

**CITY OF LINCOLN CITY
CITY COUNCIL AGENDA**

MONDAY JULY 10, 2023, 6:00 PM

6:00 PM - The Lincoln City Council will hold a Regular Meeting in the Council Chambers, 801 SW Highway 101 - 3rd Floor, Lincoln City, OR 97367.

Public comments can be submitted to publiccomment@lincolncity.org, by attending the City Council meeting, or by telephone.

Public comments submitted by email to publiccomment@lincolncity.org will be entered into the official record, distributed to the governing body, and summarized; however, due to personal privacy issues they are not generally published in the online agenda packet.

****PUBLIC COMMENT VIA EMAIL WILL ONLY BE RECOGNIZED UPON RECEIPT OF AN EMAIL SENT TO:
publiccomment@lincolncity.org**

Citizens requesting to give public comment via telephone must email publiccomment@lincolncity.org no later than noon on the meeting day. The request must include the person's name, the subject the person wishes to address, and the phone number the person intends to use for the meeting. Instructions will be sent to the person requesting prior to the meeting. Persons who will give public comment via telephone will need to leave the microphone muted until the public comment portion of the meeting.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, for a hearing-impaired device, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting. To request information in an alternate format or other assistance, please contact the City's ADA Coordinator, Kevin Mattias, at [541-996-1013](tel:541-996-1013) or kmattias@lincolncity.org. Visit the [ADA Accessibility | City of Lincoln City, OR](http://www.lincolncity.org/ada) webpage to view how the City continues to remain in compliance with Title II of the Americans with Disabilities Act regarding City programs, services, processes, and facilities.

The Lincoln City Council reserves the right to add or delete items as needed, change the order of the agenda, and discuss any other business deemed necessary at the time of the meeting.

Agenda materials for this meeting are available at www.lincolncity.org under "Government", then select "Public Meeting Agendas, Packets & Videos". To stream the meeting in HD, please visit www.lincolncity.org/government/streaming. This meeting will be televised live on Channel 4, and rebroadcast on Channel 4 multiple times a day.

If you wish to speak on an agenda or non-agenda item, please sign up on the sheet near the entrance door to the Council Chambers. You will be called to speak during the "Public Comment" section. Comments or testimony on agenda items listed under "public hearing/public comment" will be taken at that time.

- A. CALL TO ORDER**
- B. ROLL CALL**
- C. PLEDGE OF ALLEGIANCE**
- D. CONSENT AGENDA**
 - 1. Regular Meeting – Minutes of Regular Meeting – June 26, 2023 6:00 PM
 - 2. ODOT Fund Exchange Program: Master Grant Agreement (FEX)
- E. COUNCIL DELIBERATIONS**
- F. COMMENTS FROM CITIZENS PRESENT ON AGENDA/NON-AGENDA ITEMS**
- G. PRESENTATIONS**
 - 4. Lincoln City Police Department - July 4th Recap Presentation
- H. PUBLIC HEARING / ORDINANCE**
- I. PUBLIC HEARINGS / PUBLIC COMMENTS**
- J. ORDINANCES**
- K. RESOLUTIONS**
- L. SPECIAL ORDER OF BUSINESS**
 - 1. Bay Walk Construction Contract Award
- M. CITY MANAGER/CITY ATTORNEY REPORTS**
- N. ACTIONS, IF ANY, BASED ON WORK SESSION OR EXECUTIVE SESSION**
- O. ADDITIONAL COMMENTS FROM CITIZENS PRESENT ON NON-AGENDA ITEMS**
- P. ANNOUNCEMENTS OR COMMENTS BY CITY COUNCIL**
- Q. ADJOURNMENT**

CITY OF LINCOLN CITY

CITY COUNCIL MINUTES OF THE MEETING

June 26, 2023, 6:00 PM

The final minutes for this meeting are supplemented by an electronic recording of the meeting, which may be viewed online at www.lincolncity.org under the tab "Agendas, Packets, and Videos". The staff reports, resolutions, ordinances, and other documents related to this meeting are also available at the same location. This meeting is rebroadcast on Cable Channel 4. (See Channel 4 guide on the hour at <http://www2.lincolncity.org/program-guide/>).

APPROVED BY CITY COUNCIL

DATE:

A. CALL TO ORDER

Mayor Wahlke called the meeting to order at 6:00 PM.

B. ROLL CALL

| Attendee Name | Title | Status | Arrived |
|----------------|------------------|---------|---------|
| Susan Wahlke | Mayor | Present | |
| Sydney Kasner | Councilor Ward 2 | Present | |
| Judy Casper | Councilor Ward 3 | Present | |
| Riley Hoagland | Councilor Ward 2 | Present | |
| Rick Mark | Councilor Ward 3 | Present | |
| Mitch Parsons | Councilor Ward 1 | Present | |

Staff Present: Daphnee Legarza, City Manager; Chief Broderick, Lincoln City Police Department; Debbie Bridges, Finance Director; Stephanie Reid, Public Works Director; Alison Robertson, Economic Development and Urban Renewal Director; Seth Lenaerts, Project Manager; Jamie Young, City Recorder.

C. PLEDGE OF ALLEGIANCE

Mayor Wahlke led The Pledge of Allegiance.

D. CONSENT AGENDA WITH CORRECTIONS

RESULT: PASSED [UNANIMOUS]
MOVER: Judy Casper, Councilor Ward 3
SECONDER: Rick Mark, Councilor Ward 3
AYES: Wahlke, Kasner, Casper, Hoagland, Mark, Parsons

1. Oregon Liquor Control Commission- New Outlet for an Off-Premises Liquor License for Grocery Outlet

MOTION: OLCC - New Outlet Of-Premises Liquor License - Grocery Outlet
MOVER: Judy Casper, Councilor Ward 3
SECONDER: Rick Mark, Councilor Ward 3
AYES: Wahlke, Kasner, Casper, Hoagland, Mark, Parsons
RESULT: Passed

2. Regular Meeting – Minutes of Joint City Council and Planning Commission – February 2, 2021, 6:00 PM

MOTION: City Council - Joint City Council and Planning Commission - Feb 2, 2021, 6:00 PM
MOVER: Judy Casper, Councilor Ward 3
SECONDER: Rick Mark, Councilor Ward 3
RESULT: Passed

3. Regular Meeting – Minutes of Regular Meeting – June 12, 2023, 5:00 PM

MOTION: Joint City Council and Urban Renewal Agency - Regular Meeting - Jun 12, 2023, 5:00 PM
MOVER: Judy Casper, Councilor Ward 3
SECONDER: Rick Mark, Councilor Ward 3
RESULT: Passed

4. Regular Meeting – Minutes of Regular Meeting – June 12, 2023, 6:00 PM

MOTION: City Council - Regular Meeting - Jun 12, 2023, 6:00 PM
MOVER: Judy Casper, Councilor Ward 3
SECONDER: Rick Mark, Councilor Ward 3
RESULT: Passed

E. COUNCIL DELIBERATIONS

None

F. COMMENTS FROM CITIZENS PRESENT ON AGENDA/NON-AGENDA ITEMS

None

G. PRESENTATIONS

None

H. PUBLIC HEARING / ORDINANCE

None

I. PUBLIC HEARINGS / PUBLIC COMMENTS

1. Public Hearing: ZOA 2023-03 - continued to September 11, 2023

Continued to September 11, 2023

2. Public Hearing: Resolution 2023-15 State Shared Revenues

Mayor Wahlke opened the public hearing at 6:07 PM. Councilor Hoagland recused himself from the hearing. Debbie Bridges, Finance Director, read the staff report. No Citizens were present for comment. Mayor Wahlke closed the public hearing at 6:08 PM.

