

**CITY OF LINCOLN CITY
COUNCIL AGENDA**

MONDAY JUNE 12, 2023, 6:00 PM

6:00 PM - The Lincoln City Council will hold a Regular Meeting in the Council Chambers, 801 SW Highway 101 - 3rd Floor, Lincoln City, OR 97367.

Public comments can be submitted to publiccomment@lincolncity.org, by attending the City Council meeting, or by telephone.

Public comments submitted by email to publiccomment@lincolncity.org will be entered into the official record, distributed to the governing body, and summarized; however, due to personal privacy issues they are not generally published in the online Agenda packet.

****PUBLIC COMMENT VIA EMAIL WILL ONLY BE RECOGNIZED UPON RECEIPT OF AN EMAIL SENT TO publiccomment@lincolncity.org****

Citizens requesting to give public comment via telephone must email publiccomment@lincolncity.org no later than noon on the meeting day. The request must include the person's name, the subject the person wishes to address, and the phone number the person intends to use for the meeting. Instructions will be sent to the person requesting prior to the meeting. Persons who will give public comment via telephone will need to leave the microphone muted until the public comment portion of the meeting.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, for a hearing-impaired device, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting. To request information in an alternate format or other assistance, please contact the City's ADA Coordinator, Kevin Mattias, at [541-996-1013](tel:541-996-1013) or kmattias@lincolncity.org. Visit the [ADA Accessibility | City of Lincoln City, OR](#) webpage to view how the City continues to remain in compliance with Title II of the Americans with Disabilities Act regarding City programs, services, processes, and facilities.

The Lincoln City Council reserves the right to add or delete items as needed, change the order of the agenda, and discuss any other business deemed necessary at the time of the meeting.

All information for this meeting is available at www.lincolncity.org under "Government" then select "Public Meeting, Agendas, Packets & Video". This meeting will be televised live on Channel 4. For additional rebroadcast times, please consult the Channel 4 guide on the hour. If you wish to speak on an agenda or non-agenda item, please sign up on the sheet near the entrance door to the Council Chambers. You will be called to speak during the "Public Comment" section. Comments or testimony on agenda items listed under "public hearing/public comment" will be taken at that time.

A. CALL TO ORDER

B. ROLL CALL

C. PLEDGE OF ALLEGIANCE

D. CONSENT AGENDA

1. Oregon Liquor Control Commission New Outlet On-Premises Commercial for Grill 1646
2. Authorization for City Manager to enter into lease agreements with Cascade Head Biosphere Reserve and Audubon Society of Lincoln City non-profits for Suite A on the first floor of Lincoln Square Building
3. Regular Meeting – Minutes of Joint City Council and Planning Commission, February 2, 2021, 6:00 PM
4. Regular Meeting – Minutes of Regular Meeting – May 22, 2023, 6:00 PM

E. COUNCIL DELIBERATIONS

F. COMMENTS FROM CITIZENS PRESENT ON AGENDA/NON-AGENDA ITEMS

Article I, Section 8, of the Oregon Constitution provides: No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right. Be advised: Comments by citizens under this Public Comments Section of the Agenda or under Public Hearings are solely the opinions and statements of the speakers and are not statements by the City of Lincoln City and do not represent the opinions of the City of Lincoln City, its officers and employees.

G. PRESENTATIONS

5. Lincoln County Commissioner Kaety Jacobson Quarterly Presentation

H. PUBLIC HEARING / ORDINANCE

I. PUBLIC HEARINGS / PUBLIC COMMENTS

1. Public Comment: Resolution 2023-14 Setting Water/Sewer Rates
2. Public Hearing: Resolution 2023-15 State Shared Revenues
3. Public Hearing: Resolution 2023-12 Supplemental Budget
4. Public Hearing: Resolution 2023-16 Adopt Budget

J. ORDINANCES

5. ORDINANCE NO. 2023-12 AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 5. (BUSINESS TAXES, LICENSES AND REGULATIONS), CHAPTER 5.28 (STREET VENDORS), SECTION 5.28.040 (INSPECTION AND PERMITS) TO CORRECT THE REQUIRED PUSHCART INSPECTIONS.

K. RESOLUTIONS

6. RESOLUTION NO. 2023-11 A RESOLUTION OF THE CITY OF LINCOLN CITY, CALLING FOR A SPECIAL ELECTION ON NOVEMBER 7, 2023 TO FILL THE VACANT COUNCIL WARD 2 POSITION ON THE CITY COUNCIL FOR THE CITY OF LINCOLN CITY
7. RESOLUTION NO. 2023-14 A RESOLUTION SETTING FORTH WATER/SEWER RATES
8. RESOLUTION NO. 2023-15 A RESOLUTION DECLARING THE CITY'S ELECTION TO RECEIVE STATE REVENUES

9. RESOLUTION 2023-12 A RESOLUTION ADOPTING THE SUPPLEMENTAL BUDGET OF THE CITY OF LINCOLN CITY, OREGON, FOR THE FISCAL YEAR 2022-2023, AS APPROVED BY THE CITY COUNCIL, AND MAKING APPROPRIATIONS

10. RESOLUTION 2023-13 A RESOLUTION AUTHORIZING AND DIRECTING BUDGET TRANSFERS FOR THE CITY OF LINCOLN CITY, OREGON IN THE 2022-2023 FISCAL YEAR BUDGET

11. RESOLUTION NO. 2023-16 ADOPTING THE BUDGET

L. SPECIAL ORDER OF BUSINESS

12. Design Contract Award – NE 44th to 47th Connector Road

13. Intergovernmental Agreement: ODOT Delivered Federal Project on Behalf of Lincoln City US 101: 39th Street to Holmes Avenue Sidewalk Infill Key Number: 2343

M. CITY MANAGER/CITY ATTORNEY REPORTS

N. ACTIONS, IF ANY, BASED ON WORK SESSION OR EXECUTIVE SESSION

O. ADDITIONAL COMMENTS FROM CITIZENS PRESENT ON NON-AGENDA ITEMS

P. ANNOUNCEMENTS OR COMMENTS BY CITY COUNCIL

Q. ADJOURNMENT

Council Communication

OLCC - New Outlet for On-Premises Commercial - Grill 1646

Meeting Date:	June 12, 2023	Primary Staff Contact:	Jamie Young
Department:	City Council	E-Mail:	JYoung@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	5 mins

Questions:

Should the City Council provide a recommendation to the Oregon Liquor Control Commission (OLCC) for a New Outlet Limited On-Premises Commercial for Grill 1646?

Staff Recommendations:

A review was conducted by Chief Broderick, and staff recommends that City Council provide a favorable recommendation to grant the license to the applicant.

Legal Background and Framework:

LCMC 5.20 (Liquor License Review) sets forth the City's procedures for OLCC license recommendation under Oregon Revised Statute (ORS) 471.166.

Council Options:

Approve a favorable recommendation to the Oregon Liquor Control Commission (OLCC) for a New Outlet Limited On-Premises Commercial for Grill 1646.

Potential Motions:

Motion to approve the Oregon Liquor Control Commission New Outlet Limited On-Premises Commercial for Grill 1646.

Attachments

Oregon Liquor Control Commission (OLCC) application for a New Outlet Limited On-Premises Commercial for Grill 1646.

Attachments:

Grill 1646_Redacted (PDF)

LIQUOR LICENSE APPLICATION

Page 1 of 4

Check the appropriate license request option:

[New Outlet](#) | [Change of Ownership](#) | [Greater Privilege](#) | [Lesser Privilege](#) | [Additional Privilege](#)

Select the license type you are applying for.

More information about all license types is available [online](#).

Full On-Premises

- Commercial
 - Caterer
 - Public Passenger Carrier
 - Other Public Location
 - For Profit Private Club
 - Nonprofit Private Club

Winery

- Primary location
- Additional locations: 2nd 3rd 4th 5th

Brewery

- Primary location
- Additional locations: 2nd 3rd

Brewery-Public House

- Primary location
- Additional locations: 2nd 3rd

Grower Sales Privilege

- Primary location
- Additional locations: 2nd 3rd

Distillery

- Primary location
- Additional tasting locations: 2nd 3rd 4th 5th 6th

- Limited On-Premises
- Off Premises
- Warehouse
- Wholesale Malt Beverage and Wine

INTERNAL USE ONLY

Local Governing Body: After providing your recommendation, return this application to the applicant.

LOCAL GOVERNING BODY USE ONLY

City/County name:

City of Lincoln City

Date application received:

Optional: Date Stamp



- Recommend this license be granted
- Recommend this license be denied

David Broderick 5/31/23
 Printed Name [REDACTED] Date

LIQUOR LICENSE APPLICATION

Page 2 of 4

APPLICANT INFORMATION	
Identify the applicants applying for the license. This is the entity (example: corporation or LLC) or individual(s) applying for the license. Please add an additional page if more space is needed.	
Name of entity or individual applicant #1: <i>3 Parley's Corporation</i>	Name of entity or individual applicant #2:
Name of entity or individual applicant #3:	Name of entity or individual applicant #4:

BUSINESS INFORMATION		
Trade Name of the Business (name customers will see): <i>The Grill 1646 / Club Nokturnal</i>		
Premises street address (The physical location of the business and where the liquor license will be posted): <i>1330 NE Hwy 101</i>		
City: <i>Lincoln City</i>	Zip Code: <i>97367</i>	County: <i>Lincoln</i>
Business phone number: <i>541-641646</i>	Business email: <i>TheGrill1646@gmail</i>	
Business mailing address (where we will send any items by mail as described in OAR 845-004-0065(1)): <i>2150 NE Hwy 101 # 375</i>		
City: <i>Lincoln City</i>	State: <i>OR</i>	Zip Code: <i>97367</i>
Does the business address currently have an OLCC liquor license? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Does the business address currently have an OLCC marijuana license? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

AUTHORIZED REPRESENTATIVE – A liquor applicant or licensee may give a representative authorization to make changes to the license or application on behalf of the licensee or to receive information about a license or application.		
I give permission for the below named representative to:		
<input type="checkbox"/> Make changes regarding this license/application on my behalf.		
<input type="checkbox"/> Receive information about the status of this application, including information about pending compliance action or communications between OLCC and the licensee/applicant.		
Representative Name: <i>Daniel Clanton</i>		
Phone number: <i>[REDACTED]</i>	Email: <i>TheGrill1646@gmail</i>	
Mailing address: <i>1646 NE Hwy 101</i>		
City: <i>Lincoln City</i>	State: <i>OR</i>	Zip Code: <i>97367</i>

Please note: liquor license applications are public records.

OLCC Liquor License Application (Rev. 2.1.23)

LIQUOR LICENSE APPLICATION

Page 3 of 4

APPLICATION CONTACT INFORMATION – Provide the point of contact for this application. If this individual is not an applicant or licensee, the Authorized Representative section must be filled in and the appropriate permission(s) must be selected.

Application Contact Name: Daniel Clanton

Phone number: [REDACTED] **Email:** TheGrill1646@gmail

TERMS

- “Real property” means the real estate (land) and generally whatever is erected or affixed to the land (for example, the building) at the business address.
- “Common area” is a privately owned area where two or more parties (property tenants) have permission to use the area in common. Examples include the walking areas between stores at a shopping center, lobbies, hallways, patios, parking lots, etc. An area’s designation as a “common area” is typically identified in the lease or rental agreement.

ATTESTATION – OWNERSHIP AND CONTROL OF THE BUSINESS AND PREMISES

- Each applicant listed in the “Application Information” section of this form has read and understands [OAR 845-005-0311](#) and attests that:
 1. At least one applicant listed in the “Application Information” section of this form has the legal right to occupy and control the real property proposed to be licensed as shown by a property deed, lease, rental agreement, or similar document.
 2. No person not listed as an applicant in the “Application Information” section of this form has an ownership interest in the business proposed to be licensed, unless the person qualifies to have that ownership interest waived under OAR 845-005-0311.
 3. The licensed premises at the premises street address proposed to be licensed either:
 - a. Does not include any common areas; or
 - b. Does include one or more common areas; however, only the applicant(s) have the exclusive right to engage in alcohol sales and service in the area to be included as part of the licensed premises.
 - In this circumstance, the applicant(s) acknowledges responsibility for ensuring compliance with liquor laws within and in the immediate vicinity of the licensed premises, including in portions of the premises that are situated in “common areas” and that this requirement applies at all times, even when the business is closed.
 4. The licensed premises at the premises street address either:
 - a. Has no area on property controlled by a public entity (like a city, county, or state); or
 - b. Has one or more areas on property controlled by a public entity (like a city, county, or state) and the public entity has given at least one of the applicant(s) permission to exercise the privileges of the license in the area.

LIQUOR LICENSE APPLICATION

Page 4 of 4

• Each applicant listed in the "Application Information" section of this form has read and understands [OAR 845-006-0362](#) and attests that:

1. Upon licensure, each licensee is responsible for the conduct of others on the licensed premises, including in outdoor areas.
2. The licensed premises will be controlled to promote public safety and prevent problems and violations, with particular emphasis on preventing minors from obtaining or consuming alcoholic beverages, preventing over-service of alcoholic beverages, preventing open containers of alcoholic beverages from leaving the licensed premises unless allowed by OLCC rules, and preventing noisy, disorderly, and unlawful activity on the licensed premises.

I attest that all answers on all forms and documents, and all information provided to the OLCC as a part of this application, are true and complete.

Daniel Clanton  5/25/23 _____
 Print name Signature Date Atty. Bar Info (if applicable)

_____ _____ _____ _____
 Print name Signature Date Atty. Bar Info (if applicable)

_____ _____ _____ _____
 Print name Signature Date Atty. Bar Info (if applicable)

_____ _____ _____ _____
 Print name Signature Date Atty. Bar Info (if applicable)



OREGON LIQUOR & CANNABIS COMMISSION INDIVIDUAL HISTORY FORM

PRINT FORM

RESET FORM D.1.a

1. Name (Print):	<i>Clinton</i> Last	<i>Daniel</i> First	<i>Lee</i> Middle
2. Other names used (maiden, other):			
3. Do you have a Social Security Number (SSN) issued by the United States Social Security Administration? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes, you must list your SSN: [REDACTED]			
<p>SOCIAL SECURITY NUMBER DISCLOSURE: As part of your application for an initial or renewal license, Federal and State laws require you to provide your Social Security Number (SSN) to the Oregon Liquor Control Commission (OLCC) for child support enforcement purposes (42 USC § 666(a)(13) & ORS 25.785). If you are an applicant or licensee and fail to provide your SSN, the OLCC may refuse to process your application. Your SSN will be used only for child support enforcement purposes unless you indicate below.</p> <p>Based on our authority under ORS 471.311 and OAR 845-005-0312(6), we are requesting your <u>voluntary consent</u> to use your SSN for the following administrative purposes only: to match your license application to your Alcohol Server Education records (where applicable), and to ensure your identity for criminal records checks. OLCC will not deny you any rights, benefits or privileges otherwise provided by law if you do not consent to use of your SSN for these administrative purposes (5 USC § 552(a)).</p>			
4. Do you consent to the OLCC's use of my SSN as described above? Check this box: <input checked="" type="checkbox"/>			
5. Date of Birth (DOB):	[REDACTED] (mm)	[REDACTED] (dd)	[REDACTED] (yyyy)
6. Driver License or State ID #:	[REDACTED]		7. State <i>OR</i>
8. Contact Phone: [REDACTED]			
9. E-mail Address: <i>The Grill 1646@gmail.com</i>			
10. Mailing Address:	<i>1646 NE Hwy 101 Lincoln City, OR 97367</i> (Number and Street)	<i>LC</i> (City)	<i>OR</i> (State)
11. In the past 10 years, have you been convicted of a felony or a misdemeanor in a U.S. state outside of Oregon? No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> (If yes, explain in the space provided, below) Unsure <input type="checkbox"/> Choose this option and provide an explanation if, for example: you were arrested or went to court, but are unsure of whether there was a conviction; you paid a fine or served probation or parole, but are unsure of whether there was a conviction; or if you know you had a conviction, but you are unsure of whether the conviction has been removed from your record, etc.			



