review under Section 106 of the NHPA. Plaintiff's request were not addressed by council members or discussed and the proposed staff recommendations were assigned to the Planning Commission without a public hearing. No notice of the March 12<sup>th</sup> hearing was provided on the project's web site.

32. On March 15, 2018, defendant SHPO was again contacted about federal funding and the State Street Corridor Project and defendant SHPO advised that federal “Funding for a plan is not subject to Section 106 review by our office”.

33. On March 27, 2018, Plaintiff received in the mail a public notice indicating a hearing and availability of the file. Plaintiff submitted the following public records request on that day at 2:25 p.m., just hours after reading the public notice:

The CA18-02 Hearing Notice provides: on page three:

The case file is available for inspection at the office of the Salem Planning Division, City Hall, Room 305, at no cost and copies may be obtained at a reasonable cost.

I am renewing my request that was previously denied and would like to inspect the case file tomorrow, Wednesday, March 28th, at noon. I am concerned that the above notice entails what I attempted to accomplish earlier and was denied. Will I be allowed access?

Also, when were the notice of hearing for the April 3rd meeting mailed out? Was our name and address (see at the end of this email) included on the mailing list?

Thank you for your continuing cooperation,

34. On March 28, 2018, Plaintiff visited the office of the Community Development of defendant City of Salem to inspect the file. What was provided to plaintiff was a file about 1” thick that contained the notice of the hearing and the staff report. There was nothing else in the file. After discussing the matter with Eunice Kim, Plaintiff determined that the only publicly available files for inspection were the 1” thick file and those offered through the web site.

Plaintiff is an experienced litigator in public records requests and Plaintiff recalls concluding the City’s lack of transparency in the matter was the first he had ever experienced where documents were only available if you could guess what they had and then submitted requests through the City’s public request portal. During the conversation with Eunice Kim, Plaintiff asked why the boundary lines were different and Eunice Kim replied that some residents had requested they be

excluded from the project. Plaintiff asked who their names were and Ms. Kim could not recall. Plaintiff asked at what meeting was this requested and Ms. Kim could not recall.

35. On March 30, 2018, Plaintiff submitted a request on defendant's City of Salem "Contact City Attorney" page asking to talk with an attorney about the upcoming Planning Commission hearing and the NHPA. Plaintiff never received a response to this request.

36. On March 29, 2018, Plaintiff submitted a public records request to see the resumes and other qualification of the members of the City of Salem's Historic Landmark Commission as plaintiff was concerned that if a Section 106 Review were conducted who would have the background to knowledgeable address the issues. On April 2, 2018, defendant City of Salem responded that it would cost \$91.68 to have such information. Plaintiff received the following cost estimate from defendant City of Salem:

**PUBLIC RECORDS REQUEST #18-693**

Our office received your request for records and will process your request according to the policy detailed on the City's website at <http://www.cityofsalem.net/Pages/public-records-policy.aspx>.

In response to your public records request:

- The City is the custodian of (maintains) the requested record(s).
- The City is not the custodian of the requested record(s)
- The City is uncertain whether it maintains the requested record(s).
- The City requests the following clarification:

The cost estimate is as follows:

\$32.15 1 hr staff time @ \$32.15/hr  
\$45.53 Review time by Asst City Attorney @ \$91.06/hr  
\$14.00 40 pg @ \$.35/ea  
-----  
\$91.68 Total

The City accepts cash and checks for public records requests. Remit payment to:

City of Salem

City Recorder

555 Liberty St SE #205

Salem OR 97301

Note: If you pay in person, our office hours are from 8:00 a.m. to 5:00 p.m., and we are closed from noon to 1:00 p.m. Once payment has been received, staff will proceed with compiling the records for your request.

If the records are copyrighted, the City will require you to complete a release form (<https://www.cityofsalem.net/CityDocuments/public-records-request-for-production-of-copyrighted-material.pdf>) and/or obtain permission from the copyright holder(s) before documents can be released. I will email you if this applies to your request.

If the deposit amount is greater than the actual fees, a refund will be issued to you. If the deposit amount does not cover actual fees, you will be requested to submit additional funds.

37. On March 28, 2018, defendant SHPO advised defendant City of Salem that:

... Unfortunately, our office cannot speak to the specifics of this project because it was not submitted for our review. Under the law, the federal agency or its designee (ODOT in this instance) has the authority to determine when Section 106 does or does not apply. However, I can speak generally to the role of the State Historic Preservation Office (SHPO) in the Section 106 process and the applicability of the law.

...

**Planning activities are exempt from Section 106 review** because these desk-top exercises themselves do not result in an actual physical, auditory, or visual impact. Specifically, 36CFR800.3(a)(1) states, “if the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the agency official has no further obligations under section 106 or this part.” [**Boldface** added.]

38. On April 6, 2018, Plaintiff contacted defendant SHPO asking for cases or interpretations to the assertion that “Planning activities are exempt”. On April 9, 2018 defendant SHPO responded “My letter and comments are solidly based in federal law and rule“ and then cited as authority for the alleged exemption “Chapter 36 of the Code of federal Regulations, part 800.” Plaintiff is informed and believes that there are only a handful of exemptions to the

Section 106 Review requirements, e.g. railroad rights-of-way 82 FR 54390 (2017), Interstate Highway System 69 FR 77979 (2004)<sup>4</sup>, Natural Gas Pipelines 67 FR 16364 (2002), small wireless facilities 83 FR 19440 (2018), as published in the Federal Register by defendant ACHP 36 CFR 800.14(c)(8) and that “planning” is not one of them. The NHPA and regulations promulgated thereunder provide:

The National Historic Preservation Act (“NHPA”) authorizes the ACHP to promulgate regulations for exempting undertakings “from any or all of the requirements of” the Act. 16 U.S.C. 470v. The Section 106 regulations, found at 36 CFR part 800, detail the process for the approval of such

exemptions. 36 CFR 800.14(c) Exempted categories—(1) Criteria for establishing.

...

(8) Notice. The proponent of the exemption shall publish notice of any approved exemption in the Federal Register.

39. On April 3, 2018, defendant City of Salem asserted:

Staff response: Section 106 of the National Historic Preservation Act of 1966 “requires Federal agencies to take into account the effects of their undertakings on historic properties, and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment,” according to the ACHP.

Section 106 is intended to review brick and mortar projects that are federally funded. This planning project is a study and not a project to develop a property. A Section 106 review cannot be requested without a federal nexus within a development project. In addition, ODOT has a programmatic agreement with the State Historic Preservation Office (SHPO) that specifically exempts planning studies/projects from Section 106 review.

---

4 Furthermore, the exemption is narrowly drawn:

The exemption concerns only the effects of Federal undertakings on the Interstate System and does not alter the Section 106 review obligations for other types of historic properties that may be affected by an undertaking. Each Federal agency would remain responsible for considering the effects of its undertakings on other historic properties that are not components of the Interstate System. For example, Federal agencies would still have to take appropriate actions to identify and consider archaeological sites that may be affected by ground disturbing activities, historic properties of religious and cultural significance to Indian tribes that may be impacted, and **historic buildings or districts located within the area of potential effect of a proposed Federal undertaking** in accordance with subpart B of the Section 106 regulations. *Id.*, “II. Exemption Concept”. [Boldface added.]

If a Section 106 review was conducted, the SHPO would take the lead in facilitating the review process, determine whether or not there is an adverse effect requiring mitigation, and determine whether the City was a consulting party. Consulting parties participate in the review process to determine and agree upon mitigation for clear adverse effect to a historic resource. (Sheet 10 of 117, Staff Report to Planning Commissions dated April 3, 2018 for Agenda item No. 6.1)

40. On April 3, 2018, Plaintiff submitted to Defendant City of Salem's Planning Commission a more detailed analysis in the form of a 145 page Memorandum concluding that a Section 106 Review was warranted. The Planning Commission continued the hearing to May 3, 2018, to await an opinion from defendant ODOT.

41. On or about April 26, 2018, from the Oregon Department of Justice provided a memorandum ("Confidential Memorandum") to ODOT containing warning language:

THIS DOCUMENT IS A CONFIDENTIAL COMMUNICATION FROM ATTORNEY TO CLIENT. NEITHER THE DOCUMENT NOR ITS CONTENTS SHOULD BE ROUTINELY CIRCULATED BEYOND THE IMMEDIATE ADDRESSEES UNLESS COUNSEL IS FIRST CONSULTED. THIS DOCUMENT SHOULD NOT BE ATTACHED TO OR MADE A PART OF AN AGENDA FOR ANY PUBLIC MEETING, NOR SHOULD IT BE DISCUSSED BY ANY PUBLIC BODY IN OPEN SESSION WITHOUT FIRST CONSULTING WITH COUNSEL.

42. On April 30, ODOT provided the City of Salem a one and a half page letter signed by Michael Rock, Transportation Planning Unit Manager, Oregon Department of Transportation wherein Mr. Rock writes that the Oregon Attorney General has concluded:

The Oregon Department of Justice (DOJ) has researched the issue and advised us that such a Section 106 review was not required as part of the TGM Grant. The provision of funds from TGM to the City did not require a Section 106 review as the project is planning-level only and does not involve bricks and mortar activities or ground disturbance or excavation.

43. On May 1, 2018, the Planning Commission for the City of Salem approved the zoning ordinances and denied plaintiff's request for a shadow study and a visual impact study.

Plaintiff prepared a shadow model showing the impacts upon the District and present a three minute video showing the moving shadows of the entire days of selected dates in the year.

44. The Confidential Memorandum was kept secret until May 7, 2018, at 4:17 p.m., when Defendant ODOT, through the Attorney General's office, announced "ODOT has decided to waive the privilege in this particular case." The disgorgement of the Confidential Memorandum was a direct result of Plaintiff filing a public records request with ODOT and two days later directly with Joan Green, executive assistant to Ellen Rosenblum, the Oregon Attorney General. The Confidential Memorandum asserts the monies come from the FAST-Act and there is no explanation why this assertion contradicts the previous publicly available statements that funding was through the MAP-21 program.

45. On June 5, 2018, Plaintiff submitted a demand to defendants ODOT and City of Salem that a Section 106 Review be conducted and a response be provided by June 15th. On June 8, 2018, the City of Salem responded that they concur with the Attorney General's analysis and denied the request. No response, other than an acknowledgment of receipt, was received from defendant ODOT.

46. On June 18, 2018, at 9:02 a.m., plaintiff submitted a public records request to defendant ODOT asking for:

1. Page 3 Memorandum to Michael Rock from Lucinda D. Jackson, Senior Assistant Attorney General Government Services Section, dated April 26, 2018, second full paragraph, fourth line: the biennial "2017-2019 Interagency Agreement Between ODOT and DLCD for the TGM Program (IAA)."
2. The "Interagency Agreement Between ODOT and DLCD for the TGM Program" agreement in effect for the period of 2015-2017 prior to the item requested in paragraph 1 above.