3. Public Hearing: Resolution 2023-16 Adopt Budget

Mayor Wahlke opened the public hearing at 6:08 PM. Councilor Hoagland recused himself from the hearing. Debbie Bridges, Finance Director, review the staff report and changes. Staff and Council had a discussion. No Citizens were present for comment. Mayor Wahlke closed the public hearing at 6:14 PM.

4. Public Comment: Resolution 2023-17 Fee Schedule

Mayor Wahlke opened the public hearing at 6:15 PM. Councilor Hoagland recused himself from the hearing. Daphnee Legarza, City Manager, reviewed the staff report. Council and Staff had a discussion. No Citizens were present for comment. Mayor Wahlke closed the public hearing at 6:18 PM.

J. ORDINANCES

None

K. RESOLUTIONS

5. RESOLUTION NO. 2023-15 A RESOLUTION DECLARING THE CITY’S ELECTION TO RECEIVE STATE REVENUES

| | |
|------------------|--|
| MOTION: | Motion to Approve Resolution 2023-15: State Shared Revenues |
| MOVER: | Judy Casper, Councilor Ward 3 |
| SECONDER: | Mitch Parsons, Councilor Ward 1 |
| AYES: | Wahlke, Kasner, Casper, Mark, Parsons |
| RECUSED: | Hoagland |
| RESULT: | Passed by Roll Call Vote |

6.

| | |
|------------------|---|
| MOTION: | Motion to Increase the Park Operations Budget in the Parks and Recreation Fund by \$40,000, and Reduce Contingency by \$40,000 |
| MOVER: | Rick Mark, Councilor Ward 3 |
| SECONDER: | Susan Wahlke, Mayor |
| AYES: | Wahlke, Mark |
| NAYS: | Kasner, Casper, Parsons |
| RECUSED: | Hoagland |
| RESULT: | Failed by Roll Call Vote |

7.

MOTION: Motion to Increase the Beginning Fund Balance and the Street Improvements Budget in the Street Capital Fund by \$100,000, and Decrease the Beginning Fund Balance and the Capital Outlay Budget in the Sewer Capital Fund by \$100,000

MOVER: Rick Mark, Councilor Ward 3

SECONDER: Sydney Kasner, Councilor Ward 2

AYES: Wahlke, Kasner, Casper, Mark, Parsons

RECUSED: Hoagland

RESULT: Passed by Roll Call Vote

8.

MOTION: Motion to Add \$30K to FY2023-24 Contracted Services each in Water, Sewer, and Streets, for a total of \$90K, for the Purchase of Software and Professional Services to Develop an Asset Management Program

MOVER: Rick Mark, Councilor Ward 3

SECONDER: Judy Casper, Councilor Ward 3

AYES: Wahlke, Kasner, Casper, Mark, Parsons

RECUSED: Hoagland

RESULT: Passed by Roll Call Vote

9.

MOTION: Motion to Increase the Budget for Water Utility Maintenance and the Water Operating Fund by \$50,000 and Decrease the Contingency in the Same Amount

MOVER: Sydney Kasner, Councilor Ward 2

SECONDER: Mitch Parsons, Councilor Ward 1

AYES: Wahlke, Kasner, Casper, Mark, Parsons

RECUSED: Hoagland

RESULT: Passed by Roll Call Vote

10.

MOTION: Motion to Increase the Revenue Budget and the Street Improvements Budget in the Street Capital Fund by \$100,000

MOVER: Mitch Parsons, Councilor Ward 1

SECONDER: Sydney Kasner, Councilor Ward 2

AYES: Wahlke, Kasner, Casper, Mark, Parsons

RECUSED: Hoagland

RESULT: Passed by Roll Call Vote

11.

| | |
|------------------|---|
| MOTION: | Motion to Increase the ODOT Grant Revenue Fund in the Amount of \$540,000 in the Street Capital Fund and Increase the Street Improvement Fund by the Same Amount |
| MOVER: | Mitch Parsons, Councilor Ward 1 |
| SECONDER: | Judy Casper, Councilor Ward 3 |
| AYES: | Wahlke, Kasner, Casper, Mark, Parsons |
| RECUSED: | Hoagland |
| RESULT: | Passed by Roll Call Vote |

12. RESOLUTION NO. 2023-16 ADOPTING THE BUDGET

| | |
|------------------|---|
| MOTION: | Motion to Adopt Resolution 2023-16: Adopting the Budget as Amended |
| MOVER: | Judy Casper, Councilor Ward 3 |
| SECONDER: | Rick Mark, Councilor Ward 3 |
| AYES: | Wahlke, Kasner, Casper, Mark |
| NAYS: | Parsons |
| RECUSED: | Hoagland |
| RESULT: | Passed by Roll Call Vote |

13. RESOLUTION 2023-17 A RESOLUTION OF THE CITY OF LINCOLN CITY ADOPTING REVISIONS TO CITY ADMINISTRATION (ADMINISTRATIVE FEES - BUSINESS RELATED) FEE SCHEDULE

| | |
|------------------|--|
| MOTION: | Motion to Adopt Resolution 2023-17: Revisions to City Administration Fee Schedule |
| MOVER: | Rick Mark, Councilor Ward 3 |
| SECONDER: | Sydney Kasner, Councilor Ward 2 |
| AYES: | Wahlke, Kasner, Casper, Mark |
| NAYS: | Parsons |
| RECUSED: | Hoagland |
| RESULT: | Passed by Roll Call Vote |

L. SPECIAL ORDER OF BUSINESS

14. Planning Commission Interview

| | |
|------------------|---|
| MOTION: | Motion to Appoint Clay Glasgow to the Planning Commission for a Term Beginning 6/27/23 and Expiring 12/31/27 |
| MOVER: | Sydney Kasner, Councilor Ward 2 |
| SECONDER: | Mitch Parsons, Councilor Ward 1 |
| AYES: | Wahlke, Kasner, Casper, Hoagland, Mark, Parsons |
| RESULT: | Passed via Voice Vote |

The Council interviewed Mr. Glasgow for a position on the Planning Committee.