OREGON LIQUOR & CANNABIS COMMISSION
INDIVIDUAL HISTORY FORM

D.1.a

12. Do you, or any entity that you are a part of, **currently hold** or **have you previously held** a recreational marijuana license in Oregon? (Note: marijuana worker permits are not marijuana licenses.)

No Yes Please list licenses (and year(s) licensed) below Unsure Please include an explanation:

13. Do you, or any entity that you are a part of, hold an alcohol license in a U.S. state outside of Oregon?

No Yes Please list licenses (and year(s) licensed) below Unsure Please include an explanation:

3 Parley's DBA the grill 1046
 1046 NE Hwy
 LC, OR 97367

14. Do you or any entity that you are a part of, have any other liquor license applications pending with the OLCC?

No Yes Please list applications below Unsure Please include an explanation:

You must sign your own form (electronic signature acceptable). Another individual, such as your attorney or an individual with power of attorney, **may not** sign your form.

Affirmation

Even if I receive assistance in completing this form, I affirm by my signature below, that my answers on this form are true and complete. I understand the OLCC will use the above information to check my records, including but not limited to my criminal history. I understand that if my answers are not true and complete, the OLCC may deny my license application.

Name (Print):	Clanton Last	Daniel First	Lee Middle
Signature:			Date: 5/30/23

This box for OLCC use ONLY

Does the individual currently hold, or has the individual previously held, an OLCC- issued liquor license?

Council Communication

Lease Suite A Lincoln Square Building to Non-Profits

Meeting Date:	June 12, 2023	Primary Staff Contact:	Michael Phillips
Department:	Administration	E-Mail:	MPhillips@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	10 Minutes

Question:

Should the City Council authorize City Manager to negotiate and enter into separate lease agreements with Cascade Head Biosphere Reserve and Audubon Society of Lincoln City nonprofits for a joint tenancy of Suite A of the Lincoln Square Building.

Staff Recommendation:

Staff recommends the Council approve authorization of City Manager to enter into lease agreements to include abatement of monthly rent with annual report review by the City Manager of both Cascade Head Biosphere Reserve and Audubon Society of Lincoln City's work with the citizens of Lincoln City.

Background:

Audubon Society of Lincoln City & Cascade Head Biosphere Collaborative provided brief summaries about their organization which is included in the packet.

Financial Impact

The expected lease rate abatement of \$250.00 a month from each non-profit for the lease space to \$0.00.

Attachments:

ASLC 2023 About Us One Pager (PDF)
 Cascade Head Biosphere Collaborative (PDF)

Audubon Society of Lincoln City

The mission of Audubon Society of Lincoln City (ASLC) is to encourage residents and visitors to protect and enjoy the native birds, other wildlife, and habitats found on the Central Oregon Coast.

ASLC was established as a 501(c)(3) nonprofit organization in 2005 with the following goals:

- **Education.** Offer experiences in nature to residents of and visitors to Lincoln and Tillamook Counties, from schoolchildren to seniors.
- **Conservation.** Initiate conservation projects to directly benefit birds, other wildlife, and their habitats and to stimulate grassroots efforts specifically on issues affecting the Central Oregon Coast.
- **Community Science.** Involve the local community in community-science opportunities to gather data on birds and their habitats.

ASLC is a chapter of the National Audubon Society (NAS). Our service area, as assigned by NAS, consists of Lincoln and Tillamook Counties in Oregon. Our goals and objectives are guided by the NAS Strategic Plan. ASLC is also a member of the Oregon Council of Audubon Chapters (OAC). We support OAC priorities and work with the other chapters in achieving annual goals and objectives related to climate change, forests, oceans, and much more.

ASLC has 197 members and is governed by a Board of Directors. Terms of office follow the fiscal year (July through June) and each director is elected for a two-year term. We are primarily volunteer-based with two part-time employees working on coastal habitat issues and outreach. Our founding goals are achieved through four main programs with the following current activities:

1. **Education.** We hold adult birding classes at Oregon Coast Community College, provide classroom education for students in local schools, and partner with Lincoln City on various projects including bird walks and Osprey nesting. We partner with U.S. Fish and Wildlife on projects such as Black Oystercatcher and Snowy Plover etiquette cards and interpretive signage like that on the Alder Island Loop Trail.
2. **Conservation.** We act to fight climate change, protect imperiled species, reduce threats to birds and other wildlife across the Oregon landscape, preserve high-priority habitat, and advocate for equitable access to nature for all Lincoln and Tillamook County residents and visitors. Notable projects include the conservation of rocky habitat, advocacy for Oregon Marine Reserves, and recent designation of Capes Foulweather and Lookout as Marine Conservation Areas.
3. **Community Science.** We sponsor the annual Great Backyard Bird Count, Christmas Bird Counts, and celebration of Migratory Bird Day. Started this year, our Osprey Awareness Initiative trains volunteers to monitor and document nesting and fledging activities of Ospreys in Lincoln City.
4. **Outreach.** We share our activities and education information with the public through a biannual newsletter, website, social media, monthly podcast, publications like the local Osprey nest map, and tabling at community events.



cascade head
BIOSPHERE COLLABORATIVE



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### **Cascade Head Biosphere Reserve**

41,323 ha / 102,110 acres, Oregon Coast, USA.

Established in 1976, Reauthorized & Expanded in 2017.

[UNESCO ~ Man and the Biosphere Programme](#)

[CascadeHead.org](http://CascadeHead.org) ~ [Biosphere@CascadeHead.org](mailto:Biosphere@CascadeHead.org) ~ [facebook.com/CascadeHead](https://facebook.com/CascadeHead)

Education, Climate, and Community, the three pillars of the Cascade Head Biosphere Collaborative. In 2023, the Collaborative is engaged in a number of efforts across all of our three pillars. On the education front we are continuing our partnership with NOAA, Lincoln County School District, the Oregon Coast Aquarium, and Camp Westwind on the Salmon River for meaningful watershed educational experiences. Utilizing our Raindrop to Sea video series and the newly constructed Raindrop to Sea trail at Westwind we will connect with all of our local 6th grade classes in May as we trace the path of a raindrop, from precipitation back to the Pacific Ocean with eight learning circles along the way. This is part of our long-term vision of creating a full K-8 set of place-based, environmental educational resources and offerings within the UNESCO site. In 2022, we were able to bring 13 classrooms of 3<sup>rd</sup> and 4<sup>th</sup> grade students to experience and gain insights into the Secret Life of Salmon, a science and art centered field experience, based on the video series of the same name we created through lock down. All of our curricula and videos are freely available through our website: [CascadeHead.org/education](http://CascadeHead.org/education).

Our climate research efforts also continue to expand. Through a partnership with the Oregon State University's Marine Studies Initiative, US Forest Service, the Oregon Coast Aquarium, The Nature Conservancy, and Oregon Department of Fish and Wildlife we are researching and developing insights of the impact of temperature on four ecosystems – the Uplands, the Riverine/Estuarine, the Near-Shore, and the Sub-tidal/Oceanic. The research and efforts take many forms. For the uplands, with the deployment of acoustic sensors we are studying bat hibernation, with automated trail cameras we are tracing the bloom patterns of native plants, and with our new meteorological station and 10 sub-stations we are collecting data on temperature and relative humidity, as we track the climatic changes across the landscape. Down the watershed we are studying Green Crab, (*Carcinus maenas*), an invasive crustacean readily expanding its range. Out in the intertidal we are engaged in Sea Star Monitoring, and offshore we are collecting data on any number of species as they wash ashore in our WRACKLINE monitoring project. Collectively, we call these projects and this greater collaboration the 4CAST Project, an acronym, for Coastal Climate Change + Community Art, Science & Tradition: [4CASTproject.org](http://4CASTproject.org).

With an effort to bring science out from the drawers and desktops of a limited number of researchers we are actively involving the community into data collection and data processing. Volunteers are being trained in Sea Star Monitoring, Plant Phenology, and the use of iNaturalist for crowd-sourced environmental research in our WRACKLINE program. Similarly, as we want to have our data meet and match up with research across the globe we actively participate in collaborative research and shared protocols with organizations such as PISCO (Partnership for Interdisciplinary Studies of Coastal Oceans) and the US National Phenological Network, assuring data are readily available and shared beyond the Cascade Head Biosphere Region.

Our Pillar of Community, similar to Education and Climate is weaved throughout our work. Within the 4CAST Project we engage the community in giant sand art projects as we seek to let “Art Illuminate Science”. In nature printing classes, we take the lives and stories of wild salmon, kelp, and octopus to an audience of unsuspecting would-be artists. Through Art and Science on Tap, we mix lectures with libations, as we further spread our vision of to be as beautiful in our humanness and this extraordinary place.

We are pleased to be involved with an exceptional group of partners, including the City of Lincoln City, which have helped us develop our three pillars. It is with much gratitude and delight that we look forward to our association with all of them.



**JOINT MEETING**  
**CITY COUNCIL AND PLANNING COMMISSION**  
**FEBRUARY 2, 2021, 6:00 PM**

**Approved by City Council:**

**Date** \_\_\_\_\_

**I. CALL TO ORDER**

| Attendee Name      | Title            | Status  | Arrived |
|--------------------|------------------|---------|---------|
| Anne Marie Skinner | Councilor Ward 2 | Present |         |
| Judy Casper        | Councilor Ward 3 | Present |         |
| Diana Hinton       | Councilor Ward 1 | Present |         |
| Riley Hoagland     | Councilor Ward 2 | Present |         |
| Rick Mark          | Councilor Ward 3 | Present |         |
| Mitch Parsons      | Councilor Ward 1 | Present |         |
| Marci Baker        | Commissioner     | Present |         |
| Kim Blackerby      | Commissioner     | Present |         |
| Josh Brainerd      | Commissioner     | Present |         |
| Patti Kroen        | Commissioner     | Present |         |
| Lenny Nelson       | Commissioner     | Present |         |
| Miles Sleschinger  | Commissioner     | Present |         |
| Mac Smith          | Commissioner     | Present |         |

Chair Judy Casper welcomed everyone and provided an overview of the joint meeting procedures. She also acknowledged City staff present, including Alison Robertson, City Manager Ron Chandler, and City Attorney Richard Appicello. She also introduced Simon Kim, the new Planning Director.

Mr. Kim introduced himself and provided a summary of his academic and professional background and expressed his enthusiasm for working in Lincoln City.

Councilor Casper next introduced Marci Baker, the Chair of the Planning Commission, and turned the meeting over to Mr. Appicello for the training session.

**II. TRAINING**

*City Attorney Richard Appicello conducted a training regarding the roles of the two bodies, the City Council and the Planning Commission. He emphasized the "exercise of discretion", describing when the bodies have opportunities to exercise discretion and when they do not have that leeway. For this, he referred to an example of a previous land use case that the Planning Commission had voted to deny but that was ultimately approved by the City Council. He stated that they have the most discretion when they are addressing a legislative matter, such as a negotiated development agreement. In these cases,*

*the city charter grants the City Council the opportunity to make laws as long as they are consistent with state law. The Planning Commission is charged with making recommendations to the council on land use matters, working within the state mandate for comprehensive planning. Mr. Appicello provided information about the differences between legislative and quasi-judicial roles, and an overview of recent state mandates to support the development of more housing and to make provisions for Accessory Dwelling Units (ADUs). Other training subjects included the use of personal vs. City-provided laptops and devices, the role of the City Manager and the City Attorney, ethics and conflicts of interest, rules regarding gifts, ex parte communication, and site visits relating to land use cases.*

*In response to a comment from Commissioner Kroen, Mr. Appicello stated that the state has the power to step in and legislate matters of statewide concern, such as the need for housing.*

*In response to a question from Commissioner Schlesinger, Mr. Appicello stated that the recent planning commission decision to deny an application for housing was based on issues other than clear and objective criteria from the city code.*

*In response to comments from Commissioner Smith and Commissioner Nelson, Attorney Appicello clarified that the needed housing goes beyond just single-family units to include multiple-unit dwellings and that Statewide Planning Goal 10 for Housing is a provision for housing at all levels. Commissioner Nelson also expressed concern regarding the impacts of the code relating to building coverage limitations.*

*In response to a comment from Councilor Skinner, Mr. Appicello clarified that discussion with City staff is generally not considered ex parte communication unless staff is giving facts that are not shared with all other members of the body. He added that work sessions that are recorded are preferred over these informal meetings with staff.*

*In response to a question from Commissioner Blackerby Mr. Appicello provided recommendations regarding the use of his personal iPad for planning commission business.*

*Councilor Casper thanked Attorney Appicello for providing the training.*

### **III. DISCUSSION**

*City Manager Ron Chandler facilitated the joint meeting. He stated that the City Council had recently met to discuss their goals and priorities and that these would continue to be discussed over the next several meetings. He then introduced Councilor Hinton and reviewed the topics she identified as important.*

*Councilor Hinton thanked City staff for the mapping that has been completed regarding the Villages, and she wanted to clarify information about the site and advocate for the development of a new City-initiated master plan for the area. She provided an overview of property ownership, site constraints, and development opportunities. Councilor Hinton added that she is the President of the Homeowners Association for the Villages.*

*Attorney Appicello reviewed the four components of the agenda addressing the villages including initiation of open space future land use map designation, implementing zoning districts, time extension for the master plan, and outdoor recreation use, stating that a work session or work sessions would be needed. When the future land use and the implementation of the RRMU was adopted the City made a commitment to DLCD that a change to an open space designation would be initiated. Regarding the time extension, Mr. Appicello stated that the City would need the consent of the other property owners.*

*Councilor Hinton suggested that a site visit may be warranted, and asked if Alison Robertson had any updates. Ms. Robertson stated that staff has been directed to develop the Fernwood residential location and the commercial portion. This work has been somewhat slow going, due to the number of parties involved, a variety of market factors, and timelines of private developers.*

*Commissioner Blackerby commented that an understanding of traffic impacts would be key to future discussions. Commissioner Baker also asked for details regarding the development of the commercial area.*

*Councilor Casper asked that further discussion be tabled for a meeting that would focus on the Villages.*

*City Manager Chandler next invited Commissioner Miles Schlesinger to share his comments.*

*Commissioner Schlesinger shared his concerns regarding the exponential growth of traffic, especially on Highway 101, and how the Otis fire highlighted the need for alternative routes through town. He supports the consideration of Foothills Boulevard as a priority. He also expressed interest in the community discussing the issue of civil rights.*

*Planning Commissioner Patti Kroen stated her priorities for future discussion include short-term planning, better enforcement tools, updating the comprehensive plan, and long-range planning, including a discussion of tourism and ecotourism, recognition of the City as part of the UNESCO biosphere reserve, and the designation of a community forest.*

*Commissioner Smith emphasized the need for better and more comprehensive information to support decision-making. Examples include natural resource inventories, tourism data, and more qualitative information regarding employment. He added that public transportation is one of the biggest gripes that he hears as presenting a barrier for people to employment.*

*Councilor Casper stated that some of these are potential items for the council and some for the planning commission. Commissioner Smith cited that he was taking advantage of the opportunities where there is a strong overlap*

*Ms. Robertson shared that the City does have some of the information requested by Commissioner Smith, including the analysis of housing needs, economic opportunities, and the buildable lands analyses.*

*Mr. Chandler summarized the comments and stated that he supported Commissioner Kroen's suggestion to look at key goals for the coming year.*

*Commissioner Kroen emphasized the comprehensive plan update as the most important priority, and Planning Commission Chair Baker concurred. She stated that the other ideas would be best discussed in the context of that planning process.*

*Responding to a question from Commissioner Schlesinger, Planning Director Kim stated that per Mr. Chandler's direction, he had initiated the comprehensive plan work, summarizing the existing plan and the visioning plan into a single draft document for review by the various department heads prior to going to the Planning Commission.*

*Commissioner Blackerby reiterated the significance of the comprehensive plan and within that a specific focus on the issues of traffic and transportation.*

*Councilor Skinner stated that the comprehensive plan has to address all 19 of the state-wide planning goals and that everything discussed at the joint meeting will be included within the 19 statewide planning goals and each of the identified areas of concern will be encompassed in the revised plan. Once the Comp Plan Update is completed the next step will be to create and/or revise the ordinances needed to implement the plan. She thanked all of the Commissioners for emphasizing the Comp Plan as it is the necessary foundation that will serve to put everything else into place.*

**IV. ADJOURNMENT COUNCIL / COMMISSION**

*Council President Casper adjourned the meeting at 8:05 PM.*

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JUDY CASPER, COUNCIL PRESIDENT

ATTEST:

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JAMIE YOUNG, CITY RECORDER

CITY OF LINCOLN CITY

CITY COUNCIL MINUTES OF THE MEETING

May 22, 2023, 6:00 PM

The final minutes for this meeting are supplemented by an electronic recording of the meeting, which may be viewed online at [www.lincolncity.org](http://www.lincolncity.org) under the tab "Agendas, Packets, and Videos". The staff reports, resolutions, ordinances, and other documents related to this meeting are also available at the same location. This meeting is rebroadcast on Cable Channel 4. (See Channel 4 guide on the hour at <http://www2.lincolncity.org/program-guide/>).