3. The approval of the Federal Highway Administration (FHWA) referenced in Page 3, Memorandum to Michael Rock from Lucinda D. Jackson, Senior Assistant Attorney General

Government Services Section, dated April 26, 2018, second full paragraph, sixth line: "Once FHWA approves the IAA statement of work to administer the TGM program, there are no further approvals or oversight by FHWA"

4. Page 3, Memorandum to Michael Rock from Lucinda D. Jackson, Senior Assistant Attorney General Government Services Section, dated April 26, 2018, third full paragraph, first line: The award and notice of award as referenced in the phrase "ODOT and DLCD awarded a TGM grant to the City of Salem in August 2014."

5. Page 3 Memorandum to Michael Rock from Lucinda D. Jackson, Senior Assistant Attorney General Government Services Section, dated April 26, 2018, third full paragraph, first line:

"in July 2015 entered into intergovernmental agreement (SSRP IGA) for the City [of Salem] to develop the State Street Refinement Plan (SSRP)."

6. Page 3 Memorandum to Michael Rock from Lucinda D. Jackson, Senior Assistant Attorney General Government Services Section, dated April 26, 2018, third full paragraph, sixth line: "This draft plan prepared for the SSRP IGA was completed over six months ago."

47. On June 22, 2018, at 5:33 a.m. Plaintiff submitted a public records request to assistant attorney general Lucinda Jackson, the attorney who signed the Confidential Memorandum, asking for the following:

Dear Ms. Jackson,

First, I want to confirm that you had received at 6/18/2018 9:27 AM, but not answered, my email inquiry of 6/18/2018 8:46 AM about your use of an undefined acronym in your analysis.

Second, please see the attached PUBLIC RECORDS REQUEST ACKNOWLEDGEMENT AND RECEIPT from ODOT promising documents by June 29th. I am contacting you and your office to request copies of the documents specified therein in a shorter time frame since your office already has possession of the documents I have requested.

Time is of the essence because the City of Salem, after my June 5th request to ODOT and the City of Salem to avoid litigation and conduct a Section 106 Review, has denied my request and thereafter set for hearing the proposed ordinances on July 13th. I am concerned that ODOT and the City are attempting to make "moot" (see Church of Scientology of Cal. v. United States, 506 U.S. 9, 12, 113 S.Ct. 447, 121 L.Ed.2d 313 (1992)) any issue thereby defeating any

interlocutory injunction staying action of granting substantially enhanced property rights to the owners of 248 tax parcels until a Court determines whether a NHPA or NEPA review is required.

They 11 day turn-around of my public records request in light of the City's decision to proceed with great haste when such documents have already been collected and delivered to your office will impair my ability to present to a Federal Court evidence. Let this request to you and your office document I have attempted to pursue all avenues for timely disclosure.

Thank you for your time considering the above.

48. On June 22, 2018, at 5:48 a.m., Plaintiff submitted to defendant City of Salem the following public records request:

Dear Madam Recorder and Ms. Kim,

Attached please find a public records requests I have submitted to the Oregon Department of Transportation ("ODOT"). I hereby request the following documents (in digital form), to the extent your office can make some or all of the documents available before June 29th as there is no need for you to duplicate what ODOT will produce.

For clarity, here is the request:

1. Page 3 Memorandum to Michael Rock from Lucinda D. Jackson, Senior Assistant Attorney General Government Services Section, dated April 26, 2018, second full paragraph, fourth line: the biennial "2017-2019 Interagency Agreement Between ODOT and DLCD for the TGM Program (IAA)."
2. The "Interagency Agreement Between ODOT and DLCD for the TGM Program" agreement in effect for the period of 2015-2017 prior to the item requested in paragraph 1 above.
3. The approval of the Federal Highway Administration (FHWA) referenced in Page 3, Memorandum to Michael Rock from Lucinda D. Jackson, Senior Assistant Attorney General Government Services Section, dated April 26, 2018, second full paragraph, sixth line: "Once FIIWA approves the IAA statement of work to administer the TGM program, there are no further approvals or oversight by FHWA"
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agreement (SSRP IGA) for the City [of Salem] to develop the State Street Refinement Plan (SSRP)."

6. Page 3 Memorandum to Michael Rock from Lucinda D. Jackson, Senior Assistant Attorney General Government Services Section, dated April 26, 2018, third full paragraph, sixth line: "This draft plan prepared for the SSRP IGA was completed over six months ago."

I would ordinarily await what time is needed, but I am contemplating filing a suit in Federal Court which will include a request for an interlocutory injunction pending determination of the Court as to whether a Section 106 Review is required and the City's decision to set for hearing on July 13th the State Street Corridor leaves me little time. To assure I have exhausted all possible avenues to procure these documents, I am making this time-limited request.

Thank you for your attention to the request.

49. Plaintiff has not received a response from attorney Lucinda D. Jackson in regard to the his public records request of June 22<sup>nd</sup>. Plaintiff received several responses from defendant City of Salem, none of which produced any documents compliant with the request. On June 29, 2018, at 8:02 a.m. defendant ODOT made available to Plaintiff the documents requested. Plaintiff is informed and believes that attorney Lucinda D. Jackson and defendant City of Salem had in their possession several, if not all, the documents requested and decided to not to produce them within the limited time frame requested. Plaintiff calculates that it took 11 days to provide documents referenced in the Confidential Memorandum.

50. On June 25, 2018, the City Council for defendant City of Salem adopted the proposed legislation in its "1st reading". No notice of the hearing was provided on the State Street Corridor project web site. The legislation consists of:

- a) creating two new mixed-use zoning districts;
- b) amending the Salem Area Comprehensive Plan Map and The Salem Transportation System Plan,

c) amending Northeast Neighbors (NEN) - South East Salem Neighborhood Association (SESNA) Neighborhood Plan Generalized Land Use Map, and the salem zoning map for certain properties generally located on state street between 12th street and 25th street;

d) amending the Salem Area Comprehensive Plan to adopt a new street design and related projects for state street between 12th street and 25th street; and

e) amending the Salem Revised Code (src) chapters src 110.025, src 220.005, src 702.005, src 703.070, src 806.010, src 806.015, and src 900; and adding src chapters 533 and 534.

51. A public hearing for the second reading of the proposed legislation is scheduled for July 16, 2018.

52. Defendants contend through a variety of analyses that a Section 106 Review under the NHPA is not required. None of their analyses are supported by law.

53. Defendants contention that these activities are just “planning” and have not effect is not accurate. Part of the State Street Corridor project is to attract development and create incentives for investment by making parcels more valuable for development. The economic incentives consist, in part, to giving substantial, e.g. 90% more build-out, reduced parking requirements of at least 60%, increased lot coverage from 60% to 100%, no mandatory public hearings before a commission, and discretionary permits with ministerial/administrative permits. Under current zoning, to achieve the desired results a property owner must apply for a discretionary use permit and undergo a public hearing. Then the owner would have the “right” to build once a discretionary permit is granted. The proposed zoning gives the developer the right to build by simply applying for a permit that is administratively granted. The ability of the

public to participate is subordinated to an expensive appeal procedure where the developer/owner can then claim 5<sup>th</sup> amendment takings if their application is denied. Under the current zoning, the granting of the application is discretionary and not a matter of right, thus if a development is denied after a public hearing, the owner cannot claim a 5<sup>th</sup> Amendment taking and threaten the City. Under the proposed zoning, the property owner would have as a matter of right to build and the building permit could be granted by an administrator without any public hearing.

54. The incentives to develop their land and build multifamily housing adjacent to federally protected historic resources becomes a matter of right with no further consideration of impacts. The current zoning requirement of discretionary permit allows mitigation measures for impacts.

55. The goal of the State Street Corridor plan is to create land use incentives to attract development which will have impacts on the District which defendant City of Salem does not deny.

56. Plaintiff's use and enjoyment of his will be adversely affected by 1) shadows from 55' tall structures which will affect plaintiff's ability to generate electricity from solar collectors, and grow plants during the Winter months, 2) privacy from 55' tall structure looking upon plaintiff's property, 3) visual incompatibility with the architectural heritage of adjacent properties, 4) aesthetic incompatibility resulting from the significantly increased building masses allowed under the MU-1 zoning, 5) increased traffic in the alleyway abutting the south side of Plaintiff's property, 6) the erosion of the southern boundary of the District, 7) increased traffic on Court Street and the alley between Court Street and State Street, 8) increased parking from commercial and multifamily activities on Court Street, and 9) increased noise from

commercial and high density multifamily housing that is incompatible with the residential character of the District including, but not limited to, quiet hours. Parking and traffic impacts have been deferred to future “studies” after granting the entitlements.

57. Plaintiff submits that the importance of the Section 106 Review in this particular case is that local planning is the province of local politics and the residents and voters are entitled to have the benefit of a qualified assessment. A Section 106 Review will assure that the City of Salem and its electorate have all the information needed to make an informed decision about a project’s impacts prior to enacting new zoning laws. Since the federal grant has enable the whole process, it is critical that the obligations of the NHPA be observed.

#### **First Claim**

58. Plaintiff incorporates paragraphs 1-57 above as if fully set for the herein.

59. Under the terms and conditions of Intergovernmental Agreement, defendant City of Salem “City shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement...” (Section 5(G)) Defendants, and each of them, have failed undertake a Section 106 Review of the NHPA.

#### **Second Claim**

60. Plaintiff incorporates paragraphs 1-57 above as if fully set for the herein.

61. Defendant FHWA has a duty under NHPA and NEPA to assess and identify mitigations of impacts from federal undertakings. Should this court conclude that FHWA no longer has the ability to requires a Section 106 review for the funds dispersed to ODOT because of terms of the Programmatic Agreement and/or that a Section 106 is not required, then Plaintiff claims that the failure of the Programmatic Agreement to delegate the responsibility under

Section 106 of the NHPA to Defendant ODOT violates the NEPA. Plaintiff submits that FHWA cannot create a loophole to the NHPA with which to deny responsibility by entering contracts that relieve it of its duty to “Stop, Look and Listen.”

### **Prayer**

Wherefore, plaintiff prays:

a) A Declaration that defendants, collectively and individually, have violated the NHPA, and that the funds granted under the Intergovernmental Agreement were unlawfully disbursed,

b) A preliminary injunction prohibiting defendant City of Salem from enacting in law the current MU-1 and MU-2 zones until a federal Court’s ruling on whether a Section 106 review is required becomes final, and if so holding that a Section 106 Review is required, that the court retain jurisdiction for the duration of the Section 106 Review period,

c) In the event the proposed zoning ordinances become law by defendant City of Salem’s actions before a federal court has issued a final decision that a Section 106 is required in this matter, a writ of mandate to the FHWA directing the returns of monies from ODOT to FHWA, including \$289,950, but not limited to those spent in connection with the Intergovernmental Agreement,

d) A writ of mandamus directed to Defendant ODOT to initiate a Section 106 Review in accordance with the NHPA and 36 CFR 800,

e) attorney fees,

f) costs,

g) And such other equitable relief the Court deems proper.