15. Homes Pump Station Upgrade – Change Order No. 1

MOTION: Motion to Approve Change Order No.1 in the Amount of \$115,280 Bringing the Total Contract Amount to \$918,536 While Maintaining the Contingency Budget of \$80,325. The Total Authorized for this Project is \$998,861.00 Which will Include an Increased Percent for Arts

MOVER: Judy Casper, Councilor Ward 3

SECONDER: Riley Hoagland, Councilor Ward 2

AYES: Wahlke, Kasner, Casper, Hoagland, Mark, Parsons

RESULT: Passed by Roll Call Vote

16. SW 3rd & Highway 101 Improvement - Additional Fund Request

MOTION: Motion to Increase Approved Construction Funds to RK Construction for the SW 3rd Street and Highway 101 Flashing Beacon Project from a Total Amount of \$435,788.06 to \$522,868.66 with an Increased Percent for Arts.

MOVER: Mitch Parsons, Councilor Ward 1

SECONDER: Rick Mark, Councilor Ward 3

AYES: Kasner, Casper, Hoagland, Mark, Parsons

RECUSED: Wahlke

RESULT: Passed by Roll Call Vote

Mayor Wahlke recused herself from this item. Stephanie Reid, Public Works Director explained the project change.

M. CITY MANAGER/CITY ATTORNEY REPORTS

None

N. ACTIONS, IF ANY, BASED ON WORK SESSION OR EXECUTIVE SESSION

None

O. ADDITIONAL COMMENTS FROM CITIZENS PRESENT ON NON-AGENDA ITEMS

Marci Baker, Lincoln City resident, spoke about land use planning and Planning Commission work sessions.

P. ANNOUNCEMENTS OR COMMENTS BY CITY COUNCIL

Councilor Mark spoke about the B'nai Brith food program. Councilor Mark also spoke about a trip to Washington D.C. that he took and the events.

Councilor Hoagland spoke about the Meals on Wheels needing volunteers.

Councilor Casper spoke about her visit to Helping Hands reentry and the process of opening.

Councilor Kasner spoke about the firework stand at Morris Excavation located in the County. Councilor Kasner spoke about the written citizen involvement.

Councilor Parsons spoke about the Roads End Improvement Association beach clean-up.

Mayor Wahlke spoke about the Travel Oregon Report that shows Lincoln City as the most visited town after Newport. Mayor Wahlke spoke about the Kite Festival. Mayor Wahlke spoke about the entrance signs about the fireworks ban and the commercial fireworks displays for the holiday.

17.

MOTION: Motion to Direct Staff to Give Feedback on a Written Citizen Involvement Program
MOVER: Sydney Kasner, Councilor Ward 2
SECONDER: Riley Hoagland, Councilor Ward 2
AYES: Wahlke, Kasner, Casper, Hoagland, Mark, Parsons
RESULT: Passed by Voice Vote

18.

MOTION: Motion to Direct Staff to Create a Policy that will Stop Paying Travel Expenses for Employees Living out of the Area
MOVER: Mitch Parsons, Councilor Ward 1
RESULT: Died Without a Second

19.

MOTION: Motion to Move June 28th Executive Session to Another Date
MOVER: Riley Hoagland, Councilor Ward 2
SECONDER: Judy Casper, Councilor Ward 3
AYES: Wahlke, Kasner, Casper, Hoagland, Mark, Parsons
RESULT: Passed by Voice Vote

20.

MOTION: Motion to Write a Letter to Other Governing Bodies in the County to Ban the Use and Sale of Fireworks
MOVER: Rick Mark, Councilor Ward 3
SECONDER: Judy Casper, Councilor Ward 3
AYES: Wahlke, Kasner, Casper, Mark, Parsons
NAYS: Hoagland
RESULT: Passed by Roll Call Vote

21.

MOTION: Motion to Direct Staff to Come Back with a Resolution or an Ordinance that Tightens up Violations
MOVER: Mitch Parsons, Councilor Ward 1
SECONDER: Judy Casper, Councilor Ward 3
AYES: Wahlke, Kasner, Casper, Hoagland, Mark, Parsons
RESULT: Passed by Voice Vote

Q. ADJOURNMENT

Mayor Wahlke adjourned the meeting at 7:57 PM.

SUSAN WAHLKE, MAYOR

ATTEST:

JAMIE YOUNG, CITY RECORDER

Council Communication

ODOT Fund Exchange Program Grant Agreement

| | |
|--------------------------------|--|
| Meeting Date: July 10, 2023 | Primary Staff Contact: Richard Appicello |
| Department: City Attorney | E-Mail: RAppicello@lincolncity.org |
| Secondary Dept: Administration | Secondary Contacts: Daphnee Legarza |
| Approval: Daphnee Legarza | Estimated Time: 10 min. |

Question:

Should the City Council approve the attached Master Grant Agreement with ODOT regarding the Fund Exchange Program (FEX)?

Staff Recommendation:

Staff recommends Council approve the Agreement.

Authority:

ORS Chapter 190

Background:

Pursuant to a 2018 Agreement between ODOT, the League of Oregon Cities and the Association of Oregon Counties, the Agreement exchanges restricted funds for unrestricted funds (ninety cents for one dollar).

Council Options:

1. Approve the Agreement.
2. Postpone discussion
3. Do not approve the Agreement.

Potential Motions:

Council:

1. Motion to approve the Intergovernmental Agreement.

Attachments:

ODOT Fund Exchange Program (PDF)

Misc. Contracts and Agreements
No. MCA 73000-00020679

G019-T121120

**MASTER GRANT AGREEMENT
OREGON DEPARTMENT OF TRANSPORTATION
FUND EXCHANGE PROGRAM (FEX)**

This Master Grant Agreement (“Agreement”) is made and entered into by and between the **State of Oregon**, acting by and through its Department of Transportation (“ODOT”), and **City of Lincoln City**, acting by and through its Governing Body, (“Recipient”), both referred to individually or collectively as “Party” or “Parties.”

1. **Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law (the “Effective Date”). The availability of Grant Funds (as defined in Section 3) shall be from January 1, 2021 to September 30, 2024 (the “Term”).
2. **Agreement Documents.** This Agreement consists of this document and the following documents attached to this Agreement:

- Exhibit A: **Recipient Requirements**
- Exhibit B: **Subagreement Insurance Requirements**
- Exhibit C: **Direct Deposit/ACH Credit Authorization**
- Exhibit D: **Funding Request Letter template**

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits; Exhibit A; Exhibit B; Exhibit C; Exhibit D.

3. **Grant Funds.** Pursuant to the Federal-Aid Project Guidelines and Working Agreement among ODOT, the Association of Oregon Counties and the League of Oregon Cities No. 32588 dated August 23, 2018, ODOT will annually make state funds available for which Recipient may exchange Recipient’s annual allocation of federal Surface Transportation Block Grant funds (“STBG Funds”). The state funds that ODOT annually makes available for exchange are referred to in this Agreement as the “Grant Funds.” ODOT will annually determine the amount of STBG Funds, and hence Grant Funds, available to the Recipient and announce the STBG Funds amount via ODOT’s website in January of each year.
4. **Exchange Rate.** During the Term, ODOT will exchange Recipient’s annual allocation of STBG Funds for Grant Funds at the following rates:
 - a. Ninety-four cents (\$0.94) in Grant Funds for one dollar (\$1.00) of STBG Funds until December 31, 2021.
 - b. Ninety cents (\$0.90) in Grant Funds for one dollar (\$1.00) of STBG Funds January 1, 2022 and after.