**APPROVED BY CITY COUNCIL**

**DATE:**

**A. CALL TO ORDER**

Mayor Wahlke called the meeting to order at 6:00 PM.

**B. ROLL CALL**

| Attendee Name  | Title            | Status  | Arrived |
|----------------|------------------|---------|---------|
| Susan Wahlke   | Mayor            | Present |         |
| Sydney Kasner  | Councilor Ward 2 | Present |         |
| Judy Casper    | Councilor Ward 3 | Present |         |
| Riley Hoagland | Councilor Ward 2 | Present |         |
| Rick Mark      | Councilor Ward 3 | Present |         |
| Mitch Parsons  | Councilor Ward 1 | Present |         |

Staff Present: Daphnee Legarza, City Manager; Richard Appicello, City Attorney; Chief Broderick, Lincoln City Police Department; Stephanie Reid, Public Works Director; Anne Marie Skinner, Planning and Community Development Director; Liz Francis, Executive Administrative Legal Assistant

**C. PLEDGE OF ALLEGIANCE**

Mayor Wahlke led The Pledge of Allegiance.

**D. CONSENT AGENDA WITH THE SUGGESTED CHANGES**

Mayor Wahlke asked for changes to the previous minutes.

**RESULT:** PASSED [UNANIMOUS]  
**MOVER:** Rick Mark, Councilor Ward 3  
**SECONDER:** Sydney Kasner, Councilor Ward 2  
**AYES:** Wahlke, Kasner, Casper, Hoagland, Mark, Parsons

1. Regular Meeting – Minutes of Regular Meeting – May 8, 2023, 6:00 PM

**MOTION:** City Council - Regular Meeting - May 8, 2023, 6:00 PM  
**MOVER:** Rick Mark, Councilor Ward 3  
**SECONDER:** Sydney Kasner, Councilor Ward 2  
**RESULT:** Passed

2. Oregon Liquor Control Commission - Request for Greater Privilege, On Premises- Sea Gulp

**MOTION:** Oregon Liquor Control Commission - Request for Greater Privilege, On Premises- Sea Gulp  
**MOVER:** Rick Mark, Councilor Ward 3  
**SECONDER:** Sydney Kasner, Councilor Ward 2  
**AYES:** Wahlke, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed

#### **E. COUNCIL DELIBERATIONS**

*None*

#### **F. COMMENTS FROM CITIZENS PRESENT ON AGENDA/NON-AGENDA ITEMS**

*None*

#### **G. PRESENTATIONS**

3. Building Division Audit Report for Fiscal Year ending June 30, 2021

*Anne Marie Skinner, Planning and Community Development Director reviewed the Building Division Audit for 2021. Council and Staff had a discussion regarding the audit. Ms. Skinner will find out if there is a cost difference in the frequency of the audit.*

#### **H. PUBLIC HEARING / ORDINANCE**

*None*

#### **I. PUBLIC HEARINGS / PUBLIC COMMENTS**

1. CPA ZC 2023-05 Clancy Road area zone change to Open Space

*Mayor Wahlke opened the public hearing at 6:19 PM. Council had no conflict or bias. No Citizens were present for comment. Ms. Skinner presented the staff report. Council and Staff had a discussion regarding the zoning change.*

**MOTION:** Motion to Close the Record and the Public Hearing for CPA ZC 2023-05 Clancy Road Area  
**MOVER:** Sydney Kasner, Councilor Ward 2  
**SECONDER:** Rick Mark, Councilor Ward 3  
**AYES:** Wahlke, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed via Voice Vote

## J. ORDINANCES

2. ORDINANCE NO. 2023-10 AN ORDINANCE AMENDING THE LINCOLN CITY COMPREHENSIVE PLAN MAP TO CHANGE THE COMPREHENSIVE PLAN MAP DESIGNATION FROM MEDIUM DENSITY RESIDENTIAL / RESORT RESIDENTIAL MIXED STRUCTURE (RRMS) TO OPEN SPACE AND AMENDING THE LINCOLN CITY ZONING MAP TO CHANGE THE ZONING MAP DESIGNATION FROM R-1-7.5 (SINGLE FAMILY RESIDENTIAL) TO OPEN SPACE FOR CITY-OWNED PROPERTIES WITHIN THE VILLAGES AT CASCADE HEAD IN THE VICINITY OF CLANCY ROAD, INCLUDING TAX LOT: [06-11-36-BD-00500-00 (OPEN SPACE).

**MOTION:** Motion to Approve First Reading of Ordinance 2023-10 CPA ZC 2023-05 - R1-7.5 to Open Space  
**MOVER:** Mitch Parsons, Councilor Ward 1  
**SECONDER:** Judy Casper, Councilor Ward 3  
**AYES:** Wahlke, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed by Roll Call Vote

3.

**MOTION:** Motion to Approve Second Reading and Adoption of Ordinance 2023-10 CPA ZC 2023-05 - R1-7.5 to Open Space  
**MOVER:** Mitch Parsons, Councilor Ward 1  
**SECONDER:** Judy Casper, Councilor Ward 3  
**AYES:** Wahlke, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed by Roll Call Vote

4. ORDINANCE NO. 2023-09 AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 12. (STREETS, SIDEWALKS AND PUBLIC PLACES), CHAPTER 12.16 PARKS USE REGULATIONS AND EXCLUSIVE USE PERMITS), SECTION 12.16.005 (APPLICABILITY) TO CLARIFY CITY BEACH ACCESSES ARE WITHIN THE COVERAGE OF THE CHAPTER.

**MOTION:** Motion to Approve First Reading of Ordinance 2023-09 Amending LCMC 12.16.005  
**MOVER:** Mitch Parsons, Councilor Ward 1  
**SECONDER:** Judy Casper, Councilor Ward 3  
**AYES:** Wahlke, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed by Roll Call Vote

5.

**MOTION:** Motion to Approve Second Reading and Adoption of Ordinance 2023-09 Amending LCMC 12.16.005  
**MOVER:** Mitch Parsons, Councilor Ward 1  
**SECONDER:** Sydney Kasner, Councilor Ward 2  
**AYES:** Wahlke, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed by Roll Call Vote

6. ORDINANCE 2023-11 AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE), CHAPTER 9.08 (OFFENSES AGAINST PUBLIC ORDER), AMENDING SECTION 9.08.050 (PROHIBITED OVERNIGHT CAMPING), SECTION 9.08.055 (PERMITTED OVERNIGHT CAMPING/SLEEPING) TO ADDRESS HB 3115

**MOTION:** Motion to Approve First Reading of Ordinance 2023-11 Camping Time Place and Manner as Read  
**MOVER:** Judy Casper, Councilor Ward 3  
**SECONDER:** Sydney Kasner, Councilor Ward 2  
**AYES:** Wahlke, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed by Roll Call Vote

7.

**MOTION:** Motion to Approve Second Reading and Adoption of Ordinance 2023-11 Camping Time Place and Manner as Read  
**MOVER:** Judy Casper, Councilor Ward 3  
**SECONDER:** Sydney Kasner, Councilor Ward 2  
**AYES:** Wahlke, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed by Roll Call Vote

## K. RESOLUTIONS

8. RESOLUTION NO. 2023-10 A RESOLUTION OF THE CITY OF LINCOLN CITY EXTENDING ESTABLISHED TEMPORARY PARKING AND TRAFFIC CONTROL MEASURES FOR A PORTION OF NW 15TH STREET, PROHIBITING VEHICULAR TRAFFIC EXCEPT FOR EMERGENCY VEHICLES

**MOTION:** Motion to Approve Resolution 2023-10- Summer Closure Traffic Control 15th Street  
**MOVER:** Mitch Parsons, Councilor Ward 1  
**SECONDER:** Sydney Kasner, Councilor Ward 2  
**AYES:** Wahlke, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed by Roll Call Vote

9. Resolution 2023-09 Emergency Declaration for Water Main Relocation

**MOTION:** Motion to Approve Resolution 2023-09 Emergency Declaration for Water Main Relocation  
**MOVER:** Mitch Parsons, Councilor Ward 1  
**SECONDER:** Rick Mark, Councilor Ward 3  
**AYES:** Wahlke, Kasner, Casper, Mark, Parsons  
**NAYS:** Hoagland  
**RESULT:** Passed by Roll Call Vote

**L. SPECIAL ORDER OF BUSINESS**

*None*

**M. CITY MANAGER/CITY ATTORNEY REPORTS**

*Ms. Legarza said there will be responses sent to the Budget Committee and a calendar sent soon.*

**N. ACTIONS, IF ANY, BASED ON WORK SESSION OR EXECUTIVE SESSION**

*None*

**O. ADDITIONAL COMMENTS FROM CITIZENS PRESENT ON NON-AGENDA ITEMS**

*None*

**P. ANNOUNCEMENTS OR COMMENTS BY CITY COUNCIL**

*Councilor Kasner said that Grace Wins Haven will be closing on June 15th. Councilor Kasner resigned effective July 10th due to a professional development opportunity.*

*Council gave consensus to bring back a resolution to add the Ward II position to the ballot.*

*Councilor Hoagland spoke about an emergency services event for the Spanish that he attended and kudos to the staff for their attendance and gave details of the event.*

*Councilor Mark said that he attended the non-profit grant event and the different agencies.*

*Mayor Wahlke said she is wearing orange and black for the Taft Tigers softball and baseball and gave an update on the teams. Mayor Wahlke said she was given the honor to throw the first pitch. Mayor Wahlke said that she will miss Councilor Kasner. Mayor Wahlke said she is attending the Natural Resources Innovation Tour first thing in the morning.*

**Q. ADJOURNMENT**

*Mayor Wahlke adjourned the meeting at 7:25 PM.*

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SUSAN WAHLKE, MAYOR

ATTEST:

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JAMIE YOUNG, CITY RECORDER

# Council Communication

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## Lincoln County Quarterly Presentation

|                 |                 |                        |                          |
|-----------------|-----------------|------------------------|--------------------------|
| Meeting Date:   | June 12, 2023   | Primary Staff Contact: | Daphnee Legarza          |
| Department:     | City Council    | E-Mail:                | DLegarza@lincolncity.org |
| Secondary Dept: |                 | Secondary Contacts:    | Daphnee Legarza          |
| Approval:       | Daphnee Legarza | Estimated Time:        | 5 minutes                |

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Lincoln County Commissioner Kaety Jacobson and Jayne Romero, Director of Lincoln County Health and Human Services will be presenting information regarding:

- Proposed winter sheltering plan for 2023/24
- Crisis Center plan

## Council Communication

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### Public Comment: Resolution 2023-14 Setting Water / Sewer Rates

|                 |                 |                        |                          |
|-----------------|-----------------|------------------------|--------------------------|
| Meeting Date:   | June 12, 2023   | Primary Staff Contact: | Debbie Bridges           |
| Department:     | Finance         | E-Mail:                | dbridges@lincolncity.org |
| Secondary Dept: |                 | Secondary Contacts:    |                          |
| Approval:       | Daphnee Legarza | Estimated Time:        | 10 Minutes               |

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**294.160 Opportunity for public comment on new fee or fee increase.** (1) The governing body of a city, county or other unit of local government shall provide an opportunity for interested persons to comment on the enactment of any ordinance or resolution prescribing a new fee or a fee increase or an increase in the rate or other manner in which the amount of a fee is determined or calculated.

Notice has been made as required.

For further information, see staff memo under Resolution 2023-14.

## Council Communication

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### Public Hearing: Resolution 2023-15 State Shared Revenue

|                 |                 |                        |                          |
|-----------------|-----------------|------------------------|--------------------------|
| Meeting Date:   | June 12, 2023   | Primary Staff Contact: | Debbie Bridges           |
| Department:     | Finance         | E-Mail:                | dbridges@lincolncity.org |
| Secondary Dept: |                 | Secondary Contacts:    |                          |
| Approval:       | Daphnee Legarza | Estimated Time:        | 10 Minutes               |

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#### Background:

ORS 221.770 requires Cities to hold at least one public hearing at which citizens have the opportunity to provide written and oral comment to, and ask questions of, the authority responsible for adopting the budget of the city for the fiscal year on the proposed use of the distributions in relation to the entire budget of the city for the fiscal year.

Notice has been made as required.

For further information, see staff report under Resolution 2023-15.

## Council Communication

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### Public Hearing: Resolution 2023-12 Supplemental Budget

|                 |                 |                        |                          |
|-----------------|-----------------|------------------------|--------------------------|
| Meeting Date:   | June 12, 2023   | Primary Staff Contact: | Debbie Bridges           |
| Department:     | Finance         | E-Mail:                | dbridges@lincolncity.org |
| Secondary Dept: |                 | Secondary Contacts:    |                          |
| Approval:       | Daphnee Legarza | Estimated Time:        | 20 Minutes               |

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ORS 294.471 provides that the governing body of any municipal corporation may make a supplemental budget where an occurrence or condition which had not been anticipated at the time of the preparation of the budget for the current year requires a change in financial planning.

Notice has been made as required.

For further information see staff memo under Resolution 2023-12.

