

LOCAL AGENCY AGREEMENT
Pedestrian and Bicycle Program Project Agreement
US 101 Mile Posts 167.47 to 164.67
Yachats Oregon Coast Trail Safety Improvements
City of Yachats

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;" and the CITY OF YACHATS, acting by and through its designated officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. State has determined that Agency is eligible for state funds for the work to be performed under this Agreement through the Pedestrian and Bicycle Program. The Parties enter into this Agreement to identify the Project that will be funded with the state funds, and describe the method State will use to reimburse Agency for work performed on the Project using the state funds, including establishing invoicing requirements and the reimbursement rate.
2. By the authority granted in Oregon Revised Statute (ORS) [366.514](#), funds received from the State Highway Trust Fund are to be expended by the State and the various counties and cities for the establishment of footpaths and bicycle trails. For purposes of Article IX, Section 3(a), of the Oregon Constitution, the establishment and maintenance of such footpaths and bicycle trails are for highway, road, and street purposes when constructed within public right-of-way.
3. By the authority granted in ORS [190.110](#), [366.572](#) and [366.576](#), state agencies may enter into cooperative agreements with counties, cities, and units of local government for the performance of any or all functions and activities that a party to the Agreement, its officers, or agents have the authority to perform.
4. State established a Pedestrian and Bicycle Program fund in the Statewide Transportation Improvement Program (STIP) to meet the minimum requirement of one (1) percent of State Highway Funds to be spent on Pedestrian and Bicycle facilities. The 2021-2024 STIP program's \$22.2 million for the Pedestrian and Bicycle Program allocated to the Sidewalk Improvement Program (SWIP).
5. US 101 is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). The Oregon Coast Trail and Oregon Coast Bike Route operate a popular biking and walking trail system, "Trail," along the US 101 shoulder area.

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. State and Agency agree to Agency delivering the Yachats Oregon Coast Trail (OCT) Safety Improvement project, hereinafter referred to as "Project." The Project includes the installation of channelization posts (tubular markers) to create separation from motor vehicles along the shoulder which serves as the OCT route through this area. The Project location and approximate limits are shown on the map marked "Exhibit A," attached hereto and by this reference made a part hereof.
2. The total Project cost for the work to be performed under this Agreement is estimated at \$15,000, which is subject to change. State shall fund the Project in an amount not to exceed \$15,000. Agency shall be responsible for any portion of the Project cost which is not covered by State funds.
3. State shall reimburse Agency actual costs incurred in carrying out the Project, up to the maximum amount of state funds committed for the Project.
4. Agency is solely responsible for any and all costs incurred in excess of the state funds identified in this Agreement. Any unspent state funds will be retained by State and will not be available for Agency use. State funds transferred to Agency must be used for the Project.
5. To be eligible for reimbursement, expenditures must comply with the requirements of Article IX, Section 3a of the Oregon Constitution. Eligible costs are defined as reasonable and necessary costs incurred by the Agency in performance of the Project.
6. The term of this Agreement will begin upon the date all required signatures are obtained. Work shall be completed no later than 10/31/2023. 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

1. Agency shall perform the work described in Terms of Agreement, paragraph 1 of this Agreement.
2. Agency shall, upon execution of this Agreement, forward to State a letter of request for an advance deposit or irrevocable letter of credit in the amount of \$7,500, which is fifty (50) percent of the costs related to the installation of the tubular markers for the Project.

3. Upon completion of Project, Agency shall either send to State a bill for the amount which, when added to State's advance deposit, will equal 100 percent of the total Agency costs for Project or Agency will refund to State any portion of said advance deposit which is in excess of the total Agency costs for Project.
4. Agency shall, at its own expense, maintain the Project improvements upon completion of Project. Maintenance responsibilities shall survive termination of this Agreement.
5. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates in accordance with current state and federal laws and regulations; obtain all required permits; be responsible for all utility relocations; advertise for bid proposals; award all contracts; perform all construction engineering; and make all contractor payments required to complete the Project.
6. Agency shall submit a copy of the plans and specifications to State through District 4 Office for review and concurrence prior to advertising for a construction contract or prior to construction, if Agency forces will perform the construction work. Concurrence must be received from State prior to proceeding with the Project.
7. Agency shall not award a construction contract until State's District representative has reviewed and approved the low bidder's proposal and costs.
8. **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>; and

- iv. 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 Agency and prior to release of any Agency contractor.
- b. Agency 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. Agency 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.
 - c. 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.

