



City of Rockaway Beach

City Council Workshop Agenda

Date: Wednesday, December 11, 2024

Time: 4:30 P.M. – 5:40 P.M.

Location: Rockaway Beach City Hall, 276 HWY 101 – 2nd Floor Conference Room

Watch live stream here: corb.us/live-stream

View meeting later here: corb.us/city-council

Join here to attend remotely:

<https://us06web.zoom.us/j/83244486768?pwd=2u7fEUHkOzG3ymg3ua7FxVQA0Cam3H.1>

Meeting ID: 832 4448 6768

Passcode: 537207

Dial by your location

253 215 8782 US (Tacoma)

What is a City Council Workshop? Workshops are intended to allow for preliminary discussions by the City Council and staff. Workshops are held to present information to the Council so that the Council is prepared for upcoming regular meetings. Workshops are subject to Oregon's public meeting law and must be noticed accordingly. No final City Council decisions are made during workshops. The public is encouraged to attend workshops but may not participate unless expressly asked.

Note: Agenda item times are estimates and are subject to change.

1. CALL TO ORDER (4:30 p.m.)

2. ROLL CALL

3. COUNCIL BRIEFING/DISCUSSION

- a. Discussion of Site Host Agreement with EV Charging Solutions for Electric Vehicle Charging Stations at Anchor Street Parking Lot (4:31 p.m.)**
- b. Review of Resolution 2024-49 Authorizing the City Manager to Execute Safe Drinking Water Revolving Loan Fund Grant Contract for Forest Management Planning & Appraisal for the Jetty Creek Watershed (4:45 p.m.)**
- c. Review of OLCC Annual License Renewals (5:15 p.m.)**
- d. Discussion of Proposal from Tillamara Regarding Overflow Parking (5:20 p.m.)**
- e. Other Regular Session Agenda Items Review (5:30 p.m.)**

4. ADJOURNMENT (5:40 p.m.)

Rockaway Beach City Hall is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to City Hall at 503-374-1752.

