

## <u>CITY COUNCIL REGULAR SESSION AGENDA</u> <u>Monday, October 02, 2023 - 6:00 PM</u> <u>City Council Chambers</u>

All public meetings of the City of Newport will be held in the City Council Chambers of the Newport City Hall, 169 SW Coast Highway, Newport. The meeting location is accessible to persons with disabilities. A request for an interpreter, or for other accommodations, should be made at least 48 hours in advance of the meeting to Erik Glover, City Recorder at 541.574.0613, or <u>e.glover@newportoregon.gov</u>.

All meetings are live-streamed at https://newportoregon.gov, and broadcast on Charter Channel 190. Anyone wishing to provide written public comment should send the comment to publiccomment@newportoregon.gov. Public comment must be received four hours prior to a scheduled meeting. For example, if a meeting is to be held at 3:00 P.M., the deadline to submit written comment is 11:00 A.M. If a meeting is scheduled to occur before noon, the written submitted P.M. comment must be bv 5:00 the previous dav. To provide virtual public comment during a city meeting, a request must be made to the meeting staff at least 24 hours prior to the start of the meeting. This provision applies only to public comment and presenters outside the area and/or unable to physically attend an in person meeting.

The agenda may be amended during the meeting to add or delete items, change the order of agenda items, or discuss any other business deemed necessary at the time of the meeting.

## 1. CALL TO ORDER AND ROLL CALL

- 2. PLEDGE OF ALLEGIANCE
- 3. PUBLIC COMMENT

- This is an opportunity for members of the audience to bring to the Council's attention any item not listed on the agenda. Comments will be limited to three (3) minutes per person with a maximum of 15 minutes for all items. Speakers may not yield their time to others
- 3.A Public Comment from Cyr Public Comment from Cyr.pdf
- 3.B Public Comment from Jones-Romansic Public Comment Jones-Romansic.pdf
- 4. PROCLAMATIONS, PRESENTATIONS, AND SPECIAL RECOGNITIONS

Any formal proclamations or recognitions by the Mayor and Council can be placed in this section. Brief presentations to the City Council of five minutes or less are also included in this part of the agenda.

- 4.A A Proclamation Recognizing Fire Prevention Week 2023, Received by Fire Chief Rob Murphy Fire Prevention Week 2023 Proclamation 10-2-23.pdf
- 4.B A Proclamation Recognizing Banned Books Week, Received by Library Director Laura Kimberly. BANNED BOOKS PROCLAMATION\_2023.pdf

## 5. CONSENT CALENDAR

The consent calendar consists of items of a repeating or routine nature considered under a single action. Any Councilor may have an item on the consent agenda removed and considered separately on request.

5.A Receipt of Approved Committee Minutes PC\_Reg\_Session\_09-11-23\_Approved\_09-25-23.pdf PC\_Work\_Session\_09-11-23\_Approved\_09-25-23.pdf 08-16-2023\_Parking\_Advisory\_Comm\_Minutes-Approved 09-20-2023.pdf April 26, 2023 Minutes Police Advisory.pdf Police Advisory July 26, 2023 Minutes.pdf

## 6. PUBLIC HEARING

This is an opportunity for members of the audience to provide testimony/comments on the specific issue being considered by the City Council. Comments will be limited to three (3) minutes per person.

6.A Public Hearing and Potential Adoption of Ordinance No. 2214, an Ordinance Amending Chapters 1.50, 6.15, 6.20, 6.25, and 6.65 of the Newport Municipal Code to Establish an Administrative Framework for Metering Public Parking

## Areas

City Manager Report.pdf Staff Report.pdf Draft Ord. 2214 with Exhibits.pdf Planning Commission 05-22-23 Work Session Minutes.pdf City Council 06-20-2023 Work Session Minutes.pdf Parking Advisory Committee 06-21-2023 Minutes.pdf Ord 2163 - Adoption of City Parking Policies.pdf Rotary Bayfront Parking Presentation 9.21.23.pdf

## 7. CITY MANAGER'S REPORT

- All matters requiring approval of the City Council originating from the City Manager and departments will be included in this section. This section will also include any status reports for the City Council's information.
- 7.A Approval of an Intergovernmental Agreement with Lincoln County for the Lincoln County Winter Shelter Program City Manager's Report Intergovernmental Agreement City of Newport winter shelter - final draft 9-28-23.pdf Public Comment from C Connell.pdf HB3395.pdf
- 7.B Consideration of Additional Funding for Repair to the Frank Wade Park Tennis/Pickleball Court City Manager's Report Staff Report Frank Wade Courts PowerPoint
- 8. LOCAL CONTRACT REVIEW BOARD
- 8.A Authorization to Approve the Transfer of the Contract and Change Orders for Storm Pipe Rehabilitation and Outfall F Erosion and Slope Repair Dated January 22, 2021, from Michels Corporation to Michels Trenchless, Inc. City Manager's Report Staff report Michels Trenchless assignment.pdf Consent to Transfer - City of Newport Oregon.pdf CityofNewportOregon\_COI.pdf City of Newport Notice Letter 7.5.22.pdf 01\_NPT009\_Legals\_StormDrain\_100p.pdf agreement\_2919.pdf
- 8.B Authorization to Approve a Consent to Assignment of Contractual Obligations

## between the City of Newport and Pall Water to Trojan Technologies Corporation Effective June 13, 2023 City Manager's Report Contract Assignment Consent City of Newport.pdf

## 9. REPORT FROM MAYOR AND COUNCIL

This section of the agenda is where the Mayor and Council can report any activities or discuss issues of concern.

## 9.A Reports

CM Hall Report.pdf

### **10. PUBLIC COMMENT**

This is an additional opportunity for members of the audience to provide public comment. Comments will be limited to three (3) minutes per person with a maximum of 15 minutes for all items. Speakers may not yield their time to others.

## 11. ADJOURNMENT

[WARNING] This message comes from an external organization. Be careful of embedded links.

City of Newport, OR :: Contact Us - Web Form

The following information was submitted on 10/2/2023 at 11:49:43 AM

To: Public Comment Name: Ryc Yvonne Cyr Email: \_\_\_\_\_\_ Phone: \_\_\_\_\_\_ Subject: Newport Signs - keep

Message: We love our Newport welcome signs and have loved them for a long time. Please don't change them - "Crab capital of the world". We are the friendlies community on the coast. Resident since 2011.

To: Public Comment Name: Mona Jones-Romansic Email: \_\_\_\_\_\_\_\_\_ Phone: \_\_\_\_\_\_\_\_ Subject: Siletz River water quality

\_\_\_\_\_

Message: To Whom it Concerns,

I want to bring your attention to the issue of bio-solids being applied to fields adjacent to the Siletz River. Over the past 9 years over 3 million pounds of biosolids have been applied to these fields(based on DEQ reports). The bio-solids then leach into the river and create elevated nitrogen levels, which fuel algae blooms and impact water quality. Furthermore the presence of PFAS in the bio-solids also impacts the water quality in unknown ways. The EPA recommends quarterly tests for 40 known PFAS in drinking water. However the DEQ is currently NOT testing the Siletz river for these pollutants. That means that the drinking water intakes for the cities of Siletz, Toledo and parts of Newport are impacted by unknown levels of PFAS contamination. Currently Newport is the only municipality sending bio-solids to farms ABOVE the water intakes for all three cities. Please review your policy on this issue and consider the impact of releasing bio-solids into the water source for upwards of 20,000 people. City of Newport 2023 Proclamation

WHEREAS, the City of Newport is committed to ensuring the safety and security of all those living in and visiting our city; and fire is a serious public safety concern and homes are the locations where people are at greatest risk from fire; and

WHEREAS, home fires killed more than 2,800 people in the United States in 2021, according to the National Fire Protection Association® (NFPA®), and fire departments in the United States responded to 338,000 home fires; and

WHEREAS, cooking is the leading cause of home fires in the United States and fire departments responded to more than 166,400 annually between 2016 and 2020; and two of every five home fires start in the kitchen with 31% of these fires resulting from unattended cooking; and

WHEREAS, more than half of reported non-fatal home cooking fire injuries occurred when the victims tried to fight the fire themselves; and children under five face a higher risk of non-fire burns associated with cooking than being burned in a cooking fire; and

WHEREAS, Newport residents should turn pot handles toward the back of the stove; always keep a lid nearby when cooking; keep a three-foot kid-free zone around the stove, oven, and other things that could get hot; watch what they heat; and set a timer to remind them that they are cooking; and

WHEREAS, residents who have planned and practiced a home fire escape plan are more prepared and will therefore be more likely to survive a fire; and

WHEREAS, working smoke alarms cut the risk of dying in reported home fires almost in half; and

WHEREAS, Newport first responders are dedicated to reducing the occurrence of home fires and home fire injuries through prevention and protection education; and

WHEREAS, the 2023 Fire Prevention Week theme, "Cooking safety starts with YOU. Pay attention to fire prevention," effectively serves to remind us to stay alert and use caution when cooking to reduce the risk of kitchen fires.

THEREFORE, I Jan Kaplan Mayor of the City of Newport do hereby proclaim October 8–14, 2023, as Fire Prevention Week, and I urge all the people of Newport to check their kitchens for fire hazards and use safe cooking practices during Fire Prevention Week 2023.



# A PROCLAMATION OF THE CITY OF NEWPORT RECOGNIZING BANNED BOOKS WEEK

**WHEREAS**, the freedom to read is essential to our democracy, and reading is among our greatest freedoms; and

WHEREAS, privacy is essential to the exercise of that freedom, and the right to privacy is the right to open inquiry without having the subject of one's interest examined or scrutinized by others; and

WHEREAS, the freedom to read is protected by our Constitution; and

**WHEREAS** some individuals, groups, and public authorities work to remove or limit access to reading materials, to censor content in schools, to label "controversial" views, to distribute lists of "objectionable" books or authors, and to purge libraries of materials reflecting the diversity of society; and

WHEREAS, both governmental intimidation and the fear of censorship cause authors who seek to avoid controversy to practice self-censorship, thus limiting our access to new ideas; and

**WHEREAS**, every silencing of a heresy, every enforcement of an orthodoxy, diminishes the toughness and resilience of American society and leaves it less able to deal with controversy and difference; and

**WHEREAS**, Americans still favor free enterprise in ideas and expression, and can be trusted to exercise critical judgment, to recognize propaganda and misinformation, and to make their own decisions about what they read and believe, and to exercise the responsibilities that accompany this freedom; and

**WHEREAS**, intellectual freedom is essential to the preservation of a free society and a creative culture; and

**WHEREAS**, conformity limits the range and variety of inquiry and expression on which our democracy and our culture depend; and

**WHEREAS**, the American Library Association's Banned Books Week: Celebrating the Freedom to Read is observed during the last week of September each year as a reminder to Americans not to take their precious freedom for granted; and

**WHEREAS**, Banned Books Week celebrates the freedom to choose or the freedom to express one's opinion even if that opinion might be considered unorthodox or unpopular and stresses the importance of ensuring the availability of those unorthodox or unpopular viewpoints to all who wish to read them; now, therefore, be it

**RESOLVED**, that the Newport Public Library celebrates the American Library Association's Banned Books Week, October 1-7, 2023, and be it further

**RESOLVED**, that the Newport Public Library encourages all libraries and bookstores to acquire and make available materials representative of all the people in our society; and be it further

**NOW, THEREFORE**, I, Jan Kaplan, Mayor of the City of Newport, do hereby proclaim October 1-7, 2023, as Banned Books Week, and encourage free people to read freely, now and forever.

Dated: October 2, 2023

Jan Kaplan, Mayor

#### MINUTES City of Newport Planning Commission Regular Session Meeting Newport City Hall Council Chambers September, 11 2023

Planning Commissioners Present: Bill Branigan, Jim Hanselman, John Updike, Bob Berman (*by video*), Braulio Escobar, Gary East, and Marjorie Blom.

<u>City Staff Present</u>: Community Development Director (CDD), Derrick Tokos; and Executive Assistant, Sherri Marineau.

1. <u>Call to Order & Roll Call</u>. Chair Branigan called the meeting to order in the City Hall Council Chambers at 7:00 p.m. On roll call, Commissioners Branigan, Berman, Escobar, Hanselman, East, Updike, and Blom were present.

#### 2. <u>Approval of Minutes</u>.

Branigan reported minor corrections to both sets of the minutes.

# A. Approval of the Planning Commission Work Session Meeting Minutes of August 14, 2023.

**MOTION** was made by Commissioner Updike, seconded by Commissioner Escobar to approve the Planning Commission Work Session meeting minutes of August 14, 2023, with minor corrections. The motion carried unanimously in a voice vote.

# **B.** Approval of the Planning Commission Regular Session Meeting Minutes of August 14, 2023.

**MOTION** was made by Commissioner Updike, seconded by Commissioner Escobar to approve the Planning Commission Regular Session meeting minutes of August 14, 2023, with minor corrections. The motion carried unanimously in a voice vote.

#### 3. <u>Citizen/Public Comment.</u> None were heard.

4. <u>Action Items</u>. Tokos suggested the Commission do a motion to add an action item to the agenda to appoint the Planning Commission representative for the City Center Revitalization Planning Committee.

**MOTION** was made by Commissioner Blom, seconded by Commissioner Hanselman to add an action item to the agenda to appoint the Planning Commission representative for the City Center Revitalization Planning Committee. The motion carried unanimously in a voice vote.

**MOTION** was made by Commissioner Blom, seconded by Commissioner Berman to appoint Bob Berman as the Planning Commission representative for the City Center Revitalization Planning Committee. The motion carried unanimously in a voice vote.

5. <u>Public Hearings</u>. At 7:05 p.m. Chair Branigan opened the public hearing portion of the meeting. He asked the Commissioners for declarations of conflicts of interest, ex parte contacts,

bias, or site visits. None were heard. Branigan called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard.

# A. File 1-PD-23 / 3-ADJ-23: Final Development Plan and Adjustment Permit for the Oregon State University 77 Apartment-Style Student Housing Residential Units.

Tokos presented the staff report and explained the adjustment request to the off-street parking requirement. He provided an overview of the application for a final development plan in the Wilder planned development area, highlighting the criteria for approval and the conditions of approval. Tokos noted the applicant was required to provide additional overflow parking spaces and gravel reinforced turf to meet the 1.3 ratio of parking spaces per unit, and the location of the off-street parking was to be determined by the applicant. He suggested adjusting the parking ratio go from 1:1 to 1:8, with 81 surface parking spaces and 20 additional spaces for overflow. Tokos mentioned that Lincoln County Transit would determine if a stop was needed at the location, and if so, it must be a pullout to avoid buses stopping in travel lanes.

Berman questioned if the pond would have to be dredged. Tokos reported that dredging of the pond might be necessary in the future, depending on upstream activities and development. The city would have some maintenance responsibility. Updike questioned the timing of the dredging work for the pond, and if they needed to mitigate offsite drainage until construction started. Tokos reported there was an original erosion control program for site development work to try to limit the amount of turbid water that was flushed down into the drainage system. During the course of construction, the expectation was that the pond would hold for them proceeding their development. The dredging work would need to be done by the time of occupancy.

Updike asked if the distance for the trash enclosures were set up according to the new standards. Tokos reported the application was in before that ordinance was in effect, and couldn't be applied to this decision. Berman asked if the applicant checked with Thompsons Sanitary on their enclosures. Tokos reported that he raised the need for coordination with Thompsons with the applicant early in the process.

**Applicant**: Bob Cowen, Director of the Hatfield Marine Center, and Brian Varricchione, Planner with Mckenzie, Inc. addressed the Commission. Cowen discussed expanding the Hatfield Marine Science Center's operations with 450 students and a 30 percent increase in faculty. He noted that OSU made a promise to have extra students there and house them. The university aimed to build housing for students and professionals, ensuring they were not adding to the local housing shortage.

Varricchione reported they had worked to make sure this project conformed to the applicable code provisions and special dispensations granted to Wilder over the years. He explained the site was about five acres in size. As a result of this, one of the design objectives was to limit the footprint and to preserve trees with a L-shaped building and a courtyard for residents. Varricchione noted that there was a small wetland on the property as well. The Department of State Lands recognized the validity of this area for five years, but it had lapsed. However, the wetland scientists went back out and re measured and determined that the location conformed to what they measured previously, five years ago. They were confident the boundaries as show would continue to prevail.

Varricchione reviewed the utility plan and the proposed utility connections. He then went over the elevation drawings of the apartment building. The building would be 44.5 feet tall and under the height limit. Varricchione covered the image rendering of what the apartment building would look like from ground level. He explained there would be 77 units over three stories. There would be

81 bedrooms with a mix of studios and one bedroom units. There would be very few two-bedroom units. Varricchione mentioned that this wasn't a dormitory, but apartment style units with their own kitchens.

Varricchione reported that part of the motivation for the parking adjustment request was based on evidence from the surveys done at the OSU Corvallis campus. He noted that a large part of the request was based on data from the Institute for Transportation Engineers. Mckenzie's traffic engineers looked at the data and based their findings for parking on midrise apartments. They used that data to determine that based on bedroom count, the demand was less than one parking space per unit. OSU didn't want to go that low and suggested setting it at one space per unit with a few extra spaces. Varricchione wanted to point out that the addition of gravel parking would require them to take out more trees on the lot, which they wanted to avoid. They were requesting they keep the adjustment to just 81 spaces and see how it went.

Varricchione reported the State of Oregon had a special permit for erosion control, which was currently under review. The state would dictate various measures that were required to minimize soil leaving the site. Once approved, the state would monitor the construction.

Varricchione reported that the transit district looked into having a bus stop at the location and found that it was inconclusive on having one. They didn't request a stop be placed there.

Julie Bradshaw with Mckenzie Inc. addressed the Commission and reported that she was the project architect. She explained that they had looked into the trash requirements early on but didn't have written documentation from Thompsons yet. They would circle back with them to make sure the provisions were met. The trash enclosure would be located at the south of the site, and would have a double gate for the trash enclosure. Bradshaw reported there hadn't been any further conversations with transit. OSU understood that they didn't have plans for a stop at their site and would review this at a later time. There wasn't a current need for a stop, but there might need to be one at a later time. Escobar hoped they could put one in the future. Bradshaw said the county communicated that there wasn't a current need for a stop near the OSU visitor center, and there might be space for a turnout at the site for future needs. Hanselman asked if the transit had a stop at the Hatfield property. Cowen confirmed they had one near the visitor center. Varricchione stated they didn't have any problems with this condition.

Branigan asked if the professionals they recruited were from the Northwest or from all over the United States. Cowen reported the professionals were nationwide. The students were coming in the summer and from national programs. Branigan noted this location was remote as far as getting to restaurants and amenities. He questioned if OSU had any plans to run a shuttle bus or van service to take people to other spots in town. Cowen stated that some programs did this, but they weren't. This project's apartments had kitchens in them, and OSU assumed the residents would utilize them to cook. Hanselman asked what the projected occupancy rate would be. Cowen reported it was about 80 percent.

Branigan asked if Hatfield provides housekeeping services. Cowen reported there would be house cleaning, maintenance, and student activities for the site. Branigan asked if they would be increasing the staff at Hatfield to accommodate this. Cowen reported they would be adding three to four jobs.

Escobar thought the concept was positive, but questioned the push back on the concept of parking spaces. He asked how firm they were on the 81 spaces instead of the 100 in the staff report. Cowen

explained that they wanted to minimize the impact to the site, and only saw that 86 percent of the units would have cars, meaning there was less than one car for one parking space. They also intended to charge parking fees to reduce the desire for every student to have their own car there.

Berman pointed out that their previous iterations had a full time management onsite, and asked if they still had plans for this. Cowen reported there would be a fulltime onsite manager living onsite. Berman asked if bicycle parking facilities were included. Varricchione reported there would be bike parking at the ends of the "L" of the buildings, and a total of 33 spaces proposed. Berman asked what was their thoughts were on future phase expansions. Cowen reported it was a dream of their to expand, but it was hard to gather funds. Their most recent dream was to have smaller duplexes added to allow spaces for longer term professional residents, with six or eight of these units spread around. Hanselman asked if it would be on the same property. Cowen said it would be, and the thought was to nestle the buildings in the trees. He noted that another phase wasn't a very big possibility at that time. Hanselman pointed out that the addition of the duplexes meant they would have to cut down more trees.

Branigan questioned if the lighting would be the down skies type of lighting. Varricchione reported all of lighting would be appropriately shielded. Branigan asked if they would have stations for electric car charging. Varricchione reported under the Oregon State Code they were required to have 20 percent of the spaces be EV charging ready.

Updike asked if the bike parking would be covered. Varricchione reported most of it was. Updike asked if OSU had LEED Silver standards under that requirement. Varricchione said they had their own sustainability requirements and it was being designed to the LEED Silver. They weren't pursuing the certification, but looking at the design to see if they checked the boxes for sustainability.

East asked how much solar they would incorporate. Bradshaw reported the project would be solar ready, with portions that could have solar on it. When they reached out to the Lincoln County PUD and the Energy Trust of Oregon, they determined this was a dead zone for having solar incentives. Bradshaw explained they did their best to be ready for solar production if it happened in the future.

Proponents: None were heard.

**Opponents**: None were heard.

Updike asked if the sale approvals and CC&R's were pending or taken care of. Varricchione reported they had been completed with Wilder. Cowen reported they continued to communicate with Wilder to keep a good relationship.

Chair Branigan closed the hearing at 8:14 p.m.

**Deliberations**: Escobar thought the 77 units were needed and an asset to Newport, OSU, and the Marine Science Center. He had an issue with the pushback on the parking. Escobar thought if parking or a transit stop was needed, it could be located in the area. He was in favor of the proposal with the conditions presented by staff.

Blom agreed with Escobar. She thought the bus transit and parking was in a remote location. Blom was in favor of the project, but had concerns about the parking. She agreed with the staff recommendations. Blom expressed that she wanted to make sure there was an area to accommodate the bus transit system.

East was excited the project was going forward, and felt the application covered all the bases. He didn't see the parking with the projected occupancy being a problem. East noted there was a city loop bus route that ran by the location for people to utilize. He was in favor and excited to see it go forward.

Berman agreed with the other Commissioners and thought the big issue was the parking. There would be occasions when people would overpark on Harborton Street, which would be a problem. Berman was in favor of the condition requiring an additional 20 parking spaces, along with other conditions presented. He thought this would be a tremendous benefit overall to the city.

Hanselman thought the staff report was correct, and agreed with the other Commissioners that they were unwilling to make the parking adjustment because they wanted to see a plethora of parking there. He reported that he rented his personal property to OSU staff who held big picnics and had a large number of cars that accompanied them. Hanselman suspected the students would have gatherings, and wanted extra parking for their guests. He liked the project and applauded OSU for getting this built for their students. Hanselman was in support of the request.

Updike asked if the city was aware that OSU would be charging for parking when they put the staff report together. Tokos reported he wasn't aware that they would be charging, but didn't think that would affect his recommendation. His recommendation boiled down to the fact that the city didn't have any public parking that was proximate to this site to handle overflow. Tokos explained that he structured his recommendation this way because there would be periods of times where they would be at full occupancy, and there would be guest vehicles that would need to accommodate. Escobar reminded the Commission approved the same parking requirements for the South Beach Church. Updike noted that the South Beach Church wasn't charging for parking. He was on the fence on this issue. Updike was in favor of the staff report and the conditions within it.

Branigan was in favor of the project and happy to see OSU and Hatfield growing. He echoed what the fellow Commissioners thoughts were for parking, down cast lighting, and electric vehicle charging.

**MOTION** was made by Commissioner Escobar, seconded by Commissioner Blom to approve File 1-PD-23 / 3-ADJ-23 with the conditions listed in the staff report. The motion carried unanimously in a voice vote.

- 6. <u>New Business</u>. None were heard.
- 7. <u>Unfinished Business</u>. None were heard.
- 8. <u>Director Comments</u>. None were heard
- 9. <u>Adjournment</u>. Having no further business, the meeting adjourned at 8:26 p.m.

Respectfully submitted,

Sherri Marineau Executive Assistant

#### <u>MINUTES</u> City of Newport Planning Commission Work Session Meeting Newport City Hall Council Chambers September 11, 2023 6:00 p.m.

<u>Planning Commissioners Present</u>: Bill Branigan, Jim Hanselman, John Updike, Bob Berman (*by video*), Braulio Escobar, Gary East, and Marjorie Blom.

#### PC Citizens Advisory Committee Members Present: Dustin Capri.

#### PC Citizens Advisory Committee Members Absent: Greg Sutton.

- <u>City Staff Present</u>: Community Development Director (CDD), Derrick Tokos; and Executive Assistant, Sherri Marineau.
- 1. <u>Call to Order</u>. Chair Branigan called the Planning Commission work session to order at 6:00 p.m.

### 2. <u>New Business</u>.

A. <u>Discussion About Potential Craft/Cottage Industry Code Language for Newport Commercial</u> <u>Areas</u>. Tokos introduced Carol Shenk to the Commission. Shenk reported she represented the Coastal Arts Guild. She explained they were proposing a change to commercial zoning throughout Newport for what they called "custom creative work." The concept was to allow uses that were designated as light manufacturing in C-1, C-2 and C-3 zones, which were currently prohibited. Shenk explained they wanted to support the diverse economic development of Newport, entrepreneurs, and independent business people who wanted to have a creative use in the commercial areas.

Hanselman pointed out that in the materials Shenk submitted it said they were aware of three individuals or investment groups that investigated setting up these kinds of shops. He asked what kind of shops these might have been. Shenk reported that there was one retail art supply store with an art studio in back. There were also two art studios that would have galleries in the front. Branigan asked if the Guild thought these changes should apply to all commercial areas in Newport. Shenk confirmed it would be for all commercial zones, not just Nye Beach. There were sole proprietors who wanted to start a new life in Newport, but the zoning was a deterrent for them. Hanselman asked if they had a sense of how large the businesses would be. Shenk reported it depended on the use and would vary in size. The group used the Seattle Municipal Code as a model. This code gave them a square footage limit for printing presses, which helped to make the distinction between what was light manufacturing and custom creative work.

Hanselman asked what Newport identified as light manufacturing, and if any of the businesses on Shenk's list fell under this. Tokos thought that what this was getting at was a matter of scale. Industrial scale was much larger than the cottage. Tokos thought Newport's code could be clearer on this front. They needed to find out if the retail was the principal activity and if the industrial was ancillary. Tokos noted that many industrial uses needed to have ventilation, and many buildings in Newport weren't set up for this. This wasn't a reason not to do this, just something to be cognizant of. Hanselman asked how they could determine how much retail a business should be in order for these types of shops to be in these zones. Tokos said they would have a lot of leeway with this. They could require a retail connection or not, and something for the Commission to work out.

Berman thought this was a great idea. His only concern was the reference to food, which was a different nature of business. Shenk explained the intent was to promote a diverse creative economy, and it made sense to include food in this as well. Berman thought if they were to prepare language, he wanted an option that excluded food from the initiative to avoid competitive issues with nearby businesses. Capri asked Berman if he thought distilleries should be included. Berman thought distilleries would be fine to include, but noted that generally they wouldn't operate without food service.

Escobar asked if the examples Shenk presented could be independent standalone operations, or if they could be ancillary to and existing business. Shenk thought it could be either. Escobar asked if Shenk put together the materials utilizing the existing codes. Shenk confirmed they did. Escobar didn't think that cottage industries had much food service. Shenk agreed, and noted that the intent was to produce something to sell. She also noted that she gave recommendations on parking and the public interface requirements for possible approaches. What they were trying to do was fit this in all commercial code regulations and restrictions. However, the way the square footage was figured for retail might not make sense because a sculpture studio would have different traffic than a clothing store. Shenk wanted to make sure they weren't creating unnecessary burdens on entrepreneurs. Capri thought the Municipal Code would take care of this. Shenk noted the parking requirements were for the retail spaces, and defining the square footage of the retail for creative use might be difficult. Capri thought that in theory could be exclusive industrial use, which would have the lowest parking demand. Since there were many underutilized commercial spaces in Newport that had ample parking, this shouldn't be an issue. Capri noted that every issue he could think of would be covered in the Nuisance Code, or the Building Code. Shenk believed that by definition the current light manufacturing code also prohibited impacts like odor or pollution, so it was already contained. Capri questioned how much of an administrative impact this would be for the city and staff. Tokos said this could be relatively targeted and straight forward. Capri thought it was a great idea.

Blom thought that someone who made food like hot sauce, and had it available for people to taste it, would be considered food since there was not a food prep. Tokos said this would get into the Building Code that would have certain requirements for this type of food. There would also be a Health Department role with food as well. Shenk noted the thought was to create a community that was walkable with some sort of storefront. She didn't think they wanted a row of stores that were inaccessible. Berman agreed, and thought in order to have quality tourist commercial areas, there should be some sort of public facing aspect to the business.

Updike noted there was a statement in Shenk's letter that said I-Zones didn't require a public interface. Shenk noted the intent was to not change the uses in industrial zones. This was a suggestion that new uses be permitted in commercial zones, where existing industrial zones didn't have the extra requirement. Tokos agreed the light industrial zones could be a combined retail element with industrial.

Veronica Lindell addressed the Commission and said that she had a business in Nye Beach, and was a member of the Nye Neighborhood Association. She read a letter from Marcy Kenyon that expressed concerns about potential zoning code violations affecting her art studio and home in Nye Beach.

Janet Webster addressed the Commission and noted she walked Newport a lot and noticed a lot of empty storefronts. She didn't see stores actually making things, and thought that this highlighted the

need for more engaging storefronts in the city center. Webster thought that bringing people back to buildings that were showcasing creativity and work in progress would revitalize the walking experience for the public.

Tokos said if there was a general consensus to see some options for this, the earliest they could bring it forward was the October 23rd work session meeting. When they were ready to bring it forward, he would reach out to Carol Shenk and others to let them know.

Escobar thought that given the skill set that Shenk had, any amendments should be run past her for comments before a work session. Tokos would provide a copy to Shenk. Capri asked if this would only be for commercial zones, not W-1 or W-2 zones. Tokos thought they should look at these zones as well.

**B.** <u>Project Advisory Committee for City Center Revitalization Project</u>. Tokos noted that Resolution 3992 was adopted which put together the framework for an advisory committee for the City Center Revitalization Project. They were recruiting for five of the spaces. The City Council would hold interviews at their first meeting in October. There were other positions on the committee that they would be filling from specific stakeholder groups. The city would be reaching out to find representatives from these stakeholder groups to participate. Berman expressed an interest in serving as the Planning Commission Liaison. Tokos suggested adding an action item to the night's regular session meeting agenda to vote on this. He reported the grant agreement for the funds for the project were working its way through ODOT, and it would be approved sometime during the next two Council meetings.

#### 3. Unfinished Business.

- A. <u>Release of Draft Update to Yaquina Bay Estuary Management Plan</u>. Tokos provided an update on the draft Yaquina Bay Estuary Management Plan, including policy changes and zoning map changes. He explained that no action was expected at that time. This was the first update to the Plan since the 1980's.
- **B.** <u>Planning Commission Work Program Update</u>. Tokos pointed out that the September 25th meeting would only be a regular session meeting. The City Council would hold a meeting right before to do interviews for the Council opening.

Tokos reported that he met with the commercial fishing user group and the Port Commission to discuss the roll out of the Bayfront parking management strategy. He would be meeting with the Bayfront business owners later in the month. The outreach would give people a sense of what was coming up and when I would happen. Capri asked if this was for the parking lot closures. Tokos reported the parking lots would be closed on September 18th. All three lots would be out of commission for a week. The city had to get the paving done before the bad weather came. Tokos noted that they would soon be swapping out sign poles and putting in pay stations for the meters as well. They didn't set a firm launch on the pay stations yet, and they were working through the cloud setup and equipment setup. Tokos explained that the commercial fisheries wanted the city to wait until after the commercial fleets went out. The city had the ability to wait, and they would talk to the Parking Advisory Committee to see if they wanted to push the launch date out further. A discussion ensued regarding what needed to happen in order to start the program.

Escobar noted there was a news article about the County's efforts to put an evening shelter in Newport and in Lincoln City. He asked if they had identified a site for Newport. Tokos reported the County

was pursuing rotational temporary shelter accommodations for cold spells that would be in the Episcopal and Presbyterian churches, along with a space that the County had. The County would provide staffing and materials for this purpose. Tokos reported that they closed on a property that was the former counseling building on Hurbert and 7th Streets. Ultimately, this could be one property that could serve as a permanent shelter. Tokos noted that NW Coastal Housing had purchased the Coast Inn in Newport, and would be converting it into transitional housing.

3. <u>Adjourn.</u> The meeting adjourned at 6:54 p.m.

Respectfully submitted,

Sherri Marineau, Executive Assistant

#### MINUTES Parking Advisory Committee Meeting #14 Newport City Hall Council Chambers August 16, 2023

<u>Committee Members Present</u>: Doretta Smith (by video), Bill Branigan, Janell Goplen (by video), Aracelly Guevara, Aaron Bretz (by video), and Robert Emond.

Committee Members Absent: Gary Ripka, and Jan Kaplan.

<u>City Staff Present</u>: Community Development Director, Derrick Tokos; Police Chief, Jason Malloy, Parking Enforcement Officer, Donald Valentine; and Executive Assistant, Sherri Marineau.

**Public Present:** City Councilor, Dietmar Goebel.

- 1. Call to Order & Roll Call. Meeting started at 6:00 p.m.
- 2. Approval of Minutes.

**MOTION** was made by Bill Branigan, seconded by Robert Emond, to approve the August 3, 2023 Parking Advisory Committee meeting minutes as written. The motion carried unanimously in a voice vote.

3. Review Updated Draft of NMC Chapter 14.14 Amendments to Special Parking Area **Requirements.** Tokos reported that the Planning Commission initiated the legislative process for the amendments and was moving forward with a public hearing. He covered the amendments to NMC Chapter 14.14.100 concerning the special parking area standards. The City Council adopted policies in 2021 that said that in metered areas, the city would loosen up or if not eliminate off street parking requirements for development. The language was structured that this would apply to the Bayfront because it would be the only area that was going to be subject to metering. If this was adopted it would not apply to Nye Beach or the City Center because they were not proposed to have metering. Tokos explained that there were two concepts for the Bayfront. One was to disincentivize property owners from doing development that would have a severe impact on the availability of parking. The other option was to charge a one-time fee when expansions were done. These fees would increase when there was a more significant amount of parking than developers were required to have. The Commission thought the concept was great but still wanted a top end number, and say if they went above that demand number they would have to provide off street parking. The Commission felt this needed to happen given the limited amount of parking the Bayfront, even with the demand management strategy the city was pursuing. The cap number the Commission proposed was set at 20 spaces. If the Council adopted the amendments, the supplemental business license fee for parking would go away for the Bayfront, and they would no longer be a part of that program. Then, moving forward the Bayfront would be subject to these provisions. This meant that if a business was expanding, and it had additional demand for parking that was under 20, they would pay a one-time fee instead of an annual business license fee. The Commission thought that if a business was making a very modest expansion, and the demand was no more than five spaces, this should continue to be at no cost. Then if they went above five spaces, the fees would be broken down by the additional demand.

Malloy asked if new business owners on the Bayfront would have to pay annual fees after the meters were implemented. Tokos said no, they would only have to continue the basic annual business license fee, and the one-time fee would only be charged during an expansion. Smith thought this sounded like

they were going after owner occupants instead of the business owners who leased properties. She thought this was confusing. Tokos said what they were talking about was an existing legacy program that was in place, and how it was transitioning from that legacy program to this new program. The legacy program was keyed off of business licenses and was currently in place. The business operator paid a supplemental business license fee in the three districts. This fee entitled the business to expand and not have to provide off-street parking as long as the expansion didn't generate a demand for more than five off street parking spaces. If the amendments are adopted, Bayfront business owners would no longer pay the supplemental business license fee, and the only time a fee would be triggered was when the business elected to expand. This fee would be based on the amount of the demand they were placing on the parking system, and was a one-time fee. Smith thought they were getting lost on the word expand because businesses could expand their businesses without expanding their real estate. Tokos noted that if a restaurant added an additional 1,000 square feet, it would be an expansion which was an additional impact on parking, and subject to the one-time fee. The business would pay a onetime fee based on the use. Smith questioned how a business could control this if the real estate wasn't available to them, and they didn't own the real estate. Tokos gave an example of an addition to a restaurant and how the additional demand triggered the one-time fee. Smith thought using both the words "expansion" and "conversion" made things confusing because they meant different things. Emond noted this applied to the use of the property, and when they changed the use, they would be subject to the new parking requirements. Smith said that expansion to her was about expanding the footprint, not converting the use. Tokos explained that what was in the code would be the intensification of use. The way the program was set up, if adopted, was that there would be a one-time fee for the change of use that directly correlated to the amount of additional parking and change of use associated with that. The Commission recommended that the fee resolution be structured such that if the change of use did not create a demand for more than five parking spaces, there wouldn't be an additional fee. If the change was greater, there would be scaled fees based on the parking spaces associated with the change of use.

Emond asked if a fee would be required anytime a use changed. Tokos confirmed it would. Emond asked if they changed the use to something with less demand, would they then not pay a fee. Tokos said that was correct. Smith wanted it clarified that this only applied in areas with meters. Tokos confirmed that if it was adopted it would only apply to special parking areas that were metered. Smith asked if they implemented meters in the City Center would this then apply. Tokos said it would, but he expected that if it did go in the City Center they would take another look at this language because it would be a bigger change. This would also be the same for Nye Beach. Tokos wanted to emphasize that none of the amendments they were considering would apply to the City Center or Nye Beach.

Emond thought that rather than setting it a flat 20 spaces, they should say a percent of the available parking in the district. He thought this would mean they wouldn't have to tweak things for each parking area. Tokos thought this was what they would want to do. He anticipated that there would be some code adjustments as part of the discussions for this. This language dealt with the basis of existing uses that provided off street parking in order to comply with the provisions of this section. The city's prior parking ordinances were not required to retain the parking if they were located within a special parking area where metering was utilized.

Tokos asked for comments on NMC Section 14.14.100. Emond thought Item D should come before Item C in this section because it made more sense. Tokos would take a look at the section to see if he could clean that up.

Goplen asked if the proposed fees were based on what other jurisdictions were doing. Tokos said the city had looked at other jurisdiction's examples. Some had fixed fees per space or they were scaled. The fees that were included were in line with the examples they looked at.

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Smith asked if the parking district business license annual fee only applied to the Bayfront. Tokos explained the parking district business license annual fee was the legacy program and would not apply to the Bayfront once it was metered. Emond pointed out that this was why he thought this section should be first in the code, because it was more logical that way. Smith asked if the parking district business license annual fee would be new to the businesses in the City Center. Tokos explained it wouldn't be, because the fees had been in place for years.

Goplen asked if this would be included in the public outreach, or if it would just be covered in the Parking meetings. Tokos reported at this point it wasn't built into the outreach, but he would be prepared to talk about it.

4. <u>Bids for Sign Pole/Base Installations and Pay Station Foundations (Includes Budget Update)</u>. Tokos reported the bids came in for the installations. They were favorable and about \$5,000 under the estimated costs. The City Council would be asked to do the interfund loan so that there was sufficient money to pay for this last element. A portion of the meter revenues would be used to pay off the interfund loan. Tokos reported that this was the last significant piece of the rollout.

Goplen asked if they would be putting in bike racks when they did the surface restorations of the parking lots. Tokos explained that he would be talking to Public Works about this, and they would be pulling from different funding sources to do this. He confirmed they would be able to get bike racks.

5. <u>Updated Parking Management Solution FAQ and Outreach Schedule.</u> Tokos reported that he updated the FAQ handout and included a version in the packet for the Committee. He played with the graphics on the map to make the boundaries look better and stand out better. Goplen talked about how she showed the FAQs to a few people and they thought it was great. They especially liked the 72 hour parking for the fishing community. Smith suggested they do a straight line on the legend so it made more sense to the public. Tokos would do this. Goplen thought the titles on the map should be bolded or all caps. She wanted the header to stand out more on the map.

Tokos reminded that the Committee discussed that zones B and D would be invitation only. The city would coordinate with the Port to get a list of owners for the invites. Bretz noted the Port didn't generally say "owner" in their ordinances. They preferred saying "owner/operator" to allow them to choose what kind of authority they were within their organization. Bretz confirmed that the Port would supply the city with a list of the owner/operators.

Tokos asked for the Committee's thoughts on having multiple vehicles on the permits for fishermen. Bretz asked if they wanted to limit the number of invites to each boat. Tokos said the plan was to give out as many invites as the Port supplied. Bretz didn't think it would matter how may license plates they wanted to allow on a permit. Tokos thought they should think about limiting it because it might lead to abuse. Goplen asked if there was a standard number of people per boat. Bretz said generally it was about three to four people, sometimes it was five. He noted that they sometimes rotated crew based on who was available. Bretz reminded that these permits weren't annual. Tokos explained the permits would be tied to the owner/operator pulling the permits, and didn't think there would be many vehicles. Bretz thought if the intent was to have these for the people who would be working on the boat in a given month, there wouldn't be a lot. The owner/operators would want an option for when they brought in contractors to work on the boat who needed to park. Bretz imagined these folks would pay for parking. He thought the permits would be delegated to the operators, not the owners. They would get a certain number of passes for the boat, and when they changed crew they could get rid of one permit, and then offer it to another crew member. Tokos asked if the Committee thought someone who obtained an e-permit should be able to add more than one license plate to their permit. Emond didn't think so, because he thought it might cause a problem if both vehicles were parked at the same time under one permit. Malloy reminded that they would have license plate recognition (LPR) technology that would identify this. The technology wouldn't know which vehicle was parked at the same time though. Malloy also thought it would be difficult to say one permit could be for more than one vehicle. Bretz also pointed out there would be a problem if a boat authorized seven license plates under the invitation, and all seven were parking at the same time. Bretz didn't think the city would want to get into this. They should give the operator a certain number of permits, and then the operator should decide how they divvied them up to. Goplen asked if they were creating an app to manage this with the boat owners. Tokos remined that when talking about the deck hands it was a different component. The operator would buy a permit for themselves and then buy a number of coupons they needed to give out to the deck hands. The deck hand would then take the code and put it into the kiosks and be good to go. Malloy asked if the captain would have to go back in after 30 days to renew these, or if it was an auto renewal. Tokos confirmed they could do an automatic renewal. Emond questioned how it would work if a deckhand or other employee was hired and needed a permit left after two weeks. He questioned if their permit would be turned over to the new person and changed to a new license plate number. Tokos explained they could structure it for the commercial fishing side to have the option to get an e-permit for themselves and plug in their license plate number. Then they could purchase coupon codes at the same price to give out. Goplen asked if the person with the coupon code would have to log in their license plate. Tokos confirmed they would enter in their license plate number with the coupon code. Smith questioned if coupons could be transferred to different people. Tokos reported they could set it up that way, and the code could have different license plates associated with them, depending on who they had as a deckhand over the month. Goplen wanted to make sure the person that was no longer working was deleted from the coupon. Tokos said they would work with T2 Systems on setting this up. Bretz thought the trick would be to not get in the middle of it, and keep the responsibility on the owner/operator so that if someone got a ticket they would have to work it out themselves, not the city. Malloy thought they should ask the vendor was if a coupon code could be transferable.

Malloy reported that previously the Police Department would issue parking permits for mechanics prior to any kind of system there was on the Bayfront because they were down there working a long on the refrigeration and mechanicals on the boats. They were allowed to park in the loading zones for limited timeframes and would pay \$30 to \$40 a month for these permits. Malloy noted that they quit doing this because they had no way of tracking it, and thought it was important to allow certain vendors to have the same access that a commercial fisherman had. Even if they were allowed these permits, there were still parameters on what these vendors were allowed to do. Emond asked if T2 Systems tracked how long people were parking. He thought this would allow the city to monitor how things were being used. Tokos confirmed they did. He asked if Malloy thought there should be separate category of permits for trade vendors. Tokos noted they were already allowed to be in the 60 minute loading zones on the Bayfront. Malloy reported they would have license plate recognition to know what tier parking zone they would be allowed in for the permit. Bretz thought the key to this would be the rate. They will have to ask themselves if it would be cheaper to get a monthly pass or pay the daily rate based on the number of days they are there. He didn't think a daily pass would break anybody's bank. Bretz thought it was important to remind the public that they were giving people more parking access to get to the docks We were just asking people to carry a little bit of the cost and the inconvenience with everybody else.

Tokos asked if what he was hearing was that when someone got an e-permit, that e-permit would be associated to a single vehicle. Then if there was another vehicle they would have to get another permit for that vehicle. Malloy reminded the license plate recognition didn't recognize different vehicles on one permit, just that the license plate was associated with a permit. Goplen questioned if there was a login for people to change their license plate number online. Tokos would make sure that was an option. Branigan reminded that some vendors had multiple vehicles. Tokos thought they would pay of the meters, not e-permits. Bretz thought they would also use the pier to park on.

Malloy questioned if the loading zones should be 60 minutes. Tokos said the 60 minute loading zones were only on the Bayfront side. Malloy reminded that this would be used by people to park to go to lunch, and the police wouldn't know why there were parking there. Goplen thought the 60 minutes was for the fishermen to unload. Bretz reminded that the discussion on this had been that there were a select few that would be using these to load crab pots. He thought that 60 minutes was pretty long. Malloy suggested they define it as commercial use. Emond questioned if it could be changed to an "active" loading zone. That way if no one was there loading they could cite them. Malloy thought they needed to be able to defend a citation, and if it wasn't clear, a judge would have a hard time supporting it. He thought the word "commercial" should be added to the sign. Bretz reminded that a prior discussion on the signs involved how big they would be, and what they could fit in its space. He thought 60 minutes was a long time for a loading zone. Goplen suggested they change it to 40 minutes so people couldn't use the zone to park and get lunch. Smith questioned if the term "commercial" would also be interpreted as parking a car to do shopping. Malloy reminded the police used common sense to look at how vehicles were utilizing the loading zones. It they saw a parked and locked car in a loading zone, they weren't loading. A discussion ensued on how people might utilize the loading zones.

Malloy suggested they implement it and monitor it to see how it worked. Goplen asked if there was any way they could monitor how long the loading zones were being used currently. Malloy reported they the same three vehicles parked in the loading zones for eight to 12 hours all summer. He thought it was currently being abused. Smith knew that some of the pushback from the public was concerning their questions on if they had to pay to park if they were buying fish. She asked if they should make it 30 minutes instead of 60. Malloy reminded that people would use a multitude of excuses for parking in the loading zone. Tokos reminded that Gary Ripka thought that someone couldn't unload their gear in 20 minutes, and felt 60 minutes was more reasonable. The city was getting ready to order signs, and they needed to decide what the time should be. Emond thought 30 to 40 minutes sounded more reasonable. Malloy noted the police wouldn't look to give citations to fishermen who were actively loading or unloading. There was a common sense approach to this. Malloy stated he would rather make sure they were dealing with the people that were abusing the loading zones, and taking away the loading areas from our commercial fishing fleet. Guevara asked if they could say 60 minutes for commercial fishing folks and 20 minutes for the business only. Tokos asked what Malloy thought of a 40 minute limit. Malloy thought it was better to not put a time on the signs, and make the area an active loading and unloading zone only. Bretz thought that if it was defined in the code without a maximum time limit, it would give an officer the discretion and authority to give citations when enforcing. Tokos explained it was already set up as a 60 minutes on the bay side only. He also thought that a time limit would help with enforcement, because without it, it would become a judgement call for the officer.

Goplen asked how long it would take the enforcement officer took to go along the Bayfront to check the parking, and what their route would be. Malloy reported there was one parking officer for the whole city. The majority of their time would be spent on the Bayfront, and the officer would have to do more than just parking enforcement. Malloy explained that they liked to keep the route random so people didn't figure out when the officer would come by. Malloy noted they would monitor the loading zones, and if they needed to they could change signs through a traffic order and a city process. Guevara agreed with Malloy that the signs should just be loading zones, and not have times on them. Tokos thought having a time limit would help deter bad users from using them. Goplen was in favor of just having a loading/unloading zone without time. Tokos noted the downside for removing the time limit on the signs was that it put it entirely on the officer to prove the person was loading or unloading, and then would have to debate it with a municipal court judge. The time limit would give the officer concrete evidence that someone was parked too long. Emond agreed that the time on the sign was important and there were a lot of tourists on the Bayfront who wouldn't know how long they could spend in the zone. Tokos thought they could change it to 40 minutes, and then the officer would have discretion on letting it go longer if there was somebody would be legitimately loading. Malloy reminded that all of their parking enforcement was discretionary.

Malloy noted that having the signs say Saturday and Sunday, November to April meant that they would be missing spring break, one of the busiest times of the year. Emond thought it should be metered all year long. Goplen thought that people would pay all year. Bretz thought they should change it to March instead of April. Tokos noted this would add two more months into the schedule. Bretz thought they should let it ride the first year and see how it worked. The Committee was in general agreement to leave it as April. Goplen asked if it could be changed to read "Sat & Sun only" instead of "Sat-Sun only." Tokos would request the change. The Committee was in agreement to leave the signs as is, with the exception of changing it to "Sat & Sun only."

Tokos asked for feedback on the map on the back of the FAQ form. Goplen thought that printers had changes on original document hard time differentiating the brown color from the yellow and orange. She asked if they could have someone create a different graphic than what was presented. Tokos thought the map was close to what they needed, and didn't want it to be overkill.

6. <u>Meet and Greet with the City's new Parking Enforcement Officer.</u> Malloy introduced the new Parking Enforcement Officer, Donald Valentine. Valentine was working with the Community Service Officers (CSO) to get trained and would start getting out and about in Newport to get the lay of the land and figure out how he would hit all the areas.

Tokos thought it would be helpful to have Valentine attend the outreach meetings. Malloy noted that Valentine would be involved with the training for the system, and he would be working Monday through Friday so he was available to deal with the implementation. Malloy explained that Valentine needed to get familiar with everything and be well versed with the contractors and vendors on the Bayfront. The Police Department wanted him to be a part of any Nye Beach, Bayfront, and City Center meetings, because that was where most of the parking complaints were. It was important to have Valentine involved with the outreach because people wanted to talk to enforcement. Smith asked who would enforce on weekends. Malloy reported that Valentine would be working Friday through Monday once the program was implemented. Then possibly work either on a Tuesday or Thursday. Malloy noted that until the meters went into effect, time parking was very difficult for them to deal with in an eight hour shift. The current marching order Valentine had was to deal with the safety and inconvenience issues with the way people were parking.

Goplen suggested the Police Department do a funny post on Facebook to show some of the things that would happen when they put in the meters. Malloy said they were bringing back "dude you can't park like that" videos and post bad parking photos to do this. Goplen and Bretz thanked Valentine for stepping into the enforcement role.

Smith asked who enforce the other days Valentine wasn't working. Malloy said they didn't have funding for parking enforcement for seven days a week. They hoped the CSOs would help with this, but there wasn't enough time for them to do it. One of the things they would need to deal with when Valentine wasn't there was to deal with the more obvious safety violations. Tokos asked if they could stagger his schedule sometimes. Malloy explained that they wanted to be fair to staff and didn't want to abuse Valentine's schedule. Goplen asked if they would be able to afford another parking

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enforcement officer once they got the funds from the meters. Malloy said that as long as there was funding available, there would be enough work for parking year round to have two full time people. This came at a cost and was expensive. Goplen asked if volunteer officers could participate in this. Malloy reported the only volunteer parking program there was in the state was for disabled parking enforcement. They didn't have the capabilities to do this. Tokos suggested they train the CSOs on this. Malloy pointed out that if the CSOs were doing parking enforcement, they wouldn't have time to do their own jobs. Bretz thought they needed to point out that enforcement wasn't 100 percent, the city had limited resources, and they would respond to things in the order of importance. He thought they needed to get out in front of this so they could manage people's expectations. Goplen asked if part of the money for in lieu of parking could go toward parking enforcement. Tokos said the meter revenues would be more reliable for this because the in lieu fees would only be collected when there was development. Goplen asked if they could say that 80 percent of the in lieu revenues could go towards parking enforcement. Tokos said they would be able to get a gauge on what the annual revenues were, and then make choices as a Parking Committee on what percentage should or shouldn't be dedicated to enforcement. There would be an interfund loan that would be paid off over a couple of years. The parking ticket revenue, meter revenue, and payment in lieu would all be tracked to see how they were doing. The data would help them make recommendations on the certain amounts that should be dedicated to certain purposes. They would also begin to see what sort of cost it would be for an additional enforcement officer.

Smith asked why Malloy said they would need a second vehicle with LPR if there was only one parking enforcement officer. Malloy noted that he was just saying that if there were two full time parking enforcement officers, they would need their own vehicles because they wouldn't ride together.

Tokos noted the next meeting would land in-between some of the outreach meetings that would be happening. He reminded that the plan was to have the implementation happen at the end of October. Tokos would reach out to Goplen and Bretz to coordinate some of the outreach meetings. Bretz reported the Port was working on generating some signage that was similar to the standard parking signage. They would be using the term "commercial fishing parking" on the signs and they would include a Port logo on them so it was clear they weren't the city's. Tokos noted they would be doing separate outreach for the work to the parking lots so people knew when the parking lots would be worked on and closed. Goplen reported she would bring this up at the next Discover Newport meeting on August 22nd. Smith noted that she emailed the Rotary to do outreach at one of their meetings.

- 7. <u>Public Comment.</u> None were heard.
- 8. Adjournment. Having no further business, the meeting adjourned at 7:50 p.m.

Respectfully submitted,

brueau Sherri Marineau

Executive Assistant

#### POLICE ADVISORY COMMITTEE

#### CALL TO ORDER

Chair Baxter called the April 26, 2023 meeting of the Police Advisory Committee to order at 6:02 P.M. In attendance were Mindy Baxter, Sandy Roumagoux, Esmeralda Hernandez, Rick Gutknecht, Lonnie Martinez, Sam Hurst, Keith Nelson, Patty Riley, Executive Assistant, and Chief Jason Malloy.

#### **APPROVAL OF MINUTES**

Motion was made by Martinez, seconded by Roumagoux, to approve the minutes of the March 22, 2023 meeting as presented. The motion carried unanimously in a voice vote.

#### **DISCUSSION ITEMS**

<u>Committee Vacancy Update</u>. Malloy reported there are currently two Committee vacancies, one representing the LatinX community, and one Student. There have been a couple applications submitted, but they were not qualified to fill either of the vacant positions. The Committee has two options; the first option is to leave the Committee membership as it is, the other option is to make a recommendation to the City Council to adjust the membership by changing one of the 'student' members to an 'at-large' member, or changing 'student' to include college students. Hurst and Hernandez will spread the word in their communities to try to get more people interested. After a brief discussion, it was decided to table the decision for a month, and decide at the next meeting.

Action Plan Update. Baxter reported her and Gutknecht have been working on the action plan. Baxter recommended the Committee needs to start getting momentum on a new project. The COMET project is still in the works, but will take a while. Baxter suggested starting the research on moving the 911 Call Center to Lincoln County. Malloy suggested reaching out to the community groups that each member represents to find out what the complaints are from the community. Malloy explained the difference in what information needs to be gathered versus the information that was collected in the survey. The Police Officers have their own protocol for reporting complaints. WVCC serves many areas, and answers calls specifically to each area they serve. Each area may have a different protocol for answering calls. Baxter asked Malloy what the process for gathering community feedback would look like. Malloy suggested reaching out to each member's group they represent, or having an open forum meeting. Malloy went on to discuss WVCC and how complaints are handled. It was agreed to have a supervisor from WVCC come to a Committee meeting to give an overview of their system, and to answer questions before the Committee reaches out to collect information/complaints from the community. Martinez asked about having a booth at the Farmer's Market to collect information from the community. Malloy will get the contact information for the Farmer's Market. There was a brief discussion about the benefits of a booth at the Farmer's Market.

Baxter asked Malloy to report on the status of getting all the representatives together to discuss reviving the COMET team. Malloy explained the Police Department and the Sheriff's Office are in the middle of the budget process right now, and that meeting will have to take place after the budgets are finalized and each department knows how much money will be available for the program. A meeting could possibly take place at the end of June.

<u>Community Event</u>. Malloy reported on the recent and upcoming community events. April 8<sup>th</sup> was the Coffee with a Cop at Starbucks. About 50 people came through the lobby.

The Café Resource event put on by Councilor Botello and the OSU Extension Service was held on April 20<sup>th</sup>. The Newport Police Department, the Lincoln County Sheriff's Office, and the Fire Department all gave presentations through interpreters. There were 30-40 people in the Spanish speaking group, and a dozen in the Mum speaking group. This event was very successful and Councilor Botello would like to have another event in the future.

April 30<sup>th</sup> is Dia De Los Ninos and Dia De Los Libros. A combined Day of the Child and Day of the Book event at the Armory. This event is sponsored by the Newport Police Department and the Newport Library.

The final event being planned is National Night Out in August.

Monthly Statistics. March statistics are postponed until the next meeting.

<u>Director's Report</u>. The Police Department is struggling to fill the Parking Enforcement Officer position. The City would like the new parking program up and running by summer. The Department is still stuck at five Police Officer openings. Malloy reiterated that "we will not be lowering our hiring standards to fill positions". Officer Bales has been recently promoted to Sergeant. Officer Hallmark has been promoted to "Acting Sergeant". Currently one Officer is at the Academy, and two more will be going to the Academy in May. The Police Department's budget has been submitted. The Department has five new vehicles on order, but are all delayed.

Malloy handed out the Department's policies on 'active shooter' and 'force response'. He went on to give a summary of the policies and examples. Malloy reminded the group to e-mail Riley with any questions or topics they would like to hear about at future meetings. Nelson asked Malloy about state wide Speed Lights. Malloy explained The City looked into Red Light Cameras, but does not qualify. There is discussion about Speed Cameras state wide. There is concern about how Newport would be portrayed by visitors/tourists.

There was a brief discussion about cross walk medians.

#### COMMITTEE COMMENT

Baxter offered to give the Department conflict resolution cards for Officers to give out.

#### **ADJOURNMENT**

Having no further business, the meeting adjourned at 7:05 P.M.

July 26, 2023 6:00 P.M. Newport, Oregon

#### POLICE ADVISORY COMMITTEE

#### CALL TO ORDER

Chair Baxter called the July 26, 2023 meeting of the Police Advisory Committee to order at 6:02 P.M. In attendance were Mindy Baxter, Sandy Roumagoux, Esmeralda Hernandez, Rick Gutknecht, Susan Van Liew, Lonnie Martinez, Keith Nelson, Beatriz Botello, Patty Riley, Executive Assistant, and Chief Jason Malloy.

#### **APPROVAL OF MINUTES**

Motion was made by Martinez, seconded by Hernandez, to approve the minutes of the April 26, 2023 meeting as presented. The motion carried unanimously in a voice vote.

#### **DISCUSSION ITEMS**

<u>Committee Vacancy Update</u>. Malloy reported on the three committee vacancies, two students and one LatinX. Once school resumes in September, there may be interest from high school students. There was one application turned in, but unfortunately they were not eligible for either committee member openings. Malloy discussed the possibility of changing one of the open student positions to "member at large" or "community member". Malloy recommends keeping both LatinX committee members. After discussion, the Committee agreed to change one of the "student" committee members to an "at large" committee member. Malloy will get approval from the City Council.

<u>Action Plan Update</u>. Gutknecht updated the action plan. A copy will be included in the next meeting's agenda. Baxter encouraged all Committee Members to go on a ride along with one of the Newport Police Officers. It is listed as a training objective on the action plan.

Baxter brought up the section of the action plan having to do with reviewing the school district/police and community programing. Focusing on use of conflict management and use of pre-citation diversion. Van Liew has been working with Lt Shanks at the Sheriffs Office. Van Liew briefly discussed the school district and the juvenile department's involvement in working with the students, and the School District's policies having to do with restorative practices. Van Liew also spoke about how state law effects restorative practices, ex: weapons, drugs, bullying, sexual harassment etc.

<u>Community Event</u>. Malloy reported on National Night Out which will take place on Tuesday August 1, 2023 from 5-8pm at the Newport Recreation Center. The Police Advisory Committee will have a booth at the event and will need volunteers to run the booth. Several members signed up to take a shift. This will be another recruiting possibility. The Police Department will provide the all of the hand-outs.

<u>Monthly Statistics</u>. The May statistics are included in the agenda packet. There will be a steady increase in crime as we get further into the summer Chief Malloy reported. WVCC has switched to a new Computer Aided Dispatch (CAD) system, making statistic summaries more difficult to produce. The Police Department will also be switching to a new report management system, so there will be some growing pains for the next few months.

<u>Director's Report</u>. The Police Department just hired a lateral Officer from Eugene who will be starting in August. There are currently three Officers at the Academy. One will graduate in August, and two in September. That should leave the Department with only two vacancies. There is still a part time Records Clerk position open. All of the CSO positions have been filled. The CSOs have been very busy with garbage, abandoned vehicles, sight distance issues, nuisance houses etc.

Malloy reported on the Newport Mayor's recent resignation and the comments about the Police Department due to the Mayor's prior employment with the Department. Chief Malloy put out a statement letting the public know the Department does not support what the Mayor did, and it is not the way the Newport Police Department operates. The Department has adopted the City's diversity, equity and inclusion statement and process.

Unfortunately, this event has brought up a lot of social media comments, specifically about the 'thin blue line' flag that has been on the Police cars since 2015. The 'thin blue line' stands for solidarity within the Department, and that the Department had ultimately become one. Unfortunately, it also has an affiliation with an evil group. The City Council suggested having a discussion with the Police Advisory Committee, about removing the 'thin blue line' graphic from the police cars Malloy discussed the origin of the 'blue line' *"which was first mentioned by the LA Police Chief in the 1950s, and he identified that blue line as that little tiny thin line between order and chaos, and that little blue line is the Police, and if you remove that, you don't have your order or chaos, you generally just have chaos."* 

There was much Committee discussion. Several members asked questions and gave Malloy their opinions. Malloy will take the feedback to the City Council.

Botello asked Malloy if there is an active mental health crisis team that is supporting the Police at this time. Malloy responded by saying there are meetings taking place right now between law enforcement, mental health and county officials, to put a plan into place. A law was just passed that each county must have a 24-hour crisis response in place by January 1, 2024. Malloy also recommended the Committee members google 988 Crisis Oregon for more information.

#### PUBLIC COMMENT

George Barber and Keith Johnson brought up their concerns regarding an issue that has been going on for many years. The traffic at the intersection of Hurbert Street and SW 2<sup>nd</sup> Street. People are driving up to 50 miles per hour. Barber and Keith have also nearly gotten hit on multiple occasions, and have seen at least two car accidents. The speed average seems to be 35-40 miles per hour with limited visibility due to the hill. Malloy suggested putting a speed sign at that location, on the west side of the intersection. Malloy will put in a request to Public Works and will also speak to the Engineering Department. Malloy will also bring up additional signage.

### **COMMITTEE COMMENT**

Baxter brought Lincoln Community Dispute Resolution (LCDR) cards for Officers and anyone who would like some to give out.

Roumagoux complemented one of the CSOs who recently helped her with a neighbor issue.

Martinez asked about the chevrons for bicyclists, painted on Nye Street that are fading away. Malloy will look into it.

Nelson asked about signage and the dangers around Jump Off Joes.

Malloy asked the Committee about moving meetings to every other month. After a brief discussion, the Committee agreed. The next meeting will be September 27, 2023.

## **ADJOURNMENT**

Having no further business, the meeting adjourned at 7:15 P.M.

# **CITY MANAGER REPORT AND RECOMMENDATIONS**



Meeting Date: October 2, 2023

#### Agenda Item:

Public Hearing and Potential Adoption of Ordinance No. 2214, an Ordinance Amending Chapters 1.50, 6.15, 6.20, 6.25, and 6.65 of the Newport Municipal Code to Establish an Administrative Framework for Metering Public Parking Areas.

#### Background:

The City Council has authorized the implementation of a metered and paid parking system on the Bayfront to address the high demand public parking areas in accordance with Ordinance No. 2163 adopted in 2020. Since that time, the City Council authorized contracts for the purchase of the necessary system to manage parking on the Bayfront and has proceeded with contracts to make movements to three of the parking lots, and a contract for sign and parking kiosk installations that will be necessary system to be implemented. Ordinance No. 2214 is another step in moving forward with the parking management system, addressing the framework for metered parking areas. Since the City has not previously utilized parking meters, various code provisions need to be implemented to address this issue. In addition, code provisions addressing parking have been updated to address the various requirements that will be in place with the system adopted by Council. The Committee started working on these code revisions in June. The Planning Commission and the City Council also reviewed the draft amendments at work sessions on May 22 and June 20. The Committee did a final review at its September 20, 2023 meeting and recommended that Council proceed with the changes.

The code provisions have been modified to require that the City Council approve various fees and fines by annual resolutions as part of the fee schedule. Please read the proposed code changes as included in the agenda packet.

The Planning Commission is working on a second set of code changes that focus on land use amendments. These provisions will allow more flexibility on parking requirements for development that occurs in the city. The general concept is that the managed parking system will provide more capacity for parking that individual property owners are currently required to provide. This allows for identification of future development in the city.

#### **Recommendations:**

I recommend that that the Mayor conduct a public hearing on Ordinance No. 2214, an ordinance amending chapters 1.50, 6.15, 6.20, 6.25 and 6.65 of the Newport Municipal Code to establish an administrative framework for metering public parking areas.

Following the public hearing, and considering any comments made, I recommend that the City Council make the following motion:

I move to place for final passage and read by title only Ordinance No. 2214, an ordinance amending chapters 1.50, 6.15, 6.20, 6.25 and 6.65 of the Newport Municipal Code to establish an administrative framework for metering public parking areas.

The Mayor will then ask for a voice vote on whether to adopt the ordinance. If the motion passes, the City Recorder will read the ordinance by title only.

A roll call vote on the final passage of the ordinance will then be requested by the Mayor and taken by the City Recorder.

Fiscal Effects: None.

## Alternatives:

Do not approve the motion, refer back to City administration for further refinement, or as suggested by City Council. Section 16 - Ordinance Adoption of the City Charter provides that *"at the request of any Council member, the roll call vote shall be at a separate Council meeting. Any amendments from the printed version circulated at the Council meeting shall be read in full at the time of the reading of the ordinance by title, unless Council by unanimous vote waives reading of the amendments."* 

Respectfully submitted,

PULLO

Spencer Nebel City Manager



## STAFF REPORT CITY COUNCIL AGENDA ITEM

Date: October 2, 2023

<u>**Title</u>**: Public Hearing and Possible Adoption of Ordinance No. 2214, Establishing an Administrative Framework for Metering Public Parking Areas</u>

Prepared by: Derrick I. Tokos, AICP, Community Development Director

<u>Recommended Motion</u>: I move to place for final passage, and read by title only, Ordinance No. 2214, an ordinance amending Chapters 1.50, 6.15, 6.20, 6.25, and 6.65 of the Newport Municipal Code to create an administrative framework for metering public parking areas.

**Background Information**: The City is in the process of implementing metered and paid permit parking along the Bayfront in high demand public parking areas in accordance with policies the City Council adopted as part of a parking study ultimately adopted with Ordinance No. 2163 (2020). The objective is to increase vehicle turnover in high demand areas so that more parking is available to Bayfront users, reducing congestion and improving public safety.

