

**LOCAL AGENCY AGREEMENT**  
**Locally Delivered State Funded Project Program**  
City of Salem Signalized Intersection Improvements  
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 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, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities, and 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. The subject intersections listed in Exhibit A, are either part of the city street system under the jurisdiction and control of Agency or part of Marion County's county road system of which Agency performs maintenance responsibilities through an agreement between Agency and Marion County.
3. Agency wishes to exchange unspent federal funds previously allocated for the project for State funds, in order to fund the project using state funding. State has determined that Agency is eligible for State funds for the work to be performed under this Agreement through the Locally Delivered State Funded Project Program.

**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. State and Agency agree that Agency shall upgrade the existing traffic signals at approximately 40 intersections within the urban growth boundary of Agency. The signal equipment upgrades may include controllers, signal heads, flashing left turn arrows, reflective backplates, pedestrian signal heads with mounts, audible pedestrian push buttons with mounts and ethernet switches, hereinafter referred to as "Project." The Project locations are identified in "Exhibit A," attached hereto and by this reference made a part hereof.
2. The total Project cost for the work to be performed under this Agreement is estimated at \$992,500, which is subject to change. The federal share of the total Project cost is \$992,500.
  - a. Per the fund exchange ratio of \$0.94 state dollars for \$1.00 federal dollars,

Agency will exchange \$992,500 of federal dollars allocated for this Project for \$932,950 of state dollars. State funds under this Agreement are limited to \$932,950.

- b. State shall reimburse Agency one hundred (100) percent of eligible, actual costs incurred in carrying out the Project, up to the maximum amount of state funds committed for the Project.
3. Agency is solely responsible for any and all costs incurred in excess of the state funds identified in this Agreement. In the event of an underrun, any unspent state funds will be retained by State and will not be available for Agency use. State funds transferred to Agency must be used for the Project.
4. To be eligible for reimbursement, expenditures must comply with the requirements of Article IX, Section 3a of the Oregon Constitution. Eligible costs are defined as reasonable and necessary costs incurred by the Agency in performance of the Project.
5. The term of this Agreement will begin upon the date all required signatures are obtained and will terminate upon completion of the Project and final payment or ten (10) calendar years following the date of final execution, whichever is sooner.

#### **AGENCY OBLIGATIONS**

1. Agency shall perform the work described in Terms of Agreement, Paragraph 1 of this Agreement.
2. Agency shall cause to be maintained and inspected, any sidewalks, curb ramps, pedestrian signals, and audible pedestrian push buttons on portions of the Project under Agency's maintenance jurisdiction upon Project completion and throughout the useful life of the Project to ensure continuing compliance with the Americans with Disabilities Act of 1990.
3. Agency shall follow the Buy America statute under Title 23, United States Code, Section 313. Such provision shall be included as part of the construction contract.
4. Agency agrees that the Project shall be developed in conformance with the current edition of A Policy on Geometric Design of Highways and Streets by the American Association of State Highway and Transportation Officials (AASHTO). For non-highway projects Agency shall use applicable AASHTO standards.
5. Agency shall submit the following items to State's Project Manager, at Project completion and prior to final payment:
  - a. Final Project completion Inspection form No. 734-5063 (completed with State's Project Manager);
  - b. Final Cost;
  - c. As-Constructed Drawings.

6. Agency shall present invoices for the eligible, actual costs incurred by Agency on behalf of the Project directly to State's Project Manager listed in this Agreement for review and approval. Such invoices shall be in a form identifying the Project, the Agreement number, the Project phase (such as preliminary engineering, right of way and construction), the invoice number or the account number or both, and will itemize all expenses for which reimbursement is claimed. Invoices shall not be presented for periods of less than one month, based on actual expenses incurred, and must clearly specify the percentage of completion of the Project. Agency shall also include with the invoice a Project progress report or summary that describes work accomplished for the period being invoiced and work expected for the next invoicing period. Travel expenses shall be reimbursed to Agency in accordance with the current State of Oregon Department of Administrative Services' rates
7. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates in accordance with current state and federal laws and regulations; obtain all required permits; be responsible for all utility relocations; advertise for bid proposals; award all contracts; perform all construction engineering; and make all contractor payments required to complete the Project.
8. Agency or its consultant shall acquire all necessary right of way in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual.
9. Agency 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, Agency expressly agrees 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. Agency shall perform the services under this Agreement as an independent contractor and 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.
11. All employers, including Agency, 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. Agency shall ensure that each of its subcontractors complies with these requirements.

12. Agency shall, at its own expense, maintain, operate, and provide power as needed upon Project completion at a minimum level that is consistent with normal depreciation and/or service demand and throughout the useful life of the Project. State and Agency agree that the useful life of this Project is defined as 20 years. Maintenance and power responsibilities shall survive any termination of the Project Agreement.
13. 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 the Agency or other road authority, whether that permission is expressed or implied, and whether written or oral.
14. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of the current budget. Agency further agrees that they will only submit invoices to State for reimbursement on work that has been performed and paid for by Agency as described in this Agreement.
15. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.
16. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from

defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.

