

COOPERATIVE IMPROVEMENT AGREEMENT

**Surf View Village Apartments
US101 Mile Post 137.1 – 137.3**

Lincoln County Transit, City of Newport, Commonwealth Development Corporation

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State" or "ODOT," the Lincoln County Transit, acting by and through the Lincoln County Board of Commissioners, hereinafter referred to as "Transit," the City of Newport, acting by and through its elected officials, hereinafter referred to as "Agency," and Commonwealth Development Corporation of America, a Wisconsin Corporation, acting by and through its designated officials, hereinafter referred to as "Developer," all herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. US 101, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). 60th Street is part of the 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.
4. Developer applied to Agency for building permit for residential development. Agency conditioned issuance of occupancy permits upon construction of transportation improvements on US 101, and NE 60th Street including a right turn lane for northbound US 101 to turn onto NE 60th Street, a bus stop pull out and shelter and a multiuse path and illumination on US 101, and sidewalk and curb ramps, on both public street frontages.
5. Developer applied for an approach permit to serve TL 1401 to be used for emergency access to US 101 in Newport, (application number 92529). On April 23, 2019, State approved an approach permit for a new approach upon the condition that Developer installs a gate across the approach to restrict its use to emergency use only. The Parties agree that the approach will also serve TL 1400 and 1403 to the north.

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6. All control of access to public highways shall be in compliance with the rules and regulations applicable to access control in ORS 374 et seq., and Oregon Administrative Rule (OAR) 734, Division 51.
7. This Cooperative Improvement Agreement is intended to implement the City and State requirements for transportation mitigation.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, the Parties agree Developer will construct improvements on US 101 from mile post 137.1 to 137.3, hereinafter referred to as "Project." This Project includes construction of a right turn lane for north bound US 101 at NE 60th Street, frontage improvements along US 101 to include a bus pullout, bus stop shelter, curb ramps, a multi-use path, illumination for the multi-use path, and construction of sidewalks and curb ramps on 60th Street. In addition, Developer shall install a gate across the approach road at MP 137.13 restricting access for emergency use only. The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. The Project will be financed at an estimated cost of \$101,790 in Developer funds. The estimate for the total Project cost is subject to change. Developer shall be responsible for all Project costs beyond the estimate.
3. Upon approval of the completed Project, Agency shall issue an occupancy permit to Developer and ODOT shall issue a Permit to Operate an Approach at MP 137.13 on US 101 restricted for emergency use only.
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 two (2) calendar years following the date of final execution of this Agreement by both Parties.

AGENCY OBLIGATIONS

1. In consideration of the improvements along US101 from MP 137.1 to MP 137.3 provided for under this Agreement, Agency agrees upon completion of Project, to maintain all sidewalks and curb ramps within the Project area.

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2. Agency shall not issue an occupancy permit for any dwelling construction upon TL 1401 until it receives written confirmation from State that Project is complete and approved.
3. **Americans with Disabilities Act Compliance:**
 - a. Agency shall ensure that all sidewalks and curb ramps within the Project area are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
 - i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Any repairs or removal of obstructions needed to maintain Project features in compliance with the ADA requirements that were in effect at the time of Project construction are completed by Agency or abutting property owner pursuant to applicable local code provisions,
 - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
 - b. Maintenance obligations in this section shall survive termination of this Agreement.
4. Agency shall perform the maintenance responsibilities, with its own forces and at its own expense, for the multi-use path, sidewalks, and illumination installed as part of this Project.
5. Agency shall be responsible for 100 percent power costs associated with the luminaires installed as a part of this Project. Agency shall require the power company to send invoices directly to Agency.
6. Agency shall perform bus shelter maintenance and repairs beyond what is described in Transit Obligations, Paragraph 1, with its own forces and at its own expense.
7. Agency shall be responsible for the maintenance of the storm water management facilities constructed under the bus pad.