- d. Maintenance obligations in this section shall survive termination of this Agreement.
9. Agency shall contact ODOT District 4 Office seven (7) days prior to the commencement of construction and, if required, obtain a permit to occupy State right of way through the State District 4 Office.
10. If Project includes traffic control devices or illumination on or along a state highway, Agency shall:
 - a. Contact ODOT District Office and, if required, obtain a miscellaneous permit to occupy State right of way through the State District 4 Office prior to the commencement of construction.
 - b. Pursuant to Oregon Administrative Rule (OAR) 734-020-0430, obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic control device, or illumination to be installed on a state highway.
 - c. Ensure that all Project work and maintenance activities involving pedestrian-activated signals comply with the ADA and Agency Obligations paragraph 7.
11. Agency shall submit all of the following items to State's Project Manager, at Project completion and prior to final payment:
 - a. Final Project Acceptance form No. 734-5216 (completed with State's Project Manager);
 - b. Final Cost with itemized statement; and
 - c. As-Constructed Drawings
12. Agency shall present a final invoice for the eligible, actual costs incurred by Agency on behalf of the Project directly to State's Project Manager listed in this Agreement for review and approval. Agency must pay its contractors, consultants and vendors before submitting a request for reimbursement to ODOT for reimbursement. Such invoice shall be in a form identifying the Project, Key number, the Agreement number, the Project phase and amount charged to each (such as preliminary engineering, right of way, and construction), the invoice number, and will itemize all expenses for which reimbursement is claimed. Travel expenses will not be reimbursed.
13. Agency 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 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency 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.

14. Agency shall perform the services 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.
15. 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 subcontractors complies with these requirements.
16. Utility relocation or reconstruction may or may not be an eligible Project expense according to the following standard:
 - a. The expense is an eligible expense if the owner of the utility facility possesses a property right for its location on the public right of way.
 - b. The expense is not an eligible expense if the owner of the utility facility does not possess a property right for its location, but the facility exists on the public right of way solely under the permission of the Agency or other road authority, whether that permission is expressed or implied, and whether written or oral.
17. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of the current budget. Agency further agrees that they will only submit invoices to State for reimbursement on work that has been performed and paid for by Agency as described in this Agreement.
18. If Agency enters into a contract for performance of work under this Agreement, Agency agrees to comply with the following:
 - a. Contracts:
 - i. All contracts must be in writing, executed by Agency, and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the contract. Use of a contract does not relieve Agency of its responsibilities under this Agreement.

- ii. Agency shall require all of its contractors performing work under this Agreement to name State as a third-party beneficiary of the resulting contract with the contractor and to name State as an additional or “dual” obligee on contractor’s payment and performance bonds.
 - iii. Agency shall provide State with a copy of any signed contract upon request by State. This paragraph, 18 a.iii, shall survive expiration or termination of this Agreement.
 - iv. Agency must report to State any material breach of a term or condition of a contract within ten (10) days of Agency discovering the breach.
- b. Contract Indemnification:
- i. To the fullest extent permitted by law, and except to the extent otherwise void under ORS 30.140, Agency shall require each of its contractors 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, the Oregon Transportation Commission, and the Oregon Department of Transportation and their respective officers, members, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever (hereinafter, referred to individually and collectively as “Claims”) to the extent such Claims result from, arise out of, or relate to the activities or omissions of Agency’s contractor, subcontractor(s), or their respective officers, employees, or agents under the resulting contract or otherwise related to the project.
 - ii. Any such indemnification shall also provide that Agency’s contractor shall ensure that neither Agency's contractor(s) or its subcontractor(s) nor any attorney engaged by any Agency contractor or 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 any time at its election assume its own defense and settlement in the event that it determines that any Agency contractor or subcontractor is prohibited from defending the State of Oregon, or that any Agency contractor or subcontractor 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(s) and subcontractor(s) if the State of Oregon elects to assume its own defense.

