

**CITY OF LINCOLN CITY  
CITY COUNCIL AGENDA**

**MONDAY NOVEMBER 14, 2022, 6:00 PM**

6:00 PM - The Lincoln City Council Meeting for November 14, 2022 will be held via Zoom. The meeting will be broadcast live in the Courtroom. The Council Chambers is currently closed to the public. A recording of the meeting will be uploaded to the City website and to Channel 4 on November 15, 2022.

Public comments can be submitted to [publiccomment@lincolncity.org](mailto:publiccomment@lincolncity.org), by attending the City Council meeting, or by Zoom invitation. Public comments submitted by email to [publiccomment@lincolncity.org](mailto: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. Citizens present in the Courtroom will be given the opportunity to comment via Zoom. Citizens requesting to give public comment via Zoom must email [publiccomment@lincolncity.org](mailto:publiccomment@lincolncity.org) no later than 12 pm on the meeting day. The request must include the person's name, the subject the person wishes to address and the Zoom screen name the person intends to use for the meeting. A Zoom invitation will be sent to the person requesting to make public comment prior to 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](mailto: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](http://www.lincolncity.org) under "Government" then select "Public Meeting, Agendas, Packets & Video".

**A. CALL TO ORDER**

**B. ROLL CALL**

**C. PLEDGE OF ALLEGIANCE**

**D. CONSENT AGENDA**

1. Regular Meeting – Minutes of Work Session – October 19, 2022, 2:00 PM
2. Regular Meeting – Minutes of Regular Meeting – October 24, 2022, 6:00 PM

**E. COUNCIL DELIBERATIONS**

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

**G. PRESENTATIONS**

3. Marie Laper, Deputy Director - Behavior Health for Lincoln County Health and Human Services will present an overview of the mental health system of care in Lincoln County, the services that Lincoln County Behavioral Health provides, the current landscape (challenges, priorities, projects), and end with an invite to the Mental Health Symposium, scheduled for January 26th.

**H. PUBLIC HEARING / ORDINANCE**

**I. PUBLIC HEARINGS / PUBLIC COMMENTS**

**J. ORDINANCES**

1. ORDINANCE NO. 2022-42 AN ORDINANCE AMENDING THE LINCOLN CITY COMPREHENSIVE PLAN MAP TO CHANGE THE COMPREHENSIVE PLAN MAP DESIGNATION FROM MEDIUM DENSITY RESIDENTIAL TO HIGH DENSITY RESIDENTIAL AND AMENDING THE LINCOLN CITY ZONING MAP TO CHANGE THE ZONING MAP DESIGNATION FROM R-1-7.5 (SINGLE UNIT RESIDENTIAL) TO RM (MULTIPLE UNIT RESIDENTIAL) FOR TAX LOTS: 07-11-22-DC-06100-00 AND 07-11-22-DD-00200-00 [CPA / ZC 2022-07]
2. ORDINANCE NO. 2022-43 AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 10 (VEHICLES AND TRAFFIC), CHAPTER 10.12 (GENERAL REGULATIONS) SECTION 10.12.040 (PROHIBITED STORAGE ON CITY PROPERTY, CITY STREETS, OR CITY RIGHTS-OF-WAY), TO CREATE A LIMITED EXEMPTION FOR LICENSED, INSURED AND OPERABLE PASSENGER VEHICLES AND TO CLARIFY THE PROHIBITION.

**K. RESOLUTIONS**

3. RESOLUTION NO. 2022-42 A RESOLUTION OF THE CITY OF LINCOLN CITY AMENDING RESOLUTION 2022-32 TO CLARIFY THE LENGTH OF THE SDC DEFERRAL.

**L. SPECIAL ORDER OF BUSINESS**

4. Planning Commission Interview- Brian Bunnett
5. Appointment to the Nelscott URA Ad Hoc Committee - Applicants Shawnn Kehr & Barbara Jenkins-Gibson
6. Community Center Large Pool Regrout
7. Economic Development Brownfields Program: EPA Grant 4-Year Cooperative Agreement
8. Cutler District BayWalk Sidewalk Gap Update & ODOT Grant Funding Agreement

**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**

CITY OF LINCOLN CITY  
CITY COUNCIL  
MINUTES OF THE WORK SESSION MEETING

October 19, 2022, 2:00 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:

1. **CALL TO ORDER**

Mayor Wahlke called the meeting to order at 2:01 PM.

Attendee Name	Title	Status	Arrived
Susan Wahlke	Mayor	Present	2:00 PM
Elaine Starmer	Councilor Ward 1	Present	2:00 PM
Sydney Kasner	Councilor Ward 2	Present	2:04 PM
Judy Casper	Councilor Ward 3	Present	2:00 PM
Riley Hoagland	Councilor Ward 2	Present	2:00 PM
Rick Mark	Councilor Ward 3	Present	2:00 PM
Mitch Parsons	Councilor Ward 1	Present	2:00 PM

Staff Present: Daphnee Legarza, City Manager; Liz Francis, Legal Assistant to City Attorney; Jeanne Sprague, Parks and Recreation Director; Jamie Young, City Recorder.

Mayor Wahlke changed the order of the agenda to switch items A & B.

2. **DISCUSSION ITEMS**

**A. Mayors Visit to the Newport Senior Center**

Mayor Wahlke spoke about her visit to the Newport Senior Center. Council and Staff had a discussion on helping the Lincoln City Senior Center come into compliance. Ms. Sprague said Portland Parks and Recreation change their Senior Center name to Lifetime Recreation.

## **B. League of Oregon Cities Recap**

*Councilor Casper thanked Ms. Legarza for taking the time to go to the conference. Council mentioned Ms. Legarza was a very welcomed addition.*

### **i. Councilor Starmer Recap**

*Councilor Starmer said that the most insightful session that she attended was regarding Boards and Committees. Councilor Starmer said there needs to be formal training for the Planning Commission and listed ideas for improvement. Councilor Starmer also spoke about coordination and communication for homelessness. Councilor Starmer spoke about a conversation that was had with "Patty" and Councilors Kasner and Parsons about communication among Council and with Staff. Councilor Starmer explained that "Patty" said they could speak about things in the past, not items that are currently being deliberated.*

### **ii. Parsons**

*Councilor Parsons spoke about communication and that they are boxed in with what they can and cannot do. Councilor Parsons also spoke about the homeless tours he attended. Council and Staff had a discussion regarding different housing units. Councilor Hoagland shared photos of the units.*

### **iii. Hoagland**

*Councilor Hoagland spoke about the "Let's get engaged" and the amount of time some of the Councilors have service. Councilor Hoagland also discussed the homeless tour and the difference between the Veterans and St. Vincent. Councilor Hoagland spoke about the DEI session and the lack of attendance. Councilor Hoagland spoke about the People's Summit in Yachats. Councilor Hoagland said they spoke about Tourism Promotion and TRT. Councilor Hoagland explained the breakdown. Council and Staff had a discussion regarding the TRT. Councilor Hoagland discussed accessibility and becoming more inclusive. Mayor Wahlke said she received a call from a person wheelchair bound and the Mobi-mats were not accessible then received a call today and the Mobi-mats are gone. Councilor Hoagland said they also talked about the amount of food imported, which is about 90%. Ms. Legarza said the Mobi-mats are out from Memorial Day to Labor Day and extended depending on the weather.*

### **iv. Kasner**

*Councilor Kasner spoke about the classes that she was signed up for and the feedback that she left regarding the sessions. Councilor Kasner spoke about the Youth Leadership Council and thought it could be very successful. Councilor Kasner said some cities have a mobile app and the engagement of other cities' social media presents. Council and staff had a discussion regarding the accessibility of Lincoln City's website. Councilor Parsons mentioned that some Cities have a Public Information officer that handles the distribution of information. Councilor Kasner spoke about being more transparent with informing the public regarding events. Councilor Kasner spoke about the Oregon Housing and Community Services Permanent Supportive Housing Program and said she would send a copy of the information. Councilor Kasner also spoke about the Public Infrastructure Committee and explained the 20-year plan. Councilor Kasner also spoke about payment to Councilors for service to get better engagement.*

### **v. Mark**

*Councilor Mark spoke about how to get people more involved. Councilor Mark said he was on two bus trips. Councilor Mark said the first was to the Oregon State University Campus in Bend and explained the trip. Councilor Mark said one of his breakout sessions was how to not yell at*

*each other during the Council meeting and the second was how to better contact your state legislatures. Councilor Mark explained the affordable housing projects. Council has a discussion regarding the affordable house projects. Councilor Mark showed photos of the health clinic.*

**vi. Legarza**

*Ms. Legarza said there would be a department head meeting next week and she would like to take back the highlights. Council again thanked Ms. Legarza for her participation at the LOC Conference. Ms. Legarza thanked Councilor Parsons for asking if she was attending. Ms. Legarza said all of her sessions were very informative. Ms. Legarza said "Building a Relationship with the Governing Board" was great timing and explained her takeaway. Ms. Legarza said there was also a class about the Managers role in Police use of force and gave details. Ms. Legarza said she attended the HB4123 session and spoke about the timeline. Ms. Legarza said she is planning a strategic planning for the first part of the year.*

**3. MISCELLANEOUS**

*Council made comments on previous the City Manager's presence at the LOC Conference and appreciated Ms. Legarza's presence.*

**4. ADJOURNMENT**

*Mayor Wahlke adjourned the meeting at 4:02 PM.*

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SUSAN WAHLKE, MAYOR

ATTEST:

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JAMIE YOUNG, CITY RECORDER

CITY OF LINCOLN CITY

CITY COUNCIL MINUTES OF MEETING

October 24, 2022, 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 6:05 PM.

**B. ROLL CALL**

Attendee Name	Title	Status	Arrived
Susan Wahlke	Mayor	Present	6:00 PM
Elaine Starmer	Councilor Ward 1	Present	6:00 PM
Sydney Kasner	Councilor Ward 2	Present	6:00 PM
Judy Casper	Councilor Ward 3	Present	6:00 PM
Riley Hoagland	Councilor Ward 2	Present	6:00 PM
Rick Mark	Councilor Ward 3	Present	6:00 PM
Mitch Parsons	Councilor Ward 1	Present	6:00 PM

Staff Present: Daphnee Legarza, City Manager; Richard Appicello, City Attorney; Lt. Winn, Lincoln City Police Department; Jeanne Sprague, Parks and Recreation Director; Stephanie Reid, City Engineer; Anne Marie Skinner, Planning and Community Development Director; Bill Wyman, I.T. Support Specialist; Tony LaSoya, I.T. Director; Jamie Young, City Recorder.

**C. PLEDGE OF ALLEGIANCE**

Mayor Wahlke led The Pledge of Allegiance.

**D. CONSENT AGENDA**

1. Regular Meeting – Minutes of Regular Meeting – October 10, 2022, 6:00 PM

**MOTION:** City Council - Regular Meeting - Oct 10, 2022, 6:00 PM as Corrected  
**MOVER:** Elaine Starmer, Councilor Ward I  
**SECONDER:** Mitch Parsons, Councilor Ward 1  
**RESULT:** Passed

*Mayor Wahlke said in the draft minutes, on the very last page, there was a motion made in the comments and she asked it to be put in a motion box.*

**E. COUNCIL DELIBERATIONS**

NONE

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

*Mr. Baird of Lincoln City spoke regarding the privacy of the Citizens and Ordinance 2022-28.*

**G. PRESENTATIONS**

None

**H. PUBLIC HEARING / ORDINANCE**

None

**I. PUBLIC HEARINGS / PUBLIC COMMENTS**

1. CPA ZC 2022-07- Spyglass Ridge

**MOTION:** Motion to Close the Public Hearing and Record for CPA ZC 2022-07  
**SPYGLASS RIDGE**  
**MOVER:** Sydney Kasner, Councilor Ward 2  
**SECONDER:** Rick Mark, Councilor Ward 3  
**AYES:** Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed via Voice Vote

*Mayor Wahlke opened the public hearing at 6:14 PM. Councilor Mark stated that he has had conversations while campaigning but it would not affect his views. No other Council had any conflicts. Ms. Skinner, Planning & Community Development Director, presented the criteria for this case. Ms. Skinner presented the staff report and read the comments received after the agenda was published. Council asked no questions of Ms. Skinner. Dwight Schwab and Lamoine Eiler gave a presentation on behalf of the applicant. Chris Jenkins spoke in opposition to CPA ZC 2022-07. No request to leave the hearing or record open was received. The Applicant waived the opportunity to submit final written arguments. Council gave comments regarding the testimony and presentation.*

2.

**MOTION:** Motion to Direct Staff to Prepare an Ordinance Approving the Requested  
**MAP AND ZONE CHANGE IN CPA 2022-07 FOR ADOPTION AT A FUTURE MEETING**  
**MOVER:** Sydney Kasner, Councilor Ward 2  
**SECONDER:** Elaine Starmer, Councilor Ward I  
**AYES:** Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed by Roll Call Vote

3. Alternative Contracting Method for the Community Park in Taft

Ms. Reid explained the need for an alternate contracting method for the community park in Taft. Ms. Sprague thanked the Public Works Department for working with the Parks and Recreation Department on the alternative contracting method and explained the need and how it will help. Mayor Wahlke opened the public hearing at 8:03 PM. No testimony was received. Mayor Wahlke closed the hearing at 8:03 PM with unanimous consent.

4. ZOA 2022-10 Special Event Accessory Use

<b>MOTION:</b>	<b>Motion to Close Public Hearing and Record for ZOA 2022-10 Special Event Accessory Use at 8:24 PM</b>
<b>MOVER:</b>	<b>Riley Hoagland, Councilor Ward 2</b>
<b>SECONDER:</b>	<b>Rick Mark, Councilor Ward 3</b>
<b>AYES:</b>	Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons
<b>RESULT:</b>	<b>Passed via Voice Vote</b>

Mayor Wahlke opened the public hearing at 8:04 PM. No Council had any conflicts. Ms. Skinner, Planning & Community Development Director, presented the changes. Council asked questions of Ms. Skinner about the changes. No Citizens were present for comment.

J. ORDINANCES

5. ORDINANCE NO. 2022-38 AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 17, (ZONING), AMENDING CHAPTER 17.08 (DEFINITIONS), SECTION 17.08.010 (DEFINITIONS), DEFINITION OF BOUTIQUE INN, HOTEL, MOTEL, RESORT, AND SPECIAL EVENT, AMENDING CHAPTER 17.12. (BOUNDARIES OF ZONES), AMENDING CHAPTERS 17.16, (SINGLE-UNIT RESIDENTIAL) 17.17, (SINGLE-UNIT RESIDENTIAL- ROADS END),17.18 (VACATION RENTAL ZONE), 17.20 (MULTI-UNIT RESIDENTIAL), AND 17.40 (RECREATION- RESIDENTIAL), TO ADD A SPECIAL EVENT AS AN ACCESSORY USE TO AN APPROVED CONDITIONAL USE IN THE ZONE; AMENDING CHAPTER 17.24 (PROFESSIONAL CAMPUS ZONE), CHAPTER 17.28 (RECREATION-COMMERCIAL ZONE), CHAPTER 17.32 (GENERAL COMMERCIAL ZONE), CHAPTER 17.34 (NELSCOTT PLAN DISTRICT); CHAPTER 17.45(TAFT VILLAGE CORE ZONE), CHAPTER 17.50 (OCEANLAKE PLAN DISTRICT) TO ADD SPECIAL EVENT AS AN ACCESSORY USE, AMENDING CHAPTER 17.42 (PARK ZONE), AMENDING CHAPTER 17.56 (OFF-STREET PARKING AND LOADING), AMENDING CHAPTER 17.74 (DESIGN STANDARDS), AMENDING CHAPTER 17.77 (APPLICATIONS)

<b>MOTION:</b>	<b>Motion to Approve First Reading of Ordinance 2022-38 - ZOA 2022-10 as Amended</b>
<b>MOVER:</b>	<b>Mitch Parsons, Councilor Ward 1</b>
<b>SECONDER:</b>	<b>Elaine Starmer, Councilor Ward I</b>
<b>AYES:</b>	Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons
<b>RESULT:</b>	<b>Passed by Roll Call Vote</b>

One change to add in paragraph number 4D, 5 instead of zero in the table.

6.

**MOTION:** Motion to Approve Second Reading and Adoption of Ordinance 2022-38 - ZOA 2022-10 as Amended  
**MOVER:** Mitch Parsons, Councilor Ward 1  
**SECONDER:** Elaine Starmer, Councilor Ward I  
**AYES:** Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed by Roll Call Vote

7. ORDINANCE NO. 2022-39 AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 2 (ADMINISTRATION AND PERSONNEL), CHAPTER 2.52 (RETENTION OF RECORDS) AMENDING SECTION 2.52.010 (PERIOD OF RETENTION) PARAGRAPH A, TO CORRECT / UPDATE THE OREGON ADMINISTRATIVE RULE REFERENCE

Mayor Wahlke said the background is missing the word "now" in the final sentence.

**MOTION:** Motion to Approve First Reading of Ordinance 2022-39 Correct OAR for Records Retention  
**MOVER:** Riley Hoagland, Councilor Ward 2  
**SECONDER:** Elaine Starmer, Councilor Ward I  
**AYES:** Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed by Roll Call Vote

8.

**MOTION:** Motion to Approve Second Reading and Adoption of Ordinance 2022-39 Correct OAR for Records Retention  
**MOVER:** Riley Hoagland, Councilor Ward 2  
**SECONDER:** Elaine Starmer, Councilor Ward I  
**AYES:** Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed by Roll Call Vote

9. ORDINANCE NO. 2022-40 AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 15 (BUILDINGS AND CONSTRUCTION), AMENDING CHAPTER 15.14, TO REMOVE THE ADOPTION OF THE 2019 OREGON FIRE CODE, AND AUTHORIZE ENFORCEMENT OF THE 2022 FIRE CODE BY THE NORTH LINCOLN FIRE AND RESCUE DISTRICT AND THE OREGON OFFICE OF THE STATE FIRE MARSHAL

**MOTION:** Motion to Approve First Reading of Ordinance 2022-40 Fire Code  
**MOVER:** Mitch Parsons, Councilor Ward 1  
**SECONDER:** Riley Hoagland, Councilor Ward 2  
**AYES:** Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed by Roll Call Vote

*Mayor Wahlke asked how often the fire code is amended and why it could not say current instead. Mr. Appicello explained.*

10.

**MOTION:** Motion to Approve Second Reading and Adoption of Ordinance 2022-40 Fire Code  
**MOVER:** Mitch Parsons, Councilor Ward 1  
**SECONDER:** Sydney Kasner, Councilor Ward 2  
**AYES:** Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed by Roll Call Vote

11. ORDINANCE NO. 2022-41 AN ORDINANCE AMENDING LINCOLN CITY ORDINANCE 2022-36 TO MAKE CORRECTIONS TO SECTIONS 2, 3, AND 4

**MOTION:** Motion to Approve First Reading of Ordinance 2022-41 - Amending Ordinance 2022-36 to Make Corrections  
**MOVER:** Elaine Starmer, Councilor Ward 1  
**SECONDER:** Riley Hoagland, Councilor Ward 2  
**AYES:** Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed by Roll Call Vote

12.

**MOTION:** Motion to Approve Second Reading and Adoption of Ordinance 2022-41 - Amending Ordinance 2022-36 to make Corrections  
**MOVER:** Elaine Starmer, Councilor Ward 1  
**SECONDER:** Sydney Kasner, Councilor Ward 2  
**AYES:** Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed by Roll Call Vote

## K. RESOLUTIONS

13. RESOLUTION NO. 2022-41 A RESOLUTION OF THE CITY OF LINCOLN CITY, ADOPTING FINDINGS FOR A PUBLIC CONTRACT EXEMPTION AND AUTHORIZING AN ALTERNATIVE CONTRACTING METHOD FOR THE LINCOLN CITY TAFT COMMUNITY PARK PROJECT

**MOTION:** Motion to Approve Resolution 2022-41 Exemption Taft Community Park  
**MOVER:** Elaine Starmer, Councilor Ward 1  
**SECONDER:** Rick Mark, Councilor Ward 3  
**AYES:** Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons  
**RESULT:** Passed by Roll Call Vote

## L. SPECIAL ORDER OF BUSINESS

14. Ratification of Beeman Sculpture Contract and Amendment

**MOTION:** Motion to Approve as the Local Contract Review Board, the Contract and Amendment for the Beeman Artworks LLC Sculpture to be Installed at the Cultural Center Totaling \$123,300.00).

**MOVER:** Riley Hoagland, Councilor Ward 2

**SECONDER:** Mitch Parsons, Councilor Ward 1

**AYES:** Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons

**RESULT:** Passed by Roll Call Vote

**15. Kirstis Park Parking Lot Construction Cost**

*Ms. Reid explained the need for additional funds. Mayor Wahlke recused herself due to a conflict of interest. Council asked Ms. Reid questions.*

**MOTION:** Motion to Approve Increase Approved Construction Funds to RK Construction for the Kirtsis Park,

**MOVER:** Mitch Parsons, Councilor Ward 1

**SECONDER:** Riley Hoagland, Councilor Ward 2

**AYES:** Starmer, Kasner, Casper, Hoagland, Mark, Parsons

**RECUSED:** Wahlke

**RESULT:** Passed by Roll Call Vote

**16. Ten (10) Years' Service Recognition**

Mr. Humpert was unable to attend.

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

NONE

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

**17.**

**MOTION:** Motion to Invite the Judge Candidate to an Interview and also a Meet and Greet on November 2, 2022

**MOVER:** Judy Casper, Councilor Ward 3

**SECONDER:** Elaine Starmer, Councilor Ward I

**AYES:** Wahlke, Starmer, Kasner, Casper, Hoagland, Mark, Parsons

**RESULT:** Passed by Voice Vote

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

None

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

*Councilor Kasner asked about a date for the gambling permit executive session. Ms. Legarza said she is looking at November 14th.*

*Councilor Hoagland asked about the tree ordinance. Ms. Skinner explained she would like to have it completed before the end of the year. Councilor Hoagland spoke about a board that he is on and active shooter scenarios. Councilor Hoagland said the School District is looking at options. Councilor Hoagland*

*said the Economic Development summit had great information. Mayor Wahlke said she would love to hear about the summit.*

*Mayor Wahlke said the ballots have been mailed and if you have not received your ballot contact the County Clerk. Mayor Wahlke said ballots need to be received by November 8th at 8 PM. Mayor Wahlke said there is a measure put forward by the City Council on the ballot and she would be happy to answer any questions.*

**Q. ADJOURNMENT**

*Mayor Wahlke adjourned the meeting at 8:53 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

Meeting Date: November 14, 2022      Primary Staff Contact: Michael Phillips  
Department: Administration      E-Mail: MPhillips@lincolncity.org  
Secondary Dept:      Secondary Contacts:  
Approval: Daphnee Legarza      Estimated Time: 15 minutes

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**Marie Laper, Deputy Director - Behavior Health for Lincoln County Health and Human Services will present an overview of the mental health system of care in Lincoln County, the services that Lincoln County Behavioral Health provides, the current landscape (challenges, priorities, projects), and end with an invite to the Mental Health Symposium, scheduled for January 26th.**

**Attachments:**

2020 -2024 Strategic Plan Final Report with Cover      (PDF)  
2020 - 2024 SP Final Report PowerPoint (PDF)

October 12, 2022



Dear community partner,

In October 2018, Lincoln County Health & Human Services initiated a strategic planning process to establish a vision and goals for the department to meet the health needs of our community. In 2019 the department held listening sessions and surveyed Health & Human Services staff, community partners and residents. Thank you for participating in that process.

We shared the plan in late 2019 and early 2020 with the community. Little did we know a serious pandemic was about to hit the world and completely change the plans of Health & Human Services. Workgroups were created to address the priorities of the strategic plan. With the exception of the Workforce Development Committee, these workgroups never really got off the ground after COVID-19 hit the county.

Today we submit to you our final report of the 2020-2024 initial strategic plan. There have been many challenges to the community and Health & Human Services since this strategic plan was first published. The “great resignation” and nationwide behavioral health staffing crisis has led to turnover in the department during the COVID-19 pandemic. The world-wide pandemic also changed how Health & Human Services delivered services and worked with local partners. While many services continued in person, many staff moved to remote work to assure the safety of clients and staff. During this same time, a wildfire burned 290 homes in the Otis area of Lincoln County.

Despite these challenges and changes, many goals were completed as demonstrated in the attached report. Also included is a narrative about what we are assessing now and what our next steps will be.

Thank you again for being a valued partner of Health & Human Services.

In partnership,

Jayne Romero, Health & Human Services Director.



# *Lincoln County*

## **Health and Human Services**

### **2020-2024 STRATEGIC PLAN**

FINAL REPORT





## THE GOALS

In October 2018, Lincoln County Health & Human Services initiated a strategic planning process to establish a vision and goals for the department to meet the health needs of our community.

The department held listening sessions and surveyed Health & Human Services staff, community partners and residents. Through this process, along with Health & Human Services' vision, the following five priority areas were identified:

- Enhance Health Services
- Strengthen Public Relations
- Foster a Healthy Workforce
- Improve the Physical Environment
- Optimize Financial Health

# THE STRATEGY

## Enhance Health Services



**Vision:** Health & Human Services will assure that all Lincoln County residents have equal access to services to promote optimal physical, mental, and social well-being. Health & Human Services will enhance availability of services by expanding clinical services hours, increasing language services, offering training for staff and partners, stabilizing staffing levels, implementing a model for integration, and exploring technologies that can expand reach to more geographical areas.

### Increase Access

Expand hours of clinical services

### Culturally Competent Services

Meet the needs of the population with equity and inclusion.

### Training

Staff training to reduce barriers that may prevent individuals from accessing services.

### Staffing

Increase service availability by stabilizing staffing levels

### Integrated Service Model

Identify cutting edge strategies to enhance service to clients across program areas

### Geographical Locations

Expand availability of physical and mental health services across the County

## Strengthen Public Relations



**Vision:** Health & Human Services will increase awareness and utilization of services by developing and implementing a public relations plan, enhancing education about relationships between social factors and health outcomes, and partnering with other County departments and community services to identify policies and actions to promote public health.

### Public Relations

Increase awareness of services

### Lincoln County Partners

Enhance health promotion and prevention by connecting with other county departments

### Collaboration

Strengthen collaboration with community partners



## Foster a Healthy Workforce

**Vision:** Health & Human Services will promote a positive workplace culture that supports quality improvement, productivity, effectiveness, and physical, mental and social well-being. This will be accomplished by working collaboratively with all staff, identifying strategies to manage workload, and encouraging staff to create a shared vision for a healthy workplace culture.

### Workforce Development

Identify strategies to manage workloads to reduce stress and burnout & develop a recruitment and retention plan

### Workplace Culture

Establish a vision for a healthy workplace culture

### Leadership

Increase opportunities for leadership development for all staff

### Staff Wellness

Implement programs to support staff health



## Improve Physical Environment

**Vision:** Health & Human Services will address needs for the physical environment that promotes equitable access, creates a welcoming environment, and advances integration of services.

### Office Space

Improve the physical environment for clients and staff



## Optimize Financial Health

**Vision:** Health & Human Services will enhance the financial health of the organization by conducting financial analysis to identify gaps, monitoring workflow and reporting processes, utilizing partnership opportunities to leverage resources, and addressing training needs.

### Analysis

Identify needs for improvement

### Monitoring

Enhance contract monitoring and reporting

### Growth

Create processes for growing to ensure financial health

### Partnerships

Identify partners to share resources

### Training

Identify and implement training for staff

# WHAT WE ACCOMPLISHED

Despite the COVID-19 pandemic that required many staff to be redirected to its response, Health & Human Services still completed several goals.