Dated: July 2, 2018

  
\_\_\_\_\_  
John L. Poole, *Pro Se*



### Verification

I, John Laurence Poole, am the plaintiff in the above-entitled action and I declare under penalty of perjury under the laws of the State of California and the laws of the State of Oregon that the foregoing is true and correct and that by presenting to this court my Complaint that

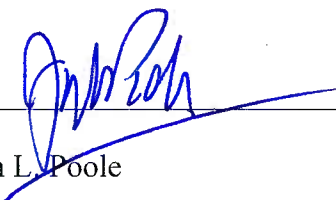
(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Dated: July 2, 2018

  
\_\_\_\_\_  
John L. Poole

Subject: RE: Public Record Request dated June 18, 2018  
From: Jackson Lucinda D <Lucinda.D.Jackson@doj.state.or.us>  
Date: 7/5/2018 8:44 AM  
To: "jlpoole56@gmail.com" <jlpoole56@gmail.com>  
CC: "LEDET Elizabeth (Elizabeth.L.LEDET@odot.state.or.us)" <Elizabeth.L.LEDET@odot.state.or.us>

John,

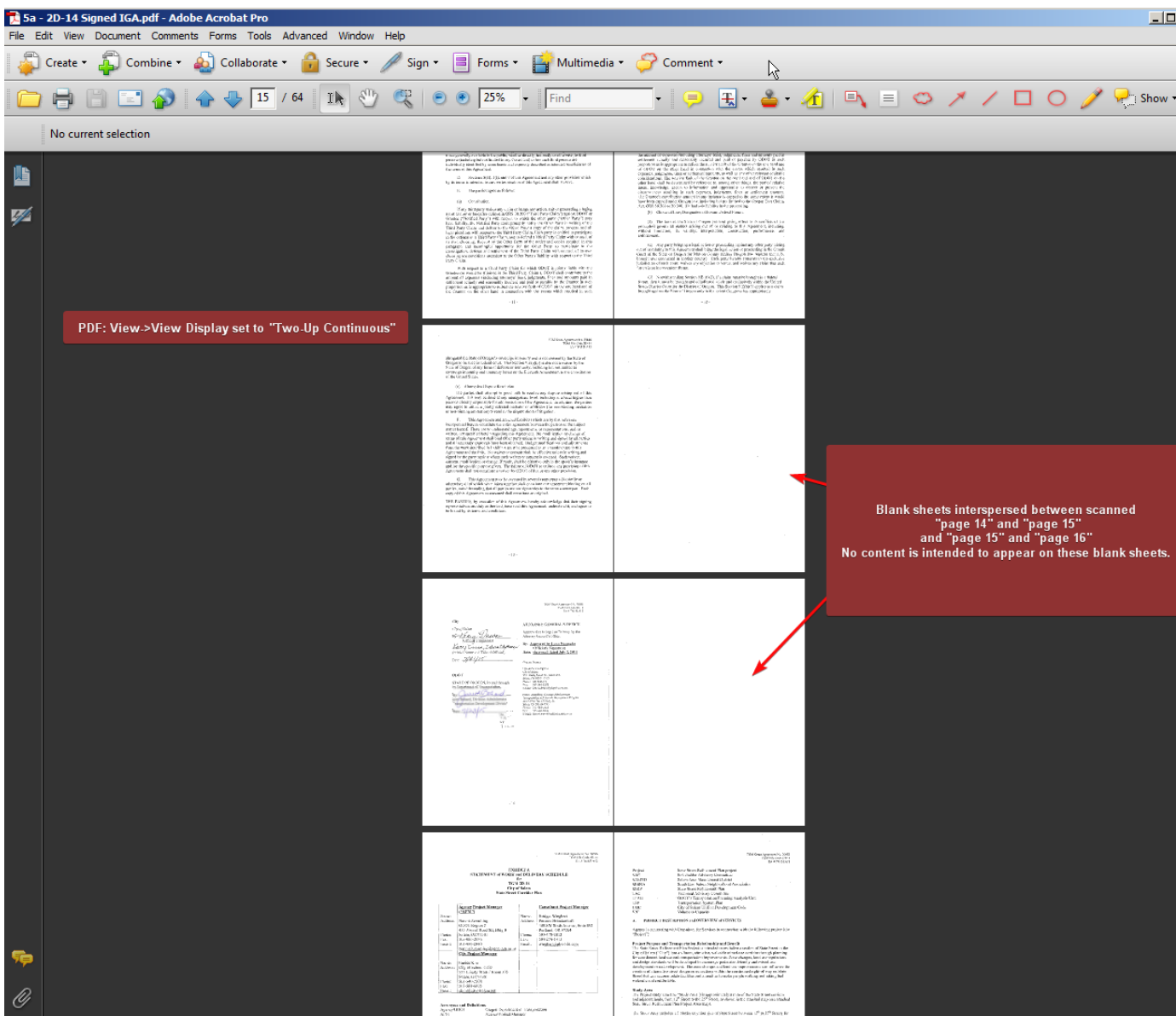
ODOT has confirmed that the pages are actually blank.

Lucinda

Lucinda D. Jackson  
Senior Assistant Attorney General  
Government Services Section I General Counsel Division  
Oregon Department of Justice  
503-947-4530

From: John L. Poole [mailto:jlpoole56@gmail.com]  
Sent: Tuesday, July 03, 2018 11:33 AM  
To: Jackson Lucinda D  
Cc: LEDET Elizabeth (Elizabeth.L.LEDET@odot.state.or.us)  
Subject: Re: Public Record Request dated June 18, 2018

Here's a screen shot that depicts the problem in its entirety. **If Ms. Jackson will agree** that the two blank sheets, # 14 and #16, are suppose to be blank, then I'm satisfied compliance is complete. The document itself as depicted in the PDF has all pages between page 13 and page 15. I do not want any surprises in the future by some claim that the two blank sheets contained critical matter which was not displayed on the version of the PDF provided to me.



Cordially

John  
On 7/3/2018 11:23 AM, Jackson Lucinda D wrote:

John,

These pages are blank in the copy of the IGA that I have.

Lucinda

**Lucinda D. Jackson**

Senior Assistant Attorney General | Government Services Section  
Oregon Department of Justice  
1162 Court Street N.E. | Salem, Oregon 97310  
503.947.4530

**From:** John L. Poole [<mailto:jlpoole56@gmail.com>]

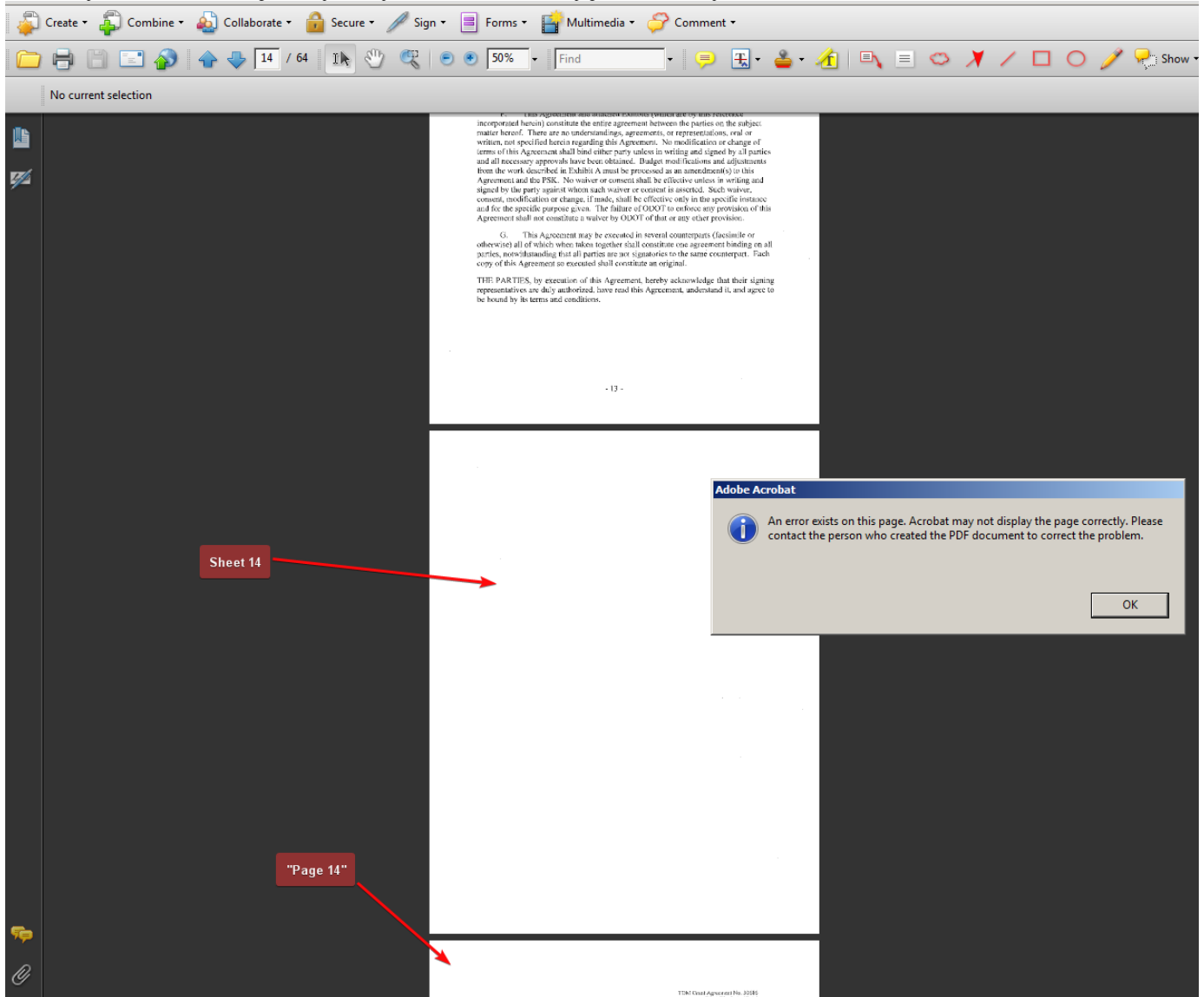
**Sent:** Tuesday, July 03, 2018 11:15 AM

**To:** Jackson Lucinda D

**Subject:** Re: Public Record Request dated June 18, 2018

Hi Lucinda,

Attached the problem PDF, 5a - 2D-14 Signed IGA.pdf. The problem sheet 14 is in between pages 13 and 14. The problem sheet 16 is likewise situated. Here's a screenshot.



John

On 7/3/2018 11:08 AM, Jackson Lucinda D wrote:

John,

Can you give me the title of the IGA you are referring to and the page numbers that did not come through?

