

# City of Rockaway Beach City Council Meeting Agenda



**Date:** Wednesday, February 9, 2022  
**Time:** 6:00 P.M.  
**Location:** Rockaway Beach City Hall, 276 HWY 101 -Civic Facility

## **Join Zoom Meeting**

<https://us06web.zoom.us/j/84036686212?pwd=d1ZPdVVrY3BpYXJidEkzcWIGbVIZUT09>

Meeting ID: 840 3668 6212

Passcode: 598613

Dial by your location

+1 253 215 8782 US (Tacoma)

Meeting ID: 840 3668 6212

Passcode: 598613

**CALL TO ORDER** – Sue Wilson, Mayor

## **PLEDGE OF ALLEGIANCE**

## **ROLL CALL**

Mayor: Sue Wilson

Councilors: Penny Cheek, Mary McGinnis,  
Terry Walhood, Tom Martine, Kristine Hayes

## **CONSENT AGENDA**

1. Approval of Minutes: January 12, 2022
  - a. January 2022 Check Register

## **CITIZEN INPUT ON NON-AGENDA ITEMS**

## **PRESENTATIONS, GUESTS & ANNOUNCEMENTS**

*City Planner Scott Fregonese will present an overview of the master planning process for development of the City's 10-acre Public Facilities lot.*

## **STAFF REPORTS**

1) Sheriff's Office   2) Fire Department   3) Public Works   4) City Manager

## **OLD BUSINESS**

## **APPROVAL OF ADMINISTRATIVE TASK LIST 2022-23**

*City Manager recommends work begin on items shown in Administrative Task List 2022-23. This list comprises topics discussed at recent City Council Meetings and practical steps to move these items forward. The City Manager would like to work with the City Council to refine and approve the list so work to tackle these issues can begin.*

*Example motion: I move that the Rockaway Beach City Council (APPROVE/DENY) Administrative Task List 2022-23.*

## **NEW BUSINESS**

### **APPROVAL OF INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE OREGON DEPARTMENT OF TRANSPORTATION**

*This is an ODOT Delivered Federal Project Agreement on Behalf of the City of Rockaway Beach. Agreement No. 35244: Salmonberry Trail – Rockaway Beach Connector. City Manager to review this IGA and overall project scope with the City Council.*

*Example motion: I move that the Rockaway Beach City Council (APPROVE/ DENY) ODOT Agreement No. 35244.*

## **COUNCIL CONCERNS**

## **MAYOR'S REPORT**

## **ADJOURNMENT**



# City of Rockaway Beach

## City Council Meeting Minutes

---

**Date:** Wednesday, January 12, 2022

**Time:** 6:00 P.M.

**Location:** Rockaway Beach City Hall, 276 HWY 101 -Civic Facility

**Join Zoom Meeting:**

<https://us06web.zoom.us/j/86091954450?pwd=RzNLb0I3a2FqOUFBRWVMbzdPRXdCUT09>

Meeting ID: 860 9195 4450

Passcode: 931471

Dial by your location

+1 253 215 8782 US (Tacoma)

Meeting ID: 860 9195 4450

Passcode: 931471

**CALL TO ORDER** – Sue Wilson, Mayor

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

Mayor-Sue Wilson: Present

Position #3-Kristine Hayes: Present

Position #4-Terry Walhood: Present

Position #1-Mary McGinnis: Present

Position #5-Penelope Cheek: Present

Position #2-Tom Martine: Present

**CONSENT AGENDA**

**WALHOOD MADE A MOTION, SECONDED BY MARTINE TO APPROVE THE DECEMBER 8, 2021, MINUTES AND DECEMBER 2021 CHECK REGISTER; MOTION CARRIED.**

Position #4 - Terry Walhood: Motion

Position #2 - Tom Martine: 2nd

Position #3 - Kristine Hayes: Approve

Position #4 - Terry Walhood: Approve

Position #1 - Mary McGinnis: Approve

Position #5 - Penelope Cheek: Approve

Position #2 - Tom Martine: Approve

### **CITIZEN INPUT ON NON-AGENDA ITEMS**

William Cristler, 619 S Coral was concerned about his property being blocked by the post office mailboxes. He wanted to have the Post Office move the mailboxes out of the way. He did not think it was right that the mailboxes were blocking his property and said they could be taken out with a flood. He thanked the City of Rockaway for trying to help him with this issue even though the Post Office would not. He feared that the mailboxes would end up ruining the road. Wanted to make a statement for the record.

### **PRESENTATIONS, GUESTS & ANNOUNCEMENTS**

Peter Gelser introduced himself and gave a very detailed presentation on the latest audit for the 2020-2021 Fiscal Year and the corresponding Action Plan. Hayes mentioned page 64 and the \$213,000 in potential damages. Gelser stated that the number came from last year's financial statement and is listed to show the potential liability. Shepard added that figure was the judgement of a lawsuit currently under appeal.