## Enhance Health Services

1. Lincoln Community Health Center is opening the Waldport Clinic in September 2022. This will include Primary Care services daily and some services provided by Behavioral Health and Public Health. The Waldport expansion will provide easier access to care for those living in south county and will also allow for Primary Care and Behavioral Health integration.
2. Plans are underway to relocate the Newport primary care clinic to the Nye Street building, which will allow for Primary Care & Behavioral Health integration and co-location with the Women, Infants & Children (WIC) program.
3. Funding for a Mobile Health Clinic was received in the fall of 2021. Bid development is underway. The mobile clinic will allow Lincoln Community Health Center to provide services in rural areas of Lincoln County and enhance relationships with community partners.
4. Health & Human Services (HHS) is wrapping up the recruiting process for a primary care physician and a psychiatric physician, both of whom will serve as the medical director in their respective divisions.
5. Job descriptions have been updated to include preference for bicultural/bilingual candidates.
6. HHS and Human Resources are working to expand advertising of positions to websites that include those that are targeted at a more culturally diverse applicant pool.
7. A Diversity, Equity and Inclusion assessment is underway and will lead to the development of an Equity Plan in 2023
8. Compensation stipends have been developed for staff who have demonstrated progressive degrees of competency in healthcare translation.
9. The Community Health Worker team has expanded to include three bi-cultural/bi-lingual community health workers that work with patients in Primary Care, Behavioral Health, and Maternal, Child & Family Health. Two of these community health workers were recently certified as medical interpreters to assist providers during medical visits.
10. Health & Human Services staff have participated in a diversity training session facilitated by City-County Insurance Services.
11. The 2021 all staff meeting offered presentations from and about the Nimiipuu people (Nez Perce Tribe) and Mayan cultures. The 2022 all staff meeting will focus on the history of the Confederated Tribes of Siletz Indians.
12. The Workforce Development Committee continues to explore options for improving workforce culture.
13. Multiple staff attended Trauma Informed Care training.
14. The mental health system is conducting a system wide assessment. This includes a plan to reimagine the work force geared towards using local staff resources with an overall goal of stabilization.
15. Discussions have occurred with the Oregon Health Authority regarding use of variances for certain staffing positions.

16. An overdose symposium was held in July 2022 to review the services and supports available in the county for addiction treatment and recovery services. The symposium offered an opportunity for participants to provide information from their perspective about service gaps. The symposium was attended by a broad range of stakeholders including law enforcement, municipality representatives, and service providers. It was so successful that a future symposium is in the works focusing on mental health services.
17. Lincoln County HHS, along with its service partners are working to launch two Behavioral Health Resource Networks (BHRNs) in the county. These BHRNs will expand the range of services available to individuals seeking support and services for addictions. The scope of services to be provided include outpatient and residential treatment, peer support, housing, and supported employment.
18. Primary Care implemented an Office Based Addiction Treatment program in 2021 to provide Medication Assisted Treatment support to patients with opioid and alcohol addiction. Measure 110 Behavioral Resource Network funding will further support this program and its expansion in 2022.
19. A 5-bedroom home has been purchased by Lincoln County Mental Health for crisis respite and transitional housing.
20. Public Health and Lincoln Community Health Center have partnered to provide services and support to patients with Hepatitis C, Sexually Transmitted Infections and HIV.
21. Telehealth options have been implemented across all Health & Human Services Divisions and s widely used secondary to the pandemic.



## Strengthen Public Relations

1. Created a Public Information Officer position.
2. Health & Human Services provided training and resources to staff to assist in communication and outreach to the public.
3. Increased Public Health Facebook following 10 times over.
4. Developed excellent relationships with local and regional media. This led to multiple articles, advertisements, and news interviews throughout the course of the pandemic.
5. Implemented multiple translation and interpretation contracts for Spanish, Mam and American Sign Language.
6. Set standard that publications and news releases shall be translated into Spanish.
7. The pandemic response facilitated the development of community partnerships that did not exist prior to the start of the pandemic. This led to aligned messaging to the public.
8. Participated in startup of Juntos en Colaboración— a cross agency group to increase support and services to local Latino/a/x residents. Collaborators included Oregon State University Extension Service, Community Services Consortium, and Olalla Center. This collaboration led to multiple latino/a/x themed vaccination events, Arcoíris Cultural, and Juntos en Jardín.
9. Worked with ViveNW, TV Jam and Univision to bring COVID-19 information to the community in Spanish and Mam languages.
10. Developed video, audio, social and written COVID-19 updates for the community in Spanish and English. Written updates were posted as flyers, billboards or sent out using the Everbridge emergency alerts system, also known as Lincoln Alerts.
11. Collaborative cross training between Oregon Department of Human Services Child Welfare, Behavioral Health Child & Family team, and Developmental Disabilities programs.



## Foster a Healthy Workforce

1. Mental Health System review plan includes activities to develop and implement a recruitment plan in collaboration with Human Resources.
2. The Mental Health and Primary Care divisions are assessing productivity to develop reasonable expectations for staff.
3. Weekly staff update has been expanded to include new happenings in the department/county and provide a forum to recognize employees for their work.
4. Health & Human Services staff are participating in the Recruitment and Retention planning for Lincoln County government.
5. The Workforce Development Committee will assess and provide recommended strategies to improve workforce culture.
6. County-level leadership training has resumed.
7. The 2020 and 2021 all staff meetings continued as remote events and will resume in-person during 2022. The 2021 all staff meeting focused on self-care.
8. Telework and remote work have been approved for many Health & Human Services Staff. A telework policy has been adopted.



## Improve Physical Environment

1. An architectural firm has been hired to assist with space analysis.
2. Administrative staff were relocated out of the Western Title Building in Newport. This resulted in substantial savings to the department.
3. Efforts are underway to renovate the Nye Street office to house the Lincoln Community Health Center's Newport clinic. This expansion will move the clinic from its current location at 1010 SW Coast Hwy in Newport. Completion of the project is targeted for December 31, 2022.
4. Exploration is underway to build additional office space in Nye Street Annex location.



## Optimize Financial Health

1. An accounting firm has been hired to assess current barriers to Health & Human Services/County fiscal tracking and reporting.
2. Contract management technician added in July 2022.
3. Administrative positions reconfiguration underway to include carving out a Project Management position.
4. Account analyst position added in early 2022 to work with Division Directors on budgeting, expense reporting, financial projections, and more detailed fiscal analysis.
5. Productivity studies underway in Primary Care and Behavioral Health.
6. Behavioral Health Resource Network funds will be arriving in Lincoln County to develop a Substance Use Disorder System of Care. Development of this network is underway now.
7. Mental Health is working with new partners around the development of housing resources.
8. New funding streams are coming into the county for Behavioral Health housing development, substance use disorder services, and Public Health modernization.

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## CHANGING DIRECTION

There have been many challenges to the community and Health & Human Services since this strategic plan was first published. The “great resignation” and nationwide behavioral health staffing crisis has led to turnover in the department during the COVID-19 pandemic. The world-wide pandemic also changed how Health & Human Services delivered services and worked with local partners. While many services continued in person, many staff moved to remote work to assure the safety of clients and staff. During this same time, a wildfire burned 290 homes in the Otis area of Lincoln County. Despite these challenges and changes, many goals were completed as demonstrated in the above summary.

The department had just started work groups for the goals of the strategic plan in January 2020 when the pandemic forced us to change focus in March of that year. Initially, many thought the coronavirus epidemic might last for a few months at most. As we all know, the epidemic turned into a pandemic that has lasted for two and half years and continues to this day.

Workgroups were created to address the priorities of the strategic plan. With the exception of the Workforce Development Committee, these workgroups never really got off the ground. For example, the leaders of the “Health in All Actions” project have moved on to new careers. Changes in statutes and policy have led to an overhaul of the Behavioral Health program.

In July 2021, Health & Human Services hired Jayne Romero as its new director. New leaders continued to join the department over the following six months – a new Behavioral Health Deputy Director arrived in November and a new Lincoln Community Health Center director started in January 2022. These leaders joined a Public Health Director who was hired by the department six months into the COVID-19 pandemic. This leadership team is ready to usher in a new era of Health and Human Services in Lincoln County. The county is also embracing a new leadership design by hiring the first-ever county administrator. These combined changes are improving and altering the overall strategies and direction of county government.

As new leaders arrived and took on the challenges inherit in running a health department, many of the priorities from this strategic plan were addressed organically. Those priorities not addressed were no longer relevant to Health and Human Services as it is today. As a result, we now close out this strategic plan with a final report and look to move forward from here.

## NEXT STEPS

With the final report of the 2020 – 2024 Health & Human Services Strategic plan complete, we look forward to formalizing new initiatives and goals for the coming years.

Health & Human Services is currently in the “age of assessments”. There is work being done in Public Health for modernization and a local climate change assessment. Health & Human Services is conducting a Diversity, Equity and Inclusion assessment and is working with Benton and Linn counties to complete a regional health assessment. All these assessments will guide the decisions and activities of the department in the future. Efforts are happening at the county level to streamline and improve the staff recruitment process. For now, plans to design a new strategic plan are on hold until the department can review the results of these assessments.

Apart from the achievements, it must be noted that challenges do remain. Lincoln County is not immune to the behavioral health staffing crisis that is hitting the nation. At the time this report was developed, the mental health vacancy rate is just under 30% (which is an improvement). Space for administrative and other service staff continues to be a challenge. Shortage of housing for staff and individuals the department serves is a significant concern, secondary to the cost of living in coastal Oregon. Efforts will continue to explore solutions to address these and other concerns that present in the years ahead.

We wish to thank everyone who participated in the efforts that went into developing this strategic plan and those staff and partners who participated in the work that led to the achievements that have occurred to date. Your input and efforts have been invaluable to the work of Lincoln County Health & Human Services.



Jayne Romero  
Health & Human Services Director



**Public Health**  
Prevent. Promote. Protect.

*Lincoln County*



# Strategic Plan Final Report

# Strategic Plan Summary

Goals, Strategies, Achievements

# Goals



Enhance Health Services



Strengthen Public Relations



Click to add text Foster a Healthy Workforce



Improve the Physical Environment



Optimize Financial Health

# Strategies for: **Enhance Health Services**

Increase  
Access

Culturally  
Competent  
Services

Training

Staffing

Integrated  
Service Model

Geographical  
Locations

# Achievements: Enhance Health Services



Opened Waldport Clinic on September 7, 2022.

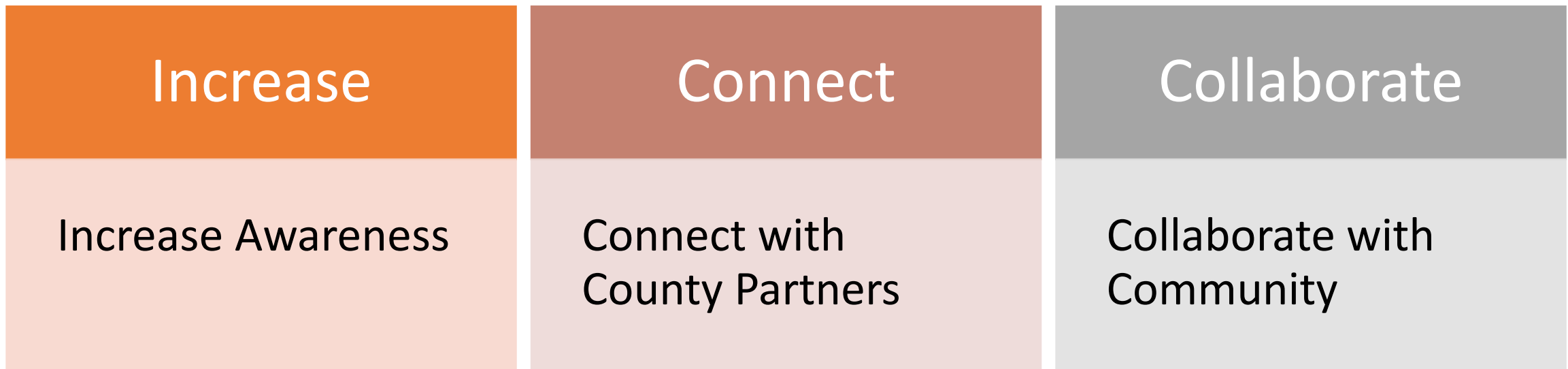


Funding for a Mobile Health Clinic received, bid development is underway.



Moving Newport primary care from 1010 SW Coast Hwy to 36 SW Nye St. Co-located with Behavioral Health and Public Health – WIC.

# Strategies for: **Strengthen Public Relations**



# Achievements: Strengthen Public Relations



Create Public Information Officer position



Increased Public Health social media following



Implemented multiple translation and interpretation contracts



Developed relationships with local and regional media



Strengthened collaboration with community partners for aligned public messaging.

# Strategies for: **Foster a Healthy Workforce**

- Workforce Development
- Workplace Culture
- Leadership Development
- Staff Wellness



# Achievements: Foster a Healthy Workforce



Workforce Development Committee  
formed and is active



Telework and remote work approved for  
many staff



All Staff meeting returns to in person in  
2022



Expanded weekly staff updates

# Strategies for: Improve Physical Environment

Improve the office space for  
clients and staff



# Achievements: Improve Physical Environment



Relocated administrative staff for substantial savings



Renovating Nye St. to house Lincoln Community Health Center's Newport clinic



Purchased building in Waldport for south-county services

# Strategies for: Optimize Financial Health

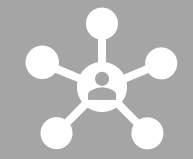
- Analysis
- Monitoring
- Growth
- Partnerships
- Training



# Achievements: Optimize Financial Health



Added contract management technician, account analyst, and reconfigured positions to include a project manager



Behavioral Health Resource Network funding approved for Substance Use Disorder System of Care



Hired accounting firm to assess current barriers to fiscal tracking and reporting

# Changing Direction

- Pandemic Response
- Achievements
- New Challenges



# Next Steps

The age of assessments:

- Diversity, Equity & Inclusion Assessment
- Local Climate Change Assessment
- Regional Health Assessment

New guidance and initiatives from Federal and State agencies.

Thank you!



# Council Communication

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## Ordinance 2022-42 CPA / ZC 2022-07 Spyglass Ridge

Meeting Date: November 14, 2022      Primary Staff Contact: Richard Appicello  
 Department: City Attorney      E-Mail: RAppicello@lincolncity.org  
 Secondary Dept: Planning Department      Secondary Contacts: AnneMarie Skinner  
 Approval: Daphnee Legarza      Estimated Time: 5 minutes

---

### Question(s):

Should the City Council conduct and approve First and Second Reading and adopt Ordinance 2022-42 entitled:

### ORDINANCE NO. 2022-42

**AN ORDINANCE AMENDING THE LINCOLN CITY COMPREHENSIVE PLAN MAP TO CHANGE THE COMPREHENSIVE PLAN MAP DESIGNATION FROM MEDIUM DENSITY RESIDENTIAL TO HIGH DENSITY RESIDENTIAL AND AMENDING THE LINCOLN CITY ZONING MAP TO CHANGE THE ZONING MAP DESIGNATION FROM R-1-7.5 (SINGLE UNIT RESIDENTIAL) TO RM (MULTIPLE UNIT RESIDENTIAL) FOR TAX LOTS: 07-11-22-DC-06100-00 AND 07-11-22-DD-00200-00 [CPA / ZC 2022-07]**

### Staff Recommendation:

Staff recommends Council conduct First Reading of Ordinance 2022-42 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:

See October 24, 2022 Agenda materials for public hearing.

**Council Options:**

1. Conduct and approve First Reading. Read changes, if any. Conduct and Approve Second Reading and Adopt the Ordinance.
2. Conduct and approve First Reading. Read changes, if any. Continue Second Reading to December 12, 2022, [or]
3. Continue First Reading to December 12, 2022.

**Potential Motions:**

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

**ORDINANCE NO. 2022-42**

**AN ORDINANCE AMENDING THE LINCOLN CITY COMPREHENSIVE PLAN MAP TO CHANGE THE COMPREHENSIVE PLAN MAP DESIGNATION FROM MEDIUM DENSITY RESIDENTIAL TO HIGH DENSITY RESIDENTIAL AND AMENDING THE LINCOLN CITY ZONING MAP TO CHANGE THE ZONING MAP DESIGNATION FROM R-1-7.5 (SINGLE UNIT RESIDENTIAL) TO RM (MULTIPLE UNIT RESIDENTIAL) FOR TAX LOTS: 07-11-22-DC-06100-00 AND 07-11-22-DD-00200-00 [CPA / ZC 2022-07]**

*Council:*

Motion to approve First Reading of Ordinance 2022-42.

*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 2022-42.

**[or]**

2. Motion to set Second Reading for December 12, 2022.

**Attachments:**

Ordinance 2022-42 (DOCX)

Exhibit A Ordinance 2022-42 revised (DOCX)

ORDINANCE NO. 2022-42

AN ORDINANCE AMENDING THE LINCOLN CITY COMPREHENSIVE PLAN MAP TO CHANGE THE COMPREHENSIVE PLAN MAP DESIGNATION FROM MEDIUM DENSITY RESIDENTIAL TO HIGH DENSITY RESIDENTIAL AND AMENDING THE LINCOLN CITY ZONING MAP TO CHANGE THE ZONING MAP DESIGNATION FROM R-1-7.5 (SINGLE FAMILY RESIDENTIAL) TO RM (MULTI-UNIT RESIDENTIAL) FOR TAX LOTS: 07-11-22-DC-06100-00 AND 07-11-22-DD-00200-00 [CPA / ZC 2022-07]

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

The City Council finds:

- A. This privately-initiated amendment to the Lincoln City Comprehensive Plan is in conformance with the Statewide Planning Goals and Lincoln City Comprehensive Plan goals as addressed in attached Exhibit "A"; and
B. This amendment is in conformance with the Zoning Ordinance, including, but not limited to, required initiation, processing and noticing requirements; and
C. The City of Lincoln City duly notified the Oregon Department of Land Conservation and Development pursuant to ORS 197.610 of its consideration of the proposed comprehensive plan and zoning map amendments; Notice was mailed to owners of all properties within 500 feet of the site on June 27, 2022. The News Guard published notice of hearing on July 5, 2022, with a continuance on July 13, 2022; and
D. The Planning Commission, on August 16, 2022 conducted a public hearing and considered the amendments contained within this ordinance. The final written recommendation was approved and forwarded to the City Council on October 4, 2022; and
E. The City Council conducted a public hearing on October 24, 2022, closed the hearing, closed the record and deliberated on the proposed amendments; Council directed that an ordinance be brought back for required readings and adoption.

THE CITY OF LINCOLN CITY ORDAINS AS FOLLOWS:

SECTION 1. Comprehensive Plan Map Amendment. The City Council hereby amends the Lincoln City Comprehensive Plan Map, Ordinance 84-01, as amended, for Lincoln County

1 Assessor’s Map Tax Lot 07-11-22-DC-06100-00 and 07-11-22-DD-00200-00 to change the  
2 current Medium Density Residential designation to High Density residential.

3  
4 **SECTION 2. Zoning District Map Amendment.** The City Council hereby amends the  
5 Lincoln City Zoning District Map, Ordinance 84-02, as amended, for Lincoln County  
6 Assessor’s Map Tax Lot 07-11-22-DC-06100-00 and 07-11-22-DD-00200-00 to change the  
7 current designation of R-1-7.5 (Single-Unit Residential District) to R-M (Multiple-Unit  
8 Residential).

9  
10 **SECTION 3. Findings adopted.** Findings contained in the Whereas Clauses of this  
11 ordinance, together with the Findings set forth in Exhibit A, as well as the competent  
12 substantial evidence in the whole record of this legislative proceeding are incorporated  
13 into this section by reference as if fully set forth herein, and are adopted in support of  
14 this legislative action.

15  
16 **SECTION 4. Severability.** The sections, subsections, paragraphs and clauses of this  
17 ordinance are severable. The invalidity of one section, subsection, paragraph, or clause  
18 shall not affect the validity of the remaining sections, subsections, paragraphs and  
19 clauses.

20  
21 **SECTION 5. Ordinance Effective Date.** Pursuant to Chapter IX, Section 9.3, this  
22 ordinance takes effect 30 days after the date of its adoption.

23  
24 The foregoing ordinance was distinctly read by title only in accordance with Chapter IX,  
25 Section 9.2 of the City of Lincoln City Charter on the 14<sup>th</sup> day of November, 2022 (First  
26 Reading) and on the 14<sup>th</sup> day of November, 2022 (Second Reading).

27  
28 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 14<sup>th</sup> day of  
29 November, 2022.

30 \_\_\_\_\_  
31 SUSAN WAHLKE, MAYOR

32 ATTEST:  
33  
34 \_\_\_\_\_  
35 JAMIE YOUNG, CITY RECORDER

36  
37 APPROVED AS TO FORM:  
38  
39 \_\_\_\_\_  
40 RICHARD APPICELLO, CITY ATTORNEY

## EXHIBIT A – FINDINGS

### Findings for Ordinance 2022-42

#### Procedural posture

The above-referenced ordinance was properly noticed pursuant to ORS 197.610. Notice to DLCD was made on June 13, 2022. Notice was published in the local newspaper on July 5, 2022. Notice of the public hearings was mailed to property owners within 500 feet of the site on June 27, 2022. Additional notice of the City Council public hearing was mailed again on September 14, 2022, to property owners within 500 feet of the site. The Planning Commission, on August 16, 2022 conducted a public hearing and considered the amendments contained within this ordinance. The final written recommendation was approved and forwarded to the City Council on October 4, 2022. The City Council conducted a public hearing on October 24, 2022, closed the hearing, closed the record and deliberated on the proposed amendments; Council directed that an ordinance be brought back for required readings and adoption.

#### Summary

**Ordinance 2022-42 amends the comprehensive plan map designation of the site from Medium-Density Residential District (R-7.5) to High-Density Residential District (R-M) and changes the zone from Single-Unit Residential (R-1-7.5) Zone to Multiple-Unit Residential (R-M) Zone.**

#### Public Comments / Opposition and Support.

Comments were received from Matt Sakraida, Val Sakraida, Paul Jenkins, Deb Soper, Stacy Borum, and Wayne Borum, via email, on July 14, 2022, stating that the proposed zoning changes are not needed to meet the goals of Lincoln City’s Comprehensive Plan or the Nelscott Gap Neighborhood Plan, that the changes are inconsistent or in conflict with several of the stated policies and goals of these plans, and that the proposed zoning would allow development that negatively affects the local neighborhood and broader community. The emailed document additionally outlines perceived conflicts with the Nelscott Gap Neighborhood Plan as reasons for denying the request.

Comments were received from North Lincoln Fire & Rescue District #1, via email, on June 13, 2022, indicating that the site is not part of the district.

Comments were received from Oregon Department of State Lands, via email, on June 13, 2022, stating the following: “From the removal-fill viewpoint this cursorily looks like a good spot for increased proposed density facilitated by this zone change. There are limited waters and wetlands mapped on both properties so, as always, when an application for ground disturbing activities is submitted, please send a WLUN.”

Comments were received from Lincoln City Economic Development, via email, on June 13, 2022, stating that “Ec Dev staff support this rezone which sounds like it would further housing objectives by allowing a greater number of residential units; the Lincoln City and surrounding areas need more housing units for the local workforce at all income levels” and expressing desire for incorporation of the future SE Lee Ave that is part of the 2015 Transportation System Plan.

Additional comments were received from Lincoln City Economic Development, via email, on June 14, 2022, stating the following: “I would like to emphasize in my earlier comment, Lincoln

City needs more housing units for the local workforce at all income levels. While Vacation Rental Dwellings (VRDs) are an important component to visitor lodging options, where undeveloped larger (for Lincoln City) land parcels have an opportunity to create residential communities needed to support the local tourism-based economy, I believe workforce housing is a higher need than additional VRD units. For that reason I humbly suggest not allowing VRDs in new residential construction greater than one unit, which would be the case for parcels involved in this re-zone application.”

Comments were received from Lincoln City Human Resources, via email, on June 14, 2022, stating the following: “I would echo what Alison said – the need for affordable housing/workforce housing has come up repeatedly in union negotiations. One of the biggest drivers for their salary proposals is affordability for housing here in Lincoln City.”

Comments were received from Oregon Department of Transportation, via email, on June 16, 2022, wondering about a traffic impact study and compliance with Statewide Planning Goal 12.

Comments were received from Oregon Department of Land Conservation and Development, via email, on June 30 2022, wondering if the local wetland protection overlay applies to non-wetland areas.

**In sum, the Council finds and determines that the proposed map and zone change will primarily change the type of housing unit authorized for the property (making work-force housing more likely) and will only slightly impact authorized density. The change in unit type will also permit clustering of development and facilitate preservation of sensitive lands. Opponents object to loss of environmental resources and impacts from increased density. Protection of environmental resources under the Code is not changed or altered by this map and zone change. Impacts from any proposed development are not addressed at this time. Such impacts will be addressed in development review within the constitutional limits for exactions. Council finds opponents site plan-related objections are premature.**

## **A. Lincoln City Comprehensive Plan**

### **1. Land Use Planning Goal**

*“To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.”*

The City Council established a land use policy framework and implementing ordinance through adoption of a comprehensive plan and zoning ordinance, respectively. The Oregon Land Conservation and Development Commission acknowledged the City of Lincoln City’s Comprehensive Plan (hereinafter referred to as Comprehensive Plan) and implementing land development regulations, including LCMC Title 17 Zoning, as complying with the Oregon Statewide Planning Goals. Citizens and affected governmental units had opportunities for review and comment during preparation, review, and revision of the plan and implementing ordinances. Review of this proposed comprehensive plan map amendment and rezoning in accordance with the Comprehensive Plan and the applicable zoning ordinance provisions establishes conformance with this goal. The application procedure for the comprehensive plan map amendment and zone change is integrated and consistent with the planning process and policy framework.

### **2. Citizen Involvement Goal**

*“Develop a Citizen Involvement Program which ensures the continued participation of citizens in the land use planning process.”*

The Comprehensive Plan’s Citizen Involvement Program goal is to “develop a Citizen Involvement Program which ensures the continued participation of citizens in the land use planning process.” Lincoln City has developed a Citizen Involvement Program through Resolution 94-33. The public hearing process for the proposed map amendment and zone change included mailed and published notice to the public and property owners as required by state law and city ordinance, and review of the proposal by Lincoln City Planning Commission and Lincoln City City Council, consistent with the Comprehensive Plan, Citizen Involvement Goal, and Resolution 94-33.

Among the policies under the City’s Citizen Involvement Program goal is one that states: “Lincoln City shall assure that a reasonable effort is made to encourage the opportunity for citizens to attend public meetings.” The Planning Commission and City Council meetings are publicized with hearing notices mailed to property owners in the affected area, published in *The News Guard*, and posted on the City’s website. The City holds public hearings in the evening to encourage public attendance. Moreover, for those unable to attend in person, the meetings are televised live, streamed live over the internet, and rebroadcast on cable television. Additionally, persons unable to attend in person have the option of calling in to the meeting to participate by phone. Video of meetings and the packet materials are also available on the City’s website for review, free of charge. These aforementioned items in their totality constitute a more than reasonable effort to encourage citizens to attend public meetings and meet the Citizen Involvement Goal.