Lucinda

**Lucinda D. Jackson**

Senior Assistant Attorney General | Government Services Section  
Oregon Department of Justice  
1162 Court Street N.E. | Salem, Oregon 97310  
503.947.4530

**From:** John L. Poole [<mailto:jlpoole56@gmail.com>]

**Sent:** Tuesday, July 03, 2018 10:54 AM

To: Jackson Lucinda D  
Subject: Re: Public Record Request dated June 18, 2018

Hi Lucinda,

I just remembered, sheets (not pages) 14 and 16 of the PDF containing the Intergovernmental Agreement did not display. I think Ms. Ledet confirmed she was having problems with those two sheets as well and I have not heard any further from her. I had left the matter that I would expect to here from her; she has been very good about follow-up. Were you able to display sheets 14 and 16 in the file 5a - 2D-14 Signed IGA.pdf. To the extent those pages are not viewable by me, then compliance is lacking.

Would your office be willing to stipulate that there is no content to view on sheets 14 and 16 of the file 5a - 2D-14 Signed IGA.pdf?

Cordially,

John

On 7/3/2018 10:45 AM, John L. Poole wrote:

Hi Lucinda,

Confirming that ODOT complied with my request last Friday at 7:52 a.m.

Cordially,

John L. Poole

On 7/3/2018 10:11 AM, Jackson Lucinda D wrote:

Mr. Poole,

I have been conferring with ODOT regarding this public records request and I understand that they have provided you all of the documents you requested On June 29, 2018.

Lucinda Jackson

**Lucinda D. Jackson**  
Senior Assistant Attorney General | Government Services Section  
Oregon Department of Justice  
1162 Court Street N.E. | Salem, Oregon 97310  
503.947.4530

---

**From:** John L. Poole [<mailto:jlpoole56@gmail.com>]  
**Sent:** Friday, June 22, 2018 5:34 AM  
**To:** Jackson Lucinda D  
**Subject:** Fwd: Public Record Request dated June 18, 2018

(RRR)

Dear Ms. Jackson,

First, I want to confirm that you had received at 6/18/2018 9:27 AM, but not answered, my email inquiry of 6/18/2018 8:46 AM about your use of an undefined acronym in your analysis.

Second, please see the attached PUBLIC RECORDS REQUEST ACKNOWLEDGEMENT AND RECEIPT from ODOT promising documents by June 29th. **I am contacting you and your office to request copies** of the documents specified therein in a shorter time frame since your office already has possession of the documents I have requested.

Time is of the essence because the City of Salem, after my June 5th request to ODOT and the City of Salem to avoid litigation and conduct a Section 106 Review, has denied my request and thereafter set for hearing the proposed ordinances on July 13th. I am concerned that ODOT and the City are attempting to make "moot" (see *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12, 113 S.Ct. 447, 121 L.Ed.2d 313 (1992)) any issue thereby defeating any interlocutory injunction staying action of granting substantially enhanced property rights to the owners of 248 tax parcels until a Court determines whether a NHPA or NEPA review is required.

They 11 day turn-around of my public records request in light of the City's decision to proceed with great haste when such documents have already been collected and delivered to your office will impair my ability to present to a Federal Court evidence. Let this request to you and your office document I have attempted to pursue all avenues for timely disclosure.

Thank you for your time considering the above.

Yours very truly,

John L. Poole

----- Forwarded Message -----

**Subject:** Public Record Request dated June 18, 2018

**Date:** Thu, 21 Jun 2018 21:34:26 +0000

**From:** LESMEISTER Cindy <[Cindy.L.LESMEISTER@odot.state.or.us](mailto:Cindy.L.LESMEISTER@odot.state.or.us)>

**To:** 'jlpoole56@gmail.com' <[jlpoole56@gmail.com](mailto:jlpoole56@gmail.com)>

**CC:** ODOT Public Record Requests <[ODOTPRR@odot.state.or.us](mailto:ODOTPRR@odot.state.or.us)>, 'lauri.k.kunze@odot.state.or.us5' <[lauri.k.kunze@odot.state.or.us5](mailto:lauri.k.kunze@odot.state.or.us5)>, ROCK Michael D <[Michael.D.ROCK@odot.state.or.us](mailto:Michael.D.ROCK@odot.state.or.us)>, LEDET Elizabeth <[Elizabeth.L.LEDET@odot.state.or.us](mailto:Elizabeth.L.LEDET@odot.state.or.us)>

Cindy Lesmeister  
Transportation and Growth Management Program  
555 13th St NE, Suite 2  
Salem, OR 97301

Phone: 503/986-4349  
Fax: 503/986-4174  
e-mail: [cindy.l.lesmeister@odot.state.or.us](mailto:cindy.l.lesmeister@odot.state.or.us)

\*\*\*\*\*CONFIDENTIALITY NOTICE\*\*\*\*\*

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

\*\*\*\*\*

--

John Laurence Poole  
1566 Court ST NE  
Salem OR 97301-4241  
707-812-1323 office

--

John Laurence Poole  
1566 Court ST NE  
Salem OR 97301-4241  
707-812-1323 office

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Salem OR 97301-4241  
707-812-1323 office

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John Laurence Poole  
1566 Court ST NE  
Salem OR 97301-4241  
707-812-1323 office

1566 Court Street NE  
Salem, Oregon 97301-4241

Thursday,  
May 3, 2018

The Hon. Ellen Rosenblum,  
Attorney General for the State of Oregon  
Oregon Department of Justice  
1162 Court Street NE  
Salem, OR 97301-4096

**BY EMAIL ONLY:** [Joan.Green@doj.state.or.us](mailto:Joan.Green@doj.state.or.us) - Executive Assistant &  
Scheduler to the Attorney General

**(RRR)**

Re: Request For Copy of Opinion Of the The Attorney General  
- The National Historic Preservation Act

Dear Madam Attorney General,

On April 3, 2018, the City of Salem Planning Commission was presented with my contention that the pass-through Federal funding from the Federal Highway Administration underwriting \$289,950 for the State Street Corridor Project carried with it the obligation to conduct a Section 106 Review under the National Historic Preservation Act now codified as 54 U.S.C. 300101 et seq. I believe the Federal Highway Administration's funding constituted more than 90% of the project's budget. My attempts to obtain an accounting through public records requests have not been successful, only \$75,342.25 of the budget has been revealed to me and the public.

The State Street Corridor project encompasses 1.7 million square feet of property located in the City of Salem as close as 700 feet away from the Oregon State Capitol building and just across 12th Street from the Department of Justice. One group of properties within the project boundary and currently zoned RM-2 is entitled to build up to 50% coverage on their lots and up to 50 feet high. Under the new proposed zoning drafted within the State Street Corridor Project, the RM-2 parcels' entitlement to build would be up to 100% coverage and up to 55 feet high; that is a 100% increase in lot coverage and 10% increase in height. The new zoning will significantly reduce the parking standards thereby encouraging high density five story multifamily development as recently built elsewhere within Salem. In addition, this new entitlement removes discretionary review of projects meeting the new zoning. These new buildings would be adjacent to the National Register Court Chemeketa Residential

The Hon. Ellen Rosenblum  
May 3, 2018  
Page 2

Historic District. It is undisputed, moreover admitted, that the majority of the southern boundary of the district, an alley, is impacted. The new zoning is designed to encourage high density multifamily development and remove the barriers, such as lot coverage and the current parking standard that has made high rise development of any kind either impossible or economically infeasible along State Street between 13th and 25th Streets.

The goal and culmination of the State Street Corridor Project is a draft of an ordinance that modifies Salem's Comprehensive Plan and neighborhood Plans and enacts two new zones: MU-1 and MU-2 [mixed use/multifamily]. The Salem Planning Commission was charged with approving or modifying the draft legislation created by the Salem Planning Department and the matter came on for hearing before the Commission on April 3, 2018. The April 3rd hearing was continued to May 1, 2018, specifically to await an opinion as to whether the Commission had to conduct a Section 106 Review.

On April 30, 2018, a two page "official" letter signed by Michael Rock, Transportation Planning Unit Manager from the Oregon Department of Transportation ("Department"), was delivered to the Commission; a copy is attached as exhibit "A". Mr. Rock is not licensed to render legal opinions in Oregon. The Department's letter, aside from Planning Staff's opinions, constitutes the only legal analysis by the City of Salem in the record regarding this matter. The legal conclusion stated is:

The Oregon Department of Justice (DOJ) has researched the issue and advised us that such a Section 106 review was not required as part of the TGM Grant. The provision of funds from TGM to the City did not require a Section 106 review as the project is planning-level only and does not involve bricks and mortar activities or ground disturbance or excavation.

On May 1st, the Commission approved Staff's recommendation to enact the ordinance subject to two modifications concerning parking requirements and road design. My contention that a Section 106 review is required was summarily dismissed based upon the Department's letter conveying your office's legal conclusions. I submit that your office's opinion memorialized within the Department's letter gave the green light to City of Salem to proceed concluding the State Street Corridor project without further consideration of the National Historic Preservation Act. Your office's involvement in this matter by having your client convey your opinion on their letterhead constituted the "force of law" customarily afforded to opinions of the Attorney General.

The Hon. Ellen Rosenblum  
May 3, 2018  
Page 3

Your web site at:

<https://www.doj.state.or.us/oregon-department-of-justice/office-of-the-attorney-general/attorney-general-opinions/>

identifies only two types of opinions: 1) formal & 2) informal. Both types of opinions are signed. I searched your web site using the terms "106", "Historic", and "Preservation" and no results were returned. Attached as exhibits "B", "C", & "D" are the search results. Since your web site's search engine did not produce the desired results, I hereby request a copy of The Department of Justice's signed opinion provided to the Department in connection with the publication of exhibit "A".

I would like to understand the basis of the Oregon State Attorney General's conclusions regarding the National Historic Preservation Act as articulated above.

Yours very truly,

John L. Poole

[jlpoole56@gmail.com](mailto:jlpoole56@gmail.com)

707-812-1323

Enc: 2 page Letter of Michael Rock dated April 30, 2018



**EXHIBIT A**



**Oregon**  
Kate Brown, Governor

**Transportation & Growth Management Program**

555 13<sup>th</sup> Street, Suite 2  
Salem, OR 97301-4178  
FAX (503) 986-4174  
<http://www.oregon.gov/lcd>

April 30, 2018

Eunice Kim, AICP  
City of Salem  
555 Liberty St SE, RM 305  
Salem, OR 97301

Eunice,

As you are aware, the Transportation and Growth Management Program (TGM) is a joint program between the Oregon Department of Transportation (ODOT) and the Department of Land Conservation and Development (DLCD) to help communities link land use and transportation planning and expand transportation choices.

TGM awarded a grant to the City of Salem as part of the 2015 Grant Award cycle. TGM grants are for planning work leading to local policy decisions, with an understanding that further implementation will be at the discretion of the applicant. The City of Salem requested funding to develop a plan that advances the City's desire to revitalize State Street into a vibrant, attractive, walkable mixed-use corridor through coordinated land use and transportation improvements. The TGM Grant ended on September 29, 2017, and the City is now proceeding with the hearings process for potential local adoption of the State Street Refinement Plan.

