

**INTERGOVERNMENTAL AGREEMENT
Commercial Vehicle, Driver and Cargo Inspection**

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 the THE CITY OF SALEM, by and through its Police Department, hereinafter referred to as "SPD," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 283.110, and 825.250, state agencies may enter into Agreements with units of local government or other state agencies 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. As defined in ORS 825.250 (2), an "authorized representative" means a city, county or state employee who has been trained and certified by ODOT as a commercial vehicle inspector and who is employed either by ODOT or by an agency that has an agreement with ODOT to provide inspections of commercial vehicles, drivers, general cargo or hazardous materials.
3. SPD wishes to have a certain number of its employees become an "authorized representative" for purposes of ORS 825.250(2).
4. The purpose of this Agreement is to effectively administer the applicable terms and conditions contained in Moving Ahead for Progress in the 21st Century Act (MAP-21), a federal-aid program of the Federal Highway Administration (FHWA).

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. ODOT and SPD wish to enter into this Agreement in order to maximize the utilization of commercial vehicle, driver, and cargo inspection resources; to avoid duplication of effort; to expand the number of inspections performed; to advance uniformity of inspection; and to minimize delays in schedules incurred by industry inherent to this type of enforcement activity, hereinafter referred to as "Project."
2. Each Party will be responsible for their own costs associated with Project.
3. ODOT and SPD agree that their authorized inspection representatives, certified as commercial vehicle inspectors by ODOT, under ORS 810.560, will implement inspection procedures in accordance with minimum standards contained herein.
4. The work shall begin on the date all required signatures are obtained and shall be completed no later than ten (10) years from the date of execution, on which date this Agreement automatically terminates unless extended by a fully executed amendment.
5. In order to advance international uniformity in the inspection of commercial motor vehicles, their drivers, and cargo, ODOT and SPD agree to enforce the North American Uniform Inspection Out-of-Service Criteria as authored and published by the:

Commercial Vehicle Safety Alliance (CVSA)

Part I - North American Uniform Inspection Driver
Out-of-Service Criteria

Part II - North American Uniform Inspection Vehicle
Out-of-Service Criteria

Part III - North American Uniform Inspection Hazardous
Material Out-of-Service Criteria

6. The above standards are adopted into Oregon law by ODOT under Oregon Administrative Rules (OAR):

OAR 740-100-0090, Part I - Driver.

OAR 740-100-0070, Part II - Vehicle.

OAR 740-100-0080, Part III - Hazardous Materials.

ODOT OBLIGATIONS

ODOT agrees, at no cost to SPD, to perform the following work:

1. Train and/or retrain inspection resources employed by SPD when such training or retraining is mutually agreed to by the Parties to this Agreement; test and certify inspectors in accordance with agreements between ODOT, Oregon Department of Public Safety Standards and Training, and, as applicable, CVSA.
2. Supply vehicle and driver out-of-service stickers.
3. Supply monitoring service relative to inspection write-up techniques and violations recorded; inspection procedures, application of Motor Carrier Safety Regulations and Out-of-Service Criteria required by the Federal Motor Carrier Safety Assistance Program (MCSAP) and ORS 810.560.
4. Pursuant to the Governor's directive, function as the lead agency for purposes of administering Oregon's participation in MAP-21 and to the maximum extent possible coordinate commercial vehicle and driver enforcement activities between all certified and participatory agencies.
5. The Manager of Field Motor Carrier Safety Enforcement at the Motor Carrier Transportation Division, is ODOT's contact person for purposes of administering this Agreement, phone (503) 373-1979.

SPD OBLIGATIONS

The SPD agrees, at no cost to ODOT, to perform the following work:

1. Ensure that all personnel who engage in the inspection of commercial motor vehicles and their drivers are trained and certified by ODOT pursuant to ORS 810.560.
2. As a matter of general policy, inspection levels shall be defined by ODOT.

3. Inspections may be initiated only after a traffic stop, size and weight enforcement stop, or when an out-of-service defect is detected during the normal duty activities of a certified inspector.
4. Roadside inspections will be conducted at locations that are adequate to protect the safety of drivers and enforcement personnel.
5. No inspection activity shall take place at a motor carrier's terminal unless such inspection has been authorized by ODOT.
6. When performing inspections as described herein, said inspections shall be documented on forms provided by ODOT. Whenever possible, inspections shall be conducted electronically using ASPEN™ software provided by ODOT.
7. Completed inspection documents shall be forwarded to ODOT within five (5) days of the date of inspection for processing and final compliance.

GENERAL PROVISIONS

1. The Parties certify, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within their current appropriation or limitation of current biennial budget.
2. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
3. The Parties may terminate this Agreement effective upon delivery of written notice to either Party, or at such later date as may be established by the Parties, under any of the following conditions:
 - a. If either Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If either Party 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 ODOT fails to correct such failures within ten (10) days or such longer period as ODOT may authorize.
 - c. If either Party fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow either Party, 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 if either Party is prohibited from paying for such work from the planned funding source.
4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. Both 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 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, SPD 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. Both Parties shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all cost 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 SPD, 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. SPD shall ensure that each of its contractors complies with these requirements.
8. 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 ODOT or SPD 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.
9. With respect to a Third Party Claim for which ODOT is jointly liable with SPD (or would be if joined in the Third Party Claim), ODOT 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 SPD in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of SPD 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 ODOT on the one hand and of SPD 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. ODOT'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 ODOT had sole liability in the proceeding.
10. With respect to a Third Party Claim for which SPD is jointly liable with ODOT (or would be if joined in the Third Party Claim), SPD 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 ODOT in such proportion as is appropriate to reflect the relative fault of SPD on the one hand and of ODOT 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 SPD on the one hand and of ODOT 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. SPD'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.

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11. 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.
12. 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.
13. 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 ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

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

THE CITY OF SALEM by and through its
Police Department

By *Karen Dorman*

Date 5/27/15

SPD Contact:

Sgt Ben Bales
Salem Police Department
Traffic Control Unit
555 Liberty St NE, Rm 130
Salem, OR 97301
(503) 588-6171
bbales@cityofsalem.net

STATE OF OREGON, by and through its
Department of Transportation

By *David M. Kane*

Manager, Motor Carrier,
Investigations/Safety/Federal Programs Section

Date 5/28/15

APPROVAL RECOMMENDED

By *Paul G. Kroll*

Fiscal Officer, Motor Carrier Administration

Date 5/27/2015

ODOT Contact:

Paul Kroll, Fiscal Officer, Motor Carrier
Administration
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