Implementation was placed on hold during the COVID pandemic. Since then significant steps have been taken, and costs incurred, to implement the program, including the recruitment of a Parking Advisory Committee, selection of a parking vendor, procurement of pay stations and parking enforcement equipment, and new parking infrastructure improvements.

Another step the City will need to take is to put in place an administrative framework to operate and enforce a meter and paid permit program, given that these are parking management tools have not historically been used by the City. This requires that portions of the City's parking regulations be amended, which the Parking Advisory Committee started working on in June of 2023. The Planning Commission and City Council also reviewed the draft amendments in work sessions on May 22, 2023 and June 20, 2023, respectively. The Parking Advisory Committee did a final review at its September 20, 2023 meeting.

These changes focus on the administration of the program, such as where meters can be placed (currently only the Bayfront), who is responsible for maintaining them, how enforcement will work, activities exempt from metering or permit, and how revenues are to be managed.

Details on meter rates, permit fees, timed parking limits and related details are not part of this package and will be brought forward in a draft Council resolution once the stakeholder outreach is completed. A presentation from a recent Rotary Club meeting is enclosed, providing additional details on work completed to date and the status of the outreach efforts. A set of land use amendments will be presented at a future meeting that reduce off-street parking requirements in areas where meters have been installed. Those changes implement another policy from the parking study.

Fiscal Notes: There are no fiscal impacts associated with this amendment.

<u>Alternatives</u>: Adopt the ordinance, request changes, forgo adoption, or as suggested by Council.

#### Attachments:

Draft Ordinance No. 2214, Minutes from the 5/22/23 Planning Commission work session, Minutes from the 6/20/23 City Council work session, Minutes from the 6/21/23 Parking Advisory Committee Meeting, Ordinance No. 2163 (and associated policies), and Presentation from 9/21/23 Rotary Club Meeting

#### **CITY OF NEWPORT**

#### **ORDINANCE NO. 2214**

#### AN ORDINANCE AMENDING CHAPTERS 1.50, 6.15, 6.20, 6.25, AND 6.65 OF THE NEWPORT MUNICIPAL CODE TO ESTABLISH AN ADMINISTRATIVE FRAMEWORK FOR METERING PUBLIC PARKING AREAS

#### Findings:

1. On March 2, 2020, the Newport City Council adopted Ordinance No. 2163, implementing recommendations of a 2018 Parking Study by Lancaster StreetLab, as amended by the City's Parking Advisory Committee. Among other things, Ordinance No. 2163 included policy direction to pursue metered zones, hybrid paid/permit, and hybrid permit/timed zones along the Bayfront to increase vehicle turnover in public parking areas, reducing congestion and improving public safety.

2. The City of Newport is not currently using meters or paid parking permits to influence parking behavior and there are no provisions in the Newport Municipal Code to provide guidance or direction on how such a program should be operated.

3. Recognizing the need for an administrative framework to effectively operate and enforce a meter and paid permit program for public parking areas, the Newport Parking Advisory Committee took up a package of Newport Municipal Code (NMC) amendments at its June 21, 2023 meeting, and further refined them at its September 20, 2023 meeting. The Newport Planning Commission and City Council reviewed the changes and provided feedback at their May 22, 2023 and June 20, 2023 work sessions, respectively. The result of that effort is a set of proposed amendments, more specifically described as follows:

a. NMC Chapter 1.50, Penalty, is being amended to establish that traffic citation and vehicle impound fees will be set by City Council resolution and that proceeds from parking related penalties are to be directed to the City's Parking Fund.

b. NMC Chapter 6.15, Parking in Rights of Way, is being retitled "Parking in Rights of Way and City Parking Lots" and the chapter is being amended to include standards for city parking lots in Chapter 6.20, freeing that chapter up for reuse.

c. NMC Chapter 6.20, City Parking Lots, is being repealed and replaced with a new Chapter 6.20, Metered Parking Zones. The new chapter authorizes the use of parking meters to increase vehicle turnover in public parking spaces, to encourage short-term parking in metered areas, and to improve safety in the public right-of-way (NMC 6.20.005). It further designates metered parking zones as those defined geographically under NMC 14.14.100 that have been designated by the City Council

for placement of parking meters (NMC 6.20.010). The City Manager is designated as the party responsible for the installation, function, and maintenance of meters (NMC 6.20.015) and the new chapter sets out parameters for enforcement of metered spaces (NMC 6.20.020 through 6.20.030). The regulations also address obstruction of meters (NMC 6.20.035); vandalism, theft, invalid receipts (NMC 6.20.040); unintentional violations due to meter failure (NMC 6.20.045); use of courtesy permits and coupon codes (NMC 6.20.050); meter collection responsibilities (NMC 6.20.055); disposition of meter proceeds(NMC 6.20.060); and that fees and time limits are to be established by City Council resolution (NMC 6.20.065).

d. NMC Chapter 6.25, Recreational Vehicle Parking, is amended to include a crossreference to the Special Event Permit Chapter (NMC Chapter 9.80) with respect to overnight parking of recreational vehicles.

e. Lastly, NMC Chapter 6.65, Impounding Vehicles, Inventory, is being amended to indicate that vehicles located in a public parking space in violation of posted time limits, meter requirements, or other posted parking regulations may be towed or impounded.

4. The City Council held a public hearing on October 2, 2023 regarding the question of the proposed changes, and determined that they are necessary and further the general welfare of the community.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

<u>Section 1</u>. The findings set forth above are hereby adopted in support of the amendments to Title I and VI of the Newport Municipal Code adopted by Sections 2 through 6 of this Ordinance.

<u>Section 2.</u> Chapter 1.50, Penalty, of Title I of the Newport Municipal Code is hereby amended as set forth in Exhibit "A".

<u>Section 3.</u> Chapter 6.15, Parking in Rights-of-Way, of Title VI of the Newport Municipal Code is hereby amended as set forth in Exhibit "B".

<u>Section 4.</u> Chapter 6.20, City Parking Lots, of Title VI of the Newport Municipal Code is hereby repealed in its entirety and replaced with a new Chapter 6.20 titled "Metered Parking Zones," as set forth in Exhibit "C".

<u>Section 5.</u> Chapter 6.25, Recreational Vehicle Parking, of Title VI of the Newport Municipal Code is hereby amended as set forth in Exhibit "D".

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<u>Section 6.</u> Chapter 6.65, Impounding Vehicles, Inventory, of Title VI of the Newport Municipal Code is hereby amended as set forth in Exhibit "E".

Section 7. This ordinance shall take effect 30 days after adoption.

| Adopted by the Newport City Council on       | , 2023. |   |
|--|---------|---|
| Signed by the Mayor on                       | , 2023. |   |
|  |         |   |
| Jan Kaplan, Mayor                            |         |   |
| ATTEST:                                      |         |   |
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| Erik Glover, Asst. City Manager/City Recorde | er      |   |
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(Unless otherwise specified, new language is shown in <u>double underline</u>, and text to be removed is depicted with strikethrough. Staff comments, in *italics*, are for context and are not a part of the revisions.)

#### CHAPTER 1.50 PENALTY

#### 1.50.010 Default Penalty

Except as otherwise specified, the penalty for violation of any provision of this code or other ordinance shall be a civil penalty of \$500. If the violation is of a code provision or ordinance that is identical to a state statute, the city may elect to proceed on the basis of the state violation or the city violation. Each calendar day on which violation occurs or remains uncorrected constitutes a separate violation.

#### 1.50.020 Traffic Citation Assessment and Vehicle Impound Fee

- A. Except as provided in Subsection B. of this section, all persons who are issued a traffic citation to appear in the Newport Municipal Court shall pay a traffic citation assessment fee of \$10.00 per citationas specified by resolution of the City Council. All persons who recover a vehicle from a vehicle impoundment shall pay a vehicle impound assessment fee of \$10.00 perto partially off-set City's cost of impoundmentimpounding the vehicle. These amounts The vehicle impound assessment fee shall be in an amount set by City Council resolution, and shall be in addition to any other penalty, assessments, or payment.
- B. If the municipal court determines that the person issued the citation did not commit the offense or has established an affirmative defense, no traffic citation assessment fee or vehicle impound assessment fee shall be imposed.
- C. The amount of the traffic citation assessment fee and vehicle impound assessment fee shall be added to any bail amount for those who do not contest the citation and shall be included as part of the judgment for all those who contest the citation and are determined to have committed the offense.
- D. Proceeds from payment of the parking traffic citation assessment and vehicle impound assessment fees shall be used for the police department's cost associated directed to the City's Parking Fund, and may be used for parking enforcement, parking improvements and/or enhancements, and related purposes. with maintaining traffic safety. Proceeds from payment of other traffic citation assessment and vehicle impound assessment fees shall be used to offset police department costs associated with maintaining traffic safety.
- E. Vehicles with three or more unpaid parking traffic citations may not utilize parking meters and are ineligible for parking permits.

*Staff: The City is now setting its traffic citation fees by resolution and this chapter of the Municipal Code needs to be amended to align with that practice. The chapter* 

is also being edited to indicate that proceeds from parking related citations are to be directed to the City's Parking Fund and that vehicles with three (3) or more unpaid parking traffic citations may not utilize parking meters and are ineligible for parking permits. (Unless otherwise specified, new language is shown in <u>double underline</u>, and text to be removed is depicted with strikethrough. Staff comments, in *italics*, are for context and are not a part of the revisions.)

### CHAPTER 6.15 PARKING IN RIGHTS OF WAY AND CITY PARKING LOTS

#### 6.15.005 Method of Parking

- A. <u>Street Parking parking</u> is permitted only parallel with the edge of the street, headed in the direction of lawful traffic movement, except where the street is marked or signed for angle parking. Where parking spaces are marked, vehicles shall be parked within the marked spaces. Parking in angled spaces shall be with the front head-in to the curb, except that vehicles delivering or picking up goods may be backed in. Where curbs exist the wheels of a parallel-parked care shall be within 12 inches of the curb, and the front of an angle-parked car shall be within 6 inches of the curb.
- B. If possible, parked cars shall be removed by their owners in the event of an emergency such as a fire.

Staff: The method of parking described in the first sentence above is specific to street parking so that clarification has been made to the code. Other parking options exist in city parking lots.

#### 6.15.010 Parking of Oversized Vehicles

Any vehicle which, because of its size or shape, cannot be parked as provided by <u>Section 6.15.005</u> may be parked outside the restricted or limited parking area of the city in a manner which will not impede or interfere with vehicular traffic. No vehicle may be parked to impede or interfere with a vehicle travel lane.

### 6.15.015 Prohibited Parking

A. No person shall park a vehicle:

- 1. On a bridge, viaduct or other elevated structure used as a street, unless permitted by authorized signs.
- 2. Obstructing a street so as to prevent or interfere with orderly two-way traffic.

- In any alley except to load or unload persons or materials not to exceed 30 minutes, and then only in such a manner as to leave available space for another vehicle to pass the parked vehicle;
- 4. On a street for the principal purpose of:
  - a. Displaying the vehicle for sale.
  - b. Greasing or repairing the vehicle, except repairs necessitated by an emergency.
  - c. Displaying a sign from the vehicle.
  - d. Selling merchandise from the vehicle except in a duly established market place or when so authorized or licensed under the ordinances of the city.
  - e. Storage in a street right-of-way for more than 72 consecutive hours, unless authorized by a valid permit. Storage includes any parking in excess of 72 consecutive hours.

Staff: Change provides the Council the option of creating parking permits with timeframes longer than 72 hours. The Parking advisory Committee is considering recommending a 96 hour permit for the commercial fishing community.

5. In a manner contrary to any sign posted regulating parking in a city parking lot, and in no circumstances for more than 16 hours in a city parking lot unless authorized for camping, pursuant to Chapter 9.50 or as a Special Event pursuant to Chapter 9.80.

*Staff: This 16 hour maximum parking allowance in city parking lots is being merged over from Chapter 6.20.* 

- 56. And leave the vehicle without stopping the engine and effectively setting the brake. Police officers are authorized to turn off any vehicles left running and unattended and remove the key. The officer shall leave information as to how to claim the key.
- 67. In a location or at times where parking is prohibited as indicated by authorized signs or curb markings.

- B. No person shall park a truck other than a pick-up on a street at any time between the hours of <u>9:0010:00</u> P.M. and 7:00 A.M. in front of or adjacent to a residence, motel, apartment house, hotel or other sleeping accommodation.
- C. No person shall park a vehicle between <u>11:0010:00</u> P.M. and 7:00 A.M. leaving any audible auxiliary motor or engine running. For purposes of this section, "audible" means audible to humans in any public right of way or on any private residential property other than private property where the vehicle is parked with the permission of the owner, and "running" means either continuously or intermittently running, whether controlled by a thermostat, timer, or other means.

Staff: The restrictions above relate to noise, and the time limits have been adjusted so that they are consistent with the City's noise ordinance.

D. Parking is prohibited in streets immediately adjacent to yellow-marked curbs. Parking or stopping is prohibited in streets or other public areas immediately adjacent to red-marked curbs. The above prohibitions apply unless parking or stopping is necessary to comply with traffic signs and signals, or if traffic does not permit continued movement. No other sign or wording is needed to make the prohibitions effective. The prohibitions established by this section apply if the yellow or red markings are visible, even though faded or partially obliterated. Public areas include private property designated or required as a fire lane. Curbs may be painted red on public or private property only to indicate a fire lane or other area where parking and stopping is prohibited.

*Staff: This change is necessary because the chapter now applies to city parking lots in addition to streets.* 

E. No person may park a vehicle in a handicapped parking space without a handicapped license or permit properly displayed on or in the vehicle.

#### 6.15.020 Removal of Illegally Parked Vehicles

A. The city may remove any illegally parked vehicle that is unattended or that is not removed after a request is made to the owner or person in charge of the vehicle, in compliance with state and city law regulating towing of vehicles by the city.

B. The registered owner of an illegally parked vehicle shall be provided 24 hour notice prior to the city shall not remove anytowing the vehicles that were originally legally parked unless the vehicle has remained illegally parked for a period three times longer than the time originally allowed for the vehicle to be parked, unless removal is needed in case of an emergency or to allow the orderly movement of traffic, or the vehicle has been parked for more than 72 hours.

Staff: The 24 hour notice is consistent with existing language in NMC 6.50.040 that is applicable to towing of immobilized vehicles. Allowing vehicles to stay three times the legal length of stay is inconsistent with other towing related language and would prevent the City from reasonably enforcing parking regulations, and maintaining public parking areas. Therefore, that language has been removed.

### 6.15.025 Loading Zone

No person shall stop, stand, or park a vehicle in a loading zone other than to (i.) load or unload materials; or (ii.) service machinery or equipment.

A. Stopping, standing, or parking a vehicle in a loading zone for the purpose of loading and unloading shall be only for the amount of time reasonably necessary to load and unload the vehicle and perform tasks ancillary to the loading and unloading, and the total time parked shall not exceed 30 minutes or the time limit identified on the sign.

B. Any person using a loading zone for parking while servicing machinery or equipment must first obtain a permit from the Newport Police Department authorizing the vehicle to park in a loading zone for a period greater than 30 minutes. The permit must be displayed in the windshield of the vehicle while parked in a loading zone. Permits may be issued on a yearly, monthly, weekly, or daily basis. The fee for the permit shall be set by City Council resolution. Pending a fee resolution, the annual fee shall be \$50.00. Staff: Language is being added to reference time limits on loading zone signs, since they vary throughout the city (as opposed to a fixed 30 minutes). The Police Department has indicated that they are not issuing permits for extended use of loading zones; therefore, that option is being eliminated.

#### 6.15.030 Passenger Loading Zone

No person shall stop, stand, or park a vehicle in a passenger loading zone other than to load and unload passengers. The maximum time to be stopped or parked in a passenger loading zone is five minutes, unless actual loading and unloading requires additional time.

### 6.15.035 Buses and Taxis

No person may park or stand a bus or taxi on any street in any business district at any place other than at a bus stand or taxicab stand, respectively. This section does not prohibit the driver of any taxi from temporarily stopping for the purpose of loading or unloading of passengers.

#### 6.15.040 Restricted Use of Bus and Taxicab Stands

No person shall stop, stand or park a vehicle other than a bus in a bus stand or other than a taxicab in a taxicab stand, except that the driver of a passenger vehicle may temporarily stop therein while actually engaged in loading or unloading passengers when the stopping does not interfere with any bus or taxi.

### 6.15.045 Parking Time Limited in Certain Areas

When signs are erected in any block, or within any public parking lot, limiting permissible parking time, no person shall park a vehicle within the block, or parking lot, for longer than the time posted on the sign. Movement of a vehicle to a parking space on either side of the same street within the area between the intersections at each end of the block shall not extend the time limits for parking. Movement of a vehicle to another parking space within the same parking lot shall not extend the time limits for parking. After a vehicle has been moved from the posted block, or parking lot, for more than one hour, a new time limitation shall apply.

#### 6.15.050 Parking Permits

The City Manager may put in place a program for issuing parking permits to reserve public right-of-way areas <u>or parking</u> <u>lots</u> for use by designated parties. Parking permits may apply in timed parking areas, or elsewhere depending upon the specifications of the permit.

- A. Parking permits <u>may be obtained electronically or in</u> <u>hardcopy form. A hardcopy permit areis</u> to be displayed on a vehicle in the manner specified on the permit, and shall include a description of the authorized activity, license number of the benefited vehicle, and the date or dates within which the permit is effective.
- B. Permit holders and permitted vehicles are subject to all traffic laws and regulations not explicitly superseded by the permit.

Staff: Changes recognize that permits can be issued for public parking lots in addition to on-street spaces. The edits also recognize that electronic permitting may be utilized.

#### 6.15.055 Exemptions

- The following activities are exempt from the provision of this chapter:
- A. City and <u>public franchise</u> utility vehicles are exempt from this chapter while in use forengaged in construction or repair work or other authorized use.
- B. Mail delivery vehicles are exempt from this chapter while in use for the collection, transportation, or delivery of United States mail.
- <u>C. Circumstances where the driver is obeying the direction of a law enforcement or parking enforcement officer.</u>
- D. When authorized by a vehicle parking permit.
- E. Emergency vehicles while serving an emergency.
- F. Vehicles performing work within a public parking lot or right-of-way under the terms of a right-of-way permit issued pursuant to Chapter 9.10.

<u>G. Vehicles parked in a marked parking space with an official</u> <u>state-issued disabled person registration or "wheelchair</u> <u>user" plate, placard, permit or decal, provided the length</u> <u>of stay adheres to the storage limitations of Section</u> <u>6.15.015.</u>

Staff: The exemptions listed are common, and they align with those that will apply to metered parking zones which the Parking Advisory Committee reviewed.

#### 6.15.060 Owner Responsibility

The owner of a vehicle parked in violation of a parking restriction shall be responsible for the violation, except where the use of the vehicle was secured by the operator without the owner's consent. Nothing in this section prevents an owner from recovering the cost of any penalty from the driver or other person responsible for the illegal parking.

## 6.15.070 Citation on Illegally Parked Vehicle

Whenever a vehicle without an operator is found parked in violation of a restriction imposed by this Chapter, the officer finding the vehicle shall take its license number and any other information displayed on the vehicle which may identify its owner, and shall conspicuously affix to the vehicle a traffic citation for the operator to answer to the charge against the owner, or pay the penalty imposed within seven days during the hours and at the place specified on the citation.

# 6.15.080 Registered Owner Presumption

In the prosecution of a vehicle owner, charging violation of a restriction on parking, proof that the vehicle at the time of the violation was registered to the defendant shall constitute a disputable presumption that the registered owner was then the owner in fact.

#### 6.15.090 Failure to Comply with Traffic Citation Attached to a Parked Vehicle

If the operator does not respond to a traffic citation affixed to such vehicle within a period of ten days, the Municipal Court may send to the registered owner of the vehicle, to which the traffic citation was affixed, a letter informing them of the violation and warning them that, any fine associated with the traffic citation is subject to an increase based on the number of days the traffic citation remains unpaid, and based on the city's master fee schedule set by Council resolution.

### 6.15.100 Penalty

Penalties for violation of this Chapter are set by Council resolution and contained in the city's master fee schedule. Penalties assessed in a traffic citation for a violation of the provisions of this Chapter shall be imposed unless the Municipal Court finds reasonable grounds exist for either increasing or reducing the penalties. (Unless otherwise specified, new language is shown in <u>double underline</u>, and text to be removed is depicted with strikethrough. Staff comments, in *italics*, are for context and are not a part of the revisions.)

### CHAPTER 6.20 CITY PARKING LOTS

6.20.005 Parking in City-Owned Parking Lots

Vehicles may park in marked spaces in city-owned parking lots, subject to compliance with authorized signs limiting the allowable time for parking in the city-owned parking lot. The maximum amount of time a vehicle shall be parked in a cityowned parking lot is 16 hours. Vehicles parking in city-owned parking lots in violation of the posted time limits, or other posted regulations, may be towed, subject to the same restrictions applicable to towing of vehicles from private parking lots.

6.20.010 Parking Lots - Publicly Owned/Operated

No vehicle may be parking in a parking lot owned or operated by a governmental entity contrary to the regulations of the parking lot operator or contrary to any sign posted regulating parking in the parking lot. Vehicles parked in violation of this section may be towed, subject to the same restrictions applicable to towing vehicles from private parking lots.

Staff: Repeal existing chapter in its entirety, and replace with new Chapter 6.20 titled "Metered Parking Zones." Relevant language from the repealed chapter has been incorporated into Chapter 6.15. (This is a new chapter to the Newport Municipal code. Staff comments, in *italics*, are for context and are not a part of the revisions.)

### CHAPTER 6.20 METERED PARKING ZONES

#### 6.20.005 Purpose

Parking meters are authorized by the City of Newport as a means to increase vehicle turnover in parking spaces, to encourage short-term parking in the metered area, and to improve safety in the public right-of-way.

Staff: Authorizes use of parking meters within the City of Newport and explains the purpose for using them consistent with the parking study element of the Newport Comprehensive Plan.

#### 6.20.010 Parking Meter Zone Designated

The public areas, streets or portions of such streets within a special area defined in Section 14.14.100 that have been designated by the City Council for placement of parking meters shall be considered parking meter zones.

Staff: Indicates that Section 14.14.100, Special Parking Areas, includes the geographic boundaries of parking meter zones and notes that only those areas designated by the City Council for placement of parking meters shall be considered parking meter zones. At this time, only the Bayfront has been designated for meters with the Parking Study adopted with Ordinance No. 2163.

## 6.20.015 Installation, Function, and Maintenance of Parking Meters

The City Manager will be responsible for the regulation, control, operation, maintenance and use of parking meters, including the establishment of areas within a meter zone where fees are applicable.

*Staff: City Manger is charged with the regulation, control, operation, maintenance and use of parking meters.* 

#### 6.20.020 Enforcement of Metered Parking Spaces

A. Parking meters are in effect during all hours indicated on the meter and/or sign.

- B. All vehicles must adhere to parking meter regulations while stopped or parked in an officially designated metered parking space; except:
  - 1. Circumstances where the driver is obeying the direction of a law enforcement or parking enforcement officer.
  - 2. When authorized by a vehicle parking permit.
  - 3. Emergency vehicles while serving an emergency.
  - 4. City and franchise utility vehicles engaged in construction or repair work.
  - 5. Vehicles performing work within a public parking lot or right-of-way under the terms of a right-of-way permit issued pursuant to Chapter 9.10.
  - 6. Mail delivery vehicles while in use for the collection, transportation, or delivery of United States mail.
  - 7. Vehicles with an official state-issued disabled person registration or "wheelchair user" plate, placard, permit or decal, provided the length of stay adheres to the storage limitations of Section 6.15.015.



C. It is unlawful to store nonvehicular property in a metered parking space. Any nonvehicular property stored in a metered parking space may be summarily abated as a nuisance if there is an immediate danger to human life, health, or safety, or immediate danger or substantial damage to property pursuant to Section 8.10.200. Otherwise, nonvehicular property stored in a metered parking space shall be subject to removal as if it were an illegal campsite under the provisions of Chapter 9.50.

*Staff:* Section addresses enforcement of metered spaces. Exemption language is consolidated into this section and sync'd up with similar language contained in NMC 6.15.055 that applies to timed parking/permit parking areas.

Summary abatement under the City's nuisance code is limited to circumstances where there is an immediate risk to life, health and safety. Otherwise, the City needs to treat nonvehicular property as if it were an illegal campsite and provide required notice. Language to that end has been added.

### 6.20.025 Compliance with Time Limit Required

- A. It is unlawful for any person to park any vehicle in any metered parking space during the hours of operation of the meter without paying the parking meter or parking permit fee, or to allow any vehicle in their control or custody to remain in any parking meter space longer than the time designated time limit.
- B. Upon expiration of the designated time limit indicated by the parking meter or parking permit, a citation may be issued if a vehicle remains parked or stopped within the same fee area or zone.
- C. A vehicle may not be parked in any space with a broken or "out of order" meter for a period of time longer than the time limit indicated on the meter. Payment or a valid receipt is required at all metered spaces regardless of whether the closest device is functioning.

Staff: Requires compliance with parking time limits. Reference to "zones" aligns with information that will be depicted on the regulatory signs that the City will be installing. In metered areas vehicles must move to another zone when the 4-hour time limit is exceeded, unless they have a valid permit.

### 6.20.030 Payment of Meter Fees

A sign or legend which indicates the interval of time for which parking is permitted and the fee payable for the time interval must be posted in all meter areas. The parking meter fee must be paid with U.S. coins, payment card or any other authorized payment method by the person within the vehicle, except:

- A. During all the days and the hours that a meter fee is not required.
- B. A vehicle with a current parking permit authorizing parking at a meter without payment of the meter fee.
- C. A vehicle, for the sole purpose of loading/unloading passengers, for a period not to exceed 5 minutes.
- D. A vehicle exempt from enforcement pursuant to Section 6.20.020(B).

Staff: Requires proper notice of areas that are to be metered along with the time interval and fee. Meter fee is payable where noticed, unless one of the limited exemptions applies.

#### 6.20.035 Obstruction of Meters

No vehicle or other property may obstruct access to a parking meter in a manner which prevents deposit of coins in the meter, visibility of the meter instructions or time limit, or visibility of any mounted signs. A vehicle in violation of this section is subject to being towed and impounded pursuant to Chapter 6.65. Other property may be subject to summary abatement pursuant to Section 8.10.200 or removal as if it were an illegal campsite under the provisions of Chapter 9.50.

Staff: Prohibits vehicles from obstructing meters, which are likely to be limited to pay stations. Cross reference added to Municipal Code Chapter that addresses towing and impounding of vehicles. Removal of "other property" is subject to summary abatement or removal as if it were an illegal campsite, as appropriate.

#### 6.20.040 Vandalism, Theft, Invalid Receipts

A. It is unlawful for any person to deface, injure, tamper with, willfully break, destroy, or impair the usefulness of any parking meter installed in public streets, public places, or elsewhere in the City, or to open or remove the same without lawful authority.

B. It is unlawful for any person without lawful authority to remove any coin box or the money content of such coin box or the contents of any parking meter or part thereof.

C. It is unlawful for any person to knowingly manufacture, duplicate, possess, or use any tool, key, implement or device designed to force, break, unlock, or otherwise gain entry to any parking meter maintained by the City unless authorized to do so by the City Manager.

D. Injury to or theft from each meter as described in Subsection A and possession of each item described in Subsections B and C is a separate offense. For each such offense, in addition to the penalties otherwise provided in this Code, a court may order restitution to the City of the damages incurred for repair or rekeying parking meters as a result of injury to the meters or the use or possession of the items described in Subsection C. E. It is unlawful for any person to duplicate, copy, use or otherwise falsify a parking payment receipt.

F. It is unlawful for any person to damage, deface, or remove a space reservation device.

*Staff: Section deals with vandalism, theft and invalid receipts. Provisions are comparable to those used by other jurisdictions (e.g. Hood River and Portland).* 

6.20.045 Unintentional Violation Due to Meter Failure

Any unintentional violation of a provision of this chapter by reason of a mechanical failure of a parking meter is not an offense within the meaning of this chapter once the mechanical failure is verified by the City or where there is a hood covering the meter that states "out of order."

Staff: Establishes that an unintentional violation due to a verified meter failure is not a violation of the chapter.

6.20.050 Courtesy Permits and Coupon Codes

The City Manager may issue parking meter courtesy permits or coupon codes valid for a period not to exceed seven (7) days, authorizing the permittee to park a vehicle without regard to time limits and without having to pay the meter fees in any parking space. Such courtesy permits or coupon codes are limited to the following:

- A. Vehicles associated with a special event permit authorized pursuant to Chapter 9.80 where the specifically identifies affected parking spaces.
- B. City sponsored promotional events to enhance business access and foster economic activity.
- C. Circumstances where a parking meter malfunctions or an error otherwise occurs in the application of the metering program.

Staff: Changes allow for use of coupon codes and courtesy permits at parking meter pay stations, with limitations. Includes options for promotional activities and addressing malfunctions should they arise.

#### 6.20.055 Meter Collection Duty

It shall be the duty of the City Manager to direct the collection of all coins deposited in parking meters.

Staff: Pay stations the City is deploying include a coin payment option, and this provision notes that it is the City Manger's responsibility to direct how collections are to occur. The software will alert the City when a coin box is close to being full, and the plan is for the City's parking enforcement officer to perform collection duties.

6.20.060 Disposition of Meter Proceeds

Parking meter proceeds will be deposited in the City of Newport Parking Fund to provide for maintenance and improvement of parking areas and for the proper regulation, control and inspection of traffic upon the public streets and lots within parking special areas as defined in Chapter 14.14.100. This includes covering the cost of supervising, regulating and inspecting the parking of vehicles as provided for in this chapter, the cost of placing and maintaining lines or markings designating parking spaces and expenses associated with the installation, operation, maintenance, control and use of the parking meters installed under this chapter and other related expenses.

Staff: Section calls for revenues to be directed to the Parking Fund where they will be used to pay for parking enforcement and enhance public parking areas.

6.20.065 Establishment of Fees and Maximum Time Limits

Parking meter fees and maximum time limits shall be established by resolution of the City Council.

Staff: Establishes that fees and maximum time limits will be set by Council resolution. City staff and the Parking Advisory Committee are working with Bayfront stakeholders to finalize these, and a draft resolution with the results of that effort will be brought forward for City Council consideration at a future meeting. (Unless otherwise specified, new language is shown in <u>double underline</u>, and text to be removed is depicted with <del>strikethrough</del>. Staff comments, in *italics*, are for context and are not a part of the revisions.)

## CHAPTER 6.25 RECREATIONAL VEHICLE PARKING

#### 6.25.005 Definitions

<u>Public Or Private Parking Lot</u> means a parking lot that is open to the general public for parking, whether for a fee or not. Parking lot does not include areas reserved for owners or tenants of a property.

<u>Recreational Vehicle or RV</u> means a vehicle with or without motive power that is designed for use as temporary living quarters and as further defined by the Oregon Department of Transportation in OAR Chapter 735, Division 022. Examples include motor homes, camping trailers, tent trailers, truck campers and camper vans.

### 6.25.010 Parking of Recreational Vehicles

A. Recreational vehicles may not be parked and occupied in the right-of-way or on any public or private parking lot between the hours of 11:00 P.M. and 5:00 A.M., except in areas where camping is permitted as identified in Section 9.50.015 or as part of a Special Event Permit approved pursuant to Chapter 9.80.

Staff: Since this chapter applies to both public and private parking areas, it is not being merged into NMC 6.15. The only change is a cross-reference to the Special Event Permit Chapter (NMC Chapter 9.80) with respect to overnight parking of recreational vehicles (Unless otherwise specified, new language is shown in <u>double underline</u>, and text to be removed is depicted with <u>strikethrough</u>. Staff comments, in *italics*, are for context and are not a part of the revisions.)

## CHAPTER 6.65 IMPOUNDING VEHICLES, INVENTORY

### 6.65.010 Purpose and Scope

This chapter provides the procedures for towing a vehicle by or at the direction of the Newport Police Department and for conducting inventories of personal property in an impounded vehicle. This policy shall not be interpreted as limiting any legal authority that policy officers may have to search persons or to search or seize property. Failure to follow the policy does not give rise to a claim against the city, the police department, or any individual, but may be grounds for disciplinary action by the city.

#### 6.65.020 Vehicle Impounds

Police officers impound vehicles in the following circumstances:

- A. Abandoned vehicles.
- A. Vehicles left in or partially in a vehicle travel lane that block or restrict traffic.
- B. Vehicles that need to be moved from their current location when the owner is arrested, cannot be located, or is incapable of caring for the vehicle.
- A. Recovered stolen vehicles.
- E. Vehicles disabled in a collision.
- F. Vehicles seized as evidence in a criminal investigation.
- G. Vehicles seized as instrumentalities of a crime such as:
  - 1. Vehicular Assault
  - 2. Attempting to Elude
  - 3. Reckless Driving.
- H. Under any statutory authority, including:

- 1. Driving while suspended or revoked.
- 2. Operating a motor vehicle without driving privileges or in violation of license restrictions.
- 3. Driving under the influence of intoxicants.
- 4. Driving uninsured.
- I. Vehicles located in a public parking space in violation of posted time limits, meter requirements, or other posted parking regulations.

A police officer may order the towing of impounded vehicles.

Staff: Language added to authorize towing and impoundment for vehicles that violate City parking regulations. It syncs up with existing language in NMC Chapters 6.15 that authorizes illegally parked vehicles to be towed. The new language is crafted to make it clear that vehicles can be towed if they violate meter requirements.

#### 6.65.030 Definitions

The following definitions apply in this chapter:

- A. Valuables means:
  - 1. Cash money of an aggregate amount of \$50 or more; or
  - 2. Individual items of personal property with a value of \$500.00 or more.
- B. Open Container means a container that is unsecured or incompletely secured in such a fashion that the container's contents are exposed to view.
- C. Closed Container means a container whose contents are not exposed to view.
- D. Police Officer means any police officer employed or acting at the direction of or in collaboration with the Newport Police Department.

#### 6.65.040 Inventories of Impounded Vehicles

- A. The contents of all vehicles impounded by a police officer will be inventoried. The inventory shall be conducted before constructive custody of the vehicle is released to a third-party towing company except under the following circumstances:
  - If there is reasonable suspicion to believe that the safety of either the police officer(s) or any other person is at risk, a required inventory will be done as soon as safely practical; or
  - 2. If the vehicle is being impounded for evidentiary purposes in connection with the investigation of a criminal offense, the inventory will be done after such investigation is completed.
- B. The purpose for the inventory of an impounded vehicle will be to:
  - 1. Promptly identify property to establish accountability and avoid spurious claims to property;
  - 2. Assist in the prevention of theft of property;
  - 3. Locate toxic, flammable, or explosive substances;
  - 4. Reduce the danger to persons and property.
- C. Inventories of impounded vehicles will be conducted according to the following procedure:
  - An inventory of personal property and the contents of open containers will be conducted throughout the passenger and engine compartments of the vehicle including, but not limited to, accessible areas under or within the dashboard area, in any pockets in the doors or in the back of the front seat, in any console between the seats, under any floor mats and under the seats;
  - 2. In addition to the passenger and engine compartments as described above, an inventory of personal property and the contents of open containers will also be conducted in the following locations:

- Any other type of unlocked compartments that are a part of the vehicle including, but not limited to, unlocked vehicle trunks and unlocked car- top containers; and
- b. Any locked compartments including, but not limited to, locked vehicle trunks, locked hatchbacks and locked car-top containers, if either the keys are available to be released with the vehicle to the thirdparty towing company or an unlocking mechanism for such compartment is available within the vehicle.
- 3. Unless otherwise provided in this chapter, closed containers located either within the vehicle or any of the vehicle's compartments will not be opened for inventory purposes, except a closed container in the vehicle or vehicle compartment will have its contents inventoried when:
  - The closed container is to be placed in the immediate possession of such person at the time that person is placed in the secure portion of a custodial facility, police vehicle, or secure police holding room;
  - b. Such person requests that the closed container be with them in the secure portion of a police vehicle or a secure police holding room; or
  - c. The closed container is designed for carrying money and/or small valuables on or about the person including, but not limited to, closed purses, closed coin purses, closed wallets and closed fanny packs.
- 4. Upon completion of the inventory, the police officer will complete a report.
- 5. Any valuables located during the inventory process will be listed on a property receipt. A copy of the property receipt will either be left in the vehicle or tendered to the person in control of the vehicle if that person is present. The valuables will be maintained in a secure manner until they can be released to the owner or other authorized person, subject to any right of the city to

seize or hold the valuables as evidence or to otherwise retain the valuables.

#### <u>MINUTES</u> City of Newport Planning Commission Work Session Newport City Hall Council Chambers May 22, 2023 6:00 p.m.

<u>Planning Commissioners Present</u>: Bill Branigan (by video), Bob Berman, Braulio Escobar, Jim Hanselman, Gary East, and John Updike.

Planning Commissioners Absent: Marjorie Blom (excused).

PC Citizens Advisory Committee Members Present: Dustin Capri.

PC Citizens Advisory Committee Members Absent: Greg Sutton.

<u>City Staff Present</u>: Community Development Director (CDD), Derrick Tokos; and Executive Assistant, Sherri Marineau.

- 1. <u>Call to Order</u>. Chair Branigan called the Planning Commission work session to order at 6:00 p.m.
- 2. New Business.
- A. Comments from Thompson Sanitary on Draft Trash Enclosure Amendments. Tokos thanked Thompsons for providing comments and input on the amendments. He noted that Walter Budzik with Thompsons responded to the request to give comments on the enclosure standards. Budzik asked if they would be adding language to calculate the volume of solid waste that was going to be needed. Tokos reported they were trying to avoid this. Thompsons offered to produce a document that could be added to a building permit application to provide guidance to multifamily and commercial developers in terms of how to size the enclosures. Tokos said there was also a suggestion to add compostables to the language, even though they didn't currently provide the service. This could change in the future and he didn't think it was a problem to include this. Tokos reported that Thompsons was also willing to go down to 10 feet for the driveways. They also asked if Thompsons could be involved with the review process and sign off on all applications. Tokos noted this would be tricky for all sign offs, because the city by state law had to have a clear and objective path to approval for multifamily. Any discretion would be a problem that would hang up the approval process. Tokos cautioned the Commission to be thoughtful on how they did this so they didn't get in a spot where multifamily developers were saying they couldn't navigate forward because a third party didn't agree with their approach.

Rob Thompson addressed the Commission and noted he thought it was helpful to developers and citizens to be upfront on what their needs were. When they didn't have the option to provide adequate service, problems would arise, which wasn't good for anyone. Thompson felt good about the examples that had been shared. He explained that they had asked Budzik to respond because he came from McMinnville and had experience with provisions for enclosures. Thompson said they were willing to give back on the size requirements for the driveway and wanted to ask about being a part of the sign off. This would give them a direct review in order to sign off any problems. Thompson didn't have a problem not pursing this at that time and thought the one page document they could add to the permit applications would be more than adequate. Tokos agreed that getting the developers into

communication with Thompsons was the biggest first step to making sure they were thinking about enclosures, and especially advantageous when it was early on in the design phase so they could make adjustments. Thompson noted that the Surf View apartments were a good example of where the design for enclosures was done the cheapest way and the management company was managing inside of a budget, which couldn't be done. This was what brought Thompsons into the enclosure discussion. Surf View only had one compactor and Thompsons thought they should of had three. Escobar asked if their management or Thompsons was in charge of cleaning up Surf View's enclosures. Thompson explained they could do it for an additional fee, but it was Surf View's responsibility. The cost for Thompsons to do it was high, and they preferred the property management do it. Thompson thought that they should have a maintenance person who monitored this on a daily basis to see the best results. Escobar asked if Thompsons could ever threaten not having service if there were problems. Thompson reported they had the option to do this but they preferred that a remedy be found before this was done.

Berman asked what Thompson's thoughts were concerning roofs on the enclosures to keep the weather out. Thompson didn't have a problem with roofs and thought they were workable. He thought it would be up to the Commission to make that decision. Updike asked if they went with Option C.1 and a developer came in with a roof proposal, would the Commission have to approve it. Tokos reported they wouldn't. He asked how Thompsons typically serviced drop boxes or compactors if they were roofed. Thompson explained for drop boxes and compactors, the trucks would hook the front of the box with a line and pull it out of the enclosure before it was lifted and rolled up onto the truck body. He noted they needed to have 50 feet in front of the compactors to be able to have enough access. Thompson reported they had seen plans for compactors in parking garages and thought this would be terrible for their trucks because they were so big. They wouldn't want to be put in a position where they had to drag a box a long distance, because the trucks weren't designed for that.

East asked how they were dealing with the enclosures at the Wyndhaven apartments. Thompsons said they didn't have any problems with them because they had more staff to monitor them. Tokos noted one of their buildings wouldn't be within 150 feet and moving forward this type of project would require them to have another enclosure location. Thompson reported that he looked at Wyndhaven's current set up and noted they could have put in a corral for auxiliary recycling or garbage if they wanted to get away from the compactor and the staffing.

Capri asked if they could require developers to provide a sanitary letter from Thompsons as part of the permit process to help take the administrative burden off of the city. Tokos thought they could have developers submit something from Thompsons confirming they had a conversation about service and what they service requirements were. Thompson pointed out that this was the intention of the McMinnville code, and he was open to that. Capri thought they should do this for large commercial developments. Tokos noted they needed to be clear that the letter wasn't an approval. It was a letter saying they had a conversation and gives the city a heads up about how they could get things resolved. Amy Thompson addressed the Commission and noted this would have helped them in the case of Surf View. Berman thought it was a good idea.

Berman asked if Thompsons wanted to see the five foot swinging doors secured. Thompson thought it was a great idea. Capri asked if overhangs were going to be a part of the proposed code language. Tokos said it wasn't included and recommended this be left up to the person designing the enclosure.

Tokos asked if the 10 feet width was okay for drop boxes in the compactors. Thompson said it was and noted that a compactor needed to fit on a truck going down the highway, which was an eight feet maximum.

Tokos reported the amendments would come before the Commission on their June 12th meeting where they would give a recommendation to the City Council. Thompson thought having a letter in the file that said the proposed plans did or didn't meet Thompson's recommendations would be helpful for the city to have as a backstory.

**B.** <u>Revisions to Parking Codes to Facilitate Bayfront Metering</u>. Tokos reviewed the draft code changes needed to facilitate the installation of parking meters along the Bayfront. The changes to NMC Chapters 6.15, 6.20, and 6.25 were provided for context, but they didn't require Planning Commission approval. The city was looking at implementing the meters on the Bayfront in October. The City had a commitment as a matter of policy to reduce or eliminate off street parking requirements when the meters were implemented.

Tokos reviewed the updates to Chapter 14.14.030(B). He noted that these changes would have applied to the considerations for the new Abbey Hotel build as far as the number of credits that would be given for the old use over the last 10 years. Tokos explained that since a new dwelling had credits for the use over the previous 10 years, it made sense logically to do a credit for the last 10 years for commercial.

Tokos reviewed the changes to 14.14.100. He covered the three options for off-street requirements. Option B.1. would eliminate off street parking requirements in areas where the city required payment for the use of public parking. Capri asked if the original parking analysis found that there wouldn't be any need for off street parking for development based on the turnover from the meters. Tokos explained that the policy adopted was to reduce or eliminate parking. Capri asked if there would be an analysis based on the turnover generated from parking meters. Tokos explained the parking study didn't delve into it that far. It established that we are at functional capacity on the Bayfront at over 85 percent observed utilization, which was the general bar communities used to institute demand management such as a metering program. There was nothing in the parking study that said by instituting metering, you're going to free up a certain percentage of utilization. He noted that how much turnover increase and relief it provided was not quantified in the study. Capri thought this was pitched as there were undeveloped lots and limited opportunities for development. If the requirements weren't lifted, properties wouldn't be able to be developed because the lots were too small to do so. Capri feared that if the parking requirements weren't lifted, there would only be two lots on the Bayfront that could be developed. Tokos thought that the different options would help address Capri's concerns. Option B.1 would lift the parking requirement, but it had the potential to bring in a heavy parking demand that they would be stuck with. Option B.2 would allow developers to pay a onetime fee in lieu of providing the off-street parking required. They could structure it so that the more demand a development placed on parking, the stiffer the fee on parking it would be. Capri thought these didn't address the parking issue in the area and the whole point of metering was to improve the flow of parking. There was a public perception that they were already adding fees for meters. Someone who wanted to do new development would be able to pay for they parking they couldn't provide, and it would cost even more money. Tokos noted the principle was that you could use this to disincentivize somebody coming in would be placing a tremendous impact on the available supply. Escobar noted that around 1977 there was a fee charged for those who didn't provide off street parking. He didn't think any of this money collected had been used to generate new parking. Escobar was opposed to developers being able to pay money to build something and not have adequate parking. The impact of the development's parking affected everyone on the Bayfront. Escobar thought the if someone was to build something they should provide parking. Tokos noted the payment in lieu fee was discontinued around 2009-2010 and the \$250,000 collected had been used to get the meters installed.

Berman noted the problem he had with Option B.2 was that it put a burden on the parking system and there was no kind of offset to provide additional parking. He thought this would be more of a penalty rather than a fee. It wouldn't be a deterrent in any of the discussed developments other than building a new hotel. Hanselman thought that someone who paid the in lieu fees who paid off all of the parking they needed to have for 20 years or less, didn't add up to him. He noted that the amount of parking would increase with a payment in lieu, and a business would get away with only having to pay a onetime fee. Tokos reminded the commitment that was made in the council policy in the Comprehensive Plan was to reduce or eliminate off street parking requirements, not to keep them in place. They had to come up with a program that reduced in a meaningful way or eliminated off street parking requirements for these businesses. Option B.2 disincentivized somebody developing on the Bayfront who would put heavy demand on those street parking spaces and create additional revenue that could be used to add supply down the road. One way to disincentivize somebody from coming down to the Bayfront and redeveloping in a manner that took up a bunch of the streets supply was to add a financial disincentive. Capri thought that would affect the small businesses more because they couldn't absorb the costs. If he were to pick anything besides Option B.1, it would be Option B.3 because it would target the high demand user and avoid the small businesses. Tokos noted he knew a restaurant could do this because he sat down with a restaurant owner who had to put in 8 to 10 parking spaces. The cost to install a parking lot was \$70,000 and asking for \$15,000 would be easier to pay. Capri liked Option B.1 the best and also liked B.3 because set a cap and allowed developers to do a small infill project without paying a bunch of money.

Tokos reviewed Option B.3 that lifted the requirements only if the development exceeded a certain threshold. He had listed the spaces at 25, but it could be changed to 20. Berman thought 25 was too high. Tokos thought they could set it at 20 instead which would mean there could be a 12,000 square foot size if it was on the water side.

Updike liked all three options. He thought for those that generated one to five spaces, there should be no fee. The ones that generated six to 20 should pay a fee. Then over 20 would pay a higher price. Updike thought they needed to find a way to incentivize the small mom and pop stores that had a nominal impact to parking. Updike thought the larger developments should provide parking spaces. Tokos noted they already had a track record of allowing the first five spaces to be exempt from the business license fee, which helped out modestly for projects. Berman asked what would happened to the fee people were paying on their business licenses when this went into effect. Tokos reported the fee would go away. He noted that the total annual collections on this fee had been around \$14,000. Tokos thought they shouldn't go over five spaces for those that wouldn't pay anything.

Hanselman questioned how they could have more businesses on the Bayfront without more parking. He thought that if they infilled all the properties on the Bayfront it would bring in more people. They would have metering to help with turnover, but there would still be many more people that walked on the sidewalks there. Tokos remined that the principal to doing the meters and permits was to adjust the rates until they got them right. Capri asked how the fees would be adjusted. Tokos explained it would be done by City Council resolution.

Berman asked if there would be anything to keep existing private parking lots from being developed if this went into effect. Tokos thought that part of the agreement was to allow these to be developed. He reported that there was somewhere between 65 and 90 spaces that were tied up in private lots on the Bayfront that could get redeveloped reasonably easy. Tokos reminded that this was part of the deal when they changed to metering. Capri noted that there would be a lot of developers that wouldn't do development without providing parking because the industry demanded they provide them. Hanselman thought if they did the parking fees correctly they could make enough money to have a shuttle. He thought they should raise the fees for the business owners, and have them pay into providing a shuttle bus because they would be the ones benefiting from it. Tokos noted once they had the meter and permit revenues they would have enough money to do transit if that was what policymakers wanted to do. They could also subsidize a carpool/vanpool program. Tokos thought that either of these would meet different demands, they just needed funds to support them.

Hanselman thought the concept of reducing parking and increasing business wasn't reasonable. Tokos noted that the meters had a positive track record across many communities in terms of turnover. Hanselman thought the metering was a separate issue than development. Tokos explained that cities who were eliminating their off street parking minimums in their commercial core areas were doing this because they had demand management in place. There was a risk that they would get a business that came in who had a significant demand on supply. Hanselman thought they should put in the parking meters and see what happened first before making decisions on these options. Escobar asked what the proposed rate for meters was. Tokos reported \$1 per hour. Berman was concerned that the permits would be bought out by employers for staff and block out all of the parking. Tokos reported the committee was comfortable with this price going out as the baseline and agreed that in the meter/permit zone they wouldn't make more permits available the than the spaces that were available. Capri asked what the consultant thought about the rates. Tokos reported that they recommended it be \$1 an hour. The committee also proposed permit fees that were higher than what the study recommended at \$45 a month for the high demand areas and \$25 a month for lower areas. Hanselman asked if all the permits had been purchased in other communities. He was concerned that if all of the permit weren't purchased it meant that there would be permit spaces left open because they were permit only spots. Tokos reminded these were both permit and meter parking areas and there would be no reserved parking for permits. Every spot would have a meter. Tokos said the less desirable areas that were permit timed were areas where people could park free for four hours or if they had a permit they could park over a period of time. These areas were where they wanted a lot of people to park. In those cases they were looking at having around 140 percent of the stalls sold in terms of permits. Hanselman asked if the Port suggested they would provide more parking or fishermen. Tokos reported they weren't. They were still working through their own issues but their permit fees were cheaper than the city's.

Capri thought Option B.3 was a reasonable approach because it allowed development to occur and gave the City control over big development. Tokos thought that if they chose B.3, it would be justifiable to peg the number of spaces at 20 rather than 25, but they wouldn't want to go much lower. Tokos reported the Parking Advisory Committee liked combining B.2 and B.3, where they could set it at requiring nothing for a small impact and then hit developers with fees as the impact intensified. He thought they could set the prices at \$0 for 0 to 5 spaces, \$5,000 for 5 to 10 spaces, \$7,500 for 10 to 15 spaces, \$10,000 for 15 to 20 spaces, then stop it at that. They could also change B.3 to not exceed 20 spaces instead of 25. The Commission was in general agreement with this.

Berman was concerned about the fees for Option B.3 and asked if they talked about making the amounts smaller and changing them to annual fees. Tokos pointed out they were trying to avoid annual fees. The concern with annual fees was that they could go on for an extended period of time and there was the potential to lose sight on what the fees were for in the first place. Berman thought charging the one time fee didn't have any value over an extended period of time. Tokos explained that one of the reasons they discontinued annual fees was that over time it became a situation where some businesses were paying more than others, while some didn't pay at all. He explained that policy makers didn't think that was fair.

Tokos reiterated that he would bring back a revision showing \$0 for 0 to 5 spaces, \$5,000 for 5 to 10 spaces, \$7,500 for 10 to 15 spaces, \$10,000 for 15 to 20 spaces, and then changing B.3 down to 20 spaces. Capri asked if there was any leniency for big developers. Tokos said there wouldn't be because everyone would be on the same playing field. If there was an existing use on a property, the new development would have a credit for parking based on that use. A discussion ensued regarding examples of how different property uses had changed over the years and how their credits worked. Tokos reminded the changes would be the bar for what someone could do to meet the parking requirements. There would still be an adjustment process for different requirements, such as a parking demand analysis or request an adjustment to a dimensional requirements.

Berman asked if Section 14.14.100(C) meant that existing uses weren't required to retain parking. Tokos confirmed that was true and noted that this was what the business community supported when they included the Comprehensive Plan policies that reduced or eliminated off street parking requirements for those that were previously constructed. They couldn't tell one person to keep their parking while allowing another to come in and not have to provide anything. Tokos noted that Section 14.14.100(D) memorialized that Nye Beach and the City Center would continue to pay their business license annual fees until they had an alternative program where there was payment for the use of public parking. This was already a resolution.

Capri asked how this would be evaluated later. Tokos reported there were firms who did this. He thought that it would make sense to wait until the meter program was up and running for a couple of year before they evaluated it. Tokos noted they would have good data because T2 Systems would be able to track the data by permit zone.

Escobar asked how the permits would work for someone who bought one permit and had three cars. Tokos explained this would something more so for Nye Beach, not the Bayfront. The Bayfront had commercial fishermen who had multiple vehicles, and the Advisory Committee discussed adding a surcharge for additional vehicles that fell under one permit. Capri asked if there was a way to know if two vehicles were being used on the permits. Tokos reported there would be license plate technology that would ping each license plate to know this. It would be set up that when someone has exhausted their time, they couldn't just go to another available space in the same zone because they would be set up by permit zone. Berman asked if someone parked with a permit in a meter space, would they need to go to a kiosk to register they were parking. Tokos reported if they had the right permit for the area they could park without having to go to the kiosk. Berman asked if the permits were for a certain number of hours. Tokos reported they would be 12 hours, and the commercial fishermen permits would be done by invite and they would be 72 hours. Capri asked who made the final determination on the fee amounts. Tokos said the City Council would. Capri asked if anyone had brought up inflation in the discussions. Tokos reported they had, and it was why they adjusted the fees to \$25 and \$45 from what they were set at previously. This was a work in progress that they would key it to an inflationary adjustment right off the bat. Berman asked if someone could buy annual permits. Tokos reported they hadn't gone down that path and were pretty much dealing with just monthly permits. Branigan guessed they wouldn't do annual permits because there would be questions on proration for people who switched cars. Berman thought it was a good idea not to do an annual permit.

Tokos asked for comments on other sections. Berman thought that for Section 6.20.02(C) emergency vehicles should be able to park anytime, not just in emergencies. Tokos thought this had been doubled up in the language and they had already included an exemption for government vehicles. He would confirm for this. Berman questioned Section 6.20.030(D) because it was hard to unload a truck in 30 seconds. Tokos noted this was in their code and suggested it be changed to five minutes. Berman thought 15 minutes would work better.

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Berman noted that in Section 6.20.040(F) he didn't know what a space reservation device was. Tokos reported they could define this. He pointed out there would be instances such as special events or construction permit authorizations where someone would have to put up space reservations. Updike thought these devises could come in many shapes and forms, and why it was kept generic.

Berman pointed out that the text in Section 6.20.045 was written as if they were referring to the meters with the old galvanized steel posts with a head on them. Tokos would clean the language up. It should have been written for a kiosk. Berman questioned Section 6.20.050 that said that if there were disable placards they behaved like everyone else and if there was a wheelchair placard, they didn't have to do anything. Tokos reported this was the state law.

Tokos noted the non-land use updates would go into place before the meters were implemented. He explained that there would be public outreach in August and September, and another opportunity to do one round of refinements to the meter/permits options after. Berman asked if they would have a sample of the machine at the outreach meetings. Tokos didn't know if they would have one at the outreach meetings. He reported they had just ordered them and they would be putting out bids in June to get it lined up to do the improvements to the parking lots in September. There were 110 sign poles that needed to be either swapped out or put in new, then the pay stations and regulatory signs installed and then go live. There would also be a break in period where people received warnings for a while. The meters would only be live on the weekends during the off season starting in October, which would help the public get used to them.

Berman asked if someone parked longer than they were metered for and received a ticket, would the meter collect the ticket amount if they came back to park. Tokos explained there would be an enhanced level enforcement for what's called scofflaw, where if somebody has a certain number of unpaid parking tickets, they would get tagged and it would be elevated in terms of its level of enforcement. They were working with the Police Department on how to do this. Tokos noted there were certain circumstances where a parking ticket would be an automatic hit when someone was renting a car and got a ticket. The ticket would go on their rental bill. Enforcement of this was done by license plate recognition. Tokos reported when people didn't pay their tickets, T2 Systems would be acting in the capacity of the city to look up people how didn't pay and send out an automatic letter with information on additional fees due. The intent was to have this be as light of an impact on the police officers as possible.

Tokos reported that the City Council voted in favor of the appellant for the appeal for the new Abbey Hotel. They felt it was essential to consider the previous development when weighing the relative impact of the project, and felt the project had less of an impact than the prior development given the parking they were going to construct. The final order would be brought to the City Council on June 5th. Berman asked if they formally acknowledged the other adjustments. Tokos reported the acknowledge the adjustment on the yard and authorized the package on a 5 to 2 vote.

Hanselman asked if the parking kiosks would be cash or credit card, or both. Tokos reported there was a coin option and credit card option. Hanselman asked if the city considered collecting tickets by charging them directly to the ticket holder's credit cards. Tokos would share where this ended up with the Commission and would talk to T2 Systems on this. He thought that the public would had the right to contest whether or not a ticket was property issued. Most people didn't pay for the tickets on the fly. Tokos reminded that rental cars agree in advance that if they had a ticket they would be charged on their rental fees.

- C. Planning Commission Work Program Update. No discussion was heard.
- 2. <u>New Business</u>. None were heard.
- 3. Adjourn. The meeting adjourned at 7:44 p.m.

Respectfully submitted,

erri Marineau

Sherri Marineau, Executive Assistant

June 20, 2023 4:09 PM Newport, Oregon

#### **CITY COUNCIL WORK SESSION**

The Newport City Council met on the above date and time in the City Council Chambers of the Newport City Hall. On roll call Jacobi, Parker, Goebel, and Kaplan.

City Staff in attendance were: Spencer Nebel, City Manager; Patty Riley; Executive Assistant. Also present were Steve Baugher, Finance Director; Derrick Tokos, Community Development Director; Jason Malloy, Police Chief.

### CALL TO ORDER AND ROLL CALL

Kaplan called the meeting to order at 4:09 P.M. and Riley conducted roll call. Hall, Sawyer, and Botello were excused.

### **DISCUSSION ITEMS**

City Manager's Report. Nebel presented the written City Manager Report saying on Tuesday, June 20 at 4 PM, the City Council will meet in a work session to discuss a possible provision of a city property maintenance code and revisions to parking codes. In addition, I am asking the City Council to schedule an executive session for purposes of labor negotiations immediately following the session. At 5:45 an Urban Renewal meeting has been scheduled for budget adoption and for considering the purchase of property. A regular City Council meeting will follow at 6 PM. Schedule for Meetings for Tuesday. June 20, 2023 1.) City Council Work Session at 4 PM 4:00 Discussion on Property Maintenance Code (20 minutes) 4:20 Revisions to Parking Codes (40 minutes) 5 PM Adjournment 2.) 5 PM Executive Session on labor negotiations (15 minutes). 4.) 5:45 PM Urban Renewal Meeting on Property Transactions (10 minutes) 5.) 6 PM Regular Council Meeting Discussion on Property Maintenance Code (20 minutes) Over the years we have presented a number of options to the City Council to provide some level of property maintenance code for the City of Newport. Beyond unsafe buildings and nuisances, the City has limited ability to address other types of property maintenance issues. Mike Walas has been invited to address the Council on Tuesday on this issue. He has expressed concerns in his neighborhood in Agate Beach regarding property maintenance issues. Revisions to Parking Codes and Revisions to Parking. (40 minutes) Derrick Tokos has provided a report on the status of meter/permit parking rollout for the Bayfront. This will require changes to the Municipal Code that will need to be made in order to facilitate these modifications. The goal at this point is to have the parking system fully implemented on the Bayfront in October. Please review the attached materials from Derrick Tokos and be prepared to provide your thoughts on steps necessary to proceed with the code changes consistent with the parking system that the City Council has authorized to be put into place on the Bayfront. Executive Session (15 minutes) Scheduling an executive session

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pursuant to ORS 192.660(2)(d) to discuss labor negotiations. I would request that Council consider the following motion: I move to hold an executive session immediately following the work session held on Tuesday, June 20 to discuss negotiations with IAFF pursuant to ORS 192.660(2)(d)

Discussion on Property Maintenance Code. Malloy spoke regarding the agenda item advising the intent was to determine the Council interest in moving forward with a code. He presented the written staff report which said at the May 2, 2022 City Council Work Session, City Building Official Joseph Lease and Community Development Director Derrick Tokos presented Building Code Enforcement Activities to the Council. The presentation and discussion included building code enforcement and ordinance violations. The Council also briefly discussed maintenance requirements/violations in the City. The topic of maintenance often comes up as it relates to ordinance and nuisance enforcement. The City of Newport utilizes City Ordinances, Building Code and Fire Code when investigating/enforcing codes within the City. The City does not have an existing building maintenance code. Residential maintenance codes are common in many cities. Maintenance codes differ from building and fire codes. Maintenance codes exist to protect the health, safety and welfare of residents, to prevent deterioration of existing housing, to preserve and enhance the quality of life in residential neighborhoods, and to prevent or reduce urban blight by establishing minimum residential property maintenance standards. Maintenance codes cover many aspects of a residence. This includes, but is not limited to roofs, exterior walls, windows, doors, etc. An example of language related to a roof maintenance code is: 1. Roof drainage of a dwelling shall channel water into approved receivers and shall be adequate to prevent water buildup or ponding from causing dampness in the walls or interior portion of the building. Roof drains, gutters and downspouts of a dwelling shall be free from obstructions and maintained in good repair, so as not to be plugged, overflowing, or in a state of deterioration. Any building or structure having originally been designed for and fitted with gutters and downspouts shall continuously be maintained with such devices, in sound condition and good repair.

2. In any two-year period, tarps, tar paper or other similar materials shall not be exposed to weather on the exterior of a structure for a cumulative period of more than three months. Sample language related to exterior walls is: 1. Every exterior wall and weather-exposed exterior surface of a dwelling shall be free of holes, breaks, loose or rotting boards or timbers and any other conditions likely to admit water or dampness to the interior portions of the dwelling. Many jurisdictions have maintenance codes for residential and business structures. Sample maintenance codes reviewed identified violations as a public nuisance. Violations, penalties and remedies are similar to nuisance violations. The Police Department responds to many complaints related to poor maintenance. However, not all complaints can be resolved because existing codes are limited and don't govern maintenance. The City recently implemented a Housing Production Strategy, which committed to having staff research the viability of a rental housing maintenance code. Maintenance codes exist for all types of development; however, the City has only committed to looking into maintenance codes as it relates to rental housing, a subset of the residential market. Does the City Council want to explore options for implementing a maintenance code? Fiscal Notes: If implemented, enforcement of a maintenance code will require additional staff time. Alternatives: Continue only utilizing the building code and ordinances that apply to violations related to

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reported poorly maintenance residences. Attachments: Rental Housing Maintenance Code Feasibility.

Tokos reported an action item from the Housing Production Strategy was to research the feasibility of a maintenance code for rental housing, and expected the review to come back by the end of 2024. Malloy reported an expansion of that to all housing and commercial properties in Newport may be wise. The Council had a brief discussion Parker inquired about what other cities do?

Goebel referenced a concern about gutters, and them not being necessary on some houses and some houses are not connected to a storm drain system. Malloy advised that the City has not drafted a code, but is exploring the interest in moving forward on this or not.

Nebel advised that Michael Walas a concerned resident who brought this topic forward, was present to speak on the item. He advised he moved to Newport in 2017, and wanted to share some thoughts as he was concerned. He referenced a variety of items saying he interested in Yaquina Bay Bridge - concerns with Art Deco "Ghetto", due to vacant buildings etc. Not maintained. AB&R Laundry's building. There is no sense of urgency. Properties that are not being maintained. Junk yard/cars in front & back/bio-hazards/tarp on the roof. Also a matter of property values. Commercial and residential blight.

Tokos detailed the ability to leverage state funds for a feasibility study on the topic.

It was the general consensus of Council to proceed, and for administration to bring a report back on potential next steps for future Council discussion.

Revisions to Parking Codes to Facilitate Bayfront Metering. Tokos spoke and presented the written staff memo which said the purpose of this work session is to update the City Council on the status of the meter/permit rollout for the Bayfront and to begin to review the Municipal Code changes needed in order for it to happen. We are looking to fully implement along the Bayfront in October, and the Parking Advisory Committee supports a fall implementation, as it will provide affected stakeholders more time to adjust to the new parking requirements. Attached is an implementation schedule. Design of the parking lot improvements is complete and the Public Works Department is putting them out for bid on June 16th with proposals being due July 10, 2023. At the same time, they will bid concrete work for the pay station foundations, installation of 63 new traffic sign posts, and the removal/replacement of 37 existing posts. Proposals for that work will also be due July 10th. City staff is working with T2 Systems, Inc. on parking system setup and training, which will extend through the summer. With respect to parking code changes, attached is a set of revisions that will need to be made to the Municipal Code to provide a framework for the metering, parking permit, and enforcement program. They include amendments to Chapter 1.50, Penalties; Chapter 6.15, Parking in Rights-of-Way; and Chapter 6.25, Recreational Vehicle Parking. Existing Chapter 6.20, City Parking Lots, will be replaced with a new Chapter 6.20, Metered Parking Zones. In addition to this regulatory framework, revisions are also being made to the City's land use regulations to reduce or eliminate off-street parking requirements along the Bayfront. The changes respond to the following implementation measures in the parking study that the City Council adopted in 2020 (Ordinance No. 2163) Implementation Measure 1.3.1: Pursue metered zones, hybrid paid/permit, and hybrid permit/timed zones for high demand areas along the Bayfront; and Implementation Measure 3.2.3: Reduce or eliminate minimum off-

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street parking requirements for new development or redevelopment in metered and meter/permit zones. A number of cities have eliminated off-street parking minimums altogether, particularly in commercial core areas where public parking is available and where they have transitioned to demand management. Here is an online article with an interactive web map of the cities: https://www.lincolninst.edu/publications/articles/2022-10-shifting-gears-eliminating-off-street-parking-requirements The Planning Commission had an opportunity to review the draft changes on May 22, 2023 (minutes enclosed) and The Parking Advisory Committee is working through them at their May 17, 2023 and June 21, 2023 meetings. I'll be prepared to walk through the changes and look forward to hearing your thoughts on the various revisions and options.

Attachments: Implementation Schedule, Draft Revisions to NMC Chapters 1.5, 6.15, 6.20, 6.25 and 14.14, Special Parking Area Map, Draft minutes from the 5/17/23 Parking Advisory Committee Meeting and 5/22/23 Commission Meeting.

Tokos spoke advising this effort should go live in October, the vendor is under contract pay stations at the shop and the License plate recognition is on order.

He added the sign installation project is out for bid, for 100 sign posts new or swap outs and 10 pay station posts.

Parker inquired about concerns on theft of signage and if they had any built in theft deterrents? Tokos reported that security cameras were an item. Tokos detailed the public outreach efforts, having a separate work session in August, and doing additional outreach in August and September. He added that the public would be asked to provide feedback on final pricing, and there was a need to do work on the municipal code to support this. Tokos shared the project was expected to be fully paid back within a couple of years

Goebel inquired about impacts on Fish Plant trucks? Tokos advised timed loading zones would be an looked at.

Council reported outreach was important. Jacobi inquired about how the City could encourage businesses to provide transportation/shuttle services?

Kaplan reported that reviewing prior minutes on this topic may shed some light.