On March 29, 2018, the City of Salem asked for a determination from the State as to whether a review under Section 106 of the National Historic Preservation Act is required as part of the State TGM grant to the City of Salem for the State Street Refinement Plan (SSRP).

The Oregon Department of Justice (DOJ) has researched the issue and advised us that such a Section 106 review was not required as part of the TGM Grant. The provision of funds from TGM to the City did not require a Section 106 review as the project is planning-level only and does not involve bricks and mortar activities or ground disturbance or excavation.

If the City would like to have its legal counsel contact DOJ to discuss this further, please let us know and we will put you in contact with our DOJ representative.

The Hon. Ellen Rosenblum  
May 3, 2018  
Page 5

**EXHIBIT A continued**

City of Salem  
Page 2

Sincerely,



---

Michael Rock  
Transportation Planning Unit Manager  
Oregon Department of Transportation

Cc: Chris Bell, ODOT  
Matt Crall, DLCD

**EXHIBIT B**

The screenshot shows the Oregon Department of Justice website. At the top, there is a navigation bar with "About Us" and "Contact Us" links, and a language dropdown set to "English". The main header features the Oregon Department of Justice logo and the name "ATTORNEY GENERAL ELLEN F. ROSENBLUM". A search bar is present with the text "Search" and a dropdown menu to "Choose to search: Attorney General or All DOJ".

The navigation menu includes categories like "ATTORNEY GENERAL", "CHILD SUPPORT", "CONSUMER PROTECTION", "CHARITIES", "VICTIMS & SURVIVORS", and "MEDIA". Below this, there are sub-categories: "Office of the Attorney General", "Divisions", "Client Resources", "Public Records", "Forms, Manuals & Reports", and "Careers".

The breadcrumb trail reads: "DOJ Home / Attorney General / Office of the Attorney General / Attorney General Opinions".

The main content area is titled "Attorney General Opinions". It includes sections for "Online and Printed Opinions", "Formal and Informal Opinions", and "Access Online Opinions".

The "Formal and Informal Opinions" section lists two categories:

- Formal Opinions**
  - Address constitutional issues and matters of statewide concern
  - Are signed by the Attorney General
  - Are listed in the subject index with a four-digit number, i.e. "OP 8246"
- Informal Opinions**
  - Address matters with little or no community impact
  - Are signed by the Chief Counsel of the Department of Justice General Counsel Division
  - Are listed in the subject index with a year and dash, i.e. "OP 1997-1"

The "Access Online Opinions" section contains a search form with the following fields:

- Year: All years (dropdown)
- Keyword(s): 106 (text input)
- SUBMIT (button)

The search results area displays "No Results Found".

**EXHIBIT C**

The screenshot displays the Oregon Department of Justice website. At the top, there is a navigation bar with "About Us" and "Contact Us" links, and a language selector set to "English". The main header features the state seal and the text "Oregon Department of Justice" and "ATTORNEY GENERAL ELLEN F. ROSENBLUM". A search bar is present with the text "Choose to search: Attorney General or All DOJ". Below the header is a menu with categories: ATTORNEY GENERAL, CHILD SUPPORT, CONSUMER PROTECTION, CHARITIES, VICTIMS & SURVIVORS, and MEDIA. A secondary menu includes: Office of the Attorney General, Divisions, Client Resources, Public Records, Forms, Manuals & Reports, and Careers. The breadcrumb trail reads: DOJ Home / Attorney General / Office of the Attorney General / Attorney General Opinions.

The main content area is titled "Attorney General Opinions". It includes sections for "Online and Printed Opinions" and "Formal and Informal Opinions". The "Formal and Informal Opinions" section lists two categories:

- Formal Opinions**
  - Address constitutional issues and matters of statewide concern
  - Are signed by the Attorney General
  - Are listed in the subject index with a four-digit number, i.e. "OP 8246"
- Informal Opinions**
  - Address matters with little or no community impact
  - Are signed by the Chief Counsel of the Department of Justice General Counsel Division
  - Are listed in the subject index with a year and dash, i.e. "OP 1997-1"

Below this is the "Access Online Opinions" section, which includes a search form titled "Search the Attorney General Opinions". The search form has a "Year" dropdown menu set to "All years" and a "Keyword(s)" text input field containing the word "Historic". A "SUBMIT" button is located to the right of the input field. Below the search form, a message "No Results Found" is displayed in a white box with a red border.

**EXHIBIT D**

The screenshot shows the Oregon Department of Justice website. At the top, there is a navigation bar with 'About Us' and 'Contact Us' links, and a language dropdown set to 'English'. The main header features the state seal and the text 'Oregon Department of Justice' and 'ATTORNEY GENERAL ELLEN F. ROSENBLUM'. A search bar is present with the text 'Search' and a dropdown menu set to 'Choose to search: Attorney General or All DOJ'. Below the header is a horizontal menu with categories: ATTORNEY GENERAL, CHILD SUPPORT, CONSUMER PROTECTION, CHARITIES, VICTIMS & SURVIVORS, and MEDIA. A secondary menu below that includes: Office of the Attorney General, Divisions, Client Resources, Public Records, Forms, Manuals & Reports, and Careers. The breadcrumb trail reads: DOJ Home / Attorney General / Office of the Attorney General / Attorney General opinions.

The main content area is titled 'Attorney General Opinions'. It includes sections for 'Online and Printed Opinions', 'Formal and Informal Opinions', and 'Access Online Opinions'. A search section titled 'Search the Attorney General Opinions' contains a form with a 'Year' dropdown set to 'All years', a 'Keyword' input field containing 'Preservation', and a 'SUBMIT' button. Below the search form, a box displays 'No Results Found'. The 'Keyword' field and the 'No Results Found' message are circled in red in the original image.

**OFFICE OF THE ATTORNEY GENERAL**  
Attorney General Ellen F. Rosenblum  
Spotlight: Elder Abuse  
Spotlight: Hate Crimes  
Spotlight: Opioid Abuse  
Spotlight: Student Loan Debt  
Spotlight: Privacy  
Spotlight: Public Records Reform  
Office of the Attorney General  
Attorney General Opinions

## Attorney General Opinions

### Online and Printed Opinions

This database of Attorney General opinions is provided for your convenience. Differences, if any, between online and printed versions are resolved in favor of the printed copy.

For official printed copies by mail or email, call us at **503-947-4540**. Pre-payment is required for any copying and mailing costs.

### Formal and Informal Opinions

The opinions fall into two broad categories:

- **Formal Opinions**
  - Address constitutional issues and matters of statewide concern
  - Are signed by the Attorney General
  - Are listed in the subject index with a four-digit number, i.e. "OP 8246"
- **Informal Opinions**
  - Address matters with little or no community impact
  - Are signed by the Chief Counsel of the Department of Justice General Counsel Division
  - Are listed in the subject index with a year and dash, i.e. "OP 1997-1"

### Access Online Opinions

Use the search below to find an opinion on a specific topic, or browse the most recent summaries.

### Search the Attorney General Opinions

Year:  Keyword:

**No Results Found**

**Subject:** RE: Public Records Request for Opinion re: National Historic Preservation Act  
**From:** Foltz Andrew <andrew.foltz@doj.state.or.us>  
**Date:** 5/10/2018 4:29 PM  
**To:** "'jlpoole56@gmail.com"' <jlpoole56@gmail.com>  
**CC:** Wolf Steven <steven.wolf@doj.state.or.us>

Mr. Poole – Thank you for your inquiry. No, the advice issued to the Department of Transportation will not be placed on our website. The website includes only published opinions signed by either the Chief Counsel of the General Counsel Division or the Attorney General herself. The day-to-day advice DOJ attorneys provide to their client agencies is ordinarily covered by attorney-client privilege. As I noted before, in this case ODOT has elected to waive that privilege and provide you the requested advice. If you have further questions about this, please feel free to contact Chief Counsel Steven Wolf, who I have copied on this email.

Regards,

**Andrew C. Foltz**  
503.947.4540  
[andrew.foltz@doj.state.or.us](mailto:andrew.foltz@doj.state.or.us)

---

**From:** John L. Poole [mailto:jlpoole56@gmail.com]  
**Sent:** Wednesday, May 09, 2018 10:20 AM  
**To:** Foltz Andrew  
**Subject:** Re: Public Records Request for Opinion re: National Historic Preservation Act

Greetings Mr. Foltz.

Yes, I am in receipt of the Opinion. Will this Opinion be retrievable through the Department of Justice's web site using the search facility? The search facility I reference is at:

<https://www.doj.state.or.us/oregon-department-of-justice/office-of-the-attorney-general/attorney-general-opinions/>

I just now tried searching with the terms "Historic", "Preservation", and "106" and no matches were found.

Thank you,

John L. poole  
On 5/9/2018 8:21 AM, Foltz Andrew wrote:

Good morning Mr. Poole,

We received your May 3, 2018 public records request for a copy of the legal opinion the Department of Justice (DOJ) issued to the Oregon Department of Transportation (ODOT) relating to the application of the National Historic Preservation Act to the State Street Corridor Project. The opinion you seek would ordinarily be exempt from public disclosure as an attorney-client privileged communication, unless the client waives the privilege. It is our understanding that ODOT, as the client, has waived its privilege in this case and provided you a copy of the opinion you seek. As you have received the records you requested, DOJ believes your request has been satisfied. Please let me know if you have any questions.

Regards,

**Andrew C. Foltz**

Senior Assistant Attorney General | Public Records Counsel | General Counsel Division  
Oregon Department of Justice  
1062 Court Street NE, Salem OR 97301-4096  
503.947.4540  
[andrew.foltz@doj.state.or.us](mailto:andrew.foltz@doj.state.or.us)

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--

John Laurence Poole  
1566 Court ST NE  
Salem OR 97301-4241  
707-812-1323 office

1566 Court Street NE  
Salem, Oregon 97301-4241

Monday,  
July 16, 2018

Re: Meeting Agenda, City Council — July 16, 2018,  
Shadow Study

Dear Mayor Bennett and Members of the Salem City Council,

This letter supplements my previous letter to you presented on March 12, 2018, regarding the impacts of shadows that the proposed building envelope of the MU-1 zone would generate.

There is precedent that shadows are a legitimate concern in city planning. The City of Salem has previously acknowledged in its code that there are shadow impacts on properties from new buildings.

Building shadows. Conformance with the design review guidelines and design review standards set forth in this subsection shall be demonstrated through conducting a shadow study.

(A) Design review guidelines.

(i) Buildings shall be sited adjacent to Riverfront Park in a manner that minimizes shadows on the playground.

(B) Design review standards.

(i) Buildings shall be sited adjacent to Riverfront Park so that shadows are not cast on the playground as follows:

(aa) No shadow shall be cast on the playground on March 21 (vernal equinox) at 3:00 p.m. (see Figure 531-19); and

(bb) No shadow shall be cast on the playground on December 21 (winter solstice) at 3:00 p.m. (see Figure 531-20).