## Council Communication

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### Public Hearing: Resolution 2023-16 Adopt Budget

|                 |                 |                        |                          |
|-----------------|-----------------|------------------------|--------------------------|
| Meeting Date:   | June 12, 2023   | Primary Staff Contact: | Debbie Bridges           |
| Department:     | Finance         | E-Mail:                | dbridges@lincolncity.org |
| Secondary Dept: |                 | Secondary Contacts:    |                          |
| Approval:       | Daphnee Legarza | Estimated Time:        | 5 Minutes                |

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#### Authority:

ORS 294.453 provides that the governing body of a municipal corporation shall meet at the time and place designated in the notice of meeting, for the purpose of holding a public hearing on the budget document as approved by the budget committee.

Notice has been made as required.

For additional information see staff memo on Resolution 2023-16.

## Council Communication

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### Ordinance 2023--12 Amends LCMC Chapters 5.28

|                 |                 |                        |                            |
|-----------------|-----------------|------------------------|----------------------------|
| Meeting Date:   | June 12, 2023   | Primary Staff Contact: | Richard Appicello          |
| Department:     | City Attorney   | E-Mail:                | RAppicello@lincolncity.org |
| Secondary Dept: |                 | Secondary Contacts:    |                            |
| Approval:       | Daphnee Legarza | Estimated Time:        | 10 minutes                 |

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#### Question(s):

Should the City Council conduct and approve First and Second Reading of Ordinance 2023-12 entitled:

#### ORDINANCE NO. 2023-12

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 5. (BUSINESS TAXES, LICENSES AND REGULATIONS), CHAPTER 5.28 (STREET VENDORS), SECTION 5.28.040 (INSPECTION AND PERMITS) TO CORRECT THE REQUIRED PUSH CART INSPECTIONS.**

#### Staff Recommendation:

**Ordinance Reading:** Staff further recommends Council conduct First Reading of Ordinance 2023-12 and, *if unanimous*, Conduct and approve Second Reading. Any changes must be read.

#### Authority:

City of Lincoln City Charter, Chapter IX. Section 9.2(1) provides that an ordinance may be enacted at a single meeting of the Council by unanimous vote of all Council members voting when a quorum is present upon being read by title only. Adoption of an ordinance after second reading requires the express concurrence of a majority of the members present. Ordinances may be read by title only, after compliance with Charter procedures. A non-emergency ordinance takes effect on the thirtieth (30th) day after its adoption or on a later day the ordinance prescribes. An ordinance adopted to meet an emergency may take effect as soon as it is adopted or on some other date specified in the ordinance.

#### Background:

This ordinance amends Title 5, Chapter 5.28 (Street Vendors), Section 5.28.040 to correct the inspection provisions – removing the building official.

**Council Options:**

1. Conduct and approve First Reading. Read changes, if any. Conduct and Approve Second Reading and Adopt the Ordinance. [Recommended]
2. Conduct and approve First Reading. Read changes, if any. Continue Second Reading to June 26, 2023 [or]
3. Continue First Reading to June 26, 2023.

**Potential Motions:**

*City Attorney:* [Conduct First Reading of Ordinance by Title only]

**ORDINANCE NO. 2023-12**

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 5. (BUSINESS TAXES, LICENSES AND REGULATIONS), CHAPTER 5.28 (STREET VENDORS), SECTION 5.28.040 (INSPECTION AND PERMITS) TO CORRECT THE REQUIRED PUSH CART INSPECTIONS.**

Motion to approve First Reading of Ordinance 2023-12.

*If unanimous: City Attorney conducts Second Reading*

*City Attorney:* [Conduct Second Reading of Ordinance by Title only]

*Council:*

1. Motion to approve Second Reading and adopt Ordinance 2023-12.

**[or]**

2. Motion to set Second Reading for June 26, 2023.

**Attachments:**

Ordinance 2023-12 ra (DOCX)

ORDINANCE NO. 2023-12

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 5. (BUSINESS TAXES, LICENSES AND REGULATIONS), CHAPTER 5.28 (STREET VENDORS), SECTION 5.28.040 (INSPECTION AND PERMITS) TO CORRECT THE REQUIRED PUSH CART INSPECTIONS.

Annotated to show deletions and additions to the code sections being modified. Deletions are bold ~~lined through~~ and additions are **bold underlined**.

WHEREAS, Chapter 2, Section 2.1 and 2.2., of the City of Lincoln City Charter provides:

2.1 Powers of the City

The city has all powers which the constitutions, statutes and common law of the United States and of this state expressly or impliedly grant or allow municipalities as fully as though this charter specifically enumerated each of those powers.

2.2 Construction of Charter

In this charter no mention of a particular power shall be construed to be exclusive or to restrict the scope of the powers which the city would have if the particular power were not mentioned. The charter shall be liberally construed to the end that the city may have all powers necessary or convenient for the conduct of its municipal affairs, including all powers that cities may assume pursuant to state laws and to the municipal home rule provisions of the state Constitution; and

WHEREAS, the above referenced grant of power has been interpreted as affording all legislative powers home rule constitutional provisions reserved to Oregon Cities. City of Beaverton v. International Ass'n of Firefighters, Local 1660, Beaverton Shop, 20 Or. App. 293; 531 P 2d 730, 734 (1975); LaGrande/Astoria v. PERB, 281 Or 137, 142 (1978), aff'd on reh'g 284 Or 173 (1978); and

WHEREAS, Council desires to correct the required pushcart inspections for street vendors of LCMC Chapter 5.28;

THE CITY OF LINCOLN CITY ORDAINS AS FOLLOWS:

SECTION 1. Lincoln City Municipal Code Title 5 (Business Taxes, Licenses and Regulations), Chapter 5.28 (Street Vendors), Section 5.28.040 (Inspection and Permits), Paragraph A. is amended to read as follows:

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- A. Prior to issuance of a street vendor license ~~the building official and~~ the State Fire Marshal shall inspect the street vendor cart each pushcart and accompanying equipment for compliance with applicable fire codes. Additionally, the planning and community development director, or authorized designee, shall confirm that the size of the street vendor cart is not greater than four feet in width and eight feet in length. The building official shall certify tha the device is structurally and mechanically sound, the design will not create a nuisance or hazard to the public and the size of the cart meets the requirements of LCMC 5.28.050. The State Fire Marshal shall certify that any cooking or heating apparatus is in conformance with the provisions of applicable fire codes.

**SECTION 2. Findings Adopted.**

The findings contained in the Whereas Clauses of this Ordinance, as well as the competent substantial evidence in the whole record of this legislative proceeding are incorporated into this section by reference as if fully set forth herein, and are adopted in support of this legislative action.

**SECTION 3. Severability.**

The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

**SECTION 4. Ordinance Effective Date.**

Pursuant to Chapter IX, Section 9.3, this ordinance takes effect 30 days after the date of its adoption.

**SECTION 5. Codification.**

Provisions of this ordinance shall be incorporated in the City of Lincoln City Municipal Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this ordinance may be renumbered, or re-lettered, provided that any Whereas clauses and boilerplate provisions (i.e. Sections 2-5) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

1 The foregoing ordinance was distinctly read by title only in accordance with Chapter IX, Section  
2 9.2 of the City of Lincoln City Charter on the 12<sup>th</sup> day of June, 2023 (First Reading) and on the  
3 12<sup>th</sup> day of June, 2023 (Second Reading).  
4

5 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 12<sup>th</sup> day of June, 2023.  
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9 \_\_\_\_\_  
SUSAN WAHLKE, MAYOR

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13 ATTEST:

APPROVED AS TO FORM:

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16 \_\_\_\_\_  
17 JAMIE YOUNG, CITY RECORDER

18 \_\_\_\_\_  
RICHARD APPICELLO, CITY ATTORNEY

# Council Communication

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## Resolution 2023-11- Call for Special Election to Fill Council Ward 2 Vacancy

|                 |                 |                        |                            |
|-----------------|-----------------|------------------------|----------------------------|
| Meeting Date:   | June 12, 2023   | Primary Staff Contact: | Richard Appicello          |
| Department:     | City Attorney   | E-Mail:                | RAppicello@lincolncity.org |
| Secondary Dept: |                 | Secondary Contacts:    |                            |
| Approval:       | Daphnee Legarza | Estimated Time:        | 5 minutes                  |

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### Question:

Should the City Council approve Resolution 2023-11 concerning calling for a special election in November 2023 to fill the vacancy created by Councilor Kasner's resignation?

### Staff Recommendation:

Staff recommends approval of Resolution 2023-11. The deadline to file with the County is July 25, 2023.

### Authority:

### Background

The Council by a vote of 5-0 directed a Resolution be prepared to call for a special election in November 2023 to fill Councilor Kasner's vacated seat in Ward 2.

### Council Options:

Approve the Resolution.  
 Do Not approve the Resolution.  
 Approve the Resolution (with amendments).  
 Motion to Reconsider – return to deliberations on the matter.

### Financial Impact

No financial impacts to City.

### Potential Motions:

Move to approve Resolution 2023-11.

Move to approve Resolution 2023-11, with the following amendments.

Move to reject the proposed Resolution.

**Attachments:**

Resolution 2023-11 vacancy referral (DOC)

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**RESOLUTION NO. 2023-11**

**A RESOLUTION OF THE CITY OF LINCOLN CITY,  
CALLING FOR A SPECIAL ELECTION ON NOVEMBER 7, 2023  
TO FILL THE VACANT COUNCIL WARD 2 POSITION ON THE  
CITY COUNCIL FOR THE CITY OF LINCOLN CITY**

**RECITALS**

**WHEREAS**, on May 22, 2023, Councilor Sydney Kasner resigned her City Council position, effective in July 2023 as Councilor Ward 2 of Lincoln City during the regular meeting; and

**WHEREAS**, Chapter VIII, Section 8.2, of the Lincoln City Charter, provides:

**8.2 Filling Vacancies**

A vacancy in the council shall be filled by appointment by majority of the council, provided, however, that the council may in its discretion call a special election for the purpose of filling such vacancy. The appointee’s term shall begin immediately upon his or her appointment and qualification and shall continue through the unexpired term of the appointee’s predecessor. During the temporary disability of a council member, or during a member’s absence from the city, the office may be filled pro-tem in the manner provided for filling vacancies in office.

**WHEREAS**, at a regular meeting of the City Council on May 22, 2023, pursuant to Chapter VIII, Section, 8.2, of the Lincoln City Charter, the City Council by unanimous consent decided to refer such vacancy to a Special Election to be held in November 2023 and directed staff to prepare such resolution; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LINCOLN CITY, AS FOLLOWS:**

**SECTION 1.** The above recitals set forth above are true and correct and are incorporated herein by this reference.

**SECTION 2.** The City Council hereby declares a vacancy to exist on the City Council, specifically, the position of Councilor Ward 2, owing to the resignation of Councilor Sydney Kasner; and

**SECTION 3.** The City Council hereby calls for a special election to fill the vacancy on the city council position of Councilor Ward 2, and directs the City Recorder to notify the County Elections Officer and provide notice as set forth in Lincoln City Municipal

1 Code, Chapter 1.12 of the applicable deadline for candidate filing for the November  
2 7, 2023 election.

3  
4 **SECTION 4.** This resolution is effective as of the date of its adoption and signature by the  
5 Council President.

6  
7 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 12<sup>th</sup> day of June  
8 2023.

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13 SUSAN WAHLKE, MAYOR

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16 ATTEST:

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20 JAMIE YOUNG, CITY RECORDER

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23 APPROVED AS TO FORM:  
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27 RICHARD APPICELLO, CITY ATTORNEY

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# Council Communication

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## Resolution 2023-14 Setting Water / Sewer Rates

|                 |                 |                        |                          |
|-----------------|-----------------|------------------------|--------------------------|
| Meeting Date:   | June 12, 2023   | Primary Staff Contact: | Debbie Bridges           |
| Department:     | Finance         | E-Mail:                | dbridges@lincolncity.org |
| Secondary Dept: |                 | Secondary Contacts:    |                          |
| Approval:       | Daphnee Legarza | Estimated Time:        | 5 Minutes                |

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### Question:

Should the City Council adopt a 5% water rate increase and a 5% sewer rate increase, for an average utility rate increase of 5%?

### Authority:

Lincoln City Municipal Code 13.12.060(A) and 13.12.080(A) provides that the City shall set the water/sewer rates and revise those rates as necessary by resolution of the City Council.

### Background:

The approved FY2023-24 budget anticipates a 5.0% increase in utility rates. Rate increases are necessary to keep the water and sewer funds operating effectively, and to cover operational and capital costs. For many years the City has implemented an annual rate increase in both water and sewer, effective with the first billing in August.

### Council Options:

1. Motion to approve Resolution 2023-14
2. Modify the percent of rate increase for water and/or sewer
3. Do not increase rates

### Attachments:

Resolution 2023-14 - Setting Forth Water -Sewer Rates (DOCX)

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**RESOLUTION NO. 2023-14**

**A RESOLUTION SETTING FORTH WATER/SEWER RATES**

WHEREAS, the City Charter and the Oregon Revised Statutes authorizes the City to own, operate and maintain a sewage disposal system, and a city water system; and

WHEREAS, THE City of Lincoln City does in fact own, operate and maintain a sewage disposal system, and a city water system; and

WHEREAS, Ordinance No. 78-37 provides that the City shall set the water/sewer rates and revise those rates as necessary by resolution of the City Council.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lincoln City does hereby set the water/sewer charges which are attached hereto, marked as Exhibit "A", and incorporated by this reference herein, as the water/sewer rates for the City of Lincoln City, effective with the August 15, 2023 billing.

BE IT FURTHER RESOLVED that the former water/sewer rates established by Resolution No. 2022-19 is hereby repealed as of the effective date of the rates established by this resolution.

PASSED AND APPROVED BY THE City Council of the City of Lincoln City this 12<sup>th</sup> day of June 2023.

\_\_\_\_\_  
SUSAN WAHLKE, Mayor

ATTEST:  
  
\_\_\_\_\_  
JAMIE YOUNG, City Recorder

## EXHIBIT "A"

**WATER AND SEWER RATES EFFECTIVE AUGUST 15<sup>TH</sup> 2023 BILLING  
MONTHLY BASE CHARGE**

| METER SIZE         | IN CITY WATER | IN CITY SEWER | OUTSIDE CITY WATER | OUTSIDE CITY SEWER |
|--------------------|---------------|---------------|--------------------|--------------------|
| 5/8" Single Family | \$ 27.65      | \$ 38.29      | \$ 58.62           | \$ 81.17           |
| 5/8" Other         | \$ 26.44      | \$ 38.29      | \$ 56.05           | \$ 81.17           |
| 1"                 | \$ 48.79      | \$ 61.70      | \$103.43           | \$130.80           |
| 1.5"               | \$ 93.49      | \$108.64      | \$198.20           | \$230.32           |
| 2"                 | \$160.50      | \$178.92      | \$340.26           | \$379.31           |
| 3"                 | \$316.89      | \$343.02      | N/A                | N/A                |
| 4"                 | \$562.68      | \$600.99      | N/A                | N/A                |
| 6"                 | \$1,121.45    | \$1,187.08    | N/A                | N/A                |
| 8"                 | \$1,861.46    | N/A           | N/A                | N/A                |

**USAGE CHARGE PER 100 CUBIC FEET (748 gallons)**

| TYPE                          | IN CITY WATER | IN CITY SEWER | OUTSIDE CITY WATER | OUTSIDE CITY SEWER |
|-------------------------------|---------------|---------------|--------------------|--------------------|
| Residential non- peak months* | \$4.14        | \$6.35        | \$8.78             | \$13.46            |
| Residential - peak months**   | \$4.61        | \$6.35        | \$9.77             | \$13.46            |
| Commercial non-peak months    | \$4.14        | \$6.35        | \$8.78             | \$13.46            |
| Commercial peak months**      | \$4.57        | \$6.35        | \$9.69             | \$13.46            |

Fire Standby charge: 10% of Base Charge based on standby meter size

Schooner Creek Surcharge \$27.33

\* Residential minimum allowed consumption per each dwelling unit designed for occupancy by one family shall be allowed 400 cubic feet of consumption per month to be included within the base charge before the consumption rate per 100 cubic feet is charged, if the individual dwelling unit is connected to a water meter serving only that unit.