### **EXECUTIVE SESSION**

### <u>Scheduling an Executive Session Pursuant to ORS 192.660(2)(d) to Discuss Labor</u> <u>Negotiations</u>

MOTION was made by Goebel, seconded by Parker to move to hold an executive session immediately following the work session held on Tuesday, June 20 to discuss negotiations with IAFF pursuant to ORS 192.660(2)(d). The motion carried unanimously in a voice vote.

### **ADJOURNMENT**

There being no further business, the meeting was adjourned at 5:20 PM

#### MINUTES Parking Advisory Committee Meeting #12 Newport City Hall Council Chambers June 21, 2023

<u>Committee Members Present</u>: Gary Ripka (*by video*), Bill Branigan (*by video*), Aracelly Guevara, Aaron Bretz, Doretta Smith, Jan Kaplan, and Robert Emond.

#### **<u>Committee Members Absent</u>:** Janell Goplen (excused).

- <u>City Staff Present</u>: Community Development Director, Derrick Tokos; and Executive Assistant, Sherri Marineau.
- 1. Call to Order & Roll Call. Meeting started at 6:05 p.m.
- 2. Approval of Minutes.

**MOTION** was made by Bill Branigan, seconded by Doretta Smith, to approve the May 17, 2023, Parking Advisory Committee meeting minutes as written. The motion carried unanimously in a voice vote.

- 3. <u>Updated Implementation Schedule</u>. Tokos reviewed the implementation schedule. Emond asked how long it would be to get the signs up. Tokos thought this wouldn't be too difficult and was okay with the timeline.
- 4. <u>Review Bayfront Parking Lot Refurbishment and Sign Installation Bid Packages</u>. Tokos reviewed the plans for the parking lot refurbishments. Tokos noted that Chris Beatty with Engineering would be taking the lead on the design of the lot refurbishments. Justin Scharbrough with Public Works would be over the implementation of the signage. Jason Malloy with the Police Department would be working with Tokos and T2 Systems.

Tokos reviewed the Abbey Street parking lot changes that would add fire lane striping and refresh the ADA parking spaces by the restrooms. Kaplan asked if this area would be metered. Tokos reported it would be a meter/permit combo. He noted they would also be setting up motorcycle parking in the Abbey Street lot as well. Guevara asked if there were any spaces for bicycles. Tokos said there weren't a lot in this project but thier areas to add them. The Bike and Pedestrian Committee was working on this in a separate project. Tokos noted that they had talked to the Parks and Recreation crews to have them try to maintain the current landscaping. He asked for the Committee's thoughts on the refurbishments. Branigan asked when the work would be done. Tokos reported that it would be done after Labor Day, during the second half of September. They would shut down the lots individually and do them in a sequence.

Tokos reviewed the area by the Abbey Street lot next to the convenience store's private lot. They would be refreshing the ADA spaces and updating the trash area at this location. Ripka asked why areas 15 and 17 on the map of the lot couldn't be motorcycle parking. Tokos would talk to Public Works about this to see if that would be an option. Kaplan suggested it could be bicycle parking as well. Tokos asked for any comments on the lot by the convenience store. Kaplan asked if the store had a parking lot. Tokos explained that they had their own private parking. He noted that they wanted to make sure there was some sort of wheel stop or curbing in the driveway approach.

Tokos reviewed the Fall Street parking lot updates. They would be adding a pay station at this location, and it would be a meter/permit lot. They would also be striping the 9 foot by 16 foot compact vehicle parking space. Emond asked what happened if a big car parked in the compact space. Tokos explained that the city would be seeing more enforcement of parking violations. If a vehicle was obstructing the travel lane they would be cited.

Tokos reviewed the SW Bay Boulevard lot near Pacific Seafoods. He noted this lot would have one additional ADA space. Tokos then reviewed the Canyon Way parking lot. They would be taking one driveway out and working in a few landscape islands. Emond asked if they could add more lights to this parking lot. Tokos would look into this.

Tokos covered the Lee Street lot. This was a terrain constrained lot and would be timed/permit. Emond asked if there would be a sign showing that it was separate from the Ripley's lot. Tokos said there would. Smith asked if the lot had a light. Tokos wasn't sure if it did. Emond thought the landscaping areas looked like they were sized enough that they could be parking spots. Tokos would ask about this as well.

Tokos reviewed the Hatfield Pump Station parking lot. They would have a pay station at this location, and would be adding one ADA parking space. Tokos noted the area left of the ADA space was there to separate it from the sidewalk.

Tokos reviewed the map of the location of signs. Emond asked if the daily maximum would be four hours on Hatfield Drive. Tokos would discuss that during the regulatory signs discussion. He said if anyone saw any adjustments on the signs to let him know. Emond was concerned that there might be confusion between the public lot and Ripley's private lot. Tokos reported the city was already working with Ripley's to get an access easement for the driveway to the public lot. They would also talk to Ripley's about their signage to make it less confusing. Tokos continued his review of the sign locations on the maps and the design of the sign poles and footings. He requested the Committee let him know if they saw anything wrong on the signage plan.

Bretz entered the meeting at 6:38 p.m.

5. <u>Review Draft Meter Permit Municipal Code Changes.</u> Tokos reviewed the updates to Municipal Code Chapter 1.50 "Penalty." He noted that the parking changes they discussed at the last meeting hadn't really changed. The only changes focused on the land use piece. Tokos reported the first changes had to do with citations, which included how the City Council would have the authority to change fees by resolution. The revenues from the parking citations would be directed to the parking fund to offset parking enforcement. The other citation revenues would go to the general fund. Tokos noted they might add language to clarify the types of citations that were set by state statues.

Tokos reviewed the changes to Chapter 6.15 "Parking in Right of Way." Emond asked if the fishermen permits would supersede this. Tokos confirmed that was correct, unless they specified otherwise. They would also be adding language to extend the parking permit program to lots, and allowing for parking permits to be electronic, not just paper. They would also change the language to authorize recreational vehicle (RV) parking through a special event permits.

Tokos reviewed the changes to Chapter 6.20 "Meter Parking Zones." Tokos noted they needed to work through who would handle calls for tickets and when one of the pay stations wasn't working. Emond asked if the kiosks would have a message on them to say who to call if they weren't working. Tokos said they could set it up so that there was some sort of message for when the kiosk wasn't working

and say who they could call if there was an issue. The Police Department was working with T2 Systems and talking to City Council about having T2 collect tickets. Tokos said T2 wouldn't handle the payment of tickets and this would be done online. There would also be an option for people to pay by check, but they wanted to collect payments online to the extent possible. Emond asked if after the 14 days were past due, or whatever timeframe they determined, would the Finance Department handle collections. Tokos said once they were on the delinquent side, T2 would collect. There would be an additional cost to collect, and the person with the ticket would have to pay this fee.

Tokos continued his review of changes to Chapter 6.20. Emond asked if the fee areas were by parking lot or parking spaces. Tokos said they were setting up different fee areas by zone. Generally what they were trying to do was stop people from just moving a few spaces down and occupying another space. This would make sure that they would need to either move a certain distance or move to another zone. Tokos thought this seemed the most logical way to do it. Emond asked if the zone would correlate to the map. Tokos confirmed that was correct. Emond asked if signs would show zones on them. Tokos said they would.

Tokos reviewed the payment of fees. Tokos noted the time allowed for vehicles to load had been changed from 30 seconds to 5 minutes by the Planning Commission. They would also be looking into installing security cameras for pay stations. Tokos noted that Chapter 6.20.50 showed that accessible parking was exempt from fees. Smith asked what the reasoning was behind setting accessible parking as free but not having disabled parking be the same. Tokos said this was state law, and he guessed that wheelchair users would have a tiny bit more difficult time getting in and out of their vehicles.

Branigan asked if disabled veterans could get license plates, or if they would need a placard. He wondered if the license plate recognition would register their plates. Branigan also asked if they would be allowed to use accessible places for wheel chairs. Tokos said he would have to look into this. He noted that the draft code was put together by aligning it with the state code. This didn't say they couldn't do something different. Branigan thought they should exempt the veterans because a lot of them had mobility issues and didn't qualify for wheelchairs. He thought they should do something extra for those that had physical impairments and mobility challenges, rather than going with the state's code. Emond thought this would be simpler and they needed to figure out the handicapped or license plate types. Tokos thought they should be able to pick off the different placards. Bretz asked if enforcement could pick up a license plate with a placard. Tokos thought this would have to be done visually by enforcement. Bretz thought this would be easy to miss. Tokos reminded they would be parked in ADA spaces, and it would be easy to pick up. This was something they could look into, and he would ask if the placards were built into license plates. Emond noted that in California anyone who parked in a regular meter space, who had a handicapped placard, would be exempt from paying the fees. He wondered if Newport would be set up this way. Tokos said if they were exempting for all disabled types, they should only be exempt from fees in ADA spaces. Emond thought it would be simpler if it was just ADA spaces. Branigan noted a lot of disabled persons with wheelchairs would get special license plates. Ripka reported that his family didn't have a permanent license plate for a vehicle for his disabled daughter because she didn't drive. He thought all disabled types should be exempt. Tokos said what he heard was there were some consistencies that they should adjust this so that if someone was parking in an assessable space, they were exempt if they qualified for being in that space, period.

Ripka pointed out they didn't have many ADA spaces on the Bayfront and asked if there was any way to add more. Tokos noted they added some at the Fall Street lot, and they didn't want to add any ADA spaces on the steep sloped lots that didn't have accessible pathways down to the Bayfront. He noted there had been another ADA space added by Hatfield. Ripka reported that there was one ADA space by Ripley's, but it wasn't truly accessible. Smith asked if someone couldn't find an accessible parking

space, would they then be exempt in a regular space. Tokos said they would have to pay in regular spaces. Ripka thought this would be difficult when there were limited spaces. He thought they should park for free anywhere in the city. Emond was in favor of this if the enforcement could tell them how many times that was being used. Ripka thought that for the most part people didn't abuse the use of ADA parking, and they wouldn't use them when they didn't need them. Tokos would make the change that all ADA was exempt. Bretz thought they should talk to the Police Chief to see if this would have any issues. Ripka thought there might be a problem when someone didn't see the placard when enforcing. Tokos said the license plate recognition would flag the vehicle and the enforcement would have to get out of vehicle to check. Emond thought this would require additional signage. Tokos said they wouldn't put up additional signs, but they might be able to add something specifically to ADA spaces. Smith thought this should be added to the kiosks. Branigan suggested they add information to the phone app saying they should hang the placard on their mirror so they wouldn't have to pay. Tokos would look into this but noted that the phone app was just a text to pay interface.

Kaplan asked if the section on RVs was saying they couldn't park for more than 72 hours in the rightof-way. Tokos said that was correct, unless the area was signed for something else. Kaplan reported he currently saw RVs parking longer than this and asked if they would they be cited. Tokos said that was correct and it would be enforceable. Kaplan asked what it meant in Chapter 6.15.010 when it said that "any vehicle, which size or shape cannot be parked as provided, may be parked outside the restricted or limited areas of the city." Tokos explained that if they were in an area that was restricted, and the city had put in tick marks where the parallel parking spaces were, they couldn't extend over that. This would only apply to areas where they had defined parking spaces.

Emond asked if Chapter 6.15.015 (B), said that if someone who parked a U-Haul or SUV couldn't park in front of residential houses. He felt it was too ambiguous and asked if this meant SUVs and large trucks. Tokos said this was old language and it was meant for large trucks idling right next to residences. He would look to modernize the language.

6. <u>Confirm Updates to Regulatory Signs.</u> Tokos reviewed the new mockup of the regulatory sign concepts. Bretz noted thought that the signs should say "Only Sat-Sun, Nov to Apr" on signs to make it clear. Tokos reviewed the 60 minute loading zone signs and pointed out the location of each loading zones. Ripka noted Bornstein's couldn't get their trucks unloaded in 60 minutes, and they would typically sit for most of the day. Tokos said they had to set a time limit and enforcement had to be cognizant of the needs of the processors on the working waterfront in terms of loading. They could be lenient where there was legitimate industrial loading. Ripka was fine with the 60 minutes, but was concerned about Bornstein's loading area because there were times when trucks would be parked waiting to load.

Tokos asked if the group preferred that the other loading zone signs by retail spaces to be 20 or 30 minutes. Emond liked a shorter time limit because it was easier to enforce. The group was in general agreement for 20 minutes. Ripka reminded that there had been problems in the past with new parking enforcement officers being too stringent on enforcement. Tokos suggested they roll this out and then see how it went. Bretz asked if they could write it into the code that if it was a seafood product they get an additional 30 minutes. He thought that if it was in the code it would allow enforcement to add additional minutes while following the letter of the law, therefore giving them some discretion. Tokos would talk to Chief Malloy about this to see if they could work some language in. He would also discuss if the signs could be from "Saturday/Sunday only" or "only Saturday/Sunday" with Justin and the street crews.

Emond noted the legend on the map stated unlimited parking. Tokos would talk about this on the last agenda item.

7. <u>Confirm Permit Availability Caps by Zone.</u> Guevara asked if the arrows would be added to the signage. Tokos said the striping on the parking lots would be striped for one way or two way parking. Guevara reported that she had seen arrows and signage put on the roadway that easily cracked and washed away. She asked if the city was planning on putting something down that was sturdier. Tokos would ask if they would be using the thermal plastic striping on heavy traffic areas because these held up better.

Tokos reviewed the permit availability caps by zone and looked at the zone map. He noted that he would fix the paid parking from no daily maximum to a maximum of four hours.

Tokos reviewed the parking stalls by zone and the number of spaces in each. Smith asked if Zones A and B would have 225 e-permits. Tokos said they would be a maximum of 225. Smith pointed out they only had 222 spots. Tokos said they were approximately the same. Smith asked if Zones C and D would have 335. Tokos confirmed this and noted they would be doing 120 percent there. The principal was that Zones A and B were the high demand areas, and where they would put the meter/permit option in. They wanted to see spaces available for metering, and not eaten up by permits. They wouldn't see all of the permits holders utilizing at the same time. Also, the commercial fishing permits would be done by invitation only.

Ripka reported that the Port Council had asked him about the parking. They wanted to know how many spaces there were, how many boats would be able to have permits, and if they would be limited on the number of permits per boat. Tokos reported it wasn't set up to reserve a certain number of the 225 permits for them. This would be set up as first come, first served basis and could be adjusted over time based on utilization. Ripka asked how many people were using Port Dock 5. Bretz reported that he received numbers from the State Employment Department that estimated that there were around 600 jobs peak, with 300 jobs average. He figured the users numbers were between these two. Bretz noted that he always counted four people per boat. Tokos said if it was in the 300 to 600 range, they would be in pretty good shape if they had up to 25 in the Zones A and B, another 400 in Zones C and D, and have none of this included in the Port parking. Ripka thought Port Dock 5 was in the 200 to 300 range. Bretz thought the only time they were at max would be in October and early November when the weather was nasty and there wasn't much happening fisheries wise. Ripka noted that another time this happened was during spring in March. He didn't think everyone would all be there at the same time. Ripka thought 225 permits would work with the Port parking. Tokos assumed that the commercial permits at \$45 month would work in both the highly desirable and not so desirable areas. Ripka thought that was reasonable. He thought that when they kept it under the \$50 mark there would be less complaints.

Emond asked if someone had a Tier 1 permit, would they be allowed to park in the lower tiers. Tokos didn't think it was set up that way. The commercial fishermen permits would be done by invitation only. It made sense that they could park in the Tier 1 and Tier 2 pricing because both were proximate to the Port docks. Emond asked if their permits would reset on the second month and if they would have to go back to the bottom of the list. Tokos said they would have priority if they renewed within a particular period of time. If they didn't, they would drop out. Emond asked if a person who already had permits had priority the next month. Tokos thought they should have a priority if they renewed within the current month. He would look into this.

#### 8. <u>Public Comment.</u> None were heard.

9. Adjournment. Having no further business, the meeting adjourned at 8:03 p.m.

Respectfully submitted,

heri Worner

Sherri Marineau Executive Assistant

#### **CITY OF NEWPORT**

#### **ORDINANCE NO. 2163**

#### AN ORDINANCE AMENDING THE CAPITAL FACILITIES CHAPTER OF THE CITY OF NEWPORT COMPREHENSIVE PLAN TO ESTABLISH A POLICY FRAMEWORK FOR MANAGING PUBLIC PARKING ASSETS IN THE NYE BEACH, CITY CENTER, AND BAYFRONT AREAS (Newport File No. 1-CP-19)

#### Summary of Findings:

1. In 2016, the City of Newport commissioned the preparation of a Parking Management Plan to identify strategies to maximize available parking supply in the Bay Front, Nye Beach, and City Center areas of Newport to support a vibrant working waterfront, tourist and general retail-oriented commercial businesses, and mixed use neighborhoods. Each of these areas within the City is densely developed with much of the parking demand being met with on-street spaces and public parking lots.

2. Historically, persons developing commercial property in these areas have been allowed to pay a fee to the City in lieu of providing new off-street parking spaces to address the impacts attributed to their projects. That program proved outdated, and beginning in 2009 business owners petitioned the City to establish Economic Improvement or "Parking Districts" to fund parking system improvements through a business license surcharge. While the Parking Districts have been easier for the City to administer than a "payment in lieu" program, and have allowed for greater involvement from area business owners, neither approach provides a clear, long term strategy for how public parking assets should be managed nor have they generated sufficient funding to make meaningful improvements to the parking system.

3. The City hired a consultant, Lancaster StreetLab, to prepare the Parking Management Plan, with assistance from City staff and oversight by a City Council appointed Parking Study Advisory Committee consisting of representatives from the three Parking District advisory committees. An initial round of workshops and walking tours with local stakeholders and business owners occurred in April of 2016. The consultants then inventoried the parking supply in the three districts and observed utilization and turnover rates during periods of peak and off-peak demand. This occurred on Thursday August 25, 2016, Saturday August 27, 2016, and Saturday December 10, 2016.

4. Lancaster StreetLabs field work, and resulting recommendations, were vetted with the Parking Study Advisory Committee, and ultimately worked into a draft Parking

Management Plan completed on March 9, 2018. The Parking Management Plan includes an inventory and assessment of the condition of public parking assets in these areas; detailed field survey data illustrating the utilization and turnover rates of parking spaces during peak and off-peak periods; a list of capital improvements needed to maintain and improve available parking, including possible upgrades to transit service; and financing strategies to fund needed improvements.

5. Once the study was completed an additional round of outreach was conducted during the summer of 2018 with Bayfront, Nye Beach, and City Center businesses; the Port of Newport and commercial fishing community; Bayfront processors; Chamber of Commerce, and Rotary Club. Members of the Parking Study Advisory Committee and city staff attended each meeting and provided an overview of the study's recommendations. Feedback obtained at these meetings was used by the advisory committee to fine tune the Parking Management Plan's recommendations.

6. The proposed amendments to the Comprehensive Plan draw from this body of work. The recommendations, framed as goals, policies, and implementation measures, seek to improve the availability of public parking for all users. This will require changes to how parking is managed. The recommendations touch upon wayfinding, lighting, needed parking improvements, and the City's parking standards for new construction. Additionally, they call for public parking along the Bayfront to be managed with a combination of parking meters and permits. Meters are a proven method of altering parking behavior and improving turnover of parking stalls in high congestion areas. They will also generate revenue for maintenance and improvement of public parking assets. Further outreach is recommended in Nye Beach to assess whether or not a non-metering option that consist of fees and/or parking permits is a workable parking management solution. No major changes are proposed for the City Center area at this time.

7. The Parking Study Advisory Committee consisted of individuals representing touristoriented retail businesses, commercial fishing interests, seafood processors, residents, and affected government entities. The group met 15 times over a three year period to develop its recommendations, and their work was informed by a significant amount of public input resulting from outreach resulting from direct mail notice, email distribution lists, press releases, radio shows, newspaper ads, walking tours with business owners and stakeholder interviews.

8. On June 4, 2019 the Parking Study Advisory Committee adopted a motion to recommend the Newport Planning Commission initiate the legislative process to amend the Newport Comprehensive Plan to add a new Parking Facilities Element as outlined in the draft set of amendments now up for consideration. This was the last action taken by the Committee, as that group's responsibilities ended when the three Parking Districts expired at the end of June 2019.

9. These amendments to the "Public Facilities" Chapter of the Newport Comprehensive Plan are consistent with applicable Statewide Planning Goals in that the changes:

- a. Have been developed and vetted with a Parking Study Advisory Committee, Planning Commission, and city Council at public meetings and hearings consistent with Statewide Planning Goal 1, Public Involvement; and
- b. Update the Newport Comprehensive Plan's technical inventory with respect to the condition of public parking capital assets, infrastructure investment priorities, and funding strategies that will facilitate fact based land use decision making processes consistent with Statewide Planning Goal 2, Land Use Planning; and
- c. Promote further economic development within the Bayfront, and potentially Nye Beach and City center, shifting to demand management approach to ensuring parking needs are met, providing businesses a broader range of development and redevelopment options, consistent with Statewide Planning Goal 9; and
- d. Provide for the timely, orderly, and efficient arrangement of public facilities and services by ensuring that public parking infrastructure priorities are identified in conjunction with the City's other capital project needs, consistent with Statewide Planning Goal 11.

10. No other Statewide Planning Goals are applicable to the proposed changes to the "Public Facilities" Chapter of the Newport Comprehensive Plan.

11. Following a work session on July 8, 2019, the Planning Commission initiated the process for amending the Newport Comprehensive Plan in a manner consistent with the proposal recommended by the Parking Study Advisory Committee and scheduled a public hearing.

12. On September 9, 2019, the Planning Commission held a public hearing on the proposed amendments. At the close of the public hearing, a motion was made by Bill Branigan, the Commission liaison to the Parking Study Advisory Committee that the policy recommendations be forwarded to the City Council as drafted, along with an ordinance that would establish a standing advisory committee to assist with implementation. That motion failed on a 3-4 vote. Instead, the Commission recommended that the Council create a new advisory committee with instructions that they revise the draft to eliminate or minimize recommendations related to metering.

13. On October 7, 2019, the Newport City Council met to discuss the Planning Commission's recommendation. The Port Commission, whose members and staff participate in the development of the proposed parking related Comprehensive Plan amendments, requested that Council hold a public hearing. They did not provide formal comment at the Planning Commission meeting. The City Council meeting was also an opportunity for representatives of the Planning Commission to share their different perspectives on the matter. After considering public testimony, the City Council elected to hold a public hearing to take additional testimony before deciding how it wants to proceed.

14. On November18, 2019, the City Council held a public hearing to take testimony on how the City should manage its public parking assets in Nye Beach, City Center, and the

Bayfront. After taking testimony, the Council elected to hold a work session to discuss how they wanted to proceed with the proposed amendments.

15. On January 6, 2020, the City Council met in work session discussed how it wanted to proceed with the proposed amendments, and there was general consensus that there was sufficient business and property owner support to schedule a public hearing on an ordinance to amend the Comprehensive Plan.

16. The City Council held a public hearing on March 2, 2020 regarding the question of the proposed Comprehensive Plan amendments, and voted in favor of their adoption after considering the recommendation of the Planning Commission, testimony, and evidence and argument in the record.

17. Information in the record, including affidavits of mailing and publication, demonstrate that appropriate public notification was provided for the Planning Commission and City Council public hearings.

#### THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. Findings. The findings set forth above are hereby adopted in support of the amendments to the Newport Comprehensive Plan adopted by Sections 2 of this Ordinance.

Section 2, Amendment. A Public Parking Facilities Element is hereby added to the Public Facilities chapter of the City of Newport Comprehensive Plan as set forth in the attached Exhibit "A". The body of the amendment, excluding goals and policies, shall be inserted into the chapter after the "Roadway Transportation Facilities" section. The goals and policies shall be inserted in the section titled "Goals and Policies Public Facilities Element," after the heading "Transportation."

Section 3. Effective Date. This ordinance shall take effect 30 days after passage.

Date adopted and read by title only: March 2, 2020

Signed by the Mayor on March 3, 2020.

Dean H. Sawyer, Mayor

ATTEST:

Margaret M. Hawker, City Recorder

## PUBLIC PARKING FACILITIES

In 2016, the City of Newport commissioned the preparation of a Parking Management Plan to identify strategies to maximize available parking supply in the Bay Front, Nye Beach, and City Center areas of Newport to support a vibrant working waterfront, tourist and general retail oriented commercial businesses, and mixed use neighborhoods. Each of these areas within the City is densely developed with much of the parking demand being met with on-street spaces and public parking lots.

Historically, persons developing commercial property in these areas have been allowed to pay a fee to the City in lieu of providing new off-street parking spaces to address the impacts attributed to their projects. That program proved outdated, and beginning in 2009 business owners petitioned the City to establish Economic Improvement or "Parking Districts" to fund parking system improvements through a business license surcharge. While the Parking Districts have been easier for the City to administer than a "payment in lieu" program, and have allowed for greater involvement from area business owners, neither approach provides a clear, long term strategy for how public parking assets should be managed nor have they generated sufficient funding to make meaningful improvements to the parking system.

Characteristics of each of the study areas is summarized as follows:

<u>Bay Front</u>: A working waterfront with a mix of tourist oriented retail, restaurants, fish processing facilities (e.g. Pacific Seafood), and infrastructure to support the City's commercial fishing fleet. The Port of Newport is a major property owner and a boardwalk and fishing piers provide public access to the bay. The area is terrain constrained, with steep slopes rising up from commercial sites situated along Bay Boulevard.

<u>City Center</u>: A "main street" style cluster of commercial buildings oriented along US 101 between the intersection of US 101 and US 20 and the Yaquina Bay Bridge. Many of the City's public buildings are within this district, including the Lincoln County Courthouse, Newport City Hall, 60+ Center, Recreation & Aquatic Center, and the Samaritan Pacific Hospital.

<u>Nye Beach</u>: A mixed-use neighborhood with direct beach access anchored by Performing Arts and Visual Art Centers. Commercial development is concentrated along Beach Drive and Coast Street, both of which include streetscape enhancements that encourage a dense pedestrian friendly atmosphere. This area includes a mix of retail, dining, lodging, professional services, galleries, single family homes, condominiums, long term and short term rentals.

The Parking Management Plan, prepared Lancaster StreetLab, dated March 9, 2018, includes an inventory and assessment of the condition of public parking assets in these commercial areas; detailed field survey data illustrating the utilization and turnover rates of parking spaces during peak and offpeak periods; a list of capital improvements needed to maintain and improve available parking, including possible upgrades to transit service; and financing strategies to fund needed improvements.

Development of the Parking Management Plan, summarized in this Public Facilities Element of the Newport Comprehensive Plan, was informed by public input from outreach events and the project advisory committee. That committee consisted of individuals representing tourist-oriented retail businesses, commercial fishing interests, seafood processors, residents, and affected government entities. Once the Parking Management Plan was complete, additional outreach was conducted with stakeholders in the community and the project advisory committee, over a period of several months, further refined many of the Plan's concepts and maps resulting in a the final set of recommendations contained in this document.

### **Existing Public Parking Assets**

To inform the preparation of the Parking Management Plan, city staff and the consultant inventoried the public parking assets in the Bay Front, Nye Beach, and City Center areas. Additionally, city staff conducted a field survey to assess the pavement condition of the public parking lots. Much of the work was performed in the spring/summer of 2016. Results were presented to the project advisory committee at its November 2016 meeting, and are summarized in Tables 1 through 3 below.

| Table 1: Parking Lots<br>Facility | Size (SF) | District    | # Spaces  | Condition |
|-----------------------------------|-----------|-------------|---|-----------|
| Abbey Street Lot                  | 21,200    | Bayfront    | 53 standard<br>2 ADA accessible   | Poor      |
| Abbey Street (right-of-way)       | 5,800     | Bayfront    | 10 standard<br>2 ADA accessible   | Good      |
| Case Street (right-of-way)        | 3,600     | Bayfront    | 6 standard<br>1 ADA accessible  | Good      |
| Canyon Way Lot                    | 23,000    | Bayfront    | 33 standard   | Fair      |
| Fall & Bay Street                 | 8,600     | Bayfront    | 13 standard<br>1 ADA accessible   | Poor      |
| Fall & 13th Street                | 11,800    | Bayfront    | 22 standard   | Fair      |
| Hurbert (right-of-way)            | 13,400    | Bayfront    | 28 standard   |           |
| Lee Street                        | 11,000    | Bayfront    | 19 standard   | Good      |
| Hatfield Lift Station             | 2,000     | Bayfront    | 5 standard  | Poor      |
| 13th Street (right-of-way)        | 3,200     | Bayfront    | 7 standard  | Poor      |
| Angle Street Lot                  | 30,000    | City Center | 53 standard<br>4 Recreational vehicle<br>3 ADA accessible                           | Good      |
| City Hall Campus                  | 57,900    | City Center | 107 standard<br>9 ADA accessible  | Good      |
| 9 <sup>th</sup> and Hurbert       | 29,700    | City Center | 39 standard<br>5 Recreational vehicle<br>2 ADA accessible<br>2 EV charging stations | Fair      |
| US 101 & Hurbert                  | 9,200     | City Center | 18 standard<br>2 ADA accessible   | Fair      |
| Don & Ann Davis Park              | 9,800     | Nye Beach   | 25 standard<br>2 ADA accessible   | Good      |
| Performing Arts Center            | 74,800    | Nye Beach   | 143 standard<br>8 ADA accessible  | Good      |
| Jump-off Joe                      | 6,100     | Nye Beach   | 10 standard   | Good      |
| Nye Beach Turnaround              | 40,400    | Nye Beach   | 45 standard<br>3 ADA accessible   | Poor      |
| Visual Arts Center                | 12,900    | Nye Beach   | 21 standard<br>2 ADA accessible   | Poor      |

#### Table 2: Striped On-Street Spaces

| District    | Streets  | Striping (LF) | # Spaces |
|-------------|--|---------------|----------|
| Bayfront    | Bay Street, Bay Blvd, Canyon Way, Fall Street,<br>Hatfield Drive, Lee Street, Naterlin Drive               | 5,280         | 386      |
| City Center | Alder Street, Angle Street, Fall Street, Hurbert Street,<br>Lee Street, US 101, 7th Street, and 9th Street | 4,830         | 293      |
| Nye Beach   | Coast Street, Olive, and 3rd Street  | 2,570         | 249      |

Ordinance No. 2163 - Public Parking Facilities Element of Newport Comprehensive Plan

#### **Pavement Condition Assessment**

A simplified Good-Fair-Poor asphalt pavement rating system was used to gauge the condition of the surface parking areas, with the resulting information being used to estimate funds needed to maintain the lots in good condition.

A <u>Good</u> condition rating was defined as a lot that appeared stable, with minor cracking that is generally hairline and hard to detect. Minor patching and deformation may have been evident.

A <u>Fair</u> condition rating was given to parking surfaces that appeared to be generally stable with minor areas of structural weakness evident. Cracking in these areas was easier to detect. Patching areas may have existed, but were not excessive and deformation may have been more pronounced. Fatigue Cracking – Abbey Street Lot (2016)



A <u>Poor</u> condition rating was provided for parking areas with visible areas of instability, marked evidence of structural deficiency, large crack patterns (alligatoring), heavy or numerous patches, and/or deformation that was very noticeable.

The following is a brief description of factors that show the degree to which wearing surfaces are worn:

**Fatigue Cracking:** Sometimes called alligator cracking due to the interconnected cracks which resemble an alligator's skin, fatigue cracking is caused by load-related deterioration resulting from a weakened base course or subgrade, too little pavement thickness, overloading, or a combination of these factors.

**Deformation:** A distortion in asphalt pavement that is often attributed to instability of an asphalt mix or weakness of the base or subgrade layers. This type of distress may include rutting, shoving, depressions, swelling and patch failures.

**Edge Cracking**: Edge cracks are longitudinal cracks which develop within one or two feet of the outer edge of pavement. They form because of a lack of support at the pavement edge; which in this case would be poorly managed drainage that is undermining the road surface

**Raveling:** Raveling is the wearing away of the asphalt cement from the aggregate particles. This can occur as a result of normal wear over time and it can be exacerbated by such conditions as oil dripping from vehicles.

**Structural weakness:** When pavement conditions wear to the point that there is substantial fatigue cracking, deformation, and/or patching, it can no longer be preserved with a slurry seal and will need to be reconstructed.

The pavement condition assessment was for the travel surface only and did not factor in striping, signing, drainage, railing, sidewalk or other repairs that may be needed.

#### **Maintenance Schedule**

The pavement condition assessment informed the development of a maintenance schedule to identify the level of funding the City should reserve annually to maintain the travel surfaces of the public parking lots (Table 3). Lots that are in good condition can be maintained with a chip seal or slurry seal every 5-10 years, and this is typically done up to three times before the surface is reconstructed. Those in fair condition will need to be rebuilt sooner, and those in poor condition are not candidates for a seal coat, as such treatment is unlikely to extend the useful life of the pavement surface.

Annual estimates were further prepared to account for striping and other ancillary repairs that may be needed, such as drainage, sidewalk, or curb replacement. Placeholders were also provided for administration of a permit parking program and metering, should those elements be implemented. The annual maintenance needs were then broken out by commercial area (Table 4).

| Parking Lot               | District    | Size (sf)     | Spaces | Condition | 1-5     | Years     | 5-10 | Years     | 10-15   | 5 Years     | 15-2 | 0 Years   |
|---------------------------|-------------|---------------|--------|-----------|---------|-----------|------|-----------|---------|-------------|------|-----------|
| Angle Street Lot          | City Center | 30,000        | 65     | Good      |         |           | Seal | \$60,000  |         |             | Seal | \$79,500  |
| City Hall                 | City Center | 57,900        | 112    | Good      |         |           | Seal | \$115,800 |         |             | Seal | \$153,43  |
| Don Davis Park            | Nye Beach   | 9,800         | 25     | Good      |         |           | Seal | \$19,600  |         |             | Seal | \$25,970  |
| Performing Arts Center    | Nye Beach   | 74,800        | 151    | Good      |         |           | Seal | \$149,600 |         |             | Seal | \$198,220 |
| Jump-Off Joe              | Nye Beach   | 6,100         | 10     | Good      |         |           | Seal | \$12,200  |         |             | Seal | \$16,165  |
| Lee Street                | Bay Front   | 11,000        | 19     | Good      |         |           | Seal | \$22,000  |         |             | Seal | \$29,150  |
| Abbey (ROW)               | Bay Front   | 5,800         | 10     | Good      |         |           | Seal | \$11,600  |         |             | Seal | \$15,370  |
| Case (ROW)                | Bay Front   | 3,600         | 6      | Good      |         |           | Seal | \$7,200   |         |             | Seal | \$9,540   |
| 9 <sup>th</sup> & Hurbert | City Center | 29,700        | 48     | Fair      | Seal    | \$51,678  |      |           | Rebuild | \$198,099   |      |           |
| US 101 & Hurbert          | City Center | 9,200         | 20     | Fair      | Seal    | \$16,008  |      |           | Rebuild | \$61,364    |      |           |
| Fail & 13 <sup>th</sup>   | Bay Front   | 11,800        | 22     | Fair      | Seal    | \$20,532  |      |           | Rebuild | \$78,706    |      |           |
| Hurbert (ROW)             | Bay Front   | 13,400        | 28     | Fair      | Seal    | \$23,316  |      |           | Rebuild | \$89,378    |      |           |
| Canyon Way                | Bay Front   | 23,000        | 33     | Fair      | Seal    | \$40,020  |      |           | Rebuild | \$153,410   |      |           |
| Nye Beach Turnaround      | Nye Beach   | 40,000        | 45     | Poor      | Rebuild | \$203,616 |      |           | Seal    | \$92,920    |      |           |
| Visual Arts Center        | Nye Beach   | 12,900        | 21     | Poor      | Rebuild | \$65,016  |      |           | Seal    | \$29,670    |      |           |
| Fall & Bay                | Bay Front   | <b>8,6</b> 00 | 13     | Poor      | Rebuild | \$43,344  |      |           | Seal    | \$19,780    |      |           |
| Abbey Lot                 | Bay Front   | 21,200        | 53     | Poor      | Rebuild | \$106,848 |      |           | Seal    | \$48,760    |      |           |
| 13 <sup>th</sup> (ROW)    | Bay Front   | 3,200         | 7      | Poor      | Rebuild | \$16,128  |      |           | Seal    | \$7,360     |      |           |
| Hatfield Lift Station     | Bay Front   | 2,000         | 5      | Poor      | Rebuild | \$10,080  |      |           | Seal    | \$4,600     |      |           |
|                           |             |               |        |           | Cost:   | \$596,586 |      | \$398,000 |         | \$784,047   |      | \$527,35  |
|                           |             |               |        |           |         |           |      |           | -       | Fotal Cost: | \$   | 2,305,983 |
|                           |             |               |        |           |         |           |      |           |         | Annual      |      | \$115,299 |

| Table 3: | Parking | Lot Surface | Maintenance | Needs. |
|----------|---------|-------------|-------------|--------|
|----------|---------|-------------|-------------|--------|

#### Table 4: Annual Maintenance Expenses

| Parking<br>District | Lot<br>Resurfacing <sup>1</sup> | Ancillary Repairs <sup>2</sup> | Striping | Permit Program <sup>3</sup><br>(if implemented) | Metering <sup>3</sup><br>(if implemented) | Total    |
|---------------------|---------------------------------|--------------------------------|----------|---|---|----------|
| Bayfront            | \$37,850                        | \$9,450                        | \$1,850  | \$10,000  | \$28,800                                  | \$87,950 |
| City Center         | \$36,800                        | \$9,200                        | \$1,900  | Not recommended                                 | Not recommended                           | \$47,900 |
| Nye Beach           | \$30,500                        | \$7,650                        | \$1,450  | \$10,000  | \$13,200                                  | \$62,800 |

1. Costs from pavement condition assessment prepared as part of parking study. Resurfacing costs proportioned by district with the cost of the Nye Beach Turnaround project being backed out since it has been funded with other resources.

2. Ancillary costs include repairs to drainage system, sidewalks, walls and railing when lots are resurfaced. Assumes 25% of resurfacing cost.

3. Annual maintenance costs are as outlined in the Study (\$500/pay station and \$100/sign).

### Outreach

Buy-in from business owners, residents, and other affected parties is essential to the success of a parking management plan. To this end, a series of public meetings were held at the outset of work on the Parking Management Plan, with the goal of obtaining public input on opportunities and constraints with regard to parking management.

Meetings were held from 6:00 to 8:00 pm during the second week of April, 2016. One meeting was held for each of the three Parking Districts. The City Center district meeting was held on Tuesday April 12th; the Nye Beach district meeting was held on Wednesday April 13th, and the Bayfront District Meeting was held on Thursday April 14th. All meetings were open to the public and advertised publicly in advance of the meeting.

Before each of the above meetings, a walking tour of the study area took place that included the consulting team and a small handful of local stakeholders and business owners. These were advertised to local business owners and other stakeholders who have been active within management of the existing parking districts. In tandem with the formal meetings in the evening, this process provided an opportunity for additional public input during which some issues and potential solutions were discussed and incorporated into the Parking Management Plan.

Once the study was completed an additional round of outreach was conducted during the summer of 2018 with Bayfront, Nye Beach, and City Center businesses; the Port of Newport and commercial fishing community; Bayfront processors; Chamber of Commerce, and Rotary. Members of the project advisory committee and city staff attended each meeting and provided an overview of the study's recommendations. Feedback obtained at these meetings was used by the advisory committee to fine tune the studies recommendations.

### Parking Management Plan Methodology

In order to gain an understanding of parking demand within each of the respective parking management areas, a detailed study of parking demand and utilization was conducted. The primary study days were Saturday August 27, 2016 and Saturday December 10, 2016. These days were selected because they were expected to represent typical weekend days (i.e., no special events or other unusual factors) during the peak tourism season and the slowest period of the year for tourism, respectively. Additional observations were conducted on Thursday August 25, 2016 in order to study differences between weekday and weekend demand patterns. The results of this analysis heavily inform the management recommendations that follow, and were used to project potential revenues and maintenance needs.

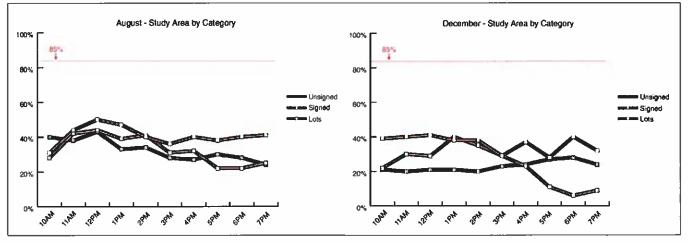
The methodology employed for this analysis consisted of two steps: an inventory of parking supply, including the number and types of stalls, followed by peak and off-peak occupancy and demand observations. To complete the first step, an inventory of the supply of parking stalls was conducted, tracking the number and location of parking spaces along each block face as well as designated users, maximum time stays, and other pertinent information as applicable. Locations and capacities of parking lots were recorded, and for on-street spaces, whether or not a space was marked was recorded. The inventory was conducted utilizing a tablet PC. Data collected in this step was used to set up data collection tools in the form of spreadsheets, to be used during the following step.

Following the inventory step, parking demand data was collected. The study area consisted of routes containing approximately 30 to 35 block faces of on-street parking as well as any lots along the route. Four routes were in Nye Beach, three were the Bayfront, and one was within the City Center district. Route sizes and configurations were designed such that data collectors were able to walk and collect data over the entire route once per hour without needing to work excessively quickly. Each parking space within the study area was thus visited once per hour from 10:00 AM to 7:00 PM.

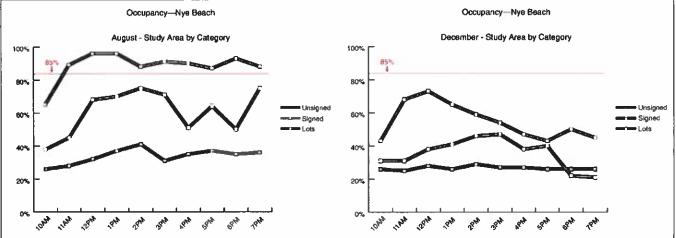
The data were collected on tablet PCs utilizing the route-optimized spreadsheets created during the inventory phase. During each hourly orbit of a given route, the first four digits of the license plate of each vehicle parked in a stall along the route were recorded, to allow for analysis of both occupancy and duration of stay.

Occupancy curves in Figures 1 to 3 below show overall parking occupancy throughout the study area for weekdays. In these figures, the time of day is shown on the horizontal axis and the percent of available parking that was observed to be occupied is shown on the vertical axis. Additionally, a line indicating an occupancy level of 85% is shown-this occupancy level is generally considered to be indicative of 'functionally full' parking. At parking occupancies at or near 85%, high instances of illegal parking, congestion attributed to vehicles cruising for parking, and other undesirable behaviors are often observed from frustrated drivers. Parking areas that are functionally full are candidates for "metering" as a tool to improve parking turnover.

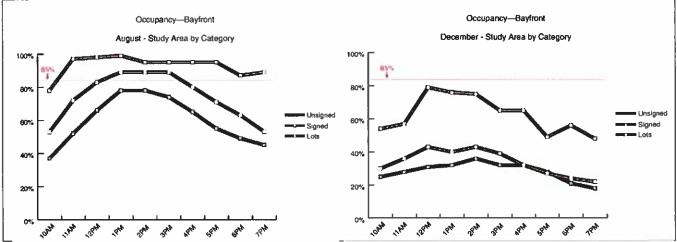












Ordinance No. 2163 - Public Parking Facilities Element of Newport Comprehensive Plan

Survey data was also used to identify the percentage of overall occupancy (hourly), percentage occupancy by street block (hourly), average stay length (Signed, Unsigned, Overall Study Area), percentage overstays (Signed Stalls), Unique Vehicle Served Daily (Signed Stalls). It is broken down in charts graphics, with more detailed analysis, in the Lancaster Parking Management Plan, included in the appendices to this Plan.

### Recommendations

Recommendations from the Lancaster Parking Management Plan, as amended by the project advisory committee, are summarized below and further refined in the goals and policies section of the Public facilities Element of the Newport Comprehensive Plan.

#### Demand Management

- Implement metered zones, permit zones, and hybrid permit/meter zones for high demand areas along the Bayfront as generally depicted in Figure 4 below. Conduct further outreach with the Nye Beach community to assess whether or not a scaled down metering concept, focused on core commercial areas as depicted in Figure 5 below, is acceptable or if a non-metering option that consists of fees and/or permit parking is preferable.
- Support metering with permit program for residents, businesses and the fishing community.
- Meter revenues in excess of administrative costs should be dedicated to prioritized parking system investments.
- Evaluate measures on an ongoing basis with attention to economic, land use and related factors that influence parking demand.

#### Wayfinding and Lighting

- Improve branding of city-owned parking lots and facilities and wayfinding between parking areas and destinations.
- Focus wayfinding efforts on under-utilized facilities such as the Hurbert Street lots and Performing Arts Center lot.
- Adjust signage to encourage RV parking and circulation outside of high demand areas along the Bayfront and in Nye Beach.
- Improve street lighting to create a better walking environment and to help activate under-utilized parking in poorly lit areas.

#### Parking Improvements

- Explore opportunities for the City and Port of Newport to partner on a project to add an east gangway access to Port Dock 5 to make Port property more attractive for parking
- Coordinate with the Port on opportunities to more efficiently store and/or rack gear to free up parking on Port property
- Restripe side street parking areas and lots with worn pavement markings (e.g. Canyon Way) to improve efficiently
- A key component is metering public parking in portions of the Bayfront and potentially Nye Beach.

#### Code Revisions

- Add code provisions to allow pervious pavement and other comparable alternatives to paved surfaces for areas suitable for temporary parking
- Allow temporary parking on undeveloped properties during extreme demand periods
- Eliminate minimum off-street parking requirements for new development and redevelopment in metered and permit zones (for most uses)





This map is for informational use only and has not been prepared for, nor is it suitable for legal, engineering, or surveying purposes. It includes data from multiple sources. The CDy of Neoport assures no responsibility for its compliation or use and users of this information are acutioned is verify all information with the CDy of Neoport Community Development Department.

Feet 400 100 0 200

Image Taken July 2018 4-inch, 4-band Digital Orthophotos Quantum Spatial, Inc. Corvallis, OR

Metering, in conjunction with permit and timed parking, is the most significant change recommended by the Parking Management Plan and is proposed as a demand management option at this time because:

- There are not enough parking spaces along the Bay Front and portions of Nye Beach to meet demand.
- Metering with permit parking is an opportunity to improve turnover in high demand areas while enhancing revenues for needed parking improvements.
- Existing revenue is insufficient to address maintenance needs let alone pay for additional supply.
- Resulting condition creates significant congestion and safety issues.
- Timed parking alone, coupled with enforcement will not address the supply problem (observed overstays 5-7%).
- Improvements to wayfinding and lighting, while important, similarly cannot contribute a meaningful number of additional spaces.
- Development opportunities, particularly on the Bayfront, are constrained by the lack of parking.
- Opportunities to add supply or supplement transit services are expensive and require dedicated revenue sources that do not presently exist.

A standing parking advisory committee, with representatives from the three commercial areas should be established to provide oversight. Responsibilities could include:

- Engage policy makers, city committees, staff, and partner organizations to plan for, and facilitate the implementation of parking and other transportation related improvements;
- Provide recommendations regarding city parking policies and programs, including maintenance of parking and related infrastructure, fees, wayfinding, and parking enforcement;
- Advocate and promote public awareness of parking and related initiatives, community engagement, and other efforts to achieve desired policy outcomes.

## **Capital Projects**

The following is a list of capital projects recommended to enhance the availability or improve the supply of available parking. A transit option was explored to provide users an alternative method of transportation to and from the Bay Front, City Center and Nye Beach. A vanpool/carpool option was also discussed; however, further analysis is needed to determine how the mechanics of such a program would work given the employment dynamics in these areas.

**Table 5: Potential Capital Projects** 

#### Parking System Enhancements (Per study except for refined meter information)

| Description   | Upfront Cost             | Annual Cost (2018) |
|---|--------------------------|--------------------|
| Implementation of Metered Areas (Bay Front and Nye Beach)                           | \$634,750                | \$42,000           |
| Implementation of Metered Areas (Bay Front Only)                                    | \$435,000                | \$28,800           |
| Newport Transit Loop  |                          | \$200,000+         |
| Expanded Striping to Un-Marked Spaces (ref: difference between Table 2 and Table 6) | \$10,000                 | \$5,000            |
| Improved Lighting at 3 <sup>rd</sup> & 6 <sup>th</sup> Street                       | \$235,000                | \$45,000           |
| Gangway from Port parking area to east end of Port Dock 5                           | \$250,000 -<br>\$750,000 | \$7,500            |
| Enhance City-Wide Wayfinding System   | \$25,000 -<br>\$125,000  | \$5,000            |
| Nye Beach Area Structured Parking   | \$2,400,000              | \$15,000           |
| Bayfront Structured / On-Pier Parking   | \$4,000,000              | \$25,000           |

The Lincoln County adopted a new transit development plan at the same time the Parking Management Plan was being developed. The transit plan includes an enhanced loop between Nye Beach and the Bayfront that utilizes City Hall as a transfer station.

Time: 15-minutes from Nye Beach to City Hall and City Hall to the Bayfront.

Equipment: One new bus

Cost: \$201,000 year

### Financing

Outlined below are metering and non-metering options for funding parking system improvements. The metering options are limited to the Bayfront and Nye Beach and align with the concept for paid only, paid/permit, and permit/timed concepts Figure 6: Newport Transit Loop



depicted on Figures 4 and 5. A breakdown of the spaces that would be subject to these concepts is listed below in Table 6. Accessible parking spaces in these areas would not be subject to meter limitations.

#### Table 6: Public Parking in Meter/Permit Concepts

#### Parking Stall Management (By Type)

| District  | Туре                   | Paid Only | Paid / Permit | Permit / Timed | Unrestricted |
|-----------|------------------------|-----------|---------------|----------------|--------------|
| Bay Front | On-Street <sup>1</sup> | 144       | 117           | 242            | 72           |
|           | Public Lot             | 0         | 103           | 52             | 23           |
| Nye Beach | On-Street <sup>1</sup> | 9         | 105           | 268            | 747          |
|           | Public Lot             | 45        | 0             | 21             | 186          |
|           |                        |           |               |                |              |

1 Includes unstriped parallel parking spaces in the totals, leading to a larger count than the figures reflected in Table 2.

#### Table 7: Paystation Pricing

#### **Meter Options**

| Parking District | # Spaces | # Paystations <sup>1</sup> | Paystation Cost <sup>1</sup> | Signage<br>Cost <sup>2</sup> | Total<br>Cost |
|------------------|----------|----------------------------|------------------------------|------------------------------|---------------|
| Bay Front        | 364      | 43                         | \$344,000                    | \$91,000                     | \$435,000     |
| Nye Beach        | 159      | 20                         | \$160,000                    | \$39,750                     | \$199,750     |

1 Roughly one kiosk per eight spaces with adjustments based on lot/street configuration. Price of \$8,000 per kiosk as noted in Study.

2 Signage cost of \$1,250 (sign and post) and assumes one sign per five parking spaces (per the Study). There would likely be cost savings attributed to re-use of existing poles.

| Parking District | Meter <sup>1</sup> | Permit (Aggressive) <sup>2</sup> | Permits (Conservative) <sup>3</sup> |
|------------------|--------------------|----------------------------------|-------------------------------------|
| Bay Front        | \$292,000          | \$37,000                         | \$25,700                            |
| Nye Beach        | \$134,000          | \$28,400                         | \$19,700                            |

#### Annual Revenues (Assumes no Business License Surcharge)

1 Peak demand assumes \$1.00 hour seven days a week from 11am – 5pm, June through September. Meters are weekends only for other months. Assumes same Phase 1 per stall revenue as study.

2 Assumes annual sales at 120% of available spaces in all paid permit and permit timed areas. Priced at \$60.00 per permit. Could be district specific or area wide.

3 Assumes annual sales at 50% of available spaces in all paid permit and permit timed areas. Priced at \$100.00 per permit. Could be district specific or area wide.

Initial installation of meters would need to come from existing city funding sources. Once implemented, anticipated meter revenue is expected to exceed annual expenses and would provide a funding stream to enhance the parking system. The non-meter option (Table 9) relies upon business license and permit parking fees, which could be supplemented with other city funding sources to maintain status quo and low cost enhancements (i.e. striping and wayfinding). For Nye Beach. new revenue could be generated by expanding the boundary of the area where business license surcharges are collected. There is less of an opportunity to do the same in the Bay Front; however, reinstituting contributions from the Port of Newport coupled with increases to existing business license surcharges may generate sufficient funds if paired with a parking permit program.

#### Table 9: Non-Meter Alternative

#### No-Metering Alternative (Timed Parking with Permits)

| Bayfront   |            | Nye Beach  |            |  |
|--|------------|--|------------|--|
| Maintenance Needs (Table 4)                                      | \$58,350   | Maintenance Needs (Table 4)                                      | \$49,600   |  |
| Current Business License<br>Surcharge Revenue <sup>1</sup>       | \$13,750   | Current Business License<br>Surcharge Revenue                    | \$6,450    |  |
| Maintenance Shortfall  | - \$44,600 | Maintenance Shortfall  | - \$43,150 |  |
| New Revenue from Parking Permits <sup>2</sup>                    | \$25,700   | New Revenue from Parking<br>Permits <sup>1</sup>                 | \$19,700   |  |
| New Revenue from Business<br>License Surcharge Fees <sup>3</sup> | \$18,900   | New Revenue from Business<br>License Surcharge Fees <sup>2</sup> | \$23,450   |  |

1 This amount would be increased by \$6,000 if the Port of Newport and City of Newport were to execute a new intergovernmental agreement committing the Port to ongoing annual contributions on behalf of the commercial fishing interests.

2 Assumes annual sales at 50% of available spaces in all areas identified as paid, paid permit, or timed permit. Priced at \$100.00 per permit. Could be district specific or area wide.

3 Fees are scalable and the amounts listed reflect what is needed to cover anticipated maintenance costs.

Consideration should be given to phasing fee increases in over time. If other revenue sources become available that can be dedicated to maintenance and/or enhancement of the parking assets then adjustments should be made to the fee structure to ensure equitable contributions from various user groups.

#### GOALS AND POLICIES PUBLIC FACILITIES ELEMENT

#### PUBLIC PARKING

<u>Goal 1</u>: Maximize the available parking supply in Nye Beach, Bay Front, and City Center areas to support a vibrant working waterfront and retail-oriented, tourist commercial businesses, and mixed-use neighborhoods.

<u>Policy 1.1</u>: Promote the use of under-utilized public parking areas.

<u>Implementation Measure 1.1.1</u>: Improve branding of City-owned parking lots and facilities and wayfinding between parking areas and destinations.

<u>Implementation Measure 1.1.2</u>: Add street lighting to create a better walking environment and to help activate parking in poorly lit areas.

Implementation Measure 1.1.3: Adjust signage to encourage RV parking in the Hurbert Street lot and along Elizabeth Street.

<u>Implementation Measure 1.1.4</u>: Identify specific measures that can be taken to enhance visibility and increase the use of the Hurbert Street lots and Performing Arts Center lot.

<u>Policy 1.2</u>: Promote alternative modes of transportation to reduce vehicle trips to and from Nye Beach and the Bayfront.

<u>Implementation Measure 1.2.1:</u> Support efforts to establish a rapid transit loop between the Bayfront, City Center, and Nye Beach as outlined in the Lincoln County Transit Development Plan (April 2018).

<u>Implementation Measure 1.2.2:</u> Coordinate with area employers on opportunities to expand carpool or vanpool options.

<u>Implementation Measure 1.2.3</u>: Continue to expand the bicycle and pedestrian network to improve connectivity and user options.

<u>Policy 1.3</u>: Consider demand management strategies to improve parking turnover for public parking areas where occupancies are "functionally full" (i.e. at or near 85% percent during peak periods).

<u>Implementation Measure 1.3.1</u>: Pursue metered zones, hybrid paid / permit, and hybrid permit / timed zones for high demand areas along the Bayfront.

<u>Implementation Measure 1.3.2:</u> Support metering, where implemented, with a parking permit program.

Implementation Measure 1.3.3: Conduct outreach with the Nye Beach community to address whether or not a non-metering concept, focusing on

options that consist of fees, permit parking, or other dedicated funding sources is preferable.

<u>Policy 1.4</u>: Investigate opportunities to enhance the supply of public and privately owned parking through strategic partnerships in a manner that best leverages limited funding.

#### Goal 2: Maintain public parking assets so that they are suitable to meet the needs of all users.

<u>Policy 2.1</u>: Develop financing strategies that secure equitable contributions from parties that benefit from and utilize public parking.

<u>Implementation Measure 2.1.1:</u> Metering should be directed to peak demand periods, as opposed to year round, with a baseline for pricing that is consistent with the recommendations contained in the Newport Parking Management Plan (March 2018).

<u>Implementation Measure 2.1.2:</u> In areas where metering is not implemented, fees from businesses and users should be adjusted to cover anticipated maintenance costs, unless other revenue sources are identified for that purpose.

<u>Implementation Measure 2.1.3:</u> Revenues generated from public parking meters, permits or other fees should be dedicated to public parking, and not used to support other city programs.

<u>Implementation Measure 2.1.4</u>: Business license surcharge fees now imposed in the Bayfront, Nye Beach, and City Center should be expanded to apply to short-term rentals, but otherwise maintained in their present form until other funding sources are established.

Policy 2.2: Establish a program for routine maintenance of public parking lots.

Implementation Measure 2.2.1: Incorporate scheduled resurfacing, striping, and reconstruction of the public parking lots into the City's Capital Improvement Plan.

<u>Policy 2.3</u>: Consider adjustments to funding maintenance of public parking areas in City Center once the urban renewal funded transportation system planning effort for that area is complete.

<u>Policy 2.4:</u> Evaluate parking management practices at the City Hall Campus to ensure available parking is sufficient to meet anticipated needs.

<u>Goal 3</u>: Implement changes to how the City manages public parking in a manner that is easily understood by the public, meets the needs of area businesses and residents, recognizes seasonality of certain uses, and is effectively enforced.

<u>Policy 3.1</u>: Ensure city codes and policies provide a clear administrative framework for implementing metering, permitting, or other regulatory tasks.

<u>Policy 3.2</u>: Identify opportunities to facilitate economic development and enhance livability in areas where parking is limited.

<u>Implementation Measure 3.2.1:</u> Add code provisions to allow pervious pavement and other comparable alternatives to paved surfaces for areas suitable for temporary parking.

<u>Implementation Measure 3.2.2:</u> Allow temporary parking on undeveloped properties during extreme demand periods.

<u>Implementation Measure 3.2.3:</u> Reduce or eliminate minimum off-street parking requirements for new development or redevelopment in metered and meter/permit zones.

<u>Policy 3.3</u>: Scale code enforcement resources commensurate to the demands of the parking program.

Goal 4: Provide opportunities for the public to inform city decision making related to the management of public parking areas.

<u>Policy 4.1</u>: Provide a structured method for members of the public to advise policymakers and staff on how the city might best leverage and invest in its parking and transportation-related assets.

<u>Implementation Measure 4.1.1</u>: Establish a standing parking advisory committee, with representation from affected areas.

<u>Implementation Measure 4.1.2:</u> Utilize public processes to evaluate parking measures on an ongoing basis with attention to economic, land use and related factors that influence parking demand.

# Bayfront Parking Management Solution

ROTARY CLUB SEPTEMBER 21, 2023



# HISTORY OF PARKING MANAGEMENT IN NEWPORT

- Payment in Lieu Era 1983 to 2009
  - New development and redevelopment allowed to pay a fee in lieu of constructing offstreet parking
- Parking District Era 2009 to 2019
  - Businesses in special parking areas pay fee to support public parking and receive exemption from off-street parking requirements for modest development projects
- Demand Management Era 2020 Present
  - Seek to change user behavior to free up public parking in high demand areas through metering and permit programs. Revenue to support public parking and related improvements and enforcement



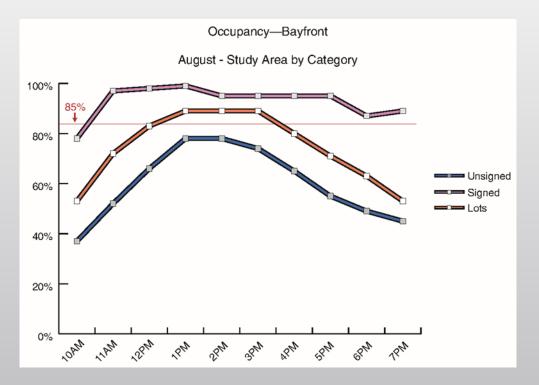
Parking Advisory Committee, Staff, and Selected Contractor:

- Assess parking conditions in the Nye Beach, Bayfront, and City Center areas
- Conduct public outreach to identify opportunities to improve availability of parking, transit and/or vanpool services as well as constraints "barriers" to effective parking management
- Perform field surveys to establish utilization and turnover rates of parking spaces during peak and off-peak periods
- Identify capital improvements needed to maintain and improve available parking, including possible upgrades to transit service
- Develop financing strategies to fund needed improvements



# BAYFRONT STUDY RESULTS

- Observed parking occupancies exceeded 85 percent during peak periods of use
- This level of activity was greater then that of Nye Beach and City Center and is considered "functionally full," where users perceive that there are no available spaces
- Functionally full parking leads to:
  - High instances of illegal parking
  - Congestion attributed to vehicles cruising for parking
  - Other undesirable behavior from frustrated drivers





# **2020** Council Adopted Bayfront Recommendation

- Implement a "pay to park" program along the Bayfront to increase vehicle turnover, reducing congestion, and improving public safety
- Goal is to maximize the available parking supply to support a vibrant working waterfront and retail-oriented, tourist commercial businesses
- Program is to include pay stations ("metering"), hybrid meter/permit zones, and hybrid timed parking/permit zones
- Proceeds will support parking enforcement and create a revenue stream to maintain and enhance bayfront parking assets or fund transit/vanpool options

# COVID PANDEMIC



# Parking Management Vendor Selection

- Parking Advisory Committee Reformed
- Request for Proposals Issued
- Vendor Responses Reviewed and Scored
- Preferred Vendor T2 Systems Selected
- Contract Negotiated and Signed



**GCivic**Smart<sup>®</sup>









# Parking Management Solutions by T2 Systems

- Integrated solar powered wireless coin/card and coupon code paystations
- Mobile "text to pay" option
- Electronic permit and ticket payment through a linked online portal
- Parking citation solution using license plate recognition technology to improve enforcement capabilities

T2SYS

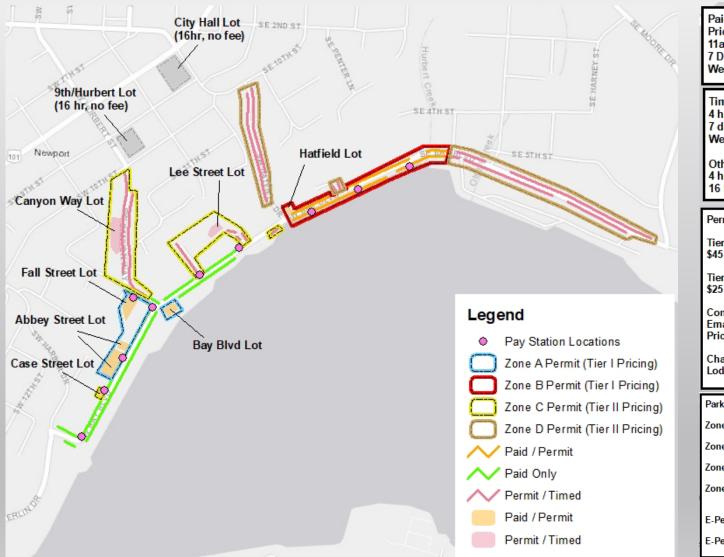








## Parking Management Alternative



Paid Parking: Pricing \$1 hr (4 hr maximum stay) 11am to 7pm 7 Days a Week - May to October Weekends Only - Nov to April

Timed Parking: 4 hr limit streets/lots 7 days a week - May to October Weekends Only - Nov to April

Other dates: 4 hr limit streets 16 hr limit parking lots

Permit Parking:

Tier I Pricing \$45 mo. (12 hr daily maximum)

Tier II Pricing \$25 mo. (12 hr daily maximum)

Commercial Fishing Community Email Invitation to Apply from Port Pricing \$45 mo. (valid 72 hr period)

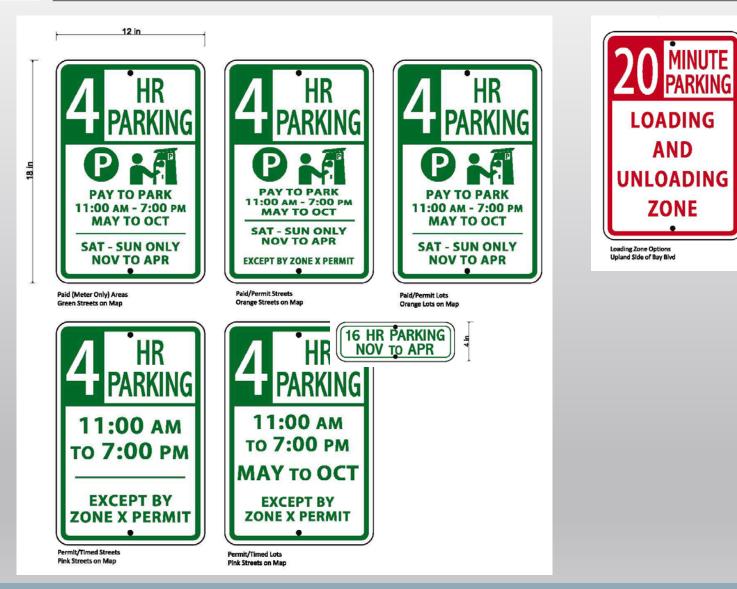
Charter Day Permit \$8 Lodging Day Permit \$10

Parking Stalls by Zone Zone A Permit (Blue) - 115 Spaces Zone B Permit (Red) - 107 Spaces Zone C Permit (Yellow) - 155 Spaces Zone D Permit (Brown) - 180 Spaces E-Permits Available for Zones A & B: 225

E-Permits Available for Zones C & D: 400



## Parking Regulatory Sign Changes





## Exemptions

The following activities will be exempt from parking meter requirements:

- Circumstances where a driver is obeying the direction of a law enforcement or parking enforcement officer
- When authorized by a vehicle parking permit
- Emergency vehicles may stop or park in any metered space at any time while serving an emergency
- City and franchise utility vehicles engaged in construction or repair work
- Vehicles performing work within a public parking lot or right-of-way under the terms of a City issued right-of-way permit
- Vehicles with an official state-issued disabled person registration or "wheelchair user" plate, placard, permit or decal

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## Implementation Schedule

Public Engagement on Implementation Options:

- Commercial Fishing Users (9/6/23)
- Seafood Processors (Managers 9/6/23) (Staff TBD)
- Bayfront Businesses (9/19/23)
- Rotary Club (9/21/23)
- Port of Newport Commission (9/26/23)

|   | 2023  |     |      |          |     |            |     |
|---|---|-----|------|----------|-----|------------|-----|
| Task  | Apr   | Мау | June | July     | Aug | Sept       | Oct |
| 1. T2 Systems Contract Executed   |   |     |      |          |     |            |     |
| 2. T2 Project Kick-off  |   |     |      |          |     |            |     |
| 3. Stakeholder Outreach   |   |     |      |          | *   |            | *   |
| 4. Parking System Setup<br>(Mobile Pay, Permits, Enforcement)                   |   |     | •    |          | •   | <b>*</b> * |     |
| 5. License Plate Recognition Install  |   |     |      |          | •   | *          |     |
| 6. Parking Lot Improvements   |   |     |      | ٠        |     |            |     |
| 7. Sign Pole Purchase and Install   |   |     |      | ٠        |     |            |     |
| 8. Regulatory Sign Design and Install   |   |     |      | <b>A</b> |     |            |     |
| 9. Pay Station Install & Configuration  |   |     |      |          |     | •          |     |
| 10. Launch Metering/Permit Program  |   |     |      |          |     |            | *   |
| Legend<br>★ Wrap-up Configuration ▲ Design<br>♦ Training Sessions ● Bid Project | <ul> <li>★ Public Engagement Activities</li> <li>Initiate Construction</li> </ul> |     |      |          |     |            |     |

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Issues the Parking Advisory Committee is working through considering feedback to date includes:

- Offering fleet management as an e-permitting option so that commercial fishing vessel owners/operators can self manage parking permits
- Considering 96 hours versus 72 hours as the parking time limit for Commercial Fishing Permits
- Adding e-chalk rules to a handout so that users understand how enforcement will work
- Considering lower permit fee for the off-season period and Tier II parking areas
- Developing "where to park" maps by permit type
- Keeping in mind crab season when establishing a firm "go live" date

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# QUESTIONS?



