

INTERGOVERNMENTAL AGREEMENT
Americans with Disabilities Act Curb Ramp Project Agreement
Northwest Oregon 2024-2027 ADA Curb Ramps
City of Salem

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT" and "State;" and THE CITY OF SALEM, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually as "Party" and collectively as "Parties."

RECITALS

1. OR 22, OR 99EB and OR 99E are a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). The various other streets impacted within the project limits are a part of the city street system under the jurisdiction and control of Agency.
2. By the authority granted in Oregon Revised Statutes (ORS) [190.110](#), [366.572](#), and [366.576](#), State may enter into cooperative agreements with counties, cities, and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. State, by ORS 366.220, is vested with complete jurisdiction and control over the roadways of other jurisdictions taken for state highway purposes. The Parties initially agree that by the authority granted by ORS 373.020, the jurisdiction extends from curb to curb, or, if there is no regular established curb, then control extends over such portion of the right of way as may be utilized by State for highway purposes. Responsibility for and jurisdiction over all other portions of a city street remains with Agency. The Parties further understand and agree to amend this Agreement if the jurisdiction stated in this recital is altered or determined to be incorrect.
4. By the authority granted in ORS [810.080](#) State has the authority to establish marked pedestrian crosswalks on its highway facilities.
5. By the authority granted in ORS 810.200-[810.210](#), State is authorized to determine the character or type of traffic control devices to be used in the State of Oregon, and each road authority shall place, control, and maintain traffic control devices upon its own highways at places where the road authority deems necessary for the safe and expeditious control of traffic; to carry out the provisions of the vehicle code or local traffic ordinances; or to regulate, warn, or guide traffic. If the project involves placement of a traffic control device on a State highway or State right of way, no traffic control devices shall be erected, maintained, or operated by any authority other than

State, except with State's written approval. Notwithstanding the foregoing, all traffic signal work on this Project must conform to current State standards and specifications established under ORS 810.200.

6. Traffic control devices that are part of the Project will conform to current State standards and specifications, including but not limited to the Manual on Uniform Traffic Control Devices (MUTCD). The Oregon Administrative Rules (OAR) Chapter 734, Division 55, governs the location, installation, and maintenance of signs, miscellaneous facilities, and miscellaneous operations on the state highway right of way.
7. In order for State to ensure that curb ramps along the state highway system are in compliance with the current standards of Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together "ADA"), State intends to enter into agreements with local public agencies throughout the state for construction projects to ensure curb ramps identified in the Statewide Transportation Improvement Program (STIP) are ADA compliant. This Agreement identifies the Parties' respective responsibilities.
8. Existing marked crosswalks, pedestrian push buttons and rectangular rapid flashing beacons (RRFB) will be replaced, or location adjusted, according to the project plans. All maintenance responsibilities for these elements remain as assigned when originally constructed.
9. One or more existing marked crosswalk, pedestrian push-button, or rectangular rapid flashing beacon (RRFB) will be replaced, or location adjusted, according to project plans. This Agreement does not alter the Parties' maintenance obligations related to these crosswalks or RRFBs, under prior agreement(s) still in effect, if any.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, State and Agency agree that State shall design and construct ADA-compliant curb ramp improvements at various locations along OR 22, OR 99EB and OR 99E within Agency limits, hereinafter referred to as "Project." The Project includes ADA curb ramp construction and remediation to meet ADA standards. Construction and remediation may result in adjustments to traffic signals, RRFB's, drainage, curb lines, utilities, and other elements within the curb ramp improvement area. The Project locations are as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. The Project will be financed at an estimated cost of \$23,175,000 in federal and state funds. The estimate for the total Project cost is subject to change. State shall be responsible for any Project costs beyond the estimate.

3. This Agreement shall become effective on the date all required signatures are obtained (Effective Date) and shall remain in effect for the purpose of ongoing maintenance responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years. The Project shall be completed within 5 calendar years following the Effective Date of this Agreement.

AGENCY OBLIGATIONS

1. Agency shall review State's Project consistent with Project plan review schedule plans prior to construction of the Project.
2. Agency grants State the right to enter onto Agency's right of way for the performance of duties as set forth in this Agreement.
3. Agency agrees to State acquiring all right of way needed for construction of the Project. Upon completion of the Project, and in consideration of the improvements constructed as part of the Project, Agency agrees to accept any property transferred by the State that is no longer needed for the construction of the Project. If said property is no longer needed by Agency for public road purposes, it shall revert to ODOT.
4. Following Project completion, Agency shall be responsible for and agrees to maintain the Project improvements within Agency right of way with its own forces and at its own expense, including, but not limited to, all surface and sub-surface features such as storm water systems, curbs, gutters, sidewalks, fences, sanitary sewer, water lines, and all other features that are within Agency right of way. Any maintenance responsibilities that are not part of this Agreement that are currently in effect shall remain unchanged. If existing marked crosswalks, pedestrian push buttons and rectangular rapid flashing beacons (RRFB) are replaced or relocated during the Project, all maintenance responsibilities for those elements shall remain as assigned when originally constructed.
5. Agency shall contact State's District 3 Permits office seven (7) working days prior to the commencement of maintenance activities that impact travel lanes. Agency and ODOT staff will coordinate work to minimize impacts to the traveling public.
6. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from State.
7. Agency delegates, and State accepts, Agency's authority pursuant to ORS 758.010, ORS 758.025 and all relevant common law, statutes, ordinances, permits, and agreement terms, to cause to be relocated or reconstructed, all privately and publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements for the portion of the project upon lands within Agency's jurisdiction.

