

**RESOLUTION 2011-28**

**A RESOLUTION ENTERING INTO AN AGREEMENT WITH THE OREGON DEPARTMENT OF TRANSPORTATION EXTENDING AGREEMENT 27111 UNTIL DECEMBER 31, 2012, AND AUTHORIZING THE MAYOR TO SIGN THE AGREEMENT**

**WHEREAS**, the City of Garibaldi has been awarded \$100,000 from the Oregon Department of Transportation for the purpose of installing sidewalks and a bicycle lane along Hwy 101 (Garibaldi Ave.) from 12<sup>th</sup> Street to 10<sup>th</sup> Street; and

**WHEREAS**, the City of Garibaldi attempted construct the project in August 2011, experienced an inadequate response to its request for bids, and subsequently rejected all bids based on the low number of bids received and costs that exceeded budgeted numbers; and

**WHEREAS**, The Oregon Department of Transportation has agreed to extend the original agreement to allow the City to re-advertise for construction bids and construct the project during the spring of 2012; and

**WHEREAS**, City staff have reviewed the agreement proposed by the Oregon Department of Transportation to have the City of Garibaldi accept and expend these funds as originally proposed with an extended time frame; NOW, THEREFORE

**THE COMMON COUNCIL OF THE CITY OF GARIBALDI RESOLVES AS FOLLOWS:**

**Section 1.** The Mayor is hereby authorized to sign the State of Oregon Department of Transportation Grant Agreement identified as Grant No. 27111-01, which is attached as Exhibit A and incorporated by reference into this resolution, on behalf of the City of Garibaldi.

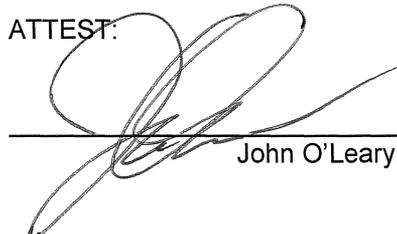
**Section 2.** The Council directs the City Manager of the City of Garibaldi to be the City's representative to the Oregon Department of Transportation for the purpose of administering this agreement.

**Section 3.** This resolution is effective on the date of adoption.

**PASSED BY THE COMMON COUNCIL AND APPROVED BY THE MAYOR**, this 21<sup>st</sup> day of November, 2011.

  
\_\_\_\_\_  
Hon. Suzanne McCarthy, Mayor

ATTEST:

  
\_\_\_\_\_  
John O'Leary, City Manager

**AMENDMENT NUMBER 01  
WALKWAY/BIKEWAY PROJECT AGREEMENT  
Pedestrian Walkway and Bicycle Project (MP 55.24-55.40)  
City of Garibaldi**

The **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "State," and the **City of Garibaldi**, acting by and through its elected officials, hereinafter referred to as "Agency," entered into an Agreement on July 17, 2011. Said Agreement covers the design and construction of sidewalk improvements and bike lanes along US 101 from 10<sup>th</sup> Street to the Coast Guard housing complex.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to extend the termination date and update language. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

**TERMS OF AGREEMENT, Paragraph 3, Page 2, which reads:**

3. The work is to begin upon execution of this Agreement by all Parties and shall be completed no later than June 30, 2011. This Agreement will terminate six (6) months after that date unless extended by a fully executed amendment. Maintenance responsibilities shall survive any termination of this Agreement.

**Shall be deleted in its entirety and replaced with the following:**

3. The work is to begin upon execution of this Agreement by all Parties and shall be completed no later than December 31, 2012. This Agreement will terminate six (6) months after that date unless extended by a fully executed amendment. Maintenance responsibilities shall survive any termination of this Agreement.

**AGENCY OBLIGATIONS, Paragraph 11, Page 4, which reads:**

11. 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. Agency shall ensure that each of its subcontractors complies with these requirements.

**Shall be deleted in its entirety and replaced with the following:**

11. 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.

**Insert new AGENCY OBLIGATIONS, Paragraphs 12 and 13, to read as follows:**

12. 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.
13. 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.

**AGENCY OBLIGATIONS, Paragraphs 12 through 15, shall be hereinafter re-numbered as Paragraphs 14 through 17.**

**GENERAL PROVISIONS, Paragraphs 5 and 6, Pages 6 and 7, which read:**

5. The Parties shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save and hold harmless the other Party, its commission, board or other governing body, and its members, officers, Commissioners and employees from any and all claims, suits and liabilities, which occur in the indemnifying Party's respective performance of this Project. Neither Party shall be liable for the negligence of the other Party. County's total liability shall not exceed the tort claims limits provided in Oregon Tort Claims Act, ORS 30.260 to 30.300, for 'local public bodies.
6. Notwithstanding the foregoing defense obligations under the paragraph above, neither Party nor any attorney engaged by either Party shall defend any claim in the name of the other Party or any agency/department/division of such other Party, nor purport to act as legal representative of the other Party or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of such other Party. Each Party may, at anytime at its election assume its own defense and settlement in the event that it determines that the other Party is prohibited from defending it, or that other Party is not adequately defending it's

interests, or that an important governmental principle is at issue or that it is in the best interests of the Party to do so. Each Party reserves all rights to pursue any claims it may have against the other if it elects to assume its own defense.

**Shall be deleted in their entirety and replaced with the following:**

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.

**GENERAL PROVISIONS, Paragraph 7, shall be hereinafter re-numbered as Paragraph 9.**

This Amendment 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 Amendment so executed shall constitute an original.

**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.

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

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_

Agency Legal Counsel

Date \_\_\_\_\_

**Agency Contact:**

John O'Leary  
City Administrator, City of Garibaldi  
PO Box 708  
Garibaldi, Oregon 97118  
(503) 322-3327  
Email: john@ci.garibaldi.or.us

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

By \_\_\_\_\_

Active Transportation Section Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_

Bicycle/Pedestrian Program Manager

Date \_\_\_\_\_

By \_\_\_\_\_

Region 2 Manager

Date \_\_\_\_\_

By \_\_\_\_\_

District 1 Manager

Date \_\_\_\_\_

**State Contact:**

Craig Dean  
ODOT District 1 Permit Specialist  
350 West Marine Drive  
Astoria, Oregon  
(503) 325-7222  
Craig.A.DEAN@odot.state.or.us