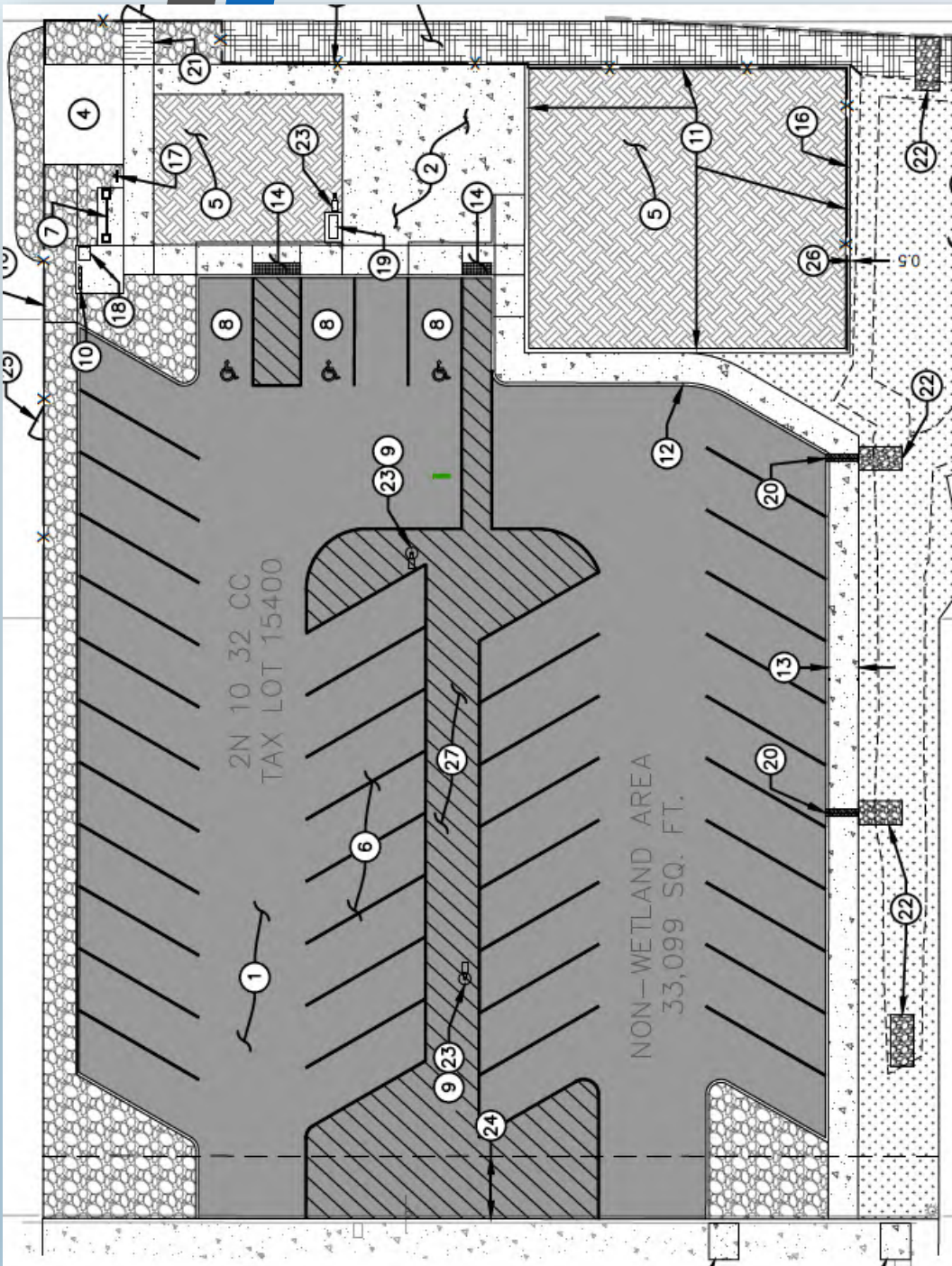
December 11, 2024

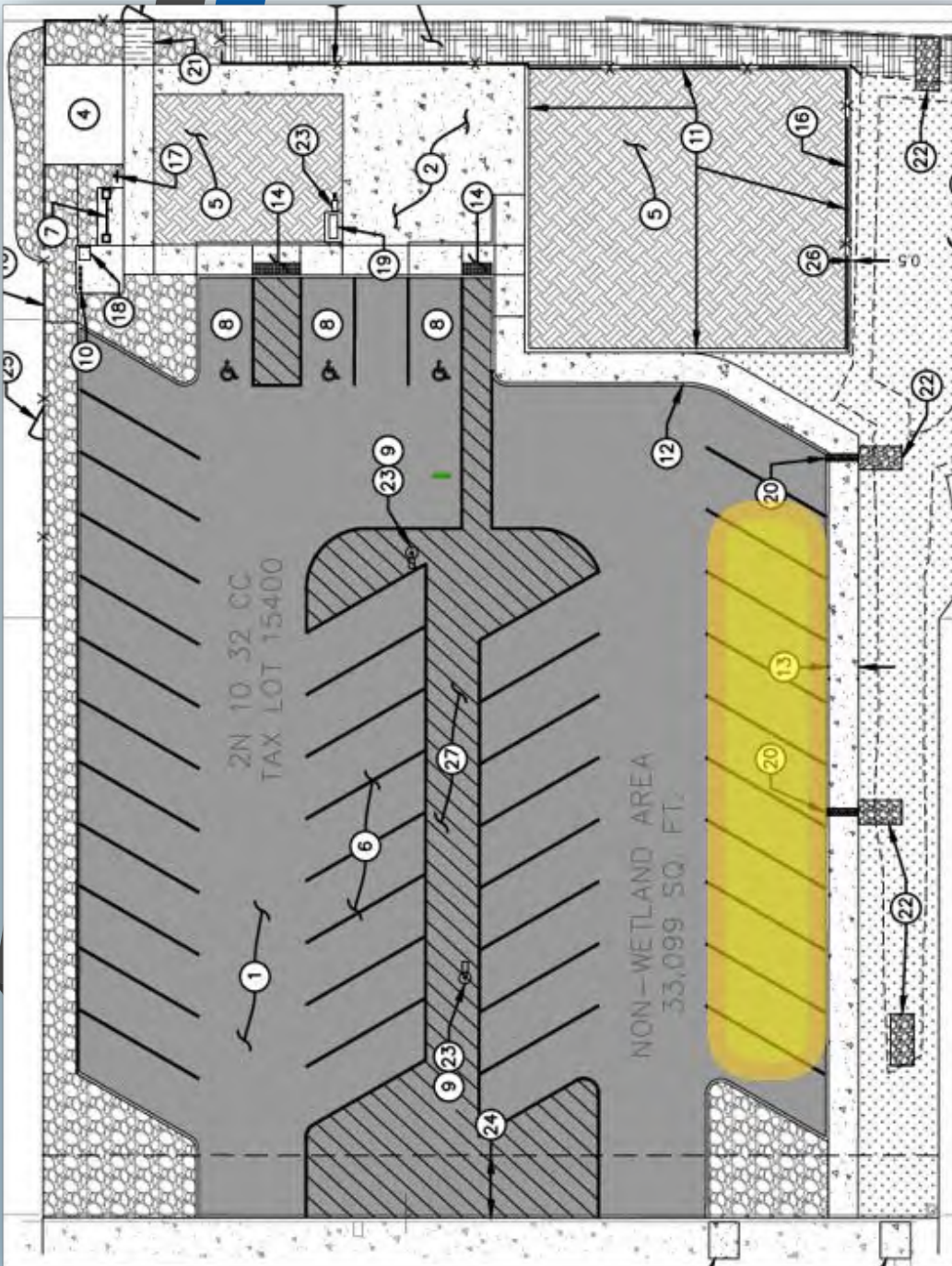
Rockaway Beach City Council Workshop



Anchor St. Project

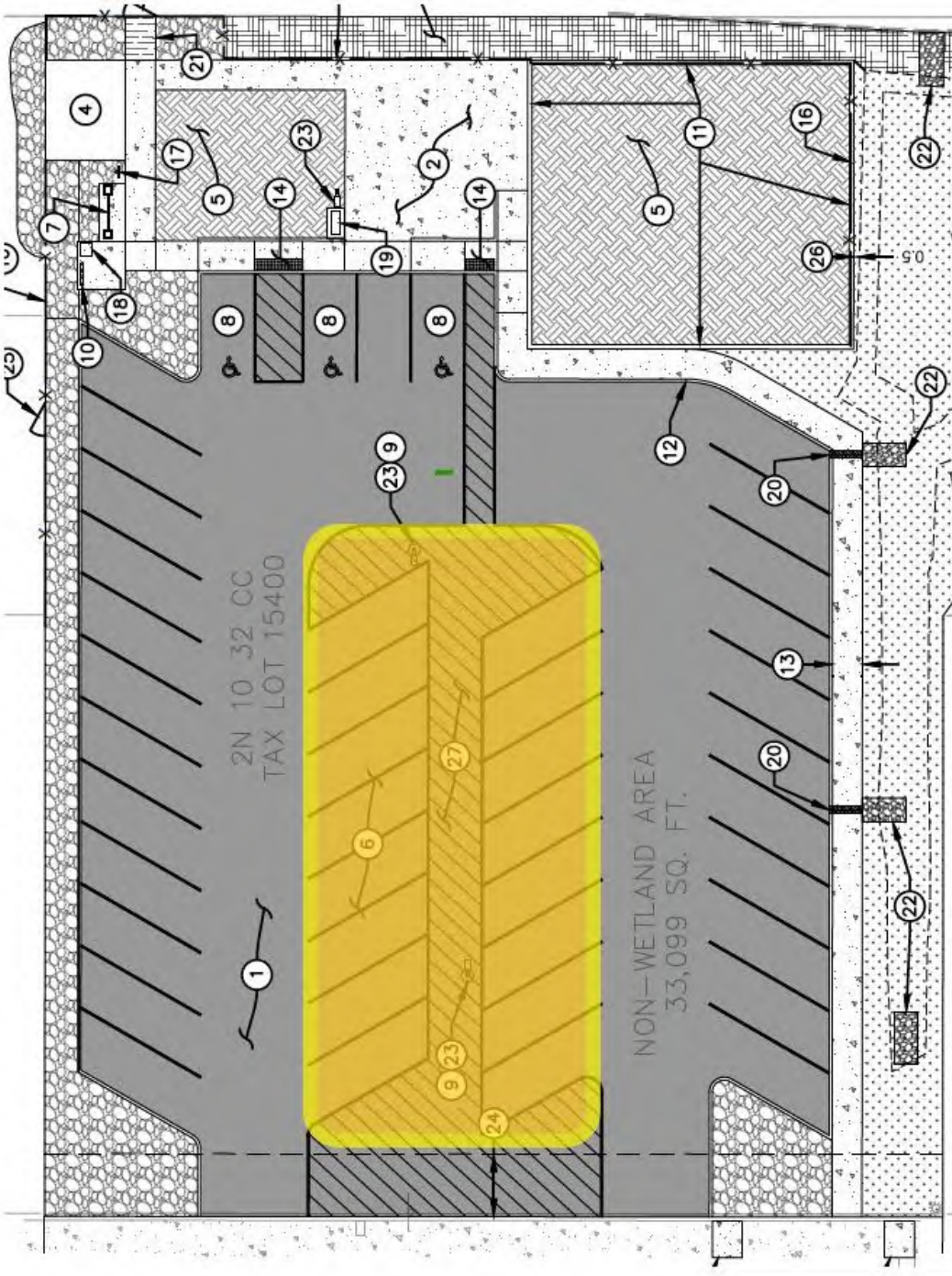
- 43 Parking Stalls (lighted)
- 3 ADA Compliant Stalls
- Up to Eight DC Fast Charging (Future)
- Event Area w/water and power
- Restroom Facility
- New Wayside Restrooms
- Amenities – Planning Commission
- Future Addition or Expansion





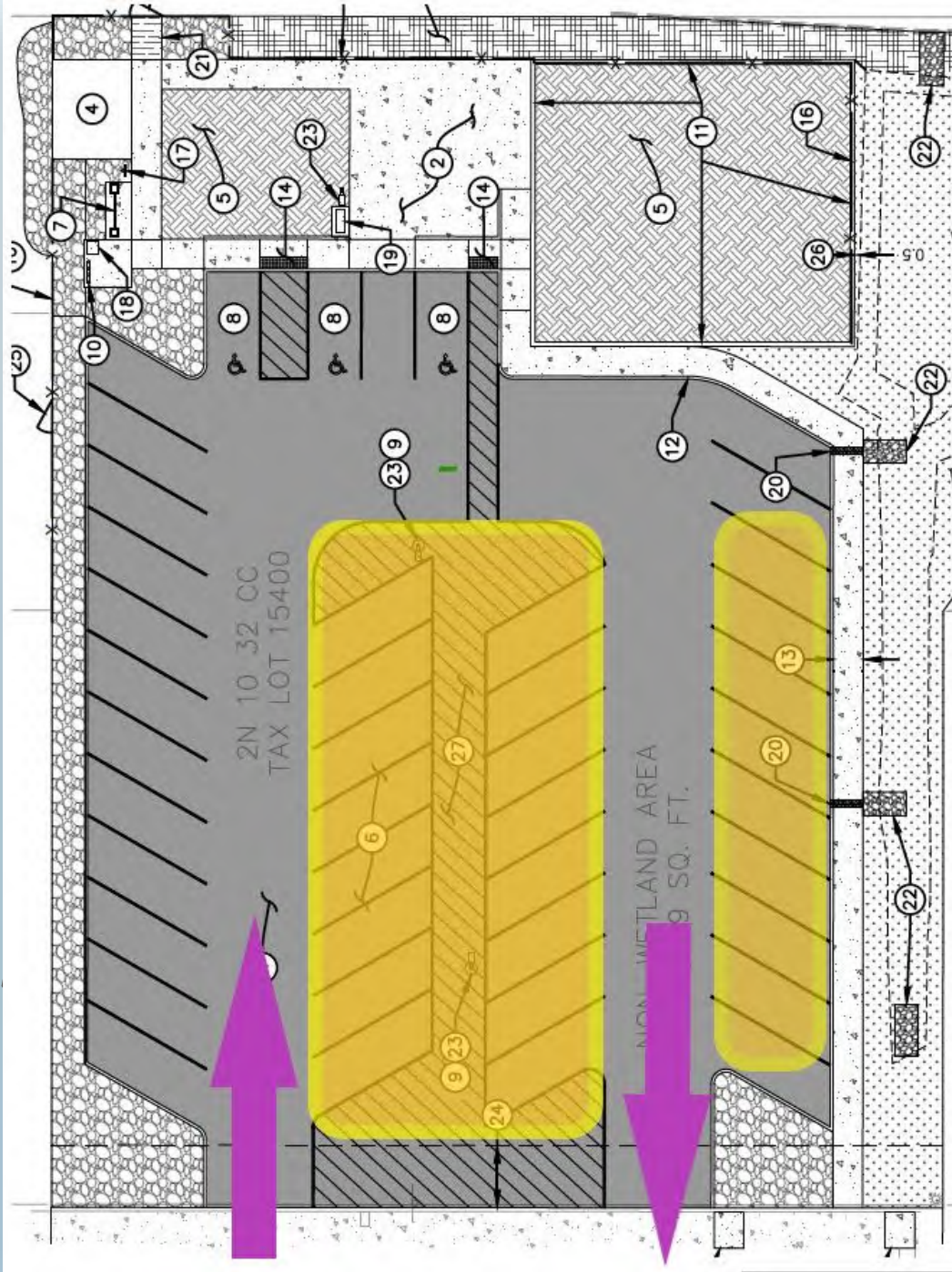
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SITE HOST AGREEMENT

This Site Host Agreement (hereafter the “**Agreement**”) is effective as of November **X**, 2024 (hereafter the “**Effective Date**”) by and between EV Charging Solutions, Inc., a California corporation with its principle at 11800 Clark Street, Arcadia, California 91006 (hereafter “**EVCS**”), and City of Rockaway Beach with its principal place of business located at 276 US-101, Rockaway Beach, OR 97136 (hereafter “**Site Host**”). EVCS and Site Host may collectively be referred to herein as the “**Parties**” or individually as “**Party**.”

RECITALS

WHEREAS, EVCS has access to public and/or private funding to install and operate Level II Charging and/or Direct Current Fast Charging (“**DCFC**”) stations used for charging and/or recharging electric vehicles (hereafter the “**Equipment**”); and

WHEREAS, this funding is intended to improve the availability and reliability of electric vehicle charging systems; and

WHEREAS, Site Host wishes to allow the construction, operation, and/or maintenance of one or more items of Equipment on its real property (hereafter “**Property**” and/or “**Site**”) in the location more specifically identified herein and also wishes to allow public use of the Equipment; and

WHEREAS, the Parties wish to collaborate by utilizing their respective resources to promote the electric transportation sector; and

WHEREAS, the Parties wish to share the revenue realized from the sale of electricity stemming from the utilization of the Equipment on the Property as more fully described below; and

WHEREAS, the Parties desire that this Agreement shall remain in effect, subject to the terms and conditions set forth below, for ten (10) years after the commissioning date (i.e., date when the Equipment is placed in service on the Property);

NOW, THEREFORE, in consideration of the promises set forth herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, EVCS and Site Host agree as follows:

1. Recitals

The Parties agree that the foregoing Recitals are true, correct, and accurate.

2. EVCS’ General Obligations for Equipment and Services

EVCS shall provide the following equipment and services at EVCS sole expense:

- a) Purchase of the Equipment (consisting of 4 DCFC Stations and 1 Level II Stations), the general specifications for which are detailed in **Exhibit A** together



with all other mechanical, electrical, and physical components necessary for the installation, connection, and operation of the Equipment in accordance with this Agreement (the Parties agree that the Equipment delivered to the Property shall be the same or similar to the equipment detailed in **Exhibit A**);

- b) Preparation of the Property and installation of the Equipment at the location(s) approved, specified and identified by Site Host (the “**Project Site**”) and performed by qualified and licensed contractor(s) in accordance with local codes, permitting, and inspection requirements, as detailed in **Exhibit B**. For the purposes of initially creating a rebate application and reserving funding for the Project, EVCS and Site Host may mutually agree to leave Exhibit B blank upon initial execution. Once funding is reserved and further feasibility and recommendations are made by EVCS’ electrical contractor in accordance with Site Host’s written approval, the Parties shall further specify the approved location(s) and Site design by mutual written agreement on Exhibit B;
- c) Payment of all costs of its contractors associated with the delivery, site preparation, installation, and setup of the Equipment at the Project Site;
- d) In EVCS’ sole discretion, design, installation, wiring, connection and integration of the charging system, consumption/use meters, and related equipment into the public power grid in a manner sufficient to allow operation of the charging station(s) and the ongoing metering of power usage from each charging port;
- e) Ongoing maintenance/repairs of the Equipment for the term of the Agreement;
- f) All necessary communications, instructions, and network systems to facilitate public use of the Equipment to charge electric vehicles; and
- g) Periodic reports to Site Host on the utilization of the Equipment.