\*\* Peak months are the months where the majority of the consumption occurs during the months of July, August and September.

**DISCOUNT FOR DIGITAL BILLING AND PAYMENT**

**A discount of \$0.50 per month per account shall be given to any customer who elects to receive a paperless (digital) statement and who pays the monthly bill using the City's online service.**

# Council Communication

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## Resolution 2023-15: State Shared Revenues

|                 |                 |                        |                          |
|-----------------|-----------------|------------------------|--------------------------|
| Meeting Date:   | June 12, 2023   | Primary Staff Contact: | Debbie Bridges           |
| Department:     | Finance         | E-Mail:                | dbridges@lincolncity.org |
| Secondary Dept: |                 | Secondary Contacts:    |                          |
| Approval:       | Daphnee Legarza | Estimated Time:        | 5 Minutes                |

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### Question:

Should the City Council enact a resolution to receive State shared revenues for FY2023-24?

### Authority:

In order to receive State Revenue sharing, ORS 221.770 requires a City to elect to receive distributions from the State revenue sharing for the fiscal year by enactment of an ordinance or resolution expressing that election, and filing the resolution with the Oregon Department of Administrative Services no later than July 31 of the fiscal year.

### Background:

The approved FY2023-24 budget includes \$203,900 of State Revenue Sharing in the General Fund. In order to receive these monies, the City must hold a public hearing to receive citizen comment, and must also adopt a resolution expressing the City's election to receive state revenues.

### Council Options:

1. Motion to approve Resolution 2023-15.
2. Do not approve Resolution 2023-15.

### Attachments:

Resolution 2023-15 - Election to Receive State Rev (DOC)

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**RESOLUTION NO. 2023-15**

**A RESOLUTION DECLARING THE CITY’S ELECTION TO RECEIVE STATE REVENUES**

NOW THEREFORE BE IT RESOLVED, that pursuant to ORS 221.770, the city hereby elects to receive state revenues for fiscal year 2023-2024.

PASSED and APPROVED by the City Council for the City of Lincoln City on the 12<sup>th</sup> day of June 2023.

\_\_\_\_\_  
SUSAN WAHLKE, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
RICHARD APPICELLO, CITY ATTORNEY

ATTEST:

\_\_\_\_\_  
JAMIE YOUNG, City Recorder

I certify that a public hearing before the Budget Committee was held on May 1<sup>st</sup>, 2023, and a public hearing before the City Council was held on June 12<sup>th</sup>, 2023, giving citizens an opportunity to comment on use of State Revenue Sharing.

\_\_\_\_\_  
JAMIE YOUNG, City Recorder

# Council Communication

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## Resolution 2023-12 Supplemental Budget

|                 |                 |                        |                          |
|-----------------|-----------------|------------------------|--------------------------|
| Meeting Date:   | June 12, 2023   | Primary Staff Contact: | Debbie Bridges           |
| Department:     | Finance         | E-Mail:                | dbridges@lincolncity.org |
| Secondary Dept: |                 | Secondary Contacts:    |                          |
| Approval:       | Daphnee Legarza | Estimated Time:        | 20 Minutes               |

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### Authority:

ORS 294.471 provides that the governing body of any municipal corporation may make a supplemental budget where an occurrence or condition which had not been anticipated at the time of the preparation of the budget for the current year requires a change in financial planning.

### Background:

Following are the items for which Finance is requesting appropriation changes in the FY2022-23 budget. This supplemental budget request requires a public hearing; notice has been published in the News Guard.

### General Fund:

Staff is requesting two changes to the General Fund budget:

- Creates an appropriation category Debt Services and provides \$7,208 of appropriation. This request is due to GASB 87 which now requires us to report cost of certain leases (such as copiers or postage machines) as a debt service payment, rather than as a material and services expense.
- Record the return of unused amount from FY2021-22 transfer from General fund to the Sewer Capital fund, for emergency repairs of the NE Jetty force main. This change also adds \$550,000 in transfers out to fund various capital items in other funds.

### % for Art Fund:

Staff is requesting adding \$63,530 to beginning fund balance and to capital outlay. This sets the budgeted beginning fund balance to equal the actual beginning fund balance, and provides appropriation for capital costs not completed in the prior fiscal year.

**Street Operations Fund:**

This change creates an appropriation category Debt Services and provides \$840 of appropriation. This request is due to GASB 87 which now requires us to report cost of certain leases (such as copiers or postage machines) as a debt service payment, rather than as a material and services expense.

**Facilities Capital Fund:**

This change creates an appropriation category Materials & Services and provides \$78,560 of appropriation. The Facilities Capital fund incurred some expenditures that do not qualify as Capital Outlay (painting City Hall), and the original adopted budget does not have a Materials & Services category.

**Explore Lincoln City:**

This change creates an appropriation category Debt Services and provides \$1,632 of appropriation. This request is due to GASB 87 which now requires us to report cost of certain leases (such as copiers or postage machines) as a debt service payment, rather than as a material and services expense.

**Internal Service Fund:**

This records a \$150,000 transfer from the General fund and increases Vehicle Maintenance appropriation by \$150,000, for capital purchases long needed by Vehicle Maintenance, including mechanic tools, an oil furnace, an alignment machine, a scan tool for diesel vehicles, and a toughbook.

**Street Capital Fund:**

This records a \$300,000 transfer from the General fund and increases the Street Improvements appropriation by \$295,000 and transfers out by \$5,000. The additional funding is for needed overlay work resulting from the NW Jetty force main emergency repair, and to purchase a skid steer.

**Police Building Bond 2018 Fund:**

This records a \$100,000 transfer from the General fund and increases the Capital Outlay budget by \$95,000 and transfers out by \$5,000. The additional funding is for needed for the Police storage building that is included the FY2023-24 approved budget.

**Sewer Capital Fund:**

This request adds \$550,000 appropriation to transfers out, in order to return unused funds from the \$1.2 million transfer this fund received in FY2021-22 from the General fund, for emergency repairs to the NW Jetty force main.

**Council Options:**

1. Motion to approve Resolution 2023-12 adopting the supplemental budget for FY2022-23.
2. Motion to approve Resolution 2023-12 adopting the supplemental budget for FY2022-23, as amended.
3. Do not approve Resolution 2023-12.

**Attachments:**

Resolution 2023-12 - Supplemental Budget FY2022-23 (DOC)

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**RESOLUTION 2023-12**

**A RESOLUTION ADOPTING THE SUPPLEMENTAL BUDGET OF THE CITY OF LINCOLN CITY, OREGON, FOR THE FISCAL YEAR 2022-2023, AS APPROVED BY THE CITY COUNCIL, AND MAKING APPROPRIATIONS**

WHEREAS, ORS 294.471 provides that the governing body of any municipal corporation may make a supplemental budget where an occurrence or condition which had not been anticipated at the time of the preparation of the budget for the current year requires a change in financial planning; and

WHEREAS, the publication of the supplemental budget was given in the manner provided in ORS 294.311;

NOW, THEREFORE, BE IT RESOLVED by the City Council of Lincoln City as follows:

Section 1. That it hereby adopts the supplemental budget for 2022-2023, and is now on file in the office of the Finance Director.

Section 2. BE IT FURTHER RESOLVED that the additional amounts for the fiscal year ending June 30, 2023, for the purposes shown below are hereby appropriated as follows:

SEE EXHIBIT "A"

This resolution shall be effective upon passage.

PASSED AND APPROVED by the City Council of The City of Lincoln City this 12<sup>th</sup> day of June 2023.

\_\_\_\_\_  
SUSAN WAHLKE, Mayor

ATTEST:

\_\_\_\_\_  
JAMIE YOUNG, City Recorder

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**EXHIBIT A**  
**SUMMARY OF SUPPLEMENTAL BUDGET**

**FUND: GENERAL FUND**

| Resource                       | Amount            | Requirement                       | Amount            |
|--------------------------------|-------------------|-----------------------------------|-------------------|
| 1 Transfer in                  | 550,000           | 1 Debt Service                    | 7,208             |
| 2                              |                   | 2 Transfer Out                    | 550,000           |
| 3                              |                   | 3 Contingencies                   | -7,208            |
| <b>Revised Total Resources</b> | <b>18,698,904</b> | <b>Revised Total Requirements</b> | <b>18,698,904</b> |

**Comments:**

*To provide appropriation for category Debt Service, per GASB 87, and to appropriate additional transfers*

**FUND: % FOR ART**

| Resource                       | Amount         | Requirement                       | Amount         |
|--------------------------------|----------------|-----------------------------------|----------------|
| 1 Beginning Fund Balance       | 63,530         | 1 Capital Outlay                  | 63,530         |
| <b>Revised Total Resources</b> | <b>117,594</b> | <b>Revised Total Requirements</b> | <b>117,594</b> |

**Comments:**

*To increase budgeted beginning fund balance to equal actual and appropriate amount available.*

**FUND: STREET OPERATIONAL FUND**

| Resource                       | Amount           | Requirement                       | Amount           |
|--------------------------------|------------------|-----------------------------------|------------------|
| 1                              |                  | 1 Debt Service                    | 840              |
| 2                              |                  | 2 Contingencies                   | -840             |
| <b>Revised Total Resources</b> | <b>4,430,799</b> | <b>Revised Total Requirements</b> | <b>4,430,799</b> |

**Comments:**

*To provide appropriation for category Debt Service, per GASB 87*

**FUND: FACILITIES CAPITAL FUND**

| Resource                       | Amount           | Requirement                       | Amount           |
|--------------------------------|------------------|-----------------------------------|------------------|
| 1                              |                  | 1 Materials & Services            | 78,560           |
| 2                              |                  | 2 Capital Outlay                  | -78,560          |
| <b>Revised Total Resources</b> | <b>2,393,851</b> | <b>Revised Total Requirements</b> | <b>2,393,851</b> |

**Comments:**

*To provide appropriation for category Materials and Services*

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**FUND: EXPLORE LINCOLN CITY**

| Resource                       | Amount    | Requirement                       | Amount    |
|--------------------------------|-----------|-----------------------------------|-----------|
| 1                              |           | 1 Debt Service                    | 1,632     |
| 2                              |           | 2 Contingency                     | -1,632    |
| <b>Revised Total Resources</b> |           | <b>Revised Total Requirements</b> |           |
|                                | 7,764,562 |                                   | 7,764,562 |

**Comments:**

To provide appropriation for category Debt Service, per GASB 87

**FUND: INTERNAL SERVICE FUND**

| Resource                       | Amount    | Requirement                       | Amount    |
|--------------------------------|-----------|-----------------------------------|-----------|
| 1 Transfers In                 | 150,000   | 1 Vehicle Maintenance             | 150,000   |
| <b>Revised Total Resources</b> |           | <b>Revised Total Requirements</b> |           |
|                                | 1,455,601 |                                   | 1,455,601 |

**Comments:**

To budget Transfer In from the General fund to fund Vehicle Maintenance capital purchases.

**FUND: STREET CAPITAL**

| Resource                       | Amount    | Requirement                       | Amount    |
|--------------------------------|-----------|-----------------------------------|-----------|
| 1 Transfer In                  | 300,000   | 1 Street Improvements             | 295,000   |
| 2                              |           | 2 Transfer Out                    | 5,000     |
| <b>Revised Total Resources</b> |           | <b>Revised Total Requirements</b> |           |
|                                | 6,185,048 |                                   | 6,185,048 |

**Comments:**

To budget Transfer In from the General fund and to appropriate amount for street improvements and transfer out.

**FUND: POLICE BUILDING BOND 2018**

| Resource                       | Amount    | Requirement                       | Amount    |
|--------------------------------|-----------|-----------------------------------|-----------|
| 1 Transfer In                  | 100,000   | 1 Capital Outlay                  | 95,000    |
| 2                              |           | 2 Transfer Out                    | 5,000     |
| <b>Revised Total Resources</b> |           | <b>Revised Total Requirements</b> |           |
|                                | 1,059,239 |                                   | 1,059,239 |

**Comments:**

To budget Transfer In from the General fund and to appropriate amount for capital outlay and transfer out.

**FUND: SEWER CAPITAL**

| Resource                       | Amount    | Requirement                       | Amount    |
|--------------------------------|-----------|-----------------------------------|-----------|
| 1                              |           | 1 Capital Outlay                  | -550,000  |
| 2                              |           | 2 Transfer Out                    | 550,000   |
| <b>Revised Total Resources</b> |           | <b>Revised Total Requirements</b> |           |
|                                | 6,834,656 |                                   | 6,834,656 |

**Comments:**

To return unused transfer from General fund in FY2021-22 for NW Jetty Main emergency repair.

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# Council Communication

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## Resolution 2023-13: Budget Transfer for FY2022-23

|                 |                 |                        |                          |
|-----------------|-----------------|------------------------|--------------------------|
| Meeting Date:   | June 12, 2023   | Primary Staff Contact: | Debbie Bridges           |
| Department:     | Finance         | E-Mail:                | dbridges@lincolncity.org |
| Secondary Dept: |                 | Secondary Contacts:    |                          |
| Approval:       | Daphnee Legarza | Estimated Time:        | 15 Minutes               |

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### Authority:

ORS 294.463 provides for transfers of appropriations within a fund or between funds.

### Background:

At the end of a fiscal year, it is common for Cities to adopt a budget transfer resolution to move existing budget appropriation between categories to more closely reflect actual expenditures. Below please find the budget transfers staff is requesting.

### General Fund

- City Attorney: add \$7,731 for unbudgeted COVID employee payment.
- Finance: add \$15,250 for unbudgeted COVID employee payment.
- Library: add \$21,000 for unbudgeted COVID employee payment.
- Planning: add \$3,850 for unbudgeted COVID employee payment and \$10,000 for travel expenditures.
- Building: add \$125,000 for building activity higher than budgeted for, and for building inspection audit.

### Lincoln Square Fund

Add \$100,000 for building maintenance, for major unexpected plumbing and fire suppression system problems.

### Water Operating Fund

Add \$840 to Debt Service budget per GASB 87.

### Water Capital Fund

Increase Transfers Out by \$3,000 (for transfers out to % for Art)

### Sewer Operating Fund

Add \$840 to Debt Service budget per GASB 87.

**% for Art Fund**

Record \$3,000 additional transfer in, and allocate \$3,000 to Capital Outlay.

**Council Options:**

1. Motion to approve Resolution 2023-13 adopting budget transfers for FY2022-23.
2. Motion to approve Resolution 2023-13 adopting budget transfers for FY2022-23, as amended.
3. Do not approve Resolution 2023-13.

