

**INTERGOVERNMENTAL AGREEMENT No. PW-3280-20  
BETWEEN  
MARION COUNTY AND THE CITY OF SALEM**

**HOLLYWOOD DR: SILVERTON RD TO GREENFIELD LN (SALEM)**

THIS AGREEMENT is made and entered into by and between Marion County, hereinafter referred to as "County", and the City of Salem, hereinafter referred to as "City", both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS:**

1. Hollywood Drive NE from Silverton Road NE south to the City limits located approximately 107 feet south of Val Vista Avenue NE is under the maintenance and jurisdiction of County:
2. Hollywood Drive NE from City limits located approximately 107 feet south of Val Vista Avenue NE to the Project terminus located approximately 650 feet south of City limits is under the maintenance and jurisdiction of City:
3. The Project was selected as a part of the Congestion Mitigation and Air Quality (CMAQ) and Urban Surface Transportation Programs (STP-U). The Salem-Keizer Area Transportation Study (SKATS) Policy Committee has awarded Federal funds totaling \$2,826,495 to County to design and construct road widening to accommodate designated bike lanes, complete sidewalks on both sides of Hollywood Drive and add a left turn refuge and traffic signal at the intersection of Hollywood Drive NE and Silverton Road NE.
4. State and SKATS have created a single project in the 2018-2021 State Transportation Improvement Plan (STIP) entitled HOLLYWOOD DR: SILVERTON RD TO GREENFIELD LN, Key Number 20743, herein referred to as the "Project," which contains the funding described in Recital 3 above plus County matching funds. County is identified in the STIP as the agency responsible for delivery of the Project.
5. County has approved a single-family subdivision to be constructed on Tax Lot 2002, Tax Map 07 2W 18AC (Marion County Case File #17-001). The subdivision has 243.6 feet of street frontage on the west side of the City owned segment of Hollywood Drive. City has conditioned the development approval to require frontage improvements on Hollywood Drive that includes street widening with a bicycle lane, curbs, sidewalks, ADA curb ramps, storm drainage facilities and paving.
6. County has estimated funds totaling \$531,555 to design and construct roadway improvements for the segment of Hollywood Drive under City jurisdiction, excluding the subdivision frontage improvements described in Recital 5.
7. County has executed Supplemental Project Agreement No. 32444 with the Oregon Department of Transportation (ODOT), referred to herein as "State", under State's Local Public Agency Certification Program, which identifies County as the agency responsible for delivery of the Project.
8. By the authority granted in Oregon Revised Statute (ORS) 190.110, County 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.

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 said provisions, County and City agree to cooperatively complete preliminary engineering, construction and construction engineering for the Project along the road segments under the jurisdiction of County and City, as further defined under COUNTY OBLIGATIONS and CITY OBLIGATIONS below. 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. The Project will be conducted as a part of the Federal-Aid Surface Transportation Program under Title 23, United States Code. The total estimated Project cost is \$3,150,000, which is subject to change. Disbursement of federal funds to County will be as set forth in Supplemental Project Agreement No. 32444 between County and State.
  - a. Federal funds for the Project are limited to \$2,826,495. The funds are available for the Preliminary Engineering, Right of Way and Construction Phases on the road segments identified in Recitals 1 and 2.
  - b. City shall provide matching funds equal to 10.27% of total Project costs plus all non-participating costs and all costs in excess of the available federal funds for the road segment identified in Recital 2. City's estimated match equals \$54,591, calculated as follows:

Total Estimated City Cost = \$531,555  
 Less Federal Funds @ 89.73% = \$476,964  
 Estimated City Match @ 10.27% = \$54,591

The total estimated City cost and estimated City match are subject to change. City's match shall consist of cash paid to County. Any credit to City's match will be in accordance with City Obligation No. 6 below. City understands that the above costs are estimates only and agrees to reimburse County for actual costs incurred per the Terms of this Agreement.

- c. County shall provide matching funds plus all non-participating costs and all costs in excess of the available federal funds for the road segment identified in Recital 1.
  - d. County shall seek concurrence from City before requesting additional funds from State for any segments within City's jurisdiction.
3. Actual Project costs allocated to each party shall be determined as follows:
  - a. Preliminary Engineering – County and Consultant costs (labor and expenses) shall be prorated based upon the curblin length of the project in each party's jurisdiction divided by the total curblin length of the project. However, no costs shall be allocated to City for design of the traffic signal at Silverton Road. County labor costs shall consist of direct salary rates plus an indirect cost rate of 8.39 percent (8.39%).
  - b. Right of Way Acquisition – total cost for right of way acquisition associated with the work in each party's jurisdiction.
  - c. Construction – total cost of bid items, contract change orders, construction contract administration, construction engineering and inspection for work in each party's jurisdiction. However, no costs shall be allocated to City for construction of the traffic signal at Silverton Road. The cost of construction contract administration and construction engineering shall be prorated based upon the curblin length of the project in each party's jurisdiction divided by the total curblin length of the project. County shall create and maintain a separate cost accounting system for work in each party's jurisdiction.
4. County and City agree that the useful life of the Project is twenty (20) years.
5. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate on completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.