Derrick I. Tokos, AICP Community Development Director City of Newport PH: 541.574.0626 D.Tokos@Newportoregon.gov

### **CITY MANAGER REPORT AND RECOMMENDATIONS**



Meeting Date: October 2, 2023

### Agenda Item:

Approval of an Intergovernmental Agreement with Lincoln County for the Lincoln County Winter Shelter Program.

### Background:

At the September 18, 2023 Council meeting, the City Council authorized participation of the Lincoln County's winter shelter program. On September 5, the Council heard a report from County Commissioner, Kaety Jacobson, and Human Services Director, Jane Romero, on a funding request to operate a county-wide winter shelter for 2023 in Newport and Lincoln City. This county-wide proposal for winter sheltering was also shared with the City Council in a status report earlier this year. The County has hired a coordinator to develop a winter housing program from October 1 through March 31. The shelter will be open from 6 PM to 7 AM each day and will be managed and supervised by paid County employees. The shelter will provide low-barrier or no-barrier access focusing on getting people out of the winter weather. The County is currently working to secure space for group sheltering in Newport with the capacity to support up to 50 people on any given night. This effort has included discussions with churches about providing space on a rotating basis through the course of the winter.

During the past two winters, the City of Newport has kicked in \$30,000 to put people in hotel rooms when weather conditions reached a certain point through Grace Wins. This was an expensive solution and provided shelter only when weather conditions were below 40° and there was precipitation in the forecast. Having a county-run shelter that is available throughout the course of the winter will provide a much safer environment for those seeking shelter indoors. The County is requesting financial assistance from the Cities based on a contribution of \$4.50 per city resident.

The County is asking for \$46,152 from the City of Newport to support this program for this winter. Overall, I am a supportive of this proposal and participating in this effort. There are a number of plans that are moving forward to provide a more permanent solution in future years, but having a solution for the 2023 - 2024 winter that is comprehensive is a much better investment of public dollars than what has been done in the recent past.

Disclosure: Summit Public Relations owned by my wife, Angela, has provided services to both Lincoln County and the Health and Human Services Department. She is not involved in the winter shelter program.

### **Recommendation:**

I recommend that the City Council consider the following motion:

I move to approve the Intergovernmental Agreement for the winter shelter program with Lincoln County and authorize the Mayor to execute the agreement on behalf of the City of Newport.

### Fiscal Effects:

Sufficient funding has been appropriated for addressing homelessness issues in the City of Newport to cover this request of \$46,152.

### Alternatives:

Do not participate in this program, or as suggested by City Council.

Respectfully submitted,

2 PULL

Spencer Nebel City Manager

### INTERGOVERNMENTAL AGREEMENT FOR THE LINCOLN COUNTY WINTER SHELTER PROGRAM

This Agreement is entered into this <u>day</u> of October, 2023 by and between THE CITY OF NEWPORT, Oregon, (hereinafter "City"), and LINCOLN COUNTY, Oregon (hereinafter "County").

A. ORS 190.010 permits units of local government to enter into intergovernmental agreements for the performance of any or all functions and activities that a party to the agreement has authority to perform; and

- i. County has authority to provide emergency shelter and access to resources for unhoused individuals; and
- ii. City has authority to contribute resources for emergency shelter for unhoused individuals; and

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

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

2. **DURATION/TERM.** [ORS 190.020(1)(e)]. The term of this Agreement shall commence after execution by all parties and shall expire one year from the date of approval of this Agreement.

**3. REAL OR PERSONAL PROPERTY.** [ORS 190.020(1)(d)]. No real or personal property is being allocated between the parties.

4. FUNCTIONS OR ACTIVITIES. [ORS 190.020(1)].

Lincoln County agrees to be responsible for the administration and operation of the "Lincoln County Winter Shelter Program" which projections indicate will cost \$600,000 for two shelters in the county, attached as Exhibit "A".

5. PAYMENT/TAXES/LIENS. [ORS 190.020(1)(a)].

The City agrees to provide \$46,152 or \$4.50 per resident to Lincoln County for operation of the Winter Shelter Program in the City of Newport.

6. **REVENUE.** [ORS 190.020(1)(b)]. The parties do not anticipate any revenues will be derived pursuant to this Agreement.

7. **PERSONNEL.** [ORS 190.020(1)(c)]. No employees will be transferred pursuant to this Agreement.

**8. TERMINATION.** [ORS 190.020(1)(f)]. This Agreement may be terminated by mutual consent by the parties or by either party, at any time, for any reason, upon sixty (60) days-notice in writing delivered by certified mail or personal service to the other party. Such termination shall be without prejudice to any obligations or liabilities of either party accrued prior to such termination.

**9. ASSIGNMENT PROHIBITED.** This Agreement cannot be assigned. Any purported assignment shall be deemed a violation of the agreement and result in termination of the Agreement.

**10. INDEMNITY/HOLD HARMLESS.** To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, (ORS 30.260 through 30.300), each party (as applicable, the 'indemnifying party') shall hold harmless, defend and indemnify the other party and its officers, employees, and agents from and against any and all claims, demands, damages or injuries, liability of damage, including injury resulting in death or damage to property, suffered directly or from a third-party claim arising out of or relating to the negligent or otherwise wrongful acts or omissions of the indemnifying party or its officers, employees, or agents under this Agreement; provided, however, that a party shall not be required to defend or indemnify the other party for any liability arising out of or relating to the negligent or otherwise wrongful acts or omissions of the other party.

Such indemnification provision above shall also cover claims brought against either party under state or federal employees' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification. Indemnity and defense for claims arising during the term of this Agreement shall survive expiration or termination of this Agreement as allowed by law.

11. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS, AND MAKING PAYMENTS. Notices and requests required by and given in connection with this Agreement and all other communications related to this agreement shall be in writing or email and deemed given as of the day they are received by (a) personal delivery, (b) electronic, (c) overnight delivery service, (d) United States mail, certified and return receipt requested, and addressed as follows:

City of Newport Attn: City Manager 169 SW Coast Hwy Newport, OR 97365 541-574-0601 s.nebel@newportoregon.gov

Lincoln County Attn: HHS Director 36 SW Nye Street Newport, OR 97365 541-265-0400 JRomero@co.lincoln.or.us

Changes may be made to the names and addresses of the person to whom notices, bills, and payments are to be given by providing notice pursuant to this paragraph.

**12. SEVERABILITY**. In the event that any part of this Agreement is found to be illegal, or in violation of public policy, or for any other reason unenforceable, such finding shall in no event invalidate or render unenforceable the other parts of this Agreement.

**13. MERGER.** This writing is intended both as the final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless it is made in

writing and signed by those parties agreeing to said modification. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement.

### City of Newport, Oregon

Lincoln County, Oregon

By: \_

Jan Kaplan, Mayor City of Newport By: \_\_

Kaety Jacobson, Chair

Ву: \_\_\_

Casey Miller, Commissioner

Ву: \_\_\_\_\_

Claire Hall, Commissioner

Approved as to Form:

Approved as to Form:

David N. Allen, City Attorney

Kristin H. Yuille, County Attorney

### Financial Needs/Projections for the Winter Shelter Program

The operational cost of standing up two shelter facilities is conservatively estimated to be approximately \$600,000 per year (with each shelter operating for a six-month period).

Overview of Budgeted Expenses:

- The program coordinator is budgeted at \$107,034 (salary plus benefits), based on the County pay equity education/skills/responsibilities assessment.
- The PTNB staff are budgeted at \$21/hour, plus applicable payroll taxes (\$146,628 per shelter)
- Food/supply expense in excess of donated items is budgeted at \$25,000 per facility.
- Miscellaneous expenses are budgeted at \$24,855 (e.g., translation expenses, office supplies, Insurance costs, line-item overruns, supply needs not met by donations, etc., per facility)
- An additional estimate of \$50,000 per facility is budgeted to cover rent/utilities for a sixmonth period for each Facility

As of the writing of this plan/funding request, the County has already provided \$40,000 in funding support for startup furnishings and supplies. Furnishings include bunk beds, mattresses, appliances, and equipment.

The Housing Authority of Lincoln County has committed funding to purchase and renovate a facility in Newport, Oregon. A facility in Lincoln City, Oregon is still needed.

Operational funding support has been secured as Follows:

- Lincoln County has allocated \$200,000 per year of ARPA funding, for the first two years of operations. Note: this funding cannot be used for staff funding and is only available for the first two years of the shelter operation.
- Lincoln County has committed to funding the Shelter Coordinator Position through the county general fund (estimated at \$107,000).
- The LC HHS Behavioral Health Division has committed \$125,000 per year.
- Total Operational funding secured to date for each of the first 2 years totals: \$432,000 (\$168,000 short of the amount needed to operate two facilities for a six-month period).

Additional funding has been requested through the IHN-CCO DST grant process to help with additional start up and operational costs.

From: cheryl connell <

Sent: Monday, October 2, 2023 1:03 PM

**To:** Erik Glover <E.Glover@NewportOregon.gov>; David Allen <D.Allen@NewportOregon.gov>; Jan Kaplan <J.Kaplan@NewportOregon.gov>

**Cc:** Spencer Nebel <S.Nebel@NewportOregon.gov>; Derrick Tokos <D.Tokos@NewportOregon.gov> **Subject:** Re: Newport Emergency Shelter Code

Hello Erik,

I wish to submit this email as public comment for tonight's agenda item on Newport Emergency Shelter Code. I ask that my email be read aloud by you so that the questions below are asked and answered by the Mayor and City Council.

- 1. Did the City (staff or elected officials) know of this selection of this site before the announcement on Yachats News ?
- 2. If so, when?
- 3. And if there was notice prior to the Yachats News announcement, why were there no public meetings to inform the community of this location as a courtesy, in the interest of transparency and to listen to concerns from neighborhood businesses, property owners, and residents? Especially as it will affect badly needed revitalization efforts about to be launched for Newport's City Center/Deco District/Downtown?

Sincerely,

Cheryl S. Connell

Deco District Resident

### Enrolled House Bill 3395

Sponsored by Representatives RAYFIELD, DEXTER, GOMBERG, Senator JAMA; Representatives ANDERSEN, NELSON, Senators ANDERSON, PATTERSON

CHAPTER .....

### AN ACT

Relating to housing; creating new provisions; amending ORS 92.090, 94.550, 100.015, 100.022, 100.105, 100.110, 100.115, 197.303, 197.758, 197.830, 215.427, 227.178 and 458.650 and sections 3 and 4, chapter 639, Oregon Laws 2019, section 3, chapter 18, Oregon Laws 2021, sections 4 and 6, chapter 67, Oregon Laws 2021, and section 23, chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001); repealing section 4, chapter 18, Oregon Laws 2021; and declaring an emergency.

### Be It Enacted by the People of the State of Oregon:

### **RESIDENTIAL USE OF COMMERCIAL LANDS**

SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS 197.286 to 197.314.

<u>SECTION 2.</u> (1) Notwithstanding an acknowledged comprehensive plan or land use regulations, within an urban growth boundary a local government shall allow, on lands zoned to allow only commercial uses and not industrial uses, the siting and development of:

(a) Residential structures subject to an affordable housing covenant as provided in ORS 456.270 to 456.295 making each unit affordable to a household with income less than or equal to 60 percent of the area median income as defined in ORS 456.270; or

(b) Mixed use structures with ground floor commercial units and residential units subject to an affordable housing covenant as provided in ORS 456.270 to 456.295 making the properties affordable to moderate income households, as defined in ORS 456.270.

(2) The local government may only apply those approval standards, conditions and procedures under ORS 197.307, that would be applicable to the residential zone of the local government that is most comparable in density to the allowed commercial uses.

(3) Development under this section does not:

(a) Trigger any requirement that a local government consider or update an analysis as required by a statewide planning goal relating to economic development.

(b) Apply on lands where the local government determines that:

(A) The development on the property cannot be adequately served by water, sewer, storm water drainage or streets, or will not be adequately served at the time that development on the lot is complete;

- (B) The property contains a slope of 25 percent or greater;
- (C) The property is within a 100-year floodplain; or

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(D) The development of the property is constrained by land use regulations based on statewide land use planning goals relating to:

(i) Natural disasters and hazards; or

(ii) Natural resources, including air, water, land or natural areas, but not including open spaces.

(c) Apply on lands that are vacant or that were added to the urban growth boundary within the last 15 years.

### **RESIDENTIAL APPROVAL PROCEDURES**

SECTION 3. ORS 215.427 is amended to read:

215.427. (1) Except as provided in subsections (3), (5) and (10) of this section, for land within an urban growth boundary and applications for mineral aggregate extraction, the governing body of a county or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 120 days after the application is deemed complete. The governing body of a county or its designee shall take final action on all other applications for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 120 days after the application of all appeals under ORS 215.422, within 150 days after the application is deemed complete, except as provided in subsections (3), (5) and (10) of this section.

(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section and ORS 197.311 upon receipt by the governing body or its designee of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.

(3)(a) If the application was complete when first submitted or the applicant submits additional information, as described in subsection (2) of this section, within 180 days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.

(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

(a) All of the missing information;

(b) Some of the missing information and written notice that no other information will be provided; or

(c) Written notice that none of the missing information will be provided.

(5) The period set in subsection (1) of this section or the 100-day period set in ORS 197.311 may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in subsection (10) of this section for mediation, may not exceed 215 days.

(6) The period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the county; and

(b) Unless the parties have agreed to mediation as described in subsection (10) of this section or ORS 197.319 (2)(b).

(7) Notwithstanding subsection (6) of this section, the period set in subsection (1) of this section and the 100-day period set in ORS 197.311 do not apply to:

(a) A decision of the county making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610[.]; or

(b) A decision of a county involving an application for the development of residential structures within an urban growth boundary, where the county has tentatively approved the application and extends these periods by no more than seven days in order to assure the sufficiency of its final order.

(8) Except when an applicant requests an extension under subsection (5) of this section, if the governing body of the county or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days or 150 days, as applicable, after the application is deemed complete, the county shall refund to the applicant either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

(9) A county may not compel an applicant to waive the period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or ORS 197.311 or 215.429 as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment.

(10) The periods set forth in subsections (1) and (5) of this section and ORS 197.311 may be extended by up to 90 additional days, if the applicant and the county agree that a dispute concerning the application will be mediated.

SECTION 4. ORS 227.178 is amended to read:

227.178. (1) Except as provided in subsections (3), (5) and (11) of this section, the governing body of a city or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete.

(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section or ORS 197.311 upon receipt by the governing body or its designee of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.

(3)(a) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.

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(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

(a) All of the missing information;

(b) Some of the missing information and written notice that no other information will be provided; or

(c) Written notice that none of the missing information will be provided.

(5) The 120-day period set in subsection (1) of this section or the 100-day period set in ORS 197.311 may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in subsection (11) of this section for mediation, may not exceed 245 days.

(6) The 120-day period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the city; and

(b) Unless the parties have agreed to mediation as described in subsection (11) of this section or ORS 197.319 (2)(b).

(7) Notwithstanding subsection (6) of this section, the 120-day period set in subsection (1) of this section and the 100-day period set in ORS 197.311 do not apply to:

(a) A decision of the city making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610[.]; or

(b) A decision of a city involving an application for the development of residential structures within an urban growth boundary, where the city has tentatively approved the application and extends these periods by no more than seven days in order to assure the sufficiency of its final order.

(8) Except when an applicant requests an extension under subsection (5) of this section, if the governing body of the city or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days after the application is deemed complete, the city shall refund to the applicant, subject to the provisions of subsection (9) of this section, either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

(9)(a) To obtain a refund under subsection (8) of this section, the applicant may either:

(A) Submit a written request for payment, either by mail or in person, to the city or its designee; or

(B) Include the amount claimed in a mandamus petition filed under ORS 227.179. The court shall award an amount owed under this section in its final order on the petition.

(b) Within seven calendar days of receiving a request for a refund, the city or its designee shall determine the amount of any refund owed. Payment, or notice that no payment is due, shall be made to the applicant within 30 calendar days of receiving the request. Any amount due and not paid within 30 calendar days of receipt of the request shall be subject to interest charges at the rate of one percent per month, or a portion thereof.

(c) If payment due under paragraph (b) of this subsection is not paid within 120 days after the city or its designee receives the refund request, the applicant may file an action for recovery of the unpaid refund. In an action brought by a person under this paragraph, the court shall award to a prevailing applicant, in addition to the relief provided in this section, reasonable attorney fees and costs at trial and on appeal. If the city or its designee prevails, the court shall award reasonable attorney fees and costs at trial and on appeal if the court finds the petition to be frivolous.

(10) A city may not compel an applicant to waive the 120-day period set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or ORS 197.311 or 227.179 as a

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condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment.

(11) The periods set forth in subsections (1) and (5) of this section and ORS 197.311 may be extended by up to 90 additional days, if the applicant and the city agree that a dispute concerning the application will be mediated.

SECTION 5. ORS 197.830 is amended to read:

197.830. (1) Review of land use decisions or limited land use decisions under ORS 197.830 to 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Appeals.

(2) Except as provided in ORS 197.620, a person may petition the board for review of a land use decision or limited land use decision if the person:

(a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section; and

(b) Appeared before the local government, special district or state agency orally or in writing.

(3) If a local government makes a land use decision without providing a hearing, except as provided under ORS 215.416 (11) or 227.175 (10), or the local government makes a land use decision that is different from the proposal described in the notice of hearing to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the board under this section:

(a) Within 21 days of actual notice where notice is required; or

(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required.

(4) If a local government makes a land use decision without a hearing pursuant to ORS 215.416 (11) or 227.175 (10):

(a) A person who was not provided notice of the decision as required under ORS 215.416 (11)(c) or 227.175 (10)(c) may appeal the decision to the board under this section within 21 days of receiving actual notice of the decision.

(b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who is adversely affected or aggrieved by the decision may appeal the decision to the board under this section within 21 days after the expiration of the period for filing a local appeal of the decision established by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

(c) A person who receives notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may appeal the decision to the board under this section within 21 days of receiving actual notice of the nature of the decision, if the notice of the decision did not reasonably describe the nature of the decision.

(d) Except as provided in paragraph (c) of this subsection, a person who receives notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may not appeal the decision to the board under this section.

(5) If a local government makes a limited land use decision which is different from the proposal described in the notice to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the board under this section:

(a) Within 21 days of actual notice where notice is required; or

(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required.

(6) The appeal periods described in subsections (3), (4) and (5) of this section:

(a) May not exceed three years after the date of the decision, except as provided in paragraph(b) of this subsection.

(b) May not exceed 10 years after the date of the decision if notice of a hearing or an administrative decision made pursuant to ORS 197.195 or 197.797 is required but has not been provided.

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(7)(a) Within 21 days after a notice of intent to appeal has been filed with the board under subsection (1) of this section, any person described in paragraph (b) of this subsection may intervene in and be made a party to the review proceeding by filing a motion to intervene and by paying a filing fee of \$100.

(b) Persons who may intervene in and be made a party to the review proceedings, as set forth in subsection (1) of this section, are:

(A) The applicant who initiated the action before the local government, special district or state agency; or

(B) Persons who appeared before the local government, special district or state agency, orally or in writing.

(c) Failure to comply with the deadline or to pay the filing fee set forth in paragraph (a) of this subsection shall result in denial of a motion to intervene.

(8) If a state agency whose order, rule, ruling, policy or other action is at issue is not a party to the proceeding, it may file a brief with the board as if it were a party. The brief shall be due on the same date the respondent's brief is due and shall be accompanied by a filing fee of \$100.

(9) A notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a statement identifying when, how and to whom notice was provided under ORS 197.615 does not render the notice defective. Copies of the notice of intent to appeal shall be served upon the local government, special district or state agency and the applicant of record, if any, in the local government, special district or state agency proceeding. The notice shall be served and filed in the form and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$300. If a petition for review is not filed with the board as required in subsections (10) and (11) of this section, the board shall award the filing fee to the local government, special district or state agency.

(10)(a) Within 21 days after service of the notice of intent to appeal, the local government, special district or state agency shall transmit to the board the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceeding the record may be shortened. The board may require or permit subsequent corrections to the record; however, the board shall issue an order on a motion objecting to the record within 60 days of receiving the motion. If the board denies a petitioner's objection to the record, the board may establish a new deadline for the petition for review to be filed that may not be less than 14 days from the later of the original deadline for the brief or the date of denial of the petitioner's record objection.

(b) Within 10 days after service of a notice of intent to appeal, the board shall provide notice to the petitioner and the respondent of their option to enter into mediation pursuant to ORS 197.860. Any person moving to intervene shall be provided such notice within seven days after a motion to intervene is filed. The notice required by this paragraph shall be accompanied by a statement that mediation information or assistance may be obtained from the Department of Land Conservation and Development.

(11) A petition for review of the land use decision or limited land use decision and supporting brief shall be filed with the board as required by the board under subsection (13) of this section.

(12) The petition shall include a copy of the decision sought to be reviewed and shall state:

(a) The facts that establish that the petitioner has standing.

(b) The date of the decision.

(c) The issues the petitioner seeks to have reviewed.

(13)(a) The board shall adopt rules establishing deadlines for filing petitions and briefs and for oral argument.

(b) The local government or state agency may withdraw its decision for purposes of reconsideration at any time:

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(A) Subsequent to the filing of a notice of intent; and

(B) Prior to:

(i) The date set for filing the record[,]; or[,]

(ii) On appeal of a decision under ORS 197.610 to 197.625 or relating to the development of a residential structure, [prior to] the filing of the respondent's brief[, the local government or state agency may withdraw its decision for purposes of reconsideration].

(c) If a local government or state agency withdraws an order for purposes of reconsideration, it shall, within such time as the board may allow, affirm, modify or reverse its decision. If the petitioner is dissatisfied with the local government or agency action after withdrawal for purposes of reconsideration, the petitioner may refile the notice of intent and the review shall proceed upon the revised order. An amended notice of intent is not required if the local government or state agency, on reconsideration, affirms the order or modifies the order with only minor changes.

(14) The board shall issue a final order within 77 days after the date of transmittal of the record. If the order is not issued within 77 days the applicant may apply in Marion County or the circuit court of the county where the application was filed for a writ of mandamus to compel the board to issue a final order.

(15) Upon entry of its final order, the board:

(a) May, in its discretion, award costs to the prevailing party including the cost of preparation of the record if the prevailing party is the local government, special district or state agency whose decision is under review.

(b) Shall award reasonable attorney fees and expenses to the prevailing party against any other party who the board finds presented a position or filed any motion without probable cause to believe the position or motion was well-founded in law or on factually supported information.

(c) Shall award costs and attorney fees to a party as provided in ORS 197.843.

(16) Orders issued under this section may be enforced in appropriate judicial proceedings.

(17)(a) The board shall provide for the publication of its orders that are of general public interest in the form it deems best adapted for public convenience. The publications shall constitute the official reports of the board.

(b) Any moneys collected or received from sales by the board shall be paid into the Board Publications Account established by ORS 197.832.

(18) Except for any sums collected for publication of board opinions, all fees collected by the board under this section that are not awarded as costs shall be paid over to the State Treasurer to be credited to the General Fund.

(19) The board shall track and report on its website:

(a) The number of reviews commenced, as described in subsection (1) of this section, the number of reviews commenced for which a petition is filed under subsection (2) of this section and, in relation to each of those numbers, the rate at which the reviews result in a decision of the board to uphold, reverse or remand the land use decision or limited land use decision. The board shall track and report reviews under this paragraph in categories established by the board.

(b) A list of petitioners, the number of reviews commenced and the rate at which the petitioner's reviews have resulted in decisions of the board to uphold, reverse or remand the land use decision or limited land use decision.

(c) A list of respondents, the number of reviews involving each respondent and the rate at which reviews involving the respondent have resulted in decisions of the board to uphold, reverse or remand the land use decision or limited land use decision. Additionally, when a respondent is the local government that made the land use decision or limited land use decision, the board shall track whether the local government appears before the board.

(d) A list of reviews, and a brief summary of the circumstances in each review, under which the board exercises its discretion to require a losing party to pay the attorney fees of the prevailing party.

### **EMERGENCY SHELTER SITING**

Enrolled House Bill 3395 (HB 3395-B)

### SECTION 6. Section 4, chapter 18, Oregon Laws 2021, as amended by section 3, chapter 47, Oregon Laws 2022, is repealed.

SECTION 7. Section 3, chapter 18, Oregon Laws 2021, is amended to read:

Sec. 3. (1) A local government shall approve an application for the development or use of land for an emergency shelter, as defined in [section 2 of this 2021 Act] ORS 197.782, on any property, notwithstanding this chapter or ORS chapter 195, [197,] 197A, 215 or 227 or any statewide [plan] land use planning goal, rule of the Land Conservation and Development Commission or local land use regulation, zoning ordinance, regional framework plan, functional plan or comprehensive plan, if the emergency shelter:

(a) Includes sleeping and restroom facilities for clients;

(b) Will comply with applicable building codes;

(c) Is located inside an urban growth boundary or in an area zoned for rural residential use as defined in ORS 215.501;

(d) Will not result in the development of a new building that is sited within an area designated under a statewide planning goal relating to natural disasters and hazards, including flood plains or mapped environmental health hazards, unless the development complies with regulations directly related to the hazard;

(e) Has adequate transportation access to commercial and medical services; and

(f) Will not pose any unreasonable risk to public health or safety.

(2) An emergency shelter allowed under this section must be operated by:

(a) A local government as defined in ORS 174.116;

(b) An organization with at least two years' experience operating an emergency shelter using best practices that is:

(A) A local housing authority as defined in ORS 456.375;

(B) A religious corporation as defined in ORS 65.001; or

(C) A public benefit corporation, as defined in ORS 65.001, whose charitable purpose includes the support of homeless individuals, that has been recognized as exempt from income tax under section 501(a) of the Internal Revenue Code [on or before January 1, 2018] for at least three years before the date of the application for a shelter; or

(c) A nonprofit corporation partnering with any other entity described in this subsection.

(3) An emergency shelter approved under this section:

(a) May provide on-site for its clients and at no cost to the clients:

(A) Showering or bathing;

(B) Storage for personal property;

(C) Laundry facilities;

(D) Service of food prepared on-site or off-site;

(E) Recreation areas for children and pets;

(F) Case management services for housing, financial, vocational, educational or physical or behavioral health care services; or

(G) Any other services incidental to shelter.

(b) May include youth shelters, winter or warming shelters, day shelters and family violence shelter homes as defined in ORS 409.290.

(4) An emergency shelter approved under this section may also provide additional services not described in subsection (3) of this section to individuals who are transitioning from unsheltered homeless status. An organization providing services under this subsection may charge a fee of no more than \$300 per month per client and only to clients who are financially able to pay the fee and who request the services.

(5)(a) The approval or denial of an emergency shelter under this section may be made without a hearing. Whether or not a hearing is held, the approval or denial is not a land use decision and is subject to review only under ORS 34.010 to 34.100.

(b) A reviewing court shall award attorney fees to:

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(A) A local government, and any intervening applicant, that prevails on the appeal of a local government's approval; and

(B) An applicant that prevails on an appeal of a local government's denial.

(6) An application for an emergency shelter is not subject to approval under this section if, at the time of filing, the most recently completed point-in-time count, as reported to the United States Department of Housing and Urban Development under 24 C.F.R. part 578, indicated that the total sheltered and unsheltered homeless population was less than 0.18 percent of the state population, based on the latest estimate from the Portland State University Population Research Center.

### SINGLE EXIT MULTIFAMILY DWELLINGS

<u>SECTION 8.</u> On or before October 1, 2025, the Department of Consumer and Business Services shall review and consider updates to the State of Oregon Structural Specialty Code through the Building Codes Structures Board established under ORS 455.132, to allow a residential occupancy to be served by a single exit, consistent with the following policies of this state:

(1) The reduction, to the extent practicable, of costs and barriers to the construction of midsize multifamily dwellings, including those offering family-size housing with sprinklers on smaller lots, while maintaining safety, public health and the general welfare with respect to construction and occupancy.

(2) Encouraging a variety of less expensive housing types that allow single-exit residential buildings under certain circumstances consistent with other adopted building codes.

(3) In adopting or considering updates to the building code under this section, the department shall consider regional variation in firefighting capacity and equipment and may make amendments to the code contingent upon a certification by a local fire official that the municipality has sufficient firefighting capacity and equipment.

### PLANNED COMMUNITY ACT EXEMPTIONS

SECTION 9. ORS 94.550 is amended to read:

94.550. As used in ORS 94.550 to 94.783:

(1) "Assessment" means any charge imposed or levied by a homeowners association on or against an owner or lot pursuant to the provisions of the declaration or the bylaws of the planned community or provisions of ORS 94.550 to 94.783.

(2) "Blanket encumbrance" means a trust deed or mortgage or any other lien or encumbrance, mechanic's lien or otherwise, securing or evidencing the payment of money and affecting more than one lot in a planned community, or an agreement affecting more than one lot by which the developer holds such planned community under an option, contract to sell or trust agreement.

(3) "Class I planned community" means a planned community that:

(a) Contains at least 13 lots or in which the declarant has reserved the right to increase the total number of lots beyond 12; and

(b) Has an estimated annual assessment, including an amount required for reserves under ORS 94.595, exceeding \$10,000 for all lots or \$100 per lot based on:

(A) For a planned community created on or after January 1, 2002, the initial estimated annual assessment, including a constructive assessment based on a subsidy of the association through a contribution of funds, goods or services by the declarant; or

(B) For a planned community created before January 1, 2002, a reasonable estimate of the cost of fulfilling existing obligations imposed by the declaration, bylaws or other governing document as of January 1, 2002.

(4) "Class II planned community" means a planned community that:

(a) Is not a Class I planned community;

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(b) Contains at least five lots; and

(c) Has an estimated annual assessment exceeding \$1,000 for all lots based on:

(A) For a planned community created on or after January 1, 2002, the initial estimated annual assessment, including a constructive assessment based on a subsidy of the association through a contribution of funds, goods or services by the declarant; or

(B) For a planned community created before January 1, 2002, a reasonable estimate of the cost of fulfilling existing obligations imposed by the declaration, bylaws or other governing document as of January 1, 2002.

(5) "Class III planned community" means a planned community that is not a Class I or II planned community.

(6) "Common expenses" means expenditures made by or financial liabilities incurred by the homeowners association and includes any allocations to the reserve account under ORS 94.595.

(7) "Common property" means any real property or interest in real property within a planned community which is owned, held or leased by the homeowners association or owned as tenants in common by the lot owners, or designated in the declaration or the plat for transfer to the association.

(8) "Condominium" means property submitted to the provisions of ORS chapter 100.

(9) "Declarant" means any person who creates a planned community under ORS 94.550 to 94.783.

(10) "Declarant control" means any special declarant right relating to administrative control of a homeowners association, including but not limited to:

(a) The right of the declarant or person designated by the declarant to appoint or remove an officer or a member of the board of directors;

(b) Any weighted vote or special voting right granted to a declarant or to units owned by the declarant so that the declarant will hold a majority of the voting rights in the association by virtue of such weighted vote or special voting right; and

(c) The right of the declarant to exercise powers and responsibilities otherwise assigned by the declaration or bylaws or by the provisions of ORS 94.550 to 94.783 to the association, officers of the association or board of directors of the association.

(11) "Declaration" means the instrument described in ORS 94.580 which establishes a planned community, and any amendments to the instrument.

(12) "Electric vehicle charging station" or "charging station" means a facility designed to deliver electrical current for the purpose of charging one or more electric motor vehicles.

(13) "Electronic meeting" means a meeting that is conducted through telephone, teleconference, video conference, web conference or any other live electronic means where at least one participant is not physically present.

(14) "Governing document" means articles of incorporation, bylaws, a declaration or a rule, regulation or resolution that was properly adopted by the homeowners association or any other instrument or plat relating to common ownership or common maintenance of a portion of a planned community that is binding upon lots within the planned community.

(15) "Governing entity" means an incorporated or unincorporated association, committee, person or any other entity that has authority under a governing document to maintain commonly maintained property, to impose assessments on lots or to act on matters of common concern on behalf of lot owners within the planned community.

(16) "Homeowners association" or "association" means the organization of owners of lots in a planned community, created under ORS 94.625, required by a governing document or formed under ORS 94.574.

(17) "Majority" or "majority of votes" or "majority of owners" means more than 50 percent of the votes in the planned community.

(18) "Mortgagee" means any person who is:

- (a) A mortgagee under a mortgage;
- (b) A beneficiary under a trust deed; or
- (c) The vendor under a land sale contract.

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(19) "Owner" means the owner of any lot in a planned community, unless otherwise specified, but does not include a person holding only a security interest in a lot.

(20) "Percent of owners" or "percentage of owners" means the owners representing the specified voting rights as determined under ORS 94.658.

(21)(a) "Planned community" means any subdivision under ORS 92.010 to 92.192 that results in a pattern of ownership of real property and all the buildings, improvements and rights located on or belonging to the real property, in which the owners collectively are responsible for the maintenance, operation, insurance or other expenses relating to any property within the planned community, including common property, if any, or for the exterior maintenance of any property that is individually owned.

(b) "Planned community" does not mean:

(A) A condominium under ORS chapter 100;

(B) A subdivision that is exclusively commercial or industrial; [or]

(C) A timeshare plan under ORS 94.803 to 94.945[.]; or

(D) A development established on or after January 1, 2024, in which each residential unit is either:

(i) Subject to an affordability restriction, including an affordable housing covenant, as defined in ORS 456.270; or

(ii) Owned by a public benefit or religious nonprofit corporation.

(22) "Purchaser" means any person other than a declarant who, by means of a voluntary transfer, acquires a legal or equitable interest in a lot, other than as security for an obligation.

(23) "Purchaser for resale" means any person who purchases from the declarant more than two lots for the purpose of resale whether or not the purchaser for resale makes improvements to the lots before reselling them.

(24) "Recorded declaration" means an instrument recorded with the recording officer of the county in which the planned community is located that contains covenants, conditions and restrictions that are binding upon lots in the planned community or that impose servitudes on the real property.

(25) "Special declarant rights" means any rights, in addition to the rights of the declarant as a lot owner, reserved for the benefit of the declarant under the declaration or ORS 94.550 to 94.783, including but not limited to:

(a) Constructing or completing construction of improvements in the planned community which are described in the declaration;

(b) Expanding the planned community or withdrawing property from the planned community under ORS 94.580 (3) and (4);

(c) Converting lots into common property;

(d) Making the planned community subject to a master association under ORS 94.695; or

(e) Exercising any right of declarant control reserved under ORS 94.600.

(26) "Successor declarant" means the transferee of any special declarant right.

(27) "Turn over" means the act of turning over administrative responsibility pursuant to ORS 94.609 and 94.616.

(28) "Unit" means a building or portion of a building located upon a lot in a planned community and designated for separate occupancy or ownership, but does not include any building or portion of a building located on common property.

(29) "Votes" means the votes allocated to lots in the declaration under ORS 94.580 (2).

### **REGULATION OF CONDOMINIUMS**

SECTION 10. ORS 100.015 is amended to read:

100.015. The Real Estate Commissioner has the exclusive right to regulate the submission of property to the provisions of this chapter and may adopt such rules as are necessary for the administration of this chapter.

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### SECTION 11. ORS 100.022 is amended to read:

100.022. [(1)] Except as provided under ORS 100.015 or explicitly required or allowed under this chapter, a zoning, subdivision, building code or other [real property law,] regulation by a public body, agency rule or local ordinance or regulation may not [prohibit]:

(1) Have the effect of prohibiting or restricting the condominium form of ownership; or

(2) Impose any **restriction or** requirement upon a structure, **property** or development **that is submitted or** proposed to be submitted to the condominium form of ownership under this chapter that it would not impose upon a structure or development under a different form of ownership[.], **including:** 

(a) Any charge, tax or fee;

(b) A review or approval process by any person of a declaration, bylaw, plat, articles of incorporation, regulation, resolution or any other document relating to the condominium or the submission of the property or development to the condominium form of ownership;

(c) Any additional permitting requirements or conditions of approval of the property or development; or

#### (d) Any other requirements.

[(2) Except as set forth in this section, no provision of this chapter invalidates or modifies any provision of any zoning, subdivision, building code or other real property use law, ordinance or regulation.]

[(3) Subsection (1) of This section does not prohibit any governmental approval required under this chapter.]

SECTION 12. ORS 100.110 is amended to read:

100.110. (1)(a) Before a declaration, supplemental declaration or an amendment thereto may be recorded, it must be approved as provided in this section by the county assessor of the county in which the property is located and the Real Estate Commissioner.

(b) Before a declaration, supplemental declaration or, if required under subsection (3) of this section, an amendment thereto may be recorded, it must be approved by the tax collector of the county in which the property is located.

(c) A declaration, supplemental declaration or amendment thereto may not be approved unless the requirements of subsections (2) to (7) of this section are met. Approval must be evidenced by execution of the declaration or amendment or by a written approval attached thereto.

(d) If the requirements of subsections (2) to (7) of this section are met, the commissioner, county assessor and tax collector, if applicable,[:]

[(A)] shall approve the declaration, supplemental declaration or amendment[; and]

[(B) May not impose additional requirements not specified in subsections (2) to (7) of this section].

(2) The county assessor of the county in which the property is located shall approve a declaration, supplemental declaration or amendment thereto if:

(a) The name complies with ORS 100.105 (5) and (6); and

(b) The plat complies with the requirements of ORS 100.115 or the plat amendment complies with ORS 100.116.

(3) The tax collector of the county in which the property is located shall approve the declaration or supplemental declaration, or an amendment that adds property to the condominium, changes the boundary of a unit or creates an additional unit from all or parts of other units or from all or parts of other units and common elements for which a plat amendment is required under ORS 100.116, if:

(a) All ad valorem taxes, special assessments, fees, or other charges required by law to be placed upon the tax roll for the affected units that have or will become a lien upon the property during the tax year have been paid;

(b) Advance payment of ad valorem taxes, special assessments, fees or other charges for the affected units that are not on the tax roll and for which payment is required under paragraph (a) of this subsection has been made to the tax collector utilizing the procedures contained in ORS 92.095 and 311.370; and

(c) The additional taxes, penalty, and any interest attributable thereto, required because of disqualification of the affected units from any special assessment have been paid.

(4) Subject to subsection (6) of this section, the commissioner shall approve the declaration or amendment thereto if:

(a) The declaration or the amendment thereto complies with the requirements of ORS 100.105 and 100.135 and other provisions of this chapter;

(b) The bylaws adopted under ORS 100.410 comply with the requirements of ORS 100.410 and 100.415 and other provisions of this chapter;

(c) The plat complies with the requirements of ORS 100.115 or the plat amendment complies with ORS 100.116 and other provisions of this chapter;

(d) The declaration is for a conversion condominium and the declarant has submitted:

(A) An affidavit that the notice of conversion was given in accordance with ORS 100.305 and that the notice period has expired;

(B) An affidavit that the notice of conversion was given in accordance with ORS 100.305 and copies of the written consent of any tenants as provided in ORS 100.305 (6) or a signed statement that no tenants were entitled to notice under ORS 100.305; or

(C) Any applicable combination of the requirements of subparagraphs (A) and (B) of this paragraph;

(e) A copy of the plat executed by the declarant and prepared in conformance with ORS 100.115 or plat amendment prepared in conformance with ORS 100.116 is submitted;

(f) A certification of plat execution, on a form prescribed and furnished by the commissioner, is:

(A) Executed by the declarant, the professional land surveyor who signed the surveyor's certificate on the plat, the attorney for the declarant, a representative of the title insurance company that issued the information required under ORS 100.640 (1)(e) or 100.668 (2)(d) or another person authorized by the declarant in writing to execute the certification; and

(B) Submitted stating that the copy is a true copy of the plat signed by the declarant; and

(g) A copy of a reserve study has been submitted, if a disclosure statement was issued under ORS 100.655 and the reserve study was not included pursuant to ORS 100.640 (1)(g).

(5) The commissioner shall approve a supplemental declaration if:

(a) The supplemental declaration complies with the requirements of ORS 100.120 and other provisions of this chapter;

(b) The supplemental plat complies with the requirements of ORS 100.115;

(c) The supplemental declaration is for a conversion condominium and the declarant has complied with the requirements of subsection (4)(d) of this section; and

(d) A copy of the supplemental plat and a certification of plat execution described in subsection (4)(e) and (f) of this section have been submitted.

(6) Approval by the commissioner is not required for an amendment to a declaration transferring the right of use of a limited common element pursuant to ORS 100.515 (5).

(7) Before the commissioner approves the declaration, supplemental declaration or amendment thereto under this section:

(a) The declarant or other person requesting approval shall pay to the commissioner a fee determined by the commissioner under ORS 100.670; and

(b) For an amendment or supplemental declaration, the Condominium Information Report and the Annual Report described in ORS 100.260 must be designated current by the Real Estate Agency as provided in ORS 100.255 and the fee required under ORS 100.670 must be paid.

(8) If the declaration, supplemental declaration or amendment thereto approved by the commissioner under subsection (4) or (5) of this section is not recorded in accordance with ORS 100.115 within one year from the date of approval by the commissioner, the approval automatically expires and the declaration, supplemental declaration or amendment thereto must be resubmitted for approval in accordance with this section. The commissioner's approval must set forth the date on which the approval expires.

SECTION 13. ORS 100.115 is amended to read:

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100.115. (1) A plat of the land described in the declaration or a supplemental plat described in a supplemental declaration, complying with ORS 92.050, 92.060 (1) and (2), 92.080 and 92.120, shall be recorded simultaneously with the declaration or supplemental declaration. The plat or supplemental plat shall be titled in accordance with subsection (3) of this section and shall:

(a) Show the location of:

(A) All buildings and public roads. The location shall be referenced to a point on the boundary of the property; and

(B) For a condominium containing units described in ORS 100.020 (3)(b)(C) or (D), the moorage space or floating structure. The location shall be referenced to a point on the boundary of the upland property regardless of a change in the location resulting from a fluctuation in the water level or flow.

(b) Show the designation, location, dimensions and area in square feet of each unit including:

(A) For units in a building described in ORS 100.020 (3)(b)(A), the horizontal and vertical boundaries of each unit and the common elements to which each unit has access. The vertical boundaries shall be referenced to a known benchmark elevation or other reference point as approved by the city or county surveyor;

(B) For a space described in ORS 100.020 (3)(b)(B), the horizontal boundaries of each unit and the common elements to which each unit has access. If the space is located within a structure, the vertical boundaries also shall be shown and referenced to a known benchmark elevation or other reference point as approved by the city or county surveyor;

(C) For a moorage space described in ORS 100.020 (3)(b)(C), the horizontal boundaries of each unit and the common elements to which each unit has access; and

(D) For a floating structure described in ORS 100.020 (3)(b)(D), the horizontal and vertical boundaries of each unit and the common elements to which each unit has access. The vertical boundaries shall be referenced to an assumed elevation of an identified point on the floating structure even though the assumed elevation may change with the fluctuation of the water level where the floating structure is moored.

(c) Identify and show, to the extent feasible, the location and dimensions of all limited common elements described in the declaration. The plat may not include any statement indicating to which unit the use of any noncontiguous limited common element is reserved.

(d) Include a statement, including signature and official seal, of a registered architect, registered professional land surveyor or registered professional engineer certifying that the plat fully and accurately depicts the boundaries of the units of the building and that construction of the units and buildings as depicted on the plat has been completed, except that the professional land surveyor who prepared the plat need not affix a seal to the statement.

(e) Include a surveyor's certificate, complying with ORS 92.070, that includes information in the declaration in accordance with ORS 100.105 (1)(a) and a metes and bounds description or other description approved by the city or county surveyor.

(f) Include a statement by the declarant that the property and improvements described and depicted on the plat are subject to the provisions of ORS 100.005 to 100.627.

[(g) Include such signatures of approval as may be required by local ordinance or regulation.]

[(h)] (g) Include any other information or data not inconsistent with the declaration that the declarant desires to include.

[(i)] (h) If the condominium is a flexible condominium, show the location and dimensions of all variable property identified in the declaration and label  $_{\mathrm{the}}$ variable property as "WITHDRAWABLE PROPERTY" "NONWITHDRAWABLE VARIABLE  $\mathbf{or}$ VARIABLE PROPERTY," with a letter different from those designating a unit, building or other tract of variable property. If there is more than one tract, each tract shall be labeled in the same manner.

(2) The supplemental plat required under ORS 100.150 (1) shall be recorded simultaneously with the supplemental declaration. The supplemental plat shall be titled in accordance with subsection (3) of this section and shall:

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(a) Comply with ORS 92.050, 92.060 (1), (2) and (4), 92.080, 92.120 and subsection (3) of this section.

(b) If any property is withdrawn:

(A) Show the resulting perimeter boundaries of the condominium after the withdrawal; and

(B) Show the information required under subsection [(1)(i)] (1)(h) of this section as it relates to any remaining variable property.

(c) If any property is reclassified, show the information required under subsection (1)(a) to (d) of this section.

(d) Include a "Declarant's Statement" that the property described on the supplemental plat is reclassified or withdrawn from the condominium and that the condominium exists as described and depicted on the plat.

(e) Include a surveyor's certificate complying with ORS 92.070.

(3) The title of each supplemental plat described in ORS 100.120 shall include the complete name of the condominium, followed by the additional language specified in this subsection and the appropriate reference to the stage being annexed or tract of variable property being reclassified. Each supplemental plat for a condominium recorded on or after January 1, 2002, shall be numbered sequentially and shall:

(a) If property is annexed under ORS 100.125, include the words "Supplemental Plat No. \_\_\_\_\_: Annexation of Stage \_\_\_\_\_"; or

(b) If property is reclassified under ORS 100.150, include the words "Supplemental Plat No. \_\_\_\_\_: Reclassification of Variable Property, Tract \_\_\_\_\_."

(4) Upon request of the county surveyor or assessor, the person offering a plat or supplemental plat for recording shall also file an exact copy, certified by the surveyor who made the plat to be an exact copy of the plat, with the county assessor and the county surveyor. The exact copy shall be made on suitable drafting material having the characteristics of strength, stability and transparency required by the county surveyor.

(5) Before a plat or a supplemental plat may be recorded, it must be approved by the city or county surveyor as provided in ORS 92.100. Before approving the plat as required by this section, the city or county surveyor shall:

(a) Check the boundaries of the plat and units and take measurements and make computations necessary to determine that the plat complies with this section.

(b) Determine that the name complies with ORS 100.105 (5) and (6).

(c) Determine that the following are consistent:

(A) The designation and area in square feet of each unit shown on the plat and the unit designations and areas contained in the declaration in accordance with ORS 100.105 (1)(d);

(B) Limited common elements identified on the plat and the information contained in the declaration in accordance with ORS 100.105 (1)(h);

(C) The description of the property in the surveyor's certificate included on the plat and the description contained in the declaration in accordance with ORS 100.105 (1)(a); and

(D) For a flexible condominium, the variable property depicted on the plat and the identification of the property contained in the declaration in accordance with ORS 100.105 (7)(c).

(6) The person offering the plat or supplemental plat for approval shall:

(a) Submit a copy of the proposed declaration and bylaws or applicable supplemental declaration at the time the plat is submitted; and

(b) Submit the original or a copy of the executed declaration and bylaws or the applicable supplemental declaration approved by the commissioner if required by law prior to approval.

(7) For performing the services described in subsection (5)(a) to (c) of this section, the city surveyor or county surveyor shall collect from the person offering the plat for approval a fee of \$150 plus \$25 per building. The governing body of a city or county may establish a higher fee by resolution or order.

SECTION 14. ORS 100.105 is amended to read:

100.105. (1) A declaration must contain:

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(a) A description of the property, including property on which a unit or a limited common element is located, whether held in fee simple, leasehold, easement or other interest or combination thereof, that is being submitted to the condominium form of ownership and that conforms to the description in the surveyor's certificate provided under ORS 100.115 (1).

(b) Subject to subsection (11) of this section, a statement of the interest in the property being submitted to the condominium form of ownership, whether fee simple, leasehold, easement or other interest or combination thereof.

(c) Subject to subsections (5) and (6) of this section, the name by which the property is known and a general description of each unit and the building or buildings, including the number of stories and basements of each building, the total number of units and the principal materials of which they are constructed.

(d) The unit designation, a statement that the location of each unit is shown on the plat, a description of the boundaries and area in square feet of each unit and any other data necessary for proper identification. The area of a unit must be the same as shown for that unit on the plat described in ORS 100.115 (1).

(e) A notice in substantially the following form in at least 12-point type in all capitals or boldface:

### NOTICE

THE SQUARE FOOTAGE AREAS STATED IN THIS DECLARATION AND THE PLAT ARE BASED ON THE BOUNDARIES OF THE UNITS AS DESCRIBED IN THIS DECLARATION AND MAY VARY FROM THE AREA OF UNITS CALCULATED FOR OTHER PURPOSES.

(f) A description of the general common elements.

(g) An allocation to each unit of an undivided interest in the common elements in accordance with ORS 100.515 and the method used to establish the allocation.

(h) The designation of any limited common elements including:

(A) A general statement of the nature of the limited common element;

(B) A statement of the unit to which the use of each limited common element is reserved, provided the statement is not a reference to an assignment of use specified on the plat; and

(C) The allocation of use of any limited common element appertaining to more than one unit.

(i) The method of determining liability for common expenses and right to common profits in accordance with ORS 100.530.

(j) The voting rights allocated to each unit in accordance with ORS 100.525 or, in the case of condominium units committed as property in a timeshare plan defined in ORS 94.803, the voting rights allocated in the timeshare instrument.

(k) A statement of the general nature of use, residential or otherwise, for which the building or buildings and each of the units is intended.

(L) A statement that the designated agent to receive service of process in cases provided in ORS 100.550 (1) is named in the Condominium Information Report which will be filed with the Real Estate Agency in accordance with ORS 100.250 (1)(a).

(m) The method of amending the declaration and the percentage of voting rights required to approve an amendment of the declaration in accordance with ORS 100.135.

(n) A statement as to whether or not the association of unit owners pursuant to ORS 100.405 (5) and (8) has authority to grant leases, easements, rights of way, licenses and other similar interests affecting the general and limited common elements of the condominium and consent to vacation of roadways within and adjacent to the condominium.

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(o) If the condominium contains a floating structure described in ORS 100.020 (3), a statement regarding the authority of the board of directors of the association, subject to ORS 100.410, to temporarily relocate the floating structure without a majority vote of affected unit owners.

(p) Any restrictions on alienation of units. Any such restrictions created by documents other than the declaration may be incorporated by reference in the declaration to the official records of the county in which the property is located.

(q) Any other details regarding the property that the person executing the declaration considers desirable. However, if a provision required to be in the bylaws under ORS 100.415 is included in the declaration, the voting requirements for amending the bylaws also govern the amendment of the provision in the declaration.

(2) In the event the declarant proposes to annex additional property to the condominium under ORS 100.125, the declaration also must contain a general description of the plan of development, including:

(a) The maximum number of units to be included in the condominium.

(b) The date after which any right to annex additional property will terminate.

(c) A general description of the nature and proposed use of any additional common elements which declarant proposes to annex to the condominium, if such common elements might substantially increase the proportionate amount of the common expenses payable by existing unit owners.

(d) A statement that the method used to establish the allocation of undivided interest in the common elements, the method used to determine liability for common expenses and right to common profits and the method used to allocate voting rights for each unit annexed is as stated in the declaration in accordance with subsection (1)(g), (i) and (j) of this section.

(e) Such other information as the Real Estate Commissioner requires in order to carry out the purposes of this chapter.

(3) Unless expressly prohibited by the declaration and subject to the requirements of ORS 100.135 (2) and subsections (9) and (10) of this section:

(a) Not later than two years following the termination date specified in subsection (2)(b) of this section, the termination date may be extended for a period not exceeding five years.

(b) Before the termination date specified in the declaration or supplemental declaration under subsection (7)(d) of this section, the termination date may be extended for a period not exceeding five years.

(c) The general description under subsection (2)(c) of this section and the information included in the declaration or supplemental declaration in accordance with subsection (7)(c), (g) and (h) of this section may be changed by an amendment to the declaration or supplemental declaration and plat or supplemental plat.

(4) The information included in the declaration or supplemental declaration in accordance with subsection (2)(a) and (d) of this section and subsection (7)(a), (b), (e), (f) and (k) of this section may not be changed unless all owners agree to the change and an amendment to the declaration or supplemental declaration and, if applicable, the plat or supplemental plat are recorded in accordance with this chapter.

(5) The name of the property shall include the word "condominium" or "condominiums" or the words "a condominium."

(6) A condominium may not bear a name which is the same as or deceptively similar to the name of any other, **different** condominium located in the same county.

(7) If the condominium is a flexible condominium containing variable property, the declaration shall also contain a general description of the plan of development, including:

(a) A statement that the rights provided for under ORS 100.150 (1) are being reserved.

(b) A statement:

(A) Of any limitations on rights reserved under ORS 100.150 (1), including whether the consent of any unit owner is required, and if so, a statement of the method by which the consent is ascertained; or

(B) That there are no limitations on rights reserved under ORS 100.150 (1).

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(c) A statement of the total number of tracts of variable property within the condominium, including:

(A) A designation of each tract as withdrawable variable property or nonwithdrawable variable property;

(B) Identification of each variable tract by a label in accordance with ORS 100.115 [(1)(i)] (1)(h);

(C) A statement of the method of labeling each tract depicted on the plat in accordance with ORS 100.115 [(1)(i)] (1)(h); and

(D) A statement of the total number of tracts of each type of variable property.

(d) The termination date, which is the date after which any right reserved under ORS 100.150 (1) will terminate, and a statement of the circumstances, if any, that will terminate any right on or before the date specified. Subject to ORS 100.120, the termination date from the date of recording of the conveyance of the first unit in the condominium to a person other than the declarant may not exceed:

(A) Twenty years, only if a condominium consists, or may consist if the condominium is a flexible condominium, exclusively of units to be used for nonresidential purposes; or

(B) Seven years.

(e) The maximum number of units that may be created.

(f) A statement that the method used to establish the allocations of undivided interest in the common elements, the method used to determine liability for common expenses and right to common profits and the method used to allocate voting rights as additional units are created is the same as stated in the declaration in accordance with subsection (1)(g), (i) and (j) of this section.

(g) A general description of all existing improvements and the nature and proposed use of any improvements that may be made on variable property if the improvements might substantially increase the proportionate amount of the common expenses payable by existing unit owners.

(h) A statement of whether or not the declarant reserves the right to create limited common elements within any variable property, and if so, a general description of the types that may be created.

(i) A statement that the plat shows the location and dimensions of all withdrawable variable property that is labeled "WITHDRAWABLE VARIABLE PROPERTY."

(j) A statement that if by the termination date all or a portion of the withdrawable variable property has not been withdrawn or reclassified, the withdrawable variable property is automatically withdrawn from the condominium as of the termination date.

(k) A statement of the rights of the association under ORS 100.155 (2).

(L) A statement of whether or not all or any portion of the variable property may not be withdrawn from the condominium and, if so, with respect to the nonwithdrawable variable property:

(A) A statement that the plat shows the location and dimensions of all nonwithdrawable variable property that is labeled "NONWITHDRAWABLE VARIABLE PROPERTY."

(B) A description of all improvements that may be made and a statement of the intended use of each improvement.

(C) A statement that, if by the termination date all or a portion of the variable property designated as "nonwithdrawable variable property" has not been reclassified, the property is automatically reclassified as of the termination date as a general common element of the condominium and any interest in the property held for security purposes is automatically extinguished by the classification.

(D) A statement of the rights of the association under ORS 100.155 (3).

(m) A statement by the local governing body or appropriate department thereof that the withdrawal of any variable property designated as "withdrawable variable property" in the declaration in accordance with paragraph (L) of this subsection, will not violate any applicable planning or zoning regulation or ordinance. The statement may be attached as an exhibit to the declaration.

(8) The plan of development for any variable property included in the declaration or any supplemental declaration of any stage in accordance with subsection (7) of this section is subject to any

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plan of development included in the declaration in accordance with subsection (2) of this section, except that the time limitation specified in subsection (7)(d) of this section governs any right reserved under ORS 100.150 (1) with respect to any variable property.

(9) The information included in the declaration in accordance with subsection (7)(j), (k) and (m) of this section may not be deleted by amendment.

(10)(a) Approval by the unit owners is not required for a declarant to redesignate withdrawable variable property as "nonwithdrawable variable property" under ORS 100.150 (1) by supplemental declaration and supplemental plat, for any reason, including if the redesignation is required by the local governing body to comply with any planning or zoning regulation or ordinance.

(b) If as a result of a redesignation under paragraph (a) of this subsection, the information required to be included in the supplemental declaration under subsection (7)(L)(B) of this section is inconsistent with the information included in the declaration or supplemental declaration in accordance with subsection (7)(g) of this section, an amendment to the declaration or supplemental declaration and plat or supplemental plat approved by at least 75 percent of owners is required.

(11) The statement of an interest in property other than fee simple submitted to the condominium form of ownership and any easements, rights or appurtenances belonging to property submitted to the condominium form of ownership, whether leasehold or fee simple, must include:

(a) A reference to the recording index numbers and date of recording of the instrument creating the interest; or

(b) A reference to the law, administrative rule, ordinance or regulation that creates the interest if the interest is created under law, administrative rule, ordinance or regulation and not recorded in the office of the recording officer of the county in which the property is located.

### SUBDIVIDING FOR DEVELOPMENT OF AFFORDABLE HOUSING

### SECTION 15. ORS 92.090 is amended to read:

92.090. (1) Subdivision plat names shall be subject to the approval of the county surveyor or, in the case where there is no county surveyor, the county assessor. No tentative subdivision plan or subdivision plat of a subdivision shall be approved which bears a name similar to or pronounced the same as the name of any other subdivision in the same county, unless the land platted is contiguous to and platted by the same party that platted the subdivision bearing that name or unless the party files and records the consent of the party that platted the contiguous subdivision bearing that name. All subdivision plats must continue the lot numbers and, if used, the block numbers of the subdivision plat of the same name last filed. On or after January 1, 1992, any subdivision submitted for final approval shall not use block numbers or letters unless such subdivision is a continued phase of a previously recorded subdivision, bearing the same name, that has previously used block numbers or letters.

(2) No tentative plan for a proposed subdivision and no tentative plan for a proposed partition shall be approved unless:

(a) The streets and roads are laid out so as to conform to the plats of subdivisions and partitions already approved for adjoining property as to width, general direction and in all other respects unless the city or county determines it is in the public interest to modify the street or road pattern.

(b) Streets and roads held for private use are clearly indicated on the tentative plan and all reservations or restrictions relating to such private roads and streets are set forth thereon.

(c) The tentative plan complies with the applicable zoning ordinances and regulations and the ordinances or regulations adopted under ORS 92.044 that are then in effect for the city or county within which the land described in the plan is situated.

(3) No plat of a proposed subdivision or partition shall be approved unless:

(a) Streets and roads for public use are dedicated without any reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public or private utilities.

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(b) Streets and roads held for private use and indicated on the tentative plan of such subdivision or partition have been approved by the city or county.

(c) The subdivision or partition plat complies with any applicable zoning ordinances and regulations and any ordinance or regulation adopted under ORS 92.044 that are then in effect for the city or county within which the land described in the subdivision or partition plat is situated.

(d) The subdivision or partition plat is in substantial conformity with the provisions of the tentative plan for the subdivision or partition, as approved.

(e) The subdivision or partition plat contains a donation to the public of all common improvements, including but not limited to streets, roads, parks, sewage disposal and water supply systems, the donation of which was made a condition of the approval of the tentative plan for the subdivision or partition.

(f) Explanations of all common improvements required as conditions of approval of the tentative plan of the subdivision or partition have been recorded and referenced on the subdivision or partition plat.

(4) Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a subdivision shall be approved by a city or county unless the city or county has received and accepted:

(a) A certification by a city-owned domestic water supply system or by the owner of a privately owned domestic water supply system, subject to regulation by the Public Utility Commission of Oregon, that water will be available to the lot line of each and every lot depicted in the proposed subdivision plat;

(b) A bond, irrevocable letter of credit, contract or other assurance by the subdivider to the city or county that a domestic water supply system will be installed by or on behalf of the subdivider to the lot line of each and every lot depicted in the proposed subdivision plat[; and the amount of any such bond, irrevocable letter of credit, contract or other assurance by the subdivider shall be] in an amount determined by a registered professional engineer, subject to any change in such amount as determined necessary by the city or county; or

(c) [In lieu of paragraphs (a) and (b) of this subsection,] A statement that no domestic water supply facility will be provided to the purchaser of any lot depicted in the proposed subdivision plat, even though a domestic water supply source may exist. A copy of any such statement, signed by the subdivider and indorsed by the city or county, shall be filed by the subdivider with the Real Estate Commissioner and shall be included by the commissioner in any public report made for the subdivision under ORS 92.385. If the making of a public report has been waived or the subdivision is otherwise exempt under the Oregon Subdivision Control Law, the subdivider shall deliver a copy of the statement to each prospective purchaser of a lot in the subdivision at or prior to the signing by the purchaser of the first written agreement for the sale of the lot. The subdivider shall take a signed receipt from the purchaser upon delivery of such a statement, shall immediately send a copy of the receipt to the commissioner and shall keep any such receipt on file in this state, subject to inspection by the commissioner, for a period of three years after the date the receipt is taken.

(5) Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a subdivision shall be approved by a city or county unless the city or county has received and accepted:

(a) A certification by a city-owned sewage disposal system or by the owner of a privately owned sewage disposal system that is subject to regulation by the Public Utility Commission of Oregon that a sewage disposal system will be available to the lot line of each and every lot depicted in the proposed subdivision plat;

(b) A bond, irrevocable letter of credit, contract or other assurance by the subdivider to the city or county that a sewage disposal system will be installed by or on behalf of the subdivider to the lot line of each and every lot depicted on the proposed subdivision plat[; and the amount of such bond, irrevocable letter of credit, contract or other assurance shall be] in an amount determined by a registered professional engineer, subject to any change in such amount as the city or county considers necessary; or

(c) [In lieu of paragraphs (a) and (b) of this subsection,] A statement that no sewage disposal facility will be provided to the purchaser of any lot depicted in the proposed subdivision plat, where

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the Department of Environmental Quality has approved the proposed method or an alternative method of sewage disposal for the subdivision in its evaluation report described in ORS 454.755 (1)(b). A copy of any such statement, signed by the subdivider and indorsed by the city or county shall be filed by the subdivider with the Real Estate Commissioner and shall be included by the commissioner in the public report made for the subdivision under ORS 92.385. If the making of a public report has been waived or the subdivision is otherwise exempt under the Oregon Subdivision Control Law, the subdivider shall deliver a copy of the statement to each prospective purchaser of a lot in the subdivision at or prior to the signing by the purchaser of the first written agreement for the sale of the lot. The subdivider shall take a signed receipt from the purchaser upon delivery of such a statement, shall immediately send a copy of the receipt to the commissioner and shall keep any such receipt on file in this state, subject to inspection by the commissioner, for a period of three years after the date the receipt is taken.

(6) A city or county shall accept as other assurance, as used in subsections (4)(b) and (5)(b) of this section, one or more award letters from public funding sources made to a subdivider who is subdividing the property to develop affordable housing, that is or will be subject to an affordability restriction as defined in ORS 456.250 or an affordable housing covenant as defined in ORS 456.270, if the awards total an amount greater than the project cost.

[(6)] (7) Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a subdivision or partition located within the boundaries of an irrigation district, drainage district, water control district, water improvement district or district improvement company shall be approved by a city or county unless the city or county has received and accepted a certification from the district or company that the subdivision or partition is either entirely excluded from the district or company or is included within the district or company for purposes of receiving services and subjecting the subdivision or partition to the fees and other charges of the district or company.

### SINGLE ROOM OCCUPANCIES

SECTION 16. Section 17 of this 2023 Act and ORS 197.758 are added to and made a part of ORS 197.286 to 197.314.

SECTION 17. (1) As used in this section "single room occupancy" means a residential development with no fewer than four attached units that are independently rented and lockable and provide living and sleeping space for the exclusive use of an occupant, but require that the occupant share sanitary or food preparation facilities with other units in the occupancy.

(2) Within an urban growth boundary, each local government shall allow the development of a single room occupancy:

(a) With up to six units on each lot or parcel zoned to allow for the development of a detached single-family dwelling; and

(b) With the number of units consistent with the density standards of a lot or parcel zoned to allow for the development of residential dwellings with five or more units.

**SECTION 18.** ORS 197.303, as amended by section 27, chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001), is amended to read:

197.303. (1) As used in ORS 197.296 and this section, "needed housing" means all housing on land zoned for residential use or mixed residential and commercial use that is determined to meet the need shown for housing within an urban growth boundary at price ranges and rent levels that are affordable to households within the county with a variety of incomes, including but not limited to households with low incomes, very low incomes and extremely low incomes, as those terms are defined by the United States Department of Housing and Urban Development under 42 U.S.C. 1437a. "Needed housing" includes the following housing types:

(a) Attached and detached single-family housing, middle housing types as described in ORS 197.758 and multiple family housing for both owner and renter occupancy;

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(b) Government assisted housing;

(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;

(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions;

(e) Agriculture workforce housing;

(f) Housing for individuals with a variety of disabilities related to mobility or communications that require accessibility features;

(g) Housing for older persons, as defined in ORS 659A.421; [and]

(h) Housing for college or university students, if relevant to the region[.]; and

(i) Single room occupancies as defined in section 17 of this 2023 Act.

(2) For the purpose of estimating housing needs, as described in ORS 197.296 (3)(b), Metro shall adopt findings and perform an analysis that estimates each of the following factors:

(a) Projected needed housing units over the next 20 years;

(b) Current housing underproduction;

(c) Housing units needed for people experiencing homelessness; and

(d) Housing units projected to be converted into vacation homes or second homes during the next 20 years.

(3) At the time Metro performs the analysis under subsection (2) of this section, Metro shall allocate a housing need for each city within Metro.

