

**INTERGOVERNMENTAL AGREEMENT PW-4978-22**  
**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 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.

2.2 On February 8, 2022, the City's Planning Administrator granted conditional approval for Affinity Estates as modified under Subdivision Plat No. SUB21-01MOD1.

2.3 Condition 5c of SUB21-01MOD1 requires the Developer to construct Lone Oak Road SE from the development to Rees Hill Road SE and authorizes that access be restricted to emergency vehicles only.

2.4 Agency intends to permit the Developer to construct public street improvements for the extension of Lone Oak Road SE from the development southerly to connect with Rees Hill Road SE.

2.5 Said Lone Oak Road SE extension will be under the Agency's jurisdiction. Rees Hill Road SE is under County jurisdiction.

2.6 County requires that access to Rees Hill Road SE be restricted to emergency vehicle access only until such time the intersection is improved to address the limited sight distance available.

**3. PURPOSE OF AGREEMENT**

The purpose of this Agreement is to establish the terms and conditions under which the Agency will require the installation of a gate across the new section of Lone Oak Road SE at or near the intersection with Rees Hill Road SE to restrict access to all but emergency vehicles. These 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 automatically upon the construction and acceptance of County-permitted safety improvements to address sight distance issues at the Lone Oak Road / Rees Hill Road intersection, 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**

County and Agency agree that no money or funds will be exchanged directly between the parties 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. Authorize placement of a gate across Agency owned right-of-way and provide County with a copy of such authorization.
- b. Require the Developer to install a gate with a locking mechanism across the improved portion of Lone Oak Road SE at a location at least 30-feet, but no greater than 40-feet from the north edge of pavement of Rees Hill Road SE. Gate and lock shall be as approved by the local Agency's fire department. Agency shall provide County with a copy of such approval.
- c. In accordance with Agency's practices, ensure that the gate is maintained and ensure that the gate is repaired or replaced if damaged.
- d. Acquire County concurrence prior to removal or permanent opening of the gate.

### **6.2 UNDER THE TERMS OF THIS AGREEMENT, COUNTY SHALL:**

- a. Upon installation by the Developer and acceptance by the Agency, conduct a site inspection to verify compliance with this Agreement.
- b. Issue a permit to Agency, or Agency's authorized Developer, that allows the construction of an emergency vehicle access to Rees Hill Road SE.

## **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 Constitution, Article XI, Section 7.

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.

## **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:  
Peter Fernandez, Public Works Director  
555 Liberty Street SE, Salem OR 97301  
pfernandez@cityofsalem.net

For County:  
Brian Nicholas, PE – Public Works Director  
5155 Silverton Road 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 SIGNATURES:

Authorized Signature:  8/17/2022  
Department Director or designee Date

Authorized Signature: n/a  
Chief Administrative Officer Date

Reviewed by Signature: n/a  
Marion County Legal Counsel Date

Reviewed by Signature:  8/17/2022  
Marion County Contracts & Procurement Date

CITY OF SALEM

Authorized Signature: \_\_\_\_\_  
City Manager or designee Date