#### COUNTY OBLIGATIONS:

1. County agrees to complete preliminary engineering; right of way acquisition; contract advertisement, bid and award; and construction contract administration for Project. This includes the following:
  - a. Survey;
  - b. Obtaining environmental clearances;

- c. Preliminary and final plans for traffic signal and all paving, drainage, curb, sidewalk work, and temporary traffic control plans within the Project limits. Design shall conform to American Association of State Highway and Transportation Officials (AASHTO) standards;
  - d. Estimates;
  - e. Specifications;
  - f. Monthly progress reports;
  - g. Documentation of hours and tasks performed; and
  - h. Preliminary engineering, right of way acquisition, advertisement, bid, award and construction contract administration in conformance with federal aid requirements and the County's Master Certification Agreement with State.
2. County agrees to pay the match or provide donated in-kind services, pay any non-participating costs and pay any amount in excess of the available federal funds for its share of the cost associated with the road segment identified in Recital 1 above.
  3. County shall submit to City in writing any requests to change scope of Project or project costs for work within the road segment identified in Recital 2 above. City's approval of any such requests shall not be unreasonably withheld.
  4. County shall submit to City quarterly invoices for City's share of costs incurred during the preliminary engineering phase of the project and monthly invoices for costs incurred during the construction phase of Project. The invoices will be itemized to clearly show City's share of Project costs, including County staff time, State staff time, consultant costs, permitting fees, if any, and construction costs.
  5. Americans with Disabilities Act (ADA) Compliance – On-going Maintenance Obligation: County shall ensure that any portions of the Project under County's maintenance jurisdiction, as identified in Recital 1 above, are maintained in compliance with ADA throughout the useful life of the Project. This includes, but is not limited to, County ensuring that:
    - a. Pedestrian access is maintained as required by the ADA,
    - b. Any complaints received by the County identifying sidewalk, curb ramp, or pedestrian-activated signal safety, or access isles are promptly evaluated and addressed,
    - c. County, or abutting property owner, pursuant to local code provisions, performs any repairs or removal of obstructions needed to maintain the facility in compliance with ADA requirements that were in effect at the time the facility was constructed or altered,
    - d. 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
    - e. Applicable permitting and regulatory actions are consistent with ADA requirements.

Survival: Maintenance obligations in this section shall survive through the useful life of the Project.

6. County may terminate this Agreement effective upon delivery of written notice to City, or at such later date as may be established by County, under any of the following conditions:
  - a. When state or federal funds are reduced or eliminated.
  - b. If City fails to provide payment of its share of Project costs.
  - c. If County fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow County, 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 City is prohibited from paying for such work from the planned funding source.
7. County's Project Manager for this Project is Mark Foster, Consultant Project Manager, Federal-Aid Projects, Capital Projects Section, 5155 Silverton Road NE, Salem, Oregon 97305-3802, phone (503) 373-4307, email [mafoster@co.marion.or.us](mailto:mafoster@co.marion.or.us), or assigned designee upon individual's absence. County shall notify City in writing of any contact information changes during the term of this Agreement.