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5. Eligible Projects and Costs.

- a. **Use of Grant Funds.** Grant Funds may only be used for transportation projects that are State Highway Trust Fund eligible, that is, those that are consistent with Article IX, Section 3a, of the Oregon Constitution (each such State Highway Trust Fund eligible transportation project is referred to in this Agreement as a “Project”). Grant Funds may be used for all phases of a Project, including, but not limited to, preliminary engineering, right of way, utility relocation, and construction.
- b. **Eligible Costs.** Recipient shall use Grant Funds only for its actual costs to deliver Projects consistent with the terms of this Agreement (“Eligible Costs”).
 - i. Eligible Costs are actual costs of Recipient to the extent those costs are:
 - A. reasonable, necessary and directly used for a Project;
 - B. permitted by generally accepted accounting principles established by the Governmental Accounting Standards Board, as reasonably interpreted by the State, to be capitalized to an asset that is part of a Project; and
 - C. eligible or permitted uses of the Grant Funds under the Oregon Constitution, the statutes and laws of the state of Oregon, and this Agreement.
 - ii. Eligible Costs can include the purchase of aggregate or equipment, provided that:
 - A. purchases or production of aggregate must be roadway-related and exclusively used for roadway work; and
 - B. purchased equipment must be used exclusively for roadway purposes for the useful life of the equipment. Recipient shall clearly describe in the Funding Request, as that capitalized term is defined in Section 6.a., how it plans to use said equipment on roadways and for roadway purposes. In the event that the equipment is not used for roadway purposes, Recipient shall pay to ODOT the fair market rental value for Recipient’s non-roadway use of the equipment. The useful life and the fair market rental value of the equipment shall be determined by ODOT, based on the type and condition of equipment.
 - iii. Eligible Costs do NOT include:
 - A. loans or grants to be made to third parties; or
 - B. any expenditures incurred before the Effective Date or after the Availability Termination Date.

6. Grant Funds Distribution Process

- a. To receive a distribution of Grant Funds during the Term, Recipient shall submit a funding request letter to the ODOT Contact for approval (a “Funding Request”). The Funding Request

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must be on Recipient letterhead and include all information set forth in the letter template attached as Exhibit D. If Recipient chooses not to request Grant Funds in a calendar year, the year's Grant Funds amount will accumulate ("bank") for Recipient's future use. ODOT's distribution of Grant Funds will be limited to Recipient's cumulative amount of Grant Funds available at the time a Funding Request is submitted. ODOT will not advance any Grant Funds based on anticipated future allocations of STBG Funds.

- b. Upon approving a Funding Request, ODOT will disburse the requested Grant Funds amount to Recipient via electronic funds transfer to the deposit account designated in Exhibit C.
 - c. ODOT's obligation to disburse Grant Funds to Recipient is subject to the satisfaction, with respect to each disbursement, of each of the following conditions precedent:
 - i. ODOT has received funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - ii. Recipient is in compliance with the terms of this Agreement.
 - iii. Recipient's representations and warranties set forth in Section 7 are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
 - d. **Recovery of Grant Funds.** Any Grant Funds disbursed to Recipient under this Agreement that are expended in violation of one or more of the provisions of this Agreement ("Misspent Funds") must be returned to ODOT. Recipient shall return all Misspent Funds to ODOT promptly after ODOT's written demand and no later than fifteen (15) days after ODOT's written demand.
7. **Representations and Warranties of Recipient.** Recipient represents and warrants to ODOT as follows:
- a. **Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.
 - b. **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its

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terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

- c. **No Solicitation.** Recipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- d. **No Debarment.** Neither Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from any federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify ODOT immediately if it is debarred, suspended or otherwise excluded from any federally assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.
- e. **Compliance with Oregon Taxes, Fees and Assessments.** Recipient is, to the best of the undersigned(s) knowledge, and for the useful life of this Agreement will remain, current on all applicable state and local taxes, fees and assessments.

8. Records Maintenance and Access; Audit.

- a. **Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Recipient shall ensure that each of its subrecipients and subcontractors complies with these requirements. ODOT, the Secretary of State of the State of Oregon (the "Secretary") and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the Grant Funds, or any Project funded by this Agreement, for the purpose of making audits and examinations. In addition, ODOT, the Secretary and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of ODOT and the Secretary to perform site reviews, and to inspect all vehicles, real property, facilities and equipment purchased by Recipient as part of this Agreement, and any transportation services rendered by Recipient. Without limiting the foregoing, ODOT may request, and Recipient shall provide, documentation of expenditures to confirm that Recipient uses Grant Funds only for State Highway Trust Fund eligible purposes. ODOT may also conduct on-site inspections of any Project funded under this Agreement to ensure that the Project is State Highway Trust Fund eligible.
- b. **Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or any Project funded by this Agreement for a period of six (6) years after final payment. If there are unresolved audit questions at the end of the period described in this section, Recipient shall retain the records until the questions are resolved.

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- c. **Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by ODOT under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit ODOT to verify how the Grant Funds were expended.

This Section 8 shall survive any expiration or termination of this Agreement.

9. Recipient Subagreements and Procurements

- a. **Subagreements.** Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, “subagreements”) for performance of this Agreement.
- i. All subagreements must be in writing, executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
 - ii. Recipient shall require all of its contractors performing work under this Agreement to name ODOT as a third party beneficiary of Recipient’s subagreement with the Contractor and to name ODOT as an additional or “dual” obligee on contractors’ payment and performance bonds.
 - iii. Recipient shall provide ODOT with a copy of any signed subagreement, as well as any other purchasing or contracting documentation, upon ODOT’s request at any time. Recipient must report to ODOT any material breach of a term or condition of a subagreement within ten (10) days of Recipient discovering the breach.
- b. **Subagreement indemnity; insurance.**

Recipient’s subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless State of Oregon, the Oregon Transportation Commission and its members, the Department of Transportation, their officers, agents and employees from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys’ fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Recipient’s subagreement or any of such party’s officers, agents, employees or subcontractors (“Claims”). It is the specific intention of the Parties that ODOT shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of ODOT, be indemnified by the other party to Recipient’s subagreement(s) from and against any and all Claims.

- i. Any such indemnification shall also provide that neither Recipient’s subrecipient(s), contractor(s) nor subcontractor(s), nor any attorney engaged by Recipient’s subrecipient(s), contractor(s) nor subcontractor(s) shall defend any claim in the name of ODOT or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient’s subrecipient is prohibited from defending the State, or that

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Recipient's subrecipient is not adequately defending the State's interests, or that an important governmental principle is at issue or that it is in the best interests of the State to do so. The State reserves all rights to pursue claims it may have against Recipient's subrecipient if the State of Oregon elects to assume its own defense.