### **3. Public Services and Utilities Goal**

*“To plan and develop a timely, orderly, and efficient arrangement of public facility and services which compliment [sic] the area and serve as a framework for urban and rural development.”*

Public services and utilities are available in the area of the map amendment and zone change. The available public services and utilities are as follows:

- a. Power – Pacific Power provides electric power to adjacent development. When the site develops, underground power lines will be installed to service the future use.
- b. Water – Lincoln City provides water to adjacent development. There is a pressurized water main line in SE 31<sup>st</sup> St. When the site develops, the main line will be extended and service lines will be installed to service the future use.
- c. Sewer – Lincoln City provides sanitary sewer service to adjacent development. There is a gravity main line in SE 31<sup>st</sup> St. When the site develops, the main line will be extended and service lines will be installed to service the future use. If necessary, a pump station will be installed as part of future development.
- d. Various providers provide land line and cellular telephone service. When the site develops, service lines will be installed to service the future use.

The proposed changes will have no impact to the existing public facilities and services and will have no direct impact to the extension of existing public facilities and services to the site. At the time of development, the extensions of services takes place whether the site is zoned R-1-7.5 or R-M. Both zones are residential and the same public facilities and services are needed for either R-1-7.5 and R-M. The public services and utilities goal is met.

### **4. Urbanization Goal**

*“To promote an orderly and efficient transition of land uses from rural to urban.”*

The area affected by the proposed map amendment and zone change is within the urban growth boundary and city limits and is, therefore, already urban and poised for urban development. The proposed amendment and zone change will not remove the site from city limits or the urban growth boundary. The site will be utilized for urban development with or without the proposed change. The proposed change is from medium to high density residential, which provides more opportunity for urbanization. This goal is met.

**5. Natural Hazard Goal**

*“The City shall control development in hazardous areas to protect life and property from natural disasters and hazards.”*

The map amendment and zone change on their own do not allow development in hazardous areas. Development in such areas is controlled by existing comprehensive plan and zoning ordinance standards, as well as building code requirements. Additionally, the City’s maps show no identified natural hazards on the site. This goal is not applicable.

**6. Housing Goal**

*“To provide for the housing needs of all citizens.”*

The request is to change the plan map from one residential district to another and the zone from one residential zone to another residential zone. Both zones allow housing as permitted uses, with each zone allowing different types of housing. The request would convert the 30.3-acre site from Single-Unit Residential R-1-7.5 to Multiple-Unit Residential R-M. As stated previously, housing is an outright permitted use in both zones. The housing options are different in the two zones with the R-1-7.5 zone allowing detached single-unit dwellings, attached single-unit dwellings, duplexes, cottage housing developments, manufactured homes, residential homes, four-flat dwellings, and accessory dwelling units. The R-M zone allows attached single-unit dwellings, cottage housing developments, duplexes, multi-unit dwellings, residential homes, and tiny house developments. Both zones, then, provide for the housing needs of the citizens of Lincoln City, just with different options.

Based on the requirements of the R-1-7.5 zone and deducting 30% from the site’s gross 30.3 acres for significant wetland preservation and infrastructure, the property could support the following: (these are approximate numbers)

123 detached single-unit dwellings	(246 units – house plus accessory dwelling unit)
369 attached single-unit dwellings	(369 units)
123 duplexes	(246 units)
557 cottage houses	(557 units)
123 manufactured homes	(123 units)
123 residential homes	(123 units)
263 four-flat dwellings	(1,052 units—maximum capacity with R-1-7.5 zoning)
450 cottage houses	(450 units)

Based on the requirements of the R-M zone and deducting 30% from the gross acreage for significant wetland preservation and infrastructure development, the property could support the following: (these are approximate numbers)

369 attached single-unit dwellings	(369 units)
557 cottage houses	(557 units)
369 duplexes	(738 units)
1,066 multi-unit dwellings	(1,066 units—maximum capacity with R-M zoning)
123 residential homes	(123 units)
600 tiny houses	(600 units)

At maximum capacity, the R-M zone will provide 14 more units than the R-1-7.5 zone (1066-1052 = 14). Additionally, multi-unit dwellings and tiny houses (which are allowed in the R-M zone but not in the R-1-7.5 zone) can be less expensive to construct than individual detached houses, which allows for more affordable housing for the citizens of Lincoln City. Accordingly, the request is consistent with the housing goal.

**7. Economy Goal**

*“To support the tourist industry and achieve a degree of diversity in the community which will allow a balanced economy that will, in turn, support an adequate level of services for all members of the area.”*  
 The area affected by the proposed rezoning is within the urban growth boundary and city limits and currently designated and zoned for residential development. The affected area does not contain any commercial lands that will be directly impacted by the request. Indirectly, affordable and work force housing affects the tourist industry. Local businesses, shops, and eating and drinking establishments need employees to provide their services to tourists. The employees need affordable or work force housing. A healthy supply of affordable and work force housing allows people to accept jobs in Lincoln City that they may not otherwise be able to accept without a place to live. When businesses have a steady employment rate, they are able to maintain more open hours and more consistent open hours, which attracts tourists and encourages lengthier stays. The economy goal is either not applicable or is met.

**8. Aesthetic Goal**

*“To develop a livable and pleasing city which enhances man’s activities while protecting the exceptional aesthetic quality of the area.”*

The site does not contain any designated aesthetic resources. Future development must adhere to Title 17 of Lincoln City Municipal Code, which has landscaping requirements, tree plan requirements, landscaping maintenance requirements, and development standards. Adherence to these requirements and standards is required whether the site is zoned R-1-7.5 or R-M. The aesthetic goal is met or is not applicable.

**9. Transportation Goal.**

*“To provide a safe, convenient and rapid transportation network to facilitate the movement of goods and people.”*

The site has access from the terminus of SE 31<sup>st</sup> St. Development will require adherence to the 2015 Lincoln City Transportation System Plan and Lincoln City Municipal Code (LCMC). LCMC 16.16.010 states: “The following improvements shall be installed at the expense of the subdivider or partitioner in accordance with the city requirements: streets, including drainage adequate to serve the property and streets; sanitary sewers and services; water distribution lines and services; sidewalks in any pedestrian ways; street name signs and street light poles; lot, street and perimeter monumentation; underground power lines; underground telephone lines; bicycle, equestrian or special “ways”; underground cable TV lines.” “All improvements shall be constructed to the subdivision or partition boundary.” “Where

dedicated or undedicated open space is proposed or provided, it shall be the subdivider's or partitioner's responsibility to provide, if required, standard public improvements to and through the open space."

LCMC 16.16.020 states: "The developer shall be responsible for improving all streets, including alleys, within the subdivision or partition, and streets adjacent, but only partially within the subdivision or partition, and streets adjacent to a subdivision or partition, whether included or excluded from the subdivision or partition." "Construction of all streets and alleys shall be to city section standards for permanent street and alley construction, pursuant to requirements set forth in the city transportation system plan and public works/engineering standards."

The surrounding area of the site has requirements from the 2015 Lincoln City Transportation System Plan, which are listed below. The site may or may not contain any of these; however, nexus and proportionality shall be applied at the time of development to ensure that the development constructs or contributes street improvements in proportion to the development where such improvements are on the site.

- SE Lee Extension – Extend SE Lee Ave to SE 23<sup>rd</sup> Dr; install sidewalks along the west side and a shared use path along the site side (work done by developer/city)
- SE Fleet Extension – Extend SE Fleet Ave to SE 23<sup>rd</sup> Dr while also connecting to stub streets east of Hwy 101; install sidewalks along the west side and a shared use path along the east side (work done by developer/city)
- SE 27<sup>th</sup> St Extension – Extend SE 27<sup>th</sup> St east to the proposed SE Lee/Fleet Ave extension, and upgrade existing facility; improvement includes sidewalks (work to be done by developer)
- SE 28<sup>th</sup> St Realignment – Realign SE 28<sup>th</sup> St to the intersection of Hwy 101 and SW 29<sup>th</sup> St, extend SE 28<sup>th</sup> St east to the proposed SE Lee/Fleet Ave extension, and upgrade existing facility; install sidewalks along the north side and a shared use path along the south side (work to be done by developer)
- SW 30<sup>th</sup> Extension – Extend SW 30<sup>th</sup> St from SW Coast Ave to Hwy 101 at SE 31<sup>st</sup> St; improvement includes sidewalks (work to be done by developer)

Streets built within any future development must extend to the edges of the site for future connection as determined by city requirements. Future development must also meet all access requirements for emergency services.

The recorded plat of The Ridge Apartments has a 60-foot-wide easement to "the City of Lincoln City for street and utility purposes" (see attached plat map of The Ridge Apartments). This easement provides a connection between the terminus of SE 32<sup>nd</sup> St and the site. To meet development code requirements, the platted easement will be improved as an extension of SE 32<sup>nd</sup> Street to provide access to the site. The transportation goal is met.

## 10. Energy Goal

*"To conserve energy."*

Future development of the site must meet all current codes, including building and energy codes. The proposed changes will not impact the requirements to meet current building and energy codes, nor are any

changes to the building and energy codes being requested as part of the proposal. This goal is met or is not applicable.

### **11. Overall Environmental Goal**

*“To achieve a balance between the need to provide housing and services and the need to protect and enhance the natural environment of the city.”*

The site has mapped significant wetlands. LCMC Chapter 17.46 outlines the requirements for preserving significant wetlands. The requirements for preservation of or development around natural resources are the same regardless of the map designation or zone classification. The requested map amendment and zone change in and of themselves have no impact on the natural resources present on the site. Future development must adhere to the zoning code requirements, including LCMC Chapter 17.46, regardless of the type of development. The proposal does not include a request to change the adopted significant natural resources maps or amend the area mapped as significant natural resource. This goal is either satisfied or not applicable.

### **12. Shoreland, Beaches, Dunes, Estuary, and Ocean Resources Goal**

*“To conserve, protect, and enhance the coastal resources of the city.”*

The site does not contain any shoreland, beaches, dunes, estuaries, or ocean resources and is more than a mile from the Pacific Ocean. The map amendment and zone change of a site that is more than a mile from the ocean, and doesn't contain any shoreland, beaches, dunes, or estuaries, will not have any impact on the city's coastal resources; therefore, the proposed request is consistent with this goal or this goal is not applicable.

## **B. Statewide Planning Goals**

**Goal 1 – “Citizen Involvement”** “To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.”

The application for amending the comprehensive plan map and changing the zoning was available at no cost on the City's website and also available for public review and purchase at the Planning and Community Development counter in City Hall. Staff was available in person and by phone or email to explain the proposal and technical information. The city advertised public hearings on the proposed comprehensive plan map amendment and zone change in the local newspaper in accordance with notice requirements. The city mailed notice of the public hearings to required property owners in accordance with state and city notice requirements. The Planning Commission and the City Council each held a public hearing at which citizens were invited to participate. The findings concerning the Comprehensive Plan Citizen Involvement Program are incorporated herein by this reference. Accordingly, the proposed map amendment and zone change are consistent with Goal 1.

**Goal 2 – “Land Use Planning”** *“To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.”*

The City Council adopted the Lincoln City Comprehensive Plan and its implementation measure, the Lincoln City Zoning Ordinance, after public hearings and has reviewed them on a periodic cycle to take into account changing public policies and circumstances. Citizens and affected governmental units had opportunities for review and comment during preparation, review, and revision of the plan and implementing ordinances. The Planning Commission and City Council considered the request in accordance with the process and based on the criteria provided in the municipal code; therefore, the request is consistent with Goal 2 or Goal 2 does not apply.

**Goal 3 – “Agricultural Lands”** *“To preserve and maintain agricultural lands.”*

The area affected by the proposed map amendment and zone change is within the City’s Urban Growth Boundary. The area is currently designated and zoned for urban development and will remain as such, regardless of the request. There is no agricultural land in Lincoln City. The request does not affect agricultural lands. Goal 3 is not applicable.

**Goal 4 – “Forest Lands”** *“To conserve forest lands by maintaining the forest land base and to protect the state’s forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.”*

The area affected by the proposed map amendment and zone change is within the City’s Urban Growth Boundary. The area is currently designated and zoned for urban development and will remain as such, regardless of this request. There is no forest land in Lincoln City, nor does the affected area include any designated forest lands. Goal 4 is not applicable.

**Goal 5 – “Open Spaces, Scenic and Historic Areas and Natural Resources”** *“To protect natural resources and conserve scenic and historic areas and open spaces.”*

The site does not contain any designated open spaces or scenic and historic areas. No changes to any properties on the National Register of Historic Places are proposed. The site does contain natural resources in the form of significant wetlands. However, the requested changes have no immediate effect on the site’s significant wetlands or any other natural resource. Environmental protections that are in place in the City’s code and development standards are unchanged by the map amendment and zone change and must be adhered to at the time the property develops. Adherence to these protections is required regardless of the map designation or zone classification. The findings concerning the City’s Comprehensive Plan Overall Environmental Goal as well as the Shoreland, Beaches, Dunes, Estuary and Ocean Resources Goal are incorporated herein by this reference. The request is consistent with Goal 5.

**Goal 6 – “Air, Water and Land Resources Quality”** *“To maintain and improve the quality of the air, water and land resources of the state.”*

The map amendment and zone change will not adversely affect the quality of the air, water, or land resources of the state. Development in either the current R-1-7.5 or the proposed R-M zone requires the availability of the full complement of public facilities and services. Environmental protections that are in place in the City’s code and development standards are unchanged by the map amendment and zone change and must be adhered to at the time the property develops. Adherence to these protections is required regardless of the map designation or zone classification, and no modifications to the protections are being requested. The findings concerning the City’s Comprehensive Plan Overall Environmental Goal are incorporated herein by this reference. The proposed request is consistent with Goal 6.

**Goal 7 – “Areas Subject to Natural Disasters and Hazards”** *“To protect people and property from natural hazards.”*

The City’s maps show the site does not contain any natural disasters and hazards areas. The request does not propose development within any natural hazard area. The existing ordinances and code requirements pertaining to natural hazards will continue to apply to all properties that might be affected by natural hazards. Required natural hazard protections are unchanged by this request, and no modifications to the protections are being requested. The findings concerning the City’s Comprehensive Plan Natural Hazard goal are incorporated herein by this reference. The proposal is consistent with Goal 7.

**Goal 8 – “Recreational Needs”** *“To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities, including destination resorts.”*

Per the Parks Master Plan, the site does not have any areas designated for the siting of necessary recreational facilities. Development standards in the R-M zone for multi-unit dwellings require usable open space for either passive or active recreation. The R-1-7.5 zone does not have these requirements. The zone change, then, provides the requirement for development of usable open space that is not required in the current zone. The proposal is consistent with Goal 8.

**Goal 9 – “Economic Development”** *“To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens.”*

The area affected by the proposed rezoning is within the City’s Urban Growth Boundary and currently designated and zoned for residential development. The affected area does not contain any economic development, commercial, or industrial lands. Goal 9 is not applicable.

**Goal 10 – “Housing”** *“To provide for the housing needs of citizens of the state.”*

The request is to change the plan map from one residential district to another and the zone from one residential zone to another residential zone. Both zones allow housing as permitted uses, with each zone allowing different types of housing. The request would convert the 30.3-acre site from Single-Unit Residential R-1-7.5 to Multiple-Unit Residential R-M. As stated previously, housing is an outright permitted use in both zones. The housing options are different in the two zones with the R-1-7.5 zone allowing detached single-unit dwellings, attached single-unit dwellings, duplexes, cottage housing developments, manufactured homes, residential homes, four-flat dwellings, and accessory dwelling units. The R-M zone allows attached single-unit dwellings, cottage housing developments, duplexes, multi-unit dwellings, residential homes, and tiny house developments. Both zones, then, provide for the housing needs of the citizens of Lincoln City, just with different options.

Based on the requirements of the R-1-7.5 zone and deducting 30% from the site’s gross 30.3 acres for significant wetland preservation and infrastructure, the property could support the following: (these are approximate numbers)

- 123 detached single-unit dwellings (246 units – house plus accessory dwelling unit)
- 369 attached single-unit dwellings (369 units)
- 123 duplexes (246 units)
- 557 cottage houses (557 units)
- 123 manufactured homes (123 units)
- 123 residential homes (123 units)
- 263 four-flat dwellings (1,052 units—maximum capacity with R-1-7.5 zoning)

450 cottage houses (450 units)

Based on the requirements of the R-M zone and deducting 30% from the gross acreage for significant wetland preservation and infrastructure development, the property could support the following: (these are approximate numbers)

- 369 attached single-unit dwellings (369 units)
- 557 cottage houses (557 units)
- 369 duplexes (738 units)
- 1,066 multi-unit dwellings (1,066 units—maximum capacity with R-M zoning)
- 123 residential homes (123 units)
- 600 tiny houses (600 units)

At maximum capacity, the R-M zone will provide 14 more units than the R-1-7.5 zone (1066-1052 = 14). Additionally, multi-unit dwellings and tiny houses (which are allowed in the R-M zone but not in the R-1-7.5 zone) can be less expensive to construct than individual detached houses, which allows for more affordable housing for the citizens of Lincoln City. Accordingly, the request is consistent with the housing goal.

**Goal 11 – “Public Facilities and Services”** *“To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.”*

Public services and utilities are available in the area of the map amendment and zone change. The available public services and utilities are as follows:

- Power – Pacific Power provides electric power to adjacent development. When the site develops, underground power lines will be installed to service the future use.
- Water – Lincoln City provide water to adjacent development. There is a pressurized water main line in SE 31<sup>st</sup> St. When the site develops, the main line will be extended and service lines will be installed to service the future use.
- Sewer – Lincoln City provides sanitary sewer service to adjacent development. There is a gravity main line in SE 31<sup>st</sup> ST. When the site develops, the main line will be extended and service lines will be installed to service the future use. If necessary, a pump station will be installed as part of future development.
- Various providers provide land line and cellular telephone service. When the site develops, service lines will be installed to service the future use.

The proposed changes will have no impact to the existing public facilities and services and will have no direct impact to the extension of existing public facilities and services to the site. At the time of development, the extensions of services takes place whether the site is zoned R-1-7.5 or R-M. Both zones are residential and the same public facilities and services are needed for either R-1-7.5 and R-M. Goal 11 is met.

**Goal 12 – “Transportation”** *“To provide and encourage a safe, convenient and economic transportation system.”*

The site has access from the terminus of SE 31<sup>st</sup> St. Development will require adherence to the 2015 Lincoln City Transportation System Plan and Lincoln City Municipal Code (LCMC). LCMC 16.16.010 states: “The following improvements shall be installed at the expense of the subdivider or partitioner in

accordance with the city requirements: streets, including drainage adequate to serve the property and streets; sanitary sewers and services; water distribution lines and services; sidewalks in any pedestrian ways; street name signs and street light poles; lot, street and perimeter monumentation; underground power lines; underground telephone lines; bicycle, equestrian or special “ways”; underground cable TV lines.” “All improvements shall be constructed to the subdivision or partition boundary.” “Where dedicated or undedicated open space is proposed or provided, it shall be the subdivider’s or partitioner’s responsibility to provide, if required, standard public improvements to and through the open space.”

LCMC 16.16.020 states: “The developer shall be responsible for improving all streets, including alleys, within the subdivision or partition, and streets adjacent, but only partially within the subdivision or partition, and streets adjacent to a subdivision or partition, whether included or excluded from the subdivision or partition.” “Construction of all streets and alleys shall be to city section standards for permanent street and alley construction, pursuant to requirements set forth in the city transportation system plan and public works/engineering standards.”

The surrounding area of the site has requirements from the 2015 Lincoln City Transportation System Plan, which are listed below. The site may or may not contain any of these; however, nexus and proportionality shall be applied at the time of development to ensure that the development constructs or contributes street improvements in proportion to the development where such improvements are on the site.

- SE Lee Extension – Extend SE Lee Ave to SE 23<sup>rd</sup> Dr; install sidewalks along the west side and a shared use path along the site side (work done by developer/city)
- SE Fleet Extension – Extend SE Fleet Ave to SE 23<sup>rd</sup> Dr while also connecting to stub streets east of Hwy 101; install sidewalks along the west side and a shared use path along the east side (work done by developer/city)
- SE 27<sup>th</sup> St Extension – Extend SE 27<sup>th</sup> St east to the proposed SE Lee/Fleet Ave extension, and upgrade existing facility; improvement includes sidewalks (work to be done by developer)
- SE 28<sup>th</sup> St Realignment – Realign SE 28<sup>th</sup> St to the intersection of Hwy 101 and SW 29<sup>th</sup> St, extend SE 28<sup>th</sup> ST east to the proposed SE Lee/Fleet Ave extension, and upgrade existing facility; install sidewalks along the north side and a shared use path along the south side (work to be done by developer)
- SW 30<sup>th</sup> Extension – Extend SW 30<sup>th</sup> St from SW Coast Ave to Hwy 101 at SE 31<sup>st</sup> St; improvement includes sidewalks (work to be done by developer)

Streets built within any future development must extend to the edges of the site for future connection as determined by city requirements. Future development must also meet all access requirements for emergency services.

The recorded plat of The Ridge Apartments has a 60-foot-wide easement to “the City of Lincoln City for street and utility purposes” (see attached plat map of The Ridge Apartments). This easement provides a connection between the terminus of SE 32<sup>nd</sup> St and the site. To meet development code requirements, the platted easement will be improved as an extension of SE 32<sup>nd</sup> Street to provide access to the site. The transportation goal is met.

**Goal 13 – “Energy Conservation”** *“To conserve energy.”*

Future development of the site must meet all current codes, including building and energy codes. The proposed changes will not impact the requirements to meet current building and energy codes, nor are any changes to the building and energy codes being requested as part of the proposed. The findings concerning the Comprehensive Plan's Energy goal are incorporated herein by this reference. The request is consistent with Goal 13.

**Goal 14 – “Urbanization”** *“To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.”*

The area affected by the proposed map amendment and zone change is within the urban growth boundary and the city limits and is already designated for urban housing development. The proposal does not alter the urban growth boundary or city limits. The proposal does not alter that the site will be zoned for urban housing development. Rather, the request enhances urbanization by providing proposed amendment and zone change will not change the already-existing urban development or prevent more urban development, so is consistent with this goal. The proposed amendment and zone change are consistent with Goal 14.

**Goal 15 – “Willamette Greenway”** *“To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.”*

The site is not located within the Willamette River Greenway, nor in proximity to the Willamette River Greenway and thus the proposed map amendment and zone change will have no impact to the Willamette Greenway. Goal 15 is not applicable.

**Goal 16 – “Estuarine Resources”** *“To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and to protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon’s estuaries.”*

The proposal does not affect any areas adjacent to the Siletz Bay estuary; therefore, Goal 16 is not applicable.

**Goal 17 – “Coastal Shorelands”** *“To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and to reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon’s coastal shorelands.”*

The city's coastal shorelands are not impacted by the proposed request since the site does not contain any coastal shorelands, nor is the site in proximity to any coastal shorelands. The findings concerning the Comprehensive Plan's Shoreland, Beaches, Dunes, Estuary and Ocean Resources goal are incorporated herein by this reference. Goal 17 is met or not applicable.

**Goal 18 – “Beaches and Dunes”** *“To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and To reduce the hazard to human life and property from natural or man-induced actions associated with these areas.”*

The proposed changes do not affect any areas located within a beach or active dune area. The findings concerning the Comprehensive Plan's Shoreland, Beaches, Dunes, Estuary and Ocean Resources goal are incorporated herein by this reference. Goal 18 is met or not applicable.

**Goal 19 – “Ocean Resources”** *“To conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations.”*

Since the area of the proposed changes is on the dry land area of the city, the proposal will not affect the near shore, ocean, and continental shelf. The findings concerning the Comprehensive Plan's Shoreland, Beaches, Dunes, Estuary and Ocean Resources goal are incorporated herein by this reference. Goal 19 is met or not applicable.

# Council Communication

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## Ordinance 2022-43 Amend Chapter 10.12 Storage Prohibition

Meeting Date:	November 14, 2022	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Richard Appicello	Estimated Time:	10 mins.

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**Question:** Should the City Council conduct and approve First Reading and Second Reading of Ordinance 2022-43?

### ORDINANCE NO. 2022-43

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 10 (VEHICLES AND TRAFFIC), CHAPTER 10.12 (GENERAL REGULATIONS) SECTION 10.12.040 (PROHIBITED STORAGE ON CITY PROPERTY, CITY STREETS, OR CITY RIGHTS-OF-WAY), TO CREATE A LIMITED EXEMPTION FOR LICENSED, INSURED, AND OPERABLE PASSENGER VEHICLES AND TO CLARIFY THE PROHIBITION.**

#### Staff Recommendation:

Staff recommends Council conduct and approve First Reading of Ordinance 2022-43 and, *if unanimous*, Conduct and approve Second Reading and adopt Ordinance 2022-43.

#### 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:

Over the past decade the City Council and City Administration has increasingly exercised more control over City public right-of-way. Council has consistently safeguarded the public right-of-way by requiring licenses (with annual fees) for encroachments or requiring compliance with Oregon Revised Statutes processes for street vacations to allow for private use of all or part of the right-of-way. Several ordinances have been passed, to create uniform processes to licensing

portions of the City right-of-way and to narrow prohibitions such as the reduction of prohibited storage from 72 hours to 24 hours, as well as to increase penalties.

Code enforcement continues to have problems with persons storing mobile homes, recreational vehicles, campers and trailers in the public right-of-way. At the same time, normal parking use of the right-of-way has become overly strict. Two changes are recommended. First, staff recommends an exception from the 24 hour limitation for parking licensed, operable passenger cars in legal spaces in the right-of-way. Second, additional language appears to be needed to clarify that moving to another public parking location is not a means to avoid a violation.

### Proposed amendment to LCMC 10.12.040.D:

[shaded language and highlighted language below is proposed in the attached ordinance:

D. Exceptions – Authorized Use. It is not considered prohibited storage under this section for properly licensed and insured, **operable** motor vehicles to utilize approved on-street **or other** public parking spaces in accordance with the posted time limitations or **pursuant to** a city permit for such spaces. When no time limit is posted, or a city permit does not provide otherwise, such authorized use shall not exceed **72 hours for an operable, licensed and insured passenger vehicle, without attachments, and 24 hours for a licensed, insured, and operable motorhome, trailer, recreational vehicle, or similar, whether or not attached to a vehicle. As provided in LCMC 10.12.090, when parking on a city street, right-of-way or public property, moving a vehicle to another public parking space on a city street, right-of-way or city property shall not extend or reset the 24 hour or 72 hour time limitation or avoid the storage violation.** Notwithstanding the exceptions in this subsection (D), any motor truck as defined in ORS 801.355 is prohibited from such authorized use between the hours of 9:00 p.m. and 7:00 a.m. of the following day.

**Issue 1.** When the police requested stricter storage rules, it was owing to the proliferation of campers, mobile homes, trailers, boats, storage containers, and the like. Such items are not properly stored in the right-of-way, which is for temporary public use. Storage of personal property needs to occur on the owner's private real property, or in an appropriate facility on property zoned for storage – such as the Planned Industrial zone. The point is, the temporary use of the right-of-way for parking a licensed, operable, insured, passenger vehicle is not a problem. The 24 hour limitation on such passenger car parking is overly strict. For example, a person without on-site parking for their second home would be in violation of the ordinance if they parked on the street for over 24 hours over a weekend (even if they moved their vehicle). The police have requested that a licensed / operable / insured passenger vehicle parked in a legal parking space in the right-of-way be exempt from the 24 hours limitation – and subject to the prior limit – which was 72 hours. Campers, mobile homes, trailers, boats, whether attached to a passenger vehicle or not, as well as storage containers and other personal property would still be subject to the 24 hour storage limitation.

**Issue 2.** Chapter 10.12 contains the following language:

**10.12.090 Extension of parking time.**

Where maximum parking time limits are designated, or when parking on a city street, right-of-way or public property exceeds 24 hours, as in the case of an abandoned vehicle, moving a vehicle to another public parking space on a city street, right-of-way or city property shall not extend the time limits for parking.