FIGURE 531-19. SHADOW STUDY ILLUSTRATING SHADOW IMPACTS  
AT 3:00 P.M. ON MARCH 21ST

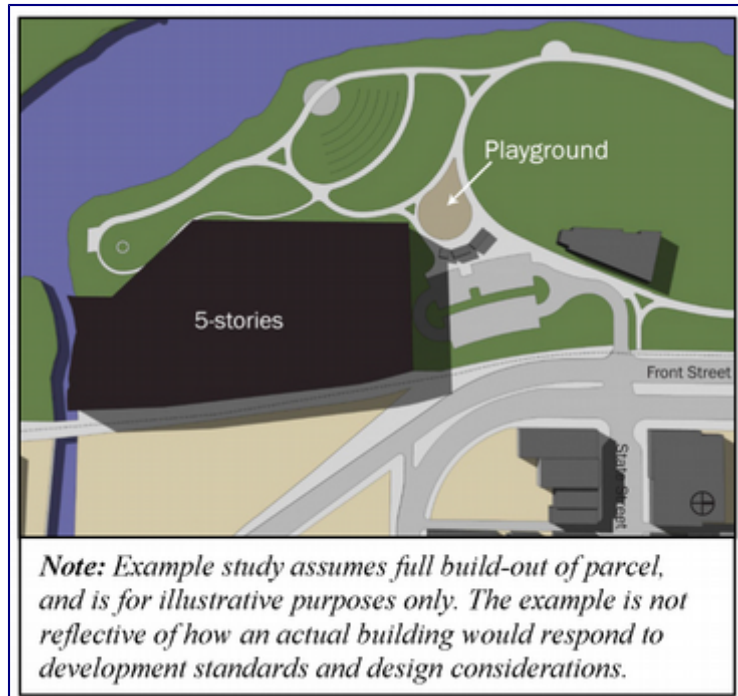
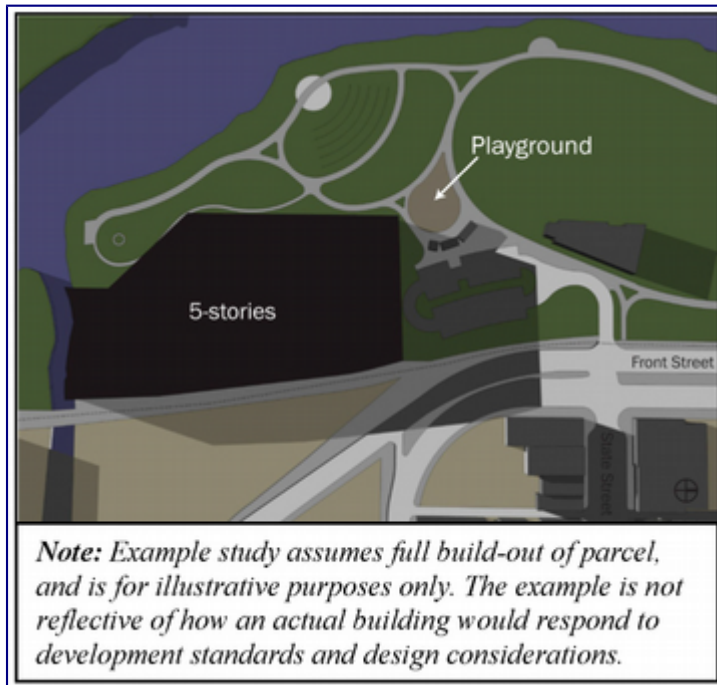


FIGURE 531-20. SHADOW STUDY ILLUSTRATING SHADOW IMPACTS  
AT 3:00 P.M. ON DECEMBER 21ST



§531.035 “Design review guidelines and design review standards”(c)”Relationship to Riverfront Park”(2)”Building shadows”

Attached as exhibit “A” is screen shot from SketchUp of the shadows cast by the proposed MU-1 building envelope on December 21<sup>st</sup> at 3:00 p.m. The shadow completely covers our property at 1566 Court Street which has the house depicted as a yellow block with a white block depicting the garage. Note also, there are three other houses which are in complete shade.

Attached as exhibit “B” is screen shot from SketchUp of the shadows cast by the proposed MU-1 building envelope on March 21<sup>st</sup> at 3:00 p.m., the Vernal Equinox. Sunset for March 21<sup>st</sup> is 6:22 p.m. Although there are no shadows cast at 3:00 p.m., at about 5:00 p.m., our back yard is completely shadowed, so we’re receiving 1½ less hours of sunlight.

Mayor Bennett and Members of the Salem City Council  
March 12, 2018  
Page 4

I will be presenting a video walk through of my model in SketchUp at the hearing.

I submit that staff and owners of parcels adjacent to the parcels that are to be rezoned should have the benefit of knowing what the impacts will be from shadows. We're planning on installing solar panels on our garage in a couple of years when the price point comes within the range of sufficient payback and the casting of shadows on our property will affect whether it becomes financially practical to derive our energy from a renewable resource. These impacts should be considered as part of the decision and not ignored.

I would also like to address the City's continued assertions that under current zoning of "CO", parcels adjacent to homes on Court Street could be subject to a building 70 feet high. My wife, an architect, and I have demonstrated that any depiction of a 70 feet high building on any of the parcels between 14<sup>th</sup> and 17<sup>th</sup> street on the North side of State street is inaccurate. Current zoning, lot limitations, and the parking requirements effectively limit the height of any building on these parcels to 2 stories unless the owner either pursues 1) underground parking, or 2) stacked parking with offices or home built on top. Both of the two possible scenarios are financially unrealistic. Suggesting to the public that a 70 feet building could be built on these parcels under current zoning is misleading.

Yours very truly,

---

John L. Poole

[jlpoole56@gmail.com](mailto:jlpoole56@gmail.com)  
707-812-1323

# EXHIBIT "A"

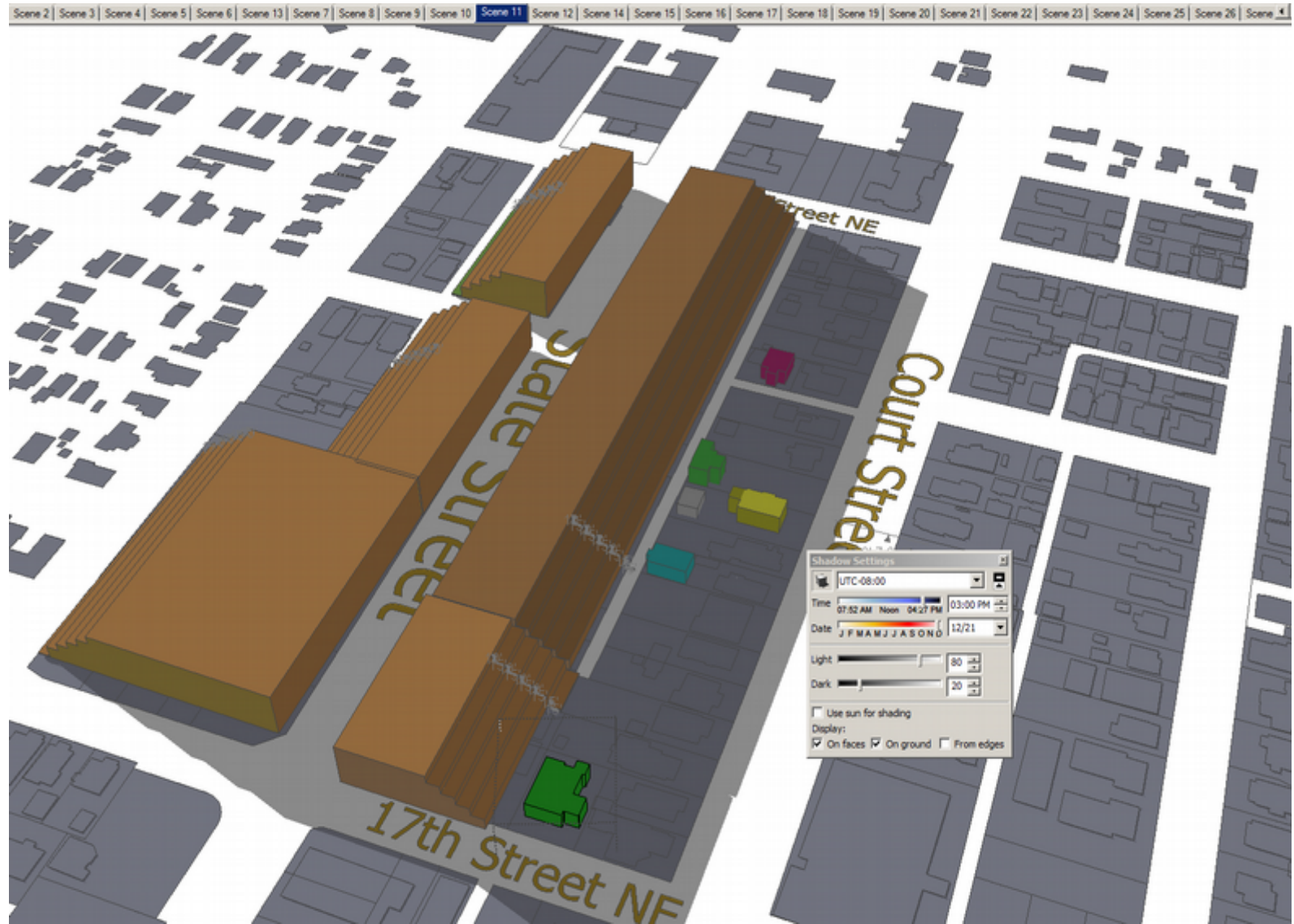


Illustration 1: December 21st 3:00 p.m.