- c. Contract Insurance:
 - i. Agency shall require the other party or parties to each of its contracts, that are not units of local government as defined in ORS 190.003, to meet the minimum insurance requirements provided in Exhibit B, attached hereto and by this reference made a part hereof. Agency may specify insurance requirements for its contractor(s) above the minimum insurance requirements specified in Exhibit B. Agency shall verify its contractor(s) meet the insurance requirements in Exhibit B.
 - ii. Agency shall determine insurance requirements and insurance types and amounts as deemed appropriate based on the risk of the work outlined within the contract. Agency shall specify insurance requirements and require its contractor(s) to meet the insurance requirements. Agency shall obtain proof of the required insurance coverages, as applicable, from any contractor providing services related to the contract.
 - iii. Agency shall require its contractor(s) to require and verify that all subcontractors carry insurance coverage that the contractor(s) deems appropriate based on the risk of the subcontracted work.
 - d. Agency shall include provisions in each of its contracts requiring its contractors to comply with the indemnification and insurance requirements in subparagraphs b and c of this Agency Obligations Paragraph 18.
19. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, 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 during the course of the Project and for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
20. 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.
21. Agency's Project Manager for this Agreement is Rick McClung, Water Treatment Plant Operator, City of Yachats, 500 W 7th, Yachats, OR 97498, 541-547-3565 email: Rick@YachatsMail.org, 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.

STATE OBLIGATIONS

1. State shall upon receipt of a fully executed copy of this Agreement, and upon a subsequent letter of request from Agency, forward to Agency an advance deposit or irrevocable letter of credit in the amount of \$7,500, which is fifty percent (50%) of State funds allocated for the Project, as identified in Terms of Agreement, paragraph 2 for the work to be performed by Agency at State's request.
2. Upon completion of Project, inspection and approval by State staff, and receipt from Agency of an itemized statement of the actual total cost of the Project, State shall deposit with Agency a final payment, which when added to any amount previously advanced by State, shall not exceed the actual total cost of the State's share of the originally estimated Project cost. Should final Project costs exceed the original estimate, extra costs shall be borne by Agency.
3. State's District 3 Office shall review and must concur in the plans prepared by Agency before the Project is advertised for a construction contract or before construction begins if Agency forces shall perform the work. State's Pedestrian and Bicycle Program office shall process all invoices submitted by Agency.
4. If the Project has the potential of needing right of way, to ensure compliance in the event that right of way is unexpectedly needed, a right of way services agreement will be required. State, at Project expense, shall be responsible for project acquisition and coordination of the right of way certification at Project expense.
5. State's Project Manager will arrange for a final project inspection upon notification from Agency of Project completion, to confirm project completeness and fulfillment of Agreement obligations, prior to final payment.
6. 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 current biennial budget.
7. State's Project Manager for this Agreement is Jenna Berman, Region 2 Active Transportation Liaison, 3700 SW Philomath Boulevard, Corvallis, Oregon 97333; cell phone: (917) 719-6024; email: jenna.berman@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. This Agreement may be terminated by mutual consent of both Parties.
2. 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 Agency 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 if State is prohibited from paying for such work from the planned funding source.
3. If State terminates this Agreement for the reasons described in General Provisions 2(a) or (b) above, Agency must reimburse State for all state funds expended. If Agency fails to reimburse State, State may withhold Agency's proportional share of State Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.
 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. State and Agency are the only Parties to this Agreement and, as such, are the only Parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third persons unless such third persons are expressly identified by name and specifically described as intended to be beneficiaries of its terms.
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

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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 either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party 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

City of Yachats/ODOT
Agreement No. 73000-00005979

CITY OF YACHATS, by and through its
elected officials

By _____

Date _____

By _____

Date _____

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

By _____
Agency Counsel

Date _____

Agency Contact:

Rick McClung
500 W 7th
Yachats, OR 97498
541-547-3565, ext. 123
Rick@YachatsMail.org