Notwithstanding this clear language, some individuals appear to believe that moving a few feet down the block will avoid a violation. Accordingly, the **proposed amendment** repeats the above language in the storage prohibition exemption paragraph LCMC 10.12.040.D to make clear that the 24 hour storage limitation and 72 hour storage limitation for passenger cars is not avoided by moving the vehicle a few feet to another city parking space.

This ordinance is consistent with case law regarding the permissible uses of city right-of-way. Right-of-way is available to all for temporary parking use. Storage of personal property, including large items like vehicles, trailers, lumber, equipment, storage containers, and the like, needs to occur on private property (accessory to the principal use) or on private property zoned for storage use (e.g. planned industrial). City streets and rights of way are not legally available for such storage use.

**Council Options:**

1. Conduct and approve First Reading. Read changes, if any. Conduct and Approve Second Reading and Adopt the Ordinance.
2. Conduct and approve First Reading. Continue Second Reading to December 12, 2022.
3. Continue First Reading to December 12, 2022.
4. Do not proceed with proposed ordinance.

**Potential Motions:**

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

**ORDINANCE NO. 2022-43**

**AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 10 (VEHICLES AND TRAFFIC), CHAPTER 10.12 (GENERAL REGULATIONS) SECTION 10.12.040 (PROHIBITED STORAGE ON CITY PROPERTY, CITY**

**STREETS, OR CITY RIGHTS-OF-WAY), TO CREATE A LIMITED EXEMPTION FOR LICENSED, INSURED, AND OPERABLE PASSENGER VEHICLES AND TO CLARIFY THE PROHIBITION.**

*Council:*

1. Motion to approve First Reading of Ordinance 2022-43.

*If unanimous: Conduct Second Reading*

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

*Council:*

1. Motion to approve Second Reading and adopt Ordinance 2022-43.

**Attachments:**

Ordinance 2022-43 (DOCX)

ORDINANCE NO. 2022-43

AN ORDINANCE OF THE CITY OF LINCOLN CITY AMENDING THE LINCOLN CITY MUNICIPAL CODE, TITLE 10 (VEHICLES AND TRAFFIC), CHAPTER 10.12 (GENERAL REGULATIONS) SECTION 10.12.040 (PROHIBITED STORAGE ON CITY PROPERTY, CITY STREETS, OR CITY RIGHTS-OF-WAY), TO CREATE A LIMITED EXEMPTION FOR LICENSED, INSURED, AND OPERABLE PASSENGER VEHICLES AND TO CLARIFY THE PROHIBITION.

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, the City of Lincoln city finds and determines that:

- (1) Lincoln City exercises control over all city streets, public rights-of-way, and city property; and
- (2) The exclusive private commercial or non-commercial use of city streets, rights-of-way, and city property is prohibited; and
- (3) The purpose of city streets and city rights of way is to facilitate transportation and commerce by residents and the traveling public; and
- (4) Permission to use city streets and rights-of-way may be granted only through the issuance of licenses, concessions, franchises or permits.

1 **WHEREAS**, the City of Lincoln City desires to provide more parking flexibility by allowing up to  
2 72 continuous hours of temporary parking in a legal parking space in the City right of way for  
3 licensed, insured and operable passenger vehicles; and  
4

5 **WHEREAS**, LCMC 10.12.090 currently provides:  
6

7 **10.12.090. Extension of parking time.** Where maximum parking time limits are  
8 designated, or when parking on a city street, right-of-way or public property exceeds 24  
9 hours, as in the case of an abandoned vehicle, moving a vehicle to another public  
10 parking space on a city street, right-of-way or city property shall not extend the time  
11 limits for parking; and  
12

13 **WHEREAS**, Council desires to expressly state that storage violations (72 hour or 24 hour) are not  
14 avoided by moving your vehicle a few feet in the right-of-way every 24 or 72 hours, as  
15 applicable.  
16

17 **THE CITY OF LINCOLN CITY ORDAINS AS FOLLOWS:**  
18

19 **SECTION 1.** Lincoln City Municipal Code Title 10 (*Vehicles and Traffic*), Chapter 10.12 (*General*  
20 *Regulations*), Section 10.12.040 (*Prohibited storage on city property, city streets or city rights-of-*  
21 *way*), Paragraph D., is hereby amended to read as follows:  
22

23 **10.12.040 Prohibited Storage on city property, city streets or city rights of way.**

24 A. Specific Storage Prohibitions. Except for authorized parking of motor vehicles as  
25 provided in subsection (D) of this section, no person shall store or permit to be stored on  
26 a city street, city right-of-way or other city property, without the permission of the city,  
27 any of the following:  
28

- 29 1. Any motor vehicle or other personal property;
- 30
- 31 2. Any self-propelled recreational vehicle or motor home;
- 32
- 33 3. Any towable recreational vehicle, camper, or any type of trailer;
- 34
- 35 4. Any abandoned vehicle.  
36

37 Permission to use city streets or rights-of-way may be granted only through the issuance  
38 of revocable licenses, concessions, franchises or permits.  
39

40 B. General Storage Prohibition. Except for authorized parking of motor vehicles as  
41 provided in subsection (D) of this section, no person shall store, or permit to be stored, a  
42 motor vehicle on a city street or right-of-way for a period in excess of 24 hours, without

1 the permission of the city. Permission to use city streets or rights-of-way may be granted  
2 only through the issuance of revocable licenses, concessions, franchises or permits.

3  
4 C. Violations – Penalty. Violation of subsection (A) or (B) of this section (prohibited  
5 storage) constitutes a Class B violation and may be enforced by citation as provided in  
6 Chapter 1.16 LCMC. Each day the violation persists is a separate offense.

7  
8 D. Exceptions – Authorized Use. It is not considered prohibited storage under this section  
9 for ~~a~~ properly licensed, ~~and~~ insured, ~~and operable~~ motor vehicles to utilize approved  
10 on-street ~~or other~~ public parking spaces in accordance with the posted time limitations  
11 or ~~pursuant to~~ a city permit for such spaces. When no time limit is posted, or a city  
12 permit does not provide otherwise, such authorized use shall not exceed **72 hours for**  
13 **an operable, licensed and insured passenger vehicle, without a tow, and** 24 hours  
14 **for a licensed, insured, and operable motorhome, trailer, recreational vehicle, or**  
15 **similar, whether or not attached to a vehicle. As provided in LCMC 10.12.090,**  
16 **when parking on a city street, right-of-way or public property, moving a vehicle to**  
17 **another public parking space on a city street, right-of-way or city property shall**  
18 **not extend or reset the 24 hour or 72 hour time limitation, as applicable, or avoid**  
19 **the storage violation.** Notwithstanding the exceptions in this subsection (D), any motor  
20 truck as defined in ORS 801.355 is prohibited from such authorized use between the  
21 hours of 9:00 p.m. and 7:00 a.m. of the following day.

22  
23 E. Definitions. In addition to those definitions contained in the ORS, the following words  
24 or phrases, except where the context clearly indicates a different meaning, shall be  
25 defined as follows:

- 26  
27 1. "Abandoned vehicle" means a vehicle that remains in violation for more than 24  
28 hours and one or more of the following conditions exist:  
29  
30 a. The vehicle does not have a lawfully affixed, unexpired registration plate,  
31 fails to display current registration or fails to have vehicle insurance as  
32 required by the state of Oregon;  
33  
34 b. The vehicle appears to be inoperative or disabled;  
35  
36 c. The vehicle appears to be wrecked, partially dismantled or junked; or  
37  
38 d. The vehicle appears to have been abandoned by its owner.  
39  
40 2. "Motor vehicle" means every vehicle that is self-propelled, including tractors,  
41 forklift trucks, motorcycles, road building equipment, street cleaning equipment  
42 and any other vehicle capable of moving under its own power, notwithstanding

1 that vehicle may be exempt from licensing under the motor vehicle laws of the  
2 state.

3  
4 3. "Recreational vehicle" (RV) means any vehicle with or without motive power that  
5 is designed for human occupancy and to be used temporarily for recreational,  
6 seasonal or emergency purposes and as further defined, by rule, by the director.

7  
8 4. "Street," as defined in this title and the ORS chapters incorporated by reference  
9 in this title, includes alleys, sidewalks, grass or parking strips, and parking areas and  
10 accessways owned or maintained by the city.

11  
12 **SECTION 3. Findings Adopted.**

13  
14 The findings contained in the Whereas Clauses of this Ordinance, as well as the competent  
15 substantial evidence in the whole record of this legislative proceeding are incorporated into this  
16 section by reference as if fully set forth herein, and are adopted in support of this legislative  
17 action.

18  
19 **SECTION 4. Severability.**

20  
21 The sections, subsections, paragraphs and clauses of this Ordinance are severable. The invalidity  
22 of one section, subsection, paragraph, or clause shall not affect the validity of the remaining  
23 sections, subsections, paragraphs and clauses.

24  
25 **SECTION 5. Ordinance Effective Date.**

26  
27 Pursuant to Chapter IX, Section 9.3, this ordinance takes effect 30 days after the date of its  
28 adoption.

29  
30 **SECTION 6. Codification.**

31  
32 Provisions of this Ordinance shall be incorporated in the City of Lincoln City Municipal Code and  
33 the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word,  
34 and the sections of this Ordinance may be renumbered, or re-lettered, provided that any  
35 Whereas clauses and boilerplate provisions (i.e. Sections 3-6) need not be codified and the City  
36 Recorder is authorized to correct any cross-references and any typographical errors.

37  
38 The foregoing ordinance was distinctly read by title only in accordance with Chapter IX, Section  
39 9.2 of the City of Lincoln City Charter on the 14<sup>th</sup> day of November 2022 (First Reading) and on  
40 the 14<sup>th</sup> day of November, 2022 (Second Reading).

41  
42

1 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 14<sup>th</sup> day of November,  
2 2022.

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\_\_\_\_\_  
SUSAN WAHLKE, MAYOR

ATTEST:

\_\_\_\_\_  
JAMIE YOUNG, CITY RECORDER

APPROVED AS TO FORM:

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

## Council Communication

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### Resolution 2022-42 - Amend SDC Deferral For Wecoma Place

Meeting Date:	November 14, 2022	Primary Staff Contact:	Richard Appicello
Department:	City Attorney	E-Mail:	RAppicello@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	

---

#### Question:

Should the City Council approve Resolution 2022-42 entitled:

#### RESOLUTION NO. 2022-42

#### A RESOLUTION OF THE CITY OF LINCOLN CITY AMENDING RESOLUTION 2022-32 TO CLARIFY THE LENGTH OF THE SDC DEFERRAL.

#### Staff Recommendation:

Staff recommends approval of Resolution 2022-42.

#### Authority:

Ordinance 2022-31 amended the SDC deferral provisions of the code to read as follows (emphasis added):

A. The city council may approve an application for deferral of the requirement to pay systems development charges, or for continuation of an approved deferral, for a qualified entity that meets all the following criteria:

1. The use proposed by the applicant fits within a type of use identified by the city council by resolution as lacking in the city and urgently needed, such as child care;
2. The use serves a widespread community need, as identified by the applicant;
3. The deferral applicant is a nonprofit corporation, or any agency or subdivision of the federal, state or local government, or a private entity that has committed to the proposed use in a binding executed agreement with the city (e.g., a 30-year affordability covenant for workforce housing) **Transfers between governmental,**

**nonprofit and for-profit entities are authorized provided the property use is restricted and SDC triggers noted, in an approved covenant;**

4. The applicant demonstrates the need for financial support to develop the use;
5. The applicant demonstrates local support for the use, such as through fundraising for the use;
6. The development will occur on property located within the city limits;
7. The applicant agrees to enter into an agreement to pay systems development charges if the city approves the application. **The agreement may be incorporated into the approval Resolution, part of a recorded covenant, and/or reflected in the City Electronic Lien record.**

B. An application for deferral of payment of systems development charges or a continuation of a deferral shall be submitted to the city manager for review. The city manager shall review the application and make a recommendation to the city council, which in its discretion may approve or deny the application, **modify or place limitations or conditions on the deferral,** decline to take action, or take other action such as requesting additional information. **When appropriate, the Council may pay the SDC obligation from other legally available funds so as not to disrupt capital improvement planning and construction. Such payment does not relieve the applicant of the obligation to pay at the termination of the deferral or due to some other payment trigger.**

C. Any approval of an application for deferral or continuation of a deferral under this section shall be contingent on the city and the applicant entering into an agreement in which the applicant acknowledges the terms of the deferral and agrees to pay systems development charges in the amount calculated at the time the use no longer qualifies for deferral, as specified in subsection (D) of this section. If the applicant is not the property owner, the property owner will be required to consent to the deferral application and sign the agreement. The agreement shall be recorded and shall run with the land. **Such recorded agreement may be part of another recorded restrictive covenant (e.g. affordability covenant) or may be in the electronic lien record).**

D. The deferral will apply until such time as a new use occupies the building that was constructed in conjunction with an approved deferral. If the new use would not meet the application criteria to qualify for continuation of the deferral of system development charges, prior to use or occupancy of the facility by a new use all applicable system development charges shall be paid. The system development charges owed will be based on the approved schedule and methodology of system development charges in effect for the new use at the time of occupancy.

E. The city council may approve a deferral of payment of systems development charges under this section **for a period of time consistent with federal, state, or local covenants, (such as an affordability covenant)** or for up to 10 years, with possible extensions of time as approved by the city council, provided the use continues to qualify for deferral.

**Background:**

Stewardship Development LLC requested clarification that the SDC deferral granted in Resolution 2022-32 was for thirty years. Staff requests that the Council clarify the deferral as the applicants have committed to a thirty year Affordability Covenant on the subject property. The ordinance making that change (from a ten year deferral with extensions to thirty years with a covenant) was not yet effective when this deferral was processed.

**Council Options:**

Approve the Resolution.

Do not approve the Resolution.

Continue the matter and request additional information.

**Potential Motions:**

Move to approve Resolution 2022-42.

Motion to continue Resolution 2022-42 to December 12, 2022.

Move to reject the proposed Resolution.

**Attachments:**

RESOLUTION 2022-42 revised 11-7-22 (DOC)

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**RESOLUTION NO. 2022-42**

**A RESOLUTION OF THE CITY OF LINCOLN CITY AMENDING RESOLUTION 2022-32 TO CLARIFY THE LENGTH OF THE SDC DEFERRAL.**

**RECITALS**

On August 22, 2022, pursuant to LCMC 13.08.095, the Lincoln City City Council passed Resolution 2022-32 granting a deferral of SDC charges to the applicant Stewardship Development LLC for a 44 unit low income housing project on the property described and shown in Exhibit A, attached hereto and made a part hereof by this reference ; and

The applicant has requested clarification of Resolution 2022-32, to state that the deferral is for thirty (30) years, consistent with the Affordability Covenant required to be recorded against the property, rather than for ten (10) years with automatic extensions; and

Council specifically amended the SDC deferral ordinance in Ordinance 2022-31, to recognize thirty (30) year SDC deferrals when there is a thirty year City affordability covenant; and

Both the Applicant and the City would like to clarify the thirty year length of the SDC deferral;

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

**SECTION 1. RECITALS.**

The above recitals and the recitals set forth in the November 14, 2022 staff report, are true and correct and are incorporated herein by this reference.

**SECTION 2. AMENDMENT / CLARIFICATION**

Resolution 2022-32, Section 3, Paragraph E., as approved, reads as follows (bold text is amended code language):

**E. The city council may approve a deferral of payment of systems development charges under this section for up to 10 years, with possible extensions of time as approved by the city council, provided the use continues to qualify for deferral.**

The SDC deferral resolution will be recorded and effective for ten (10) years and may only be extended by Resolution (also recorded) of the Council should the use continue to qualify. The criterion is met.

1 Council and the applicant, Stewardship Development LLC desire to replace Section 3,  
2 Paragraph E of Resolution 2022-32, with the following language which reflects changes  
3 made to LCMC 13.08.085 in Ordinance 2022-31 (bold text is amended code language):  
4

5 **E. The city council may approve a deferral of payment of systems development**  
6 **charges under this section for a period of time consistent with federal, state, or**  
7 **local covenants, (such as an affordability covenant) or for up to 10 years, with**  
8 **possible extensions of time as approved by the city council, provided the use**  
9 **continues to qualify for deferral.**

10  
11 The SDC deferral for the subject property is consistent with the code as amended by  
12 Ordinance 2022-31. The SDC Deferral will be effective for thirty (30) years from the date the  
13 City’s thirty (30) year Affordability Covenant is recorded on the subject property. The Code  
14 requires **either** a ten (10) year deferral **or** a period of time consistent with an affordability  
15 covenant. The applicant has agreed to a thirty (30) year City affordability covenant, in  
16 addition to other covenants for other governmental entities. Council approved Ordinance  
17 2022-31 on August 8, 2022. The criterion is met.  
18

19 **SECTION 3. NO OTHER CHANGES.** All other provisions of Resolution 2022-32 not  
20 specifically amended herein shall remain in full force and effect  
21

22 **SECTION 4. EFFECTIVE DATE.** This Resolution is effective as of the date of its adoption.  
23

24 **PASSED AND APPROVED** by the City Council of the City of Lincoln City, Oregon, this 14<sup>th</sup>  
25 day of November, 2022.  
26  
27  
28

29 \_\_\_\_\_  
30 SUSAN WAHLKE, MAYOR  
31

32 ATTEST:  
33  
34

35 \_\_\_\_\_  
36 JAMIE YOUNG, CITY RECORDER  
37

38 APPROVED AS TO FORM:  
39  
40

41 \_\_\_\_\_  
42 RICHARD APPICELLO, CITY ATTORNEY  
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**Exhibit A**

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The property is within city limits at NE 29th and Highway 101, Lincoln City. Wecoma Place, at 2207 NE 29<sup>th</sup> St.

See attached Exhibit A: Legal Description

COMBINED LEGAL DESCRIPTION:

DOC. NO. 200705042

A TRACT OF LAND IN SECTION 11, TOWNSHIP 7 SOUTH, RANGE 11 WEST OF THE WILLAMETTE MERIDIAN IN LINCOLN COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INITIAL POINT OF LOCHS HIRE MOBILE ESTATES, WHICH IS THE NORTHWEST CORNER OF LOT 2, BLOCK 1, LOCHSHIRE MOBILE ESTATES, IN SAID SECTION 11, WHICH IS THE TRUE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PROPERTY; THENCE SOUTH 89" 58' WEST ALONG THE NORTH LINE OF SAID SECTION 11, 270 FEET, MORE OR LESS, TO THE EASTERLY RIGHT OF WAY LINE OF U.S. COAST HIGHWAY 101; THENCE SOUTH ALONG SAID EAST LINE 191.4 FEET, MORE OR LESS, TO THE NORTH LINE OF N.E. 29TH STREET; THENCE NORTH 89" 42' EAST ALONG SAID N.E. 29TH STREET 347.55 FEET, MORE OR LESS, TO A POINT WHICH IS THE SOUTHWEST CORNER OF LOT 1, BLOCK 1, LOCHSHIRE MOBILE ESTATES; THENCE NORTHERLY ALONG THE WEST LINE OF LOTS 1 AND 2, BLOCK 1, LOCHSHIRE MOBILE ESTATES, A DISTANCE OF 167.90 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO JOHN LARSON, ET UX, RECORDED NOVEMBER 6, 1969 IN BOOK 15, PAGE 1167, AND ALSO THAT PROPERTY CONVEYED TO JOHN LARSON, ET UX, RECORDED AUGUST 15, 1972 IN BOOK 35, PAGE 1445, LINCOLN COUNTY.

TOTAL LAND AREA IS 43,534 SQUARE FEET (0.999 ACRES).

# Council Communication

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## Planning Commission Interview- Brian Bunnett

Meeting Date:	November 14, 2022	Primary Staff Contact:	Jamie Young
Department:	City Council	E-Mail:	JYoung@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	10 minutes

---

### Question:

Should the City Council approve the appointment of Brian Bunnett for a position on the Planning Commission?

### Staff Recommendation:

Following interviews, make appointments as desired.

### Background:

One application has been received for an appointment for the two City Resident positions. These positions are 4-year terms expiring 12/31/26, that was left vacant by the terms expiring 12/31/22.

The application is attached. Also attached, please find the new questions to be used for Planning Commission interviews with the City Council. A copy of these questions has been sent to the candidate.

The Lincoln City Code, 2.06.015 (C) (5) requires that Planning Commission applicants be interviewed at a City Council meeting.

The Planning Commission currently has two (2) vacant positions. The vacant positions were noticed to the media, Lincolncity.org, and the Facebook page; and was also advertised at City Hall and the Driftwood Public Library.

The applicant has successfully completed the interview/background process and is a City Resident.

### Council Options:

Interview, review, and discuss the possible appointment of Brian Bunnett to City Resident positions on the Planning Commission, with the terms beginning 1/1/2023 expiring 12/31/2026.

**Potential Motion:**

- 1. I move to appoint Brian Bunnett to the Planning Commission for the term beginning 1/1/2023 and expiring 12/31/2026.**

**Attachments:**

NEW Planning Commissioner questions FINAL.pdf (PDF)  
Bunnett, Brian Paul\_ Application\_Redacted.pdf (PDF)  
Commission applicant-Brian Bunnett ref 1 - Google Docs.pdf completed.pdf (PDF)  
Commission applicant-Brian Bunnett ref 2.pdf-completed.pdf(PDF)  
MEMORANDUM TO CC--APPOINTED BODIES BG CHECK PASS\_FAIL DETERMINATION-Bunnett.Brian.pdf (PDF)

1. Why do you want to serve on the Planning Commission?
2. How would you prepare for a Planning Commission meeting?
3. Some issues that the commission hears may be controversial and draw large audiences. At public hearings, planning commissioners must discuss openly among themselves any given matter before a decision is made, and they must do so before sometimes large and sometimes unfriendly audiences. Do you think you work well in group situations under such circumstances? Please tell us about a time when you had to do this.
4. What do you think is the most important skill for a Planning Commissioner to have?
5. This position requires that you listen to the public and your fellow commissioners. Importantly, it requires that you separate relevant comments from irrelevant and prejudicial comments. Do you consider yourself a good listener? Can you separate and dispassionately reject prejudicial and irrelevant comments?
6. Are you able to make a decision on a case based on the applicable criteria, even if it is at odds with your personal preferences and opinions? Please give us an example of a time when you had to make a criteria-based decision, without using your personal preferences and opinions as part of that decision.
7. Assume a controversial land use issue is before the Commission. How would you reconcile your personal opinions and emotions should they be in conflict with the goals of the Lincoln City Comprehensive Plan or applicable criteria set forth in the Lincoln City Municipal Code?



**CITY OF LINCOLN CITY  
Committee / Board / Commission Application**

Please indicate which committee/board/commission you are applying for:

- |   |   |
|---|---|
| <input type="checkbox"/> Arts Committee                     | <input type="checkbox"/> Parks and Recreation Board     |
| <input type="checkbox"/> *Budget Committee                  | <input checked="" type="checkbox"/> Planning Commission |
| <input type="checkbox"/> Community Sustainability Committee | <input type="checkbox"/> Library Board                  |
| <input type="checkbox"/> URA Ad Hoc Committee               |   |

*\* If applying for the Budget Committee, you may not serve on any other City board or committee at the same time. Other City committee volunteer positions allow dual representation if it does not present a conflict of interest.*

<b>NAME:</b>	BRIAN PAUL BUNNETT	<b>DATE:</b>	10 / 18 / 2022
<b>HOME ADDRESS:</b>	[REDACTED]		
<b>MAILING ADDRESS:</b>	SAME AS ABOVE		
<b>CITY, STATE, ZIP:</b>	LINCOLN CITY, OR 97367		
<b>E-MAIL ADDRESS:</b>	[REDACTED]		
<b>HOME PHONE:</b>		<b>CELL PHONE:</b>	[REDACTED]

**RESIDENCY AND SPECIFIC ELIGIBILITY CRITERIA**

Do you reside within the City limits:  Yes Length of Time 2 YEARS

Do you reside within the Urban Growth Boundary?  Yes Length of Time \_\_\_\_\_

Do you reside within the Lincoln County School District North:  Yes  No

Are you a registered voter in Lincoln County?  Yes  No

Are you a Lincoln City business owner or Manager?  Yes  No

If yes, please indicate which business you own/manage? \_\_\_\_\_



**QUALIFICATIONS/EXPERIENCE (Additional space is provided on back)**

Describe relevant qualifications (i.e. work or volunteer experiences) to include any applicable education and/or training. For example, if you are a hotel owner or operator and applying for the Visitor and Convention Committee; and highlight any skills, interests or hobbies that you believe would bring value to your ability to serve this position:

I AM A FORMER LIBRARY DIRECTOR AND AM ADEPT AT ORGANIZING AND EVALUATING LARGE AMOUNTS OF DATA AND AT WORKING EFFECTIVELY IN SMALL GROUPS. AT PRESENT I AM A MEMBER OF THE BOARD OF THE CENTRAL COAST HUMANE SOCIETY.

List names of volunteer/work supervisors:

BARBARA PERRY, CHAIR, CENTRAL COAST HUMANE SOCIETY (CCHS)

Please provide any previous experience with committees, boards or commissions and positions held:

MEMBER OF THE BOARD OF THE CCHS.

FORMERLY BELONGED TO VARIOUS BOARDS AND COMMITTEES (LOCAL, STATE, REGIONAL, NATIONAL) IN POSITIONS RANGING FROM PRESIDENT, CHAIR, CONVENOR, ETC.

State the name, title and any relationship you have to a City Council member, Commissioner, board member or city employee:

NONE

Explain why you would like to serve on this board, commission, or committee:

I RETIRED TO LINCOLN CITY ABOUT TWO YEARS AGO. I COULD HAVE CHOSEN SOMEWHERE ELSE TO LIVE BUT I LOVE THE CITY AND WANT TO SEE IT PROSPER AND PROGRESS

List the name, phone number, and e-mail address (if possible) of two personal or professional references:

Name: BARBARA PERRY Phone: [REDACTED]

Name: BLAIR HAMILTON Phone: [REDACTED]

My signature affirms that all information contained herein is true and correct to the best of my knowledge, and that I understand that any misstatement of fact, or any misrepresentation of credentials may result in this application being disqualified and is cause for removal from any appointed body. Shaded information will not be released due to personal privacy protection laws.

[REDACTED SIGNATURE]

10/18/2022

SIGNATURE

DATE



City Recorder  
 City of Lincoln City  
 PO Box 50  
 Lincoln City, OR 97367

**COMMITTEE VOLUNTEER EMERGENCY CONTACT INFORMATION FORM**

<b>FULL NAME:</b>	BRIAN PAUL BUNNETT
<b>START DATE:</b>	
<b>NAME OF COMMITTEE, BOARD, OR COMMISSION:</b>	PLANNING COMMISSION
<b>CITY STAFF REPRESENTATIVE:</b>	
<b>HOME ADDRESS:</b>	[REDACTED]
	LINCOLN CITY, OR 97367
<b>MAILING ADDRESS:</b>	SAME AS ABOVE
<b>HOME PHONE:</b>	
<b>CELL PHONE:</b>	[REDACTED]
<b>PERSONAL E-MAIL ADDRESS:</b>	[REDACTED]

<b>EMERGENCY CONTACT NAME/RELATIONSHIP:</b>	[REDACTED]
<b>HOME PHONE:</b>	[REDACTED]
<b>CELL PHONE:</b>	[REDACTED]

<b>DATE:</b>	10/18/2022
<b>VOLUNTEER SIGNATURE:</b>	[REDACTED]

**ALL PERSONAL INFORMATION WILL BE KEPT STRICTLY CONFIDENTIAL**



## **FAIR CREDIT REPORTING ACT (FCRA) DISCLOSURE REGARDING A BACKGROUND INVESTIGATION FOR A VOLUNTEER POSITION WITH A LINCOLN CITY APPOINTED BODY**

### **DISCLOSURE REGARDING "INVESTIGATIVE CONSUMER REPORT" BACKGROUND INVESTIGATION**

The City of Lincoln City ("the City") to which you have applied for employment, may request an investigative consumer report about you from a third party consumer reporting agency, in connection with your employment, or application for employment (including independent contractor or volunteer assignments, as applicable).