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8. Agency shall contact State's District 4 Permits Office seven (7) working days prior to the commencement of maintenance activities that impact travel lanes of US 101. No lane restrictions are permitted unless prior approval from State's District 4 Manager, or designee, is provided and as follows:
 - a. No lane restrictions including reduction of travel lanes between the hours of 6:00 A.M. to 7:00 P.M Monday through Thursday. No weekend closures including Friday's and state recognized holidays.
 - b. Any deviation from lane restrictions must be requested and approved by State's District 4 Manager. More restriction to work times may be added if State observes traffic congestion or conditions warrant a change.
9. 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.
10. 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.
11. 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 completion of Project. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
12. Agency grants Developer the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
13. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
14. Agency's Project Manager for this Project is Derrick Tokos, Community Development Director, City of Newport, 169 SW Coast Highway, Newport, Oregon 97365; telephone: (541) 574-0626; email: d.tokos@newportoregon.gov, or assigned

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designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

TRANSIT OBLIGATIONS

1. Transit shall be responsible for the maintenance of the bus shelter including all appurtenances. Maintenance includes, but is not limited to, cleaning of the bus shelter, trash removal, bus-stop sign maintenance, and upkeep of schedule holders.
2. Transit shall contact State's District 4 Permits Office seven (7) working days prior to the commencement of maintenance activities that impact travel lanes of US 101. No lane restrictions are permitted unless prior approval from State's District 4 Manager, or designee, is provided and as follows:
 - a. No lane restrictions including reduction of travel lanes between the hours of 6:00 A.M. to 7:00 P.M Monday through Thursday. No weekend closures including Friday's and state recognized holidays;
 - b. Any deviation from lane restrictions must be requested and approved by State's District 4 Manager. More restriction to work times may be added if State observes traffic congestion or conditions warrant a change.
3. Transit certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Transit, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Transit.
4. Transit's Project Manager for this Project is Cynda Bruce, Director of Transit, Lincoln County Transit, 410 NE Harney Street, Newport, Oregon 97365; telephone: (541) 574-1292; email: cbruce@co.lincoln.or.us, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

DEVELOPER OBLIGATIONS

1. Developer 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 (*other than inspections provided by State under State Obligations*), project management services and other necessary functions for sole administration of the construction contract entered into for this Project.

2. Americans with Disabilities Act Compliance:

a. Developer 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, modification, upgrade, or construction of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
 - iii. At Project completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed, modified, upgraded, or improved as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/HwyConstForm s1.aspx>; and
 - iv. Developer shall promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by State and prior to release of any Developer contractor.
3. Developer 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. Developer shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations at least ten (10) days prior to the start of construction.
4. Developer shall design and construct the Project in conformance with the current edition of the *ODOT Highway Design Manual* and the *Oregon Standard Specifications for Construction Manual*. Developer understands the Project shall be

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designed and constructed to State standards and approved by State prior to advertisement for bid, or construction of Project by Developer.

5. Developer shall not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without first obtaining written consent of the State which State may not unreasonably withhold. State's consent to any delegation of duties does not relieve Developer of any of its duties or obligations under the Agreement. This Agreement is binding upon and inures to the benefit of each of the Parties, and, except as otherwise provided their permitted successors and assigns and runs with the property that is the subject of the development approval.
6. Developer shall perform maintenance responsibilities for the pedestrian concrete walkway from the pedestrian path to Developer's property line, with its own forces and at its own expense.
7. Developer will be required to obtain the services of a registered professional engineer to oversee, accept, and document all construction procedures and certify proper construction was performed pursuant to the Project plan and permit. The registered professional engineer will be required to stamp the "As Constructed Plans" and ensure the Project meets State's required standard. Construction inspection for this Project will be completed by a private company with state-certified inspectors paid for by Developer.
8. Developer shall, prior to its advertisement for construction bid proposals, provide the Project preliminary and final plans and specifications to State's District 4 Office for review and, if approved, written concurrence. The plans and specifications must be reviewed, and if acceptable, approved by Office of the State Traffic Engineer.
9. All employers, including Developer, 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. Developer shall ensure that each of its subcontractors complies with these requirements.
10. Developer 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.
11. Developer 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 Developer 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 or

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completion of Project. Copies of applicable records shall be made available upon request.