3. Site Host General Obligations

Site Host shall undertake the following, at Site Host’s sole expense:

- a) Provide full, complete and unfettered access to EVCS for the placement, use, and operation of the Equipment at the Project Site for the full term of this Agreement;
- b) Provides the necessary temporary construction access for EVCS and its contractors for preparation of the Project Site and for installation of the Equipment;
- c) Provides necessary ongoing utility easements and / or access for installation, usage, and maintenance of power lines, conduits, meters and Equipment;
- d) Allow full, complete and unfettered ongoing access to the Project Site and Equipment in order for EVCS to collect, use, and distribute data;



- e) Will not knowingly allow the Equipment to be, and will take all reasonable steps to prevent the Equipment from being opened, accessed, modified, or repaired by anyone other than EVCS or its licensed contractors;
- f) Will not sell, alienate, hypothecate, transfer, assign, encumber or otherwise pledge the Equipment;
- g) Use best efforts to prevent damage and vandalism of any type to the Equipment;
- h) Will not, and will not permit or allow any third party to, open, move, modify, reverse engineer, or disassemble the whole or any part of the Equipment or any part thereof in any manner;
- i) Will not, and will not permit or allow any third party to, uninstall the Equipment
- j) Allow EVCS and its approved contractors full, complete and unfettered access to the Project Site for installation, maintenance, repair, replacement and approved de-installation of the Equipment;
- k) Cause the Project Site to be maintained in a clean, safe, and orderly condition, utilizing at least the same standard as to which other areas at the Property that are under the Site Host's control are maintained;
- l) Assign to EVCS all right, title and interest in and to all and any rebates that Site Host may receive relating to the Equipment, and/or this Agreement; including, but not limited to, (a) rebates or other payments based in whole or in part on the cost or size of equipment, (b) performance-based incentives paid as periodic payments, (c) tax credits, grants or benefits, and (d) any other attributes, commodities, revenue streams or payments, in each of (a) through (d) under any present or future law, standard or program and whether paid by a utility, private entity or any governmental, regulatory or administrative authority.
- m) Assign EVCS all right, title and interests in and to environmental credits (e.g., carbon credits) relating to the Equipment, and/or this Agreement; including, but limited to electric vehicle charging or renewable energy credits or certificates, carbon credits and any similar environmental or pollution allowances, credits or reporting rights.
- n) Assign EVCS all right, title and interest in and to the enrollment of the Equipment into a demand response program and any and all economic benefit arising from such an enrollment. If demand response program benefits credits the Site Host utility bill, the utility bill credit will be used to offset cost of electricity described in paragraph 4 and subchapter d (4.d.) and demand charges described in paragraph 4 and subchapter e (4.e.) and if the demand response credits are in excess of demand charges and cost of electricity, EVCS can request Site Host for reimbursement of



such excess. The Site Host agrees to issue such a reimbursement within thirty (30) days of request by EVCS.

- o) Promptly execute the Easement Agreement upon the request of EVCS or the applicable utility service provider.
- p) Shall fully cooperate and promptly communicate with EVCS during the entire time period required by EVCS to complete the preparation of the Project Site and the installation of the Equipment. Site Host understands and acknowledges that EVCS will expend a significant amount of time, resources and effort to assess the Project Site, secure funding for the installation of the Equipment, and initiate engineering and design for the Equipment. Site Host further understands and acknowledges that the timeframe for completion of the Equipment installation is in part dependent on third parties, such as utility providers, rebate and permitting authorities and grant organizations, and thus the amount of time it takes to complete installation of the Equipment at the Project Site is often outside of EVCS' control. Thus, Site Host agrees that its cooperation as described above is of the essence of this Agreement, and the breach of these provisions shall be a material breach that shall cause substantial harm to EVCS.
- q) Provide EVCS with prompt notified of the sale or transfer of the Project Site, which notice shall include current contact information of the buyer or transferee.

4. Revenue Sharing

The Parties agree that:

- a) The Equipment installed by EVCS is intended to generate revenue through the patronage of customers utilizing the Equipment placed with the Site Host.
- b) EVCS shall, in its discretion, determine the price/rate at which electricity shall be sold to consumers utilizing the Equipment.
- c) EVCS will collect the proceeds generated from the sale of electricity from the Equipment placed with the Site Host and pay Site Host **\$0.05** (five cents) for each kWh of electricity sold to customers utilizing the DCFC Equipment and **\$0.03** (three cents) for each kWh of electricity sold to customers utilizing Level II Equipment, plus 100% of the cost of electricity utilized by the equipment; in the event the Site Host is responsible to pay for the cost of such electricity usage. Site Host may, in Site Host's discretion, offer certain customers free or discounted charging rates, provided, however, that EVCS will offset any revenue share amounts owed to Site Host by an amount proportionate to the reduction in revenue caused by such discounts. In the event there is a balance owed from Site Host to EVCS as a result of such discounts, Site Host shall remit payment to settle said balance within ninety (90) days of receipt of a request for payment from EVCS.
- d) In the event Site Host incurs any utility provider assessed incremental demand charges strictly in connection with the operation of the installed Equipment, Site Host shall present these charges, including any support and back-up documentation that



substantiates the charges to EVCS, and EVCS shall reimburse Site Host for these substantiated charges within ninety (90) days of receipt of a request for payment from EVCS.

- e) EVCS at its sole option will have the right to own the electricity service meter and/or utility service account servicing the Equipment.
- f) EVCS will use commercially reasonable efforts to install a separate electric meter as allowed by the utility provider at the Property through which electrical costs shall be tracked. In the event EVCS deems installing a separate meter is impractical or uneconomical for any reason, the Equipment shall be connected to Site Host's existing electrical meter. In order to allow EVCS to perform the necessary revenue sharing calculations, and reimburse any electrical costs, Site Host will provide EVCS with a hard copy or electronic/digital copy of Site Host's electricity bills or will allow EVCS to view the bills electronically on an on-going basis. In the event EVCS is unable to obtain copies of the electricity bills, or copies are not provided by the Site Host, then EVCS, in its sole discretion, may either (i) withhold payment until the electricity bills are provided, or (ii) calculate the amount of reimbursement for electricity using information available to EVCS from the administrative panel (*i.e.*, which indicates the amount of electricity that was dispensed by the charger(s)) and then assign, in its sole discretion, a per kWh value that will be multiplied by the amount of electricity dispensed by the charger(s). If EVCS chooses the above second option, then (a) once such calculation is made EVCS shall issue reimbursement for electricity based thereon, and (b) if the Site Host thereafter provides copies of appropriate electricity bills to EVCS, then EVCS will true up the calculation and issue payment for any resulting shortfall for the prior 12 months of activity from the date of electricity bills being submitted to EVCS.
- g) EVCS will have forty-five (45) days after the end of each calendar quarter, to remit the appropriate revenue share payment to Site Host. The billing cycle will begin on the first day of the quarter and end on the last day of that same calendar quarter. EVCS shall provide Site Host with a quarterly accounting statement within forty-five (45) days following the end of the previous quarter indicating the total amount of revenue generated, including any offsets or reductions to revenue, and the resulting net revenue share amount owed to Site Host.
- h) Notwithstanding anything to the contrary in this Section 4, if the total quarterly amount owed to Site Host is less than one hundred dollars (\$100), then EVCS may, in its sole discretion, choose to withhold payment payout to the Site Host until at least one hundred dollars (\$100) is due to Site Host.
- i) See Exhibit D for Site Host ACH payment information. If such information is provided, EVCS shall make all required payments via ACH direct deposit, until further notice from Site Host.

5. Term of Agreement:

The term hereof shall begin upon the Effective Date. The date the Equipment becomes operational will hereafter be referred to as the "Commencement Date." The term hereof shall expire (unless renewed or extended) ten (10) years from the Commencement Date



(hereafter the "Termination Date"), unless sooner terminated in accordance with the provisions hereof.

a) Optional Ten (10) Year Extension Option

At least ninety (90) days but no earlier than one hundred & eighty (180) days prior to the expiration of the initial Term, EVCS reserves the right to provide written notice of Ten-Year Extension to Site Host. In the event of said Ten-Year Extension, EVCS reserves the right to replace the Equipment at the Project Site with Equipment that is comparable or better to Equipment that was previously installed. If EVCS notifies the Site Host of such intent EVCS will then replace the Equipment no later than one hundred & twenty (120) days after the Termination Date. The terms of this Agreement will remain in effect during that 120-day period after the Termination Date. Site Host will take all reasonable steps to allow EVCS to remove the pre-existing Equipment and replace the pre-existing Equipment with new Equipment. EVCS shall bear the cost to remove and replace the pre-existing Equipment. The removed pre-existing Equipment will then become the exclusive property of EVCS. If EVCS elects to replace the Equipment, this will cause the termination date of the Agreement to extend for an additional ten (10) year term from the expiration of the initial Term. If the existing Equipment is replaced with new Equipment during or at the conclusion of the original Term, site host grants all interest to EVCS of any rebate(s) and/or environmental credits associated with the equipment replacement.

b) Automatic One (1) Year Renewal Clause

Provided EVCS (or the Parties) have not exercised the Ten (10) Year Extension Option, this agreement will automatically renew at the end of each Term for a further term of one (1) year unless either party gives the other written notice of termination at least thirty (30) days but no earlier than ninety (90) days prior to the end of the relevant term.

c) Early Termination Clause

This Agreement may be terminated upon 30 (thirty) days' written notice to either party without penalty or fee in the following instances:

In the case of EVCS, at any time and for any reason prior to the submission of the permit application for construction of the Equipment, at the Project Site, or thereafter at any time in the event that EVCS determines that the construction or continued operation of the Equipment is impracticable or uneconomical.

In the case of Site Host, in the event the Commencement Date has not occurred within eighteen (18) months from issuance of the approved utility plan, and required utility easement, if applicable, provided that Site Host's rights to terminate under this section shall terminate upon the Commencement Date.

6. Ownership of Equipment and Content



EVCS shall retain title to and ownership of the Equipment. All the information, content, services and software displayed on, transmitted through, stored within, or otherwise used in connection with the use and operation of the Equipment, including, but not limited to data, text, photographs, images, illustrations, video, html, source and object code, software, internet account access, advertising, and the like (collectively, the “Content”) is owned exclusively by EVCS. Once this Agreement is terminated EVCS shall remove equipment at no cost to the Site Host.