### **STAFF REPORTS**

Undersheriff Matt Kelly stated the department had 84 calls for December. They had a search and rescue for an elderly person who walked away from their residence. The Rockaway Beach Fire Chief was able to find the missing person. Kelly reminded people about vehicle safety and to be ready to travel in bad weather and to have emergency kits, medications, and charged cell phones. He had mentioned they would increase the law enforcement presence in and around town. He added that Rockaway's newest deputy will be graduating in March.

Fire Chief Hesse stated that burn complaints were still occurring. An EMT class will be starting next week with 21 students and with 12 local department members attending. Hesse mentioned that the SCBA grant was submitted. The department received applications for the Division Chief position. Hesse made a presentation regarding calls, training reports, and recapping 2021. He detailed the department's achievements and where the department was going moving forward. Hesse talked about the department's goals and objectives for 2022.

Public Works Superintendent Dan Emerson went over his December staff report. He explained the challenges with storm drains and working around the king tides. He had mentioned there were no issues with the new pump station, and that NW 17<sup>th</sup> Pump Station is on schedule for the pump station repairs. Emerson thanked everyone for their support. Martine asked how deep the hole was at the new pump station. Emerson stated new that the new pump station depth is about 20 feet. Martine added that in previous years, the Fire Department had used the old station for rescue training.

City Manager, Luke Shepard liked the new tracking program that the fire department was using and said he was impressed with the Fire Department's volunteer hours, training and their new beach safety program. Shepard gave an update on the Salmonberry Trail

project agreement through the Oregon Department of Transportation. Shepard did not feel the agreement was ready for council to vote on at this meeting. He explained that he needed to work with ODOT to clarify some terms of the agreement first. Cheek wanted to know if the council would have a say on the design, Shepard stated that council would have little say in the design. Mary asked if the Salmonberry Trail Foundation was assisting on the project. Shepard said no, STF was not funded through this grant program. Hayes said it is disconcerting that so many entities asked if they could be involved and now, they are not allowed to be a part of decisions. Shepard stated he just wanted to give an update on where the project is, and that he would work to make sure the city would be allowed to provide input on the project. Shepard added that City Planner Scott Fregonese would give a presentation about the master planning process for city's 10 acre Public Facilities lot at the next city council meeting.

### **OLD BUSINESS**

### **NEW BUSINESS**

### **ADOPT PLAN OF ACTION FOR THE COMPLETED FISCAL YEAR AUDIT ENDED JUNE 30,2021**

Martine made a motion, seconded by Walhood to adopt the Plan of Action for the completed Fiscal Year Audit; Motion carried.

[Position #2 - Tom Martine: Motion](#)

[Position #4 - Terry Walhood: 2nd](#)

[Position #3 - Kristine Hayes: Approve](#)

[Position #4 - Terry Walhood: Approve](#)

[Position #1 - Mary McGinnis: Approve](#)

[Position #5 - Penelope Cheek: Approve](#)

[Position #2 - Tom Martine: Approve](#)

### **ELECTION OF A CITY COUNCIL PRESIDENT**

Cheek made a motion, seconded by McGinnis to elect Walhood as Council President; motion carried.

[Position #5 - Penelope Cheek: Motion](#)

[Position #1 - Mary McGinnis: 2nd](#)

[Position #3 - Kristine Hayes: Approve](#)

[Position #4 - Terry Walhood: Approve](#)

[Position #1 - Mary McGinnis: Approve](#)

[Position #5 - Penelope Cheek: Approve](#)

[Position #2 - Tom Martine: Approve](#)

### **COUNCIL CONCERNS**

Hayes wanted to talk about housing needs in Rockaway, and to expedite the process. McGinnis thanked all the department heads for the financial audit report. McGinnis said she participated in a beach cleanup and appreciated the community groups who helped. McGinnis wanted the Planning Commission to be involved in developing ordinances. Martine wanted to remind people about common sense with virus as Rockaway Beach recently lost two people to COVID-19.

### **MAYOR'S REPORT**

Glad to see everyone survived the snow and had a great holiday season.

### **ADJOURNMENT**

Meeting adjourned at 7:15pm.

MINUTES APPROVED THIS 9<sup>th</sup>  
DAY OF February 2022

---

Mayor, Sue Wilson

---

City Manager, Luke Shepard

**Rockaway Beach Fire Rescue**

276 Hwy 101 S  
PO Box 5  
Rockaway Beach OR 97136  
503-374-1752



Date February 2, 2022

Honorable Mayor, City Council and City Manager of Rockaway Beach

**Fire Department Council Report:**

The following is a summary of the activities and operations of the Rockaway Beach Fire and Rescue Department for the month of January 2022.