- ii. For Projects that are on or along a state highway, Recipient shall require its contractor(s) to meet the minimum insurance requirements provided in Exhibit B. Recipient may specify insurance requirements of its contractor(s) above the minimum insurance requirements specified in Exhibit B. Recipient shall verify its contractor(s) meet the insurance requirements in Exhibit B.
 - iii. Recipient shall determine insurance requirements, insurance types and amounts, as deemed appropriate based on the risk of the work outlined within the subagreement. Recipient shall specify insurance requirements and require its contractor(s) to meet the insurance requirements. Recipient shall obtain proof of the required insurance coverages, as applicable, from any contractor providing services related to the subagreement.
 - iv. Recipient shall require its contractor(s) to require and verify that all subcontractors carry insurance coverage that the contractor(s) deems appropriate based on the risks of the subcontracted work.
- c. **Procurements.** Recipient shall make purchases of any equipment, materials, or services comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code, Oregon Revised Statute (ORS) 279 A, B, and C, and rules, ensuring that:
- i. All applicable clauses required by federal statute, executive orders and their implementing regulations are included in each competitive procurement; and
 - ii. All procurement transactions are conducted in a manner providing full and open competition.
- d. **Conflicts of Interest.** Recipient's public officials shall comply with Oregon's government ethics laws, ORS 244.010 *et seq.*, as those laws may be subsequently amended.

10. Termination

- a. **Mutual Termination.** This Agreement may be terminated by mutual written consent of the Parties.
- b. **Termination by ODOT.** ODOT may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by ODOT in such written notice, under any of the following circumstances:
 - i. If Recipient takes any action pertaining to this Agreement without the approval of ODOT and which under the provisions of this Agreement would have required ODOT's approval;
 - ii. If Recipient fails to perform any of its other obligations under this Agreement, and that failure continues for a period of 10 calendar days after the date ODOT delivers Recipient written

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- notice specifying such failure. ODOT may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action;
- iii. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement;
 - iv. If Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that is no longer allowable or no longer eligible for funding under this Agreement; or
 - v. If a Project funded under this Agreement would not produce results commensurate with the further expenditure of funds.
- c. **Termination by Either Party.** Either Party may terminate this Grant Agreement upon at least ten (10) days' notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Grant Agreement.
 - d. **Rights upon Termination; Remedies.** Any termination of this Grant Agreement shall not prejudice any rights or obligations accrued before termination. The remedies set forth in this Grant Agreement are cumulative and are in addition to any other rights or remedies available at law or in equity.

11. GENERAL PROVISIONS

- a. **Indemnity. RECIPIENT SHALL INDEMNIFY AND DEFEND ODOT AND ITS OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER ARISING OUT OF, OR RELATING TO THE INTENTIONAL MISCONDUCT, OR RECKLESS OR NEGLIGENT ACTS OR OMISSIONS OF RECIPIENT OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS AGREEMENT.**

ODOT shall reasonably cooperate in good faith, at Recipient's reasonable expense, in the defense of a covered claim. Recipient shall select counsel reasonably acceptable to the Oregon Attorney General to defend such claim and all costs of such counsel shall be borne by Recipient. Counsel must accept appointment as a Special Assistant Attorney General under ORS Chapter 180 before such counsel may act in the name of, or represent the interests of, ODOT, its officers, employees or agents. ODOT may elect to assume its own defense with an attorney of its own choice and its own expense at any time ODOT determines important governmental interests are at stake. ODOT agrees to promptly provide Recipient with notice of any claim that may result in an indemnification obligation hereunder. Subject to the limitations noted above, Recipient may defend such claim with counsel of its own choosing provided that no settlement or compromise of any such claim shall occur without the consent of ODOT, which consent shall not be unreasonably withheld, conditioned or delayed.

- b. **Contribution.**

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- i. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (“Third Party Claim”) against ODOT or Recipient 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.
- ii. With respect to a Third Party Claim for which ODOT is jointly liable with Recipient (or would be if joined in the Third Party Claim), ODOT shall contribute to the amount of expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Recipient in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of Recipient on the other hand shall be determined by reference to, among other things, the Parties’ relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.
- iii. With respect to a Third Party Claim for which Recipient is jointly liable with ODOT (or would be if joined in the Third Party Claim), Recipient shall contribute to the amount of expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of ODOT on the other hand shall be determined by reference to, among other things, the Parties’ relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Recipient’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.
- c. **Dispute Resolution.** 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.
- d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.

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- e. **Duplicate Payment.** Recipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- f. **No Third Party Beneficiaries.** ODOT and Recipient 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 or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.
- g. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email or mailing the same, postage prepaid, to Recipient Contact or ODOT Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 10(g). Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.
- h. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between ODOT (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- i. **Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement or to implementation of Projects funded by this Agreement, including without limitation as described in Exhibit A. Without limiting the generality of the foregoing, Recipient 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. Recipient agrees to comply with the requirements of ORS 366.514, Use of Highway Fund for footpaths and bicycle trails.

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- j. Insurance; Workers' Compensation.** All employers, including Recipient, that employ subject workers who provide services 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. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Recipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- k. Independent Contractor.** Recipient shall perform as an independent contractor and not as an agent or employee of ODOT. Recipient has no right or authority to incur or create any obligation for or legally bind ODOT in any way. ODOT cannot and will not control the means or manner by which Recipient performs the work, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing its work. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of ODOT, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- l. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be 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 this Agreement did not contain the particular term or provision held to be invalid.
- m. Counterparts.** This Agreement may be executed in two or more counterparts, each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- n. Integration and Waiver.** This Agreement, including all Exhibits, constitutes 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. The delay or failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. Recipient, by the signature below of its authorized representative, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW

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

City of Lincoln City, by and through its elected officials

STATE OF OREGON, by and through its Department of Transportation

By _____
(Legally designated representative)

By _____
Statewide Investment Management Section Manager

Name _____
(printed)

Name _____
(printed)

Date _____

Date _____

By _____

APPROVAL RECOMMENDED

Name _____
(printed)

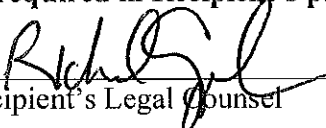
By _____
Program & Funding Services Manager

Date _____

Name _____
(printed)

LEGAL REVIEW APPROVAL
(If required in Recipient's process)

Date _____

By  _____
Recipient's Legal Counsel

ODOT Contact:
Hope Derrickson
355 Capitol Street NE
Salem, OR 97301
Phone: 503-986-5375
Email: hope.derrickson@odot.oregon.gov

Date 6/16/2023

Recipient Contact:
Daphnee Legarza
City of Lincoln City
801 SW Hwy 101
PO Box 50
Lincoln City, OR 97367
Phone: 541-996-1200
Email: dlegarza@lincolncity.org

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EXHIBIT A Recipient Requirements