12. Developer shall indemnify, defend, save, and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation, its officers and employees from any and all claims, suits, and liabilities which may occur in the performance of this Project.
13. Notwithstanding the foregoing defense obligations under the paragraph above, neither Developer nor any attorney engaged by Developer 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 Developer is prohibited from defending the State of Oregon, or that Developer 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 any claims it may have against Developer if the State of Oregon elects to assume its own defense.
14. Developer shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279A, 279B and 279C incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Developer 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.
15. Developer is required to pay, on behalf of State, any applicable fee due because of this Project, pursuant to ORS 279C.825, to the Bureau of Labor and Industries. In the event Developer does not pay such fee, and State is required to do so, Developer shall reimburse State such amount, within three (3) business days, upon its request. In addition, Developer agrees to indemnify, hold harmless and reimburse State and its officers, employees and agents for any liability, cost, expense, fine, fee or penalty payable to a private party or governmental entity, including another agency of the State of Oregon resulting from or arising out of this Project, including but not limited to expenses incurred to comply with, to obtain a determination under, or in any other way related to the Prevailing Wage Rate Laws set forth in ORS 279C.800 to 279C.870.

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16. Developer shall construct the Project in accordance with the requirements of ORS 276.071 including the public contracting laws within ORS Chapters 279A, 279B and 279C.
17. If Developer chooses to assign its contracting responsibilities to a contractor, Developer shall inform the contractor of the requirements of ORS 276.071 to ensure that the public contracting laws within ORS 279A, 279B, and 279C are followed.
18. If Developer enters into a construction contract for performance of work on the Project, then Developer will require its contractor to provide the following, and in the event Developer provides construction activities for the Project itself, the Developer is required to provide the following as well:
 - a. Contractor shall indemnify, defend and hold harmless Agency, and State against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, sub-contractors, or agents under the resulting contract.
 - b. Contractor shall name State and Agency as third party beneficiaries of the resulting contract.
 - c. **Commercial General Liability.** Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the Contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State and Agency. This insurance shall include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage shall be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence shall not be less than \$1,000,000 for each job site or location. Each annual aggregate limit shall not be less than \$2,000,000.
 - d. **Automobile Liability.** Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence shall not be less than \$1,000,000.
 - e. **Additional Insured.** The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the Contract shall include State and Agency and its divisions, officers and employees as "Additional Insured" but only with respect to the Contractor's activities to be performed under the

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resulting contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

- f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to State and Developer. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of contract and shall be grounds for immediate termination of the resulting contract and this Agreement.
19. Pursuant to the statutory requirements of ORS 279C.380 Developer shall require their contractor to submit a performance bond to Developer for an amount equal to or greater than the estimated cost of the Project.
 20. Developer shall, within ninety (90) calendar days of completion or termination without completion of the Project, provide to State permanent mylar "as constructed" plans for work on state highways. If Developer or its consultant redrafts the plans, done in Computer Aided Design and Drafting (CADD) or Microstation, to get the "as constructed" set, and they follow the most current version of the "Contract Plans Development Guide, Volume 1 Chapter 16" <http://egov.oregon.gov/ODOT/HWY/ENGSERVICES/cpdg.shtml>, Developer shall provide to State a Portable Document Format (PDF) file and a paper copy of the plan set.
 21. Developer shall, pursuant to OAR Chapter 734, Division 10, ensure that its contractor has been prequalified and registered with the Construction Contractor's Board, to function as the general contractor for the performance of this work. All obligations of the Developer stated in this Agreement shall remain the responsibility of the Developer regardless of whether or not a contractor performs the work. It is the Developer's responsibility to inform any such contractor of its obligations.
 22. This Agreement is entered into with the intent that upon completion of Project State will issue Developer a "Permit to Operate, Maintain and Use A State Highway Approach" at MP 137.13 from State's District 4 office and that State will review land use permits, building permits, and engineering design. Developer agrees to comply with all provisions of said permits, and shall require its contractors, subcontractors, or consultants performing such work to comply with said permits and provisions.
 23. Developer or its contractor shall follow the Oregon Locate Laws (ORS 757 and OAR 952).
 24. Developer, or its contractor's electrical inspectors shall possess a current State Certified Traffic Signal Inspector certificate, in order to inspect electrical installations on State highways. The State District 4 Permitting Office shall verify compliance with this requirement prior to construction. Said inspectors must coordinate their traffic

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inspections with State District 4 Office and Electrical inspectors during the course of the Project.

