

INTERGOVERNMENTAL AGREEMENT
Between
MARION COUNTY and CITY OF SALEM

1. PARTIES TO AGREEMENT

This Agreement between City of Salem, hereafter called City, and Marion County, a political subdivision of the state of Oregon, hereafter called County, is made pursuant to ORS 190.010 (Cooperative Agreements).

2. RECITALS

- a. Devon Property LLC, an Oregon limited liability company, 3425 Boone Road SE, Salem, Oregon (Developer) wishes to plat and develop certain real property under City jurisdiction identified as Affinity Estates located at 6719 Devon Avenue SE.
- b. On March 12, 2018, the City's Planning Administrator approved Urban Growth Area Preliminary Declaration Case No. UGA17-06 for Affinity Estates.
- c. On March 30, 2021, the City's Planning Administrator granted conditional approval for Affinity Estates under Subdivision Plat No. SUB21-01.
- d. Condition 4 of SUB21-01 requires that the stormwater facilities meet the requirements of City of Salem Ordinance 8-20.

The Developer's engineer has determined that, in order to comply with Ordinance 8-20, the Developer is required to construct Stormwater Facilities within Devon Avenue SE south of Elkins Way SE and within Elkins Way SE from Devon Avenue SE to Powell Creek. The Developer is required to construct the Stormwater Facilities as a condition of development. Developer will excavate for and install a storm drain pipeline, with all appurtenances incident thereto or necessary therewith, including aboveground manholes, outlet structures, and riprap, for the purpose of carrying or conveying surplus waters, and for similar uses in, under, and across the said premises, and make excavations therefor from time to time, in, under, and through the above-described premises within Elkins Way SE. The Stormwater Facility shall be built to City design standards.

- e. City and County agree that the improvements are deemed necessary and practical in order to provide for the controlled conveyance of stormwater from Affinity Estates Subdivision, to Powell Creek, being Waters of the State. See Exhibit A attached.
- f. Devon Avenue SE is located within City jurisdiction.
- g. County is Road Authority over Elkins Way; however, County is generally precluded from allocating resources to maintain Local Access Roads in general accordance with ORS 368.031. These services, encapsulating obligations to both Parties under the Agreement, are further described in Section 4.
- h. The purpose of this Agreement is to establish the terms and conditions under which the City will provide maintenance, including any necessary repair, modification or retrofit, of the Developer-built Stormwater Facilities within Elkins Way SE.

3. TERM AND TERMINATION

3.1 This Agreement shall be effective for a period commencing on the date of substantial construction completion of Stormwater Facilities by the Developer, with such date to be determined by County final inspection and acceptance of the improvements thereof, unless or until terminated as provided herein.

3.2 This Agreement may be terminated by mutual consent of both parties, as evidenced in writing.

3.3 County may terminate this Agreement effective upon delivery of written notice to City or at such later date as may be established under any of the following conditions:

- a. If City fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
- b. If City fails to perform any of the provisions of this Agreement or so fails to pursue the work as to endanger the performance of this Agreement in accordance with its terms and after written notice from County, fails to correct such failure(s) within thirty (30) days or such longer period as the County may authorize.

3.4 Any such termination of this Agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

3.5 This agreement shall terminate automatically upon annexation into the City limits of the full width of Elkins Way SE from Devon Avenue SE to Powell Creek.

4. OBLIGATIONS UNDER THE TERMS OF THIS AGREEMENT

4.1 UNDER THE TERMS OF THIS AGREEMENT, CITY SHALL:

- 4.1.1. Upon substantial construction completion, inspect and accept the Stormwater Facility.
- 4.1.2. Authorize third parties to access and use Elkins Way SE right-of-way for the purpose of connecting to the City-owned Stormwater Facilities located thereon.
- 4.1.3. Retain the right of ingress and egress in, under, over, across, and through the Elkins Way SE right-of-way at any and all times for any purpose.
- 4.1.4. Conduct, at minimum, annual inspection and maintenance of the Stormwater Facilities, such as, but not limited to, removing sediment from manholes and removing debris and other obstructions from the rip rap outfall to Powell Creek.
- 4.1.5. Upon written request by the County, provide inspection and maintenance records for the Stormwater Facilities within fifteen (15) calendar days.
- 4.1.6. Upon written notice from County that general maintenance to the Stormwater Facilities is needed, City shall acknowledge its receipt of such notice within five (5) business days.
- 4.1.7. Upon written notice from County that repairs, modifications or retrofit to Stormwater Facilities are needed, City shall acknowledge its receipt of such notice within three (3) business days.
- 4.1.8. Commence any necessary maintenance, repair, reconstruction, modification or retrofit of the improvements and restoration of right-of-way within fifteen (15) calendar days from the date of acknowledgement of notice from County. Complete work in expeditious fashion. In addition to regular maintenance, and periodic repair and reconstruction needed to perpetuate functionality of the proposed stormwater infrastructure improvements, City shall be responsible for all modifications or retrofit, including all engineering, permitting, construction and all other costs, resulting from any change in law, regulation, rules or permit conditions applicable to the installation.
- 4.1.9. Submit notification of any work, excluding emergencies and routine inspections, within Elkins Way SE right-of-way to the County no less than ten (10) business days in advance. Notification of emergency repair work shall be made within three (3) business days after the work is completed. Work re-scheduled by request of the County does not cause a violation by the City of the fifteen (15) calendar day deadline for commencement required

by Section 4.1.8. Re-scheduled work shall be conducted by a mutually agreed upon date. In the event a mutual date cannot be reached, County makes the final determination.