The Department responded or participated in 68 events during the month of January, the breakdown is listed below.

911 calls for Service: 44	Trainings: 9	Non-Emergent: 12
34- Medical	Strategy and Tactics	3- Beach Safety
5- Fire Alarm	EMT	7- Public Assist
2- Structure Fire	Traffic Safety	1- Lift Assist
0- Water Rescue	PUD	0- Burn Complaints
2- MVA		4- Radio call-ins
1- Outside Fire		0- Special Assignments
0-Vehicle Fire		

Training update- The Department focused December training on Strategy and Tactics used on Structure Fires, Traffic and electrical safety. The EMT class in conjunction with TBCC has begun and has 16 students attending class each Wednesday night and all-day Saturday until May. Enhancement of current skills and certifications are the priority and focus for the upcoming year. New training with the drone program will also be on the schedule.

Beach Safety continues to be a priority of the department. The focus continues to be on education and safety. During the month of January crews were on the beach 3 times and spent a total of 8 volunteer hours on the Beach. I have included the Year-to-date data in this report:

	January	YTD
Fire safety\Educational Moments-	2	2
Water Safety Messages\Out of Water- Stickers to kids-	17\4 persons	17\4
Educational signs reset-	0	0
Education Signs Replaced-	0	0
Fires extinguished-	0	0

I am still actively in the process of recruitment for a position of a full-time Division Chief of Operations. Interviews have been conducted and the process is moving forward. I will keep the council informed of the progress.

Overall, my mission and goals have not changed. I continue to take care of the immediate safety of my crew and public needs as my highest priorities. If you have any questions, concerns or thoughts please let me know.

Respectfully submitted,



Todd Hesse  
Fire Chief  
Rockaway Beach Fire Rescue





February 2, 2022

Dear Mayor and City Council Members,

January weather was not too bad with only one power outage, some high tides, and a tsunami warning on Saturday the 22<sup>nd</sup>.

This time last year the city was taking bid for the main lift project. Big river was awarded this project. As mentioned last month Big River still need to finish their punch list items. Public Works Department is happy to have a new lift station. Public works is currently in the process of recruiting a Treatment Plant Operator. Our current Treatment Plant Operator Caleb Smith has been filling the void, working extra hard. We have got two applications for the position and will be perusing one of the applicants.

Public works is still waiting on getting our south 6<sup>th</sup> pump back from the repair shop. As of now sending out for repair take longer than normal. So, when possible, we are glad to have spare parts on hand. This helps public works eliminate down time. Last month public works had a pump technician come give training to our staff for pump maintenance.

Along with the usual seasonal priorities such as storm drain preventative maintenance, minor road repairs, and cleanup after storm events, Public Works had to blocked of the nature boardwalk due to storm damage. We scheduled an arborist to remove the down trees from boardwalk. Public Works investigated the damage to boardwalk and will make repairs. Also, during the storms public works had multiple trees come down at the water plant, damaging the pond liner. We have scheduled for the arborist to investigate the alder trees that have potential for damaging the liner in the further. Public Works has ordered repair material for fixing the pond and will do so when dangerous trees are removed.

In the last month public works had 3 water main breaks in Nedonna on Beach St. The city is working with HBH on plans for replacement of water mainlines in Nedonna. Public Works has scheduled the annual sewer line cleaning for the first week of February and has posted this work schedule on the city's web site and Facebook. This work is sometimes noticed by residents, calling in a weird sound coming from the sewer lines.

If there are no questions, that is all that I have thank you.

**Dan W. Emerson, Superintendent**  
City of Rockaway Beach Public Works  
P: 503.374.1752 / C: 503.457.6094  
[PublicWorks@corb.us](mailto:PublicWorks@corb.us)



## Administrative Task List 2022-23

### **1) City to Acquire 10-Acre Lot and Draft Development Master Plan**

- *Final Survey and Partition through Tillamook County in early 2022.*
- *Lump sum purchase in 2022/23 Budget Year. – Option Agreement*
- *City Planner Scott Fregonese to work with the Planning Commission to draft Master Development Plan. – Begin February 2022*

### **2) Fire Department Strategic Planning and Prioritizing Emergency Preparedness Program.**

- *Develop long-term plan to meet national fire and medical emergency response standards and, replace aging vehicles and equipment. – Fire Chief to Update City Council in April 2022*
- *Review and update current emergency preparedness plans and documents. Reorganize, recruit, train and manage the City's CERT team. Manage the cities Radio Communication Network. Implement a public information program to keep citizens updated on preparedness -Begin March 2022*

