

**INTERGOVERNMENTAL AGREEMENT  
Hwy 99E MP 12.56 and Main St Pavement Repair**

**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," or "ODOT," and the City of Oregon City, 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. Highway 99E (Hwy 99E) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Main St is a part of the city street system under the jurisdiction and control of Agency.
3. ODOT Rail has required Union Pacific to close rail crossing C-755.44-C (USDOT Crossing 760021P) and this requires removal of the railroad tracks in Highway 99E at mile point 12.56. Union Pacific is performing the work required to remove their rail. State will repair the pavement in Highway 99E where the railroad tracks are removed. The Agency is requiring the associated railroad tracks in one block of Main St be removed and has asked State to facilitate the contract for the necessary repair work for Main St. State is contracting the repairs for Hwy 99E and Main St together.
4. Agency is contributing funds to this project for the pavement repair, striping removal, traffic loops, and striping for all necessary work in their right of way for Main St.

**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 to State performing pavement repair, striping removal, traffic loops, and striping at Hwy 99E MP 12.56 and Main St., 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. The Project will be financed at an estimated cost of \$188,132 in state and local funds. The estimate for the total Project cost is subject to change. Agency is responsible for all Project costs associated with work on Main St, which is estimated to be \$96,742. State is responsible for all costs associated with work on Hwy 99E, which is estimated to be \$91,390.

3. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or one (1) calendar year following the date all required signatures are obtained, whichever is sooner.

## **AGENCY OBLIGATIONS**

1. Upon completion of the Project and Agency's receipt from State of an itemized statement of the actual total cost of the Project, Agency shall pay 100 percent (100%) of actual total costs for the portion of the Project on Main St. This amount is estimated to be \$96,742.
2. Agency shall inspect the portions of the Project within Agency right of way at its own expense.
3. 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 biennial budget.
4. 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 (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
5. The 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, 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. 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.
7. 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.

8. Agency's Project Manager for this Project is John M. Lewis, Public Works Director, 625 Center Street, Oregon City, OR 97045, 503-657-0891, [jmlewis@ci.oregon-city.or.us](mailto:jmlewis@ci.oregon-city.or.us), 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 will contract for the repair of the pavement approximately 14 feet wide on both Highway 99E and SE Main St, remove existing striping and replace with new striping, and add traffic loops within the area shown in Exhibit A. State shall inspect the portion of work within their right of way.
2. Upon completion of the Project, State will send Agency an itemized statement of actual costs for the portion of the Project on Main Street.
3. 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.
4. State's Project Manager for this Project is Stacy Stubblefield, PE Project Manager District 2B, 9200 SE Lawnfield Rd., Clackamas, OR 97015, 971-673-1343, [stacy.stubblefield@odot.state.or.us](mailto:stacy.stubblefield@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. **Americans with Disabilities Act Compliance:**
  - a. When the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, the Parties shall:
    - i. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended by the ADA Amendments Act of 2008 (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
    - ii. Follow ODOT's processes for design, modification, upgrade, or construction of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction

Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;

- iii. At Project completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed, modified, upgraded, or improved as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/HwyConstForms1.aspx>

- b. ODOT shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. ODOT shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the start of construction.
- c. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
  - i. Pedestrian access is maintained as required by the ADA,
  - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
  - iii. Any repairs or removal of obstructions needed to maintain Project features in compliance with the ADA requirements that were in effect at the time of Project construction are completed by Agency or abutting property owner pursuant to applicable local code provisions,
  - iv. Any future alteration work on 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
  - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- d. Maintenance obligations in this section shall survive termination of this Agreement.