#### CITY OBLIGATIONS:

1. City agrees to allow County to complete preliminary engineering, right of way acquisition, contract advertisement, bid and award, and construction contract administration for the segment of the Project located within City jurisdiction.
2. City guarantees the availability of City funding in an amount required to fully fund City's share of the Project.
3. City agrees to pay to County the matching funds, pay any non-participating costs and pay any amount in excess of the available federal funds for its share of the cost associated with the road segment identified in Recital 2 above.
4. City shall perform reviews of County prepared construction plans at the 30%, 60% and 90% design stages and shall provide written comments in a timely manner. These reviews shall focus on the following areas:
  - a. Roadway improvements for the City owned segment of Hollywood Drive.
  - b. New traffic signal at the intersection of Silverton Road and Hollywood Drive.
5. During the construction phase, City shall provide the following services and equipment related to the construction and turn-on of the new traffic signal at the intersection of Silverton Road and Hollywood Drive:
  - a. Review of contractor submittals.
  - b. Construction inspection as needed.
  - c. Procure and provide ethernet switch for the traffic signal.
  - d. Signal programming, timing and turn-on work.
6. City shall invoice County for City's direct labor cost at an indirect cost rate of 129.96 percent, as approved by ODOT, for the services described in City Obligations No. 4 and 5 above. County shall not reimburse City for said invoices, but shall apply the invoiced charges toward City's matching fund obligation under this Agreement.
7. City shall grant County and County's construction contractor(s) authority to construct the portion of the Project located within City jurisdiction, as identified in Recital 2, without any further agreements or fees. County shall obtain a permit from City authorizing County to work in City right-of-way prior to the start of field construction.
8. Americans with Disabilities Act (ADA) Compliance – Ongoing Maintenance Obligation: City shall ensure that any portions of the Project under City's maintenance jurisdiction, as identified in Recital 2 above, are maintained in compliance with ADA throughout the useful life of the Project. This includes, but is not limited to, City ensuring that:
  - a. Pedestrian access is maintained as required by the ADA,
  - b. Any complaints received by the City identifying sidewalk, curb ramp, or pedestrian-activated signal safety, or access isles are promptly evaluated and addressed,
  - c. City, or abutting property owner, pursuant to local code provisions, performs any repairs or removal of obstructions needed to maintain the facility in compliance with ADA requirements that were in effect at the time the facility was constructed or altered,
  - d. 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
  - e. Applicable permitting and regulatory actions are consistent with ADA requirements.

Survival: Maintenance obligations in this section shall survive through the useful life of the Project.

9. City may terminate this Agreement effective upon delivery of written notice to County, or at such later date as may be established by City, under any of the following conditions:
  - a. When state or federal funds are reduced or eliminated.
  - b. If County fails to provide services called for by this Agreement within the time specified herein or any extension thereof.

- c. If County 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 City fails to correct such failures within ten (10) days or such longer period as City may authorize.

10. City's Project Manager for this Project is Aaron Edelman, Project Manager, City of Salem Public Works, 555 Liberty Street SE, Salem, Oregon 97301, phone (503)-588-6211, email aedelman@cityofsalem.net, or assigned designee upon individual's absence. City 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. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
3. City and County certify and represent that the individual(s) signing this Agreement have been authorized to enter into and execute this Agreement on behalf of Agencies, under the direction or approval of their governing body, commission, Council, board, officers, members or representatives, and to legally bind Agencies.
4. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together will 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 will constitute an original.
5. 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 will 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, will be effective only in the specific instance and for the specific purpose given. The failure of County to enforce any provision of this Agreement will not constitute a waiver by County of that or any other provision.

#### INSURANCE/INDEMNIFICATION:

1. Each Party agrees to defend, indemnify, and hold harmless the other Party, its officers, agents, and employees from damages arising out of the tortious acts of the indemnifying party, its officers, agents, and employees acting within the scope of their employment and duties in performance of this agreement subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution, Article XI, Section 7.
2. Each party shall insure or self-insure and be independently responsible for the risk of its own liability for claims within the scope of the Oregon tort claims act (ORS 30.260 TO 30.300).
3. Nothing in this agreement shall be deemed to limit the right of either party to make a claim against the other for damages and injuries incurred by one party as a result of the actions of the other party's officers, agents, and employees.

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.

**MARION COUNTY SIGNATURES:**

Authorized Signature: Bria Nichols 7/16/2020  
Department Director or designee Date

Authorized Signature: Jan Trej 7/28/20  
Chief Administrative Officer Date

Reviewed by Signature: Scott A. Nis 7/24/20  
Marion County Legal Counsel Date

Reviewed by Signature: [Signature] 7/24/20  
Marion County Contracts & Procurement Date

County Contact:  
Mark Foster, Consultant Project Manager  
Marion County Public Works  
5155 Silverton Road NE  
Salem, OR 97305-3802  
Phone: (503) 373-4307  
Email: mafoster@co.marion.or.us

**CITY OF SALEM SIGNATURES:**

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

**APPROVED AS TO FORM**

By \_\_\_\_\_  
City Attorney Date

City Contact:  
Aaron Edelman, Project Manager  
City of Salem, Public Works  
555 Liberty Street SE  
Salem, Oregon 97301  
Phone: 503-588-6211  
Email: [aedelman@cityofsalem.net](mailto:aedelman@cityofsalem.net)