State Contact:

Jenna Berman
Region 2 Active Transportation Liaison
3700 SW Philomath Boulevard
Corvallis, Oregon 97333
(971) 719-6024
Jenna.Berman@odot.Oregon.gov

STATE OF OREGON, by and through
its Department of Transportation

By _____

Date _____

APPROVAL RECOMMENDED

By _____
Pedestrian and Bicycle Program Manager

Date _____

By _____
Region 2 Manager

Date _____

By _____
District 4 Manager

Date _____

EXHIBIT A – Project Location Map

Yachats Oregon Coast Trail Safety Improvement



EXHIBIT B
Contract Insurance Requirements

1. GENERAL.

- a. Agency shall require, in its contracts with entities that are not units of local government as defined in ORS 190.003 (if any), that its contractors: 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 contract commences, and ii) maintain the insurance in full force throughout the duration of the contract. 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 State. Agency shall not authorize work to begin under the contract until the insurance is in full force. Thereafter, Agency shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Agency shall incorporate appropriate provisions in the contract permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Agency permit work under a contract when Agency is aware that the contractor is not in compliance with the insurance requirements. All references to "contractor" in this Exhibit B refer to Agency's contractor as identified in this Paragraph 1.a
- b. The insurance specified below is a minimum requirement that the Agency shall require its contractor to meet, and shall include such requirement in Agency's contract with its contractor. Agency may determine insurance types and amounts in excess of the minimum requirement as deemed appropriate based on the risks of the work outlined within the contract.
- c. Agency shall require each of its contractors 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 Agency's 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. PROFESSIONAL LIABILITY.

A&E and Related Services: Professional liability insurance is required for A&E design services and A&E Related Services, except that professional liability coverage may be waived by Agency for low-risk related services, such as public involvement or outreach.

General:

Professional liability insurance must cover damages caused by negligent acts, errors or omissions of contractor and contractor's subcontractors, agents, officers or employees related to the professional services to be provided under the contract.

Coverage shall be written with a per claim, incident or occurrence limit, or the equivalent, of not less than \$1,000,000 \$2,000,000 \$5,000,000.

Annual aggregate limits shall not be less than \$2,000,000 \$4,000,000 \$10,000,000.

If this insurance is provided on a "claims made" basis, Contractor shall maintain continuous claims made liability coverage or shall acquire tail coverage to continue the same coverage for a duration of at least **2 years**, unless **3 years** or **5 years** is specified, after completion of the contract or for the foregoing extended period beyond contract expiration or termination. Evidence of any required extended period coverage will be a condition of final payment under the contract.

c. 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, 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 State:

Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 \$2,000,000 \$5,000,000 per occurrence.

Annual aggregate limit shall not be less than \$2,000,000 \$4,000,000
 \$10,000,000.

d. 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 damage. Amount below is a minimum requirement as determined by State:

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

This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability).

e. EXCESS/UMBRELLA LIABILITY.

A combination of primary and Excess/Umbrella Liability Insurance may be used to meet the required limits of insurance.

f. ADDITIONAL INSURED.

The liability insurance coverages, except Professional Liability or Workers' Compensation/Employer's Liability, if included, must endorse 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 contract. 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 Agency.

g. "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 contract, for a minimum of twenty-four (24) months following the later of: (i) the contractor's completion and Agency's acceptance of all Services required under the contract or, (ii) the expiration of all warranty periods provided under the contract. 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 State may grant approval of the maximum “tail “ coverage period reasonably available in the marketplace. If State approval is granted, the contractor shall maintain “tail” coverage for the maximum time period that “tail” coverage is reasonably available in the marketplace.

3. NOTICE OF CANCELLATION OR CHANGE.

The contractor or its insurer must provide thirty (30) days’ written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s). **The Agency shall immediately notify State of any change in insurance coverage.**

4. CERTIFICATE(S) OF INSURANCE.

Agency shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the contract. The certificate(s) or an attached endorsement must endorse: 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 Professional Liability and Workers’ Compensation/Employer’s Liability.