25. Developer is responsible for and ensures that all survey monuments recorded with a county and within or adjacent to the highway right of way shall be preserved in accordance with ORS 209.140 and 209.150. Any such monumentation that is damaged or removed during the course of the Project must be replaced in compliance with ORS Chapter 209 stipulations, the State Right of Way Monumentation Policy, and at Developer's own expense. Developer is also responsible, at its own expense, for replacement of any additional State survey marks or other monumentation not recorded with a county that are damaged or removed during the course of the Project. In the event of such replacement, Developer shall contact State's Geometronics Unit for replacement procedures.
26. If additional right of way is acquired for State highway right of way purposes as a result of the Project, then a right of way monumentation survey is required as defined in ORS 209.150 and 209.155. Developer agrees to provide such a survey, at its own expense, following ORS Chapter 209 stipulations, State Right of Way Monumentation Policy, and State's Geometronics Unit review and approval, and to file the legal survey with the appropriate county Surveyor's office as required.
27. Developer certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Developer, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Developer.
28. Developer shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279A, 279B and 279C incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Developer 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.
29. Developer is required to pay, on behalf of State, any applicable fee due because of this Project, pursuant to ORS 279C.825, to the Bureau of Labor and Industries. In the event Developer does not pay such fee, and State is required to do so, Developer shall reimburse State such amount, within three (3) business days, upon its request. In addition, Developer agrees to indemnify, hold harmless and reimburse State and its officers, employees and agents for any liability, cost, expense, fine, fee or penalty payable to a private party or governmental entity, including another agency of the State of Oregon resulting from or arising out of this Project, including but not limited to expenses incurred to comply with, to obtain a

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determination under, or in any other way related to the Prevailing Wage Rate Laws set forth in ORS 279C.800 to 279C.870.

30. For all work being performed on State facilities, Developer shall cause the Project to be designed and constructed in accordance with State standards and shall, upon completion of the Project, release ownership of all traffic signal equipment to State.
31. Developer certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Developer, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Developer.
32. Developer's Project Manager for this Project is Kristi Morgan, Principal, Commonwealth Development Corporation of America, 7447 University Avenue, Suite 210, Middleton, Wisconsin, 53562; telephone: (608) 824-2292; email: k.morgan@commonwealthco.net, or assigned designee upon individual's absence. Developer shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State shall review, and if acceptable, approve Project plans prior to construction of Project by Developer or its contractor in a timely manner. State approval is necessary for Project to proceed. State shall not withhold approval unnecessarily or arbitrarily.
2. Upon approval of said Project plans, State shall issue Developer a construction permit to construct public improvements upon State right of way.
3. State shall inspect Project curb ramps in a timely manner.
4. State grants authority to Developer to enter upon State right of way for the construction of this Project as provided for in State's "Permit to Construct a State Highway Approach" to be issued by State's District 4 Office.
5. Upon completion of the Project and acceptance of the Project by State, State shall
 - a. Issue a "Permit to Operate, Maintain And Use A State Highway Approach" at MP 137.13 to Developer,
 - b. Accept jurisdiction and control of the state highway facilities as constructed as part of the Project, and
 - c. Provide written notification to Agency that Project is complete and approved. .
6. State's Project Manager for this Project is Duane J. Liner, Area 4 Development Review Coordinator, 3700 SW Philomath Boulevard, Corvallis, Oregon 97333;

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telephone: (541) 757-4140; email: duane.i.liner@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of all Parties.
2. State may terminate this Agreement effective upon delivery of written notice to each Party, 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 Developer 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 Developer fails to provide payment of its share of the cost of the Project.
 - d. 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.
 - e. 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.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. 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 Parties in writing of the Third Party Claim and deliver to the other Parties 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

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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.