7. Installation Activities

EVCS shall, at its sole cost and expense, be responsible for all installation activities (hereafter "Installation Activities") required to support the operation of the Equipment, and services therewith, including the hiring and coordination of all vendors and contractors; the installation of electrical equipment, utility lines, hardware, and software; site preparation, trenching, repaving, and landscaping.

8. Limitations on Use of Project Site

The Project Site and related parking spaces made available to the Project Site may be used for providing publicly-accessible electric vehicle charging. Site Host shall provide EVCS, its employees and contractors with reasonable access to the parking spaces and Equipment and shall otherwise provide to EVCS the same amenities and services Site Host provides to other users of Site Host’s parking facilities.

9. Utility Charges

EVCS shall be responsible for all electricity costs associated with both the operation of the Equipment and the charging of electric vehicles from the Equipment. Site Host shall cooperate with EVCS efforts regarding provision of electricity to the Equipment. Neither Site Host nor EVCS has any responsibility or liability for interruption, curtailment, failure, or defect in the supply of utilities furnished to the Equipment.

10. Allocation of Environmental Benefits

Site Host assigns to EVCS any renewable energy credits, allowances, or other indicators of environmental benefit attributable to the presence of the Equipment for the entirety of the time the originally installed Equipment is installed at the site but for a minimum of ten (10) years. If this Agreement extends under paragraph 5 and subchapter a (5.a.) or renews under paragraph 5 and subchapter b (5.b.), then paragraph 10 shall continue to remain in effect through the updated termination date.

11. Signage

EVCS shall have the right to place project-related signage to denote the location of the Equipment and the services available and may place other signage or advertising at the Property as EVCS reasonably determines to be practicable or appropriate.

12. Publicity

During the term of this Agreement, neither party will use the other party’s name, logos, trademarks or service marks in any manner without the other party’s prior written approval,



which will not be unreasonably withheld or delayed.

13. Media Content

It is agreed that EVCS shall have sole control over the solicitation, contracting, and distribution of any and all media content relating to the Equipment, including but not limited to, any media content data transmitted to or from the Equipment and displayed using the Equipment. EVCS will use commercially reasonable efforts to avoid distributing media content that actually and directly conflicts with Site Host's media and advertising.

14. Indemnification

- a) EVCS shall indemnify and hold harmless Site Host, and any tenant, guest, customer, patron, or employee of Site Host, from and against any and all liability and expense of any kind, including reasonable attorneys' fees, arising from injuries or damages to persons or property resulting in any way from the negligence or willful misconduct of EVCS, its contractors, agents, or employees. EVCS' indemnification obligations herein shall extend only up to the limit of any insurance coverage held by EVCS and insuring it against any such liability. It is a condition of this indemnification provision that EVCS shall receive prompt notice from Site Host of any claim against Site Host for which indemnification from EVCS is claimed.
- b) Site Host agrees to indemnify EVCS, its officers, board, employees, and agents, and hold all of same harmless from and against any and all liability and expense of any kind, including reasonable attorneys' fees, arising from injuries or damages to persons or property resulting in any way from any act or negligence or willful misconduct of Site Host, its contractors, agents or employees. It is a condition of this indemnification provision that Site Host shall receive prompt notice from EVCS of any claim against EVCS.

15. Breach and Opportunity to Cure

If either party breaches this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of that breach, then the non-breaching party may terminate this Agreement effective as of the end of such thirty (30) day period. Additionally, either party may terminate this Agreement immediately if the other party (i) ceases to do business in the ordinary course; or (ii) either voluntarily or involuntarily files a bankruptcy petition which is not vacated within thirty (30) days of filing. No such termination will be deemed a waiver of any claim for damages by the non-terminating party.

If the Site Host breaches or wrongfully terminates the Agreement prior to the Termination Date, Site Host will be required to reimburse EVCS for all costs incurred relating to the installation of the Equipment within thirty (30) days of receipt of an invoice from EVCS. The Site Host will also be required to reimburse EVCS for the total amount of any rebates EVCS would have received relating to the Equipment, and/or this Agreement had the Agreement not been breached or wrongfully terminated.

16. Limitation of Liability



NO WARRANTY, CONDITION OR REPRESENTATION, EXPRESSED, IMPLIED, ORAL OR STATUTORY, IS PROVIDED TO THE SITE HOST OR ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY, CONDITION OR REPRESENTATION: (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE; (B) THAT THE EQUIPMENT WILL BE FREE FROM INFRINGEMENT OR VIOLATION OF ANY RIGHTS, INCLUDING INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES; OR (C) THAT THE OPERATION OF ANY SOFTWARE OR HARDWARE SUPPLIED WILL BE UNINTERRUPTED OR ERROR FREE. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY HEREIN FAILS OF ITS ESSENTIAL PURPOSE. THE SITE HOST'S SOLE AND EXCLUSIVE REMEDIES HEREUNDER AND THE ONLY LIABILITY OF SITE HOST IS EXPRESSLY LIMITED TO THE TERMS OF THE AGREEMENT. EVCS SHALL NOT BE LIABLE TO THE SITE HOST, OR ANY THIRD PARTY, FOR ANY OTHER SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR INDIRECT COSTS OR DAMAGES, INCLUDING WITHOUT LIMITATION, LITIGATION COSTS, LOSS OF DATA, LOSS OF PRODUCTION, AND/OR LOSS OF PROFIT ARISING FROM ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES.

FOR PURPOSES OF THIS PROVISION, EVCS INCLUDES EVCS' DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AFFILIATES, CONTRACTORS, SUBCONTRACTORS, AND SUPPLIERS. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, ANY CLAIMS FOR DAMAGES BY EITHER PARTY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO ACTUAL RECOVERIES UNDER SUCH PARTY'S INSURANCE POLICIES.

17. Disputes

This Agreement is governed by, and must be construed and enforced in accordance with, the laws of California, excluding principles of conflicts of laws. For every dispute regarding this Agreement: (i) the prevailing party is entitled to its costs, expenses, and reasonable attorney fees (whether incurred at trial, on appeal, or otherwise) incurred in resolving or settling the dispute, in addition to all other damages or awards to which the party may be entitled; (ii) each party consents to the jurisdiction of the courts within Los Angeles County, California and agrees that those courts have personal jurisdiction over each party; (iii) venue must be within Los Angeles County, California; and (iv) the parties must submit the dispute to mediation held within the City of Los Angeles. Every mediation must be completed within 3 months of the date when the initial notice demanding mediation was provided by any party. If, for any reason, the dispute is not resolved through mediation within the 3-month period, then the parties may continue seeking to resolve the dispute by use of any process, including litigation by trial. No waiver of any provision or breach



hereof is a waiver of any other provision or breach. All rights and remedies are cumulative and nonexclusive.

18. Notices

All notices and other communications provided hereunder must be in writing and will be deemed given: (i) on the date of hand-delivery; (ii) on the date when sent by facsimile (with confirmation of transmission); (iii) on the date when sent by email, with confirmation of receipt; (iv) the day after sending by a nationally recognized overnight delivery service (with confirmation of transmission); or (v) 3 days after sending by certified mail (return receipt requested).

For purposes of this Agreement, addresses for notification, unless changed from time to time in writing, shall be:

FOR EVCS:

EV Charging Solutions, Inc.
Attn: Gustavo Occhiuzzo
11800 Clark Street
Arcadia, California 91006
gustavoo@evcs.com
323.400.EVCS (3827)

Salesperson: _____

Rebate Program: _____



SITE HOST:

SECONDARY/EMERGENCY CONTACT:

Company: City of Rockaway Beach

Company: _____

Attn: _____

Attn: _____

Add. 1: 276 S. Hwy 101

Add. 1: _____

Add. 2: Rockaway Beach, OR 97136

Add. 2: _____

Email: _____

Email: _____

Phone: _____

Phone: _____

19. Successors and Assigns

The covenants, conditions and agreements contained herein shall bind and inure to the benefit of EVCS and Site Host and their respective successors and assigns. EVCS may freely and in its sole discretion assign this Agreement to a third party upon written notice to Site Host. Site Host may not assign this Agreement to any third party without prior written consent of EVCS.

20. Entire Agreement

This Agreement contains all the agreements between the parties hereto and may not be modified in any manner other than by agreement in writing signed by both the parties hereto and their successors in interest.



IN WITNESS WHEREOF, this Agreement is executed by both parties, to become effective on the date last executed.

EVCS

SITE HOST

By: _____

By: _____

Printed Name: Gustavo Occhiuzzo

Printed Name: _____

Title: CEO

Title: _____

Date: _____

Date: _____

DRAFT

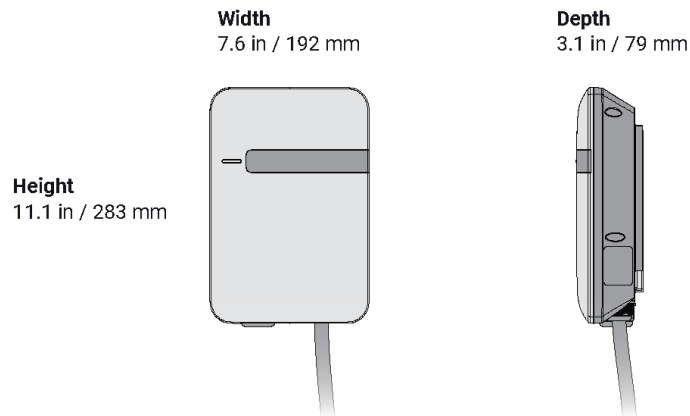
EXHIBIT A - Electric Vehicle Charging Station Equipment Specifications

- 150 kW DC Fast Charger (4) – Samsung 180 DCFC or equal
- 7.6 kW Level 2 EVSE (1) – Noodoe AC7LC and or equal