**Attachments:**

Resolution 2023-13 - Budget Transfers (DOC)

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**RESOLUTION 2023-13**

**A RESOLUTION AUTHORIZING AND DIRECTING BUDGET TRANSFERS  
FOR THE CITY OF LINCOLN CITY, OREGON IN THE 2022-2023 FISCAL YEAR  
BUDGET**

WHEREAS, the Finance Director has proposed certain budget appropriation transfers within the funds of the 2022-2023 Lincoln City budget; and

WHEREAS, the changes in departmental needs and staffing have resulted in needed changes to previously budgeted appropriations; and

WHEREAS, Oregon Budget Law allows the transfers of appropriations within a given fund when authorized by an official resolution of the City Council; and

WHEREAS, the City routinely budgets certain amounts and contingencies to provide budget resources to fund appropriations not anticipated at the time of adoption of the budget; and

WHEREAS, said transfers of appropriations are needed and will be used for purposes consistent with originally authorized expenditures in the budget; and

WHEREAS, said proposed budget appropriation transfers are set forth in the attached Exhibit "A"; and

WHEREAS, it appears to this Council that said proposed budget appropriation transfers are appropriate and should be made in conformance with the provisions of Oregon Revised Statutes 294.463.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln City, that the proposed budget transfers for Lincoln City 2022-2023 Budget are hereby ratified and approved and the Finance Director is hereby authorized and directed to make said appropriation transfers.



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**EXHIBIT A**  
**SUMMARY OF BUDGET TRANSFERS**

**FUND: GENERAL FUND**

| Resource                       |                      | Amount            | Expenditure                       |               | Amount            |
|--------------------------------|----------------------|-------------------|-----------------------------------|---------------|-------------------|
| 1                              | Fees Charges Permits | 125,000           | 1                                 | City Attorney | 7,731             |
| 2                              |                      |                   | 2                                 | Finance       | 15,250            |
| 3                              |                      |                   | 3                                 | Library       | 21,000            |
| 4                              |                      |                   | 4                                 | Planning      | 13,850            |
| 5                              |                      |                   | 5                                 | Building      | 125,000           |
| 6                              |                      |                   | 6                                 | Contingency   | -182,831          |
| <b>Revised Total Resources</b> |                      | <b>18,698,904</b> | <b>Revised Total Requirements</b> |               | <b>18,698,904</b> |

*To provide appropriation for unbudgeted COVID one-time employee payments, to provide additional \$125,000 in Building Inspection for contracted services, and \$10,000 in Planning for travel expenditures.*

**FUND: LINCOLN SQUARE OPERATIONS**

| Resource                       |  | Amount         | Expenditure                       |                            | Amount         |
|--------------------------------|--|----------------|-----------------------------------|----------------------------|----------------|
| 1                              |  |                | 1                                 | Lincoln Square Maintenance | 100,000        |
| 2                              |  |                | 2                                 | Contingency                | -100,000       |
| <b>Revised Total Resources</b> |  | <b>775,384</b> | <b>Revised Total Requirements</b> |                            | <b>775,384</b> |

*To add \$100,000 appropriation for building maintenance.*

**FUND: WATER OPERATING**

| Resource                       |  | Amount           | Expenditure                       |              | Amount           |
|--------------------------------|--|------------------|-----------------------------------|--------------|------------------|
| 1                              |  |                  | 1                                 | Debt Service | 840              |
| 2                              |  |                  | 2                                 | Contingency  | -840             |
| <b>Revised Total Resources</b> |  | <b>5,229,922</b> | <b>Revised Total Requirements</b> |              | <b>5,229,922</b> |

*To add \$840 appropriation debt service for GASB87*

**FUND: WATER CAPITAL**

| Resource                       |  | Amount           | Expenditure                       |                | Amount           |
|--------------------------------|--|------------------|-----------------------------------|----------------|------------------|
| 1                              |  |                  | 1                                 | Transfer Out   | 3,000            |
| 2                              |  |                  | 2                                 | Capital Outlay | -3,000           |
| <b>Revised Total Resources</b> |  | <b>4,047,032</b> | <b>Revised Total Requirements</b> |                | <b>4,047,032</b> |

*To increase budget for Transfers Out (for % for Art)*

**FUND: SEWER OPERATING**

| Resource                       |  | Amount           | Expenditure                       |              | Amount           |
|--------------------------------|--|------------------|-----------------------------------|--------------|------------------|
| 1                              |  |                  | 1                                 | Debt Service | 840              |
| 2                              |  |                  | 2                                 | Contingency  | -840             |
| <b>Revised Total Resources</b> |  | <b>6,384,044</b> | <b>Revised Total Requirements</b> |              | <b>6,384,044</b> |

*To add \$840 appropriation debt service for GASB87*

**FUND: % for Art**

| Resource                       |             | Amount         | Expenditure                       |                | Amount         |
|--------------------------------|-------------|----------------|-----------------------------------|----------------|----------------|
| 1                              | Transfer In | 3,000          | 1                                 | Capital Outlay | 3,000          |
| <b>Revised Total Resources</b> |             | <b>120,594</b> | <b>Revised Total Requirements</b> |                | <b>120,594</b> |

*To record additional transfer in, and appropriate to capital outlay*

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## Council Communication

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### Resolution 2023-16: Adopt Budget

|                 |                 |                        |                          |
|-----------------|-----------------|------------------------|--------------------------|
| Meeting Date:   | June 12, 2023   | Primary Staff Contact: | Debbie Bridges           |
| Department:     | Finance         | E-Mail:                | dbridges@lincolncity.org |
| Secondary Dept: |                 | Secondary Contacts:    |                          |
| Approval:       | Daphnee Legarza | Estimated Time:        | 15 Minutes               |

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#### Question:

Adoption of the FY2023-24 budget.

#### Authority:

ORS 294.456 provides that, after a public hearing and consideration of matters discussed at the public hearing, the governing body of a municipal corporation shall enact the ordinances or resolutions necessary to adopt the budget, to make the appropriations, to determine, make and declare the ad valorem property tax amount or rate to be certified to the assessor, and to itemize and categorize the ad valorem property tax amount or rate.

#### Background:

The FY2023-24 City budget as approved by the Budget Committee is available on the City website.

Once the public hearing has been held, Council may make changes to the budget that was approved by the budget committee. Any expenditure in any fund can be reduced. The property tax levy can be reduced from the rate or amount that was approved by the budget committee, so long as a corresponding change is made elsewhere in the fund to keep it balanced. Expenditures may be increased with certain restrictions. If the total increase in a fund exceeds the greater of \$5,000 or 10%, then Council must publish notice of a second budget hearing and a new financial summary, and hold a second public hearing before the adjusted budget can be adopted.

Staff would like to ask City Council to consider three changes to the proposed budget.

- Add \$40,000 to the Park Operations budget, for control of lake aquatic vegetation along City property, to be performed by the Devils Lake Water

Improvement District. Motion for this might be: I move to increase the Park Operations budget in the Parks and Recreation fund by \$40,000, and reduce contingency by \$40,000.

- Move purchase of a skid steer from the Sewer Capital fund to the Street Capital fund. Motion for this might be: I move to increase the Beginning Fund Balance and the Street Improvements budget in the Street Capital fund by \$100,000, and decrease the Beginning Fund Balance and the Capital Outlay budget in the Sewer Capital fund by \$100,000.
- The budget committee voted to recommend that City Council amend the approved budget to include funding to address the sewer pipes that we currently cannot get to, for INI purposes. An amount of \$50,000 was suggested, which the Public Works Director thinks will be sufficient to:
  - Increase the scope of the wastewater master plan to include a study of the private lateral contributions to I/I (infiltration and inflow).
  - Create a program to address the private laterals (research what other communities have done) and determine what is best for us.
  - Purchase a smaller camera to allow us to scope into private laterals and determine the condition.

Motion for this might be: I move to increase the budget for Water Utility Maintenance in the Water Operating fund by \$50,000, and to decrease contingency in same amount.

### **Council Options:**

1. Motion to approve Resolution 2023-16 adopting the FY2023-24 budget as approved.
2. Motion to approve Resolution 2023-16 adopting the FY2023-24 budget as amended.

### **Attachments:**

Resolution 2023-16 - Adopt Budget FY2023-24 (DOC)

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**RESOLUTION NO. 2023-16**

**ADOPTING THE BUDGET**

BE IT RESOLVED, that the City Council of the City of Lincoln City hereby adopts the budget for fiscal year 2023-24 in the total of \$95,518,027 now on file at the Finance Department of the City of Lincoln City.

**MAKING APPROPRIATIONS**

BE IT RESOLVED, that the amounts for the fiscal year beginning July 1, 2023, and for the purposes shown below are hereby appropriated:

**GENERAL**

|                                          |                   |
|------------------------------------------|-------------------|
| City Council                             | 72,568            |
| Administration                           | 1,003,702         |
| Finance                                  | 1,070,103         |
| Library                                  | 1,338,186         |
| Municipal Court                          | 107,493           |
| City Attorney                            | 395,027           |
| Planning                                 | 582,846           |
| Building Inspection                      | 545,726           |
| Economic Development                     | 1,434,876         |
| Police                                   | 6,859,037         |
| Dispatch                                 | 1,598,021         |
| City Hall Operations                     | 1,188,208         |
| Transfers                                | 1,656,668         |
| Contingencies                            | 3,084,753         |
| <b>TOTAL GENERAL FUND APPROPRIATIONS</b> | <b>20,937,214</b> |

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**LINCOLN SQUARE OPERATIONS**

|                                                            |                |
|------------------------------------------------------------|----------------|
| Lincoln Square Maintenance                                 | 565,664        |
| Contingencies                                              | 234,495        |
| <b>TOTAL LINCOLN SQUARE OPERATIONS FUND APPROPRIATIONS</b> | <b>800,159</b> |

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**FACILITIES CAPITAL FUND**

|                                                     |                  |
|-----------------------------------------------------|------------------|
| Building Improvements                               | 1,105,000        |
| Debt Service                                        | 615,775          |
| Transfers Out                                       | 5,000            |
| Contingency                                         | 213,522          |
| <b>TOTAL FACILITIES CAPITAL FUND APPROPRIATIONS</b> | <b>1,939,297</b> |

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**VILLAGES CASCADE HEAD**

|                                                        |                |
|--------------------------------------------------------|----------------|
| Materials and Services                                 | 272,800        |
| Contingency                                            | 724,745        |
| <b>TOTAL VILLAGES CASCADE HEAD FUND APPROPRIATIONS</b> | <b>997,545</b> |

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**INTERNAL SERVICE FUND**

|                                                   |                  |
|---------------------------------------------------|------------------|
| Vehicle Maintenance                               | 571,065          |
| Information Technology                            | 890,885          |
| Geographical Information Systems                  | 139,415          |
| Contingencies                                     | 46,277           |
| <b>TOTAL INTERNAL SERVICE FUND APPROPRIATIONS</b> | <b>1,647,642</b> |

**AGATE BEACH CLOSURE**

|                                                      |               |
|------------------------------------------------------|---------------|
| Materials and Services                               | 40,000        |
| <b>TOTAL AGATE BEACH CLOSURE FUND APPROPRIATIONS</b> | <b>40,000</b> |

6

**% FOR ART**

|                                            |               |
|--------------------------------------------|---------------|
| Public Art                                 | 59,270        |
| <b>TOTAL % FOR ART FUND APPROPRIATIONS</b> | <b>59,270</b> |

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**WORKFORCE HOUSING**

|                                                    |                |
|----------------------------------------------------|----------------|
| Workforce Housing                                  | 208,797        |
| Special Payments                                   | 100,000        |
| <b>TOTAL WORKFORCE HOUSING FUND APPROPRIATIONS</b> | <b>308,797</b> |

**EXPLORE LINCOLN CITY**

|                                                           |                   |
|-----------------------------------------------------------|-------------------|
| Tourism Attraction                                        | 8,369,922         |
| Debt Service                                              | 816               |
| Transfers                                                 | 87,832            |
| Contingency                                               | 2,092,506         |
| <b>TOTAL EXPLORE LINCOLN CITY FUND<br/>APPROPRIATIONS</b> | <b>10,551,076</b> |

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**PARK AND RECREATION**

|                                                          |                  |
|----------------------------------------------------------|------------------|
| Park Operations                                          | 2,500,615        |
| Recreation Center                                        | 1,978,079        |
| Transfers                                                | 50,470           |
| Contingency                                              | 1,446,373        |
| <b>TOTAL PARK AND RECREATION FUND<br/>APPROPRIATIONS</b> | <b>5,975,537</b> |

**PARKS CAPITAL FUND**

|                                                    |                  |
|----------------------------------------------------|------------------|
| Capital Outlay                                     | 2,371,326        |
| <b>TOTAL PARKS CAPITAL FUND<br/>APPROPRIATIONS</b> | <b>2,371,326</b> |

**PARKS SDC'S**

|                                                  |                |
|--------------------------------------------------|----------------|
| Capital Outlay                                   | 733,202        |
| <b>TOTAL PARKS SDC'S FUND<br/>APPROPRIATIONS</b> | <b>733,202</b> |

**PROPERTY ABATEMENT**

|                                                    |                |
|----------------------------------------------------|----------------|
| Abatement Program                                  | 131,977        |
| <b>TOTAL PROPERTY ABATEMENT<br/>APPROPRIATIONS</b> | <b>131,977</b> |

**POLICE BUILDING BOND 2018**

|                                                           |                |
|-----------------------------------------------------------|----------------|
| Capital Outlay                                            | 473,579        |
| <b>TOTAL POLICE BUILDING BOND 2018<br/>APPROPRIATIONS</b> | <b>473,579</b> |

**UNBONDED ASSESSMENT**

|                                                       |                |
|-------------------------------------------------------|----------------|
| Capital Outlay                                        | 802,741        |
| <b>TOTAL UNBONDED ASSESSMENTS FUND APPROPRIATIONS</b> | <b>802,741</b> |

**STREET OPERATIONS**

|                                                    |                  |
|----------------------------------------------------|------------------|
| Street Maintenance                                 | 1,644,451        |
| Debt Service                                       | 840              |
| Transfers                                          | 1,117,022        |
| Contingencies                                      | 561,086          |
| <b>TOTAL STREET OPERATIONS FUND APPROPRIATIONS</b> | <b>3,323,399</b> |

**STREET CAPITAL**

|                                                 |                  |
|-------------------------------------------------|------------------|
| Street Improvements                             | 8,214,600        |
| Transfers                                       | 5,000            |
| <b>TOTAL STREET CAPITAL FUND APPROPRIATIONS</b> | <b>8,219,600</b> |

**TRANSPORTATION DEVELOPMENT**

|                                                 |                |
|-------------------------------------------------|----------------|
| Capital Outlay                                  | 535,313        |
| <b>TOTAL TRANSPORTATION FUND APPROPRIATIONS</b> | <b>535,313</b> |

**N HWY 101 IMPROVEMENT PROGRAM**

|                                                           |                  |
|-----------------------------------------------------------|------------------|
| Capital Outlay                                            | 2,680,515        |
| <b>TOTAL N HWY 101 IMPROVEMENT PROGRAM APPROPRIATIONS</b> | <b>2,680,515</b> |

**INTERSECTION IMPROVEMENT**

|                                                      |                |
|------------------------------------------------------|----------------|
| Capital Outlay                                       | 147,910        |
| <b>TOTAL INTERSECTION IMPROVEMENT APPROPRIATIONS</b> | <b>147,910</b> |

**STORM DRAINAGE**

|                                                 |               |
|-------------------------------------------------|---------------|
| Capital Outlay                                  | 81,793        |
| <b>TOTAL STORM DRAINAGE FUND APPROPRIATIONS</b> | <b>81,793</b> |

**WATER OPERATING**

|                                                  |                  |
|--------------------------------------------------|------------------|
| Water Utility Maintenance                        | 3,175,083        |
| Debt Service                                     | 51,513           |
| Transfers                                        | 1,842,860        |
| Contingencies                                    | 281,303          |
| <b>TOTAL WATER OPERATING FUND APPROPRIATIONS</b> | <b>5,350,759</b> |

**WATER CAPITAL**

|                                                |                  |
|------------------------------------------------|------------------|
| Capital Outlay                                 | 2,595,717        |
| Transfers                                      | 5,000            |
| <b>TOTAL WATER CAPITAL FUND APPROPRIATIONS</b> | <b>2,600,717</b> |

**SDC WATER REIMBURSEMENT**

|                                                          |                |
|----------------------------------------------------------|----------------|
| Capital Outlay                                           | 889,406        |
| <b>TOTAL SDC WATER REIMBURSEMENT FUND APPROPRIATIONS</b> | <b>889,406</b> |

**SDC WATER IMPROVEMENT**

|                                                        |                |
|--------------------------------------------------------|----------------|
| Capital Outlay                                         | 398,875        |
| <b>TOTAL SDC WATER IMPROVEMENT FUND APPROPRIATIONS</b> | <b>398,875</b> |

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**SEWER OPERATING**

|                                                  |                  |
|--------------------------------------------------|------------------|
| Sewer Utility Maintenance                        | 3,902,868        |
| Debt Service                                     | 125,840          |
| Transfers                                        | 1,931,091        |
| Contingencies                                    | 1,839,993        |
| <b>TOTAL SEWER OPERATING FUND APPROPRIATIONS</b> | <b>7,799,792</b> |

**SEWER CAPITAL**

|                                                |                  |
|------------------------------------------------|------------------|
| Capital Outlay                                 | 6,117,891        |
| Transfers                                      | 5,000            |
| <b>TOTAL SEWER CAPITAL FUND APPROPRIATIONS</b> | <b>6,122,891</b> |



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General Government Limitation

Excluded From Limitation

General Fund \$4.0996/\$1,000  
Debt Service Fund

\$1,755,319

The above resolution statements were approved and declared adopted on this 12<sup>th</sup>  
day of June 2023.

