



## **Staff Report**

For City Council Meeting - 7/2/2025

### ***Subject - New Business - Authorization to Execute ODOT Cooperative Improvement Agreement***

**Synopsis:** Authorization to Execute ODOT Cooperative Improvement Agreement No. 73000-00035578 - Project Name: US101: Pacific Way (Gearhart) Improvement Project  
**Background:**

The Oregon Department of Transportation (ODOT) is undertaking a federally and state-funded infrastructure improvement project at the intersection of US101 and Pacific Way. The project includes:

- Replacement of the existing traffic signal
- Installation of a stormwater system
- Construction of new sidewalks along US101 and Pacific Way
- ADA curb ramp remediation on US101

ODOT will manage all aspects of design, permitting, construction, and funding. The project is listed in the 2024–2027 Statewide Transportation Improvement Program (STIP), Key #21555.

#### ***Council Options:***

- 1) Motion to authorize the City Administrator to execute the cooperative improvement agreement with ODOT;
- 2) Take other action desired by the Council.

**Recommendation:** Staff recommends that the City Council authorize the City Administrator to execute the cooperative improvement agreement with ODOT.

Suggested Motion:

"I move to authorize the City Administrator to execute ODOT Cooperative Improvement Agreement No. 73000-00035578 for the US101: Pacific Way (Gearhart) Project."

**Legal Analysis:** City of Gearhart responsibilities under the agreement include:

- Power Costs: 100% of ongoing power costs for the traffic signal and luminaires
- Maintenance: Sidewalk maintenance along Pacific Way (ODOT will maintain sidewalks on US101)
- ADA Compliance: Maintain pedestrian facilities on Pacific Way in compliance with the Americans with Disabilities Act (ADA)

- Notification: Notify ODOT before any work that impacts travel lanes on US101
- Indemnification: Ensure contractors meet insurance and indemnity requirements
- Right-of-Way Access: Provide ODOT access to city right-of-way for project work

**Financial Analysis:**

- No direct construction costs to the City
- Ongoing power and sidewalk maintenance obligations
- Projected useful life: 20 years

Respectfully Submitted,

A handwritten signature in blue ink, appearing to be 'Chad', written in a cursive style.

Chad

**COOPERATIVE IMPROVEMENT AGREEMENT**  
**US101: Pacific Way (Gearhart)**  
City of Gearhart

**THIS AGREEMENT** is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State;" and the CITY OF GEARHART, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. US101 (Oregon Coast Highway), is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Pacific Way is a part of the Agency's city street system under the jurisdiction and control of Agency.
2. By the authority granted in Oregon Revised Statutes (ORS) [190.110](#), [366.572](#) and [366.576](#), State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. State, by ORS [366.220](#), is vested with complete jurisdiction and control over the roadways of other jurisdictions taken for state highway purposes. By the authority granted by ORS 373.020, the jurisdiction extends from curb to curb, or, if there is no regular established curb, then control extends over such portion of the right of way as may be utilized by State for highway purposes. Responsibility for and jurisdiction over all other portions of a city street remains with the Agency.
4. By the authority granted in ORS [810.080](#) State has the authority to establish marked pedestrian crosswalks on its highway facilities.
5. By the authority granted in ORS [810.210](#), State is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where State deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than State, except with its written approval. Traffic signal work on this Project will conform to the current State standards and specifications.
6. This Agreement identifies the maintenance responsibilities for project elements constructed within Agency right of way as described in Terms of Agreement, Paragraph 2.



**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. This Agreement supersedes Agreement No. 5420 entered into on July 30, 1975, for the power and maintenance responsibilities associated with the traffic signal on US101 at Pacific Way.
2. Under such authority described in the Recitals of this Agreement, State and Agency agree to State delivering State's US101: Pacific Way (Gearhart) project, hereinafter referred to as "Project". The Project includes, but is not limited to, the design and replacement of the current signal on US101 at Pacific Way, installation of a stormwater system, construction of sidewalks along US101 and Pacific Way, and Americans with Disabilities Act (ADA) curb ramp remediation on US101. The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
3. The Project will be financed at an estimated cost of \$3,601,623.25 in federal and state funds. The estimate for the total Project cost is subject to change. State shall be responsible for Project costs beyond the estimate.
4. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance and power responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years. The Project shall be completed within five (5) calendar years following the date of final execution of this Agreement by both Parties.

#### **AGENCY OBLIGATIONS**

1. Agency shall be responsible for 100 percent of power costs associated with the traffic signal and associated luminaires installed as a part of this Project. Agency shall require the power company to send invoices directly to Agency.
2. Agency shall be responsible for the maintenance of sidewalk constructed as part of the Project along Pacific Way.
3. Agency shall contact State's District 1 Permits Office seven (7) working days prior to commencement of maintenance activities that impact travel lanes of a State highway. No lane restrictions, including the bicycle lane, are permitted unless prior approval from State's District 1 Manager, or designee, is provided as follows:
  - a. No lane restrictions including reduction of travel or bicycle lanes between the hours of 6:00 AM to 9:00 AM and 4:00 PM to 7:00 PM Monday through Friday. No closures on state recognized holidays.