4.1.10. Meet onsite at an agreed upon date(s)/time(s) with County personnel, in an ongoing manner as needed, to ascertain the need for maintenance and/or repairs to the improvements.

4.1.11. Provide 60 calendar day minimum notice to County in the event that the City determines in its sole discretion, to remove any vegetation, shrubbery, buildings, structures, fences, fill, or other materials or obstructions, or appurtenances attached to or connected therewith, in order to complete its maintenance responsibilities. City shall bear all costs for removal of these structures.

4.2 UNDER THE TERMS OF THIS AGREEMENT, COUNTY SHALL:

4.2.1. Conduct one-year, post-construction warranty inspection, and notify Contractor and City of the need for any remedial work.

4.2.2. Notify City within two (2) business days upon becoming aware that maintenance to the proposed improvements is needed.

4.2.3. Notify City within one (1) business day upon becoming aware that repairs to the proposed improvements are needed.

4.2.4. Meet onsite at an agreed upon date(s)/time(s) with City personnel, in an ongoing manner as needed, to ascertain the need for maintenance and/or repairs to the improvements.

4.2.5. Review the notification for work to be conducted submitted by the City. In the event there is a known conflict of scheduled work within the Elkins Way SE right-of-way the County may request no less than five (5) business days prior to the City's scheduled work that the City work be re-scheduled.

4.2.6. Gain consent from the City prior to granting a third-party connection to that portion of the stormwater facility for which the City has maintenance responsibility.

5. COMPLIANCE WITH APPLICABLE LAWS

The parties agree that both shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement. The parties agree that this Agreement shall be administered and construed under the laws of the state of Oregon.

6. NONDISCRIMINATION

The parties agree to comply with all applicable requirements of Federal and State civil rights and rehabilitation statutes, rules and regulations in the performance of this Agreement.

7. HOLD HARMLESS

Each Party agrees to defend, indemnify, and hold harmless the other Party, its officers, agents, and employees from damages arising out of the tortious acts of the indemnifying party, its officers, agents, and employees acting within the scope of their employment and duties in performance of this agreement subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution, Article XI, Section 7.

Each party shall insure or self-insure and be independently responsible for the risk of its own liability for claims within the scope of the Oregon tort claims act (ORS 30.260 TO 30.300).

Nothing in this agreement shall be deemed to limit the right of either party to make a claim against the other for damages and injuries incurred by one party as a result of the actions of the other party's officers, agents, and employees.

8. INSURANCE

Each party shall insure or self-insure and be independently responsible for the risk of its own liability for claims within the scope of the Oregon tort claims act (ORS 30.260 TO 30.300).

9. MERGER CLAUSE

Parties concur and agree that this Agreement constitutes the entire Agreement between the parties. No waiver, consent, modification or change to the terms of this Agreement shall bind either party unless in writing and signed by both parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Parties, by the signatures below of their authorized representatives, hereby agree to be bound by its term and conditions.

10. NOTICES

Any notice required to be given the City or County under this Agreement shall be sufficient if given in writing by email and first class mail, or in person to each individual, or to their respective successor(s), as follows:

For City:

Primary:

Peter Fernandez, PE – Public Works Director
Public Works Department
555 Liberty Street SE/Room 325
Salem Oregon 97301-3513
Email: PFERNANDEZ@cityofsalem.net

Copy to:

Dwayne Barnes – Utility Operations Manager
Public Works Operations
1410 20th Street SE, Building 2
Salem, Oregon 97302
Email: dbarnes@cityofsalem.net

For County:

Primary:

Brian Nicholas, PE – Public Works Director
5155 Silverton Road NE
Salem, Oregon 97305
Email: BNicholas@co.marion.or.us

Copy to:

Lani Radtke, PE – County Engineer
5155 Silverton Road NE
Salem, OR 97305
Email: LRadtke@co.marion.or.us

SIGNATURES

This Agreement and any changes, alterations, modifications, or amendments will be effective when approved in writing by the authorized representative of the parties hereto as of the effective date set forth herein.

In witness whereof, the parties hereto have caused this Agreement to be executed on the date set forth below.

MARION COUNTY SIGNATURES:

Authorized Signature: Brian Hill 11/2/2021
Department Director or designee Date

Authorized Signature: Janet Hef 11/5/21
Chief Administrative Officer Date

Reviewed by Signature: James E. Vetter 11/4/21
Marion County Legal Counsel Date

Reviewed by Signature: [Signature] 11/3/21
Marion County Contracts & Procurement Date

CITY OF SALEM SIGNATURE:

Authorized Signature: _____
Date

Title: _____