17. If Agency enters into a construction contract for performance of work for the Project, then Agency will include provisions in that contract requiring its contractor to comply with the following:

- a. Contractor and Agency shall name State as a third party beneficiary of the resulting contract.
- b. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, sub-contractors, or agents under the resulting contract.
- c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage shall be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence shall not be less than ☒ **\$1,000,000** for each job site or location. Each annual aggregate limit shall not be less than ☒ **\$2,000,000**.
- d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence shall not be less than \$1,000,000.
- e. Additional Insured Endorsement. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees as Additional Insured but only with respect to the Contractor's activities to be performed under the resulting contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
- f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance

coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of the resulting contract and shall be grounds for immediate termination of the resulting contract and this Agreement.

18. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, 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 during the course of the Project and for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
19. 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.
20. Agency's Project Manager for this Agreement is Kevin Hottmann, City Traffic Engineer, City of Salem Public Works Department, 555 Liberty St SE, Rm 325, Salem OR 97301; phone: 503-588-6211; email: 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. In consideration for the services performed under this Agreement, State shall reimburse Agency one hundred (100) percent of eligible costs incurred in carrying out the Project up to the maximum amount of state funds committed for the Project in Terms of Agreement, Paragraph 2 of this Agreement. Reimbursements shall be made by State within forty-five (45) days of State's approval of a request for reimbursement from Agency. Final payment will be withheld until the State's Project Manager has completed final project inspection and project acceptance.
2. State shall provide the following items to Agency's Project Manager no later than execution of this Agreement:
  - a. Scoping Notes; and
  - b. Any other project specific information gathered during the scoping and selection process
3. State's Project Manager will arrange for a final project inspection upon notification from Agency of Project completion, to confirm project completeness and fulfillment of Agreement obligations, prior to final payment.

4. State's Project Manager for this Agreement is Lee Cronemiller, Local Agency Liaison, ODOT, Region 2, 455 Airport Road SE, Building B, Salem, Oregon 97301; phone: 503-986-2779; email: lee.m.cronemiller@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 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 Agency fails to provide payment of its share of the cost of the Project.
  - d. 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.
  - e. 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 if State is prohibited from paying for such work from the planned funding source.
3. If State terminates this Agreement for the reasons described in General Provisions 2, "a" or "b" above, Agency must reimburse State for all state funds expended. If Agency fails to reimburse State, State may withhold Agency's proportional share of State Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.
4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. 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.

6. 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.
7. 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.
8. 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.
9. State and Agency are the only Parties to this Agreement and, as such, are the only Parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third persons unless such third persons are expressly identified by name and specifically described as intended to be beneficiaries of its terms.
10. 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.

11. 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 either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision.

**Signature Page Follows**

**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 #19447) 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  
elected officials

By \_\_\_\_\_  
City Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Agency Counsel

Date \_\_\_\_\_

**Agency Contact:**

Kevin Hottmann, City Traffic Engineer  
City of Salem Public Works Department  
555 Liberty St SE, Room 325  
Salem, OR 97301  
Phone: 503-588-6211  
Email: khottmann@cityofsalem.net

**State Contact:**

Lee Cronemiller, Local Agency Liaison  
ODOT Region 2  
455 Airport Road SE, Building B  
Salem, OR 97301  
Phone: 503-986-2779  
Email: lee.m.cronemiller@odot.state.or.us

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 2 Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Area 3 Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

## EXHIBIT A – Project Location List

### Hawthorne Avenue Corridor – Subject Intersections:

- State Street
- Center Street NE
- D Street NE
- Market Street NE
- Sunnyview Road NE
- Silverton Road NE

### Market Street Corridor – Subject Intersections:

- Summer Street NE
- Capitol Street NE
- 17<sup>th</sup> Street NE
- 23<sup>rd</sup> Street NE
- Park Avenue NE
- Savage Road NE

### Kuebler Boulevard Corridor – Subject Intersections:

- 36<sup>th</sup> Avenue SE
- 27<sup>th</sup> Avenue SE
- Battle Cr Road SE
- Commercial Street SE
- Sunnyside Road SE
- Lone Oak Road SE

- Liberty Road S
- Skyline Road S
- Joseph Street S (Sprague HS Entrance)

### Lancaster Drive Corridor – Subject Intersections:

- Kuebler Boulevard / Cordon Road
- Hagers Grove Road SE / Carson Drive SE
- Rickey Street SE
- Durbin Avenue SE
- Regal Cinemas Santiam 11 Theater Access Drive
- State Street
- Amber Street NE
- Auburn Road NE
- Center Street NE
- Denver Avenue NE
- D Street NE
- Market Street NE
- Sunnyview Road NE
- Wolverine Street NE
- Beverly Avenue NE
- Devonshire Court NE
- Silverton Road NE
- Cooley Drive NE
- Ward Drive NE