

INTERGOVERNMENTAL AGREEMENT
I-5: Kuebler Interchange Phase 2 Sound Wall
Sound Wall Access and Maintenance
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 "State," and the CITY OF SALEM, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. State's Interstate 5 at Kuebler Interchange Southbound Ramp Improvements Project (Key No. 16858) (Interchange SB Ramp Project) required a noise study which concluded that a sound wall was needed. A second phase was added to the Interchange SB Ramp Project to construct the sound wall. This Agreement will address the access necessary for constructing the sound wall and ongoing maintenance of the sound wall.

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 State will construct a sound wall, along I-5 in the southwest quadrant of the interchange to mitigate noise impacts from the construction of the Interchange SB Ramp Project. Construction of the sound wall will require construction and maintenance access to State right of way from Agency's local street system, hereinafter referred to as "Project." The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.
2. There will be no funds exchanged for this Project. Each Party shall be responsible for the costs associated with any duties required of the Party.
3. This Agreement shall become effective on the date all required signatures are obtained 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 two (2) calendar years following the date of final execution of this Agreement by both Parties.

AGENCY OBLIGATIONS

1. Agency agrees to allow State the use of Agency streets for Project construction access and maintenance access purposes. Upon completion of Project, Agency agrees to allow State access to the permanent access gate to the sound wall via Boone Road, or issue any required permits to allow State said use.
2. Agency agrees to allow State to utilize Agency right of way for the installation of a temporary gate that will provide access to the Project site for State's contractor. Agency understands the temporary gate will be removed upon completion of Project.
3. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
4. 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.
5. Agency's Project Manager for this Project is Ralph Lambert, P.E., Senior Project Manager, City of Salem Engineering Division; 555 Liberty Street, SE Room 325, Salem, Oregon 97301; telephone (503) 588-6211; email: rlambert@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, or its consultant, shall conduct the necessary field surveys, environmental studies, 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, 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 be responsible for all costs associated with construction and installation of the Project.
3. State forces shall perform and be responsible for the maintenance of the Project.
4. 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.
5. State's contact for the maintenance of the Project is Cole Mullis, District 3 Manager, 885 Airport Road SE, Building P, Salem, Oregon 97301-5857; telephone (503) 986-2900; email: Cole.F.Mullis@odot.state.or.us, 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.

6. State's contact for the construction portion of the Project is Ken Kohl, Region 2 Consultant Project Manager, 644 A Street, Springfield, Oregon 97477-4609; telephone (541) 747-1496; email: Kenneth.I.kohl@odot.state.or.us; 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. This Agreement may be terminated by mutual written consent of both Parties.
2. 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 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 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.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. 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.

5. 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.
6. 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.
7. 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.
8. 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.
9. 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.

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 2015-2018 Statewide Transportation Improvement Program (STIP), (Key No. 18156) that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently by amendment to the STIP).

CITY OF SALEM, by and through its designated officials

By _____
City Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Agency Counsel

Date _____

Agency Contact:

Ralph Lambert
Senior Project Manager
City of Salem, Engineering Division
555 Liberty Street SE, Room 325
Salem, Oregon 97301
(503) 588-6211

STATE OF OREGON, by and through its Department of Transportation

By _____
Region 2 Manager

Date _____

APPROVAL RECOMMENDED

By _____
Region 2 Maintenance and Operations
Manager

Date _____

By _____
District 3 Manager

Date _____

State Contact:

Cole Mullis, District Manager
ODOT, District 3
885 Airport Road SE, Building P
Salem, Oregon 97301-5857
(503) 986-2900
Cole.F.Mullis@odot.state.or.us

EXHIBIT A