An "investigative consumer report" is a background report that includes information from personal interviews (except in California, where that term includes background reports with or without information obtained from personal interviews). The most common form of an investigative consumer report in connection with your employment is a reference check through personal interviews with sources such as your former employers and associates, and other information sources. The investigative consumer report may contain information concerning your character, general reputation, personal characteristics or mode of living. You may request more information about the nature and scope of an investigative consumer report, if any, by contacting the City.

You have the right, upon written request made within a reasonable time, to request (1) whether an investigative consumer report has been obtained about you, (2) disclosure of the nature and scope of any investigative consumer report and (3) a copy of your report. These reports will be conducted by **Pinnacle Investigations, 920 North Argonne Road, Suite 200, Spokane Valley, WA, 99212; Phone: 1-800-955-5306; [www.pinnacleprof.com](http://www.pinnacleprof.com)**. The scope of this disclosure is all-encompassing, however, allowing the Company to obtain from any outside organization all manner of investigative consumer reports throughout the course of your employment to the extent permitted by law.



**FAIR CREDIT REPORTING ACT (FCRA) ACKNOWLEDGEMENT AND AUTHORIZATION FOR BACKGROUND CHECK FOR A VOLUNTEER POSITION WITH A LINCOLN CITY APPOINTED BODY**

**PLEASE READ CAREFULLY BEFORE SIGNING!**

I acknowledge receipt of the separate document entitled "DISCLOSURE REGARDING BACKGROUND INVESTIGATION and a SUMMARY OF YOUR RIGHTS UNDER THE FAIR CREDIT REPORTING ACT", and certify that I have read and understand both of those documents. I hereby authorize the obtaining of "consumer reports" and/or "investigative consumer reports" by Lincoln City ("City") at any time after receipt of this authorization and throughout my employment, if applicable.

To this end, I hereby authorize, without reservation, any law enforcement agency, administrator, state or federal agency, institution, school or university (public or private), information service bureau, employer, or insurance company to furnish any and all background information requested by **Pinnacle Investigations, 920 North Argonne Road, Suite 200, Spokane Valley, WA, 99212; Telephone Number 1-800-955-5306; [www.pinnacleprof.com](http://www.pinnacleprof.com)** and or "City". I agree that a facsimile ("fax"), electronic or photographic copy of this Authorization shall be as valid as the original.

[Redacted Signature]

10 / 18 / 2022

SIGNATURE

DATE



## Human Resources

### REFERENCE CHECK- COMMITTEES

**Reference regarding:** Brian Bunnett (Planning Commission)

**Reference:** Barbara Perry

**Reference taken by; date / time:** October 20, 2022

- What is your professional relationship with the applicant? [We volunteer together at Central Coast Humane Society](#)
- How long have you known him/her? [Since March, 2021](#)
- How long have you worked / served with him/her? [Since March, 2021](#)
- Did you hire or select him/her? [Yes](#) If not, would you hire/select him/her given the opportunity to do so? [Yes](#)
- Do you have personal knowledge of the applicant serving on any boards? [Just with the Central Coast Humane Society](#) If so, please describe. [We both served together on the Board of Directors of CCHS.](#) If not, would serving on our Planning Commission be a good match based on your knowledge of the applicant? [Absolutely](#) Would you recommend him/her for the Planning Commission? [Yes, definitely](#) Does the applicant possess good decision making / reasoning skills? [Yes, very good skills in both these areas.](#)
- Does the applicant have good communication / interpersonal skills? [Yes, Brian is polite, thoughtful, and good at listening.](#)
- Is he/she responsible and reliable? [Very. If Brian says he will do something, he does.](#)
- What are his/her strongest skills? On time, thinks clearly and very organized. Does he/she possess any special skills? [Brian is quiet but very thoughtful. He may not be saying much, but I can count on him looking and weighing all sides of an issue before he gives his input. He backs up his reasoning for his decision and yet is not opposed to listening and weighing others opinions. Brian has a unique ability in writing, be it praise or writing his opinion.](#)
- If applicable, what was his/her reason for leaving the position he/she held when you worked / volunteered together? [N/A Brian still volunteers for CCHS](#)

- Are there any areas he/she could use help in developing (i.e. written communication, organization)? What do we need to provide to help him/her succeed on the Planning Commission? Listen to what he requests and his comments. You will be able to tell by those, any additional information, history, or background to provide him that would aid him in his deliberations as he comes to a decision.
- Do you have any other feedback you could provide that would help us make a decision? Brian and his wife, Lisa, are newcomers to Lincoln City as of a few years ago. They are great community volunteers and are not afraid to jump in with both feet. They choose what they are passionate about and involve themselves in helping to make their community better. Lincoln City is better for having them establish their home here. Brian will be a pragmatic asset to the Planning Commission. I very much recommend him.

City of Lincoln City | 801 SW Highway 101 | PO Box 50 | LincolnCity, OR 97367 | 541.557.1139 | [Lincolncity.org](http://Lincolncity.org)



## Human Resources

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### REFERENCE CHECK- COMMITTEES

Reference regarding: Brian Bunnett (Planning Commission)

Reference: Blair Hamilton

Reference taken by; date / time: October 20, 2022

- What is your professional relationship with the applicant? I do not have a professional relationship with Brian; however, I have known him throughout his career. He is a true professional.
- How long have you known him/her?  
I have known Brian his entire life; 68 years.
- How long have you worked / served with him/her?  
We were in different professions; consequently, I have never worked with Brian.
- Did you hire or select him/her? If not, would you hire/select him/her given the opportunity to do so? In his profession, he was sought after. I would have no issue hiring him.
- Do you have personal knowledge of the applicant serving on any boards? If so, please describe. If not, would serving on our Planning Commission be a good match based on your knowledge of the applicant? Would you recommend him/her for the Planning Commission? Does the applicant possess good decision making / reasoning skills? Brian is a true professional... very deliberate in his thought process, and very passionate about bettering his community. He would be an excellent choice for the commission.
- Does the applicant have good communication / interpersonal skills? His communication skills are excellent. In his profession, he led many teams and could not have attained his positions without good interpersonal skills.
- Is he/she responsible and reliable?  
Brian is one of the most responsible and reliable people I know.
- What are his/her strongest skills? On time, thinks clearly and very organized. Does he/she possess any special skills? Brian is not only well organized, but also thinks clearly and fully before he speaks. He has always been passionate about the community he lives in; and gets involved to make it a better place.
- If applicable, what was his/her reason for leaving the position he/she held when you worked / volunteered together? In Terre Haute, IN, his previous residence he was involved in community affairs. He retired to Lincoln City, where he clearly is getting involved in his new community.
- Are there any areas he/she could use help in developing (i.e. written communication, organization)? What do we need to provide to help him/her succeed on the Planning Commission? Make the vision of Lincoln City clear to him. Once understood, he will be a strong asset to the city.
- Do you have any other feedback you could provide that would help us make a decision?  
Again, having known hi his entire life, he is one of the most honest and dedicated people I have known. His dedication to his endeavors and passion for his community will make him a very productive member of the Lincoln City Planning Commission.



## MEMORANDUM

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**To:** City of Lincoln City Mayor and Council  
**From:** Abigail Edwards, Human Resources Director  
**Date:** October 24, 2022  
**Re:** Council Volunteer Appointment—Background Report and References

To the Honorable Mayor and City Council:

Human Resources has conducted a background investigation and reference check for a volunteer application for City Appointed Bodies as set forth in the Lincoln City Municipal Code, Section 2.06.015(D).

No adverse information was found for the following applicant, and they have passed the background check.

Name: Brian Bunnett  
Position Applied For: Planning Commission

Reference responses have been returned to the City Recorder for your review. Thank you.

Respectfully,

Abigail Edwards  
HR Director

## Council Communication

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### Appointment to the Nelscott URA Ad Hoc Committee - Applicants Shawnn Kehr & Barbara Jenkins-Gibson

Meeting Date:	November 14, 2022	Primary Staff Contact:	Jamie Young
Department:	City Council	E-Mail:	JYoung@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	10 minutes

---

#### Question:

Should the City Council approve the appointment of Shawnn Kehr or Barbara Jenkins-Gibson for one remaining "Community Member" position on the Nelscott URA Ad Hoc Committee?

#### Staff Recommendation:

Mr. Kehr or Ms. Jenkins-Gibson would serve on the Nelscott URA Ad Hoc Committee. Their term would expire upon completion of the committee task (create a Nelscott Urban Renewal Plan for City Council decision to adopt or reject the Plan). Councilor Casper and Councilor Mark interviewed both Candidates. Councilor Casper and Councilor Mark asked to move both applications forward for consideration for the one remaining position on the Nelscott URA Ad Hoc Committee. Both Candidates qualify for a "Community Member" position.

#### Background:

The Nelscott URA Ad Hoc Committee currently has one (1) vacant Community Member position. The commitment for the advisory committee will be attendance at approximately three meetings over the course of a year and a couple of public open houses. This 11-member committee created by City Council on Resolution 2022-29 on July 25<sup>th</sup>, will terminate upon completion of the task – either with adoption or rejection by City Council of an Urban Renewal Plan for the Nelscott URA Ad Hoc Committee.

The first appointment for the Community Member position of the Ad Hoc Committee was made on September 26, 2022. Lisa Spence-Bunnnett will fill that position.

#### Authority:

LCMC 2.06.015 (F)

F. Appointment. At a regular or special meeting of the City Council the question of appointment of one or more applicants for appointive bodies can be placed on the agenda for consideration. No applicant will be placed on the agenda until completion of the interview, background and reference check process. At the time the matter is considered the individual interviewers may give their recommendation, or, as applicable, an interview subcommittee member may give the recommendation of the subcommittee. The Council may use the ballot nomination process to narrow the applicant field. Notwithstanding any other provision in the municipal code, all appointments shall be by motion, approved by majority vote of the governing body.

G. Reappointment. Requests for reappointment of appointive public officers (only for those who have previously completed the interview, reference and background check) may be processed using this abbreviated procedure. The council, by motion, may direct the city recorder to place appointive officers on the agenda for reappointment, subject only to an update of the background investigation (pursuant to a current release). Unless Council by motion directs the use of the abbreviated procedure, all reappointments shall follow the procedure identified herein for original applicants.

**Council Options:**

Review and discuss the recommendation for appointment to the one remaining "Community Member" position on the Nelscott URA Ad Hoc Committee for a term until completed.

**Potential Motions:**

- 1. I move to appoint Shawnn Kehr to the Nelscott URA Ad Hoc Committee for a "Community Member" position.**
- 2. I move to appoint Barbara Jenkins-Gibson to the Nelscott URA Ad Hoc Committee for a "Community Member" position.**
- 3. I move to leave the position open for the Nelscott URA Ad Hoc Committee for (amount of time).**
- 4. I move to postpone the appointment until next meeting (or some other date).**

**Attachments:**

Kehr, Shawn\_Application\_Redacted.pdf (PDF)

Commission applicant-Shawnn Kehr ref 1.docx-completed.pdf (PDF)

MEMORANDUM TO CC--APPOINTED BODIES BG CHECK PASS\_FAIL DETERMINATION-Shawnn Kehr.pdf (PDF)

Jenkins-Gibson, Barbara Nelscott URA Ad Hoc Application\_Redacted.pdf (PDF)

Committee applicant-Barbara Jenkins Gibson Ref 2-completed\_Redacted.pdf (PDF)

MEMORANDUM TO CC--APPOINTED BODIES BG CHECK PASS\_FAIL DETERMINATION-Jenkins-Gibson-signed.pdf (PDF)



**CITY OF LINCOLN CITY**  
**Committee / Board / Commission Application**

RECEIVED

OCT 03 2022

By \_\_\_\_\_

Please indicate which committee/board/commission you are applying for:

- |  |   |
|--|---|
| <input type="checkbox"/> Arts Committee<br><input type="checkbox"/> *Budget Committee<br><input type="checkbox"/> Community Sustainability Committee<br><input checked="" type="checkbox"/> URA Ad Hoc Committee | <input type="checkbox"/> Parks and Recreation Board<br><input type="checkbox"/> Planning Commission<br><input type="checkbox"/> Library Board |
|--|---|

*\* If applying for the Budget Committee, you may not serve on any other City board or committee at the same time. Other City committee volunteer positions allow dual representation if it does not present a conflict of interest.*

<b>NAME:</b>	Shawnn Kehr	<b>DATE:</b>	10/03/2022
<b>HOME ADDRESS:</b>	[REDACTED]		
<b>MAILING ADDRESS:</b>	[REDACTED]		
<b>CITY, STATE, ZIP:</b>	Lincoln City, Oregon, 97367		
<b>E-MAIL ADDRESS:</b>	[REDACTED]		
<b>HOME PHONE:</b>	[REDACTED]	<b>CELL PHONE:</b>	

**RESIDENCY AND SPECIFIC ELIGIBILITY CRITERIA**

Do you reside within the City limits:  Yes Length of Time 2011

Do you reside within the Urban Growth Boundary?  Yes Length of Time 2014

Do you reside within the Lincoln County School District North:  Yes  No

Are you a registered voter in Lincoln County?  Yes  No

Are you a Lincoln City business owner or Manager?  Yes  No

If yes, please indicate which business you own/manage? Salty Dog Hound Lounge



**QUALIFICATIONS/EXPERIENCE (Additional space is provided on back)**

Describe relevant qualifications (i.e. work or volunteer experiences) to include any applicable education and/or training. For example, if you are a hotel owner or operator and applying for the Visitor and Convention Committee; and highlight any skills, interests or hobbies that you believe would bring value to your ability to serve this position:

I have owned a business locally for 9 plus years with a focus on being an asset to the commun

List names of volunteer/work supervisors:

Lincoln City City Council.

Please provide any previous experience with committees, boards or commissions and positions held:

I was on the Lincoln City Planning Commission for two and a half years and was co-chair.

State the name, title and any relationship you have to a City Council member, Commissioner, board member or city employee:

I have a friendly and professional relationship with many City employees and the Council mem

Explain why you would like to serve on this board, commission, or committee:

I have a out of the box view of standard issues that can help find new ideas and creative soluti

List the name, phone number, and e-mail address (if possible) of two personal or professional references:

Name: Liza Carlson; [redacted] Phone: [redacted]

Name: Rebecca Haslett; [redacted] Phone: [redacted]

**My signature affirms that all information contained herein is true and correct to the best of my knowledge, and that I understand that any misstatement of fact, or any misrepresentation of credentials may result in this application being disqualified and is cause for removal from any appointed body. Shaded information will not be released due to personal privacy protection laws.**

[redacted signature] \_\_\_\_\_  
SIGNATURE

DATE 10/03/2022



City Recorder  
City of Lincoln City  
PO Box 50  
Lincoln City, OR 97367

**COMMITTEE VOLUNTEER EMERGENCY CONTACT INFORMATION FORM**

FULL NAME:	Shawnn-Michiel Andreas Kehr
START DATE:	10/03/22
NAME OF COMMITTEE, BOARD, OR COMMISSION:	Nelscott HOC Committee
CITY STAFF REPRESENTATIVE:	Nelscott HOC Committee
HOME ADDRESS:	[REDACTED]
	Lincoln City, OR. 97367
MAILING ADDRESS:	Same as Home
HOME PHONE:	[REDACTED]
CELL PHONE:	
PERSONAL E-MAIL ADDRESS:	

EMERGENCY CONTACT NAME/RELATIONSHIP:	[REDACTED]
HOME PHONE:	[REDACTED]
CELL PHONE:	[REDACTED]

DATE:	10/03/2022
VOLUNTEER SIGNATURE:	[REDACTED]

ALL PERSONAL INFORMATION WILL BE KEPT STRICTLY CONFIDENTIAL



**FAIR CREDIT REPORTING ACT (FCRA) ACKNOWLEDGEMENT AND AUTHORIZATION FOR BACKGROUND CHECK FOR A VOLUNTEER POSITION WITH A LINCOLN CITY APPOINTED BODY**

**PLEASE READ CAREFULLY BEFORE SIGNING!**

I acknowledge receipt of the separate document entitled "DISCLOSURE REGARDING BACKGROUND INVESTIGATION and a SUMMARY OF YOUR RIGHTS UNDER THE FAIR CREDIT REPORTING ACT", and certify that I have read and understand both of those documents. I hereby authorize the obtaining of "consumer reports" and/or "investigative consumer reports" by Lincoln City ("City") at any time after receipt of this authorization and throughout my employment, if applicable.

To this end, I hereby authorize, without reservation, any law enforcement agency, administrator, state or federal agency, institution, school or university (public or private), information service bureau, employer, or insurance company to furnish any and all background information requested by **Pinnacle Investigations, 920 North Argonne Road, Suite 200, Spokane Valley, WA, 99212; Telephone Number 1-800-955-5306; [www.pinnacleprof.com](http://www.pinnacleprof.com)** and or "City". I agree that a facsimile ("fax"), electronic or photographic copy of this Authorization shall be as valid as the original.



SIGNATURE

10/3/2022  
DATE



## Human Resources

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### REFERENCE CHECK- COMMITTEES

Reference regarding: Shawnn Kehr (URA Ad Hoc Committee)

Reference: Liza Carlson

Reference taken by; date / time: October 4, 2022

- What is your professional relationship with the applicant?  
Business partner/ co-owners of Salty Dog
- How long have you known him/her?  
12+ years
- How long have you worked / served with him/her?  
Coming up on 10 years
- Did you hire or select him/her? If not, would you hire/select him/her given the opportunity to do so?  
**Well, I married the guy... and chose to open a business with him... ;)**
- Do you have personal knowledge of the applicant serving on any boards? If so, please describe. If not, would serving on our URA Ad Hoc Committee be a good match based on your knowledge of the applicant? Would you recommend him/her for the URA Ad Hoc Committee? Does the applicant possess good decision making / reasoning skills?  
**I'm unsure of what the purpose of the committee is, but if it involves helping to decide anything having to do with our beloved community, I trust Shawnn implicitly to follow his incredibly well-balanced heart when it comes to decision making. Yes, he has served on a committee in the past, and did enjoy his work tackling housing issues.**
- Does the applicant have good communication / interpersonal skills?  
Yes
- Is he/she responsible and reliable?  
Yes, incredibly
- What are his/her strongest skills? On time, thinks clearly and very organized. Does he/she possess any special skills?  
**He can dig into the depths of a social issue and gnaw on it thoroughly. His willingness to read legalese (which makes me glaze over before the end of the first sentence) is incredibly impressive to me; it's served him well as both a business owner and a caring human who likes**



## Human Resources

---

to find the cracks which need fixing, in whatever system he is presented with. Any board would be lucky to have his brain on it's team ;) )

If applicable, what was his/her reason for leaving the position he/she held when you worked / volunteered together?

NA

- Are there any areas he/she could use help in developing (i.e. written communication, organization)? What do we need to provide to help him/her succeed on the URA Ad Hoc Committee?  
Clear deadlines help him... **this also could be one of those “probably shouldn’t be asking the spouse” kinda questions, LOL. He had a tendency in the past to jump to conclusions w/o seeing the full picture- again, his ability to dig deep into an issue has been the biggest teacher w/ this one; I’ve seen a pattern of, he absorbs information more easily if he finds it himself... probably true for all of us in one way or another.**
- Do you have any other feedback you could provide that would help us make a decision?  
Thank you for inviting him to join this committee, I know he would love to help in any way he can



## MEMORANDUM

---

**To:** City of Lincoln City Mayor and Council  
**From:** Abigail Edwards, Human Resources Director  
**Date:** October 18, 2022  
**Re:** Council Volunteer Appointment—Background Report and References

To the Honorable Mayor and City Council:

Human Resources has conducted a background investigation and reference check for a volunteer application for City Appointed Bodies as set forth in the Lincoln City Municipal Code, Section 2.06.015(D).

No adverse information was found for the following applicant, and they have passed the background check.

Name: Shawnn Kehr

Position Applied For: URA Ad Hoc Committee

Human Resources was unable to complete all reference checking due to the following:

- One reference has been unresponsive to the request for information;
- One reference provided a response.

Reference responses have been returned to the City Recorder for your review. Thank you.

Respectfully,

Abigail Edwards  
HR Director



**CITY OF LINCOLN CITY  
Committee / Board / Commission Application**

Please indicate which committee/board/commission you are applying for:

- Arts Committee
- \*Budget Committee
- Community Sustainability Committee
- URA Ad Hoc Committee
- Parks and Recreation Board
- Planning Commission
- Library Board

\* If applying for the Budget Committee, you may not serve on any other City board or committee at the same time. Other City committee volunteer positions allow dual representation if it does not present a conflict of interest.

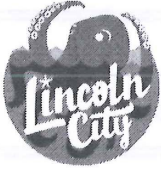
<b>NAME:</b>	BARBARA JENKINS-GIBSON	<b>DATE:</b>	9-17-22
<b>HOME ADDRESS:</b>	[REDACTED] LC 97367		
<b>MAILING ADDRESS:</b>	[REDACTED]		
<b>CITY, STATE, ZIP:</b>	LINCOLN CITY, OR. 97367		
<b>E-MAIL ADDRESS:</b>	[REDACTED]		
<b>HOME PHONE:</b>	[REDACTED]	<b>CELL PHONE:</b>	[REDACTED]

**RESIDENCY AND SPECIFIC ELIGIBILITY CRITERIA**

- Do you reside within the City limits:  Yes Length of Time 48+ YEARS
  - Do you reside within the Urban Growth Boundary?  Yes Length of Time 48+ YEARS
  - Do you reside within the Lincoln County School District North:  Yes  No
  - Are you a registered voter in Lincoln County?  Yes  No
  - Are you a Lincoln City business owner or Manager?  Yes  No
- If yes, please indicate which business you own/manage? CHRISTMAS COTTAGE

RECEIVED

SEP 21 2022



## APPLICATION PACKET – CITY APPOINTED BODIES

Thank you for your interest in volunteering to serve on a Lincoln City Appointed Body. We appreciate your time and look forward to WELCOMING you to our family of volunteers.

### **This Packet Contains:**

- 1) Committee Member Volunteer application
- 2) Criminal Background Check Authorization
- 3) Committee Volunteer Emergency Contact Information Form
- 4) Lincoln City Municipal Code Chapter 2.06 (*Committee, Board, Commission*), also located at : <https://www.codepublishing.com/OR/LincolnCity/>

### **What We Need From You:**

- Thoroughly complete and sign the Application (incomplete applications will not be processed)
- Complete and sign the Criminal Background Check Authorization
  - This will only be used if you are a finalist
  - Only a criminal background check will be conducted (not a credit check)
- Keep the Fair Credit Reporting Act (FCRA) Information Sheet for your reference
- Complete the Appointed Body Information Form
- **Return the completed original signed forms to the City Recorder, City of Lincoln City, PO Box 50 (801 S. Hwy 101), Lincoln City, OR, 97367. (Note we must have the originals.)**

### **What You Can Expect From Us:**

- The City Recorder will review and notify you if you do not meet the residency requirements, or any other criteria in the code applicable to the Appointive Body.
- The City will conduct criminal background check prior to making any selection decision. If you have any questions about how the background check process works, or what kinds of things could prevent you from serving, please contact Abigail Edwards, Human Resources Director at 541-996-1201.
- Reference checks will be conducted.
- Appointment from among qualified candidates is made by vote of the Council at a regular City Council meeting.
- You will be notified of the outcome whether you are selected or not.
- We will protect your personal information.



**QUALIFICATIONS/EXPERIENCE (Additional space is provided on back)**

Describe relevant qualifications (i.e. work or volunteer experiences) to include any applicable education and/or training. For example, if you are a hotel owner or operator and applying for the Visitor and Convention Committee; and highlight any skills, interests or hobbies that you believe would bring value to your ability to serve this position:

BUSINESS OWNER IN NELSCOTT FOR 48+ YEARS

List names of volunteer/work supervisors:

Please provide any previous experience with committees, boards or commissions and positions held:

CITY COUNCIL, URBAN RENEWAL CHAIR, CHAMBER OF COMMERCE PRES., PRES. ROTARY CLUB OF LINCOLN CITY

State the name, title and any relationship you have to a City Council member, Commissioner, board member or city employee:

N/A

Explain why you would like to serve on this board, commission, or committee:

I WAS ASKED. I CARE ABOUT THE FUTURE OF DEVELOPMENT IN LINCOLN CITY.

List the name, phone number, and e-mail address (if possible) of two personal or professional references:

Name: DICK ANDERSON

Phone: [REDACTED]

Name: DAVID GOMBERG

Phone: [REDACTED]

**My signature affirms that all information contained herein is true and correct to the best of my knowledge, and that I understand that any misstatement of fact, or any misrepresentation of credentials may result in this application being disqualified and is cause for removal from any appointed body. Shaded information will not be released due to personal privacy protection laws.**

**SIGNATURE**

**DATE**

9-17-22



City Recorder  
City of Lincoln City  
PO Box 50  
Lincoln City, OR 97367

COMMITTEE VOLUNTEER EMERGENCY CONTACT INFORMATION FORM

FULL NAME:	BARBARA JENKINS-GIBSON
START DATE:	NOW
NAME OF COMMITTEE, BOARD, OR COMMISSION:	URBAN RENEWAL / NELSCOT
CITY STAFF REPRESENTATIVE:	ALYSON ROBERTSON
HOME ADDRESS:	[REDACTED]
	LINCOLN CITY, OR 97367
MAILING ADDRESS:	[REDACTED]
HOME PHONE:	[REDACTED]
CELL PHONE:	[REDACTED]
PERSONAL E-MAIL ADDRESS:	[REDACTED]

EMERGENCY CONTACT NAME/RELATIONSHIP:	[REDACTED]
HOME PHONE:	[REDACTED]
CELL PHONE:	[REDACTED]

DATE:	9-17-22
VOLUNTEER SIGNATURE:	[REDACTED]

ALL PERSONAL INFORMATION WILL BE KEPT STRICTLY CONFIDENTIAL



**FAIR CREDIT REPORTING ACT (FCRA) ACKNOWLEDGEMENT AND AUTHORIZATION FOR BACKGROUND CHECK FOR A VOLUNTEER POSITION WITH A LINCOLN CITY APPOINTED BODY**

**PLEASE READ CAREFULLY BEFORE SIGNING!**

I acknowledge receipt of the separate document entitled "DISCLOSURE REGARDING BACKGROUND INVESTIGATION and a SUMMARY OF YOUR RIGHTS UNDER THE FAIR CREDIT REPORTING ACT", and certify that I have read and understand both of those documents. I hereby authorize the obtaining of "consumer reports" and/or "investigative consumer reports" by Lincoln City ("City") at any time after receipt of this authorization and throughout my employment, if applicable.

To this end, I hereby authorize, without reservation, any law enforcement agency, administrator, state or federal agency, institution, school or university (public or private), information service bureau, employer, or insurance company to furnish any and all background information requested by **Pinnacle Investigations, 920 North Argonne Road, Suite 200, Spokane Valley, WA, 99212; Telephone Number 1-800-955-5306; [www.pinnacleprof.com](http://www.pinnacleprof.com)** and or "City". I agree that a facsimile ("fax"), electronic or photographic copy of this Authorization shall be as valid as the original.