8. Agency by execution of this Agreement, gives its consent as required by ORS 373.030(2) and ORS 105.760 to any and all changes of grade within Agency limits, and gives its consent as required by ORS 343.050(1) to any and all closure of streets intersecting the highway, if any, in connection with or arising out of the Project covered by this Agreement.
9. Agency shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
10. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members, or representatives, and to legally bind Agency.
11. Agency's Project Manager for this Project is Kevin Hottmann, City Traffic Engineer, 555 Liberty Street SE, Suite 325, Salem, Oregon 97301; telephone: (503) 588-6211; khottmann@cityofsalem.net, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State shall conduct the necessary field surveys, environmental studies, traffic investigations, preliminary engineering, and design work required to produce and provide final plans, specifications, and cost estimates for the Project; identify and obtain all required permits; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid and contract documents; advertise for construction bid proposals; award all contracts; pay all contractor costs; and provide technical inspection, project management services, and other necessary functions for sole administration of the construction contract entered into for this Project.
2. State shall provide Project plans to Agency for review prior to construction of the Project. This includes traffic control plans and project work schedules.
3. State shall allow Agency access to State's right of way to perform maintenance obligations on constructed Project improvements specified in Agency Obligations, Paragraph 4.
4. State shall conduct all right of way activities in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended; ORS Chapter 35; Federal-Aid Policy Guide; Code of Federal Regulations (CFR), including but not limited to Title 23 CFR Part 710 and Title 49 CFR Part 24; and the ODOT Right of Way Manual.

5. Upon Project completion, State shall transfer to Agency any ownership interests State may have obtained for the Project on Agency's facilities. The method of conveyance will be determined by the Parties at the time of transfer and will be coordinated by State's Region Right of Way Manager. If said property is no longer needed by Agency for public road purposes, it shall revert to ODOT.
6. State, or its consultant, shall cause to be relocated or reconstructed, all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements for the portions of the Project which may interfere with the ADA Improvements.
7. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
8. State's Project Manager for this Project is Miranda Wells, Resident Engineer, 63055 N. Highway 97, Building M, Bend, Oregon 97703; telephone: (541) 480-7812, email: Miranda.Wells@odot.oregon.gov, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.
9. State's contact for maintenance permitting purposes is Cole Mullis, District 3 Manager, 885 Airport Road SE, Building P, Salem, Oregon 97301; telephone: (503) 986-2900; email: cole.f.mullis@odot.oregon.gov; or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. Americans with Disabilities Act Compliance:

- a. When the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals, or triggers an obligation to address curb ramps or pedestrian signals, the Parties shall:
 - i. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - ii. Follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary

pedestrian accessible route plan and current ODOT Curb Ramp Inspection Form;

- iii. At Project completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:
<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>
 - b. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
 - i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
 - iv. Any future alteration work on the Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
 - c. Maintenance obligations in this section shall survive termination of this Agreement.
2. Utility relocation or reconstruction may or may not be an eligible Project expense according to the following standard:
 - a. The expense is an eligible expense if the owner of the utility facility possesses a property right for its location on the public right of way.
 - b. The expense is not an eligible expense if the owner of the utility facility does not possess a property right for its location, but the facility exists on the public right of way solely under the permission of Agency or other road authority, whether that permission is expressed or implied, and whether written or oral.
 3. This Agreement may be terminated by mutual written consent of both Parties.

4. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger the performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If State fails to receive funding, appropriations, limitations, or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for the performance of this Agreement.
 - d. 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 State is prohibited from paying for such work from the planned funding source.
5. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
6. If any third party makes any claim or brings any action, suit, or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense, and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
7. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines, or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information, and opportunity to correct or prevent

the circumstances resulting in such expenses, judgments, fines, or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

8. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines, or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information, and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines, or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
9. The Parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, The Parties expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
10. All employers 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. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Each Party shall ensure that each of its contractors complies with these requirements.
11. The Parties acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after termination or expiration of this Agreement. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting party.

12. If Agency fails to maintain facilities in accordance with the terms of this Agreement, State, at its option, may maintain the facility and bill Agency, seek an injunction to enforce the duties and obligations of this Agreement, or take any other action allowed by law.
13. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly-selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
14. Agency and State are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement. This provision survives expiration or termination of this Agreement.
15. The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid. This provision survives expiration or termination of this Agreement.
16. 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.
17. This Agreement and attached Exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification, or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.
18. Electronic Signatures. The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the Agreement and amendments, submitted or exchanged via email are "Electronic Signatures" under ORS Chapter 84, bind the signing Party, and are intended to be and can be relied upon by the Parties. State reserves the right at any time to require the submission of the hard copy originals of any documents.

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

This Project is in the 2024-2027 STIP (Key No. 22985 or 23029 for Preliminary Engineering Phase, 23031 for Right of Way Phase, and 23044 for Construction Phase)) that was adopted by the OTC on July 13, 2023 (or subsequently by amendment to the STIP).

CITY OF SALEM, by and through its elected officials

By _____
Title:

Date _____

By _____
Title:

Date _____

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

By _____
Agency's Counsel

Date _____

Agency Contact:

Kevin Hottmann, City Traffic Engineer
City of Salem
555 Liberty Street SE, Suite 325
Salem, Oregon 97301
(503) 588-6211
khottmann@cityofsalem.net

State Contact:

Miranda Wells, Resident Engineer
63055 N. Highway 97, Building M
Bend, Oregon 97703
(541) 480-7812
Miranda.Wells@odot.oregon.gov

STATE OF OREGON, by and through its Department of Transportation

By _____
Delivery and Operations Administrator

Date _____

APPROVAL RECOMMENDED

By _____
ODOT ADA Program Director

Date _____

By _____
State Traffic Roadway Engineer

Date _____

By _____
District 3 Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____