### **3) Move forward with the following Tourist/Recreational Facilities Projects:**

- *Wayside Riprap and Beach Access. – Design and Permitting 2022/Construction possible in late 2022*
- *Development of Anchor St. lot with paved parking, lights, restrooms, info kiosk, and other amenities - Design and Permitting 2022/Construction in 2023*
- *Weatherize Community Center and reopen to the public – Summer 2022*
- *Add/Improve amenities at Lake Lytle such as docks and kayak launches. – Funds Available Now*
- *Salmonberry Trail. – Washington St. to downtown Rockaway – Approval of IGA, 156-week project*

### **4) Affordable Housing and Short-Term Rental Industry in Rockaway Beach. Take Action.**

- *Invite the Tillamook County Housing Coordinator to speak to the City Council and Planning Commission on issues affecting housing in Rockaway Beach. Discuss steps City can take to mitigate. – March or April 2022.*
- *City Planner to work with the Planning Commission to examine the impacts of the Short-Term Rental Industry on Rockaway Beach and propose Ordinance Amendments to balance the positive and negative effects of the STR industry on Rockaway Beach – Begin February 2022*

### **5) Bring Back the July 4<sup>th</sup> Parade.**

- *Utilize an Event Coordinator to host a safe and professional July 4<sup>th</sup> Parade – Begin Immediately*

**ODOT Delivered Federal Project AGREEMENT  
On Behalf of City of Rockaway Beach  
Salmonberry Trail – Rockaway Beach Connector (Phase 1)  
Salmonberry Trail Foundation  
Key Number: 22458**

This Agreement (“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 Rockaway Beach**, acting by and through its Governing Body, hereinafter referred to as “Agency,” both herein referred to individually as “Party” and collectively as “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 governments 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. Salmonberry Trail from Washington Street to Rockaway Beach Wayside is a part of the City of Rockaway Beach under the jurisdiction and control of Agency.
3. Agency has agreed that State will deliver this project on behalf of the Agency.
4. The Project was selected as a part of the Oregon Community Paths (OCP) program and may include a combination of federal and state funds. “Project” is defined under Terms of Agreement, paragraph 1 of this Agreement.
5. The Stewardship and Oversight Agreement On Project Assumption and Program Oversight By and Between Federal Highway Administration, Oregon Division and the State of Oregon Department of Transportation (“Stewardship Agreement”) documents the roles and responsibilities of the State with respect to project approvals and responsibilities regarding delivery of the Federal Aid Highway Program. This includes the State’s oversight and reporting requirements related to locally administered projects. The provisions of that agreement are hereby incorporated and included by reference.

**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, Agency and State agree to State delivering Salmonberry Trail – Rockaway Beach Connector (Phase 1) on behalf of Agency, hereinafter referred to as “Project.” Project includes construction of a non-motorized path parallel to, but separate from, US 101 within the City of Rockaway Beach as detailed in Exhibit A. The location of

Recipient / ODOT  
Agreement No. 35244

the Project is approximately as shown on the map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

2. Agency agrees that, if State hires a consultant to design the Project, State will serve as the lead contracting agency and contract administrator for the consultant contract related to the work under this Agreement.
3. Project Costs and Advance Deposit
  - a. The total Project cost is estimated at \$1,757,001, which is subject to change. Federal funds for this Project shall be limited to \$1,576,557.00. Agency shall be responsible for all remaining costs, including any non-participating costs, all costs in excess of the federal funds, and the 10.27 percent match for all eligible costs. Any unused funds obligated to this Project will not be paid out by State, and will not be available for use by Agency for this Agreement or any other projects. "Total Project Cost" means the cost to complete the entire Project, and includes any federal funds, state funds, local matching funds, and any other funds.
  - b. With the exception of Americans with Disabilities Act of 1990 (ADA) related design standards and exceptions, State shall consult with Agency on Project decisions that impact Total Project Cost involving the application of design standards, design exceptions, risks, schedule, and preliminary engineering charges, for work performed on roadways under local jurisdiction. State will allow Agency to participate in regular meetings and will use all reasonable efforts to obtain Agency's concurrence on plans. State shall consult with Agency prior to making changes to Project scope, schedule, or budget. However, State may award a construction contract up to ten (10) percent (%) over engineer's estimate without prior approval of Agency.
  - c. Federal funds under this Agreement are provided under Title 23, United States Code.
  - d. ODOT does not consider Agency to be a subrecipient or contractor under this Agreement for purposes of federal funds. The Catalog of Federal Domestic Assistance (CFDA) number for this Project is 20.205, title Highway Planning and Construction.
  - e. State will submit the requests for federal funding to the Federal Highway Administration (FHWA). The federal funding for this Project is contingent upon approval of each funding request by FHWA. Any work performed outside the period of performance or scope of work approved by FHWA will be considered nonparticipating and paid for at Agency expense.
  - f. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project.
4. 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 ten (10) calendar

years following the date all required signatures are obtained, whichever is sooner.