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**SIGNATURE** **DATE**

9-17-22



## **FAIR CREDIT REPORTING ACT (FCRA) DISCLOSURE REGARDING A BACKGROUND INVESTIGATION FOR A VOLUNTEER POSITION WITH A LINCOLN CITY APPOINTED BODY**

### **DISCLOSURE REGARDING "INVESTIGATIVE CONSUMER REPORT" BACKGROUND INVESTIGATION**

The City of Lincoln City ("the City") to which you have applied for employment, may request an investigative consumer report about you from a third party consumer reporting agency, in connection with your employment, or application for employment (including independent contractor or volunteer assignments, as applicable).

An "investigative consumer report" is a background report that includes information from personal interviews (except in California, where that term includes background reports with or without information obtained from personal interviews). The most common form of an investigative consumer report in connection with your employment is a reference check through personal interviews with sources such as your former employers and associates, and other information sources. The investigative consumer report may contain information concerning your character, general reputation, personal characteristics or mode of living. You may request more information about the nature and scope of an investigative consumer report, if any, by contacting the City.

You have the right, upon written request made within a reasonable time, to request (1) whether an investigative consumer report has been obtained about you, (2) disclosure of the nature and scope of any investigative consumer report and (3) a copy of your report. These reports will be conducted by **Pinnacle Investigations, 920 North Argonne Road, Suite 200, Spokane Valley, WA, 99212; Phone: 1-800-955-5306; [www.pinnacleprof.com](http://www.pinnacleprof.com)**. The scope of this disclosure is all-encompassing, however, allowing the Company to obtain from any outside organization all manner of investigative consumer reports throughout the course of your employment to the extent permitted by law.

## Nina Graham

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**From:** David Gomberg [REDACTED]  
**Sent:** Wednesday, September 21, 2022 11:01 AM  
**To:** Nina Graham  
**Subject:** RE: URA Ad Hoc Committee applicant-Barbara Jenkins-Gibson

**CAUTION:** This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Nina –

Can you please tell me what a URA Ad Hoc Committee is??

What is your professional relationship with the applicant?  
 We have been friends and business associates for 30 years,

How long have you known him/her?  
 30 years

How long have you worked / served with him/her?  
 30 years

Did you hire or select him/her? If not, would you hire/select him/her given the opportunity to do so?  
 Hire her? No. A long time ago as a Board member of the LC Chamber of Commerce, she hired me.

Do you have personal knowledge of the applicant serving on any boards? If so, please describe. If not, would serving on our URA Ad Hoc Committee be a good match based on your knowledge of the applicant? Would you recommend him/her for the URA Ad Hoc Committee? Does the applicant possess good decision making / reasoning skills?

Yes, yes, and yes. Barbara has my highest endorsement and greatest confidence.

Does the applicant have good communication / interpersonal skills?  
 Yes. Excellent

Is he/she responsible and reliable?  
 Exceptionally!

What are his/her strongest skills? On time, thinks clearly and very organized. Does he/she possess any special skills?  
 Excellent manager of time, details, and people.

If applicable, what was his/her reason for leaving the position he/she held when you worked / volunteered together?  
 n/a

Are there any areas he/she could use help in developing (i.e. written communication, organization)? What do we need to provide to help him/her succeed on the URA Ad Hoc Committee?

If I knew what the committee is or what it does, I could answer better.

Do you have any other feedback you could provide that would help us make a decision?  
You will be well served to select her.

David Gomberg  
[REDACTED]

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**From:** Nina Graham <ngraham@lincolncity.org>  
**Sent:** Wednesday, September 21, 2022 10:31 AM  
**To:** davidgomberg9@outlook.com  
**Subject:** URA Ad Hoc Committee applicant-Barbara Jenkins-Gibson  
**Importance:** High

Hello-

Please see attached reference form for Barbara Jenkins-Gibson who is applying for our URA Ad Hoc Committee. Please fill out and send back to me at your earliest convenience.

Thank you.



*Niña Graham, HR Supervisor*

City of Lincoln City | Administration  
801 SW Hwy 101 | PO Box 50 | Lincoln City, OR  
P: 541.557.1139 | F: 541.557.1139  
E: [ngraham@lincolncity.org](mailto:ngraham@lincolncity.org) | W: [LincolnCity.org](http://LincolnCity.org)



## MEMORANDUM

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**To:** City of Lincoln City Mayor and Council  
**From:** Abigail Edwards, Human Resources Director  
**Date:** October 3, 2022  
**Re:** Council Volunteer Appointment—Background Report and References

To the Honorable Mayor and City Council:

Human Resources has conducted a background investigation and reference check for a volunteer application for City Appointed Bodies as set forth in the Lincoln City Municipal Code, Section 2.06.015(D).

No adverse information was found for the following applicant, and they have passed the background check.

Name: Barbara Jenkins-Gibson  
Position Applied For: URA Ad Hoc Committee

Human Resources was unable to complete all reference checking due to the following:

- One reference has been unresponsive to the request for information;
- One reference provided a response.

Reference responses have been returned to the City Recorder for your review. Thank you.

Respectfully,

Abigail Edwards  
HR Director

# Council Communication

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## Community Center Large Pool Regrout

Meeting Date: November 14, 2022      Primary Staff Contact: Jeanne Sprague  
 Department: Parks and Recreation      E-Mail: JSprague@lincolncity.org  
 Secondary Dept: Public Works      Secondary Contacts:  
 Approval: Daphnee Legarza      Estimated Time: 10 min

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### Question:

Should the City Council award the Best Value Construction Contract for the Community Center Large Pool Regrout to Michael Bradley Ent.

### Staff Recommendation:

City Council should award the Best Value Construction Contract for the Community Center Large Pool Regrout to Michael Bradley Ent.

### 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) In this case, the Council approved the exemption from competitive bid.

### Background:

The Public Works Department advertised the "Invitation to Submit Proposals for Best Value" on Aug. 30, 2022. Public Works Department received one proposal on Sept 27, 2022.

PROPOSERS	BID
Michael Bradley Ent.	\$138,000

The evaluation team reviewed the proposal, and recommends accepting the proposal from Michael Bradley Ent., with a cost of \$138,000.

**Council Options:**

City Council can award the Best Value Construction Services for Community Center Large Pool Regrout to Michael Bradley Ent. or not award the project to Michael Bradley Ent.

**Financial Impact**

The 2022/23 Fiscal Year budget included \$140,000.00 for this project. The bid including contingency is \$138,000.

**Potential Motions:**

Move to award the Best Value Construction Contract for Community Center Large Pool Regrout to Michael Bradley Ent. in the amount of \$138,000.

**Attachments:**

Bid Tab

**Attachments:**

Bid Tab (PDF)

<b>Community Pool Regrouting</b>				Michael Bradley Ent.	
	<b>ITEMS</b>	<b>QUANTITY</b>	<b>UNIT</b>	<b>UNIT PRICE</b>	<b>TOTAL</b>
<b>GENERAL BID ITEMS</b>					
1	Mobilization	1	LS	\$13,800.00	\$13,800.00
2	Remove Existing Grout	1	LS	\$10,000.00	\$10,000.00
3	Apply Grout	1	LS	\$111,440.00	\$111,440.00
4	Replace Existing 2" x 2" tiles (Estimate # of Tiles to be Replace)		EA	\$0.00	\$700.00
5	Replace Existing 1" x 1" tiles (Estimate # of Tiles to be Replace)		EA	\$0.00	\$500.00
6	Replace new 2" x 2" tiles (Purchase New Tiles & Estimate # of Tiles Needed)		EA	\$0.00	\$1,000.00
7	Replace new 1" x 1" tiles (Purchase New Tiles & Estimate # of Tiles Needed)		EA	\$0.00	\$560.00
	<b>TOTAL BID ITEMS</b>				<b>\$138,000.00</b>

## Council Communication

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### Ec Dev Brownfields Grant with EPA: 4-Year Cooperative Agreement

Meeting Date: November 14, 2022      Primary Staff Contact: Alison Robertson  
 Department: Economic Development      E-Mail: alisonr@lincolncity.org  
 Secondary Dept: Finance      Secondary Contacts:  
 Approval: Daphnee Legarza      Estimated Time: 10 Min

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#### Objective

Staff would like a Council approval to enter into Cooperative Agreement with the Environmental Protection Agency (EPA) for a Community Wide Assessment (CWA) grant in the amount of \$500,000 (over 4 years) to further economic development efforts specific to Brownfield properties.

#### Background

City Council has increased economic development efforts by making available a toolbox similar to the Urban Renewal Agency, to assist business and property owners, as well as support the housing needs in Lincoln City. Some of these tools now have defined program criteria and others exist only as concepts.

One of these concept tools is to provide redevelopment assistance for properties considered to be underutilized or have barriers to redevelopment such as unknown conditions, or brownfield concerns. The concept tool to be developed is described as:

Brownfield Assistance. For private commercial or mixed-use projects that support the efforts of the Agency, Council, and Community Vision Plans, the Agency or Council will partner with property owners to assist with Brownfield site challenges to further sale or redevelopment of the property.

In August 2020, an underutilized property survey was completed to identify underutilized and/or potential brownfield sites, and begin outreach to property owners to understand their goals and needs for redevelopment or sale. The project consultant team provided a presentation to Council on August 10<sup>th</sup> (2020) to discuss the survey/project methodology, initial findings and possible next steps.

#### EPA Community Wide Assessment Grant Award

One possible next step to continue efforts towards brownfield redevelopment was to apply for an EPA Community Wide Assessment (CWA) Grant. This CWA grant application for \$500,000 was successful and the award was announced by EPA on March 12, 2021. Grant funding provided to the City will be used to hire a consultant to further the work outlined in the 2020 Underutilized Property Survey for: inventory, characterize, assess, conduct a range of planning activities, develop site-specific cleanup plans, and conduct community involvement related to brownfield sites.

The performance period for the grant is four years with a quarterly reporting requirement. There is no community matching requirement for grant funds. The City would continue outreach with property owners of sites that have been identified as underutilized and/or possible brownfields. The City would act as a conduit to assist property owners with Phase I and Phase II environmental assessments when needed for sale or redevelopment of property.

The EPA CWA grant funds will serve as the City's Brownfield Ec Dev Tool until/unless other funding sources are available.

As an example for a past grantee, the City of St. Helens was awarded \$300,000. Two Phase I environmental assessments, three Phase II environmental assessments were completed in addition to one assessment of a Leaking Underground Storage Tank (LUST) site that led to the sale of a private property to a residential developer.

Staff time to administer grant:

This work would be done by the City's Economic Development Team in conjunction with the Finance Department and Legal when needed. The grant application would be heavy up front to get things established, but generally not more than a few hours each month once it's up and running. There should be no further commitment beyond the life of the grant (4 years). There are no ongoing monitoring or similar obligations, since the grant does not pay for any clean-up activities (if contamination is discovered). Quarterly grant reporting is required during the 4 year grant implementation period. No local match is required other than staff time.

### **Looking ahead**

Although this grant does not include funding for clean-up, if any contamination is discovered, staff intends to apply for additional funding in the future should that be needed to further objectives for public or private properties. This would continue in the years ahead through the City's Brownfield Ec Dev Tool.

Staff recommends entering into the Cooperative Agreement.

### **Potential Motions**

1. Direct staff to enter into Cooperative Agreement with the EPA for a Community Wide Assessment Grant.
2. Direct staff to not enter into Cooperative Agreement with the EPA for a Community Wide Assessment Grant.

### **Attachments:**

EPA Award Notice\_2022\_0512\_Attach\_R10\_OR\_LincolnCity (PDF)

EPA\_CooperativeAgreement\_2022\_1004\_02\_AttachBF-02J21901-0 (PDF)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF  
LAND AND EMERGENCY  
MANAGEMENT

May 12, 2022

The Honorable Susan Wahlke  
Mayor of Lincoln City  
801 SW Highway 101  
PO Box 50  
Lincoln City, OR 97367

Dear Mayor Wahlke:

On behalf of the United States Environmental Protection Agency (EPA), I am pleased to congratulate you and confirm that the City of Lincoln City was selected as one of the entities EPA will begin negotiations with to award a cooperative agreement for an Assessment Grant. The City of Lincoln City submitted an outstanding application, and we deeply appreciate the tremendous commitment of time and energy that went into its preparation.


Since its inception in 1995, EPA's Brownfields Program has worked to help states and communities around the country clean up and revitalize brownfield sites. We fully expect that these brownfield projects will provide benefits to the environment and economy of local communities. Terri Griffith, your Regional Brownfields Contact, will work closely with the City of Lincoln City to negotiate the cooperative agreement prior to the grant award. You may contact Terri Griffith at 206-553-8511 or [griffith.terri@epa.gov](mailto:griffith.terri@epa.gov).

Again, congratulations on being selected! We look forward to working with you.

Sincerely,

David R. Lloyd, Director  
Office of Brownfields and Land Revitalization

cc: Terri Griffith  
Alison Robertson

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Cooperative Agreement</b>	<b>GRANT NUMBER (FAIN):</b> 02J21901 <b>MODIFICATION NUMBER:</b> 0 <b>PROGRAM CODE:</b> BF	<b>DATE OF AWARD</b> 09/29/2022
		<b>TYPE OF ACTION</b> New	<b>MAILING DATE</b> 10/04/2022
		<b>PAYMENT METHOD:</b> ASAP	<b>ACH#</b> PEND
		<b>RECIPIENT TYPE:</b> Township	
<b>RECIPIENT:</b> City of Lincoln City 801 SW Hwy 101 Lincoln City, OR 97367-2766 <b>EIN:</b> 93-0523629		<b>PAYEE:</b> City of Lincoln City, OR 801 SW Hwy 101 PO Box 50 Lincoln City, OR 97367-2766	
<b>PROJECT MANAGER</b> Alison Nelson-Robertson 801 SW Hwy 101 PO Box 50 Lincoln City, OR 97367-2766 <b>Email:</b> arobertson@lincolncity.org <b>Phone:</b> 541-996-1207		<b>EPA PROJECT OFFICER</b> Margaret Olson 805 SW Broadway, Suite 500, OOO Portland, OR 97205-3331 <b>Email:</b> olson.margaret@epa.gov <b>Phone:</b> 503-326-5874	
<b>EPA GRANT SPECIALIST</b> Lucas DuSablon 1200 Sixth Avenue, Suite 155, 17-CO4 Seattle, WA 98101-3188 <b>Email:</b> dusablon.lucas@epa.gov <b>Phone:</b> 206-553-2987			
<b>PROJECT TITLE AND DESCRIPTION</b> Lincoln City Brownfields Community-Wide Assessment FY2022  Brownfields are real property, the expansion, development or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. This agreement will provide funding for Lincoln City to conduct eligible assessment-related activities as authorized by CERLCA 104(k)(2) in Lincoln City, Oregon. Specifically, this agreement will provide funding to the recipient to inventory, characterize, assess, and conduct cleanup planning and community involvement related activities. Additionally, the recipient will competitively procure (as needed) and direct a Qualified Environmental Professional to conduct environmental site activities, and will report on interim progress and final accomplishments by completing and submitting relevant portions of the Property Profile Form using EPA's Assessment, Cleanup and Redevelopment Exchange System (ACRES). Further, the recipient anticipates conducting 8 Phase I and 6 Phase II environmental site assessments, holding 4 community outreach events, hosting 12 partner meetings, developing up to 3 site-specific cleanup plans/Analysis of Brownfield Cleanup Alternatives and planning documents to initiate brownfields revitalization, and submitting 16 quarterly reports. Work conducted under this agreement will benefit the residents, business owners, and stakeholders in and near Lincoln City, Oregon. No subawards are included in this assistance agreement.			
<b>BUDGET PERIOD</b> 10/01/2022 - 09/30/2026	<b>PROJECT PERIOD</b> 10/01/2022 - 09/30/2026	<b>TOTAL BUDGET PERIOD COST</b> \$500,000.00	<b>TOTAL PROJECT PERIOD COST</b> \$500,000.00
<b>NOTICE OF AWARD</b>			
<p>Based on your Application dated 12/01/2021 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$500,000.00. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$500,000.00. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.</p>			
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>		<b>AWARD APPROVAL OFFICE</b>	
<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 10 , EPA Region 10 Mail Code: 17-C04, 1200 Sixth Avenue, Suite 155 Seattle, WA 98101		<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 10, Land Chemicals and Redevelopment Division R10 - Region 10 1200 Sixth Avenue, Suite 155 Seattle, WA 98101-3188	
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>			
Digitally signed by EPA Award Official PeggyD Johnson - Chief, Grants & Intergency Agreements Branch Alan Lee - Grants Management Officer			<b>DATE</b> 09/29/2022

### EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$0	\$500,000	\$500,000
EPA In-Kind Amount	\$0	\$0	\$0
Unexpended Prior Year Balance	\$0	\$0	\$0
Other Federal Funds	\$0	\$0	\$0
Recipient Contribution	\$0	\$0	\$0
State Contribution	\$0	\$0	\$0
Local Contribution	\$0	\$0	\$0
Other Contribution	\$0	\$0	\$0
Allowable Project Cost	\$0	\$500,000	\$500,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Multipurpose, Assessment, Revolving Loan Fund, and Cleanup Cooperative Agreements	CERCLA: Secs. 104(k)(2) & 104(k)(5)(E)	2 CFR 200, 2 CFR 1500 and 40 CFR 33

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	2210BDG139	22	E4	10L3AG7	000D79	4114	-	-	\$500,000
									\$500,000

Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$0
2. Fringe Benefits	\$0
3. Travel	\$9,500
4. Equipment	\$0
5. Supplies	\$1,000
6. Contractual	\$486,500
7. Construction	\$0
8. Other	\$3,000
9. Total Direct Charges	\$500,000
10. Indirect Costs: 0.00 % Base	\$0
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %)	\$500,000
12. Total Approved Assistance Amount	\$500,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$500,000
15. Total EPA Amount Awarded To Date	\$500,000

## **Administrative Conditions**

### **National Administrative Terms and Conditions**

#### **General Terms and Conditions**

The recipient agrees to comply with the current EPA general terms and conditions available at: <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2021-or-later>.

These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award.

The EPA repository for the general terms and conditions by year can be found at: <https://www.epa.gov/grants/grant-terms-and-conditions#general>.

#### **A. Correspondence Condition**

The terms and conditions of this agreement require the submittal of reports, specific requests for approval, or notifications to EPA. Unless otherwise noted, all such correspondence should be sent to the following email addresses:

- Federal Financial Reports (SF-425): [rtpfc-grants@epa.gov](mailto:rtpfc-grants@epa.gov) and [dusablon.lucas@epa.gov](mailto:dusablon.lucas@epa.gov)
- MBE/WBE reports (EPA Form 5700-52A): [bennett.andrea@epa.gov](mailto:bennett.andrea@epa.gov)
- All other forms/certifications/assurances, Indirect Cost Rate Agreements, Requests for Extensions of the Budget and Project Period, Amendment Requests, Requests for other Prior Approvals, updates to recipient information (including email addresses, changes in contact information or changes in authorized representatives) and other notifications: [wasson.wendy@epa.gov](mailto:wasson.wendy@epa.gov)
- Payment requests (if applicable): [olson.margaret@epa.gov](mailto:olson.margaret@epa.gov)
- Quality Assurance documents, workplan revisions, equipment lists, programmatic reports and deliverables: [dusablon.lucas@epa.gov](mailto:dusablon.lucas@epa.gov) and [olson.margaret@epa.gov](mailto:olson.margaret@epa.gov)

#### **B. Pre-Award Costs**

In accordance with 2 CFR 1500.9, the recipient may charge otherwise allowable pre-award costs (both Federal and non-Federal matching shares) incurred from 10/1/2022 to the actual award date provided that such costs were contained in the approved application and all costs are incurred within the approved budget period.

## **Programmatic Conditions**

EPA Region 10

## FY2022 Assessment Cooperative Agreement

### Terms and Conditions

Please note that these Terms and Conditions (T&Cs) apply to Brownfield Assessment Cooperative Agreements awarded under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k).

#### I. GENERAL FEDERAL REQUIREMENTS

**NOTE: For the purposes of these Terms and Conditions, the term “assessment” includes eligible activities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k)(2)(A)(i) such as activities involving the inventory, characterization, assessment, and planning relating to brownfield sites as described in the EPA-approved workplan.**

##### A. Federal Policy and Guidance

1. Cooperative Agreement Recipients: By awarding this cooperative agreement, the Environmental Protection Agency (EPA) has approved the application for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2022 competition for Brownfield Assessment cooperative agreements.
2. In implementing this agreement, the CAR shall ensure that work done with cooperative agreement funds complies with the requirements of CERCLA § 104(k). The CAR shall also ensure that assessment activities supported with cooperative agreement funding comply with all applicable federal and state laws and regulations.
3. A term and condition or other legally binding provision shall be included in all subawards entered into with the funds awarded under this agreement, or when funds awarded under this agreement are used in combination with non-federal sources of funds, to ensure that the CAR complies with all applicable federal and state laws and requirements. In addition to CERCLA § 104(k), federal applicable laws and requirements include 2 CFR Part 200.
4. The CAR must comply with federal cross-cutting requirements. These requirements include, but are not limited to, DBE requirements found at 40 CFR Part 33; OSHA Worker Health & Safety Standard 29 CFR § 1910.120; Uniform Relocation Act (40 USC § 61); National Historic Preservation Act (16 USC § 470); Endangered Species Act (P.L. 93-205); Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR § 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC §§ 327-333); the Anti-Kickback Act (40 USC § 276c); and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250. For additional information on cross-cutting requirements visit <https://www.epa.gov/grants/epa-subaward-cross-cutter-requirements>.
5. The CAR must comply with Davis-Bacon Act prevailing wage requirements and associated U.S. Department of Labor (DOL) regulations for all construction, alteration, and repair contracts and subcontracts awarded with funds provided under this agreement by operation of CERCLA § 104(g). Assessment activities generally do not involve construction, alteration, and repair within the meaning of the Davis-Bacon Act. However, the recipient must contact the EPA Project Officer if there are unique circumstances (e.g., removal of an underground storage tank or another structure and restoration of the site) that indicate that the Davis-Bacon Act applies to an activity the CAR intends to carry out with funds provided under this agreement. EPA will provide guidance on Davis-Bacon Act compliance if necessary.

#### II. SITE ELIGIBILITY REQUIREMENTS

## A. Eligible Brownfield Site Determinations

1. All brownfield sites that will be addressed using funds from the cooperative agreement must be located within the target area(s) described in the scope of work for this cooperative agreement (i.e., the EPA-approved workplan). The CAR must provide information to the EPA Project Officer about site-specific work prior to incurring any costs under this cooperative agreement. The information that must be provided includes whether the site meets the definition of a brownfield site as defined in CERCLA § 101(39), and whether the CAR is the potentially responsible party under CERCLA § 107, is exempt from CERCLA liability, and/or has defenses to CERCLA liability. This requirement does not apply to site-specific assessment cooperative agreements where this information has been previously provided and approved in threshold eligibility review of the application, and where sites have already been pre-approved by EPA in the CAR's workplan.

2. If the site is excluded from the general definition of a brownfield, but is eligible for a property-specific funding determination, then the CAR may request a property-specific funding determination from the EPA Project Officer. In its request, the CAR must provide information sufficient for EPA to make a property-specific funding determination on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for assessing sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that EPA has determined that the property is eligible.

### 3. Brownfield Sites Contaminated with Petroleum

a. For any petroleum-contaminated brownfield site that is not included in the CAR's EPA-approved workplan, the CAR shall provide sufficient documentation to EPA prior to incurring costs under this cooperative agreement which documents that:

- i. the State determines there is "no viable responsible party" for the site;
- ii. the State determines that the person assessing or investigating the site is a person who is not potentially liable for cleaning up the site; and
- iii. the site is not subject to any order issued under Section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State, following contact and discussion with the appropriate state petroleum program official. Please contact the EPA Project Officer for additional information.

b. Documentation must include:

- i. the identity of the State program official contacted;
- ii. the State official's telephone number;
- iii. the date of the contact; and
- iv. a summary of the discussion relating to the State's determination that there is no viable responsible party and that the person assessing or investigating the site is not potentially liable for cleaning up the site.

Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.

c. If the State chooses not to make the determinations described in Section II.A.3. above, the CAR must contact the EPA Project Officer and provide the necessary information for EPA to make the requisite determinations.

d. EPA will make all determinations on the eligibility of petroleum-contaminated brownfield sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. § 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the necessary information for EPA to make the determinations.

### III. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

#### A. Sufficient Progress

1. This condition supplements the requirements of the Termination and Sufficient Progress Conditions in the General Terms and Conditions.

**Community-Wide Assessment Agreements** - EPA's Project Officer will assess whether the recipient is making sufficient progress in implementing its cooperative agreement 18 months and 30 months from the date of award. EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the CAR, if directed to do so, must implement a corrective action plan concurred on by the EPA Project Officer and approved by the Award Official or Grants Management Officer. Alternatively, EPA may terminate this agreement under 2 CFR § 200.340 for material non-compliance with its terms, or with the consent of the CAR as provided at 2 CFR § 200.340, depending on the circumstances.

Sufficient progress at 18 months is indicated when:

- at least 25% of funds have been drawn down and disbursed for eligible activities;
- a solicitation for a Qualified Environmental Professional(s) has been released;
- sites are prioritized or an inventory has been initiated (unless site prioritization or an inventory was completed prior to award);
- community involvement activities have been initiated; and/or
- other documented activities have occurred that demonstrate to EPA's satisfaction that the CAR will successfully perform the cooperative agreement.

Sufficient progress at 30 months is indicated when:

- at least 45% of funds have been drawn down and disbursed for eligible activities;
- a Qualified Environmental Professional(s) has been procured;
- assessments on at least two sites have been initiated; and/or
- other documented activities have occurred that demonstrate to EPA's satisfaction that the CAR will successfully perform the cooperative agreement.

#### B. Substantial Involvement

1. The EPA Project Officer will be substantially involved in overseeing and monitoring this cooperative agreement.

Substantial involvement, includes, but is not limited to:

- a. Close monitoring of the CAR's performance to verify compliance with the EPA-approved workplan and achievement of environmental results.
- b. Participation in periodic telephone conference calls to share ideas, project successes and challenges, etc., with EPA.
- c. Reviewing and commenting on quarterly and annual reports prepared under the cooperative agreement (the final decision on the content of reports rests with the recipient or subrecipients receiving pass-through awards).
- d. Verifying sites meet applicable site eligibility criteria (including property-specific funding determinations described in Section II.A.2.) and when the CAR awards a subaward for site assessment. The CAR must obtain technical assistance from the EPA Project Officer, or his/her designee, on which sites qualify as a brownfield site and determine whether the statutory prohibitions found in CERCLA § 104(k)(5)(B)(i)-(iv) apply. (Note, the prohibition does not allow a subrecipient to use EPA cooperative agreement funds to assess a site for which the subrecipient is potentially liable under CERCLA § 107.)
- e. Reviewing and approving Quality Assurance Project Plans and related documents or verifying that appropriate Quality Assurance requirements have been met where quality assurance activities are being conducted pursuant to an EPA-approved Quality Assurance Management Plan.

