

**INTERGOVERNMENTAL AGREEMENT**  
**Flexible Maintenance Services on Oregon Route 22 (OR 22)**  
Center Street Bridge (No. 00123K) and Marion Street Bridge (No. 07253B)

**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 designated 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 may enter into cooperative agreements with the counties, cities and units of local governments for the performance of work on certain types of maintenance or improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. Oregon Route 22 (OR 22), Center Street Bridge, and Marion Street Bridge are part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
3. State and Agency have determined that it is both to their mutual benefit and to the general public's benefit if they jointly utilize State and Agency highway maintenance resources, including equipment and operators.

**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 wishes to retain the services of Agency to perform winter maintenance services activities (specifically plowing and sanding) required for the safe movement of traffic on OR 22 Center Street Bridge and OR 22 Marion Street Bridge during winter events, hereinafter referred to as "Services." The location of the Services to be performed are as shown on "Exhibit A," attached hereto and by this reference made a part hereof.
2. The tasks associated with the highway maintenance Services referred to above are as defined in the current editions of the Oregon Department of Transportation's Maintenance Guide and the Routine Road Maintenance Water Quality and Habitat Guide Best Management Practices Manual, which are herein incorporated by reference and located at the following address:

<http://www.oregon.gov/ODOT/HWY/OOM/Pages/publications.aspx>

3. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate on June 30, 2019, on which date this Agreement automatically terminates unless extended by a fully executed amendment.
4. The total financial obligation for State will not exceed \$20,000 during the term of this Agreement.

## **AGENCY OBLIGATIONS**

1. Agency shall perform the Services on an as needed basis during the winter season (November through April) as determined by Agency's Street Supervisor. Upon completion of Services, Agency shall notify State's District 3 Salem Maintenance Coordinator by telephone at (503) 986-2887, with follow-up via email, of the Service performed for State's winter maintenance coordination responsibilities. Agency's Street Supervisor can contact State's District 3 Salem Maintenance Coordinator as listed in State Obligations, paragraph 3.
2. Agency agrees they will not, under any circumstance, apply deicer on the Center and Marion Street bridges, unless otherwise directed by State.
3. On a monthly basis for the winter season, Agency shall submit invoices to State for actual costs incurred for Services performed under this Agreement. State shall reimburse Agency for equipment and services based on the Agency's rates used for its internal financial management of personnel and equipment adopted and in existence at the time of work being performed in an amount not to exceed \$10,000 per State fiscal year (Fiscal Year 2018 and Fiscal Year 2019) for a total not to exceed amount of \$20,000. Payment shall be made within forty-five (45) calendar days from receipt of the invoice. Invoices shall be submitted to: Oregon Department of Transportation, District 3 Maintenance, 885 Airport Road SE, Building P, Salem, Oregon 97301. Travel expenses shall not be reimbursed.
4. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from State.
5. 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 279B.220, 279B.225, 279B.230, 279B.235 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.

6. Agency shall perform the service 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.
7. 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 contractors complies with these requirements.
8. 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, Oregon 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.
9. 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.
10. Agency 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 final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.

11. 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.
12. Agency's contact for this Agreement is Mark Becktel, Public Works Operations Manager, City of Salem Public Works Department, 555 Liberty Street SE, Room 325, Salem, Oregon 97301; telephone: (503) 588-6211; email: [mbecktel@cityofsalem.net](mailto:mbecktel@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, State agrees to pay Agency within forty-five (45) days of receipt by State of the invoice a maximum amount of \$10,000 per State fiscal year (Fiscal Year 2018 and Fiscal Year 2019) for a total of \$20,000. Said maximum amount shall include reimbursement for all expenses. Travel expenses shall not be reimbursed.
2. 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.
3. State's contact for this Agreement is Steve Kubishta, ODOT District 3 Transportation Maintenance Manager, 885 Airport Road SE, Building R, Salem, Oregon, 97301; telephone: (503) 986-2643; email: [steve.b.kubishta@odot.state.or.us](mailto:steve.b.kubishta@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 either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
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.

Signature Page Follows

**CITY OF SALEM**, by and through its  
designated officials

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

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

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

Date \_\_\_\_\_

**Agency Contact:**

Mark Becktel, Operations Manager  
City of Salem Public Works Dept.  
555 Liberty Street SE, Rm. 325  
Salem, Oregon 97301  
(503) 588-6211  
mbecktel@cityofsalem.net

**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 \_\_\_\_\_

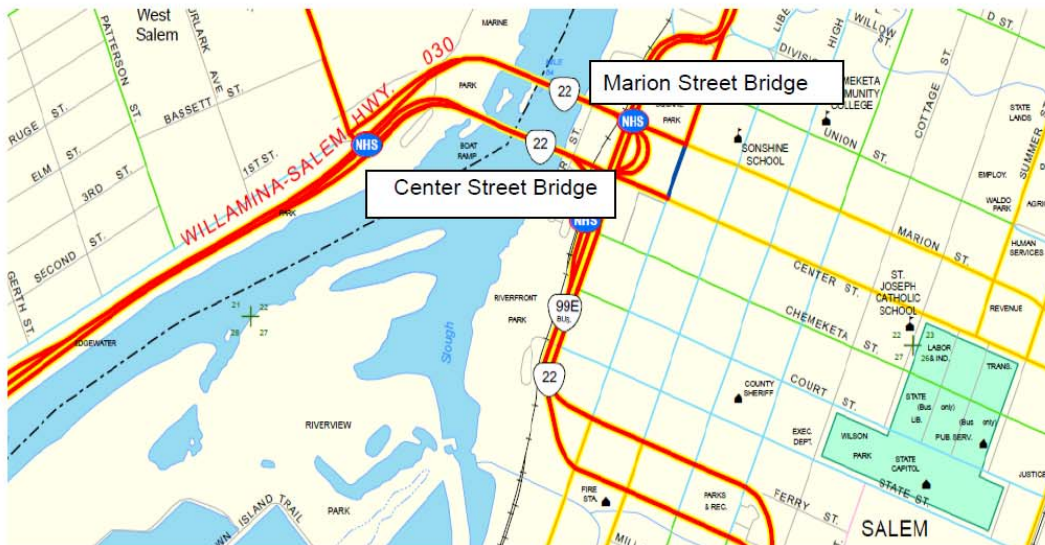
**State Contact:**

Steve Kubishta, Transportation Maint. Mgr.  
ODOT, District 3  
885 Airport Road SE, Building R  
Salem, Oregon 97301  
(503) 986-2643  
Steve.b.kubishta@odot.state.or.us



Exhibit A

Exhibit A



OR 22 Willamette River Bridges Snow Mitigation Area Defined:

OR 22 Center Street Bridge:

Beginning with "B" and "C" lanes at the intersection of OR 221 - Wallace Marine Drive NW and Edgewater Street NW, continuing east and adding "A" and "D" lanes at the eastern terminus of gore points, all lanes therefor until bridge structure terminates at Commercial Street NE. Includes northbound and southbound off ramps to Front Street By-pass NE.

OR 22 Marion Street Bridge:

Beginning with "B", "C", and "D" lanes at intersection of Marion Street NE and Commercial Street NE, including "A" lane and the on-ramp from Front Street By-pass NE, all lanes across bridge structure up to gore point on west landing, then "C" and "D" lanes and Edgewater Street NW access lane to intersection of Edgewater Street NW and OR 221 Wallace Marine Drive NW.

Travel lanes are designated from left to right in direction of travel, A through D for four lanes.