\_\_\_\_\_  
SUSAN WAHLKE, Mayor

ATTEST:

\_\_\_\_\_  
JAMIE YOUNG, City Recorder

## Council Communication

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### Design Contract Award – NE 44th to 47th Connector Road

|                 |                 |                        |                       |
|-----------------|-----------------|------------------------|-----------------------|
| Meeting Date:   | June 12, 2023   | Primary Staff Contact: | Stephanie Reid        |
| Department:     | Public Works    | E-Mail:                | SReid@lincolncity.org |
| Secondary Dept: |                 | Secondary Contacts:    |                       |
| Approval:       | Daphnee Legarza | Estimated Time:        | 10 minutes            |

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#### Question:

Should the City Council Award a Professional Services Agreement for Design of the NE 44<sup>th</sup> to 47<sup>th</sup> Connector Street to Akana?

#### Staff Recommendation:

Staff recommends the Award of a Professional Services Agreement for Design of the NE 44<sup>th</sup> to 47<sup>th</sup> Connector Street to Akana for Phase 1 in the amount of \$99,998.00.

#### Authority:

**LCMC 2.05.060** Public Improvement contracts shall be awarded by competitive bid or as provided by the Public Contracting Code or these rules, this contract would be awarded as provided in the Public Contracting Code and LCMC 2.05.060.

#### Background:

The Roads End/Villages at Cascade Head Urban Renewal District has budget for the design of the 44<sup>th</sup> to 47<sup>th</sup> Connector Street. The Urban Renewal District will transfer the funding to Lincoln City Public Work for design and construction. The project is identified in the City's 2015 Transportation System Plan and it will provide greater transportation route choice for all modes.

#### Project Description

The project includes constructing a new road connecting NE Logan and NW 44<sup>th</sup> to NE 47<sup>th</sup> Street.

#### Request For Proposals

Public Works Department advertised a Request for Proposal for the design of the project December 13, 2022. The City Public Works Department received four proposals for the project on February 2, 2023.

|                 |
|-----------------|
| <b>Proposer</b> |
|-----------------|

|                                       |
|---------------------------------------|
| Akana                                 |
| Flagline Engineering                  |
| Mackenzie, Inc.                       |
| PBS Engineering & Environmental, Inc. |

The proposals were reviewed by both the City Staff and Confederated Tribes of Siletz Indians and Akana was selected.

The design and construction services for the project is estimated by Akana at \$518,000.00. The budget currently available is \$100,000. Staff has negotiated with Akana to conduct preliminary engineering work to develop two concept plans for review, take the project through a public review, and select a concept plan for Phase 1 at a cost of \$99,998.00.

**Financial Impact:**

This project will be funded from the Street Capital Fund transferred from Urban Renewal Agency fund.

**Council Options:**

The Council may approve the award of the Professional Services Agreement.

The Council may not approve the award of the Professional Services Agreement.

**Potential Motions:**

Move to award the Professional Services Agreement to Akana for Phase 1 in the amount of \$99,998.00.

## Council Communication

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### IGA - ODOT Hwy 101 39th Street to Holmes Avenue Sidewalk Infill

|                 |                 |                        |                            |
|-----------------|-----------------|------------------------|----------------------------|
| Meeting Date:   | June 12, 2023   | Primary Staff Contact: | Richard Appicello          |
| Department:     | City Attorney   | E-Mail:                | RAppicello@lincolncity.org |
| Secondary Dept: | Administration  | Secondary Contacts:    | Daphnee Legarza            |
| Approval:       | Daphnee Legarza | Estimated Time:        | 10 min.                    |

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#### Question:

Should the City Council approve the attached Intergovernmental Agreement with ODOT regarding US 101: 39<sup>th</sup> Street to Holmes Ave Sidewalk Infill Project?

#### Staff Recommendation:

Staff recommends Council approve the Intergovernmental Agreement.

#### Authority:

ORS Chapter 190

#### Background:

The City has approved the City's \$750,000.00 contribution to this project as part of the City Budget. This Agreement from ODOT contains some confusing and egregious terms (e.g. Paragraph 4.a.i and Attachment 2 – advance deposit provisions). Staff requests permission for the City Manager and City Attorney to make minor changes to the document should we be successful in getting changes out of ODOT.

#### Council Options:

1. Approve the IGA with permission for the Manager and Attorney to make changes.
2. Postpone discussion
3. Do not approve the IGA.

#### Potential Motions:

*Council:*

1. Motion to approve Intergovernmental Agreement with permission for the Manager and Attorney to make changes, if possible.

**Attachments:**

IGA with ODOT June 2023 (PDF)

**ODOT Delivered Federal Project  
On Behalf of Lincoln City  
US 101: 39<sup>th</sup> Street to Holmes Avenue Sidewalk Infill  
Key Number: 23431**

THIS AGREEMENT ("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 LINCOLN CITY, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually as "Party" and collectively as "Parties."

### RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities and units of local governments 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.
2. US Route 101 (Oregon Coast Highway) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). NE Holmes Road, NW 39<sup>th</sup> Street, and the city streets between them in the project location, are a part of the city street system under the jurisdiction and control of Agency.
3. Agency has agreed that State will deliver this project on behalf of Agency.
4. The Project was selected as a part of the 2023 Discretionary Program and may include a combination of federal, state, and local funds. "Project" is defined under Terms of Agreement, Paragraph 1 of this Agreement.
5. The Stewardship and Oversight Agreement On Project Assumption and Program Oversight By and Between Federal Highway Administration, Oregon Division and the State of Oregon Department of Transportation ("Stewardship Agreement") documents the roles and responsibilities of the State with respect to project approvals and responsibilities regarding delivery of the Federal Aid Highway Program. This includes the State's oversight and reporting requirements related to locally administered projects. The provisions of that agreement are hereby incorporated and included by reference.

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

### TERMS OF AGREEMENT

1. Under such authority, Agency and State agree to State delivering the US 101: 39<sup>th</sup> Street to Holmes Road Sidewalk Infill project on behalf of Agency, hereinafter referred to as "Project." The Project includes design and construction of sidewalks and Americans with

Lincoln City/ODOT  
Agreement No. 73000-00017388

Disabilities Act of 1990 (ADA) curb ramps in the Project area; construction of a an approximately 315 foot retaining wall along US 101 between the two entrances to the Sea Echo Motel; construction of a storm drainage facility extending along the east side of US 101 within the Project limits; and relocation of a water service line. The location of the Project is approximately as shown on the map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

2. The Parties anticipate the right of way and construction phases of the Project to be added at a later date. Upon full funding and the addition of these phases to the Project in the Statewide Transportation Improvement Program (STIP), this Agreement will be amended to include right of way and construction phase work and their associated funding. If the Parties do not amend this Agreement to add right of way and construction phase work, the right of way, construction, and maintenance provisions in this Agreement will not apply.
3. Agency agrees that if State hires a consultant to design the Project, State will serve as the lead contracting agency and contract administrator for the consultant contract related to the work under this Agreement.
4. Project Costs and Funding.
  - a. The Total Project Cost is estimated at \$355,000.00, which is subject to change. Federal funds for this Project shall be limited to \$318,541.50. Agency shall be responsible for all remaining costs, including any non-participating costs, all costs in excess of the federal funds, and the 10.27 percent (%) match for all eligible costs. Any unused federal funds obligated to this Project will not be paid out by State, and will not be available for use by Agency for this Agreement or any other projects. "Total Project Cost" means the estimated cost to complete the entire Project, and includes any federal funds, state funds, local matching funds, and any other funds.
    - i. At this time Agency agrees to provide an additional amount of \$429,527.47 for a total local contribution of \$750,000.00. This amount includes anticipated Project costs for the right of way and construction phases. If the Parties do not amend this Agreement to add right of way and construction phase work, the funding contribution beyond the 10.27 percent match (\$36,458.50) for the Preliminary Engineering work will be returned to Agency.
  - b. With the exception of ADA-related design standards and exceptions, State shall consult with Agency on Project decisions that impact Total Project Cost involving the application of design standards, design exceptions, risks, schedule, and preliminary engineering charges, for work performed on roadways under local jurisdiction. State will allow Agency to participate in regular meetings and will use all reasonable efforts to obtain Agency's concurrence on plans. State shall consult with Agency prior to making changes to Project scope, schedule, or budget. However, State may award a construction contract up to ten (10) percent (%) over engineer's estimate without prior approval of Agency.

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- c. Federal funds under this Agreement are provided under Title 23, United States Code.
  - d. ODOT does not consider Agency to be a subrecipient or contractor under this Agreement for purposes of federal funds. The Catalog of Federal Domestic Assistance (CFDA) number for this Project is 20.205, title Highway Planning and Construction.
  - e. State will submit requests for federal funding to the Federal Highway Administration (FHWA). The federal funding for this Project is contingent upon approval of each funding request by FHWA. Any work performed outside the period of performance or scope of work approved by FHWA will be considered nonparticipating and paid for at Agency expense.
  - f. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project.
5. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or twenty (20) calendar years following the date all required signatures are obtained, whichever is sooner.
6. Termination.
- a. This Agreement may be terminated by mutual written consent of both Parties.
  - b. State may terminate this Agreement upon 30 days' written notice to Agency.
  - c. 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:
    - i. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
    - ii. 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.
    - iii. If Agency fails to provide payment of its share of the cost of the Project.
    - iv. 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.
    - v. If federal or state laws, regulations or guidelines are modified or interpreted in

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 Agreement No. 73000-00017388

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.

- d. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

**7. 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, and 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
- b. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
- i. Pedestrian access is maintained as required by the ADA,
  - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
  - iii. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,

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Agreement No. 73000-00017388

- iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
    - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
  - c. Maintenance obligations in this section shall survive termination of this Agreement.
- 8. State shall ensure compliance with the Cargo Preference Act and implementing regulations (46 CFR Part 381) for use of United States-flag ocean vessels transporting materials or equipment acquired specifically for the Project. Strict compliance is required, including but not limited to the clauses in 46 CFR 381.7(a) and (b) which are incorporated by reference. State shall also include this requirement in all contracts and ensure that contractors include the requirement in their subcontracts.
- 9. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
- 10. The Parties acknowledge and agree that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Parties which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after completion of the Project and final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting party.
- 11. The Special and Federal Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are incorporated by this reference and made a part hereof. The Federal Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
- 12. Agency shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements, and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to FHWA, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement.
- 13. Agency and State are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- 14. State and Agency hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal, or in

Lincoln City/ODOT  
Agreement No. 73000-00017388

conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

15. Notwithstanding anything in this Agreement or implied to the contrary, the rights and obligations set out in the following paragraphs of this Agreement shall survive Agreement expiration or termination, as well as any provisions of this Agreement that by their context are intended to survive: Terms of Agreement Paragraphs 4.e (Funding), 6.d (Termination), 7.b (ADA maintenance), 10-15, 18 (Integration, Merger; Waiver); and Attachment 2, Paragraphs 1 (Project Administration), 7, 9, 11, 13 (Finance), and 37-41 (Maintenance and Contribution).
16. 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.
17. This Agreement may be executed in several counterparts 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.
18. This Agreement and attached Exhibits constitute the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and the attached Exhibits will control over Project application and documents provided by Agency to State. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision. Notwithstanding this provision, the Parties may enter into a Right Of Way Services Agreement in furtherance of the Project.
19. State's Contract Administrator for this Agreement is Tyler Dunaway, Transportation Project Manager; 3700 SW Philomath Blvd., Corvallis, Oregon 97333; 541-852-0849; Tyler.dunaway@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.
20. Agency's Contract Administrator for this Agreement is Stephanie Reid, Public Works Director; 801 SW Highway 1010, Lincoln City, Oregon; 541-996-1236; sreid@lincolncity.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.

Lincoln City/ODOT  
Agreement No. 73000-00017388

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

This Project is in the 2021-2024 Statewide Transportation Improvement Program (STIP), (Key No.23431) that was adopted by the Oregon Transportation Commission on July 15, 2020 (or subsequently by amendment to the STIP).