Substantial involvement may also include, depending on the direction of the EPA Project Officer:

- f. Collaboration during the performance of the scope of work including participation in project activities, to the extent permissible under EPA policies. Examples of collaboration include:
  - i. Consultation between EPA staff and the CAR on effective methods of carrying out the scope of work provided the CAR makes the final decision on how to perform authorized activities.
  - ii. Advice from EPA staff on how to access publicly available information on EPA or other federal agency websites.
  - iii. With the consent of the CAR, EPA staff may provide technical advice to the CAR's contractors or subrecipients provided the CAR approves any expenditures of funds necessary to follow advice from EPA staff. (The CAR remains accountable for performing contract and subaward management as specified in 2 CFR § 200.318 and 2 CFR § 200.332 as well as the terms of the EPA cooperative agreement.)
  - iv. EPA staff participation in meetings, webinars, and similar events upon the request of the CAR or in connection with a co-sponsorship agreement.
- g. Reviewing proposed procurements in accordance with 2 CFR § 200.325, as well as the substantive terms of proposed contracts or subawards as appropriate.
- h. Reviewing the qualifications of key personnel (EPA does not have the authority to select employees or contractors, including consultants, employed by the award CAR).
- i. Reviewing all costs incurred by the CAR and/or its contractor(s) if needed to ensure appropriate

expenditure of grant funds.

EPA may waive any of the provisions in Section III.B.1., except for property-specific funding determinations. The EPA Project Officer will provide waivers to provisions a. – e. in Section III.B.1 in writing.

2. Effects of EPA's substantial involvement include:

- a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or rights, authorities, and actions under CERCLA or any federal statute.
- b. The CAR remains responsible for ensuring that all assessments are protective of human health and the environment and comply with all applicable federal and state laws.
- c. The CAR and its subrecipients remain responsible for ensuring costs are allowable under 2 CFR Part 200, Subpart E.

### C. Cooperative Agreement Recipient Roles and Responsibilities

1. CARs, other than state entities, that procure a contractor(s) (including consultants) where the contract will be more than the micro-purchase threshold in 2 CFR § 200.320(a)(1) (\$10,000 for most CARs) must select the contractor(s) in compliance with the fair and open competition requirements in 2 CFR Part 200 and 2 CFR Part 1500. CARs may procure multiple contractors to ensure the appropriate expertise is in place to perform work under the agreement (e.g., expertise to conduct site assessment activities vs. planning activities) and to allow the ability for work be performed concurrently in multiple target areas and/or at sites.
2. The CAR must acquire the services of a Qualified Environmental Professional(s) as defined in 40 CFR § 312.10, if it does not have such a professional on staff to coordinate, direct, and oversee the brownfield site assessment activities at a given site.
3. **[If subawards are approved for this agreement] Subawards** are defined at 2 CFR § 200.1. The CAR shall not subaward to for-profit organizations or individual consultants. The CAR must obtain commercial services and products necessary to carry out this agreement under competitive procurement procedures as described in 2 CFR §§ 200.317 through 200.327. The CAR must obtain written approval from EPA's Award Official for any subawards that are not described in the approved work plan in accordance with 2 CFR § 200.308.

In addition, EPA policy encourages awarding subawards competitively and the CAR must consider awarding subawards through competition. Recipients may consult EPA's [Subaward Policy](#) and [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#) for additional guidance. The Best Practice Guide provides information on distinguishing between subawards and procurement contracts.

4. The CAR is responsible for ensuring that funding received under this cooperative agreement does not exceed the statutory \$200,000 funding limitation for an individual brownfield site. Waiver of this funding limit for a brownfield site must be submitted to the EPA Project Officer and approved prior to the expenditure of funding exceeding \$200,000. In no case may funding for site-specific assessment activities exceed \$350,000 on a site receiving a waiver.

CARs expending funding from a Community-wide Assessment cooperative agreement must include this amount in any total funding expended on the site.

5. Cybersecurity – The recipient agrees that when collecting and managing environmental data under this cooperative agreement, it will protect the data by following all applicable State or Tribal law cybersecurity requirements.

a. EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement are secure. For purposes of this section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer no later than 90 days after the date of this award and work with the designated Regional/ Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

b. The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in Cybersecurity Section a. above if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR § 200.332(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

6. All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at [www.fgdc.gov](http://www.fgdc.gov).

#### **D. Quarterly Progress Reports**

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.329, *Monitoring and Reporting Program Performance*), the CAR agrees to submit quarterly progress reports to the EPA Project Officer within 30 days after each reporting period. The reporting periods are October 1 – December 31 (1<sup>st</sup> quarter); January 1 – March 31 (2<sup>nd</sup> quarter); April 1 – June 30 (3<sup>rd</sup> quarter); and July 1 – September 30 (4<sup>th</sup> quarter).

These reports shall cover work status, work progress, difficulties encountered, preliminary data results and a statement of activity anticipated during the subsequent reporting period, including a description of equipment, techniques, and materials to be used or evaluated. A discussion of expenditures and financial status for each workplan task, along with a comparison of the percentage of the project completed to the project schedule and an explanation of significant discrepancies shall be included in the report. The report shall also include any changes of key personnel concerned with the project.

The CAR shall refer to and utilize the Quarterly Reporting function within the Assessment, Cleanup and Redevelopment Exchange System (ACRES) to submit quarterly reports unless approval is obtained from the EPA Project Officer to use an alternate format for reports.

2. The CAR must submit progress reports on a quarterly basis in ACRES, or to the EPA Project Officer if an alternate format is approved. Quarterly progress reports must include:

- a. A summary that clearly differentiates between activities completed with EPA funds provided under the Brownfield Assessment cooperative agreement and related activities completed with other sources of leveraged funding.
- b. A summary and status of approved activities performed during the reporting quarter; a summary of the performance outputs/outcomes achieved during the reporting quarter; and a description of problems encountered during the reporting quarter that may affect the project schedule.
- c. A comparison of actual accomplishments to the anticipated outputs/outcomes specified in the EPA-approved workplan and reasons why anticipated outputs/outcomes were not met.
- d. An update on the project schedule and milestones, including an explanation of any discrepancies from the EPA-approved workplan.
- e. A list of the properties where assessment activities were performed and/or completed during the reporting quarter.
- f. A budget summary table with the following information: current approved project budget; EPA funds drawn down during the reporting quarter; costs drawn down to date (cumulative expenditures); program income generated and used (if applicable) (i.e., program income received and disbursed during the reporting quarter and during the entire cooperative agreement, and the amount of program income remaining); and total remaining funds. The CAR should include an explanation of any discrepancies in the budget from the EPA-approved workplan, cost overruns or high unit costs, and other pertinent information.
- g. **[Local governments only]** For local governments that are using cooperative agreement funds for health monitoring, the quarterly report must also include the specific budget, the quarterly expenditure, and cumulative expenditures to demonstrate that 10% of federal funding is not exceeded.

Note: Each property where assessment activities were performed and/or completed must have its corresponding information updated in ACRES (or via the Property Profile Form with prior approval from the EPA Project Officer) prior to submitting the quarterly progress report (see Section III.E. below).

3. **[If subawards are approved for this agreement]** Subawards – If the workplan and budget for this agreement include subawards, the CAR is a pass-through entity under the “Establishing and Managing Subaward” General Term and Condition of this agreement. As the pass-through entity, the CAR must report to EPA on its subaward monitoring activities under [2 CFR § 200.332\(d\)](#), including the following information on subawards as part of the CAR’s quarterly performance reporting:

- a. Summaries of results of reviews of financial and programmatic reports;
- b. Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance;
- c. Environmental results the subrecipient achieved;
- d. Summaries of audit findings and related pass-through entity management decisions, if any; and

e. Actions the pass-through entity has taken to correct any deficiencies such as those specified at [2 CFR § 200.332\(e\)](#), [2 CFR § 200.208, Specific conditions](#), and [2 CFR § 200.339, Remedies for Noncompliance](#).

4. The CAR must maintain records that will enable it to report to EPA on the amount of funds disbursed by the CAR to assess specific properties under this cooperative agreement.

5. In accordance with 2 CFR § 200.329(e)(1), the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the EPA-approved workplan.

#### **E. Property Profile Submission**

1. The CAR must report on interim progress (i.e., assessment started) and any final accomplishments (i.e., assessment completed, clean up required, contaminants, institutional controls, engineering controls) by completing and submitting relevant portions of the Property Profile Form using the Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. The CAR must enter any new data into ACRES prior to submitting the quarterly progress report to the EPA Project Officer. The CAR must utilize ACRES unless approval is obtained from the EPA Project Officer to utilize the hardcopy version of the Property Profile Form.

#### **F. Final Technical Cooperative Agreement Report with Environmental Results**

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.329, *Monitoring and Reporting Program Performance* and 2 CFR § 200.344(a), *Closeout*), the CAR agrees to submit to the EPA Project Officer within 120 days after the expiration or termination of the approved project period a final technical report on the cooperative agreement via email; unless the EPA Project Officer agrees to accept a paper copy of the report. The final technical report shall document project activities over the entire project period and shall include brief information on each of the following areas:

- a. a comparison of actual accomplishments with the anticipated outputs/outcomes specified in the EPA-approved workplan;
- b. reasons why anticipated outputs/outcomes were not met; and
- c. other pertinent information, including when appropriate, analysis and explanation of cost overruns or high unit costs.

### **IV. FINANCIAL ADMINISTRATION REQUIREMENTS**

#### **A. Eligible Uses of the Funds for the Cooperative Agreement Recipient**

1. To the extent allowable under the EPA-approved workplan, cooperative agreement funds may be used for eligible programmatic expenses to inventory, characterize, assess sites; conduct site-specific planning, general brownfield-related planning activities around one or more brownfield sites, and outreach. Eligible programmatic expenses include activities described in Section V. of these Terms and Conditions. In addition, eligible programmatic expenses may include:

- a. Determining whether assessment activities at a particular site are authorized by CERCLA § 104(k).

- b. Ensuring that an assessment complies with applicable requirements under federal and state laws, as required by CERCLA § 104(k).
- c. Preparing and updating an Analysis of Brownfield Cleanup Alternatives (ABCA) which will include information about the site and contamination issues, cleanup standards, applicable laws, alternatives considered, and the proposed cleanup.
- d. Developing a Quality Assurance Project Plan (QAPP) as required by 2 CFR § 1500.12. The specific requirement for a QAPP is outlined in *Implementation of Quality Assurance Requirements for Organizations Receiving EPA Financial Assistance* available at <https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial>.
- e. Using a portion of the cooperative agreement funds to purchase environmental insurance for the characterization or assessment of the site. [Funds shall not be used to purchase insurance intended to provide coverage for any of the ineligible uses under Section IV., *Ineligible Uses of the Funds for the Cooperative Agreement Recipient*.]
- f. Any other eligible programmatic costs, including direct costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding, monitoring, and managing subawards to the extent required to comply with 2 CFR § 200.332 and the “Establishing and Managing Subawards” General Term and Condition; and carrying out community involvement pertaining to the assessment activities.

2. **[Local Governments Only]** If authorized in the EPA-approved workplan and budget narrative, up to 10% of the funds awarded by this agreement may be used by the CAR itself as a programmatic cost for Brownfield Program development and implementation of monitoring health conditions and institutional controls. The health monitoring activities must be associated with brownfield sites at which at least a Phase II environmental site assessment is conducted and is contaminated with hazardous substances. The CAR must maintain records on funds that will be used to carry out this task to ensure compliance with this requirement.

3. Administrative Costs - Under CERCLA § 104(k)(5)(E), CARs and subrecipients may use up to 5% of the amount of federal funding for this cooperative agreement for administrative costs, including indirect costs under 2 CFR § 200.414. The limit on administrative costs for the CAR under this agreement is **\$25,000**. The total amount of indirect costs and any direct costs for cooperative agreement administration by the CAR paid for by EPA under the cooperative agreement shall not exceed this amount. Subrecipients may use up to 5% of the amount of Federal funds in their subawards for administrative costs. As required by 2 CFR § 200.403(d), the CAR and subrecipients must classify administrative costs as direct or indirect consistently and shall not classify the same types of costs in both categories. The term “administrative costs” does not include:

- a. Investigation and identification of the extent of contamination of a brownfield site;
- b. design and performance of a response action; or
- c. monitoring of a natural resource.

Eligible cooperative agreement and subaward administrative costs subject to the 5% limitation include direct costs for:

- a. Costs incurred to comply with the following provisions of the *Uniform Administrative Requirements for Cost Principles and Audit Requirements for Federal Awards* at 2 CFR Parts 200 and 1500 other than those

identified as programmatic.

- i. Record-keeping associated with equipment purchases required under 2 CFR § 200.313;
  - ii. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 2 CFR § 200.308;
  - iii. Maintaining and operating financial management systems required under 2 CFR § 200.302;
  - iv. Preparing payment requests and handling payments under 2 CFR § 200.305;
  - v. Financial reporting under 2 CFR § 200.328;
  - vi. Non-federal audits required under 2 CFR Part 200, Subpart F; and
  - vi. Closeout under 2 CFR § 200.344 with the exception of preparing the recipient's final performance report. Costs for preparing this report are programmatic and are not subject to the 5% limitation on direct administrative costs.
- b. Pre-award costs for preparation of the proposal and application for this cooperative agreement (including the final workplan) or applications for subawards are not allowable as direct costs but may be included in the CAR's or subrecipient's indirect cost pool to the extent authorized by 2 CFR § 200.460.

#### **B. Ineligible Uses of the Funds for the Cooperative Agreement Recipient**

1. Cooperative agreement funds shall not be used by the CAR for any of the following activities:
  - a. Cleanup activities;
  - b. Site development activities that are not brownfield site assessment activities (e.g., marketing of property (activities or products created specifically to attract buyers or investors) or construction of a new facility);
  - c. General community visioning, area-wide zoning updates, design guideline development, master planning, green infrastructure, infrastructure service delivery, and city-wide or comprehensive planning/plan updates – these activities are all ineligible uses of grant funds if unrelated to advancing cleanup and reuse of brownfield sites or sites to be assessed. Note: for these types of activities to be an eligible use of grant funds, there must be a specific nexus between the activity and how it will help further cleanup and reuse of the priority brownfield site(s). This nexus must be clearly described in the workplan for the project;
  - d. Job training activities unrelated to performing a specific assessment at a site covered by the cooperative agreement;
  - e. To pay for a penalty or fine;
  - f. To pay a federal cost share requirement (e.g., a cost share required by another federal grant) unless there is specific statutory authority;
  - g. To pay for a response cost at a brownfield site for which the CAR or subaward recipient is potentially liable under CERCLA § 107;
  - h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to

the assessment; and

- i. Unallowable costs (e.g., lobbying and purchases of alcoholic beverages) under 2 CFR Part 200, Subpart E.

2. Cooperative agreement funds shall not be used for any of the following properties:

- a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
- b. Facilities subject to unilateral administrative orders, court orders, and administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
- c. Facilities that are subject to the jurisdiction, custody or control of the United States government except for land held in trust by the United States government for an Indian tribe; or
- d. A site excluded from the definition of a brownfield site for which EPA has not made a property-specific funding determination.

### **C. Interest-Bearing Accounts and Program Income**

1. In accordance with 2 CFR § 1500.8(b), during the performance period of the cooperative agreement, the CAR is authorized to add program income to the funds awarded by EPA and use the program income under the same terms and conditions of this agreement.

2. Program income for the CAR shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income includes, but is not limited to, fees charged for conducting assessment, site characterizations, cleanup planning, or other activities when the costs for the activities are charged to this agreement.

3. The CAR must deposit advances of cooperative agreement funds and program income (i.e., fees) in an interest-bearing account.

- a. For interest earned on advances, CARs are subject to the provisions of 2 CFR § 200.305(b)(7)(ii) relating to remitting interest on advances to EPA on a quarterly basis.
- b. Any program income earned by the CAR will be added to the funds EPA has committed to this agreement and used only for eligible and allowable costs under the agreement as provided in 2 CFR § 200.307 and 2 CFR § 1500.8, as applicable.
- c. Interest earned on program income is considered additional program income.
- d. The CAR must disburse program income (including interest earned on program income) before requesting additional payments from EPA as required by 2 CFR § 200.305(b)(5).

4. As required by 2 CFR § 200.302, the CAR must maintain accounting records documenting the receipt and disbursement of program income.

5. The recipient must provide as part of its quarterly performance report and final technical report a description of how program income is being used. Further, a report on the amount of program income earned during the award period must be submitted with the quarterly performance report, final technical report, and Federal Financial Report (Standard

Form 425).

## V. ASSESSMENT REQUIREMENTS

### A. Authorized Assessment Activities

1. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling), the CAR shall consult with the EPA Project Officer regarding potential applicability of the National Historic Preservation Act (NHPA) (16 USC § 470) and, if applicable, shall assist EPA in complying with any requirements of the NHPA and implementing regulations.
2. If funds from this cooperative agreement are used to prepare an Analysis of Brownfield Cleanup Alternatives (ABCA), or equivalent state Brownfields program document, the CAR must include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, ability to implement, and the cost of the response proposed. The evaluation of alternatives must also consider the resilience of the remedial options to address potential adverse impacts caused by extreme weather events (e.g., sea level rise, increased frequency and intensity of flooding, etc.). The alternatives may additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed of, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The cleanup method chosen must be based on this analysis.

### B. Quality Assurance (QA) Requirements

1. When environmental data are collected as part of the brownfield assessment, the CAR shall comply with 2 CFR § 1500.12 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements. Recipients implementing environmental programs within the scope of the assistance agreement must submit to the EPA Project Officer an approvable Quality Assurance Project Plan (QAPP) at least 60 days prior to the initiating of data collection or data compilation. The Quality Assurance Project Plan (QAPP) is the document that provides comprehensive details about the quality assurance, quality control, and technical activities that must be implemented to ensure that project objectives are met. Environmental programs include direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology.

The QAPP should be prepared in accordance with [EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans](#). No environmental data collection or data compilation may occur until the QAPP is approved by the EPA Project Officer and Quality Assurance Regional Manager. Additional information on the requirements can be found at the EPA Office of Grants and Debarment website at <https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial>.

2. **Competency of Organizations Generating Environmental Measurement Data:** In accordance with Agency Policy Directive Number FEM-2012-02, *Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements*, the CAR agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency

is not practicable, the CAR agrees to demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data. The CAR shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at [http://www.epa.gov/fem/lab\\_comp.htm](http://www.epa.gov/fem/lab_comp.htm) or a copy may also be requested by contacting the EPA Project Officer for this award.

### C. Community Outreach

1. The CAR agrees to clearly reference EPA investments in the project during all phases of community outreach outlined in the EPA-approved workplan which may include the development of any post-project summary or success materials that highlight achievements to which this project contributed.
  - a. If any documents, fact sheets, and/or web materials are developed as part of this cooperative agreement, then they shall comply with the *Acknowledgement Requirements for Non-ORD Assistance Agreements* in the General Terms and Conditions of this agreement.
  - b. If a sign is developed as part of a project funded by this cooperative agreement, then the sign shall include either a statement (e.g., this project has been funded, wholly or in part, by EPA) and/or EPA's logo acknowledging that EPA is a source of funding for the project. The EPA logo may be used on project signage when the sign can be placed in a visible location with a direct linkage to site activities. Use of the EPA logo must follow the sign specifications available at <https://www.epa.gov/grants/epa-logo-seal-specifications-signage-produced-epa-assistance-agreement-recipients>.
2. The CAR agrees to notify the EPA Project Officer of public or media events publicizing the accomplishment of significant events related to construction and/or site reuse projects as a result of this agreement, and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.
3. To increase public awareness of projects serving communities where English is not the predominant language, CARs are encouraged to include in their outreach strategies communication in non-English languages. Translation costs for this purpose are allowable, provided the costs are reasonable.
4. All public awareness activities conducted with EPA funding are subject to the provisions in the General Terms and Conditions on compliance with section 504 of the Americans with Disabilities Act.

### D. All Appropriate Inquiry

1. As required by CERCLA § 104(k)(2)(B)(ii) and CERCLA § 101(35)(B), the CAR shall ensure that a Phase I site characterization and assessment carried out under this agreement will be performed in accordance with EPA's all appropriate inquiries regulation (AAI). The CAR shall utilize the practices in ASTM standard E1527-13 "*Standard Practices for Environmental Site Assessment: Phase I Environmental Site Assessment Process*" (or the latest recognized ASTM standard at the time the assessment is performed), or EPA's All Appropriate Inquiries Final Rule (40 CFR Part 312). A suggested outline for an AAI final report is provided in "*All Appropriate Inquiries Rule: Reporting Requirements and Suggestions on Report Content*" (Publication Number: EPA 560-F-14-003). This does not preclude the use of cooperative agreement funds for additional site characterization and assessment activities that may be necessary to characterize the environmental impacts at the site or to comply with applicable state standards.
2. AAI final reports produced with funding from this agreement must comply with 40 CFR Part 312 and must, at a minimum, include the information below. All AAI reports submitted to the EPA Project Officer as deliverables under this

agreement must be accompanied by a completed “*All Appropriate Inquiries: Reporting Requirements Checklist for Assessment Grant Recipients*” (Publication Number: EPA 560-F-17-194) that the EPA Project Officer will provide to the recipient. The checklist is available to CARs on EPA’s website at [www.epa.gov/brownfields](http://www.epa.gov/brownfields). The completed checklist must include:

a. An **opinion** as to whether the inquiry has identified conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property.

b. An identification of “**significant**” **data gaps** (as defined in 40 CFR § 312.10), if any, in the information collected for the inquiry. Significant data gaps include missing or unattainable information that affects the ability of the environmental professional to identify conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property. The documentation of significant data gaps must include information regarding the significance of these data gaps.

c. **Qualifications and signature** of the environmental professional(s). The environmental professional must place the following statements in the document and sign the document:

- “[I, We] declare that, to the best of [my, our] professional knowledge and belief, [I, we] meet the definition of Environmental Professional as defined in 40 CFR § 312.10 of this part.”
- “[I, We] have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. [I, We] have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.”

**Note: Please use either “I/my” or “We/our.”**

d. In compliance with 40 CFR § 312.31(b), the environmental professional must include in the final report an **opinion regarding additional appropriate investigation**, if the environmental professional has such an opinion.

3. EPA may review checklists and AAI final reports for compliance with the AAI regulation documentation requirements at 40 CFR Part 312 (or comparable requirements for those using ASTM Standard 1527-13 or the latest recognized ASTM standard at the time the assessment is performed). Any deficiencies identified during an EPA review of these documents must be corrected by the recipient within 30 days of notification. Failure to correct any identified deficiencies may result in EPA disallowing the costs for the entire AAI report as authorized by 2 CFR § 200.339. If a recipient willfully fails to correct the deficiencies EPA may consider other available remedies under 2 CFR § 200.339 and 2 CFR 200.340.

#### **E. Completion of Assessment Activities**

1. The CAR shall properly document the completion of all activities described in the EPA- approved workplan. This must be done through a final report or letter from a Qualified Environmental Professional, or other documentation provided by a State or Tribe that shows assessments are complete.

#### **F. Inclusion of Additional Terms and Conditions**

1. In accordance with 2 CFR § 200.334, the CAR shall maintain records pertaining to the cooperative agreement for a

minimum of three (3) years following submission of the final financial report unless one or more of the conditions described in the regulation applies. The CAR shall provide access to records relating to assessments supported with Assessment cooperative agreement funds to authorized representatives of the Federal government as required by 2 CFR § 200.337.

2. The CAR has an ongoing obligation to advise EPA if it assessed any penalties resulting from environmental non-compliance at sites subject to this agreement.

## **VI. PAYMENT AND CLOSEOUT**

For the purposes of these Terms and Conditions, the following definitions apply: “payment” is EPA’s transfer of funds to the CAR; “closeout” refers to the process EPA follows to ensure that all administrative actions and work required under the cooperative agreement have been completed.

### **A. Payment Schedule**

1. The CAR may request advance payment from EPA pursuant to 2 CFR § 200.305(b)(1) and the prompt disbursement requirements of the General Terms and Conditions of this agreement.

This requirement does not apply to states which are subject to 2 CFR § 200.305(a).

### **B. Schedule for Closeout**

1. Closeout will be conducted in accordance with 2 CFR § 200.344. EPA will close out the award when it determines that all applicable administrative actions and all required work under the cooperative agreement have been completed.

2. The CAR, within 120 days after the expiration or termination of the cooperative agreement, must submit all financial, performance, and other reports required as a condition of the cooperative agreement.

a. The CAR must submit the following documentation:

i. The Final Technical Cooperative Agreement Report as described in Section III.F. of these Terms and Conditions.

ii. Administrative and Financial Reports as described in the General Terms and Conditions of this agreement.

b. The CAR must ensure that all appropriate data have been entered into ACRES or all hardcopy Property Profile Forms are submitted to the EPA Project Officer.

c. As required by 2 CFR § 200.344, the CAR must immediately refund to EPA any balance of unobligated (unencumbered) advanced cash or accrued program income that is not authorized to be retained for use on other cooperative agreements.

### **Davis-Bacon Terms and Conditions For Cooperative Agreements to Governmental Entities**

#### **DAVIS-BACON PREVAILING WAGE TERM AND CONDITION**

The following terms and conditions specify how Cooperative Agreement Recipients (CARs) will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under CERCLA 104(g) and any other statute which makes DB applicable to EPA financial assistance. If a CAR has questions regarding when DB applies, obtaining the correct DB wage determinations, DB contract provisions, or DB compliance monitoring, they should contact the regional Brownfields Coordinator or Project Officer for guidance.

## 1. Applicability of the Davis-Bacon Prevailing Wage Requirements

After consultation with DOL, EPA has determined that for Brownfields Grants for remediation of sites contaminated with hazardous substances and petroleum, DB prevailing wage requirement apply when the project includes the following activities.

Hazardous substances contamination:

- (a) All construction, alteration and repair activity involving the remediation of hazardous substances, including excavation and removal of hazardous substances, construction of caps, barriers, structures which house treatment equipment, and abatement of contamination in buildings.

Petroleum contamination:

- (a) Installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping due to groundwater contamination,
- (b) Soil excavation/replacement when undertaken in conjunction with the installation of public water lines/wells described above, or
- (c) Soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement.

In the above circumstances, all the laborers and mechanics employed by contractors and subcontractors will be covered by the DB requirements for all construction work performed on the site. Other petroleum site cleanup activities such as in situ remediation, and soil excavation/replacement and tank removal when not in conjunction with paving or concrete replacement, will normally not trigger DB requirements.

If the CAR encounters a unique situation at a site (e.g., unusually extensive excavation, construction of permanent facilities to house in situ remediation systems, reconstruction of roadways) that presents uncertainties regarding DB applicability, the CAR must discuss the situation with EPA before authorizing work on that site.

## 2. Obtaining Wage Determinations

- (a) Unless otherwise instructed by EPA on a project specific basis, the CAR shall use the following DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. CARs must obtain proposed wage determinations for specific localities at <https://beta.sam.gov/>.

- (i) When soliciting competitive contracts, awarding new contracts or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments), the CAR shall use the "Heavy Construction" classification for the following activities:

Hazardous substances contamination: excavation and removal of hazardous substances, construction of caps, barriers, and similar activities that do not involve construction of buildings.

Petroleum contamination: installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping, including soil excavation/replacement.

- (ii) When soliciting competitive contracts, awarding new contracts, or issuing ordering instruments, the

CAR shall use the "Building Construction" classification for the following activities:

Hazardous substances contamination: construction of structures which house treatment equipment, and abatement of contamination in buildings (other than residential structures less than 4 stories in height).

Petroleum contamination: soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at current or former service station sites, hospitals, fire stations, industrial or freight terminal facilities, or other sites that are associated with a facility that is not used solely for the underground storage of fuel or other contaminant.