5. Termination

- a. This Agreement may be terminated by mutual written consent of both Parties.
- b. State may terminate this Agreement upon 30 days' written notice to Agency.
- c. 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:
  - i. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - ii. 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.
  - iii. If Agency fails to provide payment of its share of the cost of the Project.
  - iv. 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.
  - v. 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.
- d. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

6. **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 (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, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT

Recipient / ODOT  
Agreement No. 35244

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 or altered 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:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>

- b. 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. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
    - 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.
  - c. Maintenance obligations in this section shall survive termination of this Agreement.
7. State shall ensure compliance with the Cargo Preference Act and implementing regulations (46 CFR Part 381) for use of United States-flag ocean vessels transporting materials or equipment acquired specifically for the Project. Strict compliance is required, including but not limited to the clauses in 46 CFR 381.7(a) and (b) which are incorporated by reference. State shall also include this requirement in all contracts and ensure that contractors include the requirement in their subcontracts.
  8. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.

9. The Parties acknowledge and agree 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 the Parties 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 completion of the Project and final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting party.
10. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
11. Agency shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to FHWA, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement.
12. Agency and State are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
13. State and Agency hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
14. Notwithstanding anything in this Agreement or implied to the contrary, the rights and obligations set out in the following paragraphs of this Agreement shall survive Agreement expiration or termination, as well as any provisions of this Agreement that by their context are intended to survive: Terms of Agreement Paragraphs 3.e (Funding), 5.d (Termination), 6.c (ADA maintenance), 9-14, 17 (Integration, Merger; Waiver); and Attachment 2, paragraphs 1 (Project Administration), 7, 9, 11, 13 (Finance), and 37-41 (Maintenance and Contribution).
15. 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.

Recipient / ODOT  
Agreement No. 35244

16. This Agreement may be executed in several counterparts 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.
17. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and the attached exhibits will control over Project application and documents provided by Agency to State. 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. Notwithstanding this provision, the Parties may enter into a Right Of Way Services Agreement in furtherance of the Project.
18. State's Contract Administrator for this Agreement is Troy Palmrose, Construction Project Manager, 350 W Marine Dr, Astoria, OR 97103, (503)325-2167, troy.a.palmrose@odot.oregon.gov, 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.
19. Agency's Contract Administrator for this Agreement is Luke Shepard, City Manager, PO Box 5, Rockaway Beach, OR 97136 (503) 374-1752, lukesh Shepard@corb.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.

**Signature Page to Follow**



Recipient / ODOT  
Agreement No. 35244

**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 2021-2024 Statewide Transportation Improvement Program (STIP), (Key #22459) that was adopted by the Oregon Transportation Commission on July 15, 2020 (or subsequently by amendment to the STIP).

**CITY OF ROCKAWAY BEACH**, by and through its Governing Body

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**LEGAL REVIEW APPROVAL (If required in Agency's process)**

By \_\_\_\_\_

Agency's Legal Counsel

Date \_\_\_\_\_

**Agency Contact:**

Luke Shepard, City Manager  
PO Box 5, Rockaway Beach, OR 97136  
(503) 374-1752  
lukeshpard@corb.us

**ODOT Contact:**

Troy Palmrose, Construction Project Manager  
350 W Marine Dr, Astoria OR 97103  
(503) 325-2167  
troy.a.palmrose@odot.oregon.gov

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

By \_\_\_\_\_

Public Transportation Division  
Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_

Region 2 Manager

Date \_\_\_\_\_

By \_\_\_\_\_

Oregon Community Paths Program  
Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By Janet Borth via email \_\_\_\_\_

Assistant Attorney General

Date 12/21/21 \_\_\_\_\_

## EXHIBIT A – Project Location Map & Description



### Project Description:

The Project will create a non-motorized path parallel to, but separated from, US 101 within the City of Rockaway Beach. The trail will run for approximately one mile on the eastern side of the Port of Tillamook Bay railroad right of way on the west side of US 101. Its northern end will be located at the Rockaway beach Wayside, a major community gathering place. Its southern end will be located at the enhanced crossing recently installed at the intersection of US 101 and Washington Street.

### Project Scope of Work:

#### 1. Consultant Selection and Procurement:

- ODOT project manager will set up a meeting with the City to go over the ODOT procurement process and timelines, set up consultant evaluation

team (3 ODOT staff and 2 City staff), and carry out the procurement process including execution of the work order contract for preliminary design Develop detailed consultant scope of work with input from the City

- b. Consultant selection/hiring through the evaluation team

Begin date: 2 Weeks after Notice to Proceed (NTP)

End Date: 26 weeks after NTP

## **2. Environmental:**

- a. Environmental Review – Research and review relevant environmental regulations relevant to the path.
- b. Environmental Assessment – Assess right of way for steep abutting slopes, and wetlands and estuarine waters to ensure construction aligns with regulatory constraints. No estuary frontage exists on this section of trail.
- c. Programmatic Categorical Exclusion (PCE)