**Signature Page Follows**

Lincoln City/ODOT  
Agreement No. 73000-00017388

**LINCOLN CITY**, by and through its elected officials

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

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

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

Date \_\_\_\_\_

**Agency Contact:**  
Stephanie Reid, P.E.  
Public Works Director  
801 SW Hwy 101  
Lincoln City, Oregon 97367  
541-996-1236  
[sreid@lincolncity.org](mailto:sreid@lincolncity.org)

**State Contact:**  
Tyler Dunaway  
Construction Project Manager  
3700 SW Philomath Blvd  
Corvallis, Oregon 97333  
541-852-0849  
[Tyler.dunaway@odot.oregon.gov](mailto:Tyler.dunaway@odot.oregon.gov)

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

By \_\_\_\_\_

Delivery and Operations Division  
Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_

Region 2 Manager

Date \_\_\_\_\_

By \_\_\_\_\_

District 4 Manager

Date \_\_\_\_\_

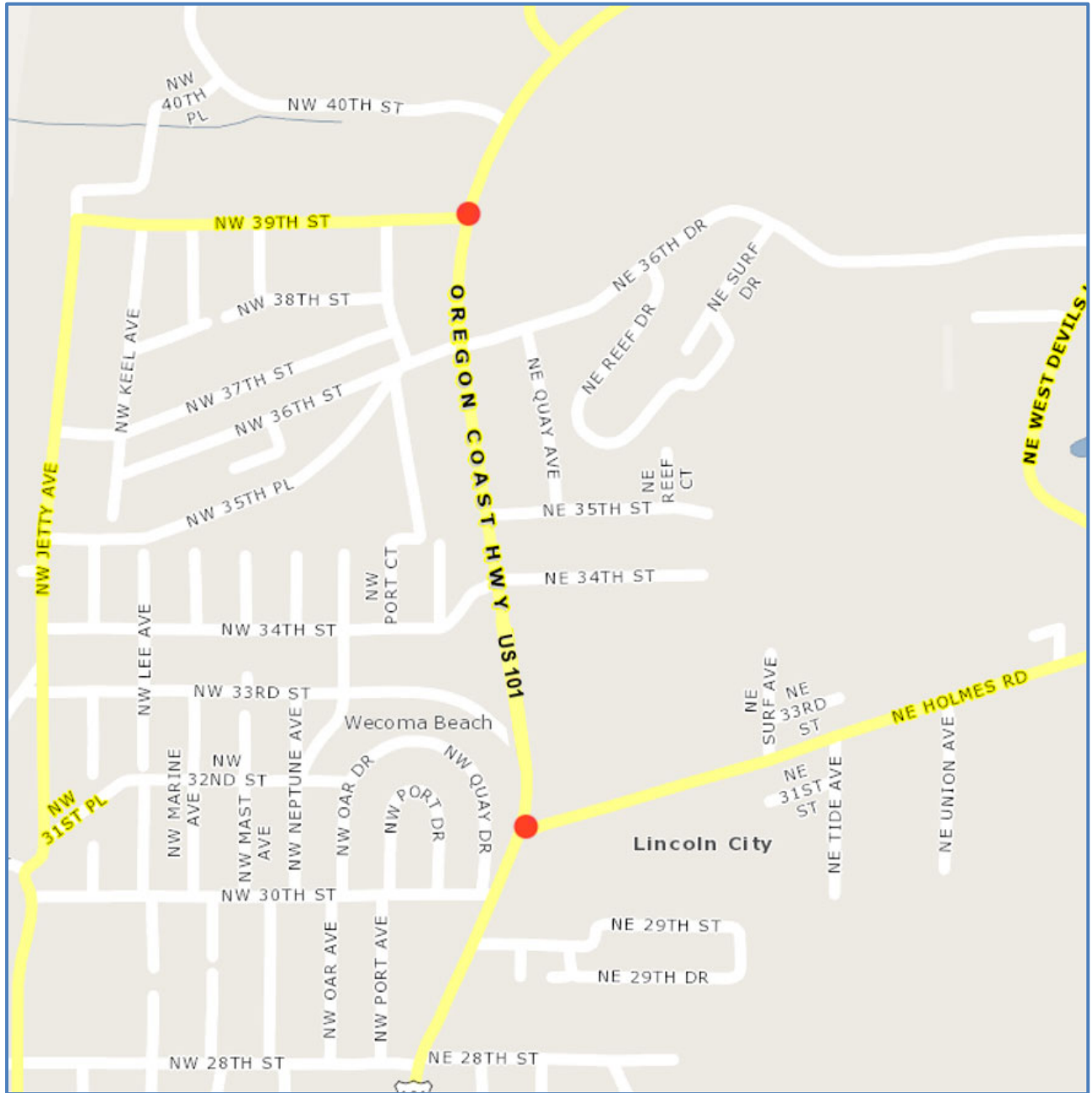
**APPROVED AS TO LEGAL SUFFICIENCY**

By Herb Lovejoy, via email  
Assistant Attorney General

Date April 20, 2023,  
email retained in file

Lincoln City/ODOT  
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**EXHIBIT A – Project Location Map**



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**ATTACHMENT NO. 1 to AGREEMENT NO. 73000-00017388**  
**SPECIAL PROVISIONS**

1. State or its consultant shall conduct all work components necessary to complete the Project, except for those responsibilities specifically assigned to Agency in this Agreement.
  - a. State or its consultant shall conduct 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; acquire necessary right of way and easements; and arrange for all utility relocations and adjustments.
  - b. State will advertise, bid, and award the construction contract. Upon State's award of the construction contract, a consultant hired and overseen by the State shall be responsible for contract administration and construction engineering and inspection, including all required materials testing and quality documentation. State shall make all contractor payments.
  - c. State will perform project management and oversight activities throughout the duration of the Project. The cost of such activities will be billed to the Project.
2. State and Agency agree that the useful life of this Project is defined as twenty-five (25) years.
3. Agency shall, with its own forces and at its own expense, be responsible for the maintenance and operation of the storm water detention facilities and storm water treatment facilities constructed as part of this Project in accordance with State's Maintenance and Operations Manual, to be provided to Agency by State.
4. Agency shall be responsible for the maintenance of the landscaped portions of the Project within State right of way.
5. Agency shall be responsible for the maintenance of the sidewalks and retaining wall constructed under this Agreement.
6. State and Agency understand a subsequent agreement will be needed to address jurisdiction and control of Project elements constructed.
7. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.

**ATTACHMENT NO. 2 to AGREEMENT NO. 73000-00017388  
FEDERAL STANDARD PROVISIONS**

**PROJECT ADMINISTRATION**

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (e.g., county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will act for Agency in other matters pertaining to the Project. Prior to taking such action, State will confer with Agency concerning actions necessary to meet federal obligations. State and Agency shall each assign a person in responsible charge "liaison" to coordinate activities and assure that the interests of both Parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.
3. State will provide or secure services to perform PS&E, construction contract advertisement, bid, award, contractor payments, and contract administration. A State-approved consultant may be used to perform preliminary engineering, right of way, and construction engineering services.
4. Agency may perform only those elements of the Project identified in the special provisions.

**PROJECT FUNDING REQUEST**

5. State shall submit a separate written Project funding request to FHWA requesting approval of federal-aid participation for each project phase including a) Program Development (Planning), b) Preliminary Engineering (National Environmental Policy Act - NEPA, Permitting and Project Design), c) Right of Way Acquisition, d) Utilities, and e) Construction (Construction Advertising, Bid and Award). Any work performed prior to FHWA's approval of each funding request will be considered nonparticipating and paid for at Agency expense. State, its consultant or Agency shall not proceed on any activity in which federal-aid participation is desired until such written approval for each corresponding phase is obtained by State. State shall notify Agency in writing when authorization to proceed has been received from FHWA. All work and records of such work shall be in conformance with FHWA rules and regulations.

**FINANCE**

6. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount for the federal funds and any portion of the Project, which is not covered by federal funding, unless otherwise agreed to and specified in the intergovernmental Agreement (Project Agreement). Agency must obtain written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Project Agreement. State will also determine and clearly state in the Project Agreement if recipient is a subrecipient or contractor, using the criteria in 2 CFR 200.331.
7. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent (100%) of all costs in excess of the total matched federal funds. Agency shall pay one hundred percent (100%) of the cost of any item in

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which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds or allocations of State Highway Trust Funds to Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration that result in items being declared non-participating by FHWA, such items deemed non-participating will be negotiated between Agency and State. Agency agrees that costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon by the Parties.

8. Agency's estimated share and advance deposit.
  - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
  - b) Agency's construction phase deposit shall be one hundred ten percent (110%) of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid, must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is cancelled. Any balance of a cash deposit in excess of amount needed, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
  - c) Pursuant to Oregon Revised Statutes (ORS) 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool), and an Irrevocable Limited Power of Attorney is sent to State's Active Transportation Section, Funding and Program Services Unit, or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash or check submitted to the Oregon Department of Transportation.
9. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear one hundred percent (100%) of all costs incurred as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear one hundred percent (100%) of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
10. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
11. Agency shall, upon State's written request for reimbursement in accordance with Title 23, CFR part 630.112(c) 1 and 2, as directed by FHWA, reimburse State for federal-aid funds distributed to Agency if any of the following events occur:
  - a) Right of way acquisition is not undertaken or actual construction is not started by the close of the twentieth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized for right of way acquisition. Agency may submit a

written request to State's Liaison for a time extension beyond the twenty (20) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.

- b) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized. Agency may submit a written request to State's Liaison for a time extension beyond the ten (10) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
12. State shall, on behalf of Agency, maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that the Project is completed in conformance with approved plans and specifications.
13. State shall submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. State shall pay all reimbursable costs of the Project. Agency may request a statement of costs-to-date at any time by submitting a written request. When the final total cost of the Project has been computed, State shall furnish Agency with an itemized statement. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal one hundred percent (100%) of the final total cost of the Project. Any portion of deposits made in excess of the final total cost of the Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the final total cost of the Project.

## DESIGN STANDARDS

14. Agency and State agree that minimum design standards on all local agency jurisdictional roadway or street projects on the National Highway System (NHS) and projects on the non-NHS shall be the American Association of State Highway and Transportation Officials (AASHTO) standards and be in accordance with State's Oregon Bicycle and Pedestrian Design Guide (current version). State or its consultant shall use either AASHTO's A Policy on Geometric Design of Highways and Streets (current version) or State's Resurfacing, Restoration, and Rehabilitation (3R) design standards for 3R projects. State or its consultant may use AASHTO for vertical clearance requirements on Agency's jurisdictional roadways or streets.
15. Agency agrees that if the Project is on the Oregon State Highway System or a State-owned facility, that design standards shall be in compliance with standards specified in the current ODOT Highway Design Manual and related references. Construction plans for such projects shall be in conformance with standard practices of State and all specifications shall be in substantial compliance with the most current Oregon Standard Specifications for Highway Construction and current Contract Plans Development Guide.
16. State and Agency agree that for all projects on the Oregon State Highway System or a State-owned facility, any design element that does not meet ODOT Highway Design Manual design standards must be justified and documented by means of a design exception. State and Agency further agree that for all projects on the NHS, regardless of funding source, any design element that does not meet AASHTO standards must be justified and documented by means of a design exception. State shall review any design exceptions on the Oregon State Highway System and retain authority for

said approval. FHWA shall review any design exceptions for projects subject to Project of Division Interest and retains authority for their approval.

17. ODOT agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the Manual on Uniform Traffic Control Devices and Oregon Supplement as adopted in Oregon Administrative Rule (OAR) 734-020-0005. State or its consultant shall, on behalf of Agency, obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal or illumination to be installed on a state highway pursuant to OAR 734-020-0430.

## **PRELIMINARY and CONSTRUCTION ENGINEERING**

18. Preliminary engineering and construction engineering may be performed by either a) State, or b) a State-approved consultant. Engineering work will be monitored by State to ensure conformance with FHWA rules and regulations. Project plans, specifications, and cost estimates shall be performed by either a) State, or b) a State-approved consultant. State shall review and approve Project plans, specifications, and cost estimates. State shall, at project expense, review, process, and approve, or submit for approval to the federal regulators, all environmental statements. State shall offer Agency the opportunity to review the documents prior to advertising for bids.
19. Architectural, engineering, photogrammetry, transportation planning, land surveying, and related services (A&E Services) as needed for federal-aid transportation projects must follow State's processes to ensure federal reimbursement. State will award, execute, and administer the contracts. State's personal services contracting process and resulting contract document will follow Title 23 CFR part 172, 2 CFR part 1201, ORS 279A.055, 279C.110, 279C.125, OAR 731-148-0130, OAR 731-148-0220(3), OAR 731-148-0260 and State Personal Services Contracting Procedures, as applicable and as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or the State approved consultant prior to receiving authorization from State to proceed.
20. The State or its consultant responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
21. State shall prepare construction contract and bidding documents, advertise for bid proposals, award all construction contracts, and administer the construction contracts.
22. Upon State's award of a construction contract, State shall perform quality assurance and independent assurance testing in accordance with the FHWA-approved Quality Assurance Program found in State's Manual of Field Test Procedures, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
23. State shall, as a Project expense, assign a liaison to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). State's liaison shall process reimbursement for federal participation costs.

## Disadvantaged Business Enterprises (DBE) Obligations

24. State and Agency agree to incorporate by reference the requirements of 49 CFR part 26 and State's DBE Program Plan, as required by 49 CFR part 26 and as approved by USDOT, into all contracts entered into under this Project Agreement. The following required DBE assurance shall be included in all contracts:

*"The contractor or subcontractor 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 Title 49 CFR part 26 in the award and administration of federal-aid contracts. 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 such other remedy as Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b))."*

25. State and Agency agree to comply with all applicable civil rights laws, rules, and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
26. The Parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders, and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR parts 1.11, 140, 635, 710, and 771; Title 49 CFR parts 24 and 26; , 2 CFR 1201; Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, the provisions of the FAPG and *FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide*. State and Agency agree that FHWA-1273 Required Contract Provisions shall be included in all contracts and subcontracts verbatim and not by reference.

## RIGHT OF WAY

27. Right of Way activities shall be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FAPG, CFR, and the *ODOT Right of Way Manual*, Title 23 CFR part 710 and Title 49 CFR part 24.
28. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of projects. State or its consultant may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project in accordance with the *ODOT Right of Way Manual*, and with the prior approval from State's Region Right of Way office.
29. 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 requesting the obligation of project funding from FHWA. State, at Project expense, shall be entirely responsible for project acquisition and coordination of the right of way certification.
30. State or its consultant shall ensure that all project right of way monumentation will be conducted in conformance with ORS 209.155.

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31. State and Agency grant each other authority to enter onto the other's right of way for the performance of non-construction activities such as surveying and inspection of the Project.

## **RAILROADS**

32. State shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through the State's Liaison, who will contact State's Railroad Liaison on behalf of Agency. Only those costs allowable under Title 23 CFR part 140 subpart I, and Title 23 part 646 subpart B shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others.

## **UTILITIES**

33. State or its consultant shall follow State established statutes, policies, and procedures when impacts occur to privately or publicly-owned utilities. Policy, procedures, and forms are available through the State Utility Liaison or State's Liaison. State or its consultant shall provide copies of all signed utility notifications, agreements, and Utility Certification to the State Utility and Railroad Liaison. Only those utility relocations, which are eligible for reimbursement under the FAPG, Title 23 CFR part 645 subparts A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. Agency may send a written request to State, at Project expense, to arrange for utility relocations/adjustments lying within Agency jurisdiction. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. Agency shall not perform any utility work on state highway right of way without first receiving written authorization from State.

## **GRADE CHANGE LIABILITY**

34. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
35. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
36. Agency, if a City, by execution of the Project Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, in connection with or arising out of the Project covered by the Project Agreement.

## **MAINTENANCE RESPONSIBILITIES**

37. Agency shall, at its own expense, maintain, operate, and provide power as needed upon Project completion at a minimum level that is consistent with normal depreciation and/or service demand and throughout the useful life of the Project. The useful life of the Project is defined in the Special Provisions. State may conduct periodic inspections during the life of the Project to verify that the Project is properly maintained and continues to serve the purpose for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of the Project Agreement. In the event the Project will include or affect a state highway, this provision does not address maintenance of that state highway.

## CONTRIBUTION

38. 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.
39. 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.
40. 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.

## ALTERNATIVE DISPUTE RESOLUTION

41. The Parties shall attempt in good faith to resolve any dispute arising out of this Project 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.

## WORKERS' COMPENSATION COVERAGE

42. All employers, including Agency, that employ subject workers who work under this Project 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 five hundred thousand (\$500,000) must be

included. State and Agency shall ensure that each of its contractors complies with these requirements.

## **LOBBYING RESTRICTIONS**

43. Agency certifies by signing the Agreement that:

- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

## **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

By signing this Agreement, Agency agrees to fulfill the responsibility imposed by 2 CFR Subpart C, including 2 CFR 180.300, 180.355, 180.360, and 180.365, regarding debarment, suspension, and other responsibility matters. For the purpose of this provision only, Agency is considered a participant in a covered transaction. Furthermore, by signing this Agreement, Agency is providing the certification for its principals required in Appendix to 2 CFR part 180 – Covered Transactions.