(4) In making an allocation under subsection (3) of this section, Metro shall consider:

(a) The forecasted population growth under ORS 195.033 or 195.036;

(b) The forecasted regional job growth;

(c) An equitable statewide distribution of housing for income levels described in section 2 (4), chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001) [of this 2023 Act].

(d) The estimates made under subsection (2) of this section; and

(e) The purpose of the Oregon Housing Needs Analysis under section 1 (1), chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001) [of this 2023 Act].

(5) Metro shall make the estimate described in subsection (2) of this section using a shorter time period than since the last review under ORS 197.296 (2)(a)(B) if Metro finds that the shorter time period will provide more accurate and reliable data related to housing need. The shorter time period may not be less than three years.

(6) Metro shall use data from a wider geographic area or use a time period longer than the time period described in subsection (2) of this section if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to subsection (2) of this section. Metro must clearly describe the geographic area, time frame and source of data used in an estimate performed under this subsection.

(7) Subsection (1)(a) and (d) of this section does not apply to a city with a population of less than 2,500.

(8) Metro may take an exception under ORS 197.732 to the definition of "needed housing" in subsection (1) of this section in the same manner that an exception may be taken under the goals.

SECTION 18a. If House Bill 2889 becomes law, section 18 of this 2023 Act (amending ORS 197.303) is repealed and ORS 197.303, as amended by section 27, chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001), and section 14, chapter \_\_\_\_, Oregon Laws 2023 (Enrolled House Bill 2889), is amended to read:

197.303. (1) As used in ORS 197.296 and this section, "needed housing" means all housing on land zoned for residential use or mixed residential and commercial use that is determined to meet the need shown for housing within an urban growth boundary at price ranges and rent levels that are affordable to households within the county with a variety of incomes, including but not limited to households with low incomes, very low incomes and extremely low incomes, as those terms are defined by the United States Department of Housing and Urban Development under 42 U.S.C. 1437a. "Needed housing" includes the following housing types:

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(a) Attached and detached single-family housing, middle housing types as described in ORS 197.758 and multiple family housing for both owner and renter occupancy;

(b) Government assisted housing;

(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;

(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; [and]

(e) Agriculture workforce housing[.]; and

(f) Single room occupancies as defined in section 17 of this 2023 Act.

(2) For the purpose of estimating housing needs, as described in ORS 197.296 (3)(b), Metro shall adopt findings and perform an analysis that estimates each of the following factors:

(a) Projected needed housing units over the next 20 years;

(b) Current housing underproduction;

(c) Housing units needed for people experiencing homelessness; and

(d) Housing units projected to be converted into vacation homes or second homes during the next 20 years.

(3) Metro shall make the estimate described in subsection (2) of this section using a shorter time period than since the last review under ORS 197.296 (2)(a)(B) if Metro finds that the shorter time period will provide more accurate and reliable data related to housing need. The shorter time period may not be less than three years.

(4) Metro shall use data from a wider geographic area or use a time period longer than the time period described in subsection (2) of this section if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to subsection (2) of this section. Metro must clearly describe the geographic area, time frame and source of data used in an estimate performed under this subsection.

(5) Subsection (1)(a) and (d) of this section does not apply to a city with a population of less than 2,500.

(6) Metro may take an exception under ORS 197.732 to the definition of "needed housing" in subsection (1) of this section in the same manner that an exception may be taken under the goals.

**SECTION 19.** Section 23, chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001), is amended to read:

Sec. 23. (1) As used in ORS 197.286 to 197.314, and except as provided in subsection (2) of this section:

(a) "Needed housing" means housing by affordability level, as described in section 2 (4), chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001) [of this 2023 Act], type, characteristics and location that is necessary to accommodate the city's allocated housing need over the 20-year planning period in effect when the city's housing capacity is determined.

(b) "Needed housing" includes the following housing types:

(A) Detached single-family housing, middle housing types as described in ORS 197.758 and multifamily housing that is owned or rented;

(B) Government assisted housing;

(C) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;

(D) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions;

(E) Housing for agricultural workers;

(F) Housing for individuals with a variety of disabilities, related to mobility or communications that require accessibility features;

(G) Housing for older persons, as defined in ORS 659A.421; [and]

(H) Housing for college or university students, if relevant to the region[.]; and

(I) Single room occupancies as defined in section 17 of this 2023 Act.

(2) Subsection (1)(b)(A) and (D) of this section does not apply to:

(a) A city with a population of less than 2,500.

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(b) A county with a population of less than 15,000.

(3) At the time that a city is required to inventory its buildable lands under ORS 197.297 (1) or section 21 or 22, chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001) [of this 2023 Act], the city shall determine its needed housing under this section.

(4) In determining needed housing the city must demonstrate that the projected housing types, characteristics and locations are:

(a) Attainable for the allocated housing need by income, including consideration of publicly supported housing;

(b) Appropriately responsive to current and projected market trends; and

(c) Responsive to the factors in ORS 197.290 (2)(b) to (d).

### SITING DUPLEXES

#### SECTION 20. ORS 197.758 is amended to read:

197.758. (1) As used in this section:

(a) "Cottage clusters" means groupings of no fewer than four detached housing units per acre with a footprint of less than 900 square feet each and that include a common courtyard.

(b) "Middle housing" means:

(A) Duplexes;

(B) Triplexes;

(C) Quadplexes;

(D) Cottage clusters; and

(E) Townhouses.

(c) "Townhouses" means a dwelling unit constructed in a row of two or more attached units, where each dwelling unit is located on an individual lot or parcel and shares at least one common wall with an adjacent unit.

(2) Except as provided in subsection (4) of this section, each city with a population of 25,000 or more and each county or city within a metropolitan service district shall allow the development of:

(a) All middle housing types in areas zoned for residential use that allow for the development of detached single-family dwellings; and

(b) A duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings.

(3) Except as provided in subsection (4) of this section, each city not within a metropolitan service district with a population of [more than 10,000] **2,500 or greater** and less than 25,000 shall allow the development of a duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings. Nothing in this subsection prohibits a local government from allowing middle housing types in addition to duplexes.

(4) This section does not apply to:

(a) Cities with a population of 1,000 or fewer;

(b) Lands not within an urban growth boundary;

(c) Lands that are not incorporated and also lack sufficient urban services, as defined in ORS 195.065;

(d) Lands that are not zoned for residential use, including lands zoned primarily for commercial, industrial, agricultural or public uses; or

(e) Lands that are not incorporated and are zoned under an interim zoning designation that maintains the land's potential for planned urban development.

(5) Local governments may regulate siting and design of middle housing required to be permitted under this section, provided that the regulations do not, individually or cumulatively, discourage the development of all middle housing types permitted in the area through unreasonable costs or delay. Local governments may regulate middle housing to comply with protective measures adopted pursuant to statewide land use planning goals.

(6) This section does not prohibit local governments from permitting:

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(a) Single-family dwellings in areas zoned to allow for single-family dwellings; or

(b) Middle housing in areas not required under this section.

(7) A local government that amends its comprehensive plan or land use regulations relating to allowing additional middle housing is not required to consider whether the amendments significantly affect an existing or planned transportation facility.

SECTION 21. Section 3, chapter 639, Oregon Laws 2019, is amended to read:

Sec. 3. (1) Notwithstanding ORS 197.646, a local government shall adopt land use regulations or amend its comprehensive plan to implement [section 2 of this 2019 Act] ORS 197.758 no later than:

(a) June 30, 2021, for each city subject to [section 2 (3) of this 2019 Act; or] ORS 197.758 (3) (2021 Edition);

(b) June 30, 2022, for each local government subject to [section 2 (2) of this 2019 Act.] ORS 197.758 (2); or

(c) June 30, 2025, for each city subject to ORS 197.758 (3), as amended by section 20 of this 2023 Act.

(2) The Land Conservation and Development Commission, with the assistance of the Building Codes Division of the Department of Consumer and Business Services, shall develop a model middle housing ordinance no later than December 31, 2020.

(3) A local government that has not acted within the time provided under subsection (1) of this section shall directly apply the model ordinance developed by the commission under subsection (2) of this section under ORS 197.646 (3) until the local government acts as described in subsection (1) of this section.

(4) In adopting regulations or amending a comprehensive plan under this section, a local government shall consider ways to increase the affordability of middle housing by considering ordinances and policies that include but are not limited to:

(a) Waiving or deferring system development charges;

(b) Adopting or amending criteria for property tax exemptions under ORS 307.515 to 307.523, 307.540 to 307.548 or 307.651 to 307.687 or property tax freezes under ORS 308.450 to 308.481; and

(c) Assessing a construction tax under ORS 320.192 and 320.195.

[(5) When a local government makes a legislative decision to amend its comprehensive plan or land use regulations to allow middle housing in areas zoned for residential use that allow for detached single-family dwellings, the local government is not required to consider whether the amendments significantly affect an existing or planned transportation facility.]

SECTION 22. Section 4, chapter 639, Oregon Laws 2019, is amended to read:

Sec. 4. (1) [Notwithstanding section 3 (1) or (3) of this 2019 Act,] The Department of Land Conservation and Development may grant to a local government that is subject to [section 2 of this 2019 Act] ORS 197.758 an extension of the time allowed to adopt land use regulations or amend its comprehensive plan under section 3, chapter 639, Oregon Laws 2019 [of this 2019 Act].

(2) An extension under this section may be applied only to specific areas where the local government has identified water, sewer, storm drainage or transportation services that are [either] significantly deficient [or are expected to be significantly deficient before December 31, 2023,] and for which the local government has established a plan of actions that will remedy the deficiency in those services that is approved by the department. The extension may not extend beyond the date that the local government intends to correct the deficiency under the plan.

(3) In areas where the extension under this section does not apply, the local government shall apply its own land use regulations consistent with section 3 (1), **chapter 639**, **Oregon Laws 2019**, [of this 2019 Act] or the model ordinance developed under section 3 (2), **chapter 639**, **Oregon Laws 2019** [of this 2019 Act].

(4) A request for an extension by a local government must be filed with the department no later than:

(a) December 31, 2020, for a city subject to [section 2 (3) of this 2019 Act.] ORS 197.758 (3) (2021 Edition).

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(b) June 30, 2021, for a local government subject to [section 2 (2) of this 2019 Act.] ORS 197.758 (2).

(c) June 30, 2024, for each city subject to ORS 197.758 (3), as amended by section 20 of this 2023 Act.

(5) The department shall grant or deny a request for an extension under this section:

(a) Within 90 days of receipt of a complete request from a city subject to [section 2 (3) of this 2019 Act.] ORS 197.758 (3).

(b) Within 120 days of receipt of a complete request from a local government subject to [section 2 (2) of this 2019 Act.] ORS 197.758 (2).

(6) The department shall adopt rules regarding the form and substance of a local government's application for an extension under this section. The department may include rules regarding:

(a) Defining the affected areas;

(b) Calculating deficiencies of water, sewer, storm drainage or transportation services;

(c) Service deficiency levels required to qualify for the extension;

(d) The components and timing of a remediation plan necessary to qualify for an extension;

(e) Standards for evaluating applications; and

(f) Establishing deadlines and components for the approval of a plan of action.

SECTION 23. In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Land Conservation and Development, for the biennium beginning July 1, 2023, out of the General Fund, the amount of \$1,250,000, to provide grants to local governments to assist them in amending their comprehensive plans as required under section 3 (1)(c), chapter 639, Oregon Laws 2019.

### **REMOVING RECORDED DISCRIMINATORY PROVISIONS**

SECTION 24. Section 25 of this 2023 Act is added to and made a part of ORS chapter 93. SECTION 25. (1) Notwithstanding ORS 94.590, 94.625, 100.110, 100.135, 100.411 or 100.413

or any requirement of the declaration or bylaws, an amendment to the declaration or bylaws of a planned community or condominium is effective and may be made and recorded in the county clerk's office of a county in which any portion of the property is situated without the vote of the owners or the board members and without the prior approval of the Real Estate Commissioner, county assessor or any other person if:

(a) The amendment is made to conform the declarations or bylaws to the requirements of ORS 93.270 (2); and

(b) The amendment is signed by the president and secretary of the homeowners association.

(2) The first page or cover sheet of an instrument amending the declaration or bylaws must comply with the recording requirements of ORS chapter 205 and must be in substantially the following form:

### AMENDMENT OF [DECLARATION/BYLAWS] TO COMPLY WITH ORS 93.270 (2).

Pursuant to this section, the undersigned states:

1. The undersigned are the president and secretary for the [homeowners/condominium owners] association \_\_\_\_\_\_ (name) in \_\_\_\_\_\_ County.

2. This document amends the [declaration/bylaws] of the association.

3. The [declaration was/bylaws were] first recorded under instrument number (or book and page number) \_\_\_\_\_\_ recorded on \_\_\_\_\_\_.

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4. The [declaration was/bylaws were] most recently amended or restated, if ever, under instrument number (or book and page number) \_

5. The undersigned have determined that the current [declarations/bylaws] of the [planned community/condominium], as last amended or revised, may fail to comply with ORS 93.270. The following amendments to the [declaration/bylaws] remove provisions that are not allowed and are unenforceable under ORS 93.270 (2). No other changes to the document are being made except as may be necessary to correct scriveners' errors or to conform format and style.

6. Under this section, a vote of the association is not required.

7. The description of the real property in \_ <u>County affected by this</u> document is:

| Dated this day of          | 20                                     |
|----------------------------|--|
| Name:<br>President,        |  |
| Address:                   |  |
| Phone No.:                 |  |
| Dated this day of          | 20                                     |
| Name:                      |  |
| Secretary,                 | _ (association name)                   |
| Address:                   |  |
| Phone No.:                 |  |
| STATE OF OREGON )<br>) ss. |  |
| County of )                |  |
| · ·                        | was acknowledged before me this day of |
| 20 by                      |  |
|                            | Notary Public for Oregon               |
|                            | My commission expires:                 |

(3) If an instrument recorded under this section affects a condominium, the condominium association shall file a copy of the recorded instrument with the Real Estate Commissioner.

SECTION 26. Section 4, chapter 67, Oregon Laws 2021, as amended by section 5b, chapter 367, Oregon Laws 2021, is amended to read:

Sec. 4. (1) On or before December 31, [2022] 2024, each homeowners association of a planned community first established before September 1, 2021, shall review [each governing document currently binding on the planned community, or the lots or the lot owners within] the declaration and bylaws of the planned community and shall:

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(a) Amend [or restate] each document as necessary to remove all restrictions against the use of the community or the lots not allowed under ORS 93.270 (2) as provided under section 25 of this 2023 Act: or

(b) Execute and record a [declaration] certification that the homeowners association has reviewed the [governing documents binding on] declaration and bylaws of the planned community and that the documents do not contain any restriction, rule or regulation against the use of the community or the lots by a person or group of persons because of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, familial status, source of income, disability or the number of individuals, including family members, persons of close affinity or unrelated persons, who are simultaneously occupying a dwelling unit within occupancy limits.

(2) [Notwithstanding ORS 94.590 or 94.625 or any requirement of the declaration or bylaws, an amendment to or a restatement of the declaration or bylaws under subsection (1)(a) of this section is effective and] A certification under subsection (1)(b) of this section:

(a) May be recorded without the vote of the owners or the board members [if the amendment or restatement includes a certification signed by the president and secretary of the homeowners association that the amended or restated declaration or bylaws does not change that document except as required under this section and as may be necessary to correct scriveners' errors or to conform format and style.]; and

(b) Must be in substantially the following form:

#### **CERTIFICATION OF COMPLIANCE WITH ORS 93.270 (2).**

Pursuant to section 4, chapter 67, Oregon Laws 2021, the undersigned states:

1. The undersigned are the president and secretary for the homeowners association \_ (name) in \_\_ \_\_\_\_\_ County.

2. The declaration was first recorded under instrument number (or book and page number) \_\_\_\_\_\_ recorded on \_\_\_\_\_\_. The declaration was most recently amended or restated, if ever, under instrument number \_ \_ recorded on

3. The bylaws were first recorded, if ever, under instrument number (or book and page \_ recorded on \_\_\_\_\_. The bylaws were most renumber) \_ cently amended or restated, if ever, under instrument number \_ \_\_\_\_\_ recorded on .

4. The undersigned have determined that the current declarations and bylaws of the planned community, as last amended or revised, conform with ORS 93.270 (2) and that there are no provisions that would restrict the use of the community or the lots or units of the community because of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, familial status, source of income, disability or the number of individuals, including family members, persons of close affinity or unrelated persons, who are simultaneously occupying a dwelling unit within occupancy limits. Any such provision that may inadvertently remain is void and unenforceable.

5. Under this section, a vote of the association is not required.

6. The description of the real property in \_\_\_\_\_ County affected by this document is:

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_

Name: \_

Name: \_\_\_\_\_\_\_ (association name)

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| Dated this day of      | 20                           |                          |
|------------------------|------------------------------|--------------------------|
| Name:                  |                              |                          |
| Secretary,             | (association name)           |                          |
| STATE OF OREGON )      |                              |                          |
| ,                      | ss.                          |                          |
| County of )            |                              |                          |
| The foregoing instrume | nt was acknowledged before n | ne this day of           |
| 20 by                  | and                          |                          |
|                        |                              | Notary Public for Oregon |
|                        | My com                       | mission expires:         |

**SECTION 27.** Section 6, chapter 67, Oregon Laws 2021, as amended by section 5c, chapter 367, Oregon Laws 2021, is amended to read:

Sec. 6. (1) On or before December 31, [2022] 2024, each association of a condominium first established before September 1, 2021, that includes units used for residential purposes shall review [each governing document currently binding on the condominium or the units or unit owners within] the declaration and bylaws of the condominium and shall:

(a) Amend [or restate] each document as necessary to remove all restrictions against the use of the condominium or the units not allowed under ORS 93.270 (2) as provided under section 25 of this 2023 Act; or

(b) Execute and record a [declaration] certification that the association has reviewed the [governing documents binding on] declaration and bylaws of the condominium and that the documents do not contain any restriction, rule or regulation against the use of the condominium or the units by a person or group of persons because of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, familial status, source of income, disability or the number of individuals, including family members, persons of close affinity or unrelated persons, who are simultaneously occupying a dwelling unit within occupancy limits.

(2) [Notwithstanding ORS 100.110, 100.135, 100.413 or any requirement of the declaration or bylaws, an amendment to or a restatement of the declaration or bylaws under this section, upon submission and approval of the Real Estate Commissioner under ORS 100.123, 100.125, 100.668 and 100.675, is effective and] A certification under subsection (1)(b) of this section:

(a) May be recorded without the vote of the owners or the board members [if the amended or restated declaration or bylaws includes a certification signed by the president and secretary of the association that the amended or restated declaration or bylaws does not change that document except as required under this section and as may be necessary to correct scriveners' errors or to conform format and style.]; and

(b) Must be in substantially the following form:

#### CERTIFICATION OF COMPLIANCE WITH ORS 93.270 (2).

Pursuant to section 6, chapter 67, Oregon Laws 2021, the undersigned states:

1. The undersigned are the president and secretary for the condominium owners association \_\_\_\_\_\_ (name) in \_\_\_\_\_\_ County.

2. The declaration was first recorded under instrument number (or book and page number) \_\_\_\_\_\_ recorded on \_\_\_\_\_\_. The declaration was most recently amended or restated, if ever, under instrument number \_\_\_\_\_\_ recorded on \_\_\_\_\_\_.

3. The bylaws were first recorded, if ever, under instrument number (or book and page number) \_\_\_\_\_\_ recorded on \_\_\_\_\_\_. The bylaws were most recently amended or restated, if ever, under instrument number \_\_\_\_\_\_ recorded on \_\_\_\_\_\_.

4. The undersigned have determined that the current declarations and bylaws of the condominium, as last amended or revised, conform with ORS 93.270 (2) and that there are no provisions that would restrict the use of the community or the lots or units of the community because of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, familial status, source of income, disability or the number of individuals, including family members, persons of close affinity or unrelated persons, who are simultaneously occupying a dwelling unit within occupancy limits. Any such provision that may inadvertently remain is void and unenforceable.

5. Under this section, a vote of the association is not required.

6. The description of the real property in \_\_\_\_\_ County affected by this document is:

| Dated this day of 20                          |  |
|---|--|
| Name:   |  |
| President, (association name)                 |  |
| Dated this day of 20                          |  |
| Name:   |  |
| Secretary, (association name)                 |  |
| STATE OF OREGON )<br>) ss.                    |  |
| County of )                                   |  |
| The foregoing instrument was acknowledged bef |  |
| 20 by and                                     |  |
|   |  |

Notary Public for Oregon My commission expires: \_\_\_\_\_

<u>SECTION 28.</u> (1) The amendments to sections 4 and 6, chapter 67, Oregon Laws 2021, by sections 26 and 27 of this 2023 Act are intended to extend the deadline for compliance with those sections and to clarify the process by which associations may comply with those sections.

(2) Sections 4 and 6, chapter 67, Oregon Laws 2021, as amended by sections 26 and 27 of this 2023 Act, do not apply to a planned community or condominium that:

(a) Was established on or after September 1, 2021; or

(b) Complied with the requirements of section 4 or 6, chapter 67, Oregon Laws 2021, that were in effect before the effective date of this 2023 Act, notwithstanding the former deadline for compliance of December 31, 2022.

#### AFFORDABLE HOUSING ON PUBLIC UTILITY LANDS

SECTION 29. (1) As used in this section, "affordable housing" means affordable housing as defined in ORS 197.308 or publicly supported housing as defined in ORS 456.250.

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(2)(a) To facilitate the development of affordable housing in this state, the Public Utility Commission may allow a public utility to sell, or to convey at below market price or as a gift, the public utility's interest in real property for the purpose of the real property being used for the development of affordable housing.

(b) The instrument that conveys, or contracts to convey, the public utility's interest in the real property must include an affordable housing covenant as provided in ORS 456.270 to 456.295.

(3) A public utility may not recover costs from customers for selling, or conveying at below market price or as a gift, the public utility's interest in real property under this section.

#### HOUSING SUPPORT FOR LOW-INCOME COLLEGE STUDENTS

<u>SECTION 30.</u> The Department of Human Services shall provide financial support to nonprofit organizations providing affordable housing support to low-income college students across this state in accordance with the department's self-sufficiency programs.

SECTION 31. Section 30 of this 2023 Act is repealed on January 2, 2026.

SECTION 32. In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Human Services, for the biennium beginning July 1, 2023, out of the General Fund, the amount of \$4,000,000 to provide financial support to nonprofit organizations under section 30 of this 2023 Act.

SECTION 32a. Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Human Services by section 1 (3), chapter \_\_\_\_, Oregon Laws 2023 (Enrolled House Bill 5026), for the biennium beginning July 1, 2023, for self-sufficiency programs, is increased by \$244,963 to administer financial support to nonprofit organizations pursuant to the provisions of section 30 of this 2023 Act.

#### COMMUNITY HOUSING SUPPORTING AGRICULTURAL EMPLOYEES

SECTION 33. Section 34 of this 2023 Act is added to and made a part of ORS 456.548 to 456.725.

<u>SECTION 34.</u> (1) As used in this section, "community housing supporting agricultural employees" means a housing development that:

(a) Is within an urban growth boundary;

(b) Is within 20 miles of significant agricultural employment as identified by the Housing and Community Services Department;

(c) Is promoted for residential use by agricultural employees and developed with amenities suitable for agricultural employees and their families;

(d) Consists of a multifamily dwelling or a cluster of buildings, including manufactured, prefabricated or modular housing, housing produced through a three-dimensional printing process or other housing developed using innovative construction types; and

(e)(A) Is subject to an affordable housing covenant requiring that the units are maintained for a period of no less than 60 years as affordable to rent for low income households, as described in ORS 456.270 to 456.295;

(B) Is operated as a consumer housing cooperative; or

(C) Is operated under a model approved by the department designed to preserve affordability or control of the property by its residents.

(2) The Housing and Community Services Department shall provide one or more grants to qualified housing sponsors for the purposes of developing community housing supporting agricultural employees.

(3) In awarding grants under this section, the department shall prioritize applications:

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(a) From a developer that is a nonprofit housing corporation that serves agricultural workers;

(b) From a developer that is a nonprofit that promotes housing for agricultural employees or other needs of agricultural employees, or from a developer that has entered into a partnership with a nonprofit housing corporation that serves agricultural workers for the purposes of developing the community housing;

(c) Where other funding for the housing development has been dedicated or can be leveraged by the grant;

(d) Where the housing development will be located close to significant agricultural employment; or

(e) Where the housing development will include or will be near specific characteristics or amenities designed to support or attract agricultural employees and their families.

(4) Grants awarded under this section may be used for any project costs for the development or predevelopment of the community housing supporting agricultural employees.

(5) A qualified housing sponsor receiving grants under this section shall agree to provide information to the department to report to an appropriate interim committee of the Legislative Assembly, in the manner provided in ORS 192.245, on the use of the grant on or before September 15, 2027.

SECTION 35. Section 34 of this 2023 Act is repealed on January 2, 2028.

SECTION 36. In addition to and not in lieu of any other appropriation, there is appropriated to the Housing and Community Services Department, for the biennium beginning July 1, 2023, out of the General Fund, the amount of \$10,000,000, to award and administer grants under section 34 of this 2023 Act.

### LOCAL GOVERNMENT HOUSING SUPPORT

SECTION 37. (1) The Oregon Department of Administrative Services, in consultation with the Department of Land Conservation and Development and the Housing and Community Services Department, shall provide grants to councils of governments, as defined in ORS 294.900, and economic development districts to support housing and community development capacity within cities and counties in this state and within the nine federally recognized Indian tribes in this state.

(2) Councils of governments and economic development districts receiving grants under this section shall partner and consult with local governments, developers, financiers, the Department of Land Conservation and Development, the Housing and Community Services Department, other relevant state agencies and other interested public and private partners to enable local governments throughout the region to encourage community development and the development of infrastructure and needed housing, as defined in section 23, chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001), by:

(a) Bridging any information gaps;

(b) Identifying and securing needed resources, including infrastructure and community facilities;

(c) Connecting producers of needed housing with consumers of needed housing; and

(d) Working with representatives of historically underrepresented groups to overcome community-specific barriers to obtaining housing.

SECTION 38. Section 37 of this 2023 Act is repealed on January 2, 2034.

SECTION 39. In addition to and not in lieu of any other appropriation, there is appropriated to the Oregon Department of Administrative Services, for the biennium beginning July 1, 2023, out of the General Fund, the amount of \$5,000,000, to provide grants under section 37 of this 2023 Act.

#### AFFORDABLE HOMEOWNERSHIP REVOLVING LOAN FUND

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<u>SECTION 40.</u> (1) The Housing and Community Services Department shall make a grant to the Network for Oregon Affordable Housing (NOAH) to establish a revolving loan fund that will allow a first-time home buyer who is purchasing a home, including a share of a cooperative or a condominium unit, in which the purchaser's equity will be limited, to establish equity at a faster rate while making monthly payments similar to those described in subsection (3)(a)(A) of this subsection. The department may not make a grant under this section until NOAH has demonstrated that it has dedicated to a loan fund described in this section no less than \$7,500,000 of additional private moneys.

(2) Loans made from the loan fund must be used for the purchase of a dwelling that is subject to an affordability restriction, such as a restriction as described in ORS 456.270 to 456.295, that:

(a) Has the effect of limiting the purchaser's ability to gain equity from the appreciation of the dwelling's value; and

(b) Requires that the purchaser be a low income household as defined in ORS 456.270.

(3) Loans made from the loan fund must:

(a) Be made only to applicants that have met with an approved or certified housing counseling agency, as described in 24 C.F.R. 214 subpart B, and have a first-time home buyer program offered by the agency;

(b) Have a term of 20 years or less; and

(c) Have a fixed interest rate that is not more than the greater of:

(A) The rate that would allow monthly amortized principal and interest payments under the term of the loan to be the amount that would result from a 30-year fixed-rate amortized mortgage at the national current average rate as published by a reputable financial source; or

(B) 0.5 percent.

SECTION 41. Section 40 of this 2023 Act is repealed on January 2, 2026.

SECTION 42. In addition to and not in lieu of any other appropriation, there is appropriated to the Housing and Community Services Department, for the biennium beginning July 1, 2023, out of the General Fund, the amount of \$7,500,000, to make a grant under section 40 of this 2023 Act.

SECTION 43. On or before September 15, 2025, and on or before September 15, 2027, the Housing and Community Services Department shall provide a report to an appropriate interim committee of the Legislative Assembly, in the manner provided in ORS 192.245, on the use of the loan funds described in section 40 of this 2023 Act, as reported to the department by the Network for Oregon Affordable Housing (NOAH).

### AFFORDABLE HOUSING LOAN GUARANTEE FUND

<u>SECTION 44.</u> Section 45 of this 2023 Act is added to and made a part of ORS chapter 458. <u>SECTION 45.</u> (1) The Housing and Community Services Department shall provide grants to one or more nonprofit corporations to develop a fund.

(2) The moneys in the fund may be used only to guarantee the repayment of loans to finance the construction of housing subject to an affordable housing covenant for low or moderate income households, as described in ORS 456.270 to 456.295 and as further defined by the Housing and Community Services Department by rule.

(3) The term of a loan guaranteed under this section may not exceed five years.

(4) The department and the state are not guarantors of any loan guaranteed by a nonprofit corporation under this section.

(5) To be eligible for a grant under this section, a nonprofit corporation must:

(a) Be exempt from income taxes under section 501(c)(3) or (4) of the Internal Revenue Code; and

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(b) Demonstrate to the satisfaction of the department that the corporation is a community development financial institution that operates statewide to support investment in the construction of affordable housing.

SECTION 46. Section 45 of this 2023 Act is repealed on January 2, 2026.

SECTION 47. In addition to and not in lieu of any other appropriation, there is appropriated to the Housing and Community Services Department, for the biennium beginning July 1, 2023, out of the General Fund, the amount of \$20,000,000 to provide grants under section 45 of this 2023 Act.

#### HOUSING AND COMMUNITY SERVICES DEPARTMENT ADMINISTRATION

SECTION 47a. Notwithstanding any other provision of law, the General Fund appropriation made to the Housing and Community Services Department by section 1, chapter Oregon Laws 2023 (Enrolled Senate Bill 5511), for the biennium beginning July 1, 2023, is increased by \$529,802, for purposes of administering sections 34, 37, 40, 43 and 45 of this 2023 Act.

### EMERGENCY HOUSING ASSISTANCE FOR COMPANION ANIMALS

SECTION 48. ORS 458.650 is amended to read:

458.650. (1) The Housing and Community Services Department shall administer the Emergency Housing Account to assist homeless individuals and individuals who are at risk of becoming homeless, through means including the emergency housing assistance program and the state homeless assistance program. Notwithstanding subsection (3)(a) of this section, the state homeless assistance program shall serve individuals experiencing homelessness, especially unsheltered homelessness, without respect to income.

(2) The Oregon Housing Stability Council shall develop a policy for the use of program funds with the advice of:

(a) Persons who have experienced housing instability;

(b) Tribes;

- (c) The Community Action Partnership of Oregon;
- (d) Continuums of care, as defined in 24 C.F.R. part 578;
- (e) Local governments;
- (f) Nonprofit organizations;
- (g) Homeless services providers;
- (h) Culturally specific organizations;
- (i) Housing providers;
- (j) Veterans' services organizations; and
- (k) Other entities identified by the department by rule.

(3) The policy under subsection (2) of this section shall direct that program funds shall be used: (a) To provide to low and very low income individuals, including but not limited to individuals

more than 65 years of age, persons with disabilities, agricultural workers and Native Americans: (A) Emergency shelters and attendant services;

(B) Transitional housing services designed to assist individuals to make the transition from homelessness to permanent housing and economic independence;

(C) Supportive housing services to enable individuals to continue living in their own homes or to provide in-home services for such individuals for whom suitable programs do not exist in their geographic area;

(D) Programs that provide emergency payment of home payments, rents or utilities; [or]

(E) Support for individuals with companion animals, as defined in ORS 401.977, that includes:

#### (i) Food for both companion animals and their owners;

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(ii) Crates or kennels on-site or off-site that are easily accessible to the companion animal owners;

#### (iii) Basic veterinary services, including behavioral services; and

(iv) Rules of conduct and responsibility regarding companion animals and their owners; or

[(E)] (F) Some or all of the needs described in subparagraphs (A) to [(D)] (E) of this paragraph. (b) To align with federal strategies and resources that are available to prevent and end homelessness, including the requirement of providing culturally responsive services and using evidence-based and emerging practices effective in ending homelessness, including practices unique to rural communities.

(4)(a) The council shall require as a condition of awarding a grant that the organization demonstrate to the satisfaction of the council that the organization:

(A) Has the capacity to deliver any service proposed by the organization;

(B) Is a culturally responsive organization or is engaged in a process to become a culturally responsive organization;

(C) Engages with culturally specific organizations; and

(D) Supports local homelessness system planning efforts.

(b) Any funds granted under this section may not be used to replace existing funds. Funds granted under this section may be used to supplement existing funds. An organization may use funds to support existing programs or to establish new programs.

(5) The department may expend funds from the account for:

(a) The administration of the account as provided for in the legislatively approved budget, as that term is defined in ORS 291.002, for the department in support of directing a statewide policy on homelessness that ensures use of evidence-based and emerging practices, service equity in funding and local planning processes.

(b) The development of technical assistance and training resources for organizations developing and operating emergency shelters as defined in ORS 197.782 and transitional housing accommodations as described in ORS 197.746.

(6) The department shall utilize outcome-oriented contracting processes and evidence-based and emerging practices for account program funds, including evidence-based and emerging practices for serving rural communities.

(7) Twenty-five percent of moneys deposited in the account pursuant to ORS 294.187 are dedicated to the emergency housing assistance program for assistance to veterans who are homeless or at risk of becoming homeless.

#### UNIT CAPTIONS

<u>SECTION 49.</u> The unit captions used in this 2023 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2023 Act.

#### **OPERATIVE AND EFFECTIVE DATES**

SECTION 50. Sections 2, 17, 29 and 30 of this 2023 Act and the amendments to ORS 92.090, 94.550, 100.015, 100.022, 100.105, 100.110, 100.115, 197.303, 197.830, 215.427 and 227.178 and section 23, chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001), by sections 3 to 5, 9 to 15, 18 and 19 of this 2023 Act become operative on January 1, 2024.

SECTION 50a. If House Bill 2889 becomes law, section 50 of this 2023 Act is amended to read:

Sec. 50. Sections 2, 17, 29 and 30 of this 2023 Act and the amendments to ORS 92.090, 94.550, 100.015, 100.022, 100.105, 100.110, 100.115, 197.303, 197.830, 215.427 and 227.178 and section 23, chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001), by sections 3 to 5, 9 to 15, [18] 18a and 19 of this 2023 Act become operative on January 1, 2024.

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SECTION 51. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.

| Passed by House June 14, 2023            | Received by Governor:           |                      |
|--|---------------------------------|----------------------|
| Repassed by House June 25, 2023          | M.,                             | , 2023               |
|  | Approved:                       |                      |
| Timothy G. Sekerak, Chief Clerk of House | M.,                             | , 2023               |
| <br>Dan Rayfield, Speaker of House       |                                 | 'ina Kotek, Governor |
| Passed by Senate June 24, 2023           | Filed in Office of Secretary of | of State:            |
|  | M.,                             | , 2023               |
| Rob Wagner, President of Senate          |                                 |                      |

Secretary of State

.....

Enrolled House Bill 3395 (HB 3395-B)

# **CITY MANAGER REPORT AND RECOMMENDATIONS**



Meeting Date: October 2, 2023

<u>Agenda Item:</u> Consideration of Additional Funding for Repair to the Frank Wade Park Tennis/Pickleball Court.

## **Background:**

In the current budget, \$18,000 was appropriated for improving the surface to the tennis courts at Frank Wade Park that are being utilized extensively for pickleball. As a national recreational activity, pickleball has seen substantial growth. This has been seen in Newport, as well.

The courts were built in the late 70s and are roughly 45 years old. There is significant maintenance that needs to be done to extend the life of the courts. At the time of the budget, there was discussion about a collaborative effort to improve the surfaces of the tennis courts and \$18,000 was appropriated. In reviewing options, the recommended option is to do a more extensive repair job which would fill in the low spots, fill cracks, and repaint the surfaces. Two of the four tennis courts would have pickleball nets installed. The estimated cost for this work is \$50,000 to \$60,000. This would provide additional life of 2 to 5 years to the tennis courts/pickleball courts.

Peggy O'Callaghan is currently the president of the Newport Pickleball Club. She would like to make a pitch to the City Council to consider a complete reconstruction of the four tennis courts to include replacing the crushed rock-base, repaving, and installing nets and a fence. The estimated cost of this alternative would be \$300,000 to \$400,000 and would have a serviceable life of 20 to 40 years.

Based on previous priorities, Parks and Recreation currently has project funding in the amount of \$250,000 for a permanent restroom at Sam Moore Parkway Skate Park, and \$80,000 budgeted for playground equipment replacement in several parks. In addition, coming from sources other than the General Fund, Parks and Recreation will have funding available to match a state grant to improve the park/playground located off of 60th Street in Agate Beach. Park projects are funded 50% from the General Fund/Recreation Fund and 50% from the Room Tax Fund according to the allocation approved by Council. This is how the revenues for the permanent restroom at Sam Moore Parkway and the playground equipment have been budgeted.

## **Recommendation:**

I recommend that the City Council consider the following motion:

I move to approve funds in the amount of \$42,000 with \$21,000 coming from Parks contingency and \$21,000 coming from Room Tax contingency for repairs to the Frank Wade Park tennis and pickleball courts.

# Fiscal Effects:

The amount of \$256,164 has been appropriated in the Recreation contingency account and a \$115,230 was appropriated in the Room Tax contingency account.

# Alternatives:

If Council was interested in reallocating funding for complete reconstruction of the tennis courts, then this would likely be a project that would have to be considered in Fiscal Year 2024 - 2025 budget due to the scope of the project. Parks and Recreation Director, Mike Cavanaugh, and I believe that the funds that have been appropriated for long-standing projects should move forward during the course of this fiscal year and not be utilized for a complete reconstruction of this project at this time.

Respectfully submitted,

2 PULLO

Spencer Nebel City Manager



Meeting Date: October 2, 2023

<u>Title</u>: Consideration of the use of Room Tax Funds for the repair project for the Frank Wade Park Tennis/Pickleball Courts.

Prepared by: Mike Cavanaugh, Parks and Recreation Director

# Recommended Motion:

Approve funds in the amount of \$42,000 with \$21,000 from the Parks contingency and \$21,000 from Room Tax contingency for the repairs of Frank Wade Park Tennis and Pickleball Courts.

# Background Information:

Over the last decade, pickleball has become the fastest growing sport in the United States. The sport is great for players of all ages from youth, who are taught to play at school, to retirees, who enjoy the exercise and socialization. Newport has experienced this same growth. Outdoor pickleball play has expanded since Covid-19 due to the safety of playing outdoors while practicing good distancing. Locally, the local pickleball club doubled in size over the last five years and outdoor play is now the primary type of play that occurs during the non-rain season.

The Frank Wade Park Courts were built in the late 1970s and are roughly 45 years old. The courts were built from asphalt with the original fencing still in place. Maintenance has been done to this facility (crack filling and minimal resurfacing) over that time to extend its life. The City has met and exceeded the life span of these courts. Unfortunately, the deferred maintenance has caught up and the courts are at the end of their cycle.

Below are 4 options to complete upgrades:

- 1. 2 Tennis Courts: fill low spots, crack fill, and repaint 2 tennis courts
  - a. Cost: \$18,000 to \$23,000
  - b. Life Span: 2 5 years
- 2. 2 Tennis Courts: fill low spots, crack fill, install pickleball nets, and repaint
  - a. Cost: \$35,000 to \$40,000
  - b. Life Span: 2 5 years
- 3. 4 Tennis Courts: fill low spots, crack fill, and repaint. 2 of the 4 tennis courts will have pickleball nets installed
  - a. Cost: \$50,000 to \$60,000
  - b. Life Span: 2 5 years

- 4. 4 Tennis Courts: Asphalt reconstruction with replacing base rock, repave, install nets, playing surface, and fence
  - a. Cost: \$300,000 to \$400,000
  - b. Life Span: 20 40 years

It is not recommended that Options #1 and #2 be considered. These two options would only repair half of the facility while leaving the other half in its current state.

Option #3 is the recommended motion in this report. This option will bring the facility back to a useable state while addressing the serious issues that are affecting the quality of play and that could lead to future safety concerns. This repair will give staff and stakeholders time to pursue additional funding for a bigger rehabilitation project.

Option #4 is the alternative option that Council could recommend to move forward. This option will complete the full rehabilitation of the courts. This option is the most expensive. Funds from several other Parks and Recreation capital projects could be reallocated to help offset these expenses. Currently, there is \$250,000 budgeted for a permanent restroom at Sam Moore Parkway and Skatepark and \$80,000 budgeted for playground equipment replacement in several parks. There are concerns if these funds are reallocated for the court project. Both the playground project and restroom project will positively impact several other parks, their users and the surrounding community.

# Fiscal Notes:

This project is budgeted in the FY23-24 budget for \$18,000. \$21,000 would be transferred via supplemental budget from the Room Tax contingency and \$21,000 from Parks contingency.

# Alternatives:

Approve the reallocation of funds in the amount of \$330,000 from the Capital Improvements Fund for the repairs of Frank Wade Park Tennis and Pickleball Courts. The \$330,000 would be reallocated from the currently funded Playground Equipment Replacement Project (\$80,000) and Sam Moore Restroom Project (\$250,000).

Do not approve the transfer of funds.

# Attachments:

Frank Wade Courts PowerPoint



# NEWPORT OUTDOOR PICKLEBALL COURTS ESTABLISHED @ FRANK WADE PARK IN 2015

# What is Pickleball?

- Invented in 1965 by 3 Dads on Bainbridge Island that were looking for a way to entertain their kids.
- A combination of tennis, ping pong and badminton.
- This paddle sport is easy to learn and fun to play for seriors youth and adults. Great free activity that has a large social component.
- Two-four players per court. The court is 1/2 size of a tennis court.
- Many under used tennis courts are being transformed into pickleball courts throughout Oregon and Mationally.
- Played internationally on outdoor courts, gyms and private courts.

# Newport Pickleball Scene

# Frank Wade Park

- April October
- Tennis courts (6 courts)
- Hours 8am till Noon

# **Newport Recreation Center**

- November March
- Small Gym (3 courts)

# Newport Pickleball Club

 Over 60 members and has many out-of-towners visit



# Outdoor Court Usage

- 2,500-3,500 visits from May to October (6 months)
- 736 hours (184 days X 4 hours per day)
- Local club volunteers power wash courts, assist in lining the courts, and provide public lessons at the Recreation Center



# **Current Conditions**

- The courts are 45 years old.
- The courts at Frank Wade are in bad condition.
- The courts have not been resurfaced for over 25 years and the asphalt has never been replaced.

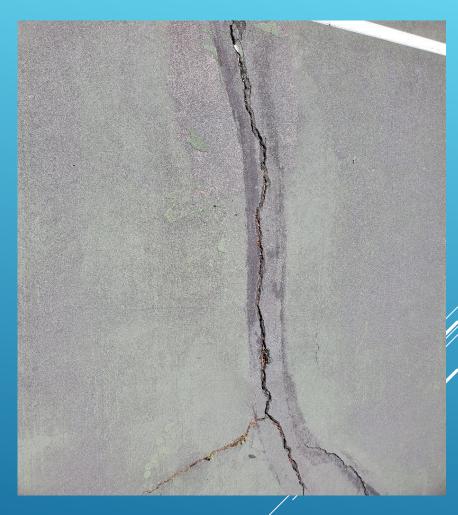


# <u>Cracks</u>

The courts were lined for pickleball in 2015, but major court maintenance has not been performed in 15+ years.

Players call crack every 3-4 plays due to cracks throwing off the ball and therefore the play of a game.

Past attempts to fill the court cracks were not successful as shown.



# More Cracks...



# Cracks large enough to fit your finger in.



# **Raising Funds for Repairs**

- Currently, the project is funded for \$18,000 in the FY23-24 Budget.
- The Friends of the Newport Parks and Recreation, the Newport Pickleball Club and the City of Newport Parks and Recreation Department have partnered to raise funds for the new courts but have been unsuccessful.
- Grants have been written to Trust Management Services (with site visit), AARP, Confederated Tribes of Grand Rhonde and the Oregon Community Foundation. No applications have been successful.
- Discussed local donation with Georgia Pacific. Request was not successful.
- Friends have started a GoFundMe page.

# **Options for Frank Wade Park Courts**

| Scope of Work   | Estimated Cost        | <u>Life Span</u> |
|---|-----------------------|------------------|
| 2 Tennis Courts - fill low spots, crack fill,<br>and repaint  | \$18,000 - \$23,000   | 2 - 5 years      |
| 2 Tennis Courts - fill low spots, crack fill,<br>install pickleball nets, and repaint                               | \$35,000 - \$40,000   | 2 - 5 years      |
| 4 Tennis Courts - fill low spots, crack fill,<br>and repaint<br>2 Tennis Courts - install pickleball nets           | \$50,000 - \$60,000   | 2 - 5 years      |
| 4 Tennis Courts – asphalt reconstruction<br>*replace base rock, repave, install nets,<br>playing surface, and fence | \$300,000 - \$400,000 | 20 – 40 years    |

# What new courts could look like!



Albany, Oregon Pickleball Courts

# **CITY MANAGER REPORT AND RECOMMENDATIONS**



Meeting Date: October 2, 2023

# Agenda Item:

Authorization to Approve the Transfer of the Contract and Change Orders for Storm Pipe Rehabilitation and Outfall F Erosion and Slope Repair Dated January 22, 2021, from Michels Corporation to Michels Trenchless, Inc.

## Background:

The Local Contract Review Board entered into a contract with Michels Corporation for storm pipe rehabilitation at the airport dated January 22, 2021. The agreement also had three change orders through the course of the contract. Michels Corporation has reorganized and the service provider under this contract is now Michels Trenchless, Inc. This transfer occurred in 2022, and final payment is due on this contract. Since the ownership of the contract has changed, it is appropriate that Council authorize a consent to transfer this contract from Michels Corporation to Michels Trenchless, Inc. so that final payment can be made to Michels Trenchless, Inc.

## Recommendation:

I recommend the City Council, acting as the Local Contract Review Board, consider the following motion:

I move to authorize execution of a consent to transfer the contract between the City of Newport and Michels Corporation for storm pipe rehabilitation at the airport to Michels Trenchless, Inc., and authorize Assistant City Manager/City Recorder Erik Glover to sign the consent to transfer.

Fiscal Effects: None directly. This will allow us to make final payment on this contract.

<u>Alternatives:</u> None recommended.

Respectfully submitted,

PUL.

Spencer Nebel City Manager



# STAFF REPORT CITY COUNCIL AGENDA ITEM

Meeting Date: October 2, 2023

<u>Title</u>: Consent to transfer airport AIP 27 contract from Michels Corporation (Transferor) to Michels Trenchless (Transferee).

Prepared by: Lance Vanderbeck, Airport Director

**Recommended Motion**: I move for administration to execute consent to transfer effective September 15, 2023 to memorialize the transfer from operation law that occurred on August 29, 2022, is entered into by, between, and among the City of Newport, Oregon (customer); Michels Corporation (Transferor); and Michels Trenchless, Inc (Transferee).

**Background Information**: Effective August 29, 2022 Michels Trenchless, currently an operation division of Michels Corporation, will merge with Michels Trenchless, Inc. Michels Corporation and the City of Newport executed a Contract for AIP 27 Storm Pipe Rehabilitation and Slope Repair in July of 2021. As part of this merger, Michels Corporation will allocate the Agreement to Michels Trenchless, Inc. by operation of law. Michels Trenchless, Inc. will fully honor its contractual obligations under the agreement.

AIP 27 as since been completed and payment requests have been submitted by Michels Trenchless, Inc. for payment. Before payment can be approved consent of transfer must be fully executed by the City of Newport.

<u>Fiscal Notes</u>: AIP 27 is fully funded by the FAA, (during COVID) and payments will be submitted for reimbursement thought the Delphi system.

<u>Attachments</u>: Consent to Transfer - City of Newport Oregon. pdf, City of Newport Oregon COI.pdf, City of Newport Notice Letter 7/22/22, 01-NPT009 Legal, City agreement 2919.

# CONSENT TO TRANSFER

This Consent to Transfer ("Consent"), dated as of September 15, 2023 (the "Effective Date") to memorialize the transfer by operation of law that occurred on August 29, 2022 (the "Transfer Date"), is entered into by, between, and among the City of Newport, Oregon ("Customer"); Michels Corporation ("Transferor"); and Michels Trenchless, Inc. ("Transferee") (collectively, the "parties").

WHEREAS, Customer and Transferor previously entered into a Contract for Storm Pipe Rehabilitation and Outfall F Erosion and Slope Repair dated January 22, 2021 (the "Agreement") including the following change orders:

- Contract Change Order No. 1 dated July 14, 2021;
- Contract Change Order No. 2 dated December 21, 2021; and
- Contract Change Order No. 3 dated May 30, 2023; and

WHEREAS, Transferor now hereby acknowledges its consent for the transfer of the Agreement to Transferee that occurred on the Transfer Date by operation of law via a merger and Customer acknowledges and approves the same;

NOW, THEREFORE, in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following:

- 1. As of the Transfer Date, Transferor agreed to transfer and convey all rights, duties, and obligations contained in the Agreement, to Transferee by operation of law.
- 2. As of the Transfer Date, Transferee agreed to accept the transfer and conveyance of all of Transferor's rights, duties, liabilities and obligations contained in or arising from the Agreement as if it were an original party to the Agreement. Transferee is responsible for all actions or omissions under the Agreement, including liability for any breach or default thereof.
- 3. Nothing in this Consent is intended as or shall be construed as a waiver or release by Customer of Transferor from any Claim or liability arising under the Agreement.
- 4. Customer hereby consents to the transfer and conveyance of the Agreement that occurred on the Transfer Date, including all rights, duties, and obligations contained therein, from Transferor to Transferee.

This Consent shall not constitute or be construed as an amendment to the Agreement, but merely as a memorialization of the transaction between Transferee and Transferor described herein and of Customer's consent to the same.

This Consent to Transfer may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute one instrument.

[Remainder of the page is intentionally left blank; signature page follows]

IN WITNESS WHEREOF, Customer, Transferor, and Transferee have caused this Consent to Transfer to be executed by their duly authorized representatives as of the Effective Date.

Customer: City of Newport, Oregon

By:\_\_\_\_\_

Name: \_\_\_\_\_\_

Title: \_\_\_\_\_

| Transferor: Michels Corporation |                   |  |  |  |  |  |
|---------------------------------|-------------------|--|--|--|--|--|
| Ву:                             | 3244              |  |  |  |  |  |
| Name:                           | A. DAVID STEDEMAN |  |  |  |  |  |
| Title:                          | SYP               |  |  |  |  |  |

| Transferee: Michels Trenchless, Inc. |     |       |  |  |  |  |
|--------------------------------------|-----|-------|--|--|--|--|
| By: Eri                              | R.  | Vitin |  |  |  |  |
| Name: Effc                           | R.  | Platt |  |  |  |  |
| Title: Secre                         | tal | ry    |  |  |  |  |

172



# **CERTIFICATE OF LIABILITY INSURANCE**

Page 1 of 2

| DATE (MM/DD/YYYY) |
|-------------------|
| 01/24/2023        |

| 1                       | -  |   |               | 116           |   | ודוס            | 11113                     | UNANU                      |   | 01/      | 24/2023    |
|-------------------------|--|---|---------------|---------------|---|-----------------|---------------------------|----------------------------|---|----------|------------|
| C<br>B                  | THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS<br>CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES<br>BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED<br>REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER. |   |               |               |   |                 |                           |                            |   |          |            |
| IN<br>If                | IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed.<br>If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).                             |   |               |               |   |                 |                           |                            |   |          |            |
| PRO                     |  | U   | 0 the         | Cert          |   |                 |                           |                            | on Certificate Cente  | r        |            |
|                         |  | Fowers Watson Midwest, Inc.   |               |               |   | PHONE           | o, Ext): 1-877            | -945-7378                  | FAX   | 1-888    | -467-2378  |
|                         |  | Century Blvd<br>x 305191  |               |               |   | E-MAIL          | SS: Certifi               | cates@will:                |   |          |            |
|                         |  | le, TN 372305191 USA  |               |               |   | ADDRL           |                           |                            | RDING COVERAGE  |          | NAIC #     |
|                         |  |   |               |               |   | INSUR           |                           |                            | nce Company   |          | 22322      |
| INSU                    | RED  |   |               |               |   |                 | RB: XL Ins                |                            |   |          | 24554      |
|                         |  | Trenchless, Inc.  |               |               |   |                 |                           |                            | urance Company  |          | 37885      |
|                         |  | n Street<br>x 128   |               |               |   |                 |                           |                            | surance Company   |          | 26883      |
| Brow                    | msv:   | ille, WI 53006  |               |               |   | INSURE          |                           |                            |   |          |            |
|                         |  |   |               |               |   | INSURE          |                           |                            |   |          |            |
| CO                      | /ER  | AGES CER  | TIFI          | CATE          | E NUMBER: W27958316                           |                 |                           |                            | <b>REVISION NUMBER:</b>   |          |            |
| IN<br>CI                | DIC/<br>RTI  | S TO CERTIFY THAT THE POLICIES<br>TED. NOTWITHSTANDING ANY RE<br>FICATE MAY BE ISSUED OR MAY<br>ISIONS AND CONDITIONS OF SUCH | EQUIF<br>PERT | REME<br>TAIN, | NT, TERM OR CONDITION<br>THE INSURANCE AFFORD | of an'<br>Ed by | Y CONTRACT<br>THE POLICIE | OR OTHER<br>S DESCRIBE     | DOCUMENT WITH RESPE<br>D HEREIN IS SUBJECT T                    | ст то у  | WHICH THIS |
| INSR                    |  | TYPE OF INSURANCE   | ADDL          | SUBR          |   |                 |                           | POLICY EXP<br>(MM/DD/YYYY) |   | rs       |            |
| LTR                     | X  | COMMERCIAL GENERAL LIABILITY  | INSD          | WVD           | POLICY NUMBER                                 |                 | (MM/DD/YYYY)              | (MM/DD/YYYY)               | EACH OCCURRENCE   | s        | 3,000,000  |
|                         | ~  | CLAIMS-MADE X OCCUR   |               |               |   |                 |                           |                            | DAMAGE TO RENTED<br>PREMISES (Ea occurrence)                    | \$<br>\$ | 1,000,000  |
| A                       |  |   |               |               |   |                 |                           |                            | MED EXP (Any one person)  | \$       |            |
|                         |  |   | Y             | Y             | CGD740955306                                  |                 | 02/01/2023                | 02/01/2024                 | · · · · · · · · · · · · · · · · · · ·                           | \$       | 3,000,000  |
|                         | GEN  | LAGGREGATE LIMIT APPLIES PER:   |               |               |   |                 |                           |                            | GENERAL AGGREGATE   | \$       | 6,000,000  |
|                         |  |   |               |               |   |                 |                           |                            | PRODUCTS - COMP/OP AGG  | \$       | 6,000,000  |
|                         |  | OTHER:  |               |               |   |                 |                           |                            |   | \$       |            |
|                         | AUT  |   |               |               |   |                 |                           |                            | COMBINED SINGLE LIMIT<br>(Ea accident)                          | \$       | 5,000,000  |
|                         | ×  | ANY AUTO  |               |               |   |                 |                           |                            | BODILY INJURY (Per person)                                      | \$       |            |
| A                       |  | OWNED SCHEDULED AUTOS   | Y             |               | CAD740955406                                  |                 | 02/01/2023                | 02/01/2024                 | BODILY INJURY (Per accident)                                    | \$       |            |
|                         |  | HIRED NON-OWNED AUTOS ONLY  |               |               |   |                 |                           |                            | PROPERTY DAMAGE<br>(Per accident)                               | \$       |            |
|                         |  |   |               |               |   |                 |                           |                            |   | \$       |            |
| в                       |  |   |               |               |   |                 |                           |                            | EACH OCCURRENCE   | \$       | 10,000,000 |
|                         | X  | EXCESS LIAB CLAIMS-MADE   |               |               | US00077661LI23A                               |                 | 02/01/2023                | 02/01/2024                 | AGGREGATE   | \$       | 10,000,000 |
|                         |  | DED RETENTION \$  |               |               |   |                 |                           |                            |   | \$       |            |
|                         |  | KERS COMPENSATION   |               |               |   |                 |                           |                            | X PER OTH-<br>STATUTE ER  |          |            |
| с                       | ANY  | EMPLOYERS' LIABILITY<br>PROPRIETOR/PARTNER/EXECUTIVE<br>CER/MEMBEREXCLUDED2<br>NO   |               |               |   |                 |                           |                            | E.L. EACH ACCIDENT  | \$       | 1,000,000  |
|                         |  | CER/MEMBER EXCLUDED?  | N/A           |               | CWD740955106                                  |                 | 02/01/2023                | 02/01/2024                 | E.L. DISEASE - EA EMPLOYEE                                      | \$       | 1,000,000  |
| L                       | If yes   | , describe under<br>CRIPTION OF OPERATIONS below  |               |               |   |                 |                           |                            | E.L. DISEASE - POLICY LIMIT                                     |          | 1,000,000  |
| С                       |  | kers Compensation - WI  |               |               | CWR740955206                                  |                 | 02/01/2023                | 02/01/2024                 | E.L. Each Accident  | \$1,00   | 0,000      |
|                         | and  | Employers Liability   |               |               |   |                 |                           |                            | E.L. Disease-Each Emp   | \$1,00   | 0,000      |
|                         | Wor  | k Comp: Per Statute   |               |               |   |                 |                           |                            | E.L. Disease-Pol Lmt  | \$1,00   | 0,000      |
| DES                     | RIPT   | ION OF OPERATIONS / LOCATIONS / VEHIC   | LES (/        | ACORE         | 0 101, Additional Remarks Schedu              | le, may b       | e attached if mor         | e space is requir          | ed)   |          |            |
|                         |  |   |               |               |   |                 |                           |                            |   |          |            |
| SEE                     | AT   | IACHED  |               |               |   |                 |                           |                            |   |          |            |
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| CE                      | CERTIFICATE HOLDER CANCELLATION  |   |               |               |   |                 |                           |                            |   |          |            |
|                         |  |   |               |               |   | THE             | EXPIRATION                | N DATE TH                  | DESCRIBED POLICIES BE C<br>EREOF, NOTICE WILL<br>CY PROVISIONS. |          |            |
|                         |  |   |               |               |   | AUTHO           | RIZED REPRESE             | NTATIVE                    |   |          |            |
| City of Newport, Oregon |  |   |               |               |   |                 |                           |                            |   |          |            |
| 1                       |  | Coast Highway<br>t, OR 97356  |               |               |   |                 | llætøjler (1,             | heroung                    |   |          |            |
| 1 1161                  | POL  | C/ OK 9/330   |               |               |   |                 | / .                       | U                          |   |          |            |

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AGENCY CUSTOMER ID:

LOC #: \_\_\_\_



# ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

| AGENCY<br>Willis Towers Watson Midwest, Inc. |                       | NAMED INSURED<br>Michels Trenchless, Inc. |
|--|-----------------------|---|
| willis lowers watson Midwest, Inc.           |                       | 817 Main Street                           |
| POLICY NUMBER                                |                       | P.O. Box 128                              |
| See Page 1                                   | Brownsville, WI 53006 |   |
| CARRIER                                      | NAIC CODE             |   |
| See Page 1 See Page 1                        |                       | EFFECTIVE DATE: See Page 1                |

### ADDITIONAL REMARKS

#### THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: \_\_\_\_\_\_ FORM TITLE: Certificate of Liability Insurance

Project: 21010700-Storm Pipe Rehabilitation and Outfall F Erosion and Slope Repair. Project Address: Newport, OR.

City of Newport, Oregon, Precision Approach Engineering, Inc., Owner and all other governmental bodies with jurisdiction in the area involved in the Project, their officers and employees are Additional Insureds with respect to the General Liability and Auto Liability coverages and the work performed by the Named Insured when required by written contract, agreement or permit executed prior to loss.

Such insurance as is afforded to Additional Insureds shall be Primary and Non-contributory with any other insurance available to Additional Insureds if required by contract executed prior to loss.

Waiver of Subrogation applies in favor of Additional Insureds with respects to General Liability.

INSURER AFFORDING COVERAGE: AIG Specialty Insurance Company POLICY NUMBER: CPO 8197229 EFF DATE: 02/01/2023 EXP DATE: 02/01/2024 NAIC#: 26883

TYPE OF INSURANCE: Contractors Pollution LIMIT DESCRIPTION: Each Loss Aggregate LIMIT AMOUNT: \$5,000,000 \$5,000,000

### ENDORSEMENT #

This endorsement, effective 12:01 a.m., February 1, 2023, forms a part of Policy No.CAD740955406

issued to M10, INC. by Greenwich Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### CANCELLATION NOTIFICATION TO OTHERS ENDORSEMENT

In the event coverage is cancelled for any statutorily permitted reason, other than nonpayment of premium, advanced written notice will be mailed or delivered to person(s) or entity(ies) according to the notification schedule shown below:

| Name of Person(s) or Entity(ies)     | Mailing Address: | Number of Days<br>Advanced<br>Notice of<br>Cancellation: |
|--------------------------------------|------------------|--|
| As per schedule on file with company |                  | 30   |

All other terms and conditions of the Policy remain unchanged.

### ENDORSEMENT #

This endorsement, effective 12:01 a.m., February 1, 2023, forms a part of Policy No. CGD740955306

issued to M10, INC. by Greenwich Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### CANCELLATION NOTIFICATION TO OTHERS ENDORSEMENT

In the event coverage is cancelled for any statutorily permitted reason, other than nonpayment of premium, advanced written notice will be mailed or delivered to person(s) or entity(ies) according to the notification schedule shown below:

| Name of Person(s) or Entity(ies)     | Mailing Address: | Number of Days<br>Advanced<br>Notice of<br>Cancellation: |
|--------------------------------------|------------------|--|
| As per schedule on file with company |                  | 30   |

All other terms and conditions of the Policy remain unchanged.

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WC 99 06 57

### ENDORSEMENT #

This endorsement, effective 12:01 a.m., February 1, 2023 forms a part of Policy No.CWD7409551-06

issued to M10, INC. by XL Specialty Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### CANCELLATION NOTIFICATION TO OTHERS ENDORSEMENT

This endorsement modifies insurance provided under the following:

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY

In the event coverage is cancelled for any statutorily permitted reason, other than nonpayment of premium, advanced written notice will be mailed or delivered to person(s) or entity(ies) according to the notification schedule shown below:

| Name of Person(s) or Entity(ies)     | Mailing Address: | Number of Days<br>Advanced<br>Notice of<br>Cancellation: |
|--------------------------------------|------------------|--|
| As per schedule on file with company |                  | 30   |

All other terms and conditions of the Policy remain unchanged.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

# (The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective February 1, 2023 Po

Policy No. CWD7409551-06 Endorsement No.

Insured M10, INC.

Premium

Scot A. Hom

Insurance Company XL Specialty Insurance Company Countersigned by\_

WC 99 06 57 Ed. 12/10

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WC 99 06 57

### ENDORSEMENT #

This endorsement, effective 12:01 a.m., February 1, 2023 forms a part of Policy No. CWR7409552-06

issued to M10, INC. by XL Specialty Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### CANCELLATION NOTIFICATION TO OTHERS ENDORSEMENT

This endorsement modifies insurance provided under the following:

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY

In the event coverage is cancelled for any statutorily permitted reason, other than nonpayment of premium, advanced written notice will be mailed or delivered to person(s) or entity(ies) according to the notification schedule shown below:

| Name of Person(s) or Entity(ies)     | Mailing Address: | Number of Days<br>Advanced<br>Notice of<br>Cancellation: |
|--------------------------------------|------------------|--|
| As per schedule on file with company |                  | 30   |

All other terms and conditions of the Policy remain unchanged.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective February 1, 2023 Policy No

Policy No. CWR7409552-06 Endorsement No.

Insured M10, INC.

Premium

Scot A. Hom

Insurance Company XL Specialty Insurance Company Countersigned by\_\_\_

WC 99 06 57 Ed. 12/10

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# **MICHELS**<sup>®</sup>

July 5, 2022

### Sent Via Email at Ivanderbeck@newportoregon.gov and Via Certified Mail

City of Newport Attn: Lance Vanderbeck 169 SW Coast Highway Newport, OR 97365

# Re: Notice of Contract Allocation Contract for Storm Pipe Rehabilitation and Outfall F Erosion and Slope Repair

Dear Mr. Vanderbeck:

Please consider this letter notice that, effective August 29, 2022, Michels Trenchless, currently an operating division of Michels Corporation, will merge with Michels Trenchless, Inc. This change will align Michels Corporation's structure with similar contractors serving the industry and will permit Michels Trenchless, Inc. to best serve our customers' operational needs and regulatory requirements.

As you are aware, Michels Corporation, and the City of Newport executed a Contract for Storm Pipe Rehabilitation and Outfall F Erosion and Slope Repair dated January 22, 2021 (the "Agreement"). As part of this merger, Michels Corporation will allocate the Agreement to Michels Trenchless, Inc. by operation of law. No action is required on your part for this allocation to occur.

Michels Corporation values the City of Newport as a customer and Michels Trenchless, Inc. will fully honor its contractual obligations under the Agreement. Moving forward, Michels Trenchless, Inc. looks forward to providing quality construction services at a competitive price.

I have copied Genette Zubrod, Business Administration Manager (gzubrod@michels.us, 920.924.4300 ext. 7691). To ensure seamless invoicing and payment moving forward, please provide Genette Zubrod any information necessary to set up Michels Trenchless, Inc. as a vendor with your company.

I have also attached an updated Certificate of Insurance being provided in advance of the August 29, 2022 allocation, which is effective as of such date.

Sincerely,

Jul.Z.

Lee Zubrod Vice President, Pipe Services Operations Izubrod@michels.us

cc: Genette Zubrod, Business Administration Manager
 Andrew Simon, Associate General Counsel
 Jack Flack, Associate Legal Counsel – Special Projects

CONTRACT DOCUMENTS and SPECIFICATIONS

for the construction of

# NEWPORT MUNICIPAL AIRPORT STORM PIPE REHABILITATION AND OUTFALL F EROSION AND SLOPE REPAIR

# **NEWPORT MUNICIPAL AIRPORT**

Newport, Oregon



# AIRPORT IMPROVEMENTS PROGRAM PROJECT NO. AIP 3-41-0040-027-2020

April 2020

Prepared by: PRECISION APPROACH ENGINEERING, INC.