- b. Any deviations from lane restrictions must be requested and approved by State's District 1 Manager. More restrictions to work times may be added if State observes traffic congestion or conditions warrant a change.
5. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS [656.017](#) and provide the required Workers' Compensation coverage unless such employers are exempt under ORS [656.126](#). Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.
6. Agency shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
7. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
8. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents 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 Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.
9. Any such indemnification shall also provide that neither the Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon 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 of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it



is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.

10. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) and ORS 105.760 to any and all changes of grade within the Agency limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the Project covered by the Agreement.
11. Agency or its consultant shall acquire all necessary rights of way according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual. Certification of right of way acquisition work must be made by the Agency (or on behalf of its consultant) doing the work. If Agency acquires the right of way, it shall provide a letter from Agency's legal counsel certifying that 1) the right of way needed for the Project has been obtained and 2) right of way acquisition has been completed in accordance with the right of way requirements contained in this Agreement. The certification form shall be routed through the State Region 2 Right of Way Office for co-signature and possible audit. If Agency elects to have State perform right of way functions, a separate agreement shall be executed between Agency and State right of way, referencing this Agreement number.
12. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
13. Agency's Project Manager for this Project is Chad Sweet, City Administrator, City of Gearhart, 698 Pacific Way, Gearhart, Oregon 97138; telephone: (503) 738-5501; email: [chadsweet@cityofgearhart.com](mailto:chadsweet@cityofgearhart.com), or assigned designee upon individual's absence. Agency shall notify State in writing of any contact information changes during the term of this Agreement.

## STATE OBLIGATIONS

1. State, or its consultant, shall conduct the necessary field surveys, environmental studies, traffic investigations, preliminary engineering and design work required to produce and provide final plans, specifications and cost estimates for the highway Project; identify and obtain all required permits; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid and contract documents; advertise for construction bid proposals; award all contracts; pay all contractor costs, provide technical inspection, project management services and other necessary functions for sole administration of the construction contract entered into for this Project.
2. State shall be responsible for the maintenance of US 101, as well as sidewalks constructed as part of the Project along US101.

3. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
4. State shall, upon signal turn on and proper operation, perform all necessary maintenance of said traffic signals, control the timing established for operation of the traffic signals, and perform and pay for maintenance costs for the traffic signals.
5. State shall be responsible for all costs associated with construction and installation of the Project.
6. State shall be responsible for signal turn-on and signal timing.
7. State grants authority to Agency to enter upon State right of way for the maintenance of this Project as provided in this Agreement.
8. State shall cause to be relocated or reconstructed, all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements for the portions of the Project which are on Agency right of way.
9. State's Project Manager for this Project is Jim Doll, Transportation Project Manager, ODOT, Region 2, 3700 SW Philomath Boulevard, Corvallis, Oregon 97333; telephone: (541) 286-8358; email: [james.p.doll@odot.oregon.gov](mailto:james.p.doll@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.
10. State's District office contact for this Project is Mark Buffington, District 1 Manager, 350 W Marine Drive Astoria, Oregon 97103; telephone: (503) 325-7222; email: [mark.w.buffington@odot.oregon.gov](mailto:mark.w.buffington@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.

## **GENERAL PROVISIONS**

### **1. Americans with Disabilities Act Compliance:**

- a. When the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, the Parties shall:
  - i. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (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 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.
2. This Agreement may be terminated by mutual written consent of both Parties.
3. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:



- a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. 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.
  - c. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
6. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have

been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

7. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
8. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
9. If Agency fails to maintain facilities in accordance with the terms of this Agreement, State, at its option, may maintain the facility and bill Agency, seek an injunction to enforce the duties and obligations of this Agreement or take any other action allowed by law.
10. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
11. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.
12. Electronic Signatures. The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the Agreement and amendments, submitted or exchanged via email are "Electronic Signatures" under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. State



City of Gearhart/ODOT  
Agreement No. 73000-00035578

reserves the right at any time to require the submission of the hard copy originals of any documents.

**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 2024-2027 Statewide Transportation Improvement Program (STIP), (Key # 21555) that was adopted by the Oregon Transportation Commission on July 13, 2023 (or subsequently by amendment to the STIP).

Signature Page Follows

**CITY OF GEARHART**, by and through its  
designated officials

By \_\_\_\_\_  
Title: \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_  
Title: \_\_\_\_\_

Date \_\_\_\_\_

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

By \_\_\_\_\_  
Agency Counsel

Date \_\_\_\_\_

**Agency Contact:**

Chad Sweet, City Administrator  
698 Pacific Way  
Gearhart, Oregon 97138  
(503) 738-5501  
[chadsweet@cityofgearhart.com](mailto:chadsweet@cityofgearhart.com)

**State Contact:**

Jim Doll, Transportation Project Manager  
ODOT, Region 2  
3700 SW Philomath Boulevard  
Corvallis, Oregon 97333  
(541) 286-8358  
[james.p.doll@odot.oregon.gov](mailto:james.p.doll@odot.oregon.gov)

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

By \_\_\_\_\_  
Region 2 Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
State Traffic Engineer

Date \_\_\_\_\_

By \_\_\_\_\_  
District 1 Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By Serena Hewitt, via email  
Assistant Attorney General

Date 04/01/2025 email retained in file



**EXHIBIT A – Project Location Map**

**US101: Pacific Way (Gearhart)**