# EXHIBIT "B"

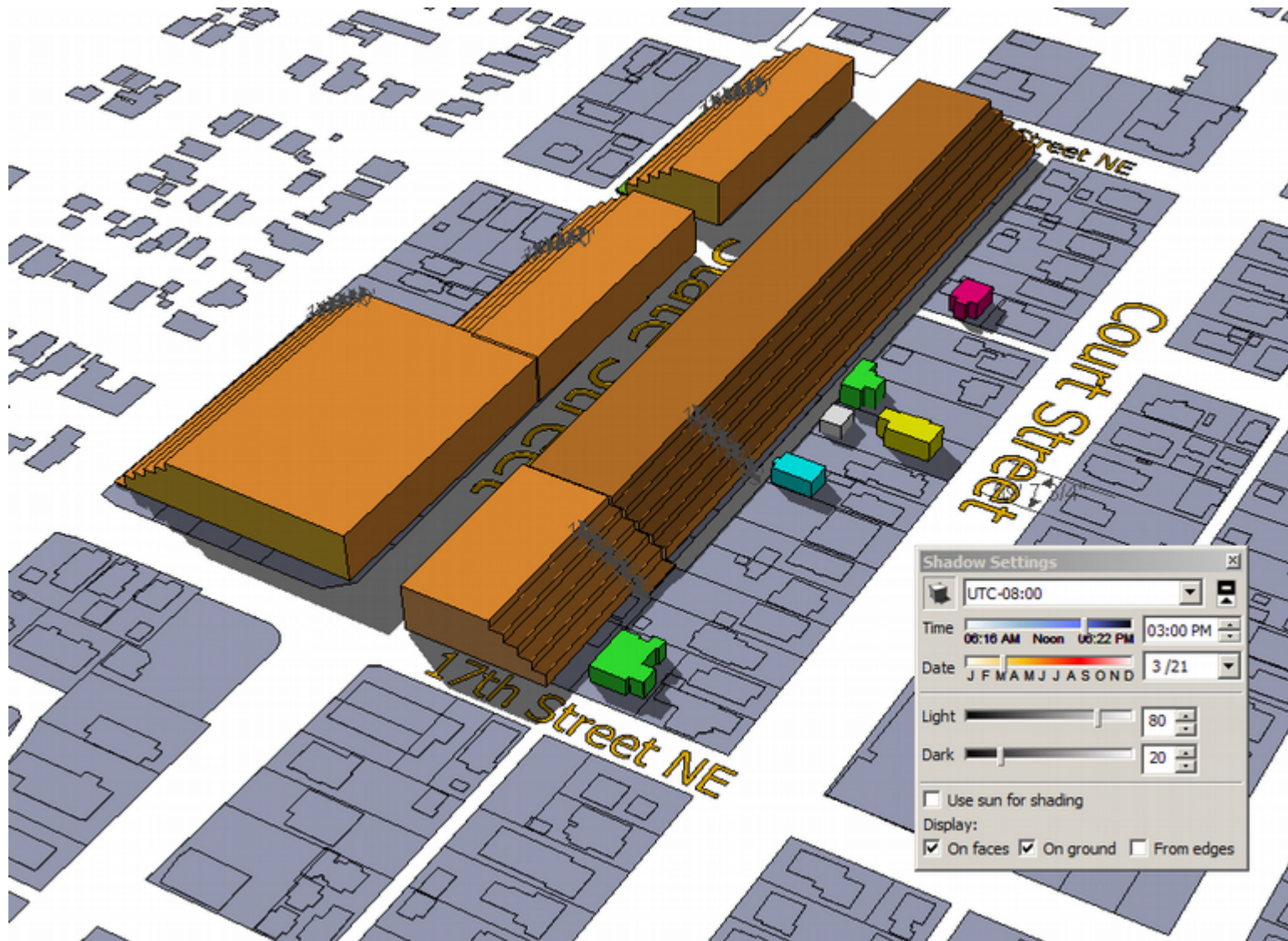


Illustration 2: March 21<sup>st</sup> at 3:00 p.m.

## Eunice Kim

---

**From:** jr <jrtravels@gmail.com>  
**Sent:** Sunday, July 15, 2018 12:09 PM  
**To:** Eunice Kim  
**Subject:** State Street Proposal

Hello,

I have just learned of this proposal (via signs up now), although I drive State Street constantly, to work and just about anything else I do here. I have lived here 2.5 years.

I just looked over the results of the public survey and am very disappointed. It seems most of the participants have businesses on State St. I don't think you are looking at how much traffic needs to use State Street! I am basing this on the fact that most people opt for the "road diet" plan for the whole corridor.

Mission is almost always a complete mess and very congested with traffic. Center St. is out of my way and usually congested. State St. is a more convenient, sane and safe way to get downtown.

If this has been in the works for awhile, why has the city not purchased buildings in order to widen the street, to include all the possibilities?? I see many empty buildings, unused spaces, run-down places, and some for sale signs. That's what other cities do when they need to widen a main street. Buy their land and/or help them remodel so there is more room near the street. Parking lots go in the alley instead of in front, etc. Buy a run-down house for sale on a side street just off State to slightly increase the commercial zone.

Create space to keep 4 lanes, add some left turn lanes, landscaping, parking, pedestrian crosswalks and perhaps a bike lane (which I am all for, but it's much safer on a side street). If I was biking or walking I would certainly use a side street at all times.

I think emphasis needs to be on creating a larger, smoother thoroughfare from I-5 through downtown, someday. It's only getting more and more congested. I understand wanting to make State St. friendly, appealing, etc. (because it is NOT so now) BUT it's a main route to downtown. There is serious rush hour traffic as it is. I just don't think this is the right solution.

And what will drivers do? More people will be driving down side streets, through residential neighborhoods. And you know many people speed when doing so. I wonder how many of those residents, from Mill St to Center, have voiced their opinion, knowing the traffic lanes will most likely be reduced? I sure hope they turn out and protest this.

Making it more attractive and "a destination" is just increasing the traffic, people turning in and out and overall congestion.

Thanks for listening. I cannot attend the city council meeting.

J Reese

## Amy Johnson

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**From:** noreply@cityofsalem.net on behalf of jeff.schumacher@gmail.com  
**Sent:** Monday, July 16, 2018 7:45 AM  
**To:** CityRecorder  
**Subject:** Contact City Recorder  
**Attachments:** July 11, 2018 - SCAN resolution on State Street Corridor Plan.pdf

Your Name	Jeff Schumacher
Your Email	jeff.schumacher@gmail.com
Your Phone	5035106950
Street	1945 W Nob Hill St. SE
City	Salem
State	OR
Zip	97302
Message	Attached is a resolution from the SCAN board in favor of the State Street Corridor Plan. This issue is coming before City Council today, July 16th. Thank you, Jeff Schumacher SCAN president, 2018-19

This email was generated by the dynamic web forms contact us form on 7/16/2018.



## Resolution on the State Street Corridor Plan

### South Central Association of Neighbors

July 11, 2018

Whereas, in 2015 the NEN-SESNA Neighborhood Plan included a goal to “revitalize State Street as a vibrant, mixed-use corridor that encourages pedestrian activity, is safe and attractive, creates a distinctive sense of place, and serves as an asset to surrounding neighborhoods;” and,

Whereas, the City of Salem applied for and received grant funds from the Oregon Department of Transportation and Department of Land Conservation and Development Transportation and Growth Management Program to develop a corridor plan for State Street between 12th and 25<sup>th</sup> streets; and,

Whereas, the State Street Corridor Plan was completed in October of 2017 with the participation of a 21-member Project Steering Committee, including Mayor Chuck Bennett and Councilor Tom Andersen; and,

Whereas, the resulting State Street Corridor Plan is a coordinated land use and transportation plan that includes proposed zone changes and land use regulations to encourage pedestrian friendly, mixed-use development or redevelopment, and a new street design cross section to support the land use and zoning changes and accommodate facilities and amenities to make pedestrians and bicyclists feel welcome and comfortable; and,

Whereas, the State Street Corridor Plan can serve as a model for similar efforts to revitalize other streets in South Central Salem and elsewhere in Salem;

Therefore be it resolved, that the Board of the South Central Association of Neighbors at their meeting on July 11, 2018, endorses the State Street Corridor Plan and urges its adoption by the Salem City Council.

Jeff Schumacher, President

South Central Association of Neighbors



## Amy Johnson

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**From:** noreply@cityofsalem.net on behalf of waltersuttle@msn.com  
**Sent:** Thursday, July 12, 2018 8:00 PM  
**To:** citycouncil  
**Subject:** Contact City Council  
**Attachments:** Testimony to the Salem City Council - State Street Project.docx

Your Name	Walter Suttle
Your Email	waltersuttle@msn.com
Your Phone	503-434-0445
Street	1582 Court St NE Apt 4
City	Salem
State	OR
Zip	97301
Message	Attached is a document which I would like to submit as testimony related to the State Street Revitalization Project

This email was generated by the dynamic web forms contact us form on 7/12/2018.

To: Mayor Chuck Bennett and the Salem City Council

From: Walter Suttle, 1582 Court Street NE Apt 4

RE: State Street Revitalization Project

Dear Mayor and City Council Members,

I am writing to express my concern about the proposed MU-1 zoning that is proposed for State Street between 13<sup>th</sup> street and 25<sup>th</sup> street. I am supportive of the goals of having a revitalized, mixed use area on State street, with shops, offices, restaurants and multi-family housing. But I am concerned about the impacts that this development will have on the neighborhoods nearby. I live in the historic Court/Chemeketa neighborhood, with my residence abutting the alley between Court and State streets. The plan as proposed does not require any parking requirement on new development. This is likely to result in more traffic through my neighborhood, and the available parking is likely to become unavailable.



This picture is of Rockingham Court in NE Salem, and it shows what the street can be like when there is not adequate parking for all the residents.

In the MU-1 zone, new developments will be encouraged (but not required) to provide parking on the side or rear of the buildings. This will result in much higher traffic through the alley between Court Street and State Street. It will also result in more noise as delivery and garbage trucks access the businesses and residences. The alley as it currently is, is not big enough to accommodate this additional traffic.

Also, customers and residents of the MU-1 zone will likely discover and use the North/South short alley located between the houses at 1496 Court Street and 1518 Court Street, rather than exit the parking lots onto State Street. This will cause additional traffic to be in the historic neighborhood.

Increased traffic will be expected on Court Street, partly because of cars going to and from the MU-1 zone on the alleyways, but also from cut through traffic, trying to avoid a slowed down State Street. Traffic volume and speed through the historic neighborhood should be mitigated. 14<sup>th</sup> Street between Center and State Streets is already used heavily by cut through traffic, which often travels at high speeds.

I ask the City Council to consider the following mitigating measures to help minimize traffic and parking issues in the Historic Court/Chemeketa District:

- Require some level of parking be provided when developing properties
- Require larger setbacks in the alleyways to accommodate the additional traffic
- Close the short N/S alley between the houses at 1496 and 1518 Court Street
- Install traffic slowing devices along court and Chemeketa Street, such as speed bumps
- Add stop signs on 14<sup>th</sup> Street at Court and Chemeketa Streets

Thank you very much for your consideration of these issues.