For information regarding this project, contact: Geoff Vaughn, P.E. 541-231-6645



# **CONTRACT DOCUMENTS and SPECIFICATIONS**

for the construction of

# STORM PIPE REHABILITATION AND OUTFALL F EROSION AND SLOPE REPAIR

## at

# **NEWPORT MUNICIPAL AIRPORT**

## AIP Project No. 3-41-0040-027-2020

Consisting of:

- Bidding Information
- Contract Forms
- Contract Conditions
- General Construction Items
- Technical Specifications
- Prevailing Wage Rates
- Drawings

## PRECISION APPROACH ENGINEERING, INC.

Corvallis, Oregon

April 2020



PAE Project No. NPT009

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**State of Oregon** Prevailing Wage Rates are attached, and are available at <u>Oregon.Gov:</u> <u>http://www.oregon.gov/boli/whd/pwr/pages/pwr\_state.aspx</u>

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# **BIDDING INFORMATION**

## **INVITATION TO BID**

for Construction Contract

### STORM PIPE REHABILITATION AND OUTFALL F EROSION AND SLOPE REPAIR AIP Project No. 3-41-0040-027-2020

### LOCATION OF PROJECT: Newport Municipal Airport, Newport, Oregon

Project is: State Funded [] Federally Funded [X]

The **City of Newport** is seeking a qualified contractor to construct the Storm Pipe Rehabilitation and Outfall F Erosion and Slope Repair project. Major elements of work for the project include, but are not limited to geopolymer lining of existing storm pipes and erosion and slope repair.

ENGINEER'S COST OPINION: Between \$1,500,000 and \$1,800,000

Sealed Bids shall be addressed to and received at City of Newport, Public Works Department, Attn: Lance Vanderbeck, Airport Director, 169 SW Coast Highway, Newport OR 97356, not later than **2:00 p.m.**, local time, on the **14th day of May 2020**. Due to Covid-19 impacts, immediately thereafter, the Bids will be publicly opened and read at the above stated location. Bidders will not be allowed to attend the bid opening in-person but are encouraged to call-in to hear the bids read aloud. **Dial-In Number: (712) 775-7031; Meeting ID Number: 673-979-300.** 

### SUBMISSION OF BIDS:

The outside of the envelope shall plainly identify:

- 1) Project name and AIP project number
- 2) Bid opening date and time
- 3) Bidder's name and address
- 4) Contractor's license number (per ORS 701)

Each Proposal must be submitted on the prescribed form and accompanied by a certified check or Bid Bond executed on the prescribed form, payable to City of Newport, in an amount not less than **five (5) percent** of the amount bid.

### Bids submitted after the above-specified time shall not be received or opened.

### FIRST-TIER SUBCONTRACTOR DISCLOSURE:

ORS 279C.370 requires that bidders disclose to CITY OF NEWPORT certain first-tier subcontractors. Not later than 4:00 p.m., on the 14th day of May 2020, Bidder shall submit to CITY OF NEWPORT, Public Works Department, Attn: Lance Vanderbeck, Airport Director, 169 SW Coast Highway, Newport OR 97356, a disclosure of any first-tier subcontractor that will be furnishing labor or labor and materials in connection with the public improvement and whose contract value is equal to or greater than a) five percent of the total project bid or \$15,000, whichever is larger; or b) \$350,000 regardless of the percentage of the total project bid. Disclosure of the first-tier subcontractors shall include: a) the name and address of each subcontractor, b) the dollar value of each subcontract, and c) the category of work each subcontractor will be performing. First-tier information shall be submitted in a separate sealed envelope which plainly identifies: 1) the Project name, 2) the Bid Opening time and date, 3) the Bidder's name, and 4) the words "First-Tier Disclosures and Bidders List." Disclosure requirements do not apply to contracts under \$100,000 or to subcontractors who only provide materials.

### **DRAWINGS AND SPECIFICATIONS:**

Drawings and Specifications may be examined at City of Newport Public Works Department, 169 SW Coast Highway, Newport, OR 97365, or at the Engineer's office, Precision Approach Engineering, Inc., 5125 SW Hout Street, Corvallis, OR 97333; 541/754-0043.

The Drawings bound in the Document are photographically reduced to 50 percent of the original size.

Drawings are included with the specifications posted on the **ORPIN** website.

Printed and bound sets of Drawings (22" x 34") may be obtained from Precision Approach Engineering, Inc., 5125 SW Hout Street, Corvallis, Oregon 97333, at the cost of reproduction and handling, plus postage for mailing (if mailing is requested). No return of these Drawings is required, and no refund will be made.

Electronic copies of the Contract Documents and Addendums are posted on the **Oregon Procurement Information Network (ORPIN) website at:** <u>http://orpin.oregon.gov/open.dll/welcome</u>, **Opportunity No. KN0010-1050-20**. The Contract Document and Addendums may be downloaded at no charge, and will not be mailed to prospective bidders. Bidders should consult the ORPIN system regularly until closing to avoid missing any Addenda.

All Bid documents shall be submitted in hard copy. Electronic or e-mailed submissions shall be rejected. It is imperative that those who download the solicitation documents check the **ORPIN** website regularly for addenda, clarifications, and other notifications that may be pertinent, as well as a Suppliers List of Interested Parties.

To be listed on the Suppliers List, interested parties must be registered on the **ORPIN** website System. Interested Parties can register in the **ORPIN** system at: <u>http://orpin.oregon.gov/open.dll/welcome</u>, **Opportunity No. KN0010-1050-20**. Interested parties who download Contract Documents from the ORPIN system will automatically be added to the Suppliers List.

NOTE: OFFERORS WHO OBTAIN CONTRACT DOCUMENTS, SPECIFICATIONS, AND DRAWINGS FROM PLAN CENTERS OR OTHER MEANS WILL NOT APPEAR ON THE REGISTERED SUPPLIERS LIST SHOWN ON **ORPIN** WEBSITE, UNLESS THEY ADD THEMSELVES TO THE SUPPLIERS LIST IN THE ORPIN SYSTEM.

This contract is for a public work subject to Oregon Bureau of Labor and Industries (ORS 279C.800 to 279C.870) and the Davis-Bacon Act (40 U.S.C. 3141, et seq). The Bidder must agree that the requirements and conditions of employment be observed and minimum wage rates, as established by the U.S. Secretary of Labor, or the Oregon Bureau of Labor and Industries, whichever is higher, be paid under the Contract.

No bid for a construction contract shall be received or considered by CITY OF NEWPORT unless the Bidder is registered with the Construction Contractors Board as required by ORS Chapter 701, or licensed by the State Landscape Contractors Board as required by ORS 671.530.

Contractors must be qualified in accordance with ORS 279 and other applicable sections of the Oregon Revised Statutes in order to enter into a Contract with the Owner for public work in Oregon.

Before a contract will be awarded for the work contemplated herein, the Owner will conduct such investigation as is necessary to determine the performance record and ability of the apparent low Bidder to perform the size and type of work specified under this Contract. Upon request, the Bidder shall submit such information as deemed necessary by the Owner to evaluate the Bidder's qualifications.

### PREQUALIFICATION:

Bidders shall be prequalified in accordance with the requirements set forth by the City of Newport, ORS 279C.430, and City Rule 137-049-0220(1)(a), 10 days prior to the opening of bids. Bidders who are not currently prequalified by the Owner to perform the type and size of work contemplated herein shall submit a completely executed Contractor's Prequalification Application to the Owner 10 working days prior to bid opening.

Bidders who are in doubt as to their current status with the Owner regarding prequalification are encouraged to informally contact the Owner to determine prequalification status. Prequalification Application forms may be obtained at the Oregon Department of Transportation, Construction Contract Section, 455 Airport Rd SE, Bldg K, Salem, OR 97301-5348, phone (503) 986-2710; and can also be accessed on the web at: http://www.oregon.gov/ODOT/CS/CONSTRUCTION/Pages/Prequalification.aspx

The successful Bidder will be required to furnish the necessary additional bond(s) for the faithful performance of the Contract, as prescribed in the Contract Documents. Bonds include, but are not limited to, bid security in the amount of 10% of the bid amount, payment and performance bonds, both for 100% of the contract price, a public works bond per ORS 279C.836, and a warranty bond for 100% of the final contract amount.

The City of Newport reserves the right to reject any bid not in compliance with all prescribed public contracting procedures and requirements, including the requirement to demonstrate the bidder's responsibility under ORS 279C.375(3)(b), and may reject for good cause any or all bids after the City finds that doing so is in the public's interest.

The City of Newport will not receive or consider a bid for this contract unless the bidder is registered and in good standing with the Construction Contractor's Board as specified in City Rule 137-049-0230.

Pursuant to ORS 279C.375(3) and City Rule 137-049-0390(2), the City will check with the Construction Contractor's Board to determine whether bidder is qualified to hold a public improvement contract (ORS 701.227), and whether contractor has met certain standards of responsibility:

- The appropriate financial, material, equipment, facility, and personnel resources and expertise, or ability available to obtain the resources and expertise necessary to indicate the capability of the prospective bidder to meet all contractual responsibilities;
- 2. A satisfactory record of performance;
- 3. A satisfactory record of integrity;
- 4. Qualified legally to contract with the City; and
- 5. Supplied all necessary information in connection with the inquiry concerning responsibility. If a prospective bidder fails to promptly supply information requested by the City concerning responsibility, the City shall base the determination of responsibility upon any available information, or may find the prospective bidder not responsible.

The proposed project is subject to the following regulations:

- 1. The proposed Contract is under and subject to Executive Order 11246, as amended, of September 24, 1965, and to the Equal Employment Opportunity (EEO) and Federal Labor Provisions.
- 2. All labor on the project shall be paid no less than the minimum wage rates established by the U.S. Secretary of Labor, or the Oregon Bureau of Labor and Industry, whichever is higher.
- 3. Each Bidder must supply all the information required by the Bid Documents and Specifications.
- 4. The EEO requirements, labor provisions, and wage rates are included in the Specifications and Bid Documents and are available for inspection at the office of the Engineer, Precision Approach Engineering, Inc., 5125 SW Hout Street, Corvallis, OR 97333, phone 541-754-0043.
- 5. Each Bidder must complete, sign, and furnish with his bid all required forms contained in the Bid document.
- 6. A Contractor having 50 or more employees and his Subcontractors having 50 or more employees and who may be awarded a contract of \$50,000 or more will be required to maintain an affirmative action program, the standards for which are contained in the Specifications.

- 7. Where the bid of the apparent low responsible Bidder is in the amount of \$1 million or more, the Bidder and his known first-tier subcontracts which will be awarded subcontracts of \$1 million or more will be subject to full, onsite, preaward equal opportunity compliance reviews before the award of the Contract for the purpose of determining whether the Bidder and his subcontractors are able to comply with the provisions of the equal opportunity clause.
- 8. To be eligible for award, each Bidder must comply with the affirmative action requirements which are contained in the Specifications.
- 9. Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement.
- 10. Women will be afforded equal opportunity in all areas of employment. However, the employment of women shall not diminish the standards or requirements for the employment of minorities.
- 11. All solicitations, contracts, and subcontracts resulting from projects funded under the AIP must contain the foreign trade restriction required by 49 CFR Part 30, Denial of Public Works Contracts to Suppliers of Goods and Services of Countries that Deny Procurement Market Access to U.S. Contractors.
- 12. Bidders on this work will be required to comply with the provisions of the President's Executive Order No. 11246 concerning equal employment opportunity, including all amendments and requirements issued thereunder. The requirements for Bidders and Contractors under this Order are explained in the Contract Documents.
- 13. Bidders are not required to be licensed under ORS 468A.720 (concerning asbestos removal) to be awarded this contract.
- 14. If this contract requires demolition, Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. (ORS 279C.510).
- 15. The Aviation Safety and Capacity Expansion Act of 1990 provides that preference be given to steel and manufactured products produced in the United States when funds are expended pursuant to a grant issued under the Airport Improvement Program.

CITY OF NEWPORT reserves the right to reject any bid or all bids not in compliance with all prescribed public bidding procedures and requirements and may reject for good cause any or all bids upon a finding of the agency that it is in the public interest to do so, and to postpone the award of the Contract for a period of time which, however, shall not extend beyond 120 days from the bid opening date.

### PRE-BID CONFERENCE:

An optional pre-bid conference will be held at 11 a.m. on April 30th, 2020. Given the current COVID-19 outbreak protocols, the pre-bid will be held via teleconference call. No in-person attendance option is available for this pre-bid. Potential bidders are strongly encouraged to attend this teleconference. Dial-In Number: (712) 775-7031; Meeting ID Number: 673-979-300. Screen Sharing Link: <u>https://join.me/496-605-137</u>

For information concerning the proposed work, contact Geoff Vaughn, Precision Approach Engineering, Inc., phone 541-231-6645. For an appointment to visit the site of the proposed work, contact Lance Vanderbeck, Airport Director, City of Newport, phone 541-867-7422.

Dated this 16th day of April 2020.

CITY OF NEWPORT Lance Vanderbeck, Airport Director

Publish: ORPIN – April 16, 2020 News Times– April 17, 2020 Oregon Daily Journal of Commerce –April 17, 2020

## **INSTRUCTIONS TO BIDDERS**

For specific requirements and instructions relating to the submission of Proposals, refer to Section 20, "Proposal Requirements and Conditions" of the General Contract Provisions and "FAA Special Provisions" for additional requirements associated with bidding and executing this contract.

### **BIDDER'S CHECKLIST**

This checklist has been prepared and furnished to aid Bidders in including all necessary supporting information with their bid. Bidders' submittals shall include, but are not limited to, the following:

J

## SUBMIT WITH BID:

| 1.       | Proposal (Bid) Fully Executed  |  |
|----------|--|--|
| 2.       | Acknowledgement of Addenda (on Proposal)   |  |
| 3.       | Bidder's Certificate   |  |
| 4.       | Bidder's Statement on Previous Contracts Subject to EEO Clause                           |  |
| 5.       | Buy American Certificate for Manufactured Products                                       |  |
| 6.       | Buy America Certificate for Total Facility   |  |
| 7.       | Buy American Conformance Listing   |  |
| 8.       | Certification of Nonsegregated Facilities  |  |
| 9.       | Certification Regarding Debarment, Suspension,<br>Ineligibility, and Voluntary Exclusion |  |
| 10.      | Non-Trafficking Certification  |  |
| 11.      | Trade Restriction Clause   |  |
| 12.      | Bid Bond or other security   |  |
| 13.      | Non-Collusion Affidavit  |  |
| 14.      | Statement of Bidder's Qualification  |  |
| 15.      | Authorization to Release Information   |  |
| SUBMIT V | VITHIN 2 HOURS AFTER BID SUBMITTAL:  |  |
| 16.      | First-Tier Subcontractors Disclosure   |  |
| 17.      | Bidder's List  |  |

**SECTION II** 

**CONTRACT FORMS** 

|                      | PROPOSAL   |
|----------------------|--|
| то:                  | City of Newport  |
| ADDRESS:             | 169 SW Coast Highway, Newport OR 97356                           |
| PROJECT TITLE:       | Storm Pipe Rehabilitation and Outfall F Erosion and Slope Repair |
| PROJECT NO.          | AIP 3-41-0040-027-2020   |
| Bidder's person to a | contact for additional information on this bid:                  |
| Name:                | Company:   |
| Address:             | Telephone:   |
| CCB#:                | Fax:   |
| DUNS#:<br>(Optional) | CAGE Code: (Optional)  |

For additional information regarding this proposal, see GENERAL CONTRACT PROVISIONS.

## **BIDDER'S DECLARATION AND UNDERSTANDING**

The undersigned, hereinafter called the Bidder, declares that the only persons or parties interested in this Proposal are those named herein, that this Proposal is, in all respects, fair and without fraud, that it is made without collusion with any official of the Owner, and that the Proposal is made without any connection or collusion with any person submitting another Proposal on this Contract.

The Bidder further declares that he has carefully examined the Contract Documents for the construction of the project, that he has personally inspected the site, that he has satisfied himself as to the quantities involved, including materials and equipment, and the conditions of work involved, including the fact that the description of the quantities of work and materials, as included herein, is brief and is intended only to indicate the general nature of the work and to identify the said quantities with the detailed requirements of the Contract Documents, and that this Proposal is made according to the provisions and under the terms of the Contract Documents, which Documents are hereby made a part of this Proposal.

Each Bidder must inform himself of the conditions relating to the execution of the work, and it is assumed that he will inspect the site and make himself thoroughly familiar with all the Contact Documents. Failure to do so will not relieve the successful Bidder of his obligation to enter into a Contract and complete the contemplated work in strict accordance with the Contract Documents. It shall be the Bidder's obligation to verify for himself and to his complete satisfaction all information concerning site and subsurface conditions.

The Bidder further agrees that he has exercised his own judgment regarding the interpretation of subsurface information and has utilized all data which he believes pertinent from the Engineer, Owner, and other sources in arriving at his conclusions.

The Owner will make available to prospective Bidders upon request and at the office of the Engineer, prior to bid opening, any information that he may have as to subsurface conditions and surface topography at the worksite. Investigations conducted by the Engineer of subsurface conditions were made for the purpose of study and design, and neither the Owner nor the Engineer assumes any responsibility whatever in respect to the sufficiency or accuracy of borings, or of the logs of test borings, or of other investigations that have been made, or of the

interpretations made thereof, and there is no warranty or guarantee, either expressed or implied, that the conditions indicated by such investigations are representative of those existing throughout such area, or any part thereof, or that unforeseen developments may not occur.

Logs of test borings, geotechnical reports, or topographic maps showing a record of the data obtained by the Engineer's investigations of surface and subsurface conditions that are made available shall not be considered a part of the Contract Documents, said logs representing only the opinion of the Engineer as to the character of the materials encountered by him in his investigations, and are available only for the convenience of the Bidders.

Information derived from inspection of logs of test borings, or pits, geotechnical reports, topographic maps, or from Drawings showing location of utilities and structures will not in any way relieve the Contractor from any risk or from properly examining the site and making such additional investigations as he may elect, or from properly fulfilling all the terms of the Contract Documents.

Each Bidder shall inform himself of, and the Bidder awarded a Contract shall comply with, federal, state, and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes, but is not limited to, applicable regulations concerning minimum wage rates, nondiscrimination in the employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, burning and non-burning requirements, permits, fees, and similar subjects.

## DRAWINGS

Drawings are included with the specifications posted on the **ORPIN** website. (See Invitation to Bid.)

Printed and bound sets of Drawings (22" x 34") may be obtained from Precision Approach Engineering, Inc., 5125 SW Hout Street, Corvallis, Oregon 97333, at the cost of reproduction and handling, plus postage for mailing (if mailing is requested). No return of these Drawings is required, and no refund will be made.

## PRE-BID CONFERENCE

An optional pre-bid conference will be held on:

Date: <u>April 30<sup>th</sup>, 2020</u>

Time: <u>11:00 a.m.</u>

Location: Given the current COVID-19 outbreak protocols, the pre-bid will be held via teleconference call. No in-person attendance option is available for this pre-bid. **Dial-In Number: (712) 775-7031; Meeting ID Number: 673-979-300. Screen Sharing Link:** <u>https://join.me/496-605-137</u>

## UNDETECTED ENVIRONMENTAL CONDITIONS IN PUBLIC CONSTRUCTION PROJECTS

The Owner will disclose all known or suspected environmental conditions and the laws, rules, or regulations that may be triggered by the presence of those conditions.

The Contractor shall inform the Owner of any environmental conditions suspected or observed while conducting a pre-bid site inspection or at any other time during the course of work on this project that may trigger laws, rules, or regulations controlling construction when these conditions are present.

If previously undetected environmental conditions are found to be present in the project work area, the Owner may, at its option, issue a contract change order or terminate the construction contract and pay costs and expenses incurred including overhead and profit in proportion to the percentage of work completed.

If the Owner terminates the contract or issues a change order, the Contractor shall furnish the Owner with appropriate bid documentation for the purpose of determining acceptable amounts of overhead and profit.

## **BID SECURITY**

Proposals must be accompanied by a certified check, or cashier's check drawn on a bank in good standing, or a bid bond issued by a Surety authorized to issue such bonds in the state where the work is located, in an amount not less than **5** percent of the total amount of the Proposal. This bid security shall be given as a guarantee that the Bidder will not withdraw his Proposal for a period of **120** days after bid opening, and that if awarded the Contract, the successful Bidder will execute the attached Contract and furnish the required Performance Bond and Payment Bond.

If the Bidder elects to furnish a Bid Bond, he shall use the Bid Bond form bound herewith, or one conforming substantially in form and content.

The Attorney-in-Fact who executes this bond in behalf of the Surety must attach a notarized copy of his power-ofattorney as evidence of his authority to bind the Surety on the date of execution of the bond. Where State Statute requires, certification by a resident agent shall also be provided.

## **CERTIFICATES OF INSURANCE**

The Bidder further agrees to furnish the Owner, before commencing the work under this Contract, the certificates of insurance as specified in these Documents.

## AWARD OF CONTRACT

The contract will be awarded to the lowest responsible bidder.

The City reserves the right to reject any bid that is not in compliance with prescribed public contracting procedures and requirements, the requirements contained within this document, and may reject for good cause all bids upon the City's finding that it is in the public interest to do so.

## START OF CONSTRUCTION AND CONTRACT COMPLETION TIME

The Bidder further agrees to begin work within 10 calendar days after the date of the Notice to Proceed with Construction issued by the Owner, and to complete the construction, in all respects, within 35 calendar days from the effective date of the Notice to Proceed. See the project Construction Plan Drawings for additional requirements.

## LIQUIDATED DAMAGES

Time is of the essence in the performance of the provisions of this agreement. In the event the Bidder is awarded the Contract and shall fail to complete the work within the time limit or extended time limit agreed upon, as more particularly set forth in the Contract Documents, liquidated damages shall be paid to the Owner in the amounts indicated in Section 80 of the General Provisions for all work awarded under one contract until the work shall have been satisfactorily completed as provided by the Contract Documents. Sundays and legal holidays shall be excluded in determining days in default.

## <u>ADDENDA</u>

The Bidder hereby acknowledges receipt of Addenda Nos. \_\_\_\_, \_\_\_\_, *(Bidder shall insert No. of each Addendum received)* and agrees that all addenda issued are hereby made part of the Contract Documents, and the Bidder further agrees that his Bid(s) includes all impacts resulting from said addenda. Proposals received without acknowledgement of addenda or without addenda enclosed will be considered informal.

## SALES AND USE TAXES

The Bidder agrees that all required application federal, state, and local sales and use taxes are included in the stated bid prices for the work.

## UNIT PRICE WORK

The Bidder further proposes to accept as full payment for the work proposed herein the amounts computed under the provisions of the Contract Documents and based on the following unit price amounts, it being expressly understood that the unit prices are independent of the exact quantities involved. The Bidder agrees that the unit prices represent a true measure of the labor and materials required to perform the work, including all allowances for overhead and profit for each type and unit of work called for in these Contract Documents.

## **CONTRACT EXECUTION AND BONDS**

The Bidder hereby expressly acknowledges by the signing of this Proposal his understanding of and his agreement to comply during the performance of any work under any Contract resulting from this bid with all equal opportunity obligations as set forth in CFR Part 8 and 41 CFR Part 60.1.

The Bidder understands and agrees that if a Contract is awarded, the Owner may elect to award any Bid Alternates associated with the project under one Contract, separately, or in any combination that best serves the interests of the Owner.

The Bidder further certifies that he has exercised all options available to him toward reaching the goals for minority business enterprise utilization specified in these Documents.

The Bidder understands and agrees that the work to be done is being financed in whole or in part by means of a grant made or insured by the United States of America acting through the Federal Aviation Administration of the Department of Transportation.

The Federal Aviation Administration will, therefore, require approval by its representative of all contracts, attachments, and similar documents, all partial and final payment estimates, and all Change Orders.

FAA-required compliance statements are attached hereto as a part of this Proposal and shall be executed by the Bidder at the time the Proposal is submitted.

The Bidder agrees that if this Proposal is accepted, he will, within 15 days, not including Sundays and legal holidays, after notice of award, sign the Contract in the form annexed hereto, and will at that time, deliver to the Owner the Performance and Payment Bond required herein, and will, to the extent of his Proposal, furnish all machinery, tools, apparatus, and other means of construction and do the work and furnish all the materials necessary to complete all work as specified or indicated in the Contract Documents.

| CITY OF NEWPORT                         |
|---|
| STORM PIPE REHABILITATION AND OUTFALL F |
| EROSION AND SLOPE REPAIR                |

BID SCHEDULE

| ltem<br>No. | Item Description  | Unit       | Quantity | Unit Bid<br>Price | Amount Bid |
|-------------|---|------------|----------|-------------------|------------|
| 1           | Construction Survey and Staking                                     | LS         | 1        |                   |            |
| 2           | Temporary Erosion Control   | LS         | 1        |                   |            |
| 3           | Installation and Removal of Silt Fence                              | LF         | 160      |                   |            |
| 4           | Mobilization <sup>1</sup>   | LS         | 1        |                   |            |
| 5           | Demolition  | LS         | 1        |                   |            |
| 6           | Clearing and Grubbing   | LS         | 1        |                   |            |
| 7           | Unclassified Excavation   | СҮ         | 270      |                   |            |
| 8           | Imported Borrow   | СҮ         | 390      |                   |            |
| 9           | 24-Inch CPP Pipe  | LF         | 22       |                   |            |
| 10          | Storm Pipe Anchoring System   | LS         | 1        |                   |            |
| 11          | Geopolymer Pipe Liner   | LF         | 2,600    |                   |            |
| 12          | Seeding   | SF         | 2,630    |                   |            |
| Note 1: S   | ee specification section 105-2 Mobilization limit in Item C-105 Mol | oilization |          |                   |            |
|             | DF EXTENDED UNIT PRICE ITEMS<br>MP SUM ITEMS LISTED ABOVE           |            |          | \$                |            |
| GRAND       | TOTAL (BID SCHEDULE)  |            |          | \$                |            |

## <u>SURETY</u>

| whose addres  | ss is  |                |               |   |               |              |                     |
|---|--|----------------|---------------|---|---------------|--------------|---------------------|
|   | City   |                | ,<br>State    | ,<br>Zip  | ·             |              |                     |
| BIDDER  |  |                |               |   |               |              |                     |
| he name of t  | the Bidder submitting  |                |               |   |               |              |                     |
|   |  |                |               |   |               |              | sat                 |
|   | Street   | ,              | City          | State   | Zip           |              |                     |
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| idder's Cons  | truction Contractor's  | Board Regis    | stration No.  |   |               |              |                     |
| idder's State   | Landscape Contract   | or's License   | No            |   |               |              |                     |
|   | the principal officer  |                |               |   | osal, or of t | the partners | ship, or of all     |
| ersons inter  | ested in this Proposa  | l as principal | s are as foll | ows:  |               |              |                     |
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| F SOLE PROP   | RIETOR OR PARTNE   | RSHIP          |               |   |               |              |                     |
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| N WITNESS h<br>Signa<br>Title   | ereto the undersigne   |                |               |   |               |              | )                   |
| N WITNESS h<br>Signa<br>Title<br>F CORPORAT   | ereto the undersigne   | ed has set his | s (its) hand  | this day of                                     |               | , 20         |                     |
| N WITNESS h<br>Signa<br>Title<br>F CORPORAT<br>N WITNESS V<br>by its duly aut                   | ereto the undersigne<br>ture of Bidder<br><u><b>'ION</b></u><br>VHEREOF, the under                                 | ed has set his | s (its) hand  | this day of                                     |               | , 20         |                     |
| N WITNESS h<br>Signa<br>Title<br>F CORPORAT<br>N WITNESS V<br>by its duly aut                   | ereto the undersigne<br>ture of Bidder<br><u><b>'ION</b></u><br>VHEREOF, the under                                 | ed has set his | s (its) hand  | this day of                                     |               | , 20         |                     |
| N WITNESS h<br>Signa<br>Title<br>F CORPORAT<br>N WITNESS V<br>by its duly aut<br>SEAL)<br>Name  | ereto the undersigne<br>ture of Bidder<br>TION<br>VHEREOF, the under<br>thorized officers this                     | ed has set his | s (its) hand  | this day of _<br><br>caused this instru<br>, 20 | iment to be   | , 20         | and its seal affixe |
| N WITNESS h<br>Signa<br>Title<br>F CORPORAT<br>N WITNESS V<br>by its duly aut<br>(SEAL)<br>Name | ereto the undersigne<br>ture of Bidder<br>TION<br>VHEREOF, the under<br>thorized officers this<br>e of Corporation | ed has set his | s (its) hand  | this day of<br><br>caused this instru<br>, 20   | iment to be   | , 20         |                     |

# FEDERAL SIGNATURE FORMS

### **BIDDER CERTIFICATE**

# THIS CERTIFICATION MUST BE COMPLETED, SIGNED AND RETURNED. FAILURE TO DO SO WILL RESULT IN BID DISQUALIFICATION.

### **CONSTRUCTION CONTRACTORS BOARD (CCB)**

Bidder is in compliance with requirements for construction contractors and is licensed and bonded with the Construction Contractor's Board as follows:

CCB REGISTRATION NO.: \_\_\_\_\_EXPIRATION DATE: \_\_\_\_\_

### COMPLIANCE WITH OREGON TAX LAWS

For purposes of this certificate, "Oregon Tax Laws" means those programs listed in ORS 305.380(4), which is incorporated herein by this reference. Examples include the state inheritance tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Lane Transit District Employer Payroll Tax, The County Metropolitan Transit District of Oregon "Tri-Met" Employer Payroll Tax, and Tri-Met Self-Employment Tax).

**CHECK ONE:** Bidder states that it [] **Does** [] **Does not** have authority and knowledge regarding the payment of taxes, and that Contractor is, to the best of its knowledge, not in violation of any Oregon tax laws.

#### NON-DISCRIMINATION INFORMATION

ORS 279A.110(1) states: "A bidder . . . may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055. . . (4) A bidder . . . shall certify . . . that the bidder . . . has not discriminated and will not discriminate, in violation of subsection (1) . . . . "

**CHECK ONE:** Bidder states that it [ ] **Has discriminated** [ ] **Has not discriminated and will not discriminate** against minority, women or emerging small business enterprises in obtaining any required subcontracts.

### TAX DELINQUENCY AND FELONY CONVICTIONS

Sections 415 and 416 of Title IV, Division L of the Consolidated Appropriations Act, 2014 (Pub. L. 113-76), and similar provisions in subsequent appropriations acts., DOT Order 4200.6 - Requirements for Procurement and Non-Procurement Regarding Tax Delinquency and Felony Convictions.

### CERTIFICATION OF OFFERER/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark ( $\checkmark$ ) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

#### Certifications

- 1) The applicant represents that it **is ( ) is not ( )** a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 2) The applicant represents that it is () is not () is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

#### Note

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner,

who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

### **Term Definitions**

**Felony conviction:** Felony conviction means a conviction within the preceding twentyfour (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

**Tax Delinquency**: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

### PREVAILING WAGE INFORMATION

ORS 279C.365(g) states in substance: "that no bid will be received or considered by the contracting agency unless the bid contains a statement by the bidder that bidder will comply with ORS 279C.840 (Prevailing Wage Rates) or the Davis-Bacon Act (40 U.S.C. 276a)."

CHECK ONE: Bidder states that it [ ] Will [ ] Will not comply with ORS 279C.840 or 40 U.S.C. 276a.

### CONTRACTOR'S CERTIFICATION OF DRUG TESTING PROGRAM ORS 279C.505(2)

Bidder certifies that:

- The bidder will have a drug testing policy in place at time of contract award; and
- The bidder shall maintain the drug testing policy for the duration of the contract; and
- The bidder shall require each subcontractor providing labor to this contract to comply with the drug testing requirements.

ORS 279C.505(2) requires that all public improvement contracts require contractors to demonstrate that it has an employee drug-testing program is in place that applies to all employees, and will maintain a drug testing program at all times during the performance of the Contract awarded. Failure to maintain a program shall constitute a material breach of contract.

CHECK ONE: Bidder states that it [ ] Does [ ] Does not comply with ORS 279C.505(2).

### STATEMENT REGARDING CERTIFICATIONS

The bidder understands and acknowledges that the above representations are material and important, and will be relied on by the City of Newport in awarding the contract for which this proposal is submitted. The bidder understands that any misstatement in these certifications is and shall be treated as fraudulent concealment from the City of Newport of the true facts relating to the submission of proposals for this project.

### PUBLIC WORKS BOND

Bidder certifies he/she/it is in compliance with ORS 279C.836 Statutory Public Works Bond for contractor and all subcontractors.

I, the undersigned, a duly-authorized representative of the Bidder, hereby certify that the answers to the foregoing BIDDER CERTIFICATE questions and all statements therein contained are true and correct. Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_ Firm: Telephone:

## BIDDER'S STATEMENT ON PREVIOUS CONTRACTS SUBJECT TO EEO CLAUSE

THE BIDDER (PROPOSER) has has not

participated in a previous contract subject to the nondiscrimination clause prescribed by Section 202 of Executive Order No. 11246 dated 24 September 1965.

THE BIDDER (PROPOSER) has has not

submitted compliance reports in connection with any such contract as required by applicable instructions.

If the Bidder (proposer) has participated in a previous contract subject to the nondiscrimination clause and has not submitted compliance reports as required by applicable instructions, the Bidder (proposer) shall submit Standard Form 100 (for federal construction contracts) with the bid or proposal indicating current compliance.

Signature

Date

Name and Title of Signer (please type)

## CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR MANUFACTURED PRODUCTS

## Certificate of Buy American Compliance for Manufactured Products:

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark ( $\checkmark$ ) or the letter "X".

Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:

- a) Only installing steel and manufactured products produced in the United States;
- b) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
- c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing U.S. domestic product
- 3. To furnish U.S. domestic product for any waiver request that the FAA rejects
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- □ The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
  - 1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  - 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.
  - 3. To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
  - 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

### **Required Documentation**

**Type 3 Waiver -** The cost of the item components and subcomponents produced in the United States is more that 60 percent of the cost of all components and subcomponents of the "item". The required documentation for a Type 3 waiver is:

- a) Listing of all product components and subcomponents that are not comprised of 100 percent U.S. domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c) Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

**Type 4 Waiver** – Total cost of project using U.S. domestic source product exceeds the total project cost using non-domestic product by 25 percent. The required documentation for a type 4 of waiver is:

- a) Detailed cost information for total project using U.S. domestic product
- b) Detailed cost information for total project using non-domestic product

**False Statements**: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date

Signature

Company Name

Title

203

## CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR TOTAL FACILITY

### Certificate of Buy American Compliance for Total Facility:

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark ( $\checkmark$ ) or the letter "X".

Bidder or offeror hereby certifies that it will comply with 49 USC§ 50101 by:

- a) Only installing steel and manufactured products produced in the United States; or
- b) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
- c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- To faithfully comply with providing US domestic products.
- To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- Bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
  - a) To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  - b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
  - c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
  - d) To furnish U.S. domestic product for any waiver request that the FAA rejects.

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e) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

## **Required Documentation**

**Type 3 Waiver -** The cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the "facility". The required documentation for a Type 3 waiver is:

- a) Listing of all manufactured products that are not comprised of 100 percent U.S. domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- c) Percentage of non-domestic component and subcomponent cost as compared to total "facility" component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

**Type 4 Waiver** – Total cost of project using U.S. domestic source product exceeds the total project cost using non-domestic product by 25 percent. The required documentation for a type 4 of waiver is:

- a) Detailed cost information for total project using U.S. domestic product
- b) Detailed cost information for total project using non-domestic product

**False Statements**: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date

Signature

Company Name

Title

2

## **BUY AMERICA CONFORMANCE LISTING**

Title 49 U.S.C Section 50101 (b)

## For Airfield Development Projects funded under the Airport Improvement Program

- Preparation of a Component Cost Calculation Table is not necessary for equipment listed on the FAA national listing: <u>http://www.faa.gov/airports/aip/buy\_american/media/nationwideBuyAmericanWaiversIssued.pdf</u>
- Bidder shall submit a listing of equipment it proposes to install on the project that is included on the current National Buy American conformance list.

| Equipment Type | Name of Manufacturer | Product Number |
|----------------|----------------------|----------------|
|                |                      |                |
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### Certification Signature:

Bidder hereby certifies that the above listed equipment, which we propose for installation on the subject project, are on the current National Buy America Conformance list as established at: <a href="http://www.faa.gov/airports/aip/buy\_american/media/nationwideBuyAmericanWaiversIssued.pdf">http://www.faa.gov/airports/aip/buy\_american/media/nationwideBuyAmericanWaiversIssued.pdf</a>

I hereby certify the above information is accurate and complete.

Date

Signature

1

## **BUY AMERICA WAIVER REQUEST**

Title 49 U.S.C Section 50101 (b)

## For Airfield Development Projects funded under the Airport Improvement Program

FORM REQUIRED AFTER BID OPENING, IF BIDDER ELECTS TO PURSUE A TYPE 3 OR TYPE 4 WAIVER UNDER 49 USC SECTION 50101(b). SEE CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR ADDITIONAL REQUIREMENTS.

## **NATIONWIDE WAIVERS:**

The FAA Office of Airports publishes national waivers for equipment and products that meet Buy American requirements under 49 USC 50101. Nationwide waivers are published at:

http://www.faa.gov/airports/aip/buy\_american/media/nationwideBuyAmericanWaiversIssued.pdf

### **SECTION 50101(B)(1) & (B)(2) WAIVERS:**

The bidder may request a waiver based upon the best interests of the public, Section 50101 (b)(1) or request a waiver based upon insufficient supply of U.S. manufactured products, Section 50101 (b)(2), however approval is rare and waivers may only be approved by the FAA Office of Airports in Washington DC.

## SECTION 50101(B)(3) WAIVER:

The bidder may request a waiver if 60% or more of the components are produced in the United States and final assembly occurs in the U.S. Bidder is hereby advised that the Owner's approval with the bidder's waiver request is contingent upon FAA approval.

"Equipment" in Section 50101 shall mean the following:

- a) Individual type "L" items (Airfield Lighting Equipment) as listed in FAA Advisory Circular 150/5345-53.
- b) Individual bid items as established within FAA Advisory Circular 150/5370-10.
- c) A waiver request may only address one specific equipment item. Submit separate requests for each equipment item for which a waiver.
- d) Items listed under the Nationwide Waiver referenced above do not require further review.
- 2. The bidder must base the U.S. percentage upon the value that results from completing a component cost calculation table similar to the attached format. The Bidder must submit the component cost calculation table as an attachment to the waiver request.
- 3. Components/subcomponents are the material and products composing the "equipment".
- 4. The final assembly of the AIP-funded "equipment" must be within the USA (Section 50101(b)(3)(B)). Final assembly is the substantial transformation of the components and subcomponents into the end product.
- 5. All steel used in the "Equipment" must be produced in the United States.
- 6. The Buy American requirements apply to all tier contractors and subcontractors. All contractors/subcontractors are required to provide appropriate documentation that indicates origin of manufacturer and percentage of domestic made product.
- 7. The bidder is hereby advised there is no implied or expressed guarantee that a requested waiver will be issued by the Federal Aviation Administration (FAA). Less than 60% USA component/subcomponent proposed for this facility CANNOT be waived. Products made with foreign steel are not eligible for a waiver.
- 8. North America Free Trade Act (NAFTA): Free Trade Agreements such as NAFTA do not apply to the AIP. Products and material made in Canada or Mexico must be considered as foreign made products.
- 9. Preparation of a Component Cost Calculation Table is not necessary for equipment listed on the FAA national listing: http://www.faa.gov/airports/aip/procurement/federal\_contract\_provisions/media/buy\_american\_waiver.xls. Bidder however shall submit a listing of any equipment it proposes to install on the project that is included on the National Buy American conformance list.

## **INSTRUCTIONS FOR SECTION 50101(B)(4) WAIVER:**

The bidder may request a waiver if application of Buy America preferences results in a 25% cost increase in the overall project. This waiver is rarely applicable. Consult the Owner before making this request.

## **BUY AMERICA WAIVER REQUEST**

Title 49 U.S.C Section 50101 (b)(3)

### For Airfield Development Projects funded under the Airport Improvement Program

### COMPONENT COST CALCULATION TABLE (Type 3 Waiver)

- In lieu of completing this table, bidder may prepare a spreadsheet that addresses the same information and calculations as presented herein.
- Preparation of a Component Cost Calculation Table is not necessary for equipment listed on the FAA national listing: <a href="http://www.faa.gov/airports/aip/procurement/federal\_contract\_provisions/media/buy\_american\_waiver.xls">http://www.faa.gov/airports/aip/procurement/federal\_contract\_provisions/media/buy\_american\_waiver.xls</a>.
- The component breakout shall be along major components of the equipment. Submit separate calculation for each different equipment types. Do not combine the component cost calculations of different types of equipment.
- For Airfield development projects, equipment is defined as the "L" items (Airfield Lighting Equipment) as listed in FAA Advisory Circular 150/5345-53 and the b) individual bid items as established within FAA Advisory Circular 150/5370-10. The individual bid item method may not be applied to the "L" type items.
- An authorized person shall attest under signature and date that the submitted information is accurate and complete.

### Equipment Type: \_\_\_\_\_

| Component/Subcomponents | Name of<br>Manufacturer | Country of<br>Origin | Cost of Foreign Manufactured<br>Components/Subcomponents | Cost of USA Manufactured<br>Components/Subcomponents |
|-------------------------|-------------------------|----------------------|--|--|
|                         |                         |                      |  |  |
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|                         |                         |                      |  |  |
|                         |                         |                      |  |  |

Sum of US Manufactured Component/Subcomponent Costs:

Sum of all Equipment Components and Subcomponents:

Percentage of Equipment Components Manufactured in the United States: Place of Final Assembly:

Certification Signature

Bidder hereby requests a waiver to Buy America preferences based upon Section 50101(b)(3) for the equipment identified above. The bidder certifies that \_\_\_\_\_\_ % of the cost of components and subcomponents comprising the equipment are produced in the United States and that final assembly occurs within the United States.

I hereby certify the above information is accurate and complete.

SAMPLE

Bidder's Firm Name

Date

<u>SAMPLE</u> Signature

## **CERTIFICATION OF NONSEGREGATED FACILITIES**

The federally assisted construction contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking foundations, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The federally assisted construction contractor agrees that (except where he has obtained identical certification from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certifications in his files.

CERTIFICATION: The information above is true and complete to the best of my knowledge.

### Signature

Date

Name and Title of Signer (please type)

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

## CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION - 49 CFR PART 29 (Version 1, 1/5/90)

The bidder/offeror certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder/offeror/contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

Name and Title of Signer

Signature

Date

**Company Name** 

**Business Address** 

| NON-TRAFFIC   |  |
|---|--|
| Trafficking in persons:   |  |
| Provisions applicable to a recipient that is a priva                        | ite entity.  |
| <ol> <li>You as the recipient, your employees, sub<br/>may not –</li> </ol> | precipients under this award, and subrecipients' employees |
| i. Engage in severe forms of trafficking effect;                            | in persons during the period of time that the award is in  |
| ii. Procure a commercial sex act during t                                   | he period of time that the award is in effect; or          |
| iii. Use forced labor in the performance of                                 | of the award or subawards under the award.                 |
| Certification:  |  |
| l,  | _, being(title)  |
| of  | , hereby certify that the information as stated            |
| be provided in writing to all Subcontractors hired                          | for the above mentioned job.                               |
| Name and Title  | Date   |
|   |  |
|   |  |
|   |  |
|   |  |
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## TRADE RESTRICTION CLAUSE

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. Is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. Has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. Has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

| Name and Title of Signer |                  |
|--------------------------|------------------|
| Signature                | Date             |
| Company Name             | Business Address |
|                          |                  |

## STATE SIGNATURE FORMS

|  | OREGON BID BOND  |
|--|--|
|  | BOND NO  |
|  | AMOUNT: \$   |
| KNOW ALL MEN BY THESE PRESENTS, that   |  |
| hereinafter called the PRINCIPAL, and  |  |
| a corporation duly organized under the laws of   | of the State of,   |
| having its principal place of business at  |  |
|  | _ in the State of  |
| and authorized to do business in the State of  | Oregon, as SURETY,   |
| are held and firmly bound unto   |  |
| hereinafter called the OBLIGEE, in the sum of  |  |
|  | _ DOLLARS (\$),  |
| for the payment of which we bind oursel  | lves, our heirs, executors, administrators, successors, and assigns, join  |
| and severally, firmly by these presents.   |  |
| THE CONDITION OF THIS BOND IS SUCH THA   | T:   |
| WHEREAS, the PRINCIPAL is herewith submitt   | ting his or its Bid Proposal for   |
|  |  |
| said Bid Proposal, by reference thereto, being   | g hereby made a part hereof.   |
| NOW, THEREFORE, if the Bid Proposal sub<br>PRINCIPAL, and if the PRINCIPAL shall execu<br>Bond as required by the Contract Documents<br>the PRINCIPAL shall fail to execute the propo  | pmitted by the PRINCIPAL is accepted, and the Contract awarded to t<br>the the proposed Contract and shall furnish such Performance and Payme<br>is within the time fixed by the Documents, then this obligation shall be void<br>posed Contract and furnish the bond, the SURETY hereby agrees to pay to t  |
| NOW, THEREFORE, if the Bid Proposal sub<br>PRINCIPAL, and if the PRINCIPAL shall execu<br>Bond as required by the Contract Documents<br>the PRINCIPAL shall fail to execute the propo<br>OBLIGEE the said sum as liquidated damages, | pomitted by the PRINCIPAL is accepted, and the Contract awarded to t<br>the the proposed Contract and shall furnish such Performance and Payme<br>is within the time fixed by the Documents, then this obligation shall be void<br>osed Contract and furnish the bond, the SURETY hereby agrees to pay to t<br>is within 10 days of such failure.      |
| NOW, THEREFORE, if the Bid Proposal sub<br>PRINCIPAL, and if the PRINCIPAL shall execu<br>Bond as required by the Contract Documents<br>the PRINCIPAL shall fail to execute the propo<br>OBLIGEE the said sum as liquidated damages, | pomitted by the PRINCIPAL is accepted, and the Contract awarded to t<br>the the proposed Contract and shall furnish such Performance and Payme<br>is within the time fixed by the Documents, then this obligation shall be void<br>osed Contract and furnish the bond, the SURETY hereby agrees to pay to t<br>is within 10 days of such failure.      |
| NOW, THEREFORE, if the Bid Proposal sub<br>PRINCIPAL, and if the PRINCIPAL shall execu<br>Bond as required by the Contract Documents<br>the PRINCIPAL shall fail to execute the propo<br>OBLIGEE the said sum as liquidated damages, | pomitted by the PRINCIPAL is accepted, and the Contract awarded to t<br>the the proposed Contract and shall furnish such Performance and Payme<br>is within the time fixed by the Documents, then this obligation shall be void<br>osed Contract and furnish the bond, the SURETY hereby agrees to pay to t<br>within 10 days of such failure.<br>, 20 |
| NOW, THEREFORE, if the Bid Proposal sub<br>PRINCIPAL, and if the PRINCIPAL shall execu<br>Bond as required by the Contract Documents<br>the PRINCIPAL shall fail to execute the propo<br>OBLIGEE the said sum as liquidated damages, | peritted by the PRINCIPAL is accepted, and the Contract awarded to the term proposed Contract and shall furnish such Performance and Paymers within the time fixed by the Documents, then this obligation shall be void based Contract and furnish the bond, the SURETY hereby agrees to pay to the within 10 days of such failure.                    |
| NOW, THEREFORE, if the Bid Proposal sub<br>PRINCIPAL, and if the PRINCIPAL shall execu<br>Bond as required by the Contract Documents<br>the PRINCIPAL shall fail to execute the propo<br>OBLIGEE the said sum as liquidated damages, | pomitted by the PRINCIPAL is accepted, and the Contract awarded to t<br>the the proposed Contract and shall furnish such Performance and Payme<br>is within the time fixed by the Documents, then this obligation shall be void<br>osed Contract and furnish the bond, the SURETY hereby agrees to pay to t<br>within 10 days of such failure.<br>, 20 |
| NOW, THEREFORE, if the Bid Proposal sub<br>PRINCIPAL, and if the PRINCIPAL shall execu<br>Bond as required by the Contract Documents<br>the PRINCIPAL shall fail to execute the propo<br>OBLIGEE the said sum as liquidated damages, | peritted by the PRINCIPAL is accepted, and the Contract awarded to the term proposed Contract and shall furnish such Performance and Paymers within the time fixed by the Documents, then this obligation shall be void based Contract and furnish the bond, the SURETY hereby agrees to pay to the within 10 days of such failure.                    |
| NOW, THEREFORE, if the Bid Proposal sub<br>PRINCIPAL, and if the PRINCIPAL shall execu<br>Bond as required by the Contract Documents   | peritted by the PRINCIPAL is accepted, and the Contract awarded to the tete proposed Contract and shall furnish such Performance and Paymers within the time fixed by the Documents, then this obligation shall be void based Contract and furnish the bond, the SURETY hereby agrees to pay to the within 10 days of such failure, 20 PRINCIPAL By    |

| NON-CO   | OLLUSION AFFIDAVIT   |
|--|--|
| STATE OF ) SS. COUNTY OF )   |  |
| which this affidavit is a part, is a genuine and<br>on behalf of any person not therein named; a<br>partnership, co-partnership or corporation he<br>solicited any Bidder to put in a sham bid, nor<br>participated in any collusion, or otherwise tak<br>the preparation and submission of a bid for co<br><b>REHABILITATION AND OUTFALL F EROSION A</b><br>described in the Contract Documents of whic | eing first duly sworn, on oath says that the bid submitted to<br>not a sham or collusion bid, or made in the interest of or<br>and that the person, firm, association, joint venture,<br>erein named, has not directly or indirectly induced or<br>directly or indirectly, entered into any agreement,<br>ken any action in restraint of free competition bidding in<br>consideration in the award of a Contract for <b>STORM PIPE</b><br><b>AND SLOPE REPAIR</b> sought by the <b>CITY OF NEWPORT</b><br>ch this affidavit is a part; and that said Bidder has not in any<br>an advantage over any other Bidder or Bidders. |
|  | (Bidder)   |
| SUBSCRIBED AND SWORN TO before this  | day of , 20  |
|  | (Signature)  |
|  | (Print Name)   |
|  | Notary Public in and for the State of  |
|  | My commission expires:   |
| NOTE: This form must be completed and submitt  | ed with the bid.   |

| _ |
|---|

Bidder shall submit this form to the City of Newport on or before 4:00 pm on May 14<sup>th</sup>, 2020 as their disclosure of first-tier subcontractors.

| Name & Address | Dollar Value (\$) | Category of Work |
|----------------|-------------------|------------------|
|                |                   |                  |
|                |                   |                  |
|                |                   |                  |
|                |                   |                  |

Bidder hereby submits this First-Tier Subcontractor Disclosure form pursuant to ORS 279C.370, which applies only to public improvements with a contract value of more than \$100,000, and is not for public improvements that have been exempted from competitive bidding requirements under ORS 279C.335.

The name of each subcontractor who will be furnishing labor or materials in connection with this project (and that is required), having a contract value equal to or greater than five percent of the total project bid or \$15,000, whichever is greater, or \$350,000 regardless of the percentage of the total project bid, shall be disclosed in the above form. Disclosure requirements do not apply to subcontractors who only provide materials.

If the contract price is in excess of \$100,000 and the first-tier subcontractors do not meet the above criteria, enter 'NONE' to indicate there are no subcontractors that need to be disclosed.

ATTACH ADDITIONAL SHEETS IF NEEDED.

| Contract is less than \$100,000; therefore, it does not         |                      |
|---|----------------------|
| meet<br>ORS 279C.370 and First-Tier Disclosure is not required. | (Sign if applicable) |
|   | (- 3 ) - (-)         |

Bids must be submitted to the City of Newport by the bid closing date and time.

Failure to submit this form by the disclosure deadline will result in a nonresponsive bid. A nonresponsive bid will not be considered for award.

# **BIDDER'S LIST**

## ALL FIRMS BIDDING OR QUOTING ON SUBCONTRACTS FOR THIS DOT-ASSISTED PROJECT ARE LISTED BELOW:

| Firm Name | Address | Certified<br>DBE<br>(Y or N) | Age of<br>Firm | GRS* |
|-----------|---------|------------------------------|----------------|------|
|           |         |                              |                |      |
|           |         |                              |                |      |
|           |         |                              |                |      |
|           |         |                              |                |      |
|           |         |                              |                |      |
|           |         |                              |                |      |
|           |         |                              |                |      |
|           |         |                              |                |      |
|           |         |                              |                |      |
|           |         |                              |                |      |
|           |         |                              |                |      |
|           |         |                              |                |      |

THIS FORM IS REQUIRED TO BE COMPLETED AND SUBMITTED WITHIN TWO (2) HOURS AFTER BID SUBMITTAL, REGARDLESS OF DBE UTILIZATION FOR THE CONTRACT

\*GRS – Annual Gross Receipts

Enter 1 for less than \$1 million Enter 2 for more than \$1 million, less than \$5 million Enter 3 for more than \$5 million, less than \$10 million Enter 4 for more than \$10 million, less than \$15 million Enter 5 for more than \$15 million.

# SUPPLEMENTAL SIGNATURE FORMS

| ٨ | Aeets the Qualification of Bidder's requirements contained in Section 20-02 of the General Provisions<br>(Evidence of Competency and financial responsibility)  |
|---|---|
|   | Name of Bidder:   |
|   | Address:  |
|   | Number of years the Bidder has been engaged in the business under the present firm name indica<br>  |
|   | Gross dollar amount of work completed during the past three (3) years:  |
|   | Gross dollar amount of work under Contract not completed:   |
|   | 2017  |
|   | 2018  |
|   | 2019  |
|   | Type of work generally performed by Bidder:   |
|   | For each of the most recent three projects in excess of \$500,000 of a nature similar to the this prowhich have been undertaken by the Bidder within the last three years state: (1) Name, addrepresentative and telephone number of the Owner; (2) a brief description of project, inclulocation; (3) the gross dollar amount; (4) whether any dispute arose between you and the ow and/or project designer requiring dispute resolution by mediation, arbitration or court action and result thereof. (Answer on separate sheet(s)) * |
|   | List of five major pieces of equipment which are anticipated to be used on this project by the Bid<br>and note which items are owned by the Bidder and which are to be leased or rented from others   |
|   |   |

| 7.  | For each project over \$100,000 you anticipate you will undertake within Oregon state, other than this<br>Project, during the contract period for this Project, state: (Answer on separate sheet(s) if more than<br>one)   |
|-----|--|
|     | Owner:   |
|     | Nature of project:   |
|     | Contract price of project:   |
|     | Dates of project:  |
|     | Any major pieces of equipment or any superintendents devoted to said project and the Project subject to this bid:  |
| 8.  | Bank References:   |
| 9.  | How many general superintendents or other responsible employees in a supervisory position for work in Oregon state do you have at this time and how long have they been with the Bidder?   |
| 10. | Have you changed bonding companies within the last three years? Yes No<br>If so, why? (Optional):  |
| 11. | Have you ever sued or been sued (court or arbitration case) by a special public purpose district, municipality, county, state or the federal government involving a public works contract?<br>Yes No   |
|     | If so, state: Owner's name and address; project description; nature of dispute; court and cause number; disposition of case, if resolved. (Answer on separate sheet for each)  |
| 12. | Oregon State CCB No.:  |
| 13. | Evidence of Financial Responsibility: <u>NOT REQUIRED AT THE TIME OF BID OPENING FOR THIS</u><br><u>PROJECT.</u> Owner reserves the right to conduct such investigation as is necessary to to evaluate the<br>apparent low Bidders evidence of financial responsibility. |
|     | each owner listed in No. 5 above, the contractor must complete and sign the form, "Authorization To Release formation" to bid the work.  |
|     | Note: This Bid Form must be completed in its entirety and submitted to bid the work.   |

|        | AUTHORIZATION TO RELEASE INFORMATION   |
|--------|--|
| TO:    | (Reference Project Owner)  |
|        |  |
| FROM   | 1:<br>(Bidding: Contractor, Principal Subcontractor, or Principal Supplier)  |
| RE:    | (Reference Project Name and Date of Contract Documents)  |
|        |  |
| You ar | re hereby authorized to release and disclose information to CITY OF NEWPORT concerning the quality   |
| of per | formance and execution of contractual obligations by Contractor, Principal Subcontractor; or Principal   |
| Suppli | <i>ier (circle one)</i> on your behalf on the above referenced project.  |
| Ву:    | , Authorized Representative<br>(Bidding: Contractor, Principal Subcontractor, or Principal Supplier)   |
| Printe | ed Name:   |
| Date:  |  |
| NOTE:  | :  |
|        | orm must be completed by the Contractor for each owner listed on No. 5 of the forms: "Statement Of r's Qualifications" and all completed forms must be submitted with the bid by Contractor. |
|        |  |
|        |  |
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# **CONTRACT FORMS**

# CONTRACT

This Contract, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the **CITY OF NEWPORT**, a municipal corporation, hereinafter called the "Owner," and \_\_\_\_\_\_ of \_\_\_\_\_ hereinafter called the "Contractor";

WITNESSETH:

The Contractor, in consideration of the sum to be paid him by the Owner and of the covenants and agreements herein contained, hereby agrees at his own proper cost and expense to do all the work and furnish all the materials, tools, labor, and all appliances, machinery, and appurtenances for construction of **"STORM PIPE REHABILITATION AND OUTFALL F EROSION AND SLOPE REPAIR "**, to the extent of the Proposal made by the Contractor, dated the \_\_\_\_\_\_ day of \_\_\_\_\_\_, 20\_\_\_\_, all in full compliance with the Contract Documents referred to herein. The selected work follows:

Base Bid Amount: \$

## Grand Total (Bid) Contract Amount: \$

The BIDDING REQUIREMENTS, including the signed copy of the Proposal, the CONTRACT FORMS, the CONDITIONS OF THE CONTRACT, the SPECIFICATIONS, and the DRAWINGS, which consist of 12 sheets entitled **"STORM PIPE REHABILITATION AND OUTFALL F EROSION AND SLOPE REPAIR"**, dated APRIL 2020, are hereby referred to and by reference made a part of this Contract as fully and completely as if the same were fully set forth herein and are mutually cooperative therewith.

In consideration of the performance of the work as set forth in these Contract Documents, the Owner agrees to pay to the Contractor the amount bid in the Proposal as adjusted in accordance with the Contract Documents, or as otherwise herein provided, and to make such payments in the manner and at the times provided in the Contract Documents.

The Contractor agrees to complete the work within the time specified herein and to accept as full payment hereunder the amounts computed as determined by the Contract Documents and based on the said Proposal.

The Contractor agrees to remedy all defects appearing in the work or developing in the materials furnished and the workmanship performed under this Contract for a period of 1 year after the date of acceptance of the work by the Owner, or as otherwise required by the Contract Documents, and further agrees to indemnify and save the Owner harmless from any costs encountered in remedying such defects.

It is agreed the time limit for completion of the Contract, based upon the Proposal, shall be 35 calendar days from the "Notice to Proceed" date.

In the event that the Contractor shall fail to complete the work within the time limit or the extended time limit agreed upon, as more particularly set forth in the Contract Documents, liquidated damages shall be paid at the rates indicated in Paragraph 80-80 of the General Provisions. Sundays and legal holidays shall be excluded in determining days in default.

**<u>Attorney Fees</u>**: In the event that any suit, action, or arbitration is brought by the parties arising out of this Agreement, the prevailing party shall recover such reasonable attorney fees as shall be set by the trial court and any court of appeal.

|                     | leliver this Contract. |
|---------------------|------------------------|
| DWNER               | CONTRACTOR             |
| Υ                   | ВҮ                     |
| ITLE                | TITLE                  |
| PPROVED AS TO FORM: |                        |
| Attorney for Owner  |                        |

|  | PA  | YMENT BOND                    |  |
|--|---|-------------------------------|--|
|  |   | BON                           | ID NO  |
|  |   |                               | DUNT: \$   |
|  |   |                               |  |
|  |   |                               |  |
|  |   |                               |  |
|  |   |                               |  |
|  |   |                               | of,  |
|  |   |                               |  |
|  |   |                               |  |
|  |   |                               |  |
|  |   |                               | ),   |
| CONTRACTOR, and                          |   |                               | nd truly be made to the OWNER, the administrators, successors, and assigns,  |
| THE CONDITION OF                         | THE ABOVE OBLIGATION IS SUCH TH   | AT:                           |  |
| WHEREAS, the COM                         | , 20, for <b>STORM PIP</b>  |                               | reto attached, with the OWNER, dated<br>FALL F EROSION AND SLOPE REPAIR at   |
| If CONTRACTOR sha<br>as all other paymen | III make all payments as required by t<br>nts for goods and services rendered | in connection with the perfo  | he within and foregoing Contract, as well<br>ormance of said Contract for which any<br>I; otherwise it shall be and remain in full |
|  | 'ER, that no final settlement betwee<br>ler, whose claim may be unsatisfied.  | en the OWNER and the CON      | TRACTOR shall abridge the right of any   |
| alteration, or additi                    | on to the terms of the Contract Doc<br>on this bond, and it does hereby wa    | uments or to the work to be   | rees that no change, extension of time,<br>performed thereunder, shall in any way<br>ension of time, alteration, or addition to    |
|  | -   | porate seal of each corporate | this instrument this day of<br>e party being hereto affixed and those<br>verning body.   |
| CONTRACTOR:                              |   | , 0-                          |  |
|  | Ву:   | (Seal)                        |  |
|  | /   | ()                            | Attest   |
| SURETY:                                  |   |                               |  |
|  | Ву:   | (Seal)                        | Attest   |
| APPROVED AS TO F                         | ORM:  |                               | Allest   |

NOTE: The SURETY named on this bond shall be one who is licensed to conduct business in the state where the project is located, and named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act for the SURETY at the time of the signing of this bond.

OWNER

Date

#### PERFORMANCE BOND

BOND NO.\_\_\_\_\_\_ AMOUNT: \$\_\_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that

| of  | , |
|---|---|
| nereinafter called the CONTRACTOR (Principal), and  | , |
| a corporation duly organized and existing under and by virtue of the laws of the State of | , |
| nereinafter called the SURETY, and authorized to transact business within the State of    | _ |
| as SURETY, are held and firmly bound unto   | _ |
| as OWNER (Obligee), in the sum of:  | _ |
| DOLLARS (\$)  | , |

lawful money of the United States of America, for the payment of which, well and truly be made to the OWNER, the CONTRACTOR, and the SURETY bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents as follows:

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

WHEREAS, the CONTRACTOR has executed and entered into a certain Contract hereto attached, with the OWNER, dated \_\_\_, 20\_\_\_, for **STORM PIPE REHABILITATION AND OUTFALL F EROSION AND SLOPE REPAIR** at **NEWPORT MUNICIPAL AIRPORT.** 

NOW, THEREFORE, if the CONTRACTOR shall in all things perform all the terms and conditions of the within and foregoing Contract as provided in the Contract Documents to be by such CONTRACTOR performed, and shall honor all claims for defective work made within 1 year after the completion and acceptance of the foregoing Contract, and shall pay over, make good, and reimburse to the OWNER, all loss or damage which the OWNER may sustain by reason of failure or default on the part of CONTRACTOR, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

PROVIDED, HOWEVER, that the SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract Documents or to the work to be performed thereunder, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract Documents.

IN WITNESS WHEREOF, the above parties bounded together have executed this instrument this day of , 20 , the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative, pursuant to authority of its governing body.

| CONTRACTOR:      |       |        |        |
|------------------|-------|--------|--------|
|                  | Ву:   | (Seal) | Attest |
| SURETY:          |       |        | Allesi |
|                  | Ву:   | (Seal) |        |
|                  |       |        | Attest |
| APPROVED AS TO F | ORM:  |        |        |
|                  | OWNER |        | Date   |

NOTE: The SURETY named on this bond shall be one who is licensed to conduct business in the state where the project is located. All bonds signed by an agent must be accompanied by a certified copy of the authority to act for the SURETY at the time of the signing of this bond.

PARTIAL PAY REQUEST

-

PAY ESTIMATE NO. DATES OF PAY ESTIMATES: FROM: TO: APPROVED:

PROJECT LOCATION PROJECT LOCATION AD NO. AIP Project No. X-XX-XXX-XXX CONTRACTOR: CONTRACTOR NAME

BASE BID

| wind         s         matrix  |   | Description | 1 Init | Ouantity | I hit Drice | Contract | This           | This Period<br>Cost | Percent<br>Complete | Previous<br>Ouentity | - | To Date<br>Cost | CHANGE ORDERS/<br>SLIPPI EMENTAL ACREEMENTS | ORIGINAL CONTRACT AMOUNTS<br>Base Rid                              | OUNTS       |
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| $ \begin{array}{c ccccccccccccccccccccccccccccccccccc$   | $ \left( \begin{array}{cccccccccccccccccccccccccccccccccccc$  |             |        |          | s           |          | ,              | -<br>S              | #DIV/0              | -                    | _ |                 | in place, as prepared by the Re             | esident Project Representative, per Section 90                     | -06 of the  |
| $ \begin{array}{c ccccccccccccccccccccccccccccccccccc$   | $ \begin{array}{c ccccccccccccccccccccccccccccccccccc$  |             |        |          | s           |          | ,              | - \$                | #DIV/0i             | -                    |   |                 | General Contract Provisions.                |  |             |
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| $ \begin{array}{c ccccccccccccccccccccccccccccccccccc$   | $ \begin{array}{c ccccccccccccccccccccccccccccccccccc$  |             |        |          | s           |          | ,              | - \$                | #DIV/0              | -                    | - |                 | and work performed to date har              | we been in accordance with the terms of this c                     | ontract and |
| ·         S         ·         #DIV/01         ·         S         ·         S         ·         MDIV/01         ·         S         ·         S         ·         MDIV/01         ·         S         ·         MDIV         ·         MDIV         MDIV         ·   | ·           |             |        |          | s           |          |                | - 8                 | ;0//AIQ#            | -                    | - |                 | that prevailing wages have bee              | en paid in accordance with the Contract Docun                      | ients.      |
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GRAND TOTALS

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### CONTRACT CHANGE ORDER NO.

| AIRPORT:             |                  |
|----------------------|------------------|
| LOCATION:            |                  |
| <b>PROJECT NAME:</b> |                  |
| AIP PROJECT NO:      | AIP 3-41-00XX-XX |
| <b>CONTRACTOR:</b>   |                  |
| DATE:                |                  |
|                      |                  |

You are requested to perform the following described work upon receipt of an approved copy of this document or as described by the Engineer

| Bid Item                       |                |      |            |          |         |
|--------------------------------|----------------|------|------------|----------|---------|
| #                              | Description    | Unit | Unit Price | Quantity | Amount  |
|                                |                |      | \$1.00     | 1        | \$1.00  |
|                                |                |      | \$1.00     |          | \$1.00  |
|                                |                |      | \$1.00     |          | \$1.00  |
|                                | CANL           |      | \$1.00     |          | \$1.00  |
|                                |                |      | \$1.00     |          | \$1.00  |
|                                |                |      | \$1.00     |          | \$1.00  |
|                                |                |      | \$1.00     |          | \$1.00  |
|                                |                |      | \$1.00     |          | \$1.00  |
|                                |                |      | \$1.00     |          | \$1.00  |
|                                |                |      | \$1.00     |          | \$1.00  |
| This Chang                     | ge Order Total |      |            |          | 10.00   |
| Previous Change Order(s) Total |                |      |            |          |         |
|                                | ontract Amount |      |            |          | \$1.00  |
|                                | ontract Total  |      |            |          | \$12.00 |

The time provided for completion of the contract is unchanged by this Change Order.

This document shall become an amendment to the contract and all provisions of the contract will apply.