(iii) When soliciting competitive contracts, awarding new contracts or issuing ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at a facility that is used solely for the underground storage of fuel or other contaminant the CAR shall use the "Heavy Construction" classification. (Only applies to petroleum contamination.)

(iv) When soliciting competitive contracts, awarding new contracts or issuing ordering instruments for the abatement of contamination in residential structures less than 4 stories in height the CAR shall use "Residential Construction" classification. (Only applies to hazardous substances contamination.)

Note: CARs must discuss unique situations that may not be covered by the General Wage Classifications described above with EPA. If, based on discussions with a CAR, EPA determines that DB applies to a unique situation (e.g., unusually extensive excavation) the Agency will advise the CAR which General Wage Classification to use based on the nature of the construction activity at the site.

(b) CARs shall obtain the wage determination for the locality in which a Brownfields cleanup activity subject to DB will take place *prior* to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the CAR shall monitor <https://beta.sam.gov/> on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The CAR shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the CAR may request a finding from EPA that there is not a reasonable time to notify interested contractors of the modification of the wage determination. EPA will provide a report of the Agency's finding to the CAR.

(ii) If the CAR does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless EPA, at the request of the CAR, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The CAR shall monitor <https://beta.sam.gov/> on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(iii) If the CAR carries out Brownfields cleanup activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the CAR shall insert the appropriate DOL wage determination from <https://beta.sam.gov/> into the ordering instrument.

(c) CARs shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a CAR's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the CAR has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the CAR shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The CAR's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

### 3. Contract and Subcontract Provisions

(a) The CAR shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to DB, the following labor standards provisions.

#### (1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the applicable wage determination of the Secretary of Labor which the CAR obtained under the procedures specified in Item 2, above, and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the

contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. CARs shall require that the contractor and subcontractors include the name of the CAR employee or official responsible for monitoring compliance with DB on the poster.

(ii)(A) The CAR, on behalf of EPA, shall require that contracts and subcontracts entered into under this agreement provide that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA Award Official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii)(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the CAR agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the CAR to the EPA Award Official. The Award Official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the award official or will notify the award official within the 30-day period that additional time is necessary.

(ii)(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the CAR do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the Award Official within the 30-day period that additional time is necessary.

(ii)(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of

obligations under the plan or program.

(1) Withholding. The CAR, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to withhold from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, EPA may, after written notice to the contractor, or CAR take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(2) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the CAR who will maintain the records on behalf of EPA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/whd/forms/wh347.pdf> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the CAR for transmission to the EPA, if requested by EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly

submission to the CAR.

(ii)(B) Each payroll submitted to the CAR shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR Part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR Part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(ii)(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(ii)(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, EPA may, after written notice to the contractor, CAR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(3) Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be

paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(4) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(5) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, and also a

clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this term and condition.

(6) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(7) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(8) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors), the CAR, borrower or subrecipient and EPA, the U.S. Department of Labor, or the employees or their representatives.

(9) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### 4. Contract Provisions for Contracts in Excess of \$100,000

(a) Contract Work Hours and Safety Standards Act. The **CAR** shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set

forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The **CAR**, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to withhold from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in [29 CFR 5.1](#), the CAR shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the CAR shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

#### 5. Compliance Verification

(a) The CAR shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in [29 CFR 5.6\(a\)\(6\)](#), all interviews must be conducted in confidence. The CAR must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The CAR shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the CAR must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. CARs must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. CARs shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The CAR shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The CAR shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the CAR must spot check payroll data within two weeks of

each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. CARs must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the CAR shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The CAR shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) CARs must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <https://www.dol.gov/whd/america2.htm>.

END OF DOCUMENT

## Council Communication

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### Cutler District BayWalk Sidewalk Gap Update & ODOT Grant Funding Agreement

Meeting Date: November 14, 2022      Primary Staff Contact: Alison Robertson  
 Department: Economic Development      E-Mail: alisonr@lincolncity.org  
 Secondary Dept: Public Works      Secondary Contacts:  
 Approval:      Estimated Time: 10 Min

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#### **Objective:**

Enter into Local Agency Agreement: Pedestrian and Bicycle Program Project Agreement with ODOT to receive construction funding for the Cutler District BayWalk Sidewalk (Highway 101) Gap.

#### **Background and Budget:**

The 32-year duration of the "Year 2000 Development Plan" Urban Renewal Area stopped collecting Tax Increment by June 2021, and continues to use remaining funds to manage Agency assets and also to wrap up projects identified in the 2008 Cutler District Community Vision & Corridor Plan. Staff continue efforts to complete both contracted and in-house work for two remaining capital projects (BayWalk Sidewalk Highway 101 Gap and Siletz Bay Access Trail).

The URA Project design and engineering for the BayWalk Sidewalk Highway 101 Gap, is currently about 600' of gravel shoulder currently used by bikes and pedestrians as the only north-south route within the south end of the City limits. This new improvement of a shared use path will complete the 1998 Taft Redevelopment Plan BayWalk concept to connect the Taft and Cutler City communities, and also serve as a segment of the City's Head to Bay Trail. Design began with Urban Renewal Agency funds in 2015 and was put on hold until other projects in the ODOT public right-of-way could be completed. The design contract costs increased from \$25,000, to \$150,000 to \$194,000 due to various project complexities (physical space; geotechnical conditions; and ODOT-City supported design). The project is now awaiting ODOT permit approval.

With limited Agency funds for the 'Year 2000 Development Plan' Area, no Agency or City construction funds had been identified. Public Works and Ec Dev staff worked with ODOT's Active Transportation Liaison to request construction funding through the 2021-2024 Pedestrian and Bicycle Program fund in the Statewide Transportation Improvement Program (STIP), which we just learned was successful in the amount of

\$540,000. This aligns with the current engineers' estimate. Public Works reviewed, and is comfortable with the estimate. Until a project is bid, we won't know the exact costs.

**Project History:**

- In June 2016, Agency and Public Works staff met to talk about the condition of the highway. At that time, one fence post was leaning over the bluff edge and another one was on the beach below.
- September 2016, Agency presented Public Works with estimated design layout of the sidewalk, showing a varied sidewalk width (from 10' to 6') depending on the bluff erosion.
- October 2016, Agency requested ODOT repairs of the section of highway in order to design/build sidewalk.
- In 2017, ODOT staff reviewed this section of Highway 101 and made a recommendation for full slope protection for 100-year fix, or an alternative soil nail wall. ODOT Maintenance does not consider this section of highway degradation an emergency, despite their own recommendation.
- In June 2018, Agency staff made state elected officials and the Governor's Regional Solutions Team Coordinator aware of the project status.
- In March 2019, staff met with ODOT to discuss possible solutions to moving the project forward.
- ODOT has not made possible any partnership funding on this project, design, engineering, or construction, at this time and cannot promise future funding. ODOT has said they are glad to see alternatives are being considered and are open to reviewing alternate design options.
- October 2019, staff met with the Governor's Regional Solutions Team to make them aware of the updated project status. ODOT Team Member requested a proposal from the Agency for project next steps.
- November 2019, staff received approval from the Agency to modify the scope for design/engineering to include additional studies for considerations on design approach.
- June 2021, change in design direction based on engineering discussions with ODOT and City Public Works.
- February 2022, design consultant submitted plans to ODOT for preliminary review/comment.
- April 2022, design/engineering contract updated to simplify design and include contract administration services.
- July 2022, Public Works and UR staff gave final approval of design submittal to ODOT for review and permit request.
- August 2022, ODOT received final design review request.
- September 2022, ODOT comments received by consultant and staff.

**Local Agency Agreement:**

Public Works has summarized the noteworthy points in the Agreement between the City and ODOT:

1. City agrees to deliver the project, and
2. Any costs over the estimate of \$540,000 will need to be covered by the City. This poses some risk but the benefits to project completion outweigh that risk.

This is a partnership project where the URA has paid for the design/engineering/permitting with Public Works input and support, and Public Works will oversee bidding and construction, with some assistance from outside consultants. If the project bidding process shows a significant increase to the project beyond the ODOT construction funding, and additional funds are needed, both City and remaining Urban Renewal Agency funds for the 'Year 2000 Development Plan' Area will be considered.

**Motion:**

Direct staff to enter into Local Agency Pedestrian and Bicycle Program Project Agreement with ODOT to receive construction funding in the amount of \$540,000 for the Cutler District BayWalk Sidewalk (Highway 101) Gap Project.

**Attachments:**

MCA73000-00009060\_US101\_Lincoln City BayWalk (Ph 2) (PDF)  
Handrail Render 2220301v3 (PDF)

Misc. Contracts and Agreements  
No. 73000-00009060

**LOCAL AGENCY AGREEMENT**  
**Pedestrian and Bicycle Program Project Agreement**  
US 101: Lincoln City BayWalk to Schooner Point (Phase 2)  
City of Lincoln City

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State" or "ODOT;" and CITY OF LINCOLN CITY, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. State has determined that Agency is eligible for state funds for the work to be performed under this Agreement through the Pedestrian and Bicycle Program. The Parties enter into this Agreement to identify the Project that will be funded with the state funds, and describe the method State will use to reimburse Agency for work performed on the Project using the state funds, including establishing invoicing requirements and the reimbursement rate.
2. By the authority granted in Oregon Revised Statute (ORS) [366.514](#), funds received from the State Highway Trust Fund are to be expended by the State and the various counties and cities for the establishment of footpaths and bicycle trails. For purposes of Article IX, Section 3(a), of the Oregon Constitution, the establishment and maintenance of such footpaths and bicycle trails are for highway, road, and street purposes when constructed within public right-of-way.
3. By the authority granted in ORS [190.110](#), [366.572](#) and [366.576](#), state agencies may enter into cooperative agreements with counties, cities, and units of local government for the performance of any or all functions and activities that a party to the Agreement, its officers, or agents have the authority to perform.
4. State established a Pedestrian and Bicycle Program fund in the Statewide Transportation Improvement Program (STIP) to meet the minimum requirement of one (1) percent of State Highway Funds to be spent on Pedestrian and Bicycle facilities. The 2021-2024 STIP programs \$22.2 million for the Pedestrian and Bicycle Program allocated to the Sidewalk Improvement Program (SWIP).
5. US 101 (Pacific Coast Highway) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
6. The Parties entered Agreement No. 32292 on October 13, 2017 for a cooperative improvement project along US 101, including sidewalk, paved parking, a landscaped

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tapered island, and curb ramps, from approximately Mile Post (MP) 118.37 to MP 118.45, for which Agency agreed to perform all maintenance duties. The duties and obligations in Agreement No. 32292 remain in full force and are not revised by the terms herein.

7. The purpose of this Agreement is to provide funding for Agency to construct sidewalk infill to connect existing sidewalks that will complete a continuous sidewalk as Phase 2 of Lincoln City BayWalk to Schooner Point.

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

### **TERMS OF AGREEMENT**

1. State and Agency agree to Agency delivering the US 101: Lincoln City BayWalk to Schooner Point (Phase 2) project, hereinafter referred to as "Project." The Project includes constructing sidewalk infill approximately between MP 118.25 to MP 118.39 to connect existing sidewalks, installing railing and water quality facilities. The Project location and approximate limits are shown on the map marked "Exhibit A," attached hereto and by this reference made a part hereof.
2. The total Project cost for the work to be performed under this Agreement is estimated at \$540,000, which is subject to change. State shall fund the Project in an amount not to exceed \$540,000. Agency shall be responsible for any portion of the Project cost which is not covered by State funds.
3. State shall reimburse Agency actual costs incurred in delivering the Project, up to the maximum amount of State funds committed for the Project.
4. Agency is solely responsible for any and all costs incurred in excess of the state funds identified in this Agreement. Any unspent state funds will be retained by State and will not be available for Agency use. State funds transferred to Agency must be used for the Project.
5. To be eligible for reimbursement, expenditures must comply with the requirements of Article IX, Section 3a of the Oregon Constitution. Eligible costs are defined as reasonable and necessary costs incurred by the Agency in performance of the Project.
6. The term of this Agreement will begin upon the date all required signatures are obtained. Work shall be completed no later than December 31, 2025. This Agreement will terminate unless extended by a fully executed amendment. Maintenance responsibilities shall survive any termination of this Agreement.

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## **AGENCY OBLIGATIONS**

1. Agency shall perform the work described in Terms of Agreement, paragraph 1 of this Agreement.
2. Agency shall, upon execution of this Agreement, forward to State a letter of request for an advance deposit or irrevocable letter of credit in the amount of \$270,000, which is fifty (50) percent of the costs related to the construction of the Project.
3. Upon completion of Project, Agency shall either send to State an invoice, which complies with Agency Obligations paragraph 11, for the amount which, when added to State's advance deposit, will equal 100 percent of the total Agency costs for Project, or Agency will refund to State any portion of said advance deposit which is in excess of the total Agency costs for Project.
4. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates in accordance with current state and federal laws and regulations; obtain all required permits; be responsible for all utility relocations; advertise for bid proposals; award all contracts; perform all construction engineering; and make all contractor payments required to complete the Project.
5. Agency shall submit a copy of the plans and specifications to State through District 4 Office for review and concurrence prior to advertising for a construction contract or prior to construction, if Agency forces will perform the construction work. Concurrence must be received from State prior to proceeding with the Project.
6. Agency shall not award a construction contract until State's Project Manager has reviewed and approved the low bidder's proposal and costs.
7. **Americans with Disabilities Act Compliance:**
  - a. When the Project scope includes work on sidewalks, shared-use-paths, 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, shared-use-paths, 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, shared-use-paths, curb ramps, and pedestrian-activated signals, including

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- using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
- iii. At Project completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:  
  
<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>; and
  - iv. Promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, shared-use-paths, curb ramps, and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by Agency and prior to release of any Agency contractor.
- b. Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Agency shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, disability organizations, and ODOT at least 10 days prior to the start of construction.
  - c. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
    - i. Pedestrian access is maintained as required by the ADA,
    - ii. Any complaints received by Agency identifying sidewalk, shared-use-paths, 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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- iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
    - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
  - d. Maintenance obligations in this section shall survive termination of this Agreement.
- 8. Agency shall contact State's District 4 Permits Office seven (7) working days prior to the commencement of construction or maintenance activities that impact travel lanes of US 101. No lane restrictions are permitted unless prior approval from State's District 4 Manager, or designee, is provided, and as follows:
  - a. No lane closures between the hours of 6:00 AM to 7:00PM Monday through Thursday.
  - b. No weekend or state recognized holiday lane closures.
  - c. Any deviations from lane restrictions must be requested and approved by State's District 4 Manager.
  - d. More restrictions to work times may be added if State observes traffic congestion or conditions warrant a change.
- 9. If Project includes traffic control devices or illumination on or along a state highway, Agency shall:
  - a. Obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic control device, or illumination to be installed on a state highway, pursuant to Oregon Administrative Rule (OAR) 734-020-0430.
  - b. Ensure that all Project work and maintenance activities involving pedestrian-activated signals comply with the ADA and Agency Obligations paragraph 7.
- 10. Agency shall submit all of the following items to State's Project Manager, at Project completion and prior to final payment:
  - a. Final Project Acceptance form No. 734-5216 (completed with State's Project Manager);
  - b. Final Cost with itemized statement; and
  - c. As-Constructed Drawings

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11. Agency shall present a final invoice for the eligible, actual costs incurred by Agency on behalf of the Project directly to State's Project Manager listed in this Agreement for review and approval. Agency must pay its contractors, consultants and vendors before submitting a request for reimbursement to ODOT for reimbursement. Such invoice shall be in a form identifying the Project, the Agreement number, the Project phase and amount charged to each (such as preliminary engineering, right of way, and construction), the invoice number, and will itemize all expenses for which reimbursement is claimed. Travel expenses will not be reimbursed.
12. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
13. Agency shall perform the services under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
14. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its subcontractors complies with these requirements.
15. Agency shall, at its own expense and upon completion of the Project, perform all maintenance for the Project. Maintenance shall survive any termination of this Agreement.
16. Utility relocation or reconstruction may or may not be an eligible Project expense according to the following standard:
  - a. The expense is an eligible expense if the owner of the utility facility possesses a property right for its location on the public right of way.

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- b. The expense is not an eligible expense if the owner of the utility facility does not possess a property right for its location, but the facility exists on the public right of way solely under the permission of the Agency or other road authority, whether that permission is expressed or implied, and whether written or oral.

17. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of the current budget. Agency further agrees that they will only submit invoices to State for reimbursement on work that has been performed and paid for by Agency as described in this Agreement.

18. If Agency enters into a contract for performance of work under this Agreement, Agency agrees to comply with the following:

a. Contracts:

- i. All contracts must be in writing, executed by Agency, and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the contract. Use of a contract does not relieve Agency of its responsibilities under this Agreement.
- ii. Agency shall require all of its contractors performing work under this Agreement to name State as a third-party beneficiary of the resulting contract with the contractor and to name State as an additional or "dual" obligee on contractor's payment and performance bonds.
- iii. Agency shall provide State with a copy of any signed contract upon request by State. This paragraph 18.a.iii shall survive expiration or termination of this Agreement.
- iv. Agency must report to State any material breach of a term or condition of a contract within ten (10) days of Agency discovering the breach.

b. Contract Indemnification:

- i. To the fullest extent permitted by law, and except to the extent otherwise void under ORS 30.140, Agency shall require each of its contractors that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, the Oregon Transportation Commission, and the Oregon Department of Transportation and their respective officers, members, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever (hereinafter, referred to individually and collectively as "Claims") to the extent such Claims result from, arise out of, or relate to the

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- activities or omissions of Agency's contractor, subcontractor(s), or their respective officers, employees, or agents under the resulting contract or otherwise related to the project.
- ii. Any such indemnification shall also provide that Agency's contractor shall ensure that neither Agency's contractor(s) or its subcontractor(s) nor any attorney engaged by any Agency contractor or subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that any Agency contractor or subcontractor is prohibited from defending the State of Oregon, or that any Agency contractor or subcontractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor(s) and subcontractor(s) if the State of Oregon elects to assume its own defense.
- c. Contract Insurance:
- i. Agency shall require the other party or parties to each of its contracts, that are not units of local government as defined in ORS 190.003, to meet the minimum insurance requirements provided in Exhibit B, attached hereto and by this reference made a part hereof. Agency may specify insurance requirements for its contractor(s) above the minimum insurance requirements specified in Exhibit B. Agency shall verify its contractor(s) meet the insurance requirements in Exhibit B.
  - ii. Agency shall determine insurance requirements and insurance types and amounts as deemed appropriate based on the risk of the work outlined within the contract. Agency shall specify insurance requirements and require its contractor(s) to meet the insurance requirements. Agency shall obtain proof of the required insurance coverages, as applicable, from any contractor providing services related to the contract.
  - iii. Agency shall require its contractor(s) to require and verify that all subcontractors carry insurance coverage that the contractor(s) deems appropriate based on the risk of the subcontracted work.
- d. Agency shall include provisions in each of its contracts requiring its contractors to comply with the indemnification and insurance requirements in subparagraphs b and c of this Agency Obligations Paragraph 18.

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19. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts during the course of the Project and for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State. This section shall survive any expiration or termination of this Agreement.
20. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
21. Agency's Project Manager for this Agreement is Stephanie Reed, Public Works Director/City Engineer, City of Lincoln City, 801 SW Hwy 101, Lincoln City, Oregon 97367; (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.

## **STATE OBLIGATIONS**

1. State shall upon receipt of a fully executed copy of this Agreement, and upon a subsequent letter of request from Agency, forward to Agency an advance deposit or irrevocable letter of credit in the amount of \$270,000, which is fifty percent (50%) of State funds allocated for the Project, as identified in Terms of Agreement, paragraph 2 for the work to be performed by Agency at State's request.
2. Upon completion of Project, inspection and approval by State staff, and receipt from Agency of an itemized statement of the actual total cost of the Project, State shall deposit with Agency a final payment, which when added to any amount previously advanced by State, shall not exceed the actual total cost of the State's share of the originally estimated Project cost. Should final Project costs exceed the original estimate, extra costs shall be borne by Agency.
3. State's local District Office shall review and must concur in the plans prepared by Agency before the Project is advertised for a construction contract or before construction begins if Agency forces shall perform the work. State's Pedestrian and Bicycle Program office shall process all invoices submitted by Agency.
4. If the Project has the potential of needing right of way, and to ensure compliance in the event that right of way is unexpectedly needed, a right of way services agreement will be required. State, at Project expense, shall be responsible for Project acquisition and coordination of the right of way certification at Project expense.

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5. State's Project Manager will arrange for a final project inspection upon notification from Agency of Project completion, to confirm project completeness and fulfillment of Agreement obligations, prior to final payment.
6. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of current biennial budget.
7. State's Project Manager for this Agreement is Jenna Berman, Region 2, Active Transportation Liaison, 3700 SW Philomath Blvd, Corvallis, Oregon 97333; (971) 719-6024; jenna.berman@odot.oregon.gov, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## **GENERAL PROVISIONS**

1. This Agreement may be terminated by mutual consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
  - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If Agency fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
  - c. If Agency fails to provide payment of its share of the cost of the Project.
  - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.
3. If State terminates this Agreement for the reasons described in General Provisions 2(a) or (b) above, Agency must reimburse State for all state funds expended. If Agency fails to reimburse State, State may withhold Agency's proportional share of State Highway Fund distribution necessary to reimburse State for costs incurred by such

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Agency breach.

4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
6. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
7. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would

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have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

8. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
9. State and Agency are the only Parties to this Agreement and, as such, are the only Parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third persons unless such third persons are expressly identified by name and specifically described as intended to be beneficiaries of its terms.
10. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
11. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision.

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

**Signature Page to Follow**

City of Lincoln City/ODOT  
Agreement No. 73000-00009060

**CITY OF LINCOLN CITY**, by and through  
its designated officials

By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

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

By \_\_\_\_\_  
Agency Legal Counsel  
  
Date \_\_\_\_\_

**Agency Contact:**  
Stephanie Reid, City Engineer  
Public Works Director  
City of Lincoln City  
801 SW Hwy 101  
Lincoln City, OR 97367  
(541) 996-1236  
sreid@lincolncity.org

**State Contact:**  
Jenna Berman  
Region 2 Active Transportation Liaison  
3700 SW Philomath Blvd  
Corvallis, OR 97333  
(971) 719-6024  
jenna.berman@odot.oregon.gov

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

By \_\_\_\_\_  
Policy and Implementation Manager  
  
Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Pedestrian and Bicycle Program Manager  
  
Date \_\_\_\_\_

By \_\_\_\_\_  
Region 2 Manager  
  
Date \_\_\_\_\_

By \_\_\_\_\_  
District 4 Manager  
  
Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General  
  
Date \_\_\_\_\_

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**EXHIBIT A – Approximate Location Map**  
**US 101: Lincoln City BayWalk to Schooner Point (Phase 2)**



## **EXHIBIT B**

### **Contract Insurance Requirements**

#### **1. GENERAL.**

- a. Agency shall require, in its contracts with entities that are not units of local government as defined in ORS 190.003 (if any), that its contractors: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the contract commences, and ii) maintain the insurance in full force throughout the duration of the contract. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State. Agency shall not authorize work to begin under the contract until the insurance is in full force. Thereafter, Agency shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Agency shall incorporate appropriate provisions in the contract permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Agency permit work under a contract when Agency is aware that the contractor is not in compliance with the insurance requirements. All references to "contractor" in this Exhibit B refer to Agency's contractor as identified in this Paragraph 1.a
- b. The insurance specified below is a minimum requirement that the Agency shall require its contractor to meet, and shall include such requirement in Agency's contract with its contractor. Agency may determine insurance types and amounts in excess of the minimum requirement as deemed appropriate based on the risks of the work outlined within the contract.
- c. Agency shall require each of its contractors to require that all of its subcontractors carry insurance coverage that the contractor deems appropriate based on the risks of the subcontracted work. Contractor shall obtain proof of the required insurance coverages, as applicable, from any subcontractor providing services related to the Contract.

#### **2. TYPES AND AMOUNTS.**

##### **a. WORKERS COMPENSATION.**

All employers, including Agency's contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide **Workers' Compensation Insurance** coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage

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shall include Employer's Liability Insurance with limits not less than \$500,000 each accident. **Contractor shall require compliance with these requirements in each of its subcontractor contracts.**

**b. PROFESSIONAL LIABILITY.**

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

General:

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

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

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

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

**c. COMMERCIAL GENERAL LIABILITY.**

Commercial General Liability Insurance shall be issued on an occurrence basis covering bodily injury and property damage and shall include personal and advertising injury liability, products and completed operations, and contractual liability coverage. When work to be performed includes operations or activity within 50 feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass or crossing, the Contractor shall provide the Contractual Liability – Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy. Amounts below are a minimum requirement as determined by State:

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

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

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**d. AUTOMOBILE LIABILITY.**

Automobile Liability Insurance covering Contractor's business-related automobile use covering all owned, non-owned, or hired vehicles for bodily injury and property damage. Amount below is a minimum requirement as determined by State:

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

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

**e. EXCESS/UMBRELLA LIABILITY.**

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

**f. ADDITIONAL INSURED.**

The liability insurance coverages, except Professional Liability or Workers' Compensation/Employer's Liability, if included, must endorse the "**State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees**" as an **endorsed** Additional Insured but only with respect to the contractor's activities to be performed under the contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations.

Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to the Agency.

**g. "TAIL" COVERAGE.**

If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance or pollution liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the contract, for a minimum of twenty-four (24) months following the later of: (i) the contractor's completion and Agency's acceptance of all Services required under the contract or, (ii) the expiration of all warranty periods provided under the contract. Notwithstanding the foregoing twenty-four (24) month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the

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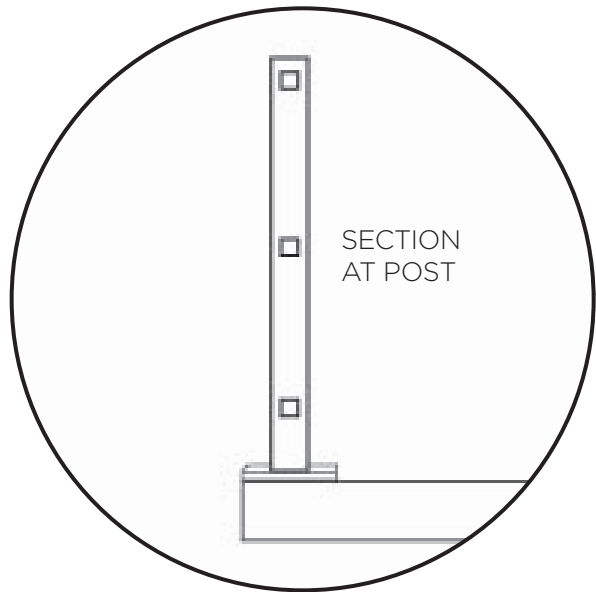
twenty-four (24) month period described above, then the contractor may request and State may grant approval of the maximum “tail “ coverage period reasonably available in the marketplace. If State approval is granted, the contractor shall maintain “tail” coverage for the maximum time period that “tail” coverage is reasonably available in the marketplace.

### **3. NOTICE OF CANCELLATION OR CHANGE.**

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

### **4. CERTIFICATE(S) OF INSURANCE.**

Agency shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the contract. The certificate(s) or an attached endorsement must endorse: i) **“State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees”** as an endorsed Additional Insured in regards to the Commercial General Liability and Automobile Liability policies and ii) that all liability insurance coverages shall be primary and non-contributory with any other insurance and self-insurance, with exception of Professional Liability and Workers’ Compensation/Employer’s Liability.



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