5. With respect to a Third Party Claim for which State is jointly liable with either Party (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 the other Party in such proportion as is appropriate to reflect the relative fault of State on the one hand and of the other Party 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 the other Party 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.
6. 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.
7. 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.
8. If any Party fails to maintain facilities in accordance with the terms of this Agreement, State, at its option, may maintain the facility and bill the responsible Party, seek an injunction to enforce the duties and obligations of this Agreement or take any other action allowed by law.
9. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties,

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notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

10. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

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

Signature Page Follows

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Commonwealth Development Corporation of America/ODOT
Agreement No. 33373

LINCOLN COUNTY TRANSIT, by and
through the Lincoln County Board of
Commissioners

By Cynda Bruce
Title: Director of Lincoln County Transit

By n/a
Title:

By n/a
Title:

Date July 21, 2019

CITY OF NEWPORT, by and through its
designated officials

By See next page
Title:

Date _____

By _____
Title:

Date _____

**COMMONWEALTH DEVELOPMENT
CORPORATION OF AMERICA**, by and
through its designated officials

By _____
Title:

Date _____

By _____
Title:

Date _____

Contact Information:

See next page

STATE OF OREGON, by and through
its Department of Transportation

By _____
Region 2 Manager

Date _____

APPROVAL RECOMMENDED

By _____
State Traffic Roadway Engineer

Date _____

By _____
Region 2 Planning and Development
Review Manager

Date _____

By _____
District 4 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

Approved as to Form Only
M. Gerard Herbage
M. Gerard Herbage
Assistant Lincoln County Counsel

Lincoln County Transit/City of Newport/
Commonwealth Development Corporation of America/ODOT
Agreement No. 33373

LINCOLN COUNTY TRANSIT, by and through the Lincoln County Board of Commissioners

By _____
Title: _____

By _____
Title: _____

By _____
Title: _____

Date _____

CITY OF NEWPORT, by and through its designated officials

By Donald J. Mayon
Title: MAYOR

Date 6-5-2019

By N/A
Title: _____

Date _____

COMMONWEALTH DEVELOPMENT CORPORATION OF AMERICA, by and through its designated officials

By see next page
Title: _____

Date _____

By _____
Title: _____

Date _____

STATE OF OREGON, by and through its Department of Transportation

By _____
Region 2 Manager

Date _____

APPROVAL RECOMMENDED

By _____
State Traffic Roadway Engineer

Date _____

By _____
Region 2 Planning and Development Review Manager

Date _____

By _____
District 4 Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

Contact Information:

See next page

Lincoln County Transit/City of Newport/
Commonwealth Development Corporation of America/ODOT
Agreement No. 33373

LINCOLN COUNTY TRANSIT, by and
through the Lincoln County Board of
Commissioners

By _____
Title: _____

By _____
Title: _____

By _____
Title: _____

Date _____

CITY OF NEWPORT, by and through its
designated officials

By _____
Title: _____

Date _____

By _____
Title: _____

Date _____

COMMONWEALTH DEVELOPMENT
CORPORATION OF AMERICA, by and
through its designated officials

By _____
Title: Kristi Morgan - President

Date 5/30/19

By NA
Title: _____

Date _____

Contact Information:

See next page

STATE OF OREGON, by and through
its Department of Transportation

By Jonny P.A. Chackering
Region 2 Manager

Date 6-30-19

APPROVAL RECOMMENDED

By _____
State Traffic Roadway Engineer

Date 6-27-19

By Terry P. Cole
Region 2 Planning and Development
Review Manager

Date 6-27-19

By _____
District 4 Manager

Date 6/25/19

APPROVED AS TO LEGAL
SUFFICIENCY

By Bonnie Heitsch via email
Assistant Attorney General

Date 05/23/19

Lincoln County Transit/City of Newport/
Commonwealth Development Corporation of America/ODOT
Agreement No. 33373

CONTACTS:

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Lincoln County Transit
410 NE Harney Street
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Email: cbruce@co.lincoln.or.us

Developer Contact:

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Commonwealth Development Corporation
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State Contact:

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Development Review Coordinator
ODOT, Area 4
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Corvallis, OR 97333
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Email: duane.j.liner@odot.state.or.us

Exhibit A, continued