#### ORIGINAL CONTRACT COMPLETION DATE

#### REVISED CONTRACT COMPLETION DATE

| Recommended by: |  | Date: |  |
|-----------------|--|-------|--|
|                 | Engineer                                 |       |  |
| Approved by:    | -  | Date: |  |
|                 | Owner                                    |       |  |
| Accepted by:    |  | Date: |  |
|                 | Contractor                               |       |  |
| Concurred by:   |  | Date: |  |
|                 | Oregon Dept. of Aviation (if applicable) |       |  |
| Approved by:    |  | Date: |  |
|                 | Federal Aviation Administration          |       |  |

**NOTE**: Change Orders and Supplemental Agreements require FAA approval prior to construction, otherwise no Federal participation can be granted. State Aeronautics' concurrence is required when state participation is anticipated

## CONTRACT CHANGE ORDER NO.

AIRPORT: LOCATION: PROJECT NAME: AIP PROJECT NO: AIP 3-41-00XX-XX CONTRACTOR: DATE:

#### JUSTIFICATION FOR CHANGE

- 1. Brief description of the proposed contract change(s) and location(s).
- 2. Reason(s) for the change(s).



- 4. The sponsor's share of this cost is available from:
- 5. If this is a supplemental agreement involving more than \$2,000, is the cost estimate based on the latest wage rate decision?
  - ☐ Yes ☐ No ☐ Not Applicable
- 6. Has consent of surety been obtained?
  - YesNot Necessary
- 7. Will this change affect the insurance coverage?



- 8. If yes, will the policies be extended?
  - Yes
    No
    Not Applicable
- 9. Has this Change Order been discussed with FAA officials?

| Yes        |
|------------|
| 🗌 No       |
| When:      |
| With Whom: |



[Date]

[ Contractor ] Attn: \_\_\_\_\_ [ Address ] [ City, State, Zip ]

#### SUBJECT: NOTICE OF SUBSTANTIAL COMPLETION [ NAME OF AIRPORT ] [ PROJECT NAME ] AIP PROJECT NO. 3-41-XXXX-XXXX-XXXX

Dear \_\_\_\_\_,

As contract work associated with the project has been sufficiently completed to permit aircraft operations, the above-referenced project is accepted by the Owner as substantially complete on **[DATE]** as outlined in the Contract Documents.

You will receive Final Acceptance for this project upon satisfactory completion of the second application of pavement marking, and any remedial action, if required, to correct contract work not in compliance with the specifications. Completion of this work will be performed as schedule and weather allows.

The warranty period for work completed on this project will be for one (1) year beginning from your notification of Substantial Completion as discussed above and dated \_\_\_\_\_\_\_ except pavement marking and any remedial action, if required, that shall be initiated upon completion and acceptance of that work.

We enjoyed working with you and your staff during this project and look forward to an efficient project closeout

Sincerely,

# PRECISION APPROACH ENGINEERING, INC.

[ insert name ] Engineering Technician

c: \_\_\_\_/Client \_\_\_\_\_/Federal Aviation Administration \_\_\_\_\_/Precision Approach Engineering

# **CITY OF NEWPORT FORMS**

BOND NO. \_\_\_\_\_\_ PREMIUM NO. \_\_\_\_\_

#### WARRANTY BOND

PROJECT NO.

WHEREAS, the City of Newport (hereafter "Agency") and \_\_\_\_\_\_ (hereafter, "Principal") have entered into an agreement ("Agreement") dated \_\_\_\_\_\_,20\_\_, whereby Principal agreed to complete certain designated public improvements relating to the ; and

WHEREAS, the Principal is required under the terms of the Agreement to furnish warranty security for the work performed pursuant to the Agreement, in the amount of the full amount of the Agreement (100%), to meet the warranty described in the Agreement for a period of one year following final acceptance by the Agency of said improvements.

NOW, THEREFORE, we, Principal, and \_\_\_\_\_\_ ("Surety"), are held and firmly bound unto District in the penal sum of \_\_\_\_\_\_ (\$ \_\_\_\_\_\_) lawful money of the United States, for the payment of which we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally.

As part of the obligation secured hereby and in addition to the face amount specified, costs and reasonable expenses and fees shall be included, including reasonable attorneys' fees, incurred by Agency in successfully enforcing the obligation, all to be taxed as costs and included in any judgment rendered.

Surety shall provide the Agency with thirty (30) days' written notice of Principal's default prior to Surety terminating, suspending, or revoking the bond.

In witness whereof, this instrument has been duly executed by Principal and Surety on \_\_\_\_\_, 20\_\_\_.

Principal

Surety

Ву \_\_\_\_\_

Attorney-in-Fact

Address \_\_\_\_\_

\_\_\_\_\_ (ALL signatures to be properly notarized.)

## **CONTRACTOR RELEASE FORM**

#### Contractor's Certification:

The undersigned Contractor certifies that:

- (1) All previous progress payments received from Owner on account of Work done under the Contract referred to above have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment, including payment of all subcontractors & material suppliers: and
- (2) Title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to Owner indemnifying Owner against any such Lien, security interest or encumbrance); and
- (3) All Work covered by this Application for Payment is in accordance with the Contract Documents and not defective; and
- (4) In consideration for the payment referenced above, and upon receipt of such payment, Contractor hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through the date of this application, with the exception that this release does not cover retainage; and
- (5) Contractor represents that receipt of said payment constitutes full and complete payment for all work, and all costs or expenses incurred (including, but not limited to, costs for supervision, field office overhead, interest on capital, profit and conditions costs) relative to work or improvements as of the date of this application; and
- (6) Contractor specifically waives, guitclaims and releases any claim for damages due to delay, hindrances, interference, acceleration, inefficiencies or extra work, or any other claim of any kind it may have as of the date of this application, except as follows:

Dated:

Contractor signature

By:\_\_\_\_\_ (Print or type name)

Dated:\_\_\_\_\_

By:

## SUBCONTRACTOR RELEASE FORM

#### Subcontractor's Certification:

The undersigned Subcontractor certifies that:

- (1) All previous progress payments received from Contractor on account of Work done under the Subcontract referred to above have been applied on account to discharge Subcontractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment, including payment of all subcontractors & material suppliers; and
- (2) Title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner/Contractor at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to Owner indemnifying Owner against any such Lien, security interest or encumbrance); and
- (3) All Work covered by this Application for Payment is in accordance with the Subcontract Documents and not defective; and
- (4) In consideration for the payment referenced above, and upon receipt of such payment, Subcontractor hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through the date of this application, with the exception that this release does not cover retainage; and
- (5) Subcontractor represents that receipt of said payment constitutes full and complete payment for all work, and all costs or expenses incurred (including, but not limited to, costs for supervision, field office overhead, interest on capital, profit and conditions costs) relative to work or improvements as of the date of this application; and
- (6) Subcontractor specifically waives, quitclaims and releases any claim for damages due to delay, hindrances, interference, acceleration, inefficiencies or extra work, or any other claim of any kind it may have as of the date of this application, except as follows:

Dated:\_\_\_\_\_

Subcontractor signature

By:\_\_\_\_

(Print or type name)

Dated:\_\_\_\_\_

Ву:\_\_\_\_\_

SECTION III

**CONTRACT CONDITIONS** 

# GENERAL CONTRACT PROVISIONS

### **SECTION 10 DEFINITION OF TERMS**

When the following terms are used in these specifications, in the contract, or in any documents or other instruments pertaining to construction where these specifications govern, the intent and meaning shall be defined as follows:

| Paragraph<br>Number | Term                                 | Definition   |
|---------------------|--------------------------------------|--|
| 10-01               | AASHTO                               | The American Association of State Highway and Transportation Officials.  |
| 10-02               | Access Road                          | The right-of-way, the roadway and all improvements constructed thereon connecting the airport to a public roadway.   |
| 10-03               | Advertisement                        | A public announcement, as required by local law, inviting bids for work to be performed and materials to be furnished.   |
| 10-04               | Airport                              | Airport means an area of land or water which is used or intended<br>to be used for the landing and takeoff of aircraft; an appurtenant<br>area used or intended to be used for airport buildings or other<br>airport facilities or rights of way; airport buildings and facilities<br>located in any of these areas, and a heliport.   |
| 10-05               | Airport Improvement<br>Program (AIP) | A grant-in-aid program, administered by the Federal Aviation<br>Administration (FAA).  |
| 10-06               | Air Operations Area (AOA)            | The term air operations area (AOA) shall mean any area of the<br>airport used or intended to be used for the landing, takeoff, or<br>surface maneuvering of aircraft. An air operation area shall<br>include such paved or unpaved areas that are used or intended to<br>be used for the unobstructed movement of aircraft in addition to<br>its associated runway, taxiway, or apron. |
| 10-07               | Apron                                | Area where aircraft are parked, unloaded or loaded, fueled and/or serviced.  |
| 10-08               | ASTM International (ASTM)            | Formerly known as the American Society for Testing and Materials (ASTM).   |
| 10-09               | Award                                | The Owner's notice to the successful bidder of the acceptance of the submitted bid.  |
| 10-10               | Bidder                               | Any individual, partnership, firm, or corporation, acting directly or through a duly authorized representative, who submits a proposal for the work contemplated.  |
| 10-11               | Building Area                        | An area on the airport to be used, considered, or intended to be<br>used for airport buildings or other airport facilities or rights-of-<br>way together with all airport buildings and facilities located<br>thereon.   |
| 10-12               | Calendar Day                         | Every day shown on the calendar.   |
| 10-13               | Certificate of Analysis (COA)        | The COA is the manufacturer's Certificate of Compliance (COC) including all applicable test results required by the specifications.  |

# AC 150/5370-10H, AND ERRATA THROUGH 11/12/19

| Paragraph<br>Number | Term   | Definition  |
|---------------------|--|---|
| 10-14               | Certificate of Compliance<br>(COC)             | The manufacturer's certification stating that materials or<br>assemblies furnished fully comply with the requirements of the<br>contract. The certificate shall be signed by the manufacturer's<br>authorized representative.   |
| 10-15               | Change Order                                   | A written order to the Contractor covering changes in the plans,<br>specifications, or proposal quantities and establishing the basis of<br>payment and contract time adjustment, if any, for work within<br>the scope of the contract and necessary to complete the project.   |
| 10-16               | Contract                                       | A written agreement between the Owner and the Contractor that<br>establishes the obligations of the parties including but not limited<br>to performance of work, furnishing of labor, equipment and<br>materials and the basis of payment.  |
|                     |  | The awarded contract includes but may not be limited to:<br>Advertisement, Contract form, Proposal, Performance bond,<br>payment bond, General provisions, certifications and<br>representations, Technical Specifications, Plans, Supplemental<br>Provisions, standards incorporated by reference and issued<br>addenda. |
| 10-17               | Contract Item (Pay Item)                       | A specific unit of work for which a price is provided in the contract.  |
| 10-18               | Contract Time                                  | The number of calendar days or working days, stated in the<br>proposal, allowed for completion of the contract, including<br>authorized time extensions. If a calendar date of completion is<br>stated in the proposal, in lieu of a number of calendar or working<br>days, the contract shall be completed by that date. |
| 10-19               | Contractor                                     | The individual, partnership, firm, or corporation primarily liable<br>for the acceptable performance of the work contracted and for<br>the payment of all legal debts pertaining to the work who acts<br>directly or through lawful agents or employees to complete the<br>contract work.                                 |
| 10-20               | Contractors Quality Control<br>(QC) Facilities | The Contractor's QC facilities in accordance with the Contractor Quality Control Program (CQCP).  |
| 10-21               | Contractor Quality Control<br>Program (CQCP)   | Details the methods and procedures that will be taken to assure<br>that all materials and completed construction required by the<br>contract conform to contract plans, technical specifications and<br>other requirements, whether manufactured by the Contractor, or<br>procured from subcontractors or vendors.        |
| 10-22               | Control Strip                                  | A demonstration by the Contractor that the materials,<br>equipment, and construction processes results in a product<br>meeting the requirements of the specification.   |
| 10-23               | Construction Safety and<br>Phasing Plan (CSPP) | The overall plan for safety and phasing of a construction project<br>developed by the airport operator, or developed by the airport<br>operator's consultant and approved by the airport operator. It is  |

| Paragraph<br>Number | Term                   | Definition   |
|---------------------|------------------------|--|
|                     |                        | included in the invitation for bids and becomes part of the project specifications.  |
| 10-24               | Drainage System        | The system of pipes, ditches, and structures by which surface or subsurface waters are collected and conducted from the airport area.  |
| 10-25               | Engineer               | The individual, partnership, firm, or corporation duly authorized<br>by the Owner to be responsible for engineering, observation of<br>the contract work and acting directly or through an authorized<br>representative.   |
| 10-26               | Equipment              | All machinery, together with the necessary supplies for upkeep<br>and maintenance; and all tools and apparatus necessary for the<br>proper construction and acceptable completion of the work.   |
| 10-27               | Extra Work             | An item of work not provided for in the awarded contract as<br>previously modified by change order or supplemental agreement,<br>but which is found by the Owner's Engineer or Resident Project<br>Representative (RPR) to be necessary to complete the work<br>within the intended scope of the contract as previously modified.  |
| 10-28               | FAA                    | The Federal Aviation Administration. When used to designate a person, FAA shall mean the Administrator or their duly authorized representative.  |
| 10-29               | Federal Specifications | The federal specifications and standards, commercial item descriptions, and supplements, amendments, and indices prepared and issued by the General Services Administration.   |
| 10-30               | Force Account          | <b>a.</b> Contract Force Account - A method of payment that addresses extra work performed by the Contractor on a time and material basis.   |
|                     |                        | <b>b.</b> Owner Force Account - Work performed for the project by the Owner's employees.   |
| 10-31               | Intention of Terms     | <ul> <li>Whenever, in these specifications or on the plans, the words<br/>"directed," "required," "permitted," "ordered," "designated,"<br/>"prescribed," or words of like import are used, it shall be<br/>understood that the direction, requirement, permission, order,<br/>designation, or prescription of the Engineer and/or Resident<br/>Project Representative (RPR) is intended; and similarly, the words<br/>"approved," "acceptable," "satisfactory," or words of like import,<br/>shall mean approved by, or acceptable to, or satisfactory to the<br/>Engineer and/or RPR, subject in each case to the final<br/>determination of the Owner.</li> </ul> |
|                     |                        | Any reference to a specific requirement of a numbered paragraph<br>of the contract specifications or a cited standard shall be<br>interpreted to include all general requirements of the entire<br>section, specification item, or cited standard that may be<br>pertinent to such specific reference.   |
| 10-32               | Lighting               | A system of fixtures providing or controlling the light sources<br>used on or near the airport or within the airport buildings. The  |

| Paragraph<br>Number | Term                               | Definition  |
|---------------------|------------------------------------|---|
|                     |                                    | field lighting includes all luminous signals, markers, floodlights,<br>and illuminating devices used on or near the airport or to aid in<br>the operation of aircraft landing at, taking off from, or taxiing on<br>the airport surface.  |
| 10-33               | Major and Minor Contract<br>Items  | A major contract item shall be any item that is listed in the proposal, the total cost of which is equal to or greater than 20% of the total amount of the award contract. All other items shall be considered minor contract items.  |
| 10-34               | Materials                          | Any substance specified for use in the construction of the contract work.   |
| 10-35               | Modification of Standards<br>(MOS) | Any deviation from standard specifications applicable to material and construction methods in accordance with FAA Order 5300.1.   |
| 10-36               | Notice to Proceed (NTP)            | A written notice to the Contractor to begin the actual contract<br>work on a previously agreed to date. If applicable, the Notice to<br>Proceed shall state the date on which the contract time begins.   |
| 10-37               | Owner                              | The term "Owner" shall mean the party of the first part or the contracting agency signatory to the contract. Where the term "Owner" is capitalized in this document, it shall mean airport Sponsor only. The Owner for this project is City of Newport.   |
| 10-38               | Passenger Facility Charge<br>(PFC) | Per 14 Code of Federal Regulations (CFR) Part 158 and 49 United<br>States Code (USC) § 40117, a PFC is a charge imposed by a public<br>agency on passengers enplaned at a commercial service airport it<br>controls.  |
| 10-39               | Pavement Structure                 | The combined surface course, base course(s), and subbase course(s), if any, considered as a single unit.  |
| 10-40               | Payment bond                       | The approved form of security furnished by the Contractor and<br>their own surety as a guaranty that the Contractor will pay in full<br>all bills and accounts for materials and labor used in the<br>construction of the work.   |
| 10-41               | Performance bond                   | The approved form of security furnished by the Contractor and<br>their own surety as a guaranty that the Contractor will complete<br>the work in accordance with the terms of the contract.   |
| 10-42               | Plans                              | The official drawings or exact reproductions which show the location, character, dimensions and details of the airport and the work to be done and which are to be considered as a part of the contract, supplementary to the specifications. Plans may also be referred to as 'contract drawings.' |
| 10-43               | Project                            | The agreed scope of work for accomplishing specific airport development with respect to a particular airport.   |
| 10-44               | Proposal                           | The written offer of the bidder (when submitted on the approved proposal form) to perform the contemplated work and furnish the necessary materials in accordance with the provisions of the plans and specifications.  |

| Paragraph<br>Number | Term                                      | Definition  |
|---------------------|---|---|
| 10-45               | Proposal guaranty                         | The security furnished with a proposal to guarantee that the bidder will enter into a contract if their own proposal is accepted by the Owner.  |
| 10-46               | Quality Assurance (QA)                    | Owner's responsibility to assure that construction work completed complies with specifications for payment.   |
| 10-47               | Quality Control (QC)                      | Contractor's responsibility to control material(s) and construction processes to complete construction in accordance with project specifications.   |
| 10-48               | Quality Assurance (QA)<br>Inspector       | An authorized representative of the Engineer and/or Resident<br>Project Representative (RPR) assigned to make all necessary<br>observations, tests, and/or observation of tests of the work<br>performed or being performed, or of the materials furnished or<br>being furnished by the Contractor.   |
| 10-49               | Quality Assurance (QA)<br>Laboratory      | The official quality assurance testing laboratories of the Owner or<br>such other laboratories as may be designated by the Engineer or<br>RPR. May also be referred to as Engineer's, Owner's, or QA<br>Laboratory.   |
| 10-50               | Resident Project<br>Representative (RPR)  | The individual, partnership, firm, or corporation duly authorized<br>by the Owner to be responsible for all necessary observations,<br>tests, and/or observations of tests of the contract work<br>performed or being performed, or of the materials furnished or<br>being furnished by the Contractor, and acting directly or through<br>an authorized representative. |
| 10-51               | Runway                                    | The area on the airport prepared for the landing and takeoff of aircraft.   |
| 10-52               | Runway Safety Area (RSA)                  | A defined surface surrounding the runway prepared or suitable<br>for reducing the risk of damage to aircraft. See the construction<br>safety and phasing plan (CSPP) for limits of the RSA.   |
| 10-53               | Safety Plan Compliance<br>Document (SPCD) | Details how the Contractor will comply with the CSPP.   |
| 10-54               | Specifications                            | A part of the contract containing the written directions and<br>requirements for completing the contract work. Standards for<br>specifying materials or testing which are cited in the contract<br>specifications by reference shall have the same force and effect<br>as if included in the contract physically.   |
| 10-55               | Sponsor                                   | A Sponsor is defined in 49 USC § 47102(24) as a public agency that submits to the FAA for an AIP grant; or a private Owner of a public-use airport that submits to the FAA an application for an AIP grant for the airport.   |
| 10-56               | Structures                                | Airport facilities such as bridges; culverts; catch basins, inlets,<br>retaining walls, cribbing; storm and sanitary sewer lines; water<br>lines; underdrains; electrical ducts, manholes, handholes, lighting<br>fixtures and bases; transformers; navigational aids; buildings;   |

| Paragraph<br>Number | Term                                  | Definition   |
|---------------------|---------------------------------------|--|
|                     |                                       | vaults; and, other manmade features of the airport that may be<br>encountered in the work and not otherwise classified herein.   |
| 10-57               | Subgrade                              | The soil that forms the pavement foundation.   |
| 10-58               | Substantial Completion                | "Substantial completion" shall be that degree of completion of the project or a defined portion of the project, as evidenced by the Engineer's written notice of Substantial Completion, sufficient to provide the Owner, at his discretion, the full-time use of the project or defined portion of the project for the purposes for which it was intended. "Substantial Completion" of an operating facility shall be that degree of completion that has provided a minimum of 7 continuous days of successful, trouble-free, unrestricted operation, which period shall begin after all performance and acceptance testing has been successfully demonstrated to the Engineer. All equipment contained in the work, plus all other components necessary to enable the Owner to operate the facility in the manner that was intended, shall be complete on the substantial completion date. |
| 10-59               | Superintendent                        | The Contractor's executive representative who is present on the work during progress, authorized to receive and fulfill instructions from the RPR, and who shall supervise and direct the construction.  |
| 10-60               | Supplemental Agreement                | A written agreement between the Contractor and the Owner that<br>establishes the basis of payment and contract time adjustment, if<br>any, for the work affected by the supplemental agreement. A<br>supplemental agreement is required if: (1) in scope work would<br>increase or decrease the total amount of the awarded contract<br>by more than 25%: (2) in scope work would increase or decrease<br>the total of any major contract item by more than 25%; (3) work<br>that is not within the scope of the originally awarded contract; or<br>(4) adding or deleting of a major contract item.   |
| 10-61               | Surety                                | The corporation, partnership, or individual, other than the<br>Contractor, executing payment or performance bonds that are<br>furnished to the Owner by the Contractor.  |
| 10-62               | Taxilane                              | A taxiway designed for low speed movement of aircraft between aircraft parking areas and terminal areas.   |
| 10-63               | Taxiway                               | The portion of the air operations area of an airport that has been designated by competent airport authority for movement of aircraft to and from the airport's runways, aircraft parking areas, and terminal areas.   |
| 10-64               | Taxiway/Taxilane Safety<br>Area (TSA) | A defined surface alongside the taxiway prepared or suitable for<br>reducing the risk of damage to an aircraft. See the construction<br>safety and phasing plan (CSPP) for limits of the TSA.  |
| 10-65               | Work                                  | The furnishing of all labor, materials, tools, equipment, and incidentals necessary or convenient to the Contractor's  |

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| Paragraph<br>Number | Term                       | Definition   |
|---------------------|----------------------------|--|
|                     |                            | performance of all duties and obligations imposed by the contract, plans, and specifications.  |
| 10-66               | Working day                | A working day shall be any day other than a legal holiday,<br>Saturday, or Sunday on which the normal working forces of the<br>Contractor may proceed with regular work for at least six (6)<br>hours toward completion of the contract. When work is<br>suspended for causes beyond the Contractor's control, it will not<br>be counted as a working day. Saturdays, Sundays and holidays on<br>which the Contractor's forces engage in regular work will be<br>considered as working days. |
| 10-67               | <b>Owner Defined terms</b> | None   |

END OF SECTION 10

#### Section 20 Proposal Requirements and Conditions

**20-01 Advertisement (Notice to Bidders).** The Owner shall publish the advertisement at such places and at such times as are required by local law or ordinances. The published advertisement shall state the time and place for submitting sealed proposals; a description of the proposed work; instructions to bidders as to obtaining proposal forms, plans, and specifications; proposal guaranty required; and the Owner's right to reject any and all bids.

**20-02 Qualification of bidders**. Each bidder shall submit evidence of competency and evidence of financial responsibility to perform the work to the Owner at the time of bid opening.

Evidence of competency, unless otherwise specified, shall consist of statements covering the bidder's past experience on similar work, and a list of equipment and a list of key personnel that would be available for the work.

Each bidder shall furnish the Owner satisfactory evidence of their financial responsibility. Evidence of financial responsibility, unless otherwise specified, shall consist of a confidential statement or report of the bidder's financial resources and liabilities as of the last calendar year or the bidder's last fiscal year. Such statements or reports shall be certified by a public accountant. At the time of submitting such financial statements or reports, the bidder shall further certify whether their financial responsibility is approximately the same as stated or reported by the public accountant. If the bidder's financial responsibility has changed, the bidder shall qualify the public accountant's statement or report to reflect the bidder's true financial condition at the time such qualified statement or report is submitted to the Owner.

Unless otherwise specified, a bidder may submit evidence that they are prequalified with the State Highway Division and are on the current "bidder's list" of the state in which the proposed work is located. Evidence of State Highway Division prequalification may be submitted as evidence of financial responsibility in lieu of the certified statements or reports specified above.

**20-03 Contents of proposal forms**. The Owner's proposal forms state the location and description of the proposed construction; the place, date, and time of opening of the proposals; and the estimated quantities of the various items of work to be performed and materials to be furnished for which unit bid prices are asked. The proposal form states the time in which the work must be completed, and the amount of the proposal guaranty that must accompany the proposal. The Owner will accept only those Proposals properly executed on physical forms or electronic forms provided by the Owner. Bidder actions that may cause the Owner to deem a proposal irregular are given in paragraph 20-09 *Irregular proposals*.

See Item C-105 for Mobilization Limit.

A prebid conference will be held on this project to discuss as a minimum, the following items: material requirements; submittals; Quality Control/Quality Assurance requirements; the construction safety and phasing plan including airport access and staging areas; and unique airfield paving construction requirements.

**20-04 Issuance of proposal forms**. The Owner reserves the right to refuse to issue a proposal form to a prospective bidder if the bidder is in default for any of the following reasons:

**a.** Failure to comply with any prequalification regulations of the Owner, if such regulations are cited, or otherwise included, in the proposal as a requirement for bidding.

**b.** Failure to pay, or satisfactorily settle, all bills due for labor and materials on former contracts in force with the Owner at the time the Owner issues the proposal to a prospective bidder.

- **c.** Documented record of Contractor default under previous contracts with the Owner.
- **d.** Documented record of unsatisfactory work on previous contracts with the Owner.

**20-05** Interpretation of estimated proposal quantities. An estimate of quantities of work to be done and materials to be furnished under these specifications is given in the proposal. It is the result of careful calculations and is believed to be correct. It is given only as a basis for comparison of proposals and the award of the contract. The

Owner does not expressly, or by implication, agree that the actual quantities involved will correspond exactly therewith; nor shall the bidder plead misunderstanding or deception because of such estimates of quantities, or of the character, location, or other conditions pertaining to the work. Payment to the Contractor will be made only for the actual quantities of work performed or materials furnished in accordance with the plans and specifications. It is understood that the quantities may be increased or decreased as provided in the Section 40, paragraph 40-02, Alteration of Work and Quantities, without in any way invalidating the unit bid prices.

**20-06 Examination of plans, specifications, and site**. The bidder is expected to carefully examine the site of the proposed work, the proposal, plans, specifications, and contract forms. Bidders shall satisfy themselves to the character, quality, and quantities of work to be performed, materials to be furnished, and to the requirements of the proposed contract. The submission of a proposal shall be prima facie evidence that the bidder has made such examination and is satisfied to the conditions to be encountered in performing the work and the requirements of the proposed contract, plans, and specifications.

Boring logs and other records of subsurface investigations and tests are available for inspection of bidders. It is understood and agreed that such subsurface information, whether included in the plans, specifications, or otherwise made available to the bidder, was obtained and is intended for the Owner's design and estimating purposes only. Such information has been made available for the convenience of all bidders. It is further understood and agreed that each bidder is solely responsible for all assumptions, deductions, or conclusions which the bidder may make or obtain from their own examination of the boring logs and other records of subsurface investigations and tests that are furnished by the Owner.

All information obtained by the Engineer regarding site conditions, subsurface information, groundwater elevations, existing construction of site facilities as applicable, and similar data will be available for inspection at the office of the Engineer upon request. Such information is offered as supplementary information only. Neither the Engineer nor the Owner assumes any responsibility for the completeness or interpretation of such supplementary information.

Topographic maps were used in the design of the project. Bidders may inspect such maps at the office of the Engineer.

**20-07 Preparation of proposal**. The bidder shall submit their proposal on the forms furnished by the Owner. All blank spaces in the proposal forms, unless explicitly stated otherwise, must be correctly filled in where indicated for each and every item for which a quantity is given. The bidder shall state the price (written in ink or typed) both in words and numerals which they propose for each pay item furnished in the proposal. In case of conflict between words and numerals, the words, unless obviously incorrect, shall govern.

The bidder shall correctly sign the proposal in ink. If the proposal is made by an individual, their name and post office address must be shown. If made by a partnership, the name and post office address of each member of the partnership must be shown. If made by a corporation, the person signing the proposal shall give the name of the state where the corporation was chartered and the name, titles, and business address of the president, secretary, and the treasurer. Anyone signing a proposal as an agent shall file evidence of their authority to do so and that the signature is binding upon the firm or corporation.

**20-08 Responsive and responsible bidder.** A responsive bid conforms to all significant terms and conditions contained in the Owner's invitation for bid. It is the Owner's responsibility to decide if the exceptions taken by a bidder to the solicitation are material or not and the extent of deviation it is willing to accept.

A responsible bidder has the ability to perform successfully under the terms and conditions of a proposed procurement, as defined in 2 CFR § 200.318(h). This includes such matters as Contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

**20-09 Irregular proposals**. Proposals shall be considered irregular for the following reasons:

**a.** If the proposal is on a form other than that furnished by the Owner, or if the Owner's form is altered, or if any part of the proposal form is detached.

**b.** If there are unauthorized additions, conditional or alternate pay items, or irregularities of any kind that make the proposal incomplete, indefinite, or otherwise ambiguous.

**c.** If the proposal does not contain a unit price for each pay item listed in the proposal, except in the case of authorized alternate pay items, for which the bidder is not required to furnish a unit price.

- **d.** If the proposal contains unit prices that are obviously unbalanced.
- e. If the proposal is not accompanied by the proposal guaranty specified by the Owner.

f. If the applicable Disadvantaged Business Enterprise information is incomplete.

The Owner reserves the right to reject any irregular proposal and the right to waive technicalities if such waiver is in the best interest of the Owner and conforms to local laws and ordinances pertaining to the letting of construction contracts.

**20-10 Bid guarantee**. Each separate proposal shall be accompanied by a bid bond, certified check, or other specified acceptable collateral, in the amount specified in the proposal form. Such bond, check, or collateral, shall be made payable to the Owner.

**20-11 Delivery of proposal.** Each proposal submitted shall be placed in a sealed envelope plainly marked with the project number, location of airport, and name and business address of the bidder on the outside. When sent by mail, preferably registered, the sealed proposal, marked as indicated above, should be enclosed in an additional envelope. No proposal will be considered unless received at the place specified in the advertisement or as modified by Addendum before the time specified for opening all bids. Proposals received after the bid opening time shall be returned to the bidder unopened.

**20-12 Withdrawal or revision of proposals**. A bidder may withdraw or revise (by withdrawal of one proposal and submission of another) a proposal provided that the bidder's request for withdrawal is received by the Owner in writing before the time specified for opening bids. Revised proposals must be received at the place specified in the advertisement before the time specified for opening all bids.

**20-13 Public opening of proposals**. Proposals shall be opened, and read, publicly at the time and place specified in the advertisement. Bidders, their authorized agents, and other interested persons are invited to attend. Proposals that have been withdrawn (by written or telegraphic request) or received after the time specified for opening bids shall be returned to the bidder unopened.

20-14 Disqualification of bidders. A bidder shall be considered disqualified for any of the following reasons:

**a.** Submitting more than one proposal from the same partnership, firm, or corporation under the same or different name.

**b.** Evidence of collusion among bidders. Bidders participating in such collusion shall be disqualified as bidders for any future work of the Owner until any such participating bidder has been reinstated by the Owner as a qualified bidder.

**c.** If the bidder is considered to be in "default" for any reason specified in paragraph 20-04, *Issuance of Proposal Forms*, of this section.

**20-15 Discrepancies and Omissions.** A Bidder who discovers discrepancies or omissions with the project bid documents shall immediately notify the Owner's Engineer of the matter. A bidder that has doubt as to the true meaning of a project requirement may submit to the Owner's Engineer a written request for interpretation no later than 5 days prior to bid opening.

Any interpretation of the project bid documents by the Owner's Engineer will be by written addendum issued by the Owner. The Owner will not consider any instructions, clarifications or interpretations of the bidding documents in any manner other than written addendum.

END OF SECTION 20

## Section 30 Award and Execution of Contract

**30-01 Consideration of proposals**. After the proposals are publicly opened and read, they will be compared on the basis of the summation of the products obtained by multiplying the estimated quantities shown in the proposal by the unit bid prices. If a bidder's proposal contains a discrepancy between unit bid prices written in words and unit bid prices written in numbers, the unit bid price written in words shall govern.

Until the award of a contract is made, the Owner reserves the right to reject a bidder's proposal for any of the following reasons:

**a.** If the proposal is irregular as specified in Section 20, paragraph 20-09, *Irregular Proposals*.

**b.** If the bidder is disqualified for any of the reasons specified Section 20, paragraph 20-14, *Disqualification of Bidders*.

In addition, until the award of a contract is made, the Owner reserves the right to reject any or all proposals, waive technicalities, if such waiver is in the best interest of the Owner and is in conformance with applicable state and local laws or regulations pertaining to the letting of construction contracts; advertise for new proposals; or proceed with the work otherwise. All such actions shall promote the Owner's best interests.

**30-02 Award of contract**. The award of a contract, if it is to be awarded, shall be made within 120 calendar days of the date specified for publicly opening proposals, unless otherwise specified herein.

If the Owner elects to proceed with an award of contract, the Owner will make award to the responsible bidder whose bid, conforming with all the material terms and conditions of the bid documents, is the lowest in price.

**30-03 Cancellation of award**. The Owner reserves the right to cancel the award without liability to the bidder, except return of proposal guaranty, at any time before a contract has been fully executed by all parties and is approved by the Owner in accordance with paragraph 30-07 *Approval of Contract*.

**30-04 Return of proposal guaranty**. All proposal guaranties, except those of the two lowest bidders, will be returned immediately after the Owner has made a comparison of bids as specified in the paragraph 30-01, *Consideration of Proposals*. Proposal guaranties of the two lowest bidders will be retained by the Owner until such time as an award is made, at which time, the unsuccessful bidder's proposal guaranty will be returned. The successful bidder's proposal guaranty will be returned as soon as the Owner receives the contract bonds as specified in paragraph 30-05, *Requirements of Contract Bonds*.

**30-05 Requirements of contract bonds**. At the time of the execution of the contract, the successful bidder shall furnish the Owner a surety bond or bonds that have been fully executed by the bidder and the surety guaranteeing the performance of the work and the payment of all legal debts that may be incurred by reason of the Contractor's performance of the work. The surety and the form of the bond or bonds shall be acceptable to the Owner. Unless otherwise specified in this subsection, the surety bond or bonds shall be in a sum equal to the full amount of the contract. Contractor shall also provide separate performance and payment bonds in the full amount of the awarded contract. Payment and Performance Bond forms are contained within the contract document.

**30-06 Execution of contract**. The successful bidder shall sign (execute) the necessary agreements for entering into the contract and return the signed contract to the Owner, along with the fully executed surety bond or bonds specified in paragraph 30-05, *Requirements of Contract Bonds*, of this section, within 15 calendar days from the date mailed or otherwise delivered to the successful bidder.

**30-07 Approval of contract**. Upon receipt of the contract and contract bond or bonds that have been executed by the successful bidder, the Owner shall complete the execution of the contract in accordance with local laws or ordinances, and return the fully executed contract to the Contractor. Delivery of the fully executed contract to the Contractor shall constitute the Owner's approval to be bound by the successful bidder's proposal and the terms of the contract.

**30-08 Failure to execute contract**. Failure of the successful bidder to execute the contract and furnish an acceptable surety bond or bonds within the period specified in paragraph 30-06, *Execution of Contract*, of this section shall be just cause for cancellation of the award and forfeiture of the proposal guaranty, not as a penalty, but as liquidated damages to the Owner.

END OF SECTION 30

# Section 40 Scope of Work

**40-01 Intent of contract**. The intent of the contract is to provide for construction and completion, in every detail, of the work described. It is further intended that the Contractor shall furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with the plans, specifications, and terms of the contract.

**40-02 Alteration of work and quantities**. The Owner reserves the right to make such changes in quantities and work as may be necessary or desirable to complete, in a satisfactory manner, the original intended work. Unless otherwise specified in the Contract, the Owner's Engineer or RPR shall be and is hereby authorized to make, in writing, such inscope alterations in the work and variation of quantities as may be necessary to complete the work, provided such action does not represent a significant change in the character of the work.

For purpose of this section, a significant change in character of work means: any change that is outside the current contract scope of work; any change (increase or decrease) in the total contract cost by more than 25%; or any change in the total cost of a major contract item by more than 25%.

Work alterations and quantity variances that do not meet the definition of significant change in character of work shall not invalidate the contract nor release the surety. Contractor agrees to accept payment for such work alterations and quantity variances in accordance with Section 90, paragraph 90-03, *Compensation for Altered Quantities*.

Should the value of altered work or quantity variance meet the criteria for significant change in character of work, such altered work and quantity variance shall be covered by a supplemental agreement. Supplemental agreements shall also require consent of the Contractor's surety and separate performance and payment bonds. If the Owner and the Contractor are unable to agree on a unit adjustment for any contract item that requires a supplemental agreement, the Owner reserves the right to terminate the contract with respect to the item and make other arrangements for its completion.

**40-03 Omitted items**. The Owner, the Owner's Engineer or the RPR may provide written notice to the Contractor to omit from the work any contract item that does not meet the definition of major contract item. Major contract items may be omitted by a supplemental agreement. Such omission of contract items shall not invalidate any other contract provision or requirement.

Should a contract item be omitted or otherwise ordered to be non-performed, the Contractor shall be paid for all work performed toward completion of such item prior to the date of the order to omit such item. Payment for work performed shall be in accordance with Section 90, paragraph 90-04, *Payment for Omitted Items*.

**40-04 Extra work**. Should acceptable completion of the contract require the Contractor to perform an item of work not provided for in the awarded contract as previously modified by change order or supplemental agreement, Owner may issue a Change Order to cover the necessary extra work. Change orders for extra work shall contain agreed unit prices for performing the change order work in accordance with the requirements specified in the order, and shall contain any adjustment to the contract time that, in the RPR's opinion, is necessary for completion of the extra work.

When determined by the RPR to be in the Owner's best interest, the RPR may order the Contractor to proceed with extra work as provided in Section 90, paragraph 90-05, *Payment for Extra Work*. Extra work that is necessary for acceptable completion of the project, but is not within the general scope of the work covered by the original contract shall be covered by a supplemental agreement as defined in Section 10, paragraph 10-59, *Supplemental Agreement*.

If extra work is essential to maintaining the project critical path, RPR may order the Contractor to commence the extra work under a Time and Material contract method. Once sufficient detail is available to establish the level of effort necessary for the extra work, the Owner shall initiate a change order or supplemental agreement to cover the extra work.

Any claim for payment of extra work that is not covered by written agreement (change order or supplemental agreement) shall be rejected by the Owner.

**40-05 Maintenance of traffic.** It is the explicit intention of the contract that the safety of aircraft, as well as the Contractor's equipment and personnel, is the most important consideration. The Contractor shall maintain traffic in the manner detailed in the Construction Safety and Phasing Plan (CSPP).

**a.** It is understood and agreed that the Contractor shall provide for the free and unobstructed movement of aircraft in the air operations areas (AOAs) of the airport with respect to their own operations and the operations of all subcontractors as specified in Section 80, paragraph 80-04, *Limitation of Operations*. It is further understood and agreed that the Contractor shall provide for the uninterrupted operation of visual and electronic signals (including power supplies thereto) used in the guidance of aircraft while operating to, from, and upon the airport as specified in Section 70, paragraph 70-15, *Contractor's Responsibility for Utility Service and Facilities of Others*.

**b.** With respect to their own operations and the operations of all subcontractors, the Contractor shall provide marking, lighting, and other acceptable means of identifying personnel, equipment, vehicles, storage areas, and any work area or condition that may be hazardous to the operation of aircraft, fire-rescue equipment, or maintenance vehicles at the airport in accordance with the construction safety and phasing plan (CSPP) and the safety plan compliance document (SPCD).

**c.** When the contract requires the maintenance of an existing road, street, or highway during the Contractor's performance of work that is otherwise provided for in the contract, plans, and specifications, the Contractor shall keep the road, street, or highway open to all traffic and shall provide maintenance as may be required to accommodate traffic. Streets shall be kept in a clean and serviceable condition at all times. In the event materials are inadvertently deposited on roadways the material shall be promptly removed. The Contractor, at their expense, shall be responsible for the repair to equal or better than preconstruction conditions of any damage caused by the Contractor's equipment and personnel. The Contractor shall furnish, erect, and maintain barricades, warning signs, flag person, and other traffic control devices in reasonable conformity with the Manual on Uniform Traffic Control Devices (MUTCD) (http://mutcd.fhwa.dot.gov/), unless otherwise specified. The Contractor shall also construct and maintain in a safe condition any temporary connections necessary for ingress to and egress from abutting property or intersecting roads, streets or highways. Unless otherwise specified herein, the Contractor will not be required to furnish snow removal for such existing road, street, or highway.

**40-06 Removal of existing structures**. All existing structures encountered within the established lines, grades, or grading sections shall be removed by the Contractor, unless such existing structures are otherwise specified to be relocated, adjusted up or down, salvaged, abandoned in place, reused in the work or to remain in place. The cost of removing such existing structures shall not be measured or paid for directly, but shall be included in the various contract items.

Should the Contractor encounter an existing structure (above or below ground) in the work for which the disposition is not indicated on the plans, the Resident Project Representative (RPR) shall be notified prior to disturbing such structure. The disposition of existing structures so encountered shall be immediately determined by the RPR in accordance with the provisions of the contract.

Except as provided in Section 40, paragraph 40-07, *Rights in and Use of Materials Found in the Work*, it is intended that all existing materials or structures that may be encountered (within the lines, grades, or grading sections established for completion of the work) shall be used in the work as otherwise provided for in the contract and shall remain the property of the Owner when so used in the work.

**40-07 Rights in and use of materials found in the work**. Should the Contractor encounter any material such as (but not restricted to) sand, stone, gravel, slag, or concrete slabs within the established lines, grades, or grading sections, the use of which is intended by the terms of the contract to be embankment, the Contractor may at their own option either:

**a.** Use such material in another contract item, providing such use is approved by the RPR and is in conformance with the contract specifications applicable to such use; or,

- b. Remove such material from the site, upon written approval of the RPR; or
- c. Use such material for the Contractor's own temporary construction on site; or,

**d.** Use such material as intended by the terms of the contract.

Should the Contractor wish to exercise option a., b., or c., the Contractor shall request the RPR's approval in advance of such use.

Should the RPR approve the Contractor's request to exercise option a., b., or c., the Contractor shall be paid for the excavation or removal of such material at the applicable contract price. The Contractor shall replace, at their expense, such removed or excavated material with an agreed equal volume of material that is acceptable for use in constructing embankment, backfills, or otherwise to the extent that such replacement material is needed to complete the contract work. The Contractor shall not be charged for use of such material used in the work or removed from the site.

Should the RPR approve the Contractor's exercise of option a., the Contractor shall be paid, at the applicable contract price, for furnishing and installing such material in accordance with requirements of the contract item in which the material is used.

It is understood and agreed that the Contractor shall make no claim for delays by reason of their own exercise of option a., b., or c.

The Contractor shall not excavate, remove, or otherwise disturb any material, structure, or part of a structure which is located outside the lines, grades, or grading sections established for the work, except where such excavation or removal is provided for in the contract, plans, or specifications.

**40-08 Final cleanup**. Upon completion of the work and before acceptance and final payment will be made, the Contractor shall remove from the site all machinery, equipment, surplus and discarded materials, rubbish, temporary structures, and stumps or portions of trees. The Contractor shall cut all brush and woods within the limits indicated and shall leave the site in a neat and presentable condition. Material cleared from the site and deposited on adjacent property will not be considered as having been disposed of satisfactorily, unless the Contractor has obtained the written permission of the property Owner. Project site and storage areas shall be properly graded to drain and blend in with the abutting property. Any waste area obtained by the Contractor for deposit of waste materials shall be finished to properly drain and blend with the surrounding terrain.

END OF SECTION 40

## Section 50 Control of Work

**50-01** Authority of the Resident Project Representative (RPR). The RPR has final authority regarding the interpretation of project specification requirements. The RPR shall determine acceptability of the quality of materials furnished, method of performance of work performed, and the manner and rate of performance of the work. The RPR does not have the authority to accept work that does not conform to specification requirements.

**50-02 Conformity with plans and specifications**. All work and all materials furnished shall be in reasonably close conformity with the lines, grades, grading sections, cross-sections, dimensions, material requirements, and testing requirements that are specified (including specified tolerances) in the contract, plans, or specifications.

If the RPR finds the materials furnished, work performed, or the finished product not within reasonably close conformity with the plans and specifications, but that the portion of the work affected will, in their opinion, result in a finished product having a level of safety, economy, durability, and workmanship acceptable to the Owner, the RPR will advise the Owner of their determination that the affected work be accepted and remain in place. The RPR will document the determination and recommend to the Owner a basis of acceptance that will provide for an adjustment in the contract price for the affected portion of the work. Changes in the contract price must be covered by contract change order or supplemental agreement as applicable.

If the RPR finds the materials furnished, work performed, or the finished product are not in reasonably close conformity with the plans and specifications and have resulted in an unacceptable finished product, the affected work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor in accordance with the RPR's written orders.

The term "reasonably close conformity" shall not be construed as waiving the Contractor's responsibility to complete the work in accordance with the contract, plans, and specifications. The term shall not be construed as waiving the RPR's responsibility to insist on strict compliance with the requirements of the contract, plans, and specifications during the Contractor's execution of the work, when, in the RPR's opinion, such compliance is essential to provide an acceptable finished portion of the work.

The term "reasonably close conformity" is also intended to provide the RPR with the authority, after consultation with the Sponsor and FAA, to use sound engineering judgment in their determinations to accept work that is not in strict conformity, but will provide a finished product equal to or better than that required by the requirements of the contract, plans and specifications.

The RPR will not be responsible for the Contractor's means, methods, techniques, sequences, or procedures of construction or the safety precautions incident thereto.

**50-03 Coordination of contract, plans, and specifications**. The contract, plans, specifications, and all referenced standards cited are essential parts of the contract requirements. If electronic files are provided and used on the project and there is a conflict between the electronic files and hard copy plans, the hard copy plans shall govern. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of discrepancy, calculated dimensions will govern over scaled dimensions, other document conflicts shall govern in descending order as follows below:

- 1. Addenda (if any)
- 2. Contract
- 3. Proposal
- 4. FAA Special Provisions
- 5. Special Provisions
- 6. Invitation to Bid
- 7. Contract Technical Specifications
- 8. General Construction Items
- 9. General Contract Provisions
- 10. General Requirements

- 11. Drawings (Plans)
- 12. Cited standards for materials or testing
- 13. Cited Advisory Circulars (ACs)

From time to time, discrepancies within cited testing standards occur due to the timing of the change, edits, and/or replacement of the standards. If the Contractor discovers any apparent discrepancy within standard test methods, the Contractor shall immediately ask the RPR for an interpretation and decision, and such decision shall be final.

The Contractor shall not take advantage of any apparent error or omission on the plans or specifications. In the event the Contractor discovers any apparent error or discrepancy, Contractor shall immediately notify the Owner or the designated representative in writing requesting their written interpretation and decision.

#### 50-04 List of Special Provisions.

- FAA Special Provisions
- Special Provisions

**50-05 Cooperation of Contractor**. The Contractor shall be supplied with five hard copies or an electronic PDF of the plans and specifications. The Contractor shall have available on the construction site at all times one hardcopy each of the plans and specifications. Additional hard copies of plans and specifications may be obtained by the Contractor for the cost of reproduction.

The Contractor shall give constant attention to the work to facilitate the progress thereof, and shall cooperate with the RPR and their inspectors and with other Contractors in every way possible. The Contractor shall have a competent superintendent on the work at all times who is fully authorized as their agent on the work. The superintendent shall be capable of reading and thoroughly understanding the plans and specifications and shall receive and fulfill instructions from the RPR or their authorized representative.

**50-06 Cooperation between Contractors.** The Owner reserves the right to contract for and perform other or additional work on or near the work covered by this contract.

When separate contracts are let within the limits of any one project, each Contractor shall conduct the work not to interfere with or hinder the progress of completion of the work being performed by other Contractors. Contractors working on the same project shall cooperate with each other as directed.

Each Contractor involved shall assume all liability, financial or otherwise, in connection with their own contract and shall protect and hold harmless the Owner from any and all damages or claims that may arise because of inconvenience, delays, or loss experienced because of the presence and operations of other Contractors working within the limits of the same project.

The Contractor shall arrange their work and shall place and dispose of the materials being used to not interfere with the operations of the other Contractors within the limits of the same project. The Contractor shall join their work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

**50-07 Construction layout and stakes**. The Engineer/RPR shall establish necessary horizontal and vertical control. The establishment of Survey Control and/or reestablishment of survey control shall be by a State Licensed Land Surveyor provided by the Contractor. Recognized and established construction survey practices and orders of accuracy shall be followed in all cases. Surveying equipment shall be in good operating order and kept in proper adjustment during the course of the work. Contractor is responsible for preserving integrity of horizontal and vertical controls established by Engineer/RPR. In case of negligence on the part of the Contractor or their employees, resulting in the destruction of any horizontal and vertical control, the resulting costs will be deducted as a liquidated damage against the Contractor.

Prior to the start of construction, the Contractor will check all control points for horizontal and vertical accuracy and certify in writing to the RPR that the Contractor concurs with survey control established for the project. All lines, grades and measurements from control points necessary for the proper execution and control of the work on this project will be provided to the RPR. The Contractor is responsible to establish all layout required for the construction of the project from survey control as shown on the drawings. The Contractor shall furnish all stakes, templates,

platform and equipment, and labor as are required to lay out and control every part of the work from the reference monuments. The Engineer may perform such checks as deemed necessary to verify the accuracy of the Contractor's layout work and ensure that the completed work complies with the Drawings and Specifications. The control staking provided by the Contractor shall be preserved and left undisturbed until the Engineer has completed any check they deem necessary.

If unforeseen difficulties, not due to the Contractor's operations, necessitate minor redesign of some portion of the work, the survey effort necessary to gather additional information for the redesign will be provided by the Engineer.

Copies of survey notes will be provided to the RPR for each area of construction and for each placement of material as specified to allow the RPR to make periodic checks for conformance with plan grades, alignments and grade tolerances required by the applicable material specifications. Surveys will be provided to the RPR prior to commencing work items that cover or disturb the survey staking. Survey(s) and notes shall be provided in the following format(s): electronic pdf, electronic survey data file, and hard copies.

Laser, GPS, String line, or other automatic control shall be checked with temporary control as necessary. In the case of error, on the part of the Contractor, their surveyor, employees or subcontractors, resulting in established grades, alignment or grade tolerances that do not concur with those specified or shown on the plans, the Contractor is solely responsible for correction, removal, replacement and all associated costs at no additional cost to the Owner.

No direct payment will be made, unless otherwise specified in contract documents, for this labor, materials, or other expenses. The cost shall be included in the price of the bid for the various items of the Contract.

**50-08** Authority and duties of Quality Assurance (QA) inspectors. QA inspectors shall be authorized to inspect all work done and all material furnished. Such QA inspection may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the materials to be used. QA inspectors are not authorized to revoke, alter, or waive any provision of the contract. QA inspectors are not authorized to issue instructions contrary to the plans and specifications or to act as foreman for the Contractor.

QA Inspectors are authorized to notify the Contractor or their representatives of any failure of the work or materials to conform to the requirements of the contract, plans, or specifications and to reject such nonconforming materials in question until such issues can be referred to the RPR for a decision.

**50-09 Inspection of the work**. All materials and each part or detail of the work shall be subject to inspection. The RPR shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.

If the RPR requests it, the Contractor, at any time before acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the specifications. Should the work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as extra work; but should the work so exposed or examined prove unacceptable, the uncovering, or removing, and the replacing of the parts removed will be at the Contractor's expense.

Provide advance written notice to the RPR of work the Contractor plans to perform each week and each day. Any work done or materials used without written notice and allowing opportunity for inspection by the RPR may be ordered removed and replaced at the Contractor's expense.

Should the contract work include relocation, adjustment, or any other modification to existing facilities, not the property of the (contract) Owner, authorized representatives of the Owners of such facilities shall have the right to inspect such work. Such inspection shall in no sense make any facility owner a party to the contract, and shall in no way interfere with the rights of the parties to this contract.

**50-10 Removal of unacceptable and unauthorized work**. All work that does not conform to the requirements of the contract, plans, and specifications will be considered unacceptable, unless otherwise determined acceptable by the RPR as provided in paragraph 50-02, *Conformity with Plans and Specifications*.

Unacceptable work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or any other cause found to exist prior to the final acceptance of the work, shall be removed immediately and replaced in an acceptable manner in accordance with the provisions of Section 70, paragraph 70-14, *Contractor's Responsibility for Work*.

No removal work made under provision of this paragraph shall be done without lines and grades having been established by the RPR. Work done contrary to the instructions of the RPR, work done beyond the lines shown on the plans or as established by the RPR, except as herein specified, or any extra work done without authority, will be considered as unauthorized and will not be paid for under the provisions of the contract. Work so done may be ordered removed or replaced at the Contractor's expense.

Upon failure on the part of the Contractor to comply with any order of the RPR made under the provisions of this subsection, the RPR will have authority to cause unacceptable work to be remedied or removed and replaced; and unauthorized work to be removed and recover the resulting costs as a liquidated damage against the Contractor.

**50-11 Load restrictions**. The Contractor shall comply with all legal load restrictions in the hauling of materials on public roads beyond the limits of the work. A special permit will not relieve the Contractor of liability for damage that may result from the moving of material or equipment.

The operation of equipment of such weight or so loaded as to cause damage to structures or to any other type of construction will not be permitted. Hauling of materials over the base course or surface course under construction shall be limited as directed. No loads will be permitted on a concrete pavement, base, or structure before the expiration of the curing period. The Contractor, at their own expense, shall be responsible for the repair to equal or better than preconstruction conditions of any damage caused by the Contractor's equipment and personnel.

**50-12 Maintenance during construction**. The Contractor shall maintain the work during construction and until the work is accepted. Maintenance shall constitute continuous and effective work prosecuted day by day, with adequate equipment and forces so that the work is maintained in satisfactory condition at all times.

In the case of a contract for the placing of a course upon a course or subgrade previously constructed, the Contractor shall maintain the previous course or subgrade during all construction operations.

All costs of maintenance work during construction and before the project is accepted shall be included in the unit prices bid on the various contract items, and the Contractor will not be paid an additional amount for such work.

The Contractor shall at all times during the work keep the premises clean and orderly. He shall promptly remove all waste materials and rubbish. All directions from authorized public officials having jurisdiction over health and safety shall be obeyed. Areas to be opened up to aircraft operations shall be swept thoroughly clean with power broom equipment. Any debris resisting sweeping shall be removed by hand labor or other suitable means.

Upon completion of the work, all materials, equipment, and appurtenances not required as a part of, or appurtenant to, the completed structure or facility shall be completely removed from the Owner's property. All slop-over from paving operations and scatterings of unused materials shall be removed.

**50-13 Failure to maintain the work**. Should the Contractor at any time fail to maintain the work as provided in paragraph 50-12, *Maintenance during Construction*, the RPR shall immediately notify the Contractor of such noncompliance. Such notification shall specify a reasonable time within which the Contractor shall be required to remedy such unsatisfactory maintenance condition. The time specified will give due consideration to the exigency that exists.

Should the Contractor fail to respond to the RPR's notification, the Owner may suspend any work necessary for the Owner to correct such unsatisfactory maintenance condition, depending on the exigency that exists. Any maintenance cost incurred by the Owner, shall be recovered as a liquidated damage against the Contractor.

**50-14 Partial acceptance**. If at any time during the execution of the project the Contractor substantially completes a usable unit or portion of the work, the occupancy of which will benefit the Owner, the Contractor may request the RPR to make final inspection of that unit. If the RPR finds upon inspection that the unit has been satisfactorily completed in compliance with the contract, the RPR may accept it as being complete, and the Contractor may be

relieved of further responsibility for that unit. Such partial acceptance and beneficial occupancy by the Owner shall not void or alter any provision of the contract.

**50-15 Final acceptance.** Upon due notice from the Contractor of presumptive completion of the entire project, the RPR and Owner will make an inspection. If all construction provided for and contemplated by the contract is found to be complete in accordance with the contract, plans, and specifications, such inspection shall constitute the final inspection. The RPR shall notify the Contractor in writing of final acceptance as of the date of the final inspection.

If, however, the inspection discloses any work, in whole or in part, as being unsatisfactory, the RPR will notify the Contractor and the Contractor shall correct the unsatisfactory work. Upon correction of the work, another inspection will be made which shall constitute the final inspection, provided the work has been satisfactorily completed. In such event, the RPR will make the final acceptance and notify the Contractor in writing of this acceptance as of the date of final inspection.

**50-16 Claims for adjustment and disputes.** If for any reason the Contractor deems that additional compensation is due for work or materials not clearly provided for in the contract, plans, or specifications or previously authorized as extra work, the Contractor shall notify the RPR in writing of their intention to claim such additional compensation before the Contractor begins the work on which the Contractor bases the claim. If such notification is not given or the RPR is not afforded proper opportunity by the Contractor for keeping strict account of actual cost as required, then the Contractor hereby agrees to waive any claim for such additional compensation. Such notice by the Contractor and the fact that the RPR has kept account of the cost of the work shall not in any way be construed as proving or substantiating the validity of the claim. When the work on which the claim for additional compensation is based has been completed, the Contractor shall, within 10 calendar days, submit a written claim to the RPR who will present it to the Owner for consideration in accordance with local laws or ordinances.

Nothing in this subsection shall be construed as a waiver of the Contractor's right to dispute final payment based on differences in measurements or computations.

END OF SECTION 50

#### Section 60 Control of Materials

**60-01 Source of supply and quality requirements.** The materials used in the work shall conform to the requirements of the contract, plans, and specifications. Unless otherwise specified, such materials that are manufactured or processed shall be new (as compared to used or reprocessed).

In order to expedite the inspection and testing of materials, the Contractor shall furnish documentation to the RPR as to the origin, composition, and manufacture of all materials to be used in the work. Documentation shall be furnished promptly after execution of the contract but, in all cases, prior to delivery of such materials.

At the RPR's option, materials may be approved at the source of supply before delivery. If it is found after trial that sources of supply for previously approved materials do not produce specified products, the Contractor shall furnish materials from other sources.

The Contractor shall furnish airport lighting equipment that meets the requirements of the specifications; and is listed in AC 150/5345-53, *Airport Lighting Equipment Certification Program* and *Addendum*, that is in effect on the date of advertisement.

**60-02 Samples, tests, and cited specifications**. All materials used in the work shall be inspected, tested, and approved by the RPR before incorporation in the work unless otherwise designated. Any work in which untested materials are used without approval or written permission of the RPR shall be performed at the Contractor's risk. Materials found to be unacceptable and unauthorized will not be paid for and, if directed by the RPR, shall be removed at the Contractor's expense.

Unless otherwise designated, quality assurance tests will be made by and at the expense of the Owner in accordance with the cited standard methods of ASTM, American Association of State Highway and Transportation Officials (AASHTO), federal specifications, Commercial Item Descriptions, and all other cited methods, which are current on the date of advertisement for bids.

The term quality assurance shall be used interchangeably and shall have the same meaning as quality acceptance for the purposes of this section.

The testing organizations performing on-site quality assurance field tests shall have copies of all referenced standards on the construction site for use by all technicians and other personnel. Unless otherwise designated, samples for quality assurance will be taken by a qualified representative of the RPR. All materials being used are subject to inspection, test, or rejection at any time prior to or during incorporation into the work. Copies of all tests will be furnished to the Contractor's representative at their request after review and approval of the RPR.

A copy of all Contractor QC test data shall be provided to the RPR daily, along with printed reports, in an approved format, on a weekly basis. After completion of the project, and prior to final payment, the Contractor shall submit a final report to the RPR showing all test data reports, plus an analysis of all results showing ranges, averages, and corrective action taken on all failing tests. The Contractor shall provide copies of all test data sheets electronically in a pdf format within the time periods indicated above, to include in the final report summary.

Wherever in these Contract Documents reference is made to the "Standard Specifications," said reference shall be understood as referring to the latest edition, plus Addendums thereto, of the Oregon Standard Specifications for Construction by the Oregon State Department of Transportation.

**60-03 Certification of compliance/analysis (COC/COA)**. The RPR may permit the use, prior to sampling and testing, of certain materials or assemblies when accompanied by manufacturer's COC stating that such materials or assemblies fully comply with the requirements of the contract. The certificate shall be signed by the manufacturer. Each lot of such materials or assemblies delivered to the work must be accompanied by a certificate of compliance in which the lot is clearly identified. The COA is the manufacturer's COC and includes all applicable test results.

Materials or assemblies used on the basis of certificates of compliance may be sampled and tested at any time and if found not to be in conformity with contract requirements will be subject to rejection whether in place or not.

The form and distribution of certificates of compliance shall be as approved by the RPR.

When a material or assembly is specified by "brand name or equal" and the Contractor elects to furnish the specified "or equal," the Contractor shall be required to furnish the manufacturer's certificate of compliance for each lot of such material or assembly delivered to the work. Such certificate of compliance shall clearly identify each lot delivered and shall certify as to:

- a. Conformance to the specified performance, testing, quality or dimensional requirements; and,
- **b.** Suitability of the material or assembly for the use intended in the contract work.

The RPR shall be the sole judge as to whether the proposed "or equal" is suitable for use in the work.

The RPR reserves the right to refuse permission for use of materials or assemblies on the basis of certificates of compliance.

**60-04 Plant inspection**. The RPR or their authorized representative may inspect, at its source, any specified material or assembly to be used in the work. Manufacturing plants may be inspected from time to time for the purpose of determining compliance with specified manufacturing methods or materials to be used in the work and to obtain samples required for acceptance of the material or assembly.

Should the RPR conduct plant inspections, the following conditions shall exist:

**a.** The RPR shall have the cooperation and assistance of the Contractor and the producer with whom the Contractor has contracted for materials.

**b.** The RPR shall have full entry at all reasonable times to such parts of the plant that concern the manufacture or production of the materials being furnished.

**c.** If required by the RPR, the Contractor shall arrange for adequate office or working space that may be reasonably needed for conducting plant inspections. Place office or working space in a convenient location with respect to the plant.

It is understood and agreed that the Owner shall have the right to retest any material that has been tested and approved at the source of supply after it has been delivered to the site. The RPR shall have the right to reject only material which, when retested, does not meet the requirements of the contract, plans, or specifications.

60-05 Engineer/ Resident Project Representative (RPR) field office. An Engineer/RPR field office is not required.

**60-06 Storage of materials**. Materials shall be stored to assure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. When considered necessary, they shall be placed on wooden platforms or other hard, clean surfaces, and not on the ground, and/or they shall be placed under cover. Stored materials shall be located to facilitate their prompt inspection. The Contractor shall coordinate the storage of all materials with the RPR. Materials to be stored on airport property shall not create an obstruction to air navigation nor shall they interfere with the free and unobstructed movement of aircraft. Unless otherwise shown on the plans and/or CSPP, the storage of materials and the location of the Contractor's plant and parked equipment or vehicles shall be as directed by the RPR. Private property shall not be used for storage purposes without written permission of the Owner or lessee of such property. The Contractor shall make all arrangements and bear all expenses for the storage of materials on private property. Upon request, the Contractor shall furnish the RPR a copy of the property Owner's permission.

All storage sites on private or airport property shall be restored to their original condition by the Contractor at their expense, except as otherwise agreed to (in writing) by the Owner or lessee of the property.

**60-07 Unacceptable materials**. Any material or assembly that does not conform to the requirements of the contract, plans, or specifications shall be considered unacceptable and shall be rejected. The Contractor shall remove any rejected material or assembly from the site of the work, unless otherwise instructed by the RPR.

Rejected material or assembly, the defects of which have been corrected by the Contractor, shall not be returned to the site of the work until such time as the RPR has approved its use in the work.

**60-08 Owner furnished materials**. The Contractor shall furnish all materials required to complete the work, except those specified, if any, to be furnished by the Owner. Owner-furnished materials shall be made available to the Contractor at the location specified.

All costs of handling, transportation from the specified location to the site of work, storage, and installing Ownerfurnished materials shall be included in the unit price bid for the contract item in which such Owner-furnished material is used.

After any Owner-furnished material has been delivered to the location specified, the Contractor shall be responsible for any demurrage, damage, loss, or other deficiencies that may occur during the Contractor's handling, storage, or use of such Owner-furnished material. The Owner will deduct from any monies due or to become due the Contractor any cost incurred by the Owner in making good such loss due to the Contractor's handling, storage, or use of Owner-furnished materials.

END OF SECTION 60

#### Section 70 Legal Regulations and Responsibility to Public

**70-01 Laws to be observed**. The Contractor shall keep fully informed of all federal and state laws, all local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the work, or which in any way affect the conduct of the work. The Contractor shall at all times observe and comply with all such laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the Owner and all their officers, agents, or servants against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor or the Contractor's employees.

**70-02 Permits, licenses, and taxes**. The Contractor shall procure all permits and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful execution of the work.

**70-03 Patented devices, materials, and processes.** If the Contractor is required or desires to use any design, device, material, or process covered by letters of patent or copyright, the Contractor shall provide for such use by suitable legal agreement with the Patentee or Owner. The Contractor and the surety shall indemnify and hold harmless the Owner, any third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the Owner for any costs, expenses, and damages which it may be obliged to pay by reason of an infringement, at any time during the execution or after the completion of the work.

**70-04 Restoration of surfaces disturbed by others**. The Owner reserves the right to authorize the construction, reconstruction, or maintenance of any public or private utility service, FAA or National Oceanic and Atmospheric Administration (NOAA) facility, or a utility service of another government agency at any time during the progress of the work. To the extent that such construction, reconstruction, or maintenance has been coordinated with the Owner, such authorized work (by others) must be shown on the plans and is indicated as follows: See project Construction Safety and Phasing Plan.

Except as listed above, the Contractor shall not permit any individual, firm, or corporation to excavate or otherwise disturb such utility services or facilities located within the limits of the work without the written permission of the RPR.

Should the Owner of public or private utility service, FAA, or NOAA facility, or a utility service of another government agency be authorized to construct, reconstruct, or maintain such utility service or facility during the progress of the work, the Contractor shall cooperate with such Owners by arranging and performing the work in this contract to facilitate such construction, reconstruction or maintenance by others whether or not such work by others is listed above. When ordered as extra work by the RPR, the Contractor shall make all necessary repairs to the work which are due to such authorized work by others, unless otherwise provided for in the contract, plans, or specifications. It is understood and agreed that the Contractor shall not be entitled to make any claim for damages due to such authorized work by others or for any delay to the work resulting from such authorized work.

**70-05 Federal Participation**. The United States Government has agreed to reimburse the Owner for some portion of the contract costs. The contract work is subject to the inspection and approval of duly authorized representatives of the FAA Administrator. No requirement of this contract shall be construed as making the United States a party to the contract nor will any such requirement interfere, in any way, with the rights of either party to the contract.