 180kW Charger Product Technical Data Sheet		
Category	Category details	Criteria/parameter
Concept requirements	Charging system concept	One single unit containing all required components Charging system can be update with power modules OTA soft-/firmware capability for all key components (e.g. PLC board, all MCU/ECU board) Cooling system
	Load management	Internal load balancing to reduce kW per charger as well as load balancing across several installed charger has to be implemented (as provided by our backend) Load management across several installed charger has to be implemented (as provided by our backend) via OCPP 1.6
	Local UI for operations	UI provides an overview of error codes with timestamps All configuration keys can be set via the UI Max. load and/or input power can be set via the UI Firm-/software updates, error handling
	Parallel charging of two vehicles	Both vehicles charges at the DC-outlets
	Supported charging plug-/socket-types	CCS Type-1 as per IEC 62196-3 NACS (24 Q2)
System Requirements	Operating temperature range [°C]	Max. temperature: +50 °C Min. temperature: -30 °C
	Max. altitude [m]	2000 m
	Max. relative humidity [%]	<95% non-condensing
	Operating audible noise emissions [dB]	<60 dB @ 1m
	Enclosure Rating	NEMA 3R
	Impact protection degree	IK10 (Housing)
	Material, Coating	Anti-corrosive protection e.g. galvanization
	M2M	all chargers must be equipped and set up with innogy M2M SIM cards
	EMC emissions	Class A (industrial) as per IEC/EN 61851-21-2 Class B (residential) as per IEC/EN 61851-21-2 (to be developed)
	Reactive Power compensation	Required due to upcoming legislation beginning 27.4.2019. Can be mandatory mid of 2019.
Quality Requirements	Quality management	The supplier shall provide full transparency of all quality relevant processes
	communication tests (frontend/backend)	Communication to car and also (to backend tbd) must be validated during final inspection.
	test protocol	Test protocol must document all performed tests and test results (visual, electrical and electrical safety, function) and is to be signed by the responsible person that performed the tests. All tests results have to be filed and archived.
Production Requirements	Serial numbers	Each number gets a unique serial number.
	Type plate	Type plate according to IEC61851-1 required.
	Variant management	Each version and revision of charger needs to be traceable. This includes every component of the charger to guarantee spare parts compatibility and failure tracking in case of quality problems.
	Labels	Labels and position, including labels for end testing to be defined, traceability of each charger and included components must be
	Material Number	Each charger is identified via material number. The material number and the batch number needs to be on the delivery slip and invoice of the charger.
Service Management	Safety Protection	All internal electric installations with life parts that exceeds extra-low voltage shall be protected by a transparent cover (touch
	AC Input terminals	The AC input terminals are designed for European conduits. The size of the terminals de-pends on the charger type
	Access to electrical and maintenance relevant components	All components are easy accessible by one technician.
	Hardware requirements	Doors and side panels are exchangeable
	Surface	Surface easy to clean and graffiti and sticker resistant
	Cable entry	The cable entry shall be located under the terminals. It must be easy to lead the cable into the terminals
	lifting hooks	For installation lifting hooks are installed. After installation the hooks are removable.
Installation/Maintenance	Change of Charging Cable	Change of charging cable must be easy and must be done in a reasonable time by a service technician.
	Safety	All European safety standards are considered for all installation and maintenance work.
	Installation/Commissioning	The installation process is possible to be done by two technician considering all European safety standards within 60 minutes.
	Maintenance	Change of charging cable must be easy and must be done in a reasonable time by a service technician.

HMI/User Interface	HMI/Display	LCD color display with 12.1" Touch screen Customized logo can be updated remotely for the screen
	Authentication/Payment	RFID authentication as standard NFC reader
	RFID authentication	All MIFARE standards as per ISO 14443A/B Type V as per ISO/IEC 15693
Electrical Grid Connection	Type of AC-Connection	AC 3-phase 4-wire: L1, L2, L3, 3P3W(no neutral) + PE
	Input voltage range [V]	480 Vac (line-2-line) $\pm 10\%$
	Frequency range [Hz]	50/60 Hz $\pm 10\%$
	Efficiency rating [%]	>94% @ full load
	Power Factor Correction (PFC)	PFC from -0.99 (ind) to +0.99 (cap)
Electrical Protection	Residual current device (RCD)	RCD Type-A* for DC outlet (primary side)
	Overall protection	Short-circuit protection Surge Protection Insulation monitoring Over- and undervoltage protection Comply with all CE-relevant safety and protection requirements, e.g.: IEC 61851
Construction & maintenance	Construction & maintenance friendly	Easy to build-up, Module check-up
Communication	Cellular connection	3G 4G
	Ethernet	10/100 Fast Ethernet 10/100/1000 Gigabit Ethernet
	WiFi	IEEE 802.11 b/g/n (under progress)
	Meter Communication	Communication between meter and controller
Backend communication	Communication protocol	OCPP 1.6 JSON (2.0.1, to be developed) OCPP connection via VPN/APN tunnel Firm-/software updates via OCPP All configuration keys can be set via OCPP Non-auth mode can be set via OCPP config key
DC Charging (CCS)	Plug/Socket type	CCS Type-1 as per IEC 62196-3 (Configuration FF)
	Charging mode	Mode-4 as per IEC 61851-1
	Communication	PLC as per IEC 61851-23/-24, DIN 70121 ISO 15118-3
	Cable length [m]	5,5 m (outside length)
	Output power rating [kW]	180 kW
	Output voltage range [V]	150 - 1,000 Vdc
	Output current rating [A]	375 A





SPECIFICATIONS

Cloud service	Noodoe EV OS
Maximum output power	7.6 kW
Output power	32 A @208~240 Vac, 1-phase
Vehicle connector	SAE J1772
Charging cable length	25 feet / 7.6 m
Input power	1-phase, 3-wire, 208~240 Vac, 32 A maximum
Grounding system	TN, TT
Efficiency	> 99%
Power factor	> 0.99
Display	LED indicator, OLED, 20 characters, 2 lines
Communication protocol	OCPP 1.6 JSON
Network connectivity	Wi-Fi, 4G
RFID	RFID ISO/IEC 14443 A/B, ISO 15693
NEMA enclosures(NEMA)	NEMA 4
Impact protection	IK10
Electrical protection	Over voltage protection, under voltage protection, surge protection, ground fault protection, residual current device, short circuit protection, over current protection, over temperature protection
Operating temperature	-22 °F to +122 °F / -30 °C to +50 °C
Dimensions	7.6 (W) x 11.1 (H) x 3.1 (D) in 192 (W) x 283 (H) x 79 (D) mm
Weight	11 lbs / 5 kg
Certifications	UL, FCC, Energy Star

Noodoe EV OS

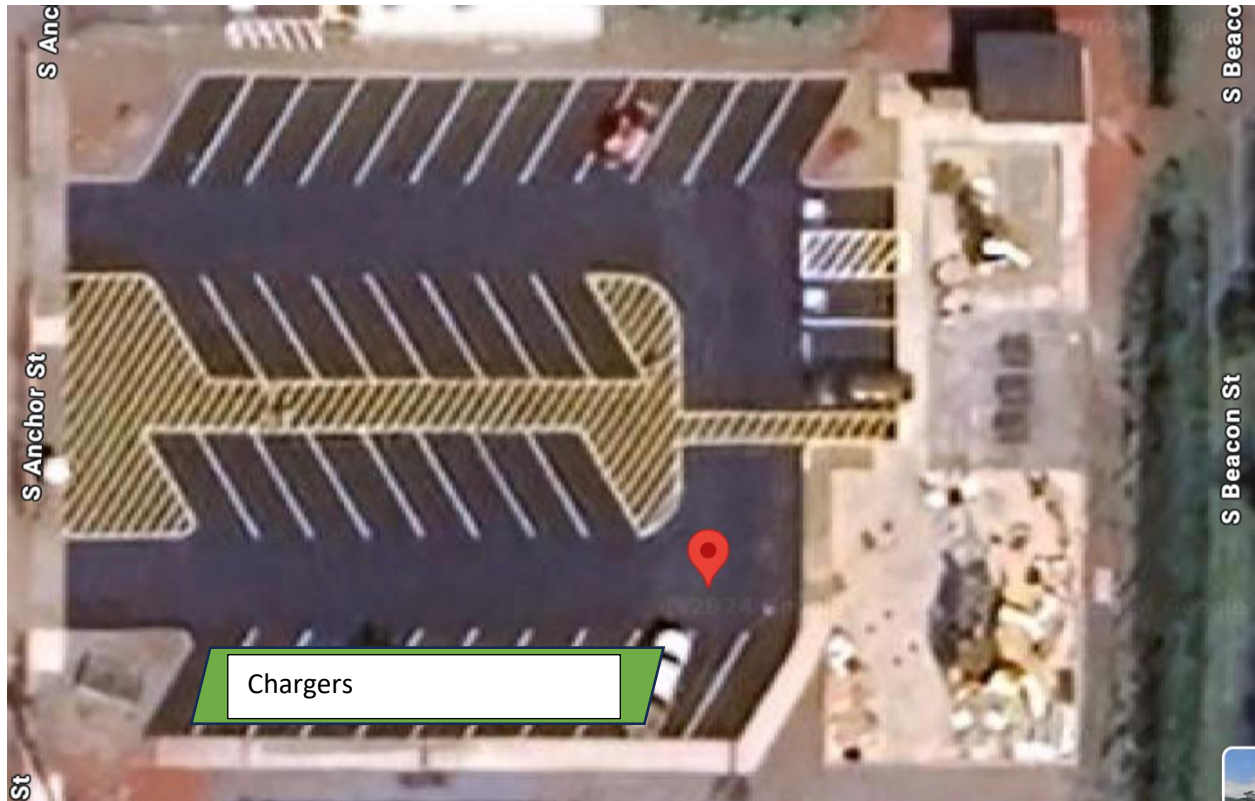


Noodoe Inc.
9896 Bissonnet,
Suite 440
Houston, TX 7703,
United States
+1 281-888-3429
info@noodoe.com
noodoe.com



EXHIBIT B – Project Site Info

220 S. Anchor Street, Rockaway Beach, OR 97136



Utility/Electric Provider: Tillamook PUD

Electric Provider Acct. #: EVCS tbd

Total Estimated Parking Spaces: 9 / Estimated Number of ADA Spaces: 1

Other: _____

**EXHIBIT D – Site Host Banking Information (for ACH Payment
Purposes)**

Name on Account: _____

Name of Bank: _____

Bank Routing Number: _____

RESOLUTION NO. 2024-49

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE SAFE DRINKING WATER REVOLVING LOAN FUND GRANT CONTRACT FOR FOREST MANAGEMENT PLANNING & APPRAISAL FOR THE JETTY CREEK WATERSHED

WHEREAS, the State of Oregon has awarded the City of Rockaway Beach a grant in the amount of \$70,000 from the Safe Drinking Water Revolving Loan Fund for the Drinking Water Source Protection Plan project “Forest Management Planning & Appraisal for the Jetty Creek Watershed”; and

WHEREAS, the State administers the grant through its Oregon Infrastructure Finance Authority of the Oregon Business Development Department (“OBDD”), also known as Business Oregon.

NOW, THEREFORE, BE IT RESOLVED THAT

Section 1. The City Council of the City of Rockaway Beach hereby authorizes the City Manager to execute a Safe Drinking Water Revolving Loan Fund Grant Contract for Source Water Protection (Project Name: Forest Management Planning & Appraisal for the Jetty Creek Watershed; Project No. U25006) with the Oregon Business Development Department, in the amount of \$70,000.

Section 2. This Resolution shall be effective immediately upon adoption.

APPROVED AND ADOPTED BY THE CITY COUNCIL THE 11th DAY OF DECEMBER 2024.

APPROVED

Charles McNeilly, Mayor

ATTEST

Melissa Thompson, City Recorder

SAFE DRINKING WATER REVOLVING LOAN FUND
GRANT CONTRACT FOR SOURCE WATER PROTECTION

Project Name: Forest Management Planning & Appraisal for the Jetty Creek Watershed

Project Number: U25006

This grant contract (“Contract”), dated as of the date the Contract is fully executed, is made by the State of Oregon, acting by and through its Oregon Infrastructure Finance Authority of the Oregon Business Development Department (“OBDD”), and the City of Rockaway Beach, Oregon (“Recipient”) for financing of the project referred to above and described in Exhibit B (“Project”). This Contract becomes effective only when fully signed and approved as required by applicable law. Capitalized terms not defined in Section 1 and elsewhere in the body of the Contract have the meanings assigned to them by Exhibit A.

This Contract includes the following exhibits, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

- Exhibit A General Definitions
- Exhibit B Project Description and Special Conditions
- Exhibit C Project Budget

The information in Exhibit D is required by 2CFR § 200.332 and is attached to this Contract for informational purposes only.

SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

Estimated Project Cost: \$85,000

Grant Amount: \$70,000

Project Closeout Deadline: 90 days after the earlier of the Project Completion Date or the Project Completion Deadline.

Project Completion Deadline: 24 months after the date of this Contract.

SECTION 2 - FINANCIAL ASSISTANCE

- A. OBDD shall provide Recipient, and Recipient shall accept from OBDD, financing for the Project as a grant (the “Grant”) in an aggregate amount not to exceed the Grant Amount.
- B. Use of Proceeds. Recipient shall use the Grant only for the activities described in Exhibit B and according to the budget in Exhibit C. Recipient may not exceed or change line items in the budget except with the prior written consent of OBDD.
- C. Costs of the Project. Recipient shall apply the Grant to the Costs of the Project in accordance with the Act and Oregon law, as applicable. Grant proceeds cannot be used for costs in excess of one hundred percent (100%) of the total Costs of the Project and cannot be used for pre-Award Costs of the Project, unless permitted by Exhibit B.
- D. Costs Paid for by Others. Recipient may not use any of the Grant to cover costs to be paid for by other financing for the Project from another State of Oregon agency or any third party.

SECTION 3 - DISBURSEMENTS

- A. Reimbursement Basis. The Grant shall be disbursed to Recipient on an expense reimbursement or costs-incurred basis. Recipient must submit each disbursement request for the Grant on an OBDD-provided or OBDD-approved disbursement request form (“Disbursement Request”).
- B. Financing Availability. OBDD’s obligation to make, and Recipient’s right to request, disbursements under this Contract terminates on the Project Closeout Deadline.

SECTION 4 - CONDITIONS PRECEDENT

- A. Conditions Precedent to OBDD’s Obligations. OBDD’s obligations are subject to the receipt of the following items, in form and substance satisfactory to OBDD and its Counsel:
- (1) This Contract duly signed by an authorized officer of Recipient.
 - (2) Such other certificates, documents, opinions and information as OBDD may reasonably require.
- B. Conditions to Disbursements. As to any disbursement, OBDD has no obligation to disburse funds unless all following conditions are met:
- (1) There is no Event of Default.
 - (2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
 - (3) OBDD, in the reasonable exercise of its administrative discretion, has sufficient moneys in the Fund for use in the Project and has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.
 - (4) OBDD (a) has received a completed Disbursement Request, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as OBDD may require, (c) is satisfied that all items listed in the Disbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project, and (d) has determined that the disbursement is only for costs defined as eligible costs under the Act and any implementing administrative rules and policies.
 - (5) Recipient has delivered documentation satisfactory to OBDD that, in addition to the Grant, Recipient has available or has obtained binding commitments for all funds necessary to complete the Project.
 - (6) Any conditions to disbursement elsewhere in this Contract are met.

SECTION 5 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

Recipient represents and warrants to OBDD:

- A. Estimated Project Cost. A reasonable estimate of the Costs of the Project is shown in Section 1, and the Project is fully funded.
- B. Organization and Authority.
- (1) Recipient is a municipality, validly organized and existing under Oregon law, and owns a public water system as defined in the Act.

- (2) Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract, (b) incur and perform its obligations under this Contract, and (c) receive financing for the Project.
- (3) This Contract has been duly executed by Recipient, and when executed by OBDD, is legal, valid and binding, and enforceable in accordance with its terms.
- C. Full Disclosure. Recipient has disclosed in writing to OBDD all facts that materially adversely affect the Project, or the ability of Recipient to perform all obligations required by this Contract. Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract is true and accurate in all respects.
- D. Pending Litigation. Recipient has disclosed in writing to OBDD all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Recipient to perform all obligations required by this Contract.
- E. No Defaults.
 - (1) No Events of Default exist or occur upon authorization, execution or delivery of this Contract.
 - (2) Recipient has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Recipient to perform all obligations required by this Contract.
- F. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract will not: (i) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (ii) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.
- G. Governmental Consent. Recipient has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Contract, for the financing and undertaking and completion of the Project.

SECTION 6 - COVENANTS OF RECIPIENT

Recipient covenants as follows:

- A. Notice of Adverse Change. Recipient shall promptly notify OBDD of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Project related to the ability of Recipient to perform all obligations required by this Contract.
- B. Compliance with Laws. Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract, the Project and the operation of the System of which the Project is a component. In particular, but without limitation, Recipient shall comply with the following, as applicable:
 - (1) State procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C. Oregon state procurement regulations will satisfy federal procurement requirements of 2 CFR part 200, subpart D.

- (2) State labor standards and wage rates found in ORS chapter 279C.
- (3) SAFE DRINKING WATER IN OREGON: Program Guidelines & Handbook for the Federally Funded Safe Drinking Water Revolving Fund & Drinking Water Protection Loan Fund (March 2024 update), as amended from time to time ("Safe Drinking Water Handbook"), available at <https://www.orinfrastructure.org/assets/docs/IFA/SDWhandbook.pdf>.
- (4) Federal Crossing-Cutting Authorities. All federal laws, executive orders and government-wide policies that apply by their terms to projects and activities receiving federal financial assistance, regardless of whether the Act makes them applicable ("Cross-Cutting Authorities"). The Safe Drinking Water Handbook contains a link to a list of the Cross-Cutting Authorities.
- (5) Lobbying. Recipient acknowledges and agrees that the Costs of the Project will not include any Lobbying costs or expenses incurred by Recipient or any person on behalf of Recipient, and that Recipient will comply with federal restrictions on lobbying at 40 C.F.R. Part 34 and will not request payment or reimbursement for Lobbying costs and expenses. "Lobbying" means influencing or attempting to influence a member, officer or employee of a governmental agency or legislature in connection with the awarding of a government contract, the making of a government grant or loan or the entering into of a cooperative agreement with such governmental entity or the extension, continuation, renewal, amendment or modification of any of the above.
- (6) Federal Audit Requirements. The Grant is federal financial assistance, and the Federal Assistance Listing (formerly CFDA) number and title is "66.468, Capitalization Grants for Drinking Water State Revolving Funds." Recipient is a sub-recipient.
 - (a) If Recipient receives federal funds in excess of \$750,000 in Recipient's fiscal year, it is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Recipient, if subject to this requirement, shall at its own expense submit to OBDD a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Contract and shall submit or cause to be submitted to OBDD the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Contract.
 - (b) Audit costs for audits not required in accordance with 2 CFR part 200, subpart F are unallowable. If Recipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the funds received under this Contract.
 - (c) Recipient shall save, protect and hold harmless OBDD from the cost of any audits or special investigations performed by the Federal awarding agency or any federal agency with respect to the funds expended under this Contract. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and the State of Oregon.
- (7) Disadvantaged Business Enterprises. Recipient will implement the good faith efforts for solicitation and contracting with Disadvantaged Business Enterprises ("DBE") described in the Safe Drinking Water Handbook. This applies to all solicitation and contracting for construction, equipment, supplies, engineering or other services that constitute the Project financed by this Contract. Recipient will maintain documentation in a Project file and submit the required forms, as described in the Safe Drinking Water Handbook. Recipient will ensure

that all prime contractors implement the good faith efforts for solicitation and contracting, and comply with all DBE procurement forms, statements, and reporting requirements.

Recipient will ensure that each procurement contract includes the following term and condition:

“The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.”

- (8) Incorporation by Reference. The above state and federal laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.

C. Project Completion Obligations. Recipient shall:

- (1) When procuring professional consulting services, provide OBDD with copies of all solicitations at least 10 days before advertising, and all contracts at least 10 days before signing.
- (2) Complete the Project using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of financial assistance provided pursuant to this Contract.
- (3) Complete the Project no later than the Project Completion Deadline, unless otherwise permitted by OBDD in writing.
- (4) No later than the Project Closeout Deadline, Recipient must deliver to OBDD an electronic copy of the final Forest Stewardship Plan (“FSP”).
- (5) Provide OBDD with a copy of all other final plans, reports or other documents prepared as part of the Project before requesting its final Grant disbursement. OBDD will review the documents and may require reasonable modifications. If OBDD does not suggest modifications within thirty (30) days of its receipt of the documents, they will be deemed approved.

D. Professional Responsibility. All service providers retained for their professional expertise must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty.

E. Financial Records. Recipient shall keep accurate books and records for the Costs of the Project, separate and distinct from its other books and records, and maintain them according to generally accepted accounting principles established by the Government Accounting Standards Board in effect at the time. Recipient shall have these records audited annually by an independent certified public accountant, which may be part of the annual audit of all records of Recipient.

F. Inspections; Information. Recipient shall permit OBDD and any party designated by OBDD: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters. Recipient shall supply any related reports and information as OBDD may reasonably require.

G. Records Maintenance. Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Grant for a minimum of six years,

or such longer period as may be required by other provisions of this Contract or applicable law, following the Project Completion Deadline or final completion and satisfaction of all reporting requirements of Recipient under this Contract. If there are unresolved issues at the end of such period, Recipient shall retain the books, documents, papers and records until the issues are resolved.

H. Economic Benefit Data. OBDD may require Recipient to submit specific data on the economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion date. Recipient shall, at its own expense, prepare and submit the data within the time specified by OBDD.