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. 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 perform any of the other provisions of this Agreement, 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.
  - b. If Agency fails to provide payment of its share of the cost of the Project.
  - 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.
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. 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.
10. 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 TO FOLLOW**

Agency/State  
Agreement No. 32354

**CITY OF OREGON CITY**, by and through  
its elected officials

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**LEGAL REVIEW**

(If required by Agency's process)

By \_\_\_\_\_

Agency Counsel

Date \_\_\_\_\_

**Agency Contact:**

John M. Lewis, Public Works Director

625 Center Street

Oregon City, OR 97045

503-657-0891

[jmlewis@ci.oregon-city.or.us](mailto:jmlewis@ci.oregon-city.or.us)

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

By \_\_\_\_\_

Region 1 Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_

District 2B Manager

Date \_\_\_\_\_

By \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By Per Jennifer O'Brien via email

Assistant Attorney General

Date Email dated 1/26/18

**State Contact:**

Stacy Stubblefield, District 2B Project  
Manager,

9200 SE Lawnfield Rd.

Clackamas, OR 97015

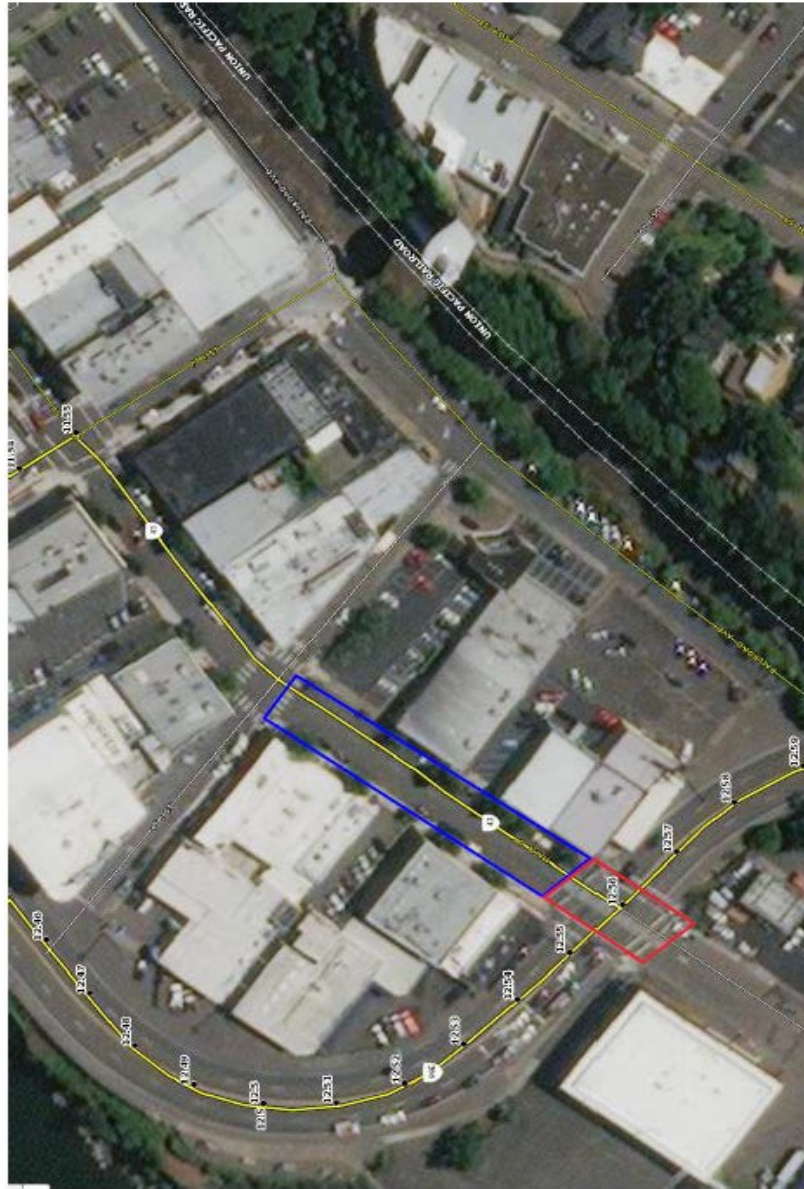
971-673-1343

[Stacy.STUBBLEFIELD@odot.state.or.us](mailto:Stacy.STUBBLEFIELD@odot.state.or.us)



EXHIBIT A

Hwy 99E MP 12.56 and Main St. Pavement Repair



ODOT responsible for costs associated with the portion of the work outlined in RED  
City of Oregon City responsible for costs associated with the portion of the work outlined in BLUE



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Agreement No.