1. Recipient shall comply with all applicable provisions of ORS 279C.800 to 279C.870 pertaining to prevailing wage rates and including, without limitation, that workers shall be paid not less than rates in accordance with ORS 279C.838 and 279C.840 pertaining to wage rates and ORS 279C.836 pertaining to having a public works bond filed with the Construction Contractors' Board.
2. Recipient shall notify ODOT's Contact in writing when any contact information changes during the Agreement.
3. Recipient shall, at its own expense, maintain and operate all roadways and equipment funded by this Agreement upon completion and throughout the useful life at a minimum level that is consistent with normal depreciation or service demand or both. The Parties agree that the useful life of any roadway work is defined as seven (7) years from its completion date (the "Project Useful Life").
4. Recipient shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities or equipment.
5. **Americans with Disabilities Act Compliance**
 - a. **State Highway:** For portions of a Project located on or along the State Highway System or a State-owned facility ("state highway"):
 - i. Recipient shall 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, pedestrian-activated signals, shared use path, transit stop, park-and-ride, on-street parking, or any other feature that might need to be accessible meet current ODOT Highway Design Manual standards;
 - ii. Recipient shall follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, pedestrian-activated signals, shared use path, transit stop, park-and-ride, on-street parking, or any other feature that might need to be accessible 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 completion of a Project funded by this Agreement, Recipient shall send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form and 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:

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

- iv. Recipient shall promptly notify ODOT of a Project's completion and allow ODOT to inspect Project sidewalks, curb ramps, pedestrian-activated signals shared use path, transit stop, park-and-ride, on-street parking, or any other feature that might need to be accessible located on or along a state highway prior to release of any Recipient contractor.
 - v. Recipient 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. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, disability organizations, and ODOT at least 10 days prior to the start of construction.
- b. **Local Roads:** For portions of a Project located on Recipient roads or facilities that are not on or along a state highway:
- i. Recipient shall ensure that the Project is designed, constructed and maintained in compliance with the ADA.
 - ii. Recipient may follow its own processes or may use ODOT's processes for design, construction, or alteration 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 Curb Ramp Inspection form, available at:

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

Additional ODOT resources are available at the above-identified link. ODOT has made its forms, processes, and resources available for Recipient's use and convenience.
 - iii. Recipient assumes sole responsibility for ensuring compliance with the ADA, including when Recipient uses ODOT forms and processes. Recipient acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect completed Projects to confirm ADA compliance.
 - iv. Recipient 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 and include accessibility features equal to or better than the features present in the existing pedestrian route. Recipient 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 prior to the start of construction.
- c. Recipient shall ensure that any portions under Recipient's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of Projects funded by this Agreement. This includes, but is not limited to, Recipient ensuring that:

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- i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Recipient identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Recipient, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the Project in compliance with the ADA requirements that were in effect at the time the Project 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.
- d. Maintenance obligations in this Section 5 shall survive termination of this Agreement.

6. Work Performed within ODOT's Right of Way

- a. Prior to the commencement of work, Recipient shall obtain, or require its contractor to obtain, permission from the appropriate ODOT District Office to work on or along the state highway. This Agreement does not provide permission to work on or along the state highway.
- b. If a Project includes traffic control devices (see ODOT's Traffic Manual, Chapter 5, for a description of traffic control devices) on or along a state highway, Recipient shall, pursuant to Oregon Administrative Rule (OAR) 734-020-0430, obtain the approval of the State Traffic Engineer prior to design or construction of any traffic control device being installed.
- c. Recipient shall enter into a separate traffic signal agreement with ODOT to cover obligations for any traffic signal being installed on a state highway.
- d. Recipient shall ensure that its electrical inspectors possess a current State Certified Traffic Signal Inspector certificate before the inspectors inspect electrical installations on state highways. The ODOT's District Office shall verify compliance with this requirement before construction. The permit fee should also cover the State electrician's supplemental inspection.

7. General Standards

All Projects funded by this Agreement shall be completed within industry standards and best practices to ensure that the functionality and serviceability of the program's investment meets the intent of the application and the program.

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EXHIBIT B

Subagreement Insurance Requirements

1. GENERAL.

- a. If the Project is on or along a state highway, Recipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to ODOT. Recipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Recipient permit work under a subagreement when Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which the Recipient is a Party.
- b. The insurance specified below is a minimum requirement that the contractor within the subagreement shall meet. Recipient may determine insurance types and amounts in excess to the minimum requirement as deemed appropriate based on the risks of the work outlined within the subagreement.
- c. Recipient shall require the contractor(s) to require that all of its subcontractors carry insurance coverage that the contractor deems appropriate based on the risks of the subcontracted work. Contractor shall obtain proof of the required insurance coverages, as applicable, from any subcontractor providing Services related to the Contract.

2. TYPES AND AMOUNTS.

a. WORKERS COMPENSATION.

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide Workers' Compensation Insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employer's Liability Insurance with limits not less than \$500,000 each accident. **Contractor shall require compliance with these requirements in each of its subcontractor contracts.**

b. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance shall be issued on an occurrence basis covering bodily injury and property damage and shall include personal and advertising injury liability, products and completed operations, and contractual liability coverage. When work to be performed includes operations or activity within 50 feet of any railroad property, bridge, trestle, track,

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roadbed, tunnel, underpass or crossing, the Contractor shall provide the Contractual Liability – Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy. Amounts below are a minimum requirement as determined by ODOT:

Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

c. AUTOMOBILE Liability Insurance: Automobile Liability.

Automobile Liability Insurance covering Contractor’s business-related automobile use covering all owned, non-owned, or hired vehicles for bodily injury and property. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Amount below is a minimum requirement as determined by ODOT:

Coverage shall be written with a combined single limit of not less than \$1,000,000.

d. ADDITIONAL INSURED.

The Commercial General Liability Insurance and Automobile Liability Insurance must include the “**State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees**” as an **endorsed** Additional Insured but only with respect to the contractor’s activities to be performed under the Subcontract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations. Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to the Recipient.

e. “TAIL” COVERAGE.

If any of the required insurance policies is on a “claims made” basis, such as professional liability insurance or pollution liability insurance, the contractor shall maintain either “tail” coverage or continuous “claims made” liability coverage, provided the effective date of the continuous “claims made” coverage is on or before the effective date of the Subcontract, for a minimum of twenty-four (24) months following the later of : (i) the contractor’s completion and Recipient’s acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing twenty-four (24) month requirement, if the contractor elects to maintain “tail” coverage and if the maximum time period “tail” coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then the contractor may request and ODOT may grant approval of the maximum “tail “ coverage period reasonably available in the marketplace. If ODOT approval is granted, the contractor shall maintain “tail” coverage for the maximum time period that “tail” coverage is reasonably available in the marketplace.

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f. NOTICE OF CANCELLATION OR CHANGE.

The contractor or its insurer must provide thirty (30) days' written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

g. CERTIFICATE(S) OF INSURANCE.

Recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) **"State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees"** as an endorsed Additional Insured in regards to the Commercial General Liability and Automobile Liability policies and ii) that all liability insurance coverages shall be primary and non-contributory with any other insurance and self-insurance, with exception of Workers' Compensation..

The Recipient shall immediately notify ODOT of any change in insurance coverage.

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EXHIBIT C

DIRECT DEPOSIT/ACH CREDIT AUTHORIZATION

Type of Action: NEW ENROLLMENT CHANGE CANCEL

By selecting the Change box and completing the form with new account information, or by selecting the Cancel box, you revoke your previous authorization for direct deposit.

Payee Information:

LEGAL NAME OF PAYEE (used for tax reporting): _____

BUSINESS NAME (DBA name if different from above): _____

TAXPAYER IDENTIFICATION NUMBER (EIN OR SSN): _____

MAILING ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

Type of Bank Account:

Checking account Savings account

Financial Institution Information (attach voided check or a letter from the bank confirming the account name, routing number, and account number):

FINANCIAL INSTITUTION NAME: _____

NAME(S) ON ACCOUNT: _____

ACCOUNT NUMBER: _____

ROUTING NUMBER: _____

FINANCIAL INSTITUTION ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

Authorization:

I authorize the Oregon Department of Transportation (ODOT) to initiate electronic credits and, if necessary, adjusting debit entries to reverse erroneous electronic payments, to the account designated on this form. I certify that I am authorized to enter into this agreement as the account holder or on behalf of the account holder. I acknowledge that the origination of ACH transactions to the authorized account must comply with the provisions of the law of the State of Oregon and the United States.

International transaction certification – I certify that the entire amount of my direct deposit is NOT ultimately deposited into a financial institution outside the United States.

This authorization will remain in effect until ODOT receives written notification from Payee of its termination in such time and in such manner as to afford ODOT and the depository financial institution a reasonable opportunity to act on it. If Financial Institution information changes, Payee agrees to promptly submit to ODOT an updated Direct Deposit/ACH Credit Authorization.

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AUTHORIZED NAME: _____

TITLE (if company account): _____

AUTHORIZED SIGNATURE: _____

DATE: _____ TELEPHONE NUMBER: _____

Mail the completed form and voided check or bank letter to:

ODOT Financial Services, MS #21
TEAMS Table Maintenance
355 Capitol St NE
Salem, OR 97301-3871 or
FAX to (503) 986-3907

If you have questions, please call us at (503) 986-4385.

731-0781 (11/2016)

ODOT/Recipient
Agreement No. «AgreementNumber»20679

EXHIBIT D

<LETTERHEAD WITH CITY/COUNTY, ADDRESS>

<DATE>

Oregon Department of Transportation
Program & Funding Services
ODOT Mill Creek Building
555 13th Street NE
Salem, OR 97301

To Whom it May Concern:

Pursuant to its Master Grant Agreement no. <IGA #> with ODOT, <CITY/COUNTY> requests its allocation of federal Surface Transportation Block Grant (STBG) funds to finance the following transportation project(s) eligible under Oregon Constitution Article IX, Section 3a (the "Project"):

<DESCRIPTION OF GAS TAX ELIGIBLE ACTIVITIES/LOCATION>

<CITY/COUNTY> hereby exchanges \$<FEDERAL AMOUNT> in STBG funds for state funds at a ratio of 94 or 90 cents in state funds for each dollar of STBG funds exchanged. Accordingly, we request ODOT to disburse to <CITY/COUNTY> a total of \$<.94 or .90 x FEDERAL AMOUNT> in state funds that <CITY/COUNTY> will use to finance the Project. <CITY/COUNTY>'s Vendor Number is <VENDOR #>.

By signing below, I certify that I am authorized to sign on behalf of the <CITY/COUNTY> and that the <CITY/COUNTY> will use the state funds received in accordance with the limitations of Oregon Constitution Article IX, Section 3a.

Please contact <NAME> at <PHONE NUMBER>, <EMAIL> if you have any questions or concerns regarding this request.

Sincerely,

<SIGNATURE>

<NAME>
<TITLE>
<EMAIL>

Council Communication

Lincoln City Police Department - July 4th Recap

| | | | |
|-----------------|-----------------|------------------------|--------------------------|
| Meeting Date: | July 10, 2023 | Primary Staff Contact: | Daphnee Legarza |
| Department: | City Council | E-Mail: | DLegarza@lincolncity.org |
| Secondary Dept: | | Secondary Contacts: | Daphnee Legarza |
| Approval: | Daphnee Legarza | Estimated Time: | 10 minutes |

Chief Broderick will be presenting information and statistics for last week's 4th of July Fireworks event.

Council Communication

Bay Walk Construction Contract Award

| | | | |
|-----------------|-----------------|------------------------|-----------------------|
| Meeting Date: | July 10, 2023 | Primary Staff Contact: | Stephanie Reid |
| Department: | Public Works | E-Mail: | SReid@lincolncity.org |
| Secondary Dept: | | Secondary Contacts: | |
| Approval: | Daphnee Legarza | Estimated Time: | |

Question

Should the Council award the US 101: Lincoln City Bay Walk to Schooner Point Sidewalk project, to CG Contractors?

Staff Recommendation

Staff recommends the Council award the US 101: Lincoln City Bay Walk to Schooner Point Sidewalk project, to CG Contractors.

Background

Lincoln City Urban Renewal has worked with ODOT to design a connection of the remaining sidewalk gap from the Schooner Creek Bridge to the Bay Walk pullout, which was constructed in 2019. Funds were recently negotiated with ODOT to fund a portion of the remaining sidewalk section.

Project Description

This project includes installing 720 feet of sidewalk, associated storm drainage facilities, water quality facilities, roadway paving, and miscellaneous other work to connect the existing sidewalk sections.

Bids

The Public Works Department opened bids for the project on June 15, 2023. Three bids were received:

| Bidder | Bid Amount |
|--|--------------|
| RK Construction - WITHDRAWN 06-26-2023 | \$396,808.38 |
| CG Contractors | \$442,825.00 |
| K&E Excavation | \$885,116.00 |

The low bid was withdrawn on June 26, 2023. The lowest responsive and responsible bidder was CG Contractors in the amount of \$442,825.00

Project Budget and Costs

This project is funded by ODOT funds, up to \$540,000.00. An advance deposit of \$270,000 of city funds was made in February of 2023 to meet the Intergovernmental agreement. Funds for the project are to come from Street Capital, Sidewalk Construction (211-000-6340208), which was funded by deposits to 4301900 ODOT Grant/Reimbursement.

| Item | Estimated Cost to Complete FY23/24 and 24/25 |
|--|---|
| Bureau of Labor and Industries | \$442.83 |
| Construction Bid | \$442,825.00 |
| Art (1/2 of one percent of the construction bid) | \$2,214.13 |
| Construction Contingency | \$44,282.50 |
| Total | \$489,764.01 |

Recommendation

Staff recommends the construction contract be awarded to CG Contractors in the amount of \$442,825.00 with a construction contingency of \$44,282.50 (10 percent of bid amount) for a total of \$487,107.50.