Begin date: 26 Weeks after Notice to Proceed

End Date: 52 weeks after NTP

## **3. Design and Engineering:**

- a. Trail Engineering – Perform engineering study of a multi-use path for a section of approximately 5,000 feet extending from 1,236 feet north of US 101 MP 51 and 3,576 feet south of US 101 MP 51. The southern terminus is the intersection of Washington Street. The northern terminus is 2<sup>nd</sup> Avenue. Feasibility for the path between 2<sup>nd</sup> Avenue and 1<sup>st</sup> Avenue will also be assessed.
- b. Trail Design – Design an ADA compatible multi-use path, including all engineering/construction drawings.
- c. Local Street Crossings (5 crossings) – Assess necessary safety improvements with ODOT/ODOT Rail at each crossing. Explore impacts of closing crossings that would not result in significantly greater drives for vehicles accessing properties along parallel street. Assess steepness of berm heights intersecting street crossings. Design and build improvements.
- d. Saltair Creek Trestle Modification – Saltair Creek Trestle is a single-span 15-foot structure located at RR MP 841.17. The ROW is 60 feet. The trail is on the east side of the trestle. This task entails removing existing structure and replace with steel pile and precast concrete slab. The new trail bridge will be approximately 20 feet, single span structure located on the east side of the rail trestle. A minimum of 18' horizontal distance shall be left between the eastern edge of the new bridge and the western face of the storm drain structure that conveys Saltair Creek under Highway 101, for drainage maintenance purposes. The bottom of the new bridge structure

Recipient / ODOT  
Agreement No. 35244

shall be no more than 3.5 feet below the level of the bridge deck to allow maintenance beneath the bridge.

- e. Trail with Widened Berm – Approximately 18 to 20 foot widening to rail berm crown. Footprint of new berm could be approximately 40 to 42 feet wide. Many sections of the rail through Rockaway Beach are at or nearly at grade with surrounding lands, thus the required new rail berm footprint may be significantly narrower. Use of retaining walls could further reduce land needed for side slopes and would reduce footprint.

Begin date: 40 Weeks after NTP

End Date: 78 weeks after NTP

**4. Construction:**

Begin date: 78 Weeks after NTP

End Date: 156 weeks after NTP

**Project Milestones:**

Begin Date: 2 weeks after NTP

End Date: 156 Weeks after NTP

**ATTACHMENT NO. 1 to AGREEMENT NO. 35244  
SPECIAL PROVISIONS**

1. State or its consultant shall conduct all work components necessary to complete the Project, except for those responsibilities specifically assigned to Agency in this Agreement.
  - a. State or its consultant shall conduct 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; acquire necessary right of way and easements; and arrange for all utility relocations and adjustments.
  - b. State will advertise, bid, and award the construction contract. Upon State's award of the construction contract, a consultant hired and overseen by the State shall be responsible for contract administration and construction engineering & inspection, including all required materials testing and quality documentation. State shall make all contractor payments.
  - c. State will perform project management and oversight activities throughout the duration of the Project. The cost of such activities will be billed to the Project.
2. Agency will lead public outreach in partnership with the City of Rockaway Beach, Tillamook County, and the Oregon Coast Visitors Association (OCVA). City and county residents will be engaged through existing channels. Outreach done in conjunction with OCVA will target local business leaders.
3. State and Agency agree that the useful life of this Project is defined as 20 years.
4. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.

## ATTACHMENT NO. 2 FEDERAL STANDARD PROVISIONS

### PROJECT ADMINISTRATION

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will act for Agency in other matters pertaining to the Project. Prior to taking such action, State will confer with Agency concerning actions necessary to meet federal obligations. State and Agency shall each assign a person in responsible charge "liaison" to coordinate activities and assure that the interests of both Parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.
3. State will provide or secure services to perform plans, specifications and estimates (PS&E), construction contract advertisement, bid, award, contractor payments and contract administration. A State-approved consultant may be used to perform preliminary engineering, right of way and construction engineering services.
4. Agency may perform only those elements of the Project identified in the special provisions.

### PROJECT FUNDING REQUEST

5. State shall submit a separate written Project funding request to FHWA requesting approval of federal-aid participation for each project phase including a) Program Development (Planning), b) Preliminary Engineering (National Environmental Policy Act - NEPA, Permitting and Project Design), c) Right of Way Acquisition, d) Utilities, and e) Construction (Construction Advertising, Bid and Award). Any work performed prior to FHWA's approval of each funding request will be considered nonparticipating and paid for at Agency expense. State, its consultant or Agency shall not proceed on any activity in which federal-aid participation is desired until such written approval for each corresponding phase is obtained by State. State shall notify Agency in writing when authorization to proceed has been received from FHWA. All work and records of such work shall be in conformance with FHWA rules and regulations.

### FINANCE

6. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount for the federal funds and any portion of the Project, which is not covered by federal funding, unless otherwise agreed to and specified in the intergovernmental Agreement (Project Agreement). Agency must obtain written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Project Agreement. State will also determine and clearly state in the Project Agreement if Agency is a subrecipient or contractor, using the criteria in 2 CFR 200.331.

Recipient/State  
Agreement No. 35238

7. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall pay one hundred (100) percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds or allocations of State Highway Trust Funds to Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration that result in items being declared non-participating by FHWA, such items deemed non-participating will be negotiated between Agency and State. Agency agrees that costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon by the Parties.
8. Agency's estimated share and advance deposit.
  - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
  - b) Agency's construction phase deposit shall be one hundred ten (110) percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid, must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is cancelled. Any balance of a cash deposit in excess of amount needed, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
  - c) Pursuant to Oregon Revised Statutes (ORS) 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool), and an Irrevocable Limited Power of Attorney is sent to State's Active Transportation Section, Funding and Program Services Unit, or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash or check submitted to the Oregon Department of Transportation.
9. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear one hundred (100) percent of all costs incurred as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear one hundred (100) percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
10. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
11. Agency shall, upon State's written request for reimbursement in accordance with Title 23, CFR part 630.112(c) 1 and 2, as directed by FHWA, reimburse State for federal-aid funds distributed to Agency if any of the following events occur:

- a) Right of way acquisition is not undertaken or actual construction is not started by the close of the twentieth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized for right of way acquisition. Agency may submit a written request to State's Liaison for a time extension beyond the twenty (20) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
  - b) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized. Agency may submit a written request to State's Liaison for a time extension beyond the ten (10) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
12. State shall, on behalf of Agency, maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that the Project is completed in conformance with approved plans and specifications.
  13. State shall submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. State shall pay all reimbursable costs of the Project. Agency may request a statement of costs-to-date at any time by submitting a written request. When the final total cost of the Project has been computed, State shall furnish Agency with an itemized statement. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal one hundred (100) percent of the final total cost of the Project. Any portion of deposits made in excess of the final total cost of the Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the final total cost of the Project.

## **DESIGN STANDARDS**

14. Agency and State agree that minimum design standards on all local agency jurisdictional roadway or street projects on the National Highway System (NHS) and projects on the non-NHS shall be the American Association of State Highway and Transportation Officials (AASHTO) standards and be in accordance with State's Oregon Bicycle & Pedestrian Design Guide (current version). State or its consultant shall use either AASHTO's A Policy on Geometric Design of Highways and Streets (current version) or State's Resurfacing, Restoration and Rehabilitation (3R) design standards for 3R projects. State or its consultant may use AASHTO for vertical clearance requirements on Agency's jurisdictional roadways or streets.
15. Agency agrees that if the Project is on the Oregon State Highway System or a State-owned facility, that design standards shall be in compliance with standards specified in the current ODOT Highway Design Manual and related references. Construction plans for such projects shall be in conformance with standard practices of State and all specifications shall be in substantial compliance with the most current Oregon Standard Specifications for Highway Construction and current Contract Plans Development Guide.
16. State and Agency agree that for all projects on the Oregon State Highway System or a State-owned facility, any design element that does not meet ODOT Highway Design Manual design standards must be justified and documented by means of a design exception. State and Agency further agree that for all projects on the NHS, regardless of funding source; any design element that does not



meet AASHTO standards must be justified and documented by means of a design exception. State shall review any design exceptions on the Oregon State Highway System and retain authority for said approval. FHWA shall review any design exceptions for projects subject to Project of Division Interest and retains authority for their approval.

17. ODOT agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the Manual on Uniform Traffic Control Devices and Oregon Supplement as adopted in Oregon Administrative Rule (OAR) 734-020-0005. State or its consultant shall, on behalf of Agency, obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a state highway pursuant to OAR 734-020-0430.