Walter Suttle

## Eunice Kim

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**From:** Norman Wright  
**Sent:** Thursday, July 12, 2018 8:30 AM  
**To:** Eunice Kim; Lisa Anderson-Ogilvie  
**Subject:** FW: Contact City Council  
**Attachments:** ATT00001.bin

FYI

**Norman Wright, AICP**  
Community Development Director  
City of Salem, OR  
503-588-6173

**From:** noreply@cityofsalem.net [mailto:noreply@cityofsalem.net] **On Behalf Of** waltersuttle@msn.com  
**Sent:** Thursday, July 12, 2018 5:32 AM  
**To:** citycouncil <citycouncil@cityofsalem.net>  
**Subject:** Contact City Council

Your Name	Walter Suttle
Your Email	<a href="mailto:waltersuttle@msn.com">waltersuttle@msn.com</a>
Your Phone	503-434-0445
Street	1582 Court St NE Apt 4
City	Salem
State	OR
Zip	97301
Message	<p>To Mayor Chuck Bennett and the Salem City Council RE: State Street Corridor Redevelopment Project My name is Walter Suttle, and I live at 1582 Court Street NE, Apt. 4. I support the concept of revitalizing the State Street Corridor to create a vibrant, walkable, mixed use street with shops, restaurants, offices and multi-family housing. However, I am concerned about the proposed MU1 zoning proposal for the property behind my home. The character of the historic Court/Chemeketa Street district will be strongly impacted by the new MU1 zoning on State Street, unless some mitigating measures are taken. The height of the proposed buildings will change the streetscape on Court Street. Fifty-five-foot-tall, modern buildings will loom over the historic neighborhood. The property where I live will have significantly reduced sunlight for 6 months of the year, from the autumnal equinox to the vernal equinox, from shadows cast by the buildings (as is demonstrated in the letter to the city council from John Poole dated March 12, 2018 and the video posted on YouTube at <a href="https://youtu.be/FGv7dhhKt-o">https://youtu.be/FGv7dhhKt-o</a>). In addition, at night there will be significant light pollution. Lights from balconies, windows, and parking lots will be clearly visible from Court Street. Lighting which minimizes spread of light outside of the area that needs to be illuminated should be a requirement in the MU1 zone. Mechanical equipment on roof tops will be an eyesore and produce noise which will spill into the historic district. Screening should be a requirement for rooftop equipment. I urge the City Council to lower the allowed height of the buildings to 40 feet in</p>

the MU1 zone, and to require that adequate buffers and screening be required to mitigate the shade, light, noise and visual impacts that the redevelopment will have on the Historic Court/Chemeketa Street Neighborhood. Thank you for your consideration.

This email was generated by the dynamic web forms contact us form on 7/12/2018.

Juliana Inman  
1566 Court St

16 July 2018

Mayor Chuck Bennett  
Salem City Councilors

Re: Code Amendment State Street Corridor Plan Case No. CA18-02  
Via email to Eunice Kim [EKim@cityofsalem.net](mailto:EKim@cityofsalem.net)

Dear Mayor and Councilors,

Several residents of our National Register District have done a review of the current Salem Revised Code – Unified Development Code, Chapters 110-900 to see how commercial, office, retail, multi-family housing, and arterial traffic zones are treated when adjacent to existing residential districts. We better understand after this effort why the City would wish to move away from “Overlay Zones”.

In order to provide appropriate integration of the new proposed Mixed Use Zoning districts with the existing residential districts adjacent to the State Street Corridor and possibly elsewhere in the City, we recommend some additional language for these MU zones. Further, we see a need for more than one additional MU zoning district in order to eventually replace the patchwork of Overlay Zones.

For discussion this evening we wish to raise the possibility of adding at least an MU-3 zone to address these issues:

- Shading of existing residential structures and properties
- Zone to zone setback at MU zones to residential areas
- Historic alley protection through use restrictions in future
- Historic alley protection through landscape buffer

We also recommend adding language to the “purpose” section of all the MU zones so that where they abut residential districts, the impacts on residential properties are mitigated. All the changes recommended have precedents in the existing Unified Development Code. Attached is a table of some of the existing Overlay Zones and a few of their key features.

Purpose: The purpose of the Mixed Use-3(MU-3) zone is to identify allowed uses and establish development standards that promote pedestrian-oriented development in vibrant mixed-use districts, encourage a mix of compatible uses in multi-story buildings, and emphasize active commercial uses on ground floors facing major streets, *Add: that also buffers existing residential development from the Mixed Use zone.*

- Building Height: *Change:* 45’ maximum, with 5 feet mechanical screening permitted
- Zone to zone setback for MU to Residential: *Change:* 20’ minimum
- Court/State Street alleys between 14<sup>th</sup> and 18<sup>th</sup> Streets - *Add:* “no vehicle access to existing residential serving alley is permitted for a non-residential or multi-family use over 3 units.”
- Landscape - *Change:* type B – allows hedges as well as walls, fences, screens

**Discussion:**

Non-residential building height is restricted to 35 feet in the Superior-Rural Overlay Zone (621), Oxford-West Nob Hill Overlay Zone (622), Oxford-Hoyt Overlay Zone (623), Hoyt-McGilcrest Overlay Zone (625), Saginaw Street Overlay Zone (625), Fairview Mixed Use (35 feet and 45 feet-530), NCMU zone (532). Total building height is restricted to 50 feet in the three Broadway Overlay Zones (613, 614, 615). There is almost universal precedent for 35 feet building height, and also for the requested 45 +5 feet maximum height. There are no Overlay Zones permitting buildings 55 feet abutting existing residential properties.

The additional zone to zone setback of a total of 20 feet, coupled with the reduced building height of 45 feet mitigates the winter shading of adjacent residential properties located north of the State Street Corridor. Since parking is to be placed at the rear portion of the parcels, this will most likely be part of the required parking for any new development. There is precedent for consideration of shading in the models included in Figures 531-19 and 20, Chapter 531 of the Unified Development Code for the SWMU—South Waterfront Mixed-Use Zone.

Precedent for protection of residential alleys from non-residential and multi-family use is included in the Saginaw Overlay Zone (625) and the Rural-Superior Overlay Zone (621). The Rural-Superior Zone also includes a 38 foot setback from the alley. Additional landscape screening is included for non-residential properties abutting an alley.

We are asking for consideration of reasonable zoning language changes to mitigate impacts of newly created Mixed Use Zones on the adjacent National Register Court-Chemeketa Residential Historic District and its boundaries.

There is a lot of enthusiasm in the neighborhood about completing the State Street Corridor improvements. Please use these comments as well-considered recommendations for allowing Mixed Use Zoning to work with adjacent residences (historic or not).

Regards,



Juliana Inman

Attachment: Table of Unified Development Code Selected Provisions

Overlay Zone (Chapter)	Building Height	Design review required	Rear set back	Lot Coverage/min. Dev standards	Parking	Alley	Purpose
Broadway/High Street Retail Overlay (613)	50 feet	yes	1:1 up to 20'		10% reduction	may be used for parking access	The purpose of the Broadway/High Street Retail Overlay Zone is to identify allowed uses and to establish development standards that promote a pedestrian-oriented mixed-use residential and commercial district with an emphasis on retail.
Broadway/High Street Housing Overlay (614)	50 feet	yes		50% ground floor must be residential	10% reduction	may be used for parking access	The purpose of the Broadway/High Street Housing Overlay Zone is to identify allowed uses and to establish development standards that promote a pedestrian-oriented mixed-use residential and commercial district with an emphasis on residential uses to support retail areas.
Broadway/High Street Transition Overlay (615)	50 feet	yes	1:1 up to 20'	50% ground floor must be residential	10% reduction		The purpose of the Broadway/High Street Transition Overlay Zone is to identify allowed uses and to establish development standards that buffer existing residential from the commercial corridor along Broadway/High Street by providing a transition from lower density development to the east of the overlay zone and higher density development to the west of the overlay zone
Riverfront High Density Residential Overlay (616)	70 feet	yes		20 DU/acre min, no max., river access walk every 400 feet	parking structures allowed, no more than 50% street frontage		The purpose of the Riverfront High Density Residential Overlay Zone is to identify allowed uses and to establish development standards to promote a mixed-use residential and commercial district with an emphasis on high density residential development and pedestrian access to and along the Willamette Riverfront, while affording existing buildings additional flexibility until property is redeveloped for the uses set forth in this chapter.
Riverfront Overlay Zone (617)	70 feet	yes		20 DU/acre min, no max., river access walk every 400 feet			The purpose of the Riverfront Overlay Zone is to identify allowed uses and to establish development standards to promote a mixed-use residential and commercial district with an emphasis on office development and pedestrian access to and along the Willamette River.
Mixed Use Overlay Zone (619)	75 feet	no, use MF design standards, yes for only MF housing		12 DU/acre min	1/DU min, max 2.5/DU		The purpose of the Mixed Use Overlay Zone is to implement the mixed-use land use concepts in the Salem Area Comprehensive Plan by providing residential uses along with commercial, office, and neighborhood service uses.
Superior-Rural Overlay zone (621)	35 feet		Building min 12' + 1:1 for ht. Over 12" 20' max; 12' min vehicle use areas; 38' min. setback @ alley	screening from SF uses		(621-1) 10' landscaping required @ alley + 4' fence, no driveways for other than SF residential to alley serving Rural and Superior, 38' min. setback for buildings from alley	The purpose of the Superior/Rural Overlay Zone is to establish development standards that minimize the impacts of nonresidential development on existing residential uses.
Oxford-West Nob Hill Overlay Zone (622)	35 feet		Building min 12' + 1:1 for ht. Over 12" 20' max; 20' min. @Nob Hill, 12' min vehicle use areas	12' landscape required @ Nob Hill, 4' fence		NA – no alleys	The purpose of the Oxford/West Nob Hill Overlay Zone is to establish development standards that minimize the impacts of nonresidential development on existing residential uses
Oxford-Hoyt Overlay Zone (623)	35 feet			20' setbacks @ Nob Hill, 12' vehicle use areas		NA – no alleys	The purpose of the Oxford/Hoyt Overlay Zone is to establish development standards that minimize the impacts of nonresidential development on existing residential uses
Hoyt-McGilcrest Overlay Zone (624)	35 feet					NA – No alleys	The purpose of the Hoyt/McGilcrest Overlay Zone is to establish development standards that minimize the impacts of nonresidential development on existing residential uses
Saginaw Street Overlay Zone (625)	35 feet			30' setback from streets, 5' vehicle use setback @Kearney & Bush, 12' min elsewhere	6' hedge required abutting residential	no setback, no access serving a non-residential use is permitted onto Saginaw St	The purpose of the Saginaw Street Overlay Zone is to establish development standards that minimize impacts on residential uses.



Fairview Mixed Use Zone (530)	35 feet LI, 45 feet MI, AU, VC					The purpose of the Fairview Mixed-Use (FMU) Zone is to implement the mixed-use designation of the Salem Area Comprehensive Plan by establishing a master planning process through which allowed uses are identified and development standards are established
NCMU - Neighborhood Center Mixed Use (532)	35feet and 28' max. or existing, whichever is greater		12' min and 20' min	60% lot coverage max.		The purpose of this chapter is to create the Neighborhood Center Mixed Use (NCMU) Zone, in order to implement the mixed-use comprehensive plan designation, and to encourage the development of appropriately scaled, pedestrian friendly neighborhood center developments.
Proposed MU1	55 feet	no	10' + 1.5:1 above 15' @ rear abutting existing residential	12DU/acre min, 100% coverage allowed		The purpose of the Mixed Use-I(MU-I) zone is to identify allowed uses and establish development standards that promote pedestrian-oriented development in vibrant mixed-use districts,encourage a mix of compatible uses in multi-story buildings,and emphasize active commercial uses on ground floors facing major streets.
Proposed MU2	55 feet	no	10' + 1.5:1 above 15' @ rear abutting existing residential	12DU/acre min, 100% coverage allowed		The purpose of the Mixed Use-II(MU-II) zone is to identify allowed uses, establish development standards that promote pedestrian-oriented development in vibrant mixed-use districts, and encourage a mix of compatible uses in multi-story buildings