Attachments:

Bid Tab

Attachments:

Bid Tab Results (2nd low) (PDF)

| US 101: Lincoln City Baywalk to Schooner Point, Phase II | | | | Engineer's Estimate | | RK Construction -WITHDRAWN | | CG Contractors | | K&E Excavating | | |
|--|-------|---|-------|---------------------|-------------|----------------------------|-------------|----------------|-------------|---------------------|-------------|---------------------|
| | ITEMS | QUANTITY | UNIT | UNIT PRICE | TOTAL | UNIT PRICE | TOTAL | UNIT PRICE | TOTAL | UNIT PRICE | TOTAL | |
| GENERAL BID ITEMS | | | | | | | | | | | | |
| 1 | 00210 | Mobilization | 1 | LS | \$35,000.00 | \$35,000.00 | \$25,000.00 | \$25,000.00 | \$35,000.00 | \$35,000.00 | \$88,000.00 | \$88,000.00 |
| 2 | 00220 | Pedestrian Management Plan | 1 | LS | \$5,000.00 | \$5,000.00 | \$8,000.00 | \$8,000.00 | \$6,000.00 | \$6,000.00 | \$19,000.00 | \$19,000.00 |
| 3 | 00225 | Temporary Work Zone Traffic Control | 1 | LS | \$50,000.00 | \$50,000.00 | \$17,200.00 | \$17,200.00 | \$10,000.00 | \$10,000.00 | \$40,000.00 | \$40,000.00 |
| 4 | 00280 | Erosion Control | 1 | LS | \$5,000.00 | \$5,000.00 | \$4,825.00 | \$4,825.00 | \$1,000.00 | \$1,000.00 | \$5,750.00 | \$5,750.00 |
| 5 | 00310 | Sawcut | 638 | LF | \$2.00 | \$1,276.00 | \$4.67 | \$2,979.46 | \$4.00 | \$2,552.00 | \$3.00 | \$1,914.00 |
| 6 | 00310 | Demolition - General | 1 | LS | \$10,000.00 | \$10,000.00 | \$7,860.00 | \$7,860.00 | \$3,000.00 | \$3,000.00 | \$3,500.00 | \$3,500.00 |
| 7 | 00320 | Clear & Grubbing | 1 | LS | \$10,000.00 | \$10,000.00 | \$5,200.00 | \$5,200.00 | \$2,000.00 | \$2,000.00 | \$1,500.00 | \$1,500.00 |
| 8 | 00330 | Earthwork Cuts | 1 | LS | \$3,900.00 | \$3,900.00 | \$6,350.00 | \$6,350.00 | \$1,000.00 | \$1,000.00 | \$10,000.00 | \$10,000.00 |
| 9 | 00445 | Storm Pipe, 12" PVC 3034, Class "B", 0-10 | 144 | FT | \$150.00 | \$21,600.00 | \$135.00 | \$19,440.00 | \$120.00 | \$17,280.00 | \$120.00 | \$17,280.00 |
| 10 | 00466 | Sidewalk Drain | 5 | EA | \$1,000.00 | \$5,000.00 | \$674.00 | \$3,370.00 | \$800.00 | \$4,000.00 | \$350.00 | \$1,750.00 |
| 11 | 00470 | Storm Manhole (48-Inch) | 1 | EA | \$5,000.00 | \$5,000.00 | \$12,575.00 | \$12,575.00 | \$6,800.00 | \$6,800.00 | \$8,900.00 | \$8,900.00 |
| 12 | 00470 | Catch Basin (CONTECH Filter) | 1 | EA | \$20,000.00 | \$20,000.00 | \$28,007.00 | \$28,007.00 | \$3,800.00 | \$3,800.00 | \$24,000.00 | \$24,000.00 |
| 13 | 00490 | Adjust Water Meter Finish Grade | 1 | EA | \$750.00 | \$750.00 | \$4,000.00 | \$4,000.00 | \$1,000.00 | \$1,000.00 | \$1,200.00 | \$1,200.00 |
| 14 | 00641 | Sidewalk Aggregate Base Rock | 62 | CY | \$200.00 | \$12,400.00 | \$162.51 | \$10,075.62 | \$31.00 | \$1,922.00 | \$185.00 | \$11,470.00 |
| 15 | 00744 | Level 3, 1/2" Dense ACP, 8" Depth | 60 | TON | \$250.00 | \$15,000.00 | \$494.98 | \$29,698.80 | \$260.00 | \$15,600.00 | \$230.00 | \$13,800.00 |
| 16 | 00759 | Standard Curb, 6" Reveal | 142 | LF | \$50.00 | \$7,100.00 | \$54.08 | \$7,679.36 | \$40.00 | \$5,680.00 | \$36.00 | \$5,112.00 |
| 17 | 00759 | Standard Curb, 7" Reveal | 573 | LF | \$70.00 | \$40,110.00 | \$64.77 | \$37,113.21 | \$42.00 | \$24,066.00 | \$40.00 | \$22,920.00 |
| 18 | 00759 | Concrete Sidewalk & Ramp (4" Thick) | 2,865 | SF | \$12.00 | \$34,380.00 | \$11.17 | \$32,002.05 | \$13.00 | \$37,245.00 | \$12.00 | \$34,380.00 |
| 19 | 00759 | Concrete Sidewalk (Taper Section Behind Curb, 3" Thick) | 573 | SF | \$12.00 | \$6,876.00 | \$10.37 | \$5,942.01 | \$16.00 | \$9,168.00 | \$11.00 | \$6,303.00 |
| 20 | 00759 | Concrete Sidewalk & Ramp (6" Thick) | 1,352 | SF | \$20.00 | \$27,040.00 | \$14.57 | \$19,698.64 | \$15.00 | \$20,280.00 | \$13.00 | \$17,576.00 |
| 21 | 00759 | Concrete Sidewalk & Ramp (8" Thick) | 1,146 | SF | \$25.00 | \$28,650.00 | \$15.88 | \$18,198.48 | \$17.00 | \$19,482.00 | \$16.00 | \$18,336.00 |
| 22 | 00905 | Relocate Sign | 1 | EA | \$500.00 | \$500.00 | \$750.00 | \$750.00 | \$1,000.00 | \$1,000.00 | \$300.00 | \$300.00 |
| 23 | 01050 | Aluminum Pedestrian Fence | 675 | LF | \$120.00 | \$81,000.00 | \$119.25 | \$80,493.75 | \$314.00 | \$211,950.00 | \$775.00 | \$523,125.00 |
| 25 | | Construction Staking | 1 | LS | \$10,000.00 | \$10,000.00 | \$10,350.00 | \$10,350.00 | \$3,000.00 | \$3,000.00 | \$9,000.00 | \$9,000.00 |
| | | TOTAL BID ITEMS | | | | \$435,582.00 | Withdrawn: | \$396,808.38 | | \$442,825.00 | | \$885,116.00 |