I. Notice of Events of Default. Recipient shall give OBDD prompt written notice of any Event of Default as soon as Recipient becomes aware of its existence or reasonably believes an Event of Default is likely.

J. Contributory Liability and Contractor Indemnification.

(1) 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 a party (the “Notified Party”) with respect to which the other party may have liability, the Notified Party must promptly notify the other party in writing and deliver a copy of the claim, process, and all legal pleadings related to the Third Party Claim. Either 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. The foregoing provisions are conditions precedent for either party’s liability to the other in regards to the Third Party Claim.

If the parties are jointly liable (or would be if joined in the Third Party Claim), the parties 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 in such proportion as is appropriate to reflect their respective relative fault. The relative fault of the parties 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. Each party’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if that party had sole liability in the proceeding. This Section shall survive termination of this Contract.

(2) Recipient shall take all reasonable steps to require its contractor(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 and its officers, employees and agents (“Indemnatee”) 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 Recipient’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 Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by the contractor from and against any and all Claims. This Section shall survive termination of this Contract.

SECTION 7 - DEFAULTS

Any of the following constitutes an “Event of Default”:

A. Any false or misleading representation is made by or on behalf of Recipient, in this Contract or in any document provided by Recipient related to this Grant or the Project.

- B. Recipient fails to perform any obligation required under this Contract, other than those referred to in subsection A of this Section 7, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by OBDD. OBDD may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

SECTION 8 - REMEDIES

- A. Remedies. Upon any Event of Default, OBDD may pursue any or all remedies in this Contract, and any other remedies available at law or in equity to collect amounts due or to become due or to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to:
- (1) Terminating OBDD's commitment and obligation to make disbursements under the Contract.
 - (2) Barring Recipient from applying for future awards.
 - (3) Exercising any applicable remedy listed in OAR 123-049-0040.
- B. Application of Moneys. Any moneys collected by OBDD pursuant to section 8.A will be applied first, to pay any attorneys' fees and other fees and expenses incurred by OBDD; second, as applicable, to repay any Grant proceeds owed; and third, to pay any other amounts due and payable under this Contract.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to OBDD is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Contract shall preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. OBDD is not required to provide any notice in order to exercise any right or remedy, other than notice required in Section 7 of this Contract.
- D. Default by OBDD. In the event OBDD defaults on any obligation in this Contract, Recipient's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of OBDD's obligations.

SECTION 9 - MISCELLANEOUS

- A. Time is of the Essence. Recipient agrees that time is of the essence under this Contract and the other Financing Documents.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
 - (2) Nothing in this Contract gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
 - (3) This Contract will be binding upon and inure to the benefit of OBDD, Recipient, and their respective successors and permitted assigns.
 - (4) Recipient may not assign or transfer any of its rights or obligations or any interest in this Contract without the prior written consent of OBDD. OBDD may grant, withhold or impose

conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to OBDD, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of OBDD's Counsel. Any approved assignment is not to be construed as creating any obligation of OBDD beyond those in this Contract, nor does assignment relieve Recipient of any of its duties or obligations under this Contract.

- (5) Recipient hereby approves and consents to any assignment, sale or transfer of this Contract that OBDD deems to be necessary.

C. Disclaimer of Warranties; Limitation of Liability. Recipient agrees that:

- (1) OBDD makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portion of the Project, or any other warranty or representation.
- (2) In no event are OBDD or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Contract or the existence, furnishing, functioning or use of the Project.

D. Notices and Communication. Except as otherwise expressly provided in this Contract, any communication between the parties or notices required or permitted must be given in writing by personal delivery, email, or by mailing the same, postage prepaid, to Recipient or OBDD at the addresses set forth below, or to such other persons or addresses that either party may subsequently indicate pursuant to this Section.

Any communication or notice by personal delivery will be deemed effective when actually delivered to the addressee. Any communication or notice so addressed and mailed will be deemed to be received and effective five (5) days after mailing. Any communication or notice given by email becomes effective 1) upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system or 2) the recipient's confirmation of receipt, whichever is earlier. Notwithstanding this provision, the following notices may not be given by email: notice of default or notice of termination.

If to OBDD: Deputy Director
Oregon Business Development Department
775 Summer Street NE Suite 310
Salem OR 97301-1280

If to Recipient: City Manager
City of Rockaway Beach
PO Box 5
276 S Highway 101
Rockaway Beach OR 97136-1015

- E. No Construction against Drafter. This Contract is to be construed as if the parties drafted it jointly.
- F. Severability. If any term or condition of this Contract is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.
- G. Amendments, Waivers. This Contract may not be amended without the prior written consent of OBDD (and when required, the Department of Justice) and Recipient. This Contract may not be amended in a manner that is not in compliance with the Act. No waiver or consent is effective unless in writing and signed by the party against whom such waiver or consent is sought to be enforced.

Such waiver or consent will be effective only in the specific instance and for the specific purpose given.

- H. Attorneys' Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to OBDD by its attorneys.
- I. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

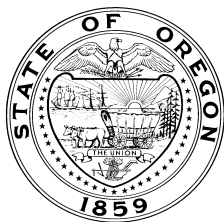
Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- J. Integration. This Contract (including all exhibits, schedules or attachments) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.
- K. Execution in Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

SIGNATURES PAGE TO FOLLOW

Recipient, by its signature below, acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON
acting by and through its
Oregon Business Development Department



CITY OF ROCKAWAY BEACH

By: _____
Edward Tabor, Infrastructure and
Program Services Director

By: _____
Dan Emerson, Superintendent, Public Works

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

Not Required as per OAR 137-045-0030

EXHIBIT A - GENERAL DEFINITIONS

As used in this Contract, the following terms have the meanings below.

“Act” means “Safe Drinking Water Act,” 42 U.S.C. Sec. 300f, and all subsequent amendments, including the Amendments of 1996, Public Law 104-182.

“Award” means the award of financial assistance to Recipient by OBDD dated 01 October 2024.

“Costs of the Project” means Recipient’s actual costs (including any financing costs properly allocable to the Project) that are (a) reasonable, necessary and directly related to the Project, (b) permitted by generally accepted accounting principles to be Costs of the Project, and (c) are eligible or permitted uses of the Grant under applicable state or federal statute and rule.

“Counsel” means an attorney at law or firm of attorneys at law duly admitted to practice law before the highest court of any state, who may be of counsel to, or an employee of, OBDD or Recipient.

“ORS” means the Oregon Revised Statutes.

“Project Completion Date” means the date on which Recipient completes the Project.

EXHIBIT B - PROJECT DESCRIPTION AND SPECIAL CONDITIONS

Project Description:

Recipient will:

1) Contract with a sustainable forestry consultant to develop a FSP for the Jetty Creek Watershed.

Recipient will ensure the following are included in the FSP:

- long term management objectives;
- forest inventory and site evaluation;
- identification of risks to water quality; and
- planned best management practices (“BMPs”) for riparian buffers, roads, culverts, landslide-prone slopes, any planned timber harvests, and post-harvest restoration to maintain high raw water quality.

2) Provide a summary of the FSP to the Oregon Department of Environmental Quality (“DEQ”) for approval. The FSP summary should include, but is not limited to: FSP goals, methods, and an overview of BMPs recommended. Detailed timber stand data and BMPs for specific parcels do not need to be submitted.

3) Obtain property appraisals for at least one parcel within Nuveen Nature Capital owned portions of the Jetty Creek Watershed (the lower 600 acres).

4) Conduct community engagement with at least one in-person meeting.

5) Contract with North Coast Land Conservancy for support on mapping and due diligence tasks.

Special Conditions:

10% of the Grant award will be withheld until documentation of DEQ approval of the FSP is received by OBDD.

EXHIBIT C - PROJECT BUDGET

Line Item Activity	OBDD Funds	Other / Matching Funds
Forest Management Plan Development	\$30,000	\$0
Yellow Book Appraisal	\$30,000	\$0
Forest Management Planning – Community Engagement	\$10,000	\$0
Jetty Creek Working Group Facilitation and Landowner Support – Sustainable	\$0	\$10,000
Mapping & Due Diligence – North Coast Land Conservancy	\$0	\$5,000
Total	\$70,000	\$15,000

EXHIBIT D - INFORMATION REQUIRED BY 2 CFR § 200.332(A)(1)

- (i) Subrecipient* name (which must match registered name in SAM): Rockaway City Hall
 - (ii) Subrecipient's Unique Entity Identifier (SAM): ZJ9JU8FK6G89
 - (iii) Federal Award Identification Number (FAIN): 98009022
 - (iv) Federal Award Date: 21 September 2022
 - (v) Sub-award Period of Performance Start and End Date: beginning at Contract execution and ending on the last day of the month occurring 24 months after the date of this Contract.
 - (vi) Sub-award budget period start and end dates: beginning at Contract execution and ending on the last day of the month occurring 24 months after the date of this Contract.
 - (vii) Total Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient: \$70,000.
 - (viii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current financial obligation: \$70,000.
 - (ix) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity: \$120,000
 - (x) Federal award project description as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA): Oregon's Drinking Water State Revolving Fund: This grant increases the capacity of Oregon to ensure that its public water systems continue to provide safe drinking water. This is done by (1) continuing loan financing to public water systems and support for newly proposed priority projects, (2) providing grant support for covering administrative expenses, small public water system technical assistance, State program management and local assistance, and (3) continuation of the loan fund to finance source water protection project initiatives, including acquiring conservation easements.
 - (xi) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity:
 - (a) Name of Federal awarding agency: U.S. Environmental Protection Agency
 - (b) Name of pass-through entity: Oregon Business Development Department
 - (c) Contact information for awarding official of the pass-through entity: Edward Tabor, Infrastructure and Program Services Director, 503-949-3523
 - (xii) The Federal Assistance Listing (formerly CFDA) Number and Name: 66.468 Safe Drinking Water State Revolving Fund,
Amount: \$70,000
 - (xiii) Is Award R&D? No
 - (xiv) Indirect cost rate for the Federal award: 15%
- * For the purposes of this Exhibit E, "Subrecipient" refers to Recipient and "pass-through entity" refers to OBDD.
- ** The total amount of federal funds obligated to the Subrecipient by the pass-through entity is the total amount of federal funds obligated to the Subrecipient by the pass-through entity during the current state fiscal year, which runs from July 1 through June 30.



City of Rockaway Beach, Oregon

276 S. Highway 101, PO Box 5
Rockaway Beach, OR 97136
503.374.1752

STAFF REPORT

Date: December 4, 2024
To: City Council
From: Luke Shepard, City Manager
Subject: Review of OLCC Annual License Renewals

ISSUE STATEMENT

The City Council may consider whether they wish to recommend that OLCC deny or restrict any annual liquor license renewals.

BACKGROUND

In Spring of 2024, the Oregon Liquor and Cannabis Commission (OLCC) launched a new on-line licensing system. OLCC now provides the City with a list of upcoming license renewals and gives local governments 60 days to recommend approval or denial. License applicants complete their application with OLCC online. Applicants must pay the City's \$25 renewal fee.

CITY MANAGER'S COMMENT

Staff does not have any reports of problems relating to current licenses that OLCC can consider to refuse or restrict a license. Staff recommends the City Council review the licenses scheduled for renewals and approve them under the Regular Meeting Consent Agenda.

COUNCIL OPTIONS

The Council may:

- **Recommend Approval** (by doing nothing). If the City does not submit a recommendation by January 15th, the OLCC will process the renewal application as a favorable recommendation.
- **Recommend Denial**
 1. File an unfavorable recommendation, stating the grounds for the unfavorable (must meet denial criteria on attached PDF); **OR**
 2. Make a written request for additional time to complete an investigation. The request must state:
 - A) You are considering making an unfavorable recommendation;
 - B) The specific grounds being considered.

The grounds must be one referenced in Oregon Administrative Rule 845-005-0308(3). If your request is granted you will be given a 45-day extension to file your unfavorable recommendation. Unfavorable means recommending denial of a license or requesting restrictions be placed on a license.

- Provide other or no direction, as desired.

ATTACHMENTS

- OLCC Licenses Renewals for March 31, 2025
- OLCC License Denial Criteria

FOR MORE INFORMATION

Staff Contact: Luke Shepard, City Manager

Telephone: (503) 374-1752

Staff E-Mail: citymanager@corb.us

OLCC License Renewals

Trade Name	Licensee Name	License Type	Expiration Date	Physical Address
BEACH BITE RESTAURANT AND DOS ROCAS MEXICAN RESTAURANT	SEÑOR LATINO LLC	FULL ON-PREMISES SALES - COMMERCIAL	03/31/2025	176 S HIGHWAY 101 ROCKAWAY OR 97136-
CENTER MARKET #27	SIMRON INC	OFF-PREMISES SALES	03/31/2025	140 HIGHWAY 101 N ROCKAWAY BEACH OR 97136-
CENTER MARKET #34	NIRANKAR INC	OFF-PREMISES SALES	03/31/2025	208 S ANCHOR ST ROCKAWAY BEACH OR 97136-9783
DOLLAR GENERAL STORE #18455	DG RETAIL LLC	OFF-PREMISES SALES	03/31/2025	412 HIGHWAY 101 N ROCKAWAY BEACH OR 97136-
EL TRIO LOCO III	TRIO BAUTISTA LLC	FULL ON-PREMISES SALES - COMMERCIAL	03/31/2025	122 HIGHWAY 101 N ROCKAWAY BEACH OR 97136-
JOE'S SNACKS AND BEER	HISTORICAL ROCKAWAY SNACK SHACK LLC	LIMITED ON-PREMISES SALES	03/31/2025	101 S MILLER ST ROCKAWAY BEACH OR 97136-
LAKESIDE HIDEAWAY	AWESOME INDOOR PLAYGROUND SALEM, LLC	FULL ON-PREMISES SALES - COMMERCIAL	03/31/2025	670 HIGHWAY 101 N ROCKAWAY OR 97136-9582
LITTORAL LOUNGE	LITTORAL LLC	FULL ON-PREMISES SALES - COMMERCIAL	03/31/2025	342 HIGHWAY 101 N ROCKAWAY BEACH OR 97136-
RICK'S ROADHOUSE	RICK'S ROAD HOUSE INC	FULL ON-PREMISES SALES - COMMERCIAL	03/31/2025	184 S HIGHWAY 101 ROCKAWAY BEACH OR 97136-
ROCK BOX	CART LLC	LIMITED ON-PREMISES SALES	03/31/2025	530 HIGHWAY 101 N ROCKAWAY BEACH OR 97136-9668
SAND DOLLAR RESTAURANT & LOUNGE	SAND DOLLAR LLC	FULL ON-PREMISES SALES - COMMERCIAL	03/31/2025	210 N 1ST AVE ROCKAWAY BEACH OR 97136-
TIE BREAKER	TIE BREAKER LLC	FULL ON-PREMISES SALES - COMMERCIAL	03/31/2025	194 HIGHWAY 101 S ROCKAWAY BEACH OR 97136-

REASONS WE MAY DENY OR RESTRICT A LICENSE
ORS 471.313(4)(5), OAR 845-005-0320, 845-005-0321, 845-005-0322
845-005-0325, 845-005-0326(4)(5) or 845-005-0355

The following is a list of problems relating to the **APPLICANT** or **BUSINESS** that OLCC **can** consider to refuse or restrict a license:

1. Applicant has a habit of using alcohol or drugs to excess
2. Applicant makes a false statement to OLCC (must be related to a refusal basis)
3. Applicant has been convicted of local, state or federal laws that are substantially related to the fitness of holding a liquor license
4. Applicant has demonstrated poor moral character
5. Applicant has a poor record of compliance when previously licensed by OLCC
6. Applicant is not the legitimate owner of the business
7. The business has a history of serious and persistent problems at this location.

The problems can include:

- Obtrusive or excessive noise, music or sound vibrations
- Public drunkenness
- Fights or altercations
- Harassment
- Unlawful drug sales
- Alcohol or related litter

OLCC is **not** able to consider the following issues when deciding to renew a liquor license:

- Lack of parking
- Increase in traffic
- Too many licenses in a specific area (saturation)
- Entertainment type - nude dancing, gambling, live bands, etc.
- Increased noise
- Zoning issues

Visit www.oregon.gov/olcc/ to see the full text of ORS and OAR referenced above. In order for an unfavorable recommendation from a local government to be valid, the grounds must be found in the license refusal bases of ORS 471.313(4), 471.313(5), OAR 845-005-0320, 845-005-0321, 845-005-0322, 845-005-0325 or 845-005-0326(4)(5) or the license restriction bases of OAR 845-005-0355, and must be supported by reliable factual information.

OVERFLOW PARKING AGREEMENT

Date

This Overflow Parking Agreement (“Agreement”) is made and entered into as of the date of the last signature of the parties below (“Effective Date”).

Parties

The parties (individually “Party” and collectively “Parties”) to this Agreement are:

1. City of Rockaway Beach (“City”); and
2. Tillamara, Inc. (“Tillamara”).

Recitals

- A. Tillamara owns Rockaway Beach Resort ("Resort"), which has recently reorganized from a non-profit time-share resort into a for-profit business hotel and conference center.
- B. To address limited parking availability near the Resort, Tillamara seeks access to overflow parking spaces for use by Resort guests and conference attendees.
- C. Anchor Street Park, located in the City of Rockaway Beach, features a parking lot (“Lot”) with sufficient overflow parking spaces to fulfill the Resort’s parking needs.
- D. The Parties desire to enter into this Agreement in order to provide Resort guests and conference attendees with access to the Lot for overflow parking purposes.

Agreement

The Parties hereby agree as follows:

1. **Recitals.** The recitals are true, are an integral part of this Agreement, and are incorporated herein by this reference.
2. **Terms and Conditions.**
 - 2.1. **Seasonal Use.** Resort may allow its event guests and attendees to park within the Lot between September 20 through June 10 of any given calendar year, subject to the notice requirements in Section 2.3. If the Resort desires access to the Lot outside of the above-referenced seasonal range, Tillamara shall seek the City’s consent at least four weeks in advance. Consent to Resort’s use of the Lot outside the seasonal range shall not be unreasonably withheld.

- 2.2. **Maximum Spaces.** Resort guests and attendees shall be authorized to use up to 30 of the Lot's 39 total parking spaces during any particular event.
- 2.3. **Prior Notice.** At least four weeks prior to any intended use, Tillamara shall provide City with written notice of its intent to utilize the Lot. Such notice shall provide the dates of intended use and the number of spaces needed. Such notice shall be delivered to: _____ if by mail, or _____ if by email. Upon receipt of notice of intended use, City shall ensure that the requested number of spaces are timely marked as available only for parking by Resort guests and attendees.
- 2.4. **Restrictions on Use.** Overnight parking by Resort guests and attendees is strictly prohibited.
- 2.5. **Resort Shuttle.** All parking shall be conducted personally. No valet service will be provided. Resort may operate its own shuttle service between the Lot and the Resort to transport guests and attendees.
- 2.6. **Security Services.** Tillamara may, at its discretion, provide private security services at the Lot.
3. **Warranty of Capacity to Execute Agreement.** Each Party hereto represents and warrants that the Parties have the sole right and exclusive authority to execute this Agreement, and that the Parties have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Agreement.
4. **Binding Effect.** This Agreement is binding on and inures to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns.
5. **Construction.**
- 5.1. The captions used in this Agreement are provided for convenience only and will not affect the meaning or interpretation of any provision of this Agreement.
- 5.2. All references in this Agreement to "section" or "sections" without additional identification refer to the section or sections of this Agreement.
- 5.3. All words used in this Agreement will be construed to be of such gender or number as the circumstances require.
- 5.4. Whenever the words "include" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation."
- 5.5. This Agreement has been negotiated and prepared by the Parties and their respective counsel. Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the provision shall not apply the rule of construction

that a document is to be construed more strictly against one Party.

6. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the state of Oregon, without regard to conflict of laws principles.
7. **Entire Agreement.** This Agreement contains the entire agreement among the Parties with regard to the matters set forth.
8. **Effectiveness.** This Agreement shall become effective immediately following execution by each of the Parties.
9. **Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable for any reason, then (i) the validity, legality, and enforceability of the remaining provisions of this Agreement (including, but not limited to, all parts of this Agreement containing any such provision held to be invalid, illegal, or unenforceable, that are not themselves invalid, illegal, or unenforceable) shall not in any way be affected or impaired thereby and (ii) to the fullest extent possible, the provisions of this Agreement (including, but not limited to, all parts of this Agreement containing any such provision held to be invalid, illegal, or unenforceable, that are not themselves invalid, illegal, or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal, or unenforceable.
10. **Fax and Electronic Signatures.** Fax(ed) and/or electronic signatures (i.e., pdf or e-faxes) shall be sufficient and equivalent to original signatures in this Agreement.
11. **Multiple Counterparts.** This Agreement may be executed in multiple counterparts.

[signature page to follow]

City

By: _____
Position: _____

Date

Tillamara

By: _____
Position: _____

Date