## **PRELIMINARY & CONSTRUCTION ENGINEERING**

18. Preliminary engineering and construction engineering may be performed by either a) State, or b) a State-approved consultant. Engineering work will be monitored by State to ensure conformance with FHWA rules and regulations. Project plans, specifications and cost estimates shall be performed by either a) State, or b) a State-approved consultant. State shall review and approve Project plans, specifications and cost estimates. State shall, at project expense, review, process and approve, or submit for approval to the federal regulators, all environmental statements. State shall offer Agency the opportunity to review the documents prior to advertising for bids.
19. Architectural, engineering, photogrammetry, transportation planning, land surveying and related services (A&E Services) as needed for federal-aid transportation projects must follow the State's processes to ensure federal reimbursement. State will award, execute, and administer the contracts. State's personal services contracting process and resulting contract document will follow Title 23 CFR part 172, 2 CFR part 1201, ORS 279A.055, 279C.110, 279C.125, OAR 731-148-0130, OAR 731-148-0220(3), OAR 731-148-0260 and State Personal Services Contracting Procedures, as applicable and as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or the state approved consultant prior to receiving authorization from State to proceed.
20. The State or its consultant responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
21. State shall prepare construction contract and bidding documents, advertise for bid proposals, award all construction contracts, and administer the construction contracts.
22. Upon State's award of a construction contract, State shall perform quality assurance and independent assurance testing in accordance with the FHWA-approved Quality Assurance Program found in State's Manual of Field Test Procedures, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
23. State shall, as a Project expense, assign a liaison to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). State's liaison shall process reimbursement for federal participation costs.

### **Disadvantaged Business Enterprises (DBE) Obligations**

24. State and Agency agree to incorporate by reference the requirements of 49 CFR part 26 and State's DBE Program Plan, as required by 49 CFR part 26 and as approved by USDOT, into all contracts entered into under this Project Agreement. The following required DBE assurance shall be included in all contracts:

*"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR part 26 in the award and administration of federal-aid contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b))."*

25. State and Agency agree to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
26. The Parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR parts 1.11, 140, 635, 710, and 771; Title 49 CFR parts 24 and 26; , 2 CFR 1201; Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, the provisions of the FAPG and *FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide*. State and Agency agree that FHWA-1273 Required Contract Provisions shall be included in all contracts and subcontracts verbatim and not by reference.

### **RIGHT OF WAY**

27. Right of Way activities shall be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FAPG, CFR, and the *ODOT Right of Way Manual*, Title 23 CFR part 710 and Title 49 CFR part 24.
28. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of projects. State or its consultant may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project in accordance with the *ODOT Right of Way Manual*, and with the prior approval from State's Region Right of Way office.
29. If the Project has the potential of needing right of way, to ensure compliance in the event that right of way is unexpectedly needed, a right of way services agreement will be required. State, at Project expense, shall be responsible for requesting the obligation of project funding from FHWA. State, at Project expense, shall be entirely responsible for project acquisition and coordination of the right of way certification.
30. State or its consultant shall ensure that all project right of way monumentation will be conducted in conformance with ORS 209.155.

31. State and Agency grant each other authority to enter onto the other's right of way for the performance of non-construction activities such as surveying and inspection of the Project.

## **RAILROADS**

32. State shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through the State's Liaison, who will contact State's Railroad Liaison on behalf of Agency. Only those costs allowable under Title 23 CFR part 140 subpart I, and Title 23 part 646 subpart B shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others.

## **UTILITIES**

33. State or its consultant shall follow State established statutes, policies and procedures when impacts occur to privately or publicly-owned utilities. Policy, procedures and forms are available through the State Utility Liaison or State's Liaison. State or its consultant shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility & Railroad Liaison. Only those utility relocations, which are eligible for reimbursement under the FAPG, Title 23 CFR part 645 subparts A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. Agency may send a written request to State, at Project expense, to arrange for utility relocations/adjustments lying within Agency jurisdiction. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. Agency shall not perform any utility work on state highway right of way without first receiving written authorization from State.

## **GRADE CHANGE LIABILITY**

34. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
35. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
36. Agency, if a City, by execution of the Project Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, in connection with or arising out of the Project covered by the Project Agreement.

## **MAINTENANCE RESPONSIBILITIES**

37. 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. The useful life of the Project is defined in the Special Provisions. State may conduct periodic inspections during the life of the Project to verify that the Project is properly maintained and continues to serve the purpose for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of the Project Agreement. In the event the Project will include or affect a state highway, this provision does not address maintenance of that state highway.

## **CONTRIBUTION**

38. 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.
39. 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.
40. 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.

## **ALTERNATIVE DISPUTE RESOLUTION**

41. The Parties shall attempt in good faith to resolve any dispute arising out of this Project 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.

## **WORKERS' COMPENSATION COVERAGE**

42. All employers, including Agency, that employ subject workers who work under this Project 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 five hundred thousand (\$500,000) must be

included. State and Agency shall ensure that each of its contractors complies with these requirements.

## **LOBBYING RESTRICTIONS**

43. Agency certifies by signing the Agreement that:

- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

## **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

By signing this Agreement, Agency agrees to fulfill the responsibility imposed by 2 CFR 180.300, 180.355, 180.360, and 180.365, regarding debarment, suspension, and other responsibility matters. For the purpose of this provision only, Agency is considered a participant in a covered transaction. Furthermore, by signing this Agreement, Agency is providing the certification for its principals required in Appendix to 2 CFR part 180 – Covered Transactions.