**70-06 Sanitary, health, and safety provisions**. The Contractor's worksite and facilities shall comply with applicable federal, state, and local requirements for health, safety and sanitary provisions. At a minimum the Contractor shall furnish and maintain sanitary facilities for his employees and his subcontractor's employees.

**70-07 Public convenience and safety**. The Contractor shall control their operations and those of their subcontractors and all suppliers, to assure the least inconvenience to the traveling public. Under all circumstances, safety shall be the most important consideration.

The Contractor shall maintain the free and unobstructed movement of aircraft and vehicular traffic with respect to their own operations and those of their own subcontractors and all suppliers in accordance with Section 40, paragraph 40-05, *Maintenance of Traffic*, and shall limit such operations for the convenience and safety of the traveling public as specified in Section 80, paragraph 80-04, *Limitation of Operations*.

The Contractor shall remove or control debris and rubbish resulting from its work operations at frequent intervals, and upon the order of the RPR. If the RPR determines the existence of Contractor debris in the work site represents a hazard to airport operations and the Contractor is unable to respond in a prompt and reasonable manner, the RPR reserves the right to assign the task of debris removal to a third party and recover the resulting costs as a liquidated damage against the Contractor.

**70-08 Construction Safety and Phasing Plan (CSPP).** The Contractor shall complete the work in accordance with the approved Construction Safety and Phasing Plan (CSPP) developed in accordance with AC 150/5370-2, Operational Safety on Airports During Construction. The CSPP is located in the general construction items, Section E-025.

**70-09 Use of explosives**. The use of explosives is not permitted on this project.

**70-10 Protection and restoration of property and landscape**. The Contractor shall be responsible for the preservation of all public and private property, and shall protect carefully from disturbance or damage all land monuments and property markers until the Engineer/RPR has witnessed or otherwise referenced their location and shall not move them until directed.

The Contractor shall be responsible for all damage or injury to property of any character, during the execution of the work, resulting from any act, omission, neglect, or misconduct in manner or method of executing the work, or at any time due to defective work or materials, and said responsibility shall not be released until the project has been completed and accepted.

When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work, or in consequence of the non-execution thereof by the Contractor, the Contractor shall restore, at their expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, or otherwise restoring as may be directed, or the Contractor shall make good such damage or injury in an acceptable manner.

**70-11 Responsibility for damage claims**. The Contractor shall indemnify and hold harmless the Engineer/RPR and the Owner and their officers, agents, and employees from all suits, actions, or claims, of any character, brought because of any injuries or damage received or sustained by any person, persons, or property on account of the operations of the Contractor; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, neglect, or misconduct of said Contractor; or because of any claims or amounts recovered from any infringements of patent, trademark, or copyright; or from any claims or amounts arising or recovered under the "Workmen's Compensation Act," or any other law, ordinance, order, or decree. Money due the Contractor under and by virtue of their own contract considered necessary by the Owner for such purpose may be retained for the use of the Owner or, in case no money is due, their own surety may be held until such suits, actions, or claims for injuries or damages shall have been settled and suitable evidence to that effect furnished to the Owner, except that money due the Contractor will not be withheld when the Contractor produces satisfactory evidence that he or she is adequately protected by public liability and property damage insurance.

**70-12 Third party beneficiary clause**. It is specifically agreed between the parties executing the contract that it is not intended by any of the provisions of any part of the contract to create for the public or any member thereof, a third-party beneficiary or to authorize anyone not a party to the contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the contract.

**70-13 Opening sections of the work to traffic.** If it is necessary for the Contractor to complete portions of the contract work for the beneficial occupancy of the Owner prior to completion of the entire contract, such "phasing" of the work must be specified below and indicated on the approved Construction Safety and Phasing Plan (CSPP)

and the project plans. When so specified, the Contractor shall complete such portions of the work on or before the date specified or as otherwise specified.

As shown on the drawings and described in the Construction Safety and Phasing.

Upon completion of any portion of work listed above, such portion shall be accepted by the Owner in accordance with Section 50, paragraph 50-14, *Partial Acceptance*.

No portion of the work may be opened by the Contractor until directed by the Owner in writing. Should it become necessary to open a portion of the work to traffic on a temporary or intermittent basis, such openings shall be made when, in the opinion of the RPR, such portion of the work is in an acceptable condition to support the intended traffic. Temporary or intermittent openings are considered to be inherent in the work and shall not constitute either acceptance of the portion of the work so opened or a waiver of any provision of the contract. Any damage to the portion of the work so opened that is not attributable to traffic which is permitted by the Owner shall be repaired by the Contractor at their expense.

The Contractor shall make their own estimate of the inherent difficulties involved in completing the work under the conditions herein described and shall not claim any added compensation by reason of delay or increased cost due to opening a portion of the contract work.

The Contractor must conform to safety standards contained AC 150/5370-2 and the approved CSPP.

Contractor shall refer to the plans, specifications, and the approved CSPP to identify barricade requirements, temporary and/or permanent markings, airfield lighting, guidance signs and other safety requirements prior to opening up sections of work to traffic.

**70-14 Contractor's responsibility for work**. Until the RPR's final written acceptance of the entire completed work, excepting only those portions of the work accepted in accordance with Section 50, paragraph 50-14, *Partial Acceptance*, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part due to the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before final acceptance and shall bear the expense thereof except damage to the work due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to acts of God such as earthquake, tidal wave, tornado, hurricane or other cataclysmic phenomenon of nature, or acts of the public enemy or of government authorities.

If the work is suspended for any cause whatever, the Contractor shall be responsible for the work and shall take such precautions necessary to prevent damage to the work. The Contractor shall provide for normal drainage and shall erect necessary temporary structures, signs, or other facilities at their own expense. During such period of suspension of work, the Contractor shall properly and continuously maintain in an acceptable growing condition all living material in newly established planting, seeding, and sodding furnished under the contract, and shall take adequate precautions to protect new tree growth and other important vegetative growth against injury.

**70-15** Contractor's responsibility for utility service and facilities of others. As provided in paragraph 70-04, *Restoration of Surfaces Disturbed by Others*, the Contractor shall cooperate with the owner of any public or private utility service, FAA or NOAA, or a utility service of another government agency that may be authorized by the Owner to construct, reconstruct or maintain such utility services or facilities during the progress of the work. In addition, the Contractor shall control their operations to prevent the unscheduled interruption of such utility services and facilities.

To the extent that such public or private utility services, FAA, or NOAA facilities, or utility services of another governmental agency are known to exist within the limits of the contract work, the approximate locations have been indicated on the plans and/or in the contract documents.

See the Project Construction Safety and Phasing Plan for additional requirements.

It is understood and agreed that the Owner does not guarantee the accuracy or the completeness of the location information relating to existing utility services, facilities, or structures that may be shown on the plans or encountered in the work. Any inaccuracy or omission in such information shall not relieve the Contractor of the responsibility to protect such existing features from damage or unscheduled interruption of service.

It is further understood and agreed that the Contractor shall, upon execution of the contract, notify the Owners of all utility services or other facilities of their plan of operations. Such notification shall be in writing addressed to "The Person to Contact" as provided in this paragraph and paragraph 70-04, *Restoration of Surfaces Disturbed By Others*. A copy of each notification shall be given to the RPR.

In addition to the general written notification provided, it shall be the responsibility of the Contractor to keep such individual Owners advised of changes in their plan of operations that would affect such Owners.

Prior to beginning the work in the general vicinity of an existing utility service or facility, the Contractor shall again notify each such Owner of their plan of operation. If, in the Contractor's opinion, the Owner's assistance is needed to locate the utility service or facility or the presence of a representative of the Owner is desirable to observe the work, such advice should be included in the notification. Such notification shall be given by the most expeditious means to reach the utility owner's "Person to Contact" no later than two normal business days prior to the Contractor's commencement of operations in such general vicinity. The Contractor shall furnish a written summary of the notification to the RPR.

The Contractor's failure to give the two days' notice shall be cause for the Owner to suspend the Contractor's operations in the general vicinity of a utility service or facility.

Where the outside limits of an underground utility service have been located and staked on the ground, the Contractor shall be required to use hand excavation methods within 3 feet (1 m) of such outside limits at such points as may be required to ensure protection from damage due to the Contractor's operations.

The continuity of all existing electrical circuits shall be maintained during the course of the work. Any necessary interruption of circuits shall be scheduled through the Engineer and shall not proceed until approval has been given. The Contractor shall perform an operational check of each airport system each day a system is worked on or excavation operations occur.

Should the Contractor damage or interrupt the operation of a utility service or facility by accident or otherwise, the Contractor shall immediately notify the proper authority and the RPR and shall take all reasonable measures to prevent further damage or interruption of service. The Contractor, in such events, shall cooperate with the utility service or facility owner and the RPR continuously until such damage has been repaired and service restored to the satisfaction of the utility or facility owner.

In the event of interruption to domestic water, sewer, storm drain, or to other utility services as a result of accidental breakage, or as a result of being exposed or unsupported, promptly notify the proper authority. Cooperate with said authority in restoration of service as promptly as possible and bear all costs of repair. In no case shall interruption of any water or utility service be allowed to exist outside working hours unless prior approval is received.

Neither the Owner nor its officers or agents shall be responsible to the Contractor for damages as a result of the location of the underground utilities being other than that shown on the Drawings or for the existence of underground utilities not shown on the Drawings.

The Contractor shall bear all costs of damage and restoration of service to any utility service or facility due to their operations whether due to negligence or accident. The Owner reserves the right to deduct such costs from any monies due or which may become due the Contractor, or their own surety.

**70-16 Furnishing rights-of-way**. The Owner will be responsible for furnishing all rights-of-way upon which the work is to be constructed in advance of the Contractor's operations.

**70-17 Personal liability of public officials**. In carrying out any of the contract provisions or in exercising any power or authority granted by this contract, there shall be no liability upon the Engineer, RPR, their authorized

representatives, or any officials of the Owner either personally or as an official of the Owner. It is understood that in such matters they act solely as agents and representatives of the Owner.

**70-18 No waiver of legal rights.** Upon completion of the work, the Owner will expeditiously make final inspection and notify the Contractor of final acceptance. Such final acceptance, however, shall not preclude or stop the Owner from correcting any measurement, estimate, or certificate made before or after completion of the work, nor shall the Owner be precluded or stopped from recovering from the Contractor or their surety, or both, such overpayment as may be sustained, or by failure on the part of the Contractor to fulfill their obligations under the contract. A waiver on the part of the Owner of any breach of any part of the contract shall not be held to be a waiver of any other or subsequent breach.

The Contractor, without prejudice to the terms of the contract, shall be liable to the Owner for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Owner's rights under any warranty or guaranty.

**70-19 Environmental protection**. The Contractor shall comply with all federal, state, and local laws and regulations controlling pollution of the environment. The Contractor shall take necessary precautions to prevent pollution of streams, lakes, ponds, and reservoirs with fuels, oils, asphalts, chemicals, or other harmful materials and to prevent pollution of the atmosphere from particulate and gaseous matter.

**70-20 Archaeological and historical findings**. Unless otherwise specified in this subsection, the Contractor is advised that the site of the work is not within any known property, district, or site, and does not contain any building, structure, or object listed in the current National Register of Historic Places published by the United States Department of Interior.

Should the Contractor encounter, during their operations, any building, part of a building, structure, or object that is incongruous with its surroundings, the Contractor shall immediately cease operations in that location and notify the RPR. The RPR will immediately investigate the Contractor's finding and the Owner will direct the Contractor to either resume operations or to suspend operations as directed.

Should the Owner order suspension of the Contractor's operations in order to protect an archaeological or historical finding, or order the Contractor to perform extra work, such shall be covered by an appropriate contract change order or supplemental agreement as provided in Section 40, paragraph 40-04, *Extra Work*, and Section 90, paragraph 90-05, *Payment for Extra Work*. If appropriate, the contract change order or supplemental agreement shall include an extension of contract time in accordance with Section 80, paragraph 80-07, *Determination and Extension of Contract Time*.

70-21 Insurance Requirements. See project special provisions.

END OF SECTION 70

#### Section 80 Execution and Progress

**80-01 Subletting of contract**. The Owner will not recognize any subcontractor on the work. The Contractor shall at all times when work is in progress be represented either in person, by a qualified superintendent, or by other designated, qualified representative who is duly authorized to receive and execute orders of the Resident Project Representative (RPR).

The Contractor shall perform, with his organization, an amount of work equal to at least 25 percent of the total contract cost.

Should the Contractor elect to assign their contract, said assignment shall be concurred in by the surety, shall be presented for the consideration and approval of the Owner, and shall be consummated only on the written approval of the Owner.

# The Contractor shall provide copies of all subcontracts to the RPR 14 days prior to being utilized on the project. As a minimum, the information shall include the following:

- Subcontractor's legal company name.
- Subcontractor's legal company address, including County name.
- Principal contact person's name, telephone and fax number.
- Complete narrative description, and dollar value of the work to be performed by the subcontractor.
- Copies of required insurance certificates in accordance with the specifications.
- Minority/ non-minority status.

**80-02** Notice to proceed (NTP). The Owners notice to proceed will state the date on which contract time commences. The Contractor is expected to commence project operations within 10 days of the NTP date. The Contractor shall notify the RPR at least 24 hours in advance of the time contract operations begins. The Contractor shall not commence any actual operations prior to the date on which the notice to proceed is issued by the Owner.

**80-03 Execution and progress**. Unless otherwise specified, the Contractor shall submit their coordinated construction schedule showing all work activities for the RPR's review and acceptance at least 10 days prior to the start of work. The Contractor's progress schedule, once accepted by the RPR, will represent the Contractor's baseline plan to accomplish the project in accordance with the terms and conditions of the Contract. The RPR will compare actual Contractor progress against the baseline schedule to determine that status of the Contractor's performance. The Contractor shall provide sufficient materials, equipment, and labor to guarantee the completion of the project in accordance within the time set forth in the proposal.

At the end of each month, the Contractor shall submit a summary report of the progress of the various schedule work items stating, for each item, the existing time status, estimated time of completion, and cause of delays, if any. If the work is behind the previously submitted schedule, the Contractor shall submit an updated bar graph schedule and a written plan acceptable to the RPR for bringing the work up to schedule.

- **a.** Updated schedules will be used by the RPR in compiling partial payments and no such computations will be made until the reports have been received and reviewed by the RPR.
- **b.** The RPR may request reports to be made on a more frequent schedule if he considers the substantial completion date to be in jeopardy because of activities behind schedule or for other valid reasons.

If the Contractor falls significantly behind the submitted schedule, the Contractor shall, upon the RPR's request, submit a revised schedule for completion of the work within the contract time and modify their operations to provide such additional materials, equipment, and labor necessary to meet the revised schedule. Should the execution of the work be discontinued for any reason, the Contractor shall notify the RPR at least 24 hours in advance of resuming operations.

The Contractor shall not commence any actual construction prior to the date on which the NTP is issued by the Owner.

The project schedule shall be prepared as a network diagram in Critical Path Method (CPM), Program Evaluation and Review Technique (PERT), or other format, or as otherwise specified. It shall include information on the sequence of work activities, milestone dates, and activity duration. The schedule shall show all work items identified in the project proposal for each work area and shall include the project start date and end date.

The Contractor shall maintain the work schedule and provide an update and analysis of the progress schedule on a twice monthly basis, or as otherwise specified in the contract. Submission of the work schedule shall not relieve the Contractor of overall responsibility for scheduling, sequencing, and coordinating all work to comply with the requirements of the contract.

**80-04** Limitation of operations. The Contractor shall control their operations and the operations of their subcontractors and all suppliers to provide for the free and unobstructed movement of aircraft in the air operations areas (AOA) of the airport.

When the work requires the Contractor to conduct their operations within an AOA of the airport, the work shall be coordinated with airport operations (through the RPR) at least 48 hours prior to commencement of such work. The Contractor shall not close an AOA until so authorized by the RPR and until the necessary temporary marking, signage and associated lighting is in place as provided in Section 70, paragraph 70-08, *Construction Safety and Phasing Plan (CSPP)*.

When the contract work requires the Contractor to work within an AOA of the airport on an intermittent basis (intermittent opening and closing of the AOA), the Contractor shall maintain constant communications as specified; immediately obey all instructions to vacate the AOA; and immediately obey all instructions to resume work in such AOA. Failure to maintain the specified communications or to obey instructions shall be cause for suspension of the Contractor's operations in the AOA until satisfactory conditions are provided. The areas of the AOA identified in the Construction Safety Phasing Plan (CSPP) and as listed below, cannot be closed to operating aircraft to permit the Contractor's operations on a continuous basis and will therefore be closed to aircraft operations intermittently as follows:

As specified in the Construction Safety and Phasing Plan

The Contractor shall be required to conform to safety standards contained in AC 150/5370-2, Operational Safety on Airports During Construction and the approved CSPP.

**80-04.1 Operational safety on airport during construction.** All Contractors' operations shall be conducted in accordance with the approved project Construction Safety and Phasing Plan (CSPP) and the Safety Plan Compliance Document (SPCD) and the provisions set forth within the current version of AC 150/5370-2, Operational Safety on Airports During Construction. The CSPP included within the contract documents conveys minimum requirements for operational safety on the airport during construction activities. The Contractor shall prepare and submit a SPCD that details how it proposes to comply with the requirements presented within the CSPP.

The Contractor shall implement all necessary safety plan measures prior to commencement of any work activity. The Contractor shall conduct routine checks to assure compliance with the safety plan measures.

The Contractor is responsible to the Owner for the conduct of all subcontractors it employs on the project. The Contractor shall assure that all subcontractors are made aware of the requirements of the CSPP and SPCD and that they implement and maintain all necessary measures.

No deviation or modifications may be made to the approved CSPP and SPCD unless approved in writing by the Owner. The necessary coordination actions to review Contractor proposed modifications to an approved CSPP or approved SPCD can require a significant amount of time.

**80-05 Character of workers, methods, and equipment**. The Contractor shall, at all times, employ sufficient labor and equipment for prosecuting the work to full completion in the manner and time required by the contract, plans, and specifications.

All workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform the work satisfactorily.

Any person employed by the Contractor or by any subcontractor who violates any operational regulations or operational safety requirements and, in the opinion of the RPR, does not perform his work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the RPR, be removed immediately by the Contractor or subcontractor employing such person, and shall not be employed again in any portion of the work without approval of the RPR.

Should the Contractor fail to remove such person or persons, or fail to furnish suitable and sufficient personnel for the proper execution of the work, the RPR may suspend the work by written notice until compliance with such orders.

All equipment that is proposed to be used on the work shall be of sufficient size and in such mechanical condition as to meet requirements of the work and to produce a satisfactory quality of work. Equipment used on any portion of the work shall not cause injury to previously completed work, adjacent property, or existing airport facilities due to its use.

When the methods and equipment to be used by the Contractor in accomplishing the work are not prescribed in the contract, the Contractor is free to use any methods or equipment that will accomplish the work in conformity with the requirements of the contract, plans, and specifications.

When the contract specifies the use of certain methods and equipment, such methods and equipment shall be used unless otherwise authorized by the RPR. If the Contractor desires to use a method or type of equipment other than specified in the contract, the Contractor may request authority from the RPR to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed and of the reasons for desiring to make the change. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing work in conformity with contract requirements. If, after trial use of the substituted methods or equipment, the RPR determines that the work produced does not meet contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining work with the specified methods and equipment. The Contractor shall remove any deficient work and replace it with work of specified quality, or take such other corrective action as the RPR may direct. No change will be made in basis of payment for the contract items involved nor in contract time as a result of authorizing a change in methods or equipment under this paragraph.

**80-06 Temporary suspension of the work**. The Owner shall have the authority to suspend the work wholly, or in part, for such period or periods the Owner may deem necessary, due to unsuitable weather, or other conditions considered unfavorable for the execution of the work, or for such time necessary due to the failure on the part of the Contractor to carry out orders given or perform any or all provisions of the contract.

In the event that the Contractor is ordered by the Owner, in writing, to suspend work for some unforeseen cause not otherwise provided for in the contract and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the work during the period of shutdown. No allowance will be made for anticipated profits. The period of shutdown shall be computed from the effective date of the written order to suspend work to the effective date of the written order to resume the work. Claims for such compensation shall be filed with the RPR within the time period stated in the RPR's order to resume work. The Contractor shall submit with their own claim information substantiating the amount shown on the claim. The RPR will forward the Contractor's claim to the Owner for consideration in accordance with local laws or ordinances. No provision of this article shall be construed as entitling the Contractor to compensation for delays due to inclement weather or for any other delay provided for in the contract, plans, or specifications.

If it becomes necessary to suspend work for an indefinite period, the Contractor shall store all materials in such manner that they will not become an obstruction nor become damaged in any way. The Contractor shall take every precaution to prevent damage or deterioration of the work performed and provide for normal drainage of the work. The Contractor shall erect temporary structures where necessary to provide for traffic on, to, or from the airport.

**80-07 Determination and extension of contract time**. The number of calendar days shall be stated in the proposal and contract and shall be known as the Contract Time.

If the contract time requires extension for reasons beyond the Contractor's control, it shall be adjusted as follows:

**80-07.1** Contract time based on calendar days. Contract Time based on calendar days shall consist of the number of calendar days stated in the contract counting from the effective date of the Notice to Proceed and including all Saturdays, Sundays, holidays, and non-work days. All calendar days elapsing between the effective dates of the Owner's orders to suspend and resume all work, due to causes not the fault of the Contractor, shall be excluded.

At the time of final payment, the contract time shall be increased in the same proportion as the cost of the actually completed quantities bears to the cost of the originally estimated quantities in the proposal. Such increase in the contract time shall not consider either cost of work or the extension of contract time that has been covered by a change order or supplemental agreement. Charges against the contract time will cease as of the date of final acceptance.

**80-08 Failure to complete on time**. For each calendar day or working day, as specified in the contract, that any work remains uncompleted after the contract time (including all extensions and adjustments as provided in paragraph 80-07, *Determination and Extension of Contract Time*) the sum specified in the contract and proposal as liquidated damages (LD) will be deducted from any money due or to become due the Contractor or their own surety. Such deducted sums shall not be deducted as a penalty but shall be considered as liquidation of a reasonable portion of damages including but not limited to additional engineering services that will be incurred by the Owner should the Contractor fail to complete the work in the time provided in their contract.

| Phase | Liquidated Damages Cost | Allowed Construction Time |
|-------|-------------------------|---------------------------|
| 1     | \$500 / day             | 35 Calendar Days          |

The maximum construction time allowed for the project will be the sum of the time allowed for individual phases but not more than 35 days. Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, will in no way operate as a wavier on the part of the Owner of any of its rights under the contract.

**80-09 Default and termination of contract**. The Contractor shall be considered in default of their contract and such default will be considered as cause for the Owner to terminate the contract for any of the following reasons, if the Contractor:

a. Fails to begin the work under the contract within the time specified in the Notice to Proceed, or

**b.** Fails to perform the work or fails to provide sufficient workers, equipment and/or materials to assure completion of work in accordance with the terms of the contract, or

**c.** Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, or

d. Discontinues the execution of the work, or

e. Fails to resume work which has been discontinued within a reasonable time after notice to do so, or

- f. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
- g. Allows any final judgment to stand against the Contractor unsatisfied for a period of 10 days, or
- h. Makes an assignment for the benefit of creditors, or

i. For any other cause whatsoever, fails to carry on the work in an acceptable manner.

Should the Owner consider the Contractor in default of the contract for any reason above, the Owner shall immediately give written notice to the Contractor and the Contractor's surety as to the reasons for considering the Contractor in default and the Owner's intentions to terminate the contract.

If the Contractor or surety, within a period of 10 days after such notice, does not proceed in accordance therewith, then the Owner will, upon written notification from the RPR of the facts of such delay, neglect, or default and the Contractor's failure to comply with such notice, have full power and authority without violating the contract, to take the execution of the work out of the hands of the Contractor. The Owner may appropriate or use any or all materials and equipment that have been mobilized for use in the work and are acceptable and may enter into an agreement for the completion of said contract according to the terms and provisions thereof, or use such other methods as in the opinion of the RPR will be required for the completion of said contract in an acceptable manner.

All costs and charges incurred by the Owner, together with the cost of completing the work under contract, will be deducted from any monies due or which may become due the Contractor. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay to the Owner the amount of such excess.

**80-10 Termination for national emergencies**. The Owner shall terminate the contract or portion thereof by written notice when the Contractor is prevented from proceeding with the construction contract as a direct result of an Executive Order of the President with respect to the execution of war or in the interest of national defense.

When the contract, or any portion thereof, is terminated before completion of all items of work in the contract, payment will be made for the actual number of units or items of work completed at the contract price or as mutually agreed for items of work partially completed or not started. No claims or loss of anticipated profits shall be considered.

Reimbursement for organization of the work, and other overhead expenses, (when not otherwise included in the contract) and moving equipment and materials to and from the job will be considered, the intent being that an equitable settlement will be made with the Contractor.

Acceptable materials, obtained or ordered by the Contractor for the work and that are not incorporated in the work shall, at the option of the Contractor, be purchased from the Contractor at actual cost as shown by receipted bills and actual cost records at such points of delivery as may be designated by the RPR.

Termination of the contract or a portion thereof shall neither relieve the Contractor of their responsibilities for the completed work nor shall it relieve their surety of its obligation for and concerning any just claim arising out of the work performed.

**80-11 Work area, storage area and sequence of operations**. The Contractor shall obtain approval from the RPR prior to beginning any work in all areas of the airport. No operating runway, taxiway, or air operations area (AOA) shall be crossed, entered, or obstructed while it is operational unless shown on the CSPP. The Contractor shall plan and coordinate work in accordance with the approved CSPP and SPCD.

Plan the construction work and carry out with a minimum of interference with the operation of the existing facilities or other construction work. Prior to starting the construction, confer with the Engineer, Owner's representative, and other contractors to develop a construction schedule which will permit the facilities to function as normally as practical during the construction period. It may be necessary to do certain parts of the construction work outside normal working hours in order to avoid undesirable conditions, and it shall be the obligation of the Contractor to do this work at such times as necessary.

END OF SECTION 80

#### Section 90 Measurement and Payment

**90-01 Measurement of quantities**. All work completed under the contract will be measured by the RPR, or their authorized representatives, using United States Customary Units of Measurement. Contractor shall provide to the RPR supporting computations and calculations made to determine Contractor's quantity of work performed with each partial pay request and final payment request.

The method of measurement and computations to be used in determination of quantities of material furnished and of work performed under the contract will be those methods generally recognized as conforming to good engineering practice.

Unless otherwise specified, longitudinal measurements for area computations will be made horizontally, and no deductions will be made for individual fixtures (or leave-outs) having an area of 9 square feet (0.8 square meters) or less. Unless otherwise specified, transverse measurements for area computations will be the neat dimensions shown on the plans or ordered in writing by the RPR.

Unless otherwise specified, all contract items which are measured by the linear foot such as electrical ducts, conduits, pipe culverts, underdrains, and similar items shall be measured parallel to the base or foundation upon which such items are placed.

The term "lump sum" when used as an item of payment will mean complete payment for the work described in the contract. When a complete structure or structural unit (in effect, "lump sum" work) is specified as the unit of measurement, the unit will be construed to include all necessary fittings and accessories.

When requested by the Contractor and approved by the RPR in writing, material specified to be measured by the cubic yard (cubic meter) may be weighed, and such weights will be converted to cubic yards (cubic meters) for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the RPR and shall be agreed to by the Contractor before such method of measurement of pay quantities is used.

| Term                                       | Description  |
|--|--|
| Excavation and<br>Embankment<br>Volume     | In computing volumes of excavation, the average end area method will be used unless otherwise specified.   |
| Measurement and<br>Proportion by<br>Weight | The term "ton" will mean the short ton consisting of 2,000 pounds (907 km)<br>avoirdupois. All materials that are measured or proportioned by weights shall be<br>weighed on accurate, independently certified scales by competent, qualified personnel<br>at locations designated by the RPR. If material is shipped by rail, the car weight may be<br>accepted provided that only the actual weight of material is paid for. However, car<br>weights will not be acceptable for material to be passed through mixing plants. Trucks<br>used to haul material being paid for by weight shall be weighed empty daily at such<br>times as the RPR directs, and each truck shall bear a plainly legible identification mark. |
| Measurement by<br>Volume                   | Materials to be measured by volume in the hauling vehicle shall be hauled in approved vehicles and measured therein at the point of delivery. Vehicles for this purpose may be of any size or type acceptable for the materials hauled, provided that the body is of such shape that the actual contents may be readily and accurately determined. All vehicles shall be loaded to at least their water level capacity, and all loads shall be leveled when the vehicles arrive at the point of delivery.  |

#### **Measurement and Payment Terms**

| Term                | Description   |
|---------------------|---|
| Asphalt Material    | Asphalt materials will be measured by the gallon (liter) or ton (kg). When measured by volume, such volumes will be measured at 60°F (16°C) or will be corrected to the volume at 60°F (16°C) using ASTM D1250 for asphalts. Net certified scale weights or weights based on certified volumes in the case of rail shipments will be used as a basis of measurement, subject to correction when asphalt material has been lost from the car or the distributor, wasted, or otherwise not incorporated in the work. When asphalt materials are shipped by truck or transport, net certified weights by volume, subject to correction for loss or foaming, will be used for computing quantities. |
| Cement              | Cement will be measured by the ton (kg) or hundredweight (km).  |
| Structure           | Structures will be measured according to neat lines shown on the plans or as altered to fit field conditions.   |
| Timber              | Timber will be measured by the thousand feet board measure (MFBM) actually incorporated in the structure. Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.   |
| Plates and Sheets   | The thickness of plates and galvanized sheet used in the manufacture of corrugated metal pipe, metal plate pipe culverts and arches, and metal cribbing will be specified and measured in decimal fraction of inch.   |
| Miscellaneous Items | When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by gauge, unit weight, section dimensions, etc., such identification will be considered to be nominal weights or dimensions. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.  |
| Scales              | Scales must be tested for accuracy and serviced before use. Scales for weighing materials which are required to be proportioned or measured and paid for by weight shall be furnished, erected, and maintained by the Contractor, or be certified permanently installed commercial scales. Platform scales shall be installed and maintained with the platform level and rigid bulkheads at each end.   |
|                     | Scales shall be accurate within 0.5% of the correct weight throughout the range of use.<br>The Contractor shall have the scales checked under the observation of the RPR before<br>beginning work and at such other times as requested. The intervals shall be uniform in<br>spacing throughout the graduated or marked length of the beam or dial and shall not<br>exceed 0.1% of the nominal rated capacity of the scale, but not less than one pound<br>(454 grams). The use of spring balances will not be permitted.   |
|                     | In the event inspection reveals the scales have been "overweighing" (indicating more than correct weight) they will be immediately adjusted. All materials received subsequent to the last previous correct weighting-accuracy test will be reduced by the percentage of error in excess of 0.5%.   |
|                     | In the event inspection reveals the scales have been under-weighing (indicating less than correct weight), they shall be immediately adjusted. No additional payment to the Contractor will be allowed for materials previously weighed and recorded.   |

| Term             | Description   |
|------------------|---|
|                  | Beams, dials, platforms, and other scale equipment shall be so arranged that the operator and the RPR can safely and conveniently view them.  |
|                  | Scale installations shall have available ten standard 50-pound (2.3 km) weights for testing the weighing equipment or suitable weights and devices for other approved equipment.  |
|                  | All costs in connection with furnishing, installing, certifying, testing, and maintaining scales; for furnishing check weights and scale house; and for all other items specified in this subsection, for the weighing of materials for proportioning or payment, shall be included in the unit contract prices for the various items of the project.   |
| Rental Equipment | Rental of equipment will be measured by time in hours of actual working time and necessary traveling time of the equipment within the limits of the work. Special equipment ordered in connection with extra work will be measured as agreed in the change order or supplemental agreement authorizing such work as provided in paragraph 90-05 <i>Payment for Extra Work</i> .   |
| Pay Quantities   | When the estimated quantities for a specific portion of the work are designated as the pay quantities in the contract, they shall be the final quantities for which payment for such specific portion of the work will be made, unless the dimensions of said portions of the work shown on the plans are revised by the RPR. If revised dimensions result in an increase or decrease in the quantities of such work, the final quantities for payment will be revised in the amount represented by the authorized changes in the dimensions. |

**90-02 Scope of payment**. The Contractor shall receive and accept compensation provided for in the contract as full payment for furnishing all materials, for performing all work under the contract in a complete and acceptable manner, and for all risk, loss, damage, or expense of whatever character arising out of the nature of the work or the execution thereof, subject to the provisions of Section 70, paragraph 70-18, *No Waiver of Legal Rights*.

When the "basis of payment" subsection of a technical specification requires that the contract price (price bid) include compensation for certain work or material essential to the item, this same work or material will not also be measured for payment under any other contract item which may appear elsewhere in the contract, plans, or specifications.

**90-03 Compensation for altered quantities**. When the accepted quantities of work vary from the quantities in the proposal, the Contractor shall accept as payment in full, so far as contract items are concerned, payment at the original contract price for the accepted quantities of work actually completed and accepted. No allowance, except as provided for in Section 40, paragraph 40-02, *Alteration of Work and Quantities*, will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor which results directly from such alterations or indirectly from their own unbalanced allocation of overhead and profit among the contract items, or from any other cause.

**90-04 Payment for omitted items**. As specified in Section 40, paragraph 40-03, *Omitted Items*, the RPR shall have the right to omit from the work (order nonperformance) any contract item, except major contract items, in the best interest of the Owner.

Should the RPR omit or order nonperformance of a contract item or portion of such item from the work, the Contractor shall accept payment in full at the contract prices for any work actually completed and acceptable prior to the RPR's order to omit or non-perform such contract item.

Acceptable materials ordered by the Contractor or delivered on the work prior to the date of the RPR's order will be paid for at the actual cost to the Contractor and shall thereupon become the property of the Owner.

In addition to the reimbursement hereinbefore provided, the Contractor shall be reimbursed for all actual costs incurred for the purpose of performing the omitted contract item prior to the date of the RPR's order. Such additional costs incurred by the Contractor must be directly related to the deleted contract item and shall be supported by certified statements by the Contractor as to the nature the amount of such costs.

**90-05 Payment for extra work**. Extra work, performed in accordance with Section 40, paragraph 40-04, *Extra Work*, will be paid for at the contract prices or agreed prices specified in the change order or supplemental agreement authorizing the extra work.

**90-06 Partial payments**. Partial payments will be made to the Contractor at least once each month as the work progresses. Said payments will be based upon estimates, prepared by the RPR, of the value of the work performed and materials complete and in place, in accordance with the contract, plans, and specifications. Such partial payments may also include the delivered actual cost of those materials stockpiled and stored in accordance with paragraph 90-07, *Payment for Materials on Hand*. No partial payment will be made when the amount due to the Contractor since the last estimate amounts to less than five hundred dollars.

**a.** From the total of the amount determined to be payable on a partial payment, 5 percent of such total amount will be deducted and retained by the Owner for protection of the Owner's interests. Unless otherwise instructed by the Owner, the amount retained by the Owner will be in effect until the final payment is made except as follows:

(1) Contractor may request release of retainage on work that has been partially accepted by the Owner in accordance with Section 50-14. Contractor must provide a certified invoice to the RPR that supports the value of retainage held by the Owner for partially accepted work.

(2) In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account per paragraph 90-08.

**b.** The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

**c.** When at least 95% of the project work has been completed to the satisfaction of the RPR, the RPR shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done.

It is understood and agreed that the Contractor shall not be entitled to demand or receive partial payment based on quantities of work in excess of those provided in the proposal or covered by approved change orders or supplemental agreements, except when such excess quantities have been determined by the RPR to be a part of the final quantity for the item of work in question.

No partial payment shall bind the Owner to the acceptance of any materials or work in place as to quality or quantity. All partial payments are subject to correction at the time of final payment as provided in paragraph 90-09, *Acceptance and Final Payment*.

The Contractor shall deliver to the Owner a complete release of all claims for labor and material arising out of this contract before the final payment is made. If any subcontractor or supplier fails to furnish such a release in full, the Contractor may furnish a bond or other collateral satisfactory to the Owner to indemnify the Owner against any potential lien or other such claim. The bond or collateral shall include all costs, expenses, and attorney fees the Owner may be compelled to pay in discharging any such lien or claim.

**90-07 Payment for materials on hand.** Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the work, provided that such materials meet the requirements of the contract, plans, and specifications and are delivered to acceptable sites on the airport property or at other sites in the vicinity that are acceptable to the Owner. Such delivered costs of stored or stockpiled materials may be included in the next partial payment after the following conditions are met:

**a.** The material has been stored or stockpiled in a manner acceptable to the RPR at or on an approved site.

**b.** The Contractor has furnished the RPR with acceptable evidence of the quantity and quality of such stored or stockpiled materials.

**c.** The Contractor has furnished the RPR with satisfactory evidence that the material and transportation costs have been paid.

**d.** The Contractor has furnished the Owner legal title (free of liens or encumbrances of any kind) to the material stored or stockpiled.

**e.** The Contractor has furnished the Owner evidence that the material stored or stockpiled is insured against loss by damage to or disappearance of such materials at any time prior to use in the work.

It is understood and agreed that the transfer of title and the Owner's payment for such stored or stockpiled materials shall in no way relieve the Contractor of their responsibility for furnishing and placing such materials in accordance with the requirements of the contract, plans, and specifications.

In no case will the amount of partial payments for materials on hand exceed the contract price for such materials or the contract price for the contract item in which the material is intended to be used.

No partial payment will be made for stored or stockpiled living or perishable plant materials.

The Contractor shall bear all costs associated with the partial payment of stored or stockpiled materials in accordance with the provisions of this paragraph.

**90-08 Payment of withheld funds**. At the Contractor's option, if an Owner withholds retainage in accordance with the methods described in paragraph 90-06 *Partial Payments*, the Contractor may request that the Owner deposit the retainage into an escrow account. The Owner's deposit of retainage into an escrow account is subject to the following conditions:

**a.** The Contractor shall bear all expenses of establishing and maintaining an escrow account and escrow agreement acceptable to the Owner.

**b.** The Contractor shall deposit to and maintain in such escrow only those securities or bank certificates of deposit as are acceptable to the Owner and having a value not less than the retainage that would otherwise be withheld from partial payment.

**c.** The Contractor shall enter into an escrow agreement satisfactory to the Owner.

**d.** The Contractor shall obtain the written consent of the surety to such agreement.

**90-09 Acceptance and final payment**. When the contract work has been accepted in accordance with the requirements of Section 50, paragraph 50-15, *Final Acceptance*, the RPR will prepare the final estimate of the items of work actually performed. The Contractor shall approve the RPR's final estimate or advise the RPR of the Contractor's objections to the final estimate which are based on disputes in measurements or computations of the final quantities to be paid under the contract as amended by change order or supplemental agreement. The Contractor and the RPR shall resolve all disputes (if any) in the measurement and computation of final quantities to be paid within 30 calendar days of the Contractor's receipt of the RPR's final estimate. If, after such 30-day period, a dispute still exists, the Contractor may approve the RPR's estimate under protest of the quantities in dispute, and such disputed quantities shall be considered by the Owner as a claim in accordance with Section 50, paragraph 50-16, *Claims for Adjustment and Disputes*.

After the Contractor has approved, or approved under protest, the RPR's final estimate, and after the RPR's receipt of the project closeout documentation required in paragraph 90-11, *Contractor Final Project Documentation*, final payment will be processed based on the entire sum, or the undisputed sum in case of approval under protest, determined to be due the Contractor less all previous payments and all amounts to be deducted under the provisions of the contract. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

If the Contractor has filed a claim for additional compensation under the provisions of Section 50, paragraph 50-16, *Claims for Adjustments and Disputes,* or under the provisions of this paragraph, such claims will be considered by the Owner in accordance with local laws or ordinances. Upon final adjudication of such claims, any additional payment determined to be due the Contractor will be paid pursuant to a supplemental final estimate.

#### 90-10 Construction warranty.

**a.** In addition to any other warranties in this contract, the Contractor warrants that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, workmanship, or design furnished, or performed by the Contractor or any subcontractor or supplier at any tier.

**b.** This warranty shall continue for a period of one year from the date of final acceptance of the work, except as noted. If the Owner takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one year from the date the Owner takes possession. However, this will not relieve the Contractor from corrective items required by the final acceptance of the project work. Light Emitting Diode emitting diode (LED) light fixtures with the exception of obstruction lighting, must be warranted by the manufacturer for a minimum of four (4) years after date of installation inclusive of all electronics.

**c.** The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Owner real or personal property, when that damage is the result of the Contractor's failure to conform to contract requirements; or any defect of equipment, material, workmanship, or design furnished by the Contractor.

**d.** The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for one year from the date of repair or replacement.

**e.** The Owner will notify the Contractor, in writing, within ten (10) calendar days after the discovery of any failure, defect, or damage.

**f.** If the Contractor fails to remedy any failure, defect, or damage within 14 calendar days after receipt of notice, the Owner shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

**g.** With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall: (1) Obtain all warranties that would be given in normal commercial practice; (2) Require all warranties to be executed, in writing, for the benefit of the Owner, as directed by the Owner, and (3) Enforce all warranties for the benefit of the Owner.

**h.** This warranty shall not limit the Owner's rights with respect to latent defects, gross mistakes, or fraud.

**90-11 Contractor Final Project Documentation.** Approval of final payment to the Contractor is contingent upon completion and submittal of the items listed below. The final payment will not be approved until the RPR approves the Contractor's final submittal. The Contractor shall:

- **a.** Provide two (2) copies of all manufacturers warranties specified for materials, equipment, and installations.
- **b.** Provide weekly payroll records (not previously received) from the general Contractor and all subcontractors.
- **c.** Complete final cleanup in accordance with Section 40, paragraph 40-08, *Final Cleanup*.
- **d.** Complete all punch list items identified during the Final Inspection.

e. Provide complete release of all claims for labor and material arising out of the Contract.

**f.** Provide a certified statement signed by the subcontractors, indicating actual amounts paid to the Disadvantaged Business Enterprise (DBE) subcontractors and/or suppliers associated with the project.

g. When applicable per state requirements, return copies of sales tax completion forms.

h. Manufacturer's certifications for all items incorporated in the work.

i. All required record drawings, as-built drawings or as-constructed drawings.

j. Project Operation and Maintenance (O&M) Manual(s).

**k.** Security for Construction Warranty.

I. Equipment commissioning documentation submitted, if required.

**m.** all material tests in required final format.

END OF SECTION 90

#### **SPECIAL PROVISIONS**

#### 1. INSURANCE AND LIABILITY

**a. GENERAL.** The Contractor shall provide (from insurance companies acceptable to the Owner) the insurance coverage designated hereinafter and pay all costs.

Before commencing work under this Contract, Contractor shall furnish the Owner with certificates of insurance specified herein showing the type, amount, class of operations covered, effective dates, and date of expiration of policies, and containing substantially the following statement:

"The insurance covered by this certificate shall not be canceled or materially altered, except after 30 days' written notice has been received by the Owner."

In case of the breach of any provision of this Article, the Owner, at his option, may take out and maintain, at the expense of the Contractor, such insurance as the Owner may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Contractor under this Contract.

**b. CONTRACTOR AND SUBCONTRACTOR**. The Contractor shall not commence work under this Contract until he has obtained all the insurance required hereunder and such insurance has been reviewed by the Owner, nor shall the Contractor allow any Subcontractor to commence work on his subcontract until insurance specified below has been obtained. Review of the insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder.

#### 2. COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE

Provide Worker's Compensation coverage for all persons employed on the work to be done under the Contract. Assure that all workers will receive the compensation for compensable injuries provided in ORS Chapter 656 either by: 1) Contributing to the Industrial Accident Fund as a contributing employer; or 2) Qualifying as a direct responsibility employer as provided in ORS Chapter 656.

In the event that Contractor or any of his subcontractors shall elect to fulfill this responsibility by qualifying as a direct responsibility employer as in (2) above, satisfactory proof of such fact shall be required. In the event that the certification as a direct responsibility employer is withdrawn, as provided in ORS Chapter 656, the Contractor or any subcontractor shall thereafter, on the effective date of the withdrawal or certification, become a contributing employer.

All compensation insurance policies shall bear an endorsement or shall have attached a rider whereby it is provided that, in the event of expiration or proposed cancellation of such policies for any reason whatsoever, the Owner shall be notified by registered mail not less than 30 days before expiration or cancellation is effective.

#### 3. GENERAL LIABILITY INSURANCE INCLUDING AUTOMOBILE

At all times during the Contract, maintain such public liability and property damage insurance as will protect the Contractor, Owner, and Engineer from any and all claims for damage or personal injury including death, which may arise from operations under this Contract or in connection therewith, including all operations of subcontractors. Such insurance shall provide coverage for not less than that required by law, or the following, whichever is higher:

| For Personal Injury: | \$500,000 for one claimant      |  |
|----------------------|---------------------------------|--|
|                      | \$1,000,000 from one occurrence |  |
| For Property Damage: | \$500,000 one occurrence        |  |

Such insurance shall be without prejudice to coverage otherwise existing, and shall name as additional insured the Owner and all other governmental bodies with jurisdiction in the area involved in the project, their officers and employees, and shall further provide that the policy shall not be terminated or be canceled prior to the completion of this Contract without 30 days' written notice to the Owner, which notice shall be subject to the approval of the Attorney; said notice to commence to run from the date notice is actually received by the Owner.

Notwithstanding the naming of additional insured, said policy shall protect each insured in the same manner as though a separate policy had been issued to each; but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

The Contractor shall not commence work under this Contract until he has furnished the Owner with satisfactory Proof of Insurance specified herein.

#### 4. BUILDERS RISK ALL RISK INSURANCE

Insure the work for 100 percent of the replaceable value thereof for the life the Contract against all loss or damage by fire and against all loss or damage covered by the Standard Extended Coverage Insurance endorsement, including theft, vandalism, and malicious mischief, with an insurance company or companies acceptable to Owner. The amount of the insurance may vary with the extent of the work completed, but shall at all times be at least equal to the replaceable value of the amount furnished or delivered, but not yet accepted by Owner. The insurance policy or policies shall be held jointly in the name of the Owner and Contractor as their respective interests may appear. The loss, if any, shall be made adjustable with, and payable to Owner as trustee for whom it may concern. Any payments made under such policy shall insure to the benefit of Owner to the extent of any loss suffered by Owner and to Contractor as to any remaining balance, for replacement of the loss suffered. The policy of insurance shall provide that it shall not be terminated or be canceled prior to completion of this Contract without 30 days' written notice to the Owner. Be responsible for all damage to the work under construction, whether from fire, water, high winds, theft, vandalism, or other cause, during construction and until final completion and acceptance, even though partial payments or progress payments have been made under the Contract.

#### 5. REQUIREMENTS OF STATE LAW FOR PUBLIC WORKS PROJECTS

When the Contract Documents concern public works of the state or any county, municipality, or political subdivision created by its laws, the applicable statutes shall apply. All parties to this Contract shall determine the contents of all applicable statutes and comply with their provisions throughout the performance of the Contract.

#### 6. OTHER CONTRACTS

The Owner reserves the right to let other Contracts in connection with the work. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his work with theirs.

If any part of the work under this Contract depends for proper execution or results upon the work of any other Contractor, utility service company or Owner, the Contractor shall inspect and promptly report to the Engineer in writing any patent or apparent defects or deficiencies in such work that render it unsuitable for such proper execution and results. The Contractor's failure to so report shall constitute an acceptance of the work by others as being fit and proper for integration with work under this Contract, except for latent or non-apparent defects and deficiencies in the work.

# ANY Change in Insurance Coverage shall require immediate notification of that change to the Recipient.

#### 7. Disadvantaged Business Enterprise Reporting Requirements

This project is subject to the Sponsors Disadvantaged Business Enterprise Program (DBE) to include reporting requirements. As part of the Sponsors requirements for compliance with FAA Civil Rights, the Contractor shall provide the following information in conjunction with each request made for payment:

- Total number of subcontracts and dollar value of each subcontract awarded or committed for the reporting period. Contractor shall also provide copies of the subcontracts;
- Identify all subcontracts with federally certified DBEs including firm name and contract dollar value. Contractor shall also provide proof of the DBEs certification;
- Payments received by Prime Contractor during the reporting period;
- Payments made to DBE subcontractors per firm during the reporting period;
- Total number of subcontracts and payments made on subcontracts completed during the reporting period.

3



FAA Airports

## **Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects**

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#### A1 ACCESS TO RECORDS AND REPORTS 2 CFR § 200.3332, CFR § 200.336, FAA Order 5100.38

#### ACCESS TO RECORDS AND REPORTS

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

\* \* \* \* \* \* \* \* \*

#### A2 AFFIRMATIVE ACTION REQUIREMENT

41 CFR part 60-4, Executive Order 11246

#### NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION to ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

#### Timetables

| Goals for minority participation for each trade: | 2.9% |
|--|------|
| Goals for female participation in each trade:    | 6.9% |

These goals are applicable to all of the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a) and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or

trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is City of Newport, Lincoln County, Oregon.

\* \* \* \* \* \* \* \* \*

#### A3 BREACH OF CONTRACT TERMS 2 CFR § 200 Appendix II(A)

#### **BREACH OF CONTRACT TERMS**

Any violation or breach of terms of this contract on the part of the Contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide Contractor written notice that describes the nature of the breach and corrective actions the Contractor must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the Contractor must correct the breach. Owner may proceed with termination of the contract if the Contractor fails to correct the breach by the deadline indicated in the Owner's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

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#### A4 BUY AMERICAN PREFERENCE

Title 49 USC § 50101

#### **BUY AMERICAN PREFERENCE**

The Contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must complete and submit the Buy America certification included herein with their bid or offer. The Owner will reject as nonresponsive any bid or offer that does not include a completed Certificate of Buy American Compliance.

#### CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR TOTAL FACILITY

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with its proposal. The bidder or offeror must indicate how it intends to comply with 49 USC § 50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark ( $\checkmark$ ) or the letter "X".

Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:

- a) Only installing steel and manufactured products produced in the United States; or
- b) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
- c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

• To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.

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- To faithfully comply with providing U.S. domestic products.
- To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- □ The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
  - a) To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that supports the type of waiver being requested.

- b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
- c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
- d) To furnish U.S. domestic product for any waiver request that the FAA rejects.
- e) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

#### **Required Documentation**

**Type 3 Waiver** – The cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the "facility". The required documentation for a Type 3 waiver is:

- a) Listing of all manufactured products that are not comprised of 100 percent U.S. domestic content (excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- c) Percentage of non-domestic component and subcomponent cost as compared to total "facility" component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

**Type 4 Waiver** – Total cost of project using U.S. domestic source product exceeds the total project cost using non-domestic product by 25 percent. The required documentation for a Type 4 of waiver is:

- a) Detailed cost information for total project using U.S. domestic product
- b) Detailed cost information for total project using non-domestic product

**False Statements**: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date

Signature

**Company Name** 

Title

#### Certificate of Buy American Compliance for Manufactured Products

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark ( $\checkmark$ ) or the letter "X".

 $\square$  Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:

- a) Only installing steel and manufactured products produced in the United States;
- Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
- c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- 1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- 2. To faithfully comply with providing U.S. domestic product.
- 3. To furnish U.S. domestic product for any waiver request that the FAA rejects
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

□ The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

- 1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that supports the type of waiver being requested.
- 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.
- 3. To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
- 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

### **Required Documentation**

**Type 3 Waiver** – The cost of the item components and subcomponents produced in the United States is more that 60 percent of the cost of all components and subcomponents of the "item". The required documentation for a Type 3 waiver is:

a) Listing of all product components and subcomponents that are not comprised of 100 percent U.S. domestic content (Excludes products listed on the FAA Nationwide Buy

American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as nondomestic products in their entirety).

- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c) Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

**Type 4 Waiver** – Total cost of project using U.S. domestic source product exceeds the total project cost using non-domestic product by 25 percent. The required documentation for a Type 4 of waiver is:

- a) Detailed cost information for total project using U.S. domestic product
- b) Detailed cost information for total project using non-domestic product

**False Statements**: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

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Date

Signature

**Company Name** 

Title

#### A 5 **CIVIL RIGHTS - GENERAL** 49 USC § 47123

#### **GENERAL CIVIL RIGHTS PROVISIONS**

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

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#### **CIVIL RIGHTS - TITLE VI ASSURANCE** A6

49 USC § 47123, FAA Order 1400.11

#### **Title VI Solicitation Notice:**

The City of Newport, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, [select disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

#### **Title VI Clauses for Compliance with Nondiscrimination Requirements**

The sponsor must include this contract clause in:

- Every contract or agreement (unless the sponsor has determined, and the FAA concurs, that 1) the contract or agreement is not subject to the Nondiscrimination Acts and Authorities); and
- 2) Service contracts with utility companies that are not already subject to nondiscrimination requirements.

#### **Compliance with Nondiscrimination Requirements:**

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

- 1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the

Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

- 3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- 4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration as appropriate, and will set forth what efforts it has made to obtain the information.
- 5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- 6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States.

#### Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq*.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

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2 CFR § 200, Appendix II(G)

#### CLEAN AIR AND WATER POLLUTION CONTROL

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceeds \$150,000.

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#### A8 CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS 2 CFR § 200, Appendix II(E)

#### CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

#### 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, including watchmen and guards, 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 (1) of this clause, the Contractor and any subcontractor responsible therefor 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 (1) of this clause, 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 (1) of this clause.

#### 3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, 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 (2) of this clause.

4. Subcontractors.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor 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 (1) through (4) of this clause.

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#### A9 COPELAND "ANTI-KICKBACK" ACT 2 CFR § 200, Appendix II(D), 29 CFR Parts 3 and 5

## COPELAND "ANTI-KICKBACK" ACT

Contractor must comply with the requirements of the Copeland "Anti-Kickback" Act (18 USC 874 and 40 USC 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Owner must report any violations of the Act to the Federal Aviation Administration.

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## A10 DAVIS-BACON REQUIREMENTS

2 CFR § 200, Appendix II(D), 29 CFR Part 5

## DAVIS-BACON REQUIREMENTS

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 the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto 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 (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 29 CFR Part 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 (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 easily be seen by the workers.

(ii)(A) The contracting officer shall require 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 contracting officer 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;

(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.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer 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 contracting officer 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 contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, 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 contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, 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.

## 2. Withholding.

The Federal Aviation Administration or the sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld 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 work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the Contractor, Sponsor, Applicant, or Owner, 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.

## 3. 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 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 that 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 that show the costs anticipated or the actual costs 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 Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration. 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.

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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 Web site at *www.dol.gov/whd/forms/wh347instr.htm* 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 Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration, 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 sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted 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) The payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;

(2) Each laborer and 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) 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.

(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 (3)(ii)(B) of this section.

(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 (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the sponsor, the Federal Aviation Administration, 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, the Federal agency may, after written notice to the Contractor, 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.

4. 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, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, 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 Bureau of Apprenticeship and Training 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 Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, 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 that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that 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.

5. 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.

6. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration 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 29 CFR Part 5.5.

7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. 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.

9. 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) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. 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 USC 1001.

\* \* \* \* \* \* \* \* \*

#### A11 DEBARMENT AND SUSPENSION

2 CFR part 180 (Subpart C), 2 CFR part 1200, DOT Order 4200.5

#### **CERTIFICATION OF OFFERER/BIDDER REGARDING DEBARMENT**

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

#### CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must verify each lower tier participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

- 1. Checking the System for Award Management at website: http://www.sam.gov.
- 2. Collecting a certification statement similar to the Certification of Offerer /Bidder Regarding Debarment, above.
- 3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

\* \* \* \* \* \* \* \* \*

#### A12 DISADVANTAGED BUSINESS ENTERPRISE 49 CFR part 26

#### DISADVANTAGED BUSINESS ENTERPRISES

#### Contract Assurance (§ 26.13) -

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;

- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

**Prompt Payment (§26.29)** – The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from City of Newport. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of Newport. This clause applies to both DBE and non-DBE subcontractors.

\* \* \* \* \* \* \* \* \*

## A13 DISTRACTED DRIVING

Executive Order 13513, DOT Order 3902.10

#### **TEXTING WHEN DRIVING**

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving", (10/1/2009) and DOT Order 3902.10, "Text Messaging While Driving", (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

\* \* \* \* \* \* \* \* \*

## A14 ENERGY CONSERVATION REQUIREMENTS

2 CFR § 200, Appendix II(H)

#### ENERGY CONSERVATION REQUIREMENTS

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201*et seq*).

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## A15 DRUG FREE WORKPLACE REQUIREMENTS

49 CFR part 32, Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq., as amended)

None.

\* \* \* \* \* \* \* \* \*

#### A16 EQUAL EMPLOYEMENT OPPORTUNITY (EEO)

2 CFR 200, Appendix II(C), 41 CFR § 60-1.4, 41 CFR § 60-4.3, Executive Order 11246

#### EQUAL OPPORTUNITY CLAUSE

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identify, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event a contractor becomes involved in, or is threatened with, litigation

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with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. "Minority" includes:

(1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);

(3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR part 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractor's toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female

utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the Contractor during the training period and the Contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or female sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions, including specific review of these items, with onsite supervisory personnel such superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.

I. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally), the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these

specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR part 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

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## A17 FEDERAL FAIR LABOR STANDARDS ACT 29 USC § 201, et seq

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

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#### A18 LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

31 USC § 1352 – Byrd Anti-Lobbying Amendment, 2 CFR part 200, Appendix II(J), 49 CFR part 20, Appendix A

#### CERTIFICATION REGARDING LOBBYING

The Bidder or Offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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#### A19 PROHIBITION of SEGREGATED FACILITIES 41 CFR § 60

## **PROHIBITION OF SEGREGATED FACILITIES**

(a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.

(b) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

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# A20 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 29 CFR part 1910

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

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#### A21 PROCUREMENT OF RECOVERED MATERIALS

2 CFR § 200.322, 40 CFR part 247, Solid Waste Disposal Act

#### PROCUREMENT OF RECOVERED MATERIALS

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or
- 2) The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products.

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.

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#### **A22 RIGHT TO INVENTIONS** 2 CFR § 200, Appendix II(F), 37 CFR §401

#### **RIGHTS TO INVENTIONS**

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental, or research work.

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A23 SEISMIC SAFETY 49 CFR part 41

## A23.1.1 Construction Contracts

#### SEISMIC SAFETY

The Contractor agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.

\* \* \* \* \* \* \* \* \*

#### A24 TAX DELINQUENCY AND FELONY CONVICTIONS

Sections 415 and 416 of Title IV, Division L of the Consolidated Appropriations Act, 2014 (Pub. L. 113-76), and similar provisions in subsequent appropriations acts., DOT Order 4200.6 - Requirements for Procurement and Non-Procurement Regarding Tax Delinquency and Felony Convictions

#### CERTIFICATION OF OFFERER/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark ( $\checkmark$ ) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

#### Certifications

- The applicant represents that it is ( ✓ ) is not ( ✓ ) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- The applicant represents that it is ( ✓ ) is not ( ✓ ) is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

#### Note

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify the FAA

Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

## **Term Definitions**

**Felony conviction:** Felony conviction means a conviction within the preceding twentyfour (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

**Tax Delinquency**: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

\* \* \* \* \* \* \* \* \*

## A25 TERMINATION OF CONTRACT

2 CFR § 200 Appendix II(B), FAA Advisory Circular 150/5370-10, Section 80-09

## **TERMINATION FOR CONVENIENCE (CONSTRUCTION & EQUIPMENT CONTRACTS)**

The Owner may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of Owner. Upon receipt of a written notice of termination, except as explicitly directed by the Owner, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

- 1. Contractor must immediately discontinue work as specified in the written notice.
- 2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.
- 3. Discontinue orders for materials and services except as directed by the written notice.
- 4. Deliver to the Owner all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work, and as directed in the written notice.
- 5. Complete performance of the work not terminated by the notice.
- 6. Take action as directed by the Owner to protect and preserve property and work related to this contract that Owner will take possession.

Owner agrees to pay Contractor for:

- 1) completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
- documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;

- 3) reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
- 4) reasonable and substantiated expenses to the Contractor directly attributable to Owner's termination action.

Owner will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the Owner's termination action.

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract.

## A25.1.1 Termination for Default

## TERMINATION FOR DEFAULT (CONSTRUCTION)

Section 80-09 of FAA Advisory Circular 150/5370-10 establishes conditions, rights, and remedies associated with Owner termination of this contract due to default of the Contractor.

## **TERMINATION FOR DEFAULT (EQUIPMENT)**

The Owner may, by written notice of default to the Contractor, terminate all or part of this Contract if the Contractor:

- 1. Fails to commence the Work under the Contract within the time specified in the Notice- to-Proceed;
- 2. Fails to make adequate progress as to endanger performance of this Contract in accordance with its terms;
- 3. Fails to make delivery of the equipment within the time specified in the Contract, including any Owner approved extensions;
- 4. Fails to comply with material provisions of the Contract;
- 5. Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements; or
- 6. Becomes insolvent or declares bankruptcy.

If one or more of the stated events occur, the Owner will give notice in writing to the Contractor and Surety of its intent to terminate the contract for cause. At the Owner's discretion, the notice may allow the Contractor and Surety an opportunity to cure the breach or default.

If within [10] days of the receipt of notice, the Contractor or Surety fails to remedy the breach or default to the satisfaction of the Owner, the Owner has authority to acquire equipment by other procurement action. The Contractor will be liable to the Owner for any excess costs the Owner incurs for acquiring such similar equipment.

Payment for completed equipment delivered to and accepted by the Owner shall be at the Contract price. The Owner may withhold from amounts otherwise due the Contractor for such completed equipment, such sum as the Owner determines to be necessary to protect the Owner against loss because of Contractor default. Owner will not terminate the Contractor's right to proceed with the Work under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such acceptable causes include: acts of God, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, and severe weather events that substantially exceed normal conditions for the location.

If, after termination of the Contractor's right to proceed, the Owner determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the Owner issued the termination for the convenience the Owner.

The rights and remedies of the Owner in this clause are in addition to any other rights and remedies provided by law or under this contract.

\* \* \* \* \* \* \* \* \*

#### **A26 TRADE RESTRICTION CERTIFICATION** 49 USC § 50104, 49 CFR part 30

## TRADE RESTRICTION CERTIFICATION

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror –

- is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- 3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC Section 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

 who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR or

- 2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list or
- 3) who incorporates in the public works project any product of a foreign country on such USTR list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

\* \* \* \* \* \* \* \*

#### **A27 VETERAN'S PREFERENCE** 49 USC § 47112(c)

## **VETERAN'S PREFERENCE**

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

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\* \* \* \* \* \* \* \* \*

#### CONTRACT

This Contract, made and entered into this 22 day of January 2021, by and between the CITY OF NEWPORT, a municipal corporation, hereinafter called the "Owner," and <u>Michels Corporation</u> of Salem, Oregon hereinafter called the "Contractor";

#### WITNESSETH:

The Contractor, in consideration of the sum to be paid him by the Owner and of the covenants and agreements herein contained, hereby agrees at his own proper cost and expense to do all the work and furnish all the materials, tools, labor, and all appliances, machinery, and appurtenances for construction of **"STORM PIPE REHABILITATION AND OUTFALL F EROSION AND SLOPE REPAIR**", to the extent of the Proposal made by the Contractor, dated the 14th day of \_\_\_\_\_\_\_, 2020, all in full compliance with the Contract Documents referred to herein. The selected work follows:

Base Bid Amount: \$1,668,787.00

Grand Total (Bid) Contract Amount: \$1,668,787.00

The BIDDING REQUIREMENTS, including the signed copy of the Proposal, the CONTRACT FORMS, the CONDITIONS OF THE CONTRACT, the SPECIFICATIONS, and the DRAWINGS, which consist of 12 sheets entitled **"STORM PIPE REHABILITATION AND OUTFALL F EROSION AND SLOPE REPAIR"**, dated APRiL 2020, are hereby referred to and by reference made a part of this Contract as fully and completely as if the same were fully set forth herein and are mutually cooperative therewith.

In consideration of the performance of the work as set forth in these Contract Documents, the Owner agrees to pay to the Contractor the amount bid in the Proposal as adjusted in accordance with the Contract Documents, or as otherwise herein provided, and to make such payments in the manner and at the times provided in the Contract Documents.

The Contractor agrees to complete the work within the time specified herein and to accept as full payment hereunder the amounts computed as determined by the Contract Documents and based on the said Proposal.

The Contractor agrees to remedy all defects appearing in the work or developing in the materials furnished and the workmanship performed under this Contract for a period of 1 year after the date of acceptance of the work by the Owner, or as otherwise required by the Contract Documents, and further agrees to indemnify and save the Owner harmless from any costs encountered in remedying such defects.

It is agreed the time limit for completion of the Contract, based upon the Proposal, shall be 35 calendar days from the "Notice to Proceed" date.

In the event that the Contractor shall fail to complete the work within the time limit or the extended time limit agreed upon, as more particularly set forth in the Contract Documents, liquidated damages shall be paid at the rates indicated in Paragraph 80-80 of the General Provisions. Sundays and legal holidays shall be excluded in determining days in default.

**<u>Attornev Fees</u>**: In the event that any suit, action, or arbitration is brought by the parties arising out of this Agreement, the prevailing party shall recover such reasonable attorney fees as shall be set by the trial court and any court of appeal.

Storm Pipe Rehabilitation and Outfall F Erosion and Slope Repair Contract

Authorize Signer: Each person signing this Contract, represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract. City of Newport, Oregon **Michels Corporation** CONTRACTOR OWNER Scott Odell 1d BY BY Cif Western Regional Manager ounger TITLE \_ TITLE MICONSIN MICHAE 9 allo APPROVED AS TO FORM: Attorney for Owner Within Wi 2 Storm Pipe Rehabilitation and Outfall F Contract

Erosion and Slope Repair

**PAYMENT BOND** 

BOND NO. <u>30117672/190046394</u> AMOUNT: \$<u>1,668,787.00</u>

KNOW ALL MEN BY THESE PRESENTS, that Michels Corporation

of 1715 16th Street SE, Salem, OR 97302

hereinafter called the CONTRACTOR (Principal), and, Continental Casualty Company & Liberty Mutual Insurance Company

a corporation duly organized and existing under and by virtue of the laws of the State of IL & MA

hereinafter called the SURETY, and authorized to transact business within the State of OR

as SURETY, are held and firmly bound unto \_\_\_\_\_ City of Newport\_\_\_\_\_

as OWNER (Obligee), in the sum of: One Million Six Hundred Sixty Eight Thousand Seven Hundred Eighty Seven &

00/100

DOLLARS (\$1,668,787.00

lawful money of the United States of America, for the payment of which, well and truly be made to the OWNER, the CONTRACTOR, and the SURETY bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents as follows:

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

WHEREAS, the CONTRACTOR has executed and entered into a certain Contract hereto attached, with the OWNER, dated January 22 \_\_\_\_\_, 20<u>21</u>, for STORM PIPE REHABILITATION AND OUTFALL F EROSION AND SLOPE REPAIR at NEWPORT MUNICIPAL AIRPORT.

If CONTRACTOR shall make all payments as required by the terms and conditions of the within and foregoing Contract, as well as all other payments for goods and services rendered in connection with the performance of said Contract for which any common law or statutory mechanics lien is available, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

PROVIDED, HOWEVER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

PROVIDED, FURTHER, that the SