

INTERGOVERNMENTAL AGREEMENT
Between
MARION COUNTY and CITY OF SALEM

1. PARTIES TO AGREEMENT

This Agreement between City of Salem, hereafter called Agency, 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

- 2.1 Agency intends to permit the construction of public street improvements for the extension of Gaia Street SE from its current terminus, northeasterly to connect to Culver Drive SE.
- 2.2 Said Gaia Street SE extension will be under Agency jurisdiction. Culver Drive SE is under County jurisdiction.
- 2.3 County requires that access to Culver Drive SE be restricted to emergency vehicle access only as the current structural condition of Culver Drive SE is not anticipated to be able to support the commercial and industrial traffic anticipated to be generated from the development of the Salem Business Campus subdivision, hereafter call Development.

3. PURPOSE OF AGREEMENT

The purpose of this Agreement is to establish the terms and conditions under which Agency will install and maintain a gate across the new section of Gaia Street at the intersection with Culver Drive SE to restrict access to all but emergency vehicles and pay a \$600,000 fee to the County toward future County improvements to be made to Culver Drive SE to allow for the full public use of the Gaia Street SE / Culver Drive SE intersection in lieu of constructing urban improvements along the Development's Culver Drive SE frontage, and the terms that shall allow for the removal or permanent opening of the gate. The terms are further described in Section 6 of this Agreement.

4. TERM AND TERMINATION

- 4.1 This Agreement shall be effective upon execution by both parties and shall terminate upon construction and acceptance of County-constructed structural-capacity improvements to Culver Dr SE to support the anticipated traffic needs of the area, including that associated with the Development, to allow for full public use as determined by County, unless sooner terminated as provided herein.
- 4.2 This Agreement may be terminated by mutual consent of both parties at any time. Any such termination of this Agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

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

- a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
- b. If Agency fails to perform any of the 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 ten (10) days or such longer period as the County may authorize.

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

5. FUNDING AND BILLING

Agency agrees to contribute \$600,000 toward future County improvements to be made to Culver Drive SE in lieu of constructing urban improvements along the Development's Culver Drive SE frontage.

The full amount of Agency's contribution to the County will be provided no later than January 1, 2023.

County and Agency agree that Agency's contribution to the County for future improvements along Culver Drive SE constitutes the Agency's full financial obligation for any and all traffic impacts to County infrastructure related to the Development.

County and Agency agree that County has no financial obligation as a result of this Agreement.

6. OBLIGATIONS UNDER THE TERMS OF THIS AGREEMENT

6.1 UNDER THE TERMS OF THIS AGREEMENT, AGENCY SHALL:

- a. No later than January 1, 2023, pay in full a \$600,000 fee to the County toward future County improvements to be made to Culver Drive SE to support the full public use of the Gaia Street SE / Culver Drive SE intersection in lieu of constructing urban improvements along the Development's Culver Drive SE frontage.
- b. Apply for and obtain a County permit authorizing the gated emergency vehicle only connection to Culver Drive SE.
- c. Acquire Agency authorization to place a gate across Agency owned Gaia Street SE right-of-way and provide County with a copy of such authorization.
- d. Prior to acceptance of the Gaia Street SE street improvements, install a gate with a locking mechanism across the improved portion of Gaia Street SE at a location at

least 30-feet, but no greater than 40-feet from the southwesterly edge of pavement of Culver Drive SE. Gate and lock shall be as approved by the local fire district. Provide County with a copy of such approval.

- e. Bear all costs required to install, maintain, and the eventual removal of the gate or to replace the gate if damaged.
- f. Acquire County concurrence for removal or permanent opening of the gate.

6.2 UNDER THE TERMS OF THIS AGREEMENT, COUNTY SHALL:

- a. Upon gate installation by Agency and written acceptance by the local fire district, conduct a site inspection to verify compliance with this Agreement.
- b. Issue a permit to Agency authorizing a gated emergency vehicle only access from Culver Drive SE to Gaia Street SE.
- c. No later than September 30, 2023, complete Culver Drive structural-capacity improvements.
- d. No later than 30 calendar days following the completion of County conducted Culver Drive structural-capacity improvements, amend the permit issued to Agency under Section 6.2(b) that establishes the gated access to Culver Drive SE providing concurrence that the gate may be removed or permanently opened, authorizing the intersection for full public use.

7. 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.

8. 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.

9. 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 Construction, Article XI, Section 7.

Nothing in this Agreement shall be deemed to limit the right of either party to make 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.

10. 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).

11. 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.

12. NOTICES

Any notice required to be given the Agency or County under this Agreement shall be sufficient if given, in writing, by first class mail or in person as follows:

For Agency:
Tory Banford, City of Salem
Urban Development Department
350 Commercial St NE, Salem, OR 97301
tbanford@cityofsalem.net

For County:
Brian Nicholas
Marion County Public Works
5155 Silverton Rd NE, Salem, OR 97305
bnicholas@co.marion.or.us

13. 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 SIGNATURE
BOARD OF COMMISSIONERS:**

| | |
|-------|------|
| Chair | Date |
|-------|------|

Commissioner

Date

Commissioner

Date

Authorized Signature:

Department Director or designee

Date

Authorized Signature: _____

Chief Administrative Officer

Date

Reviewed by Signature: _____

Marion County Legal Counsel

Date

Reviewed by Signature: _____

Marion County Contracts & Procurement

Date

CITY OF SALEM

Authorized Signature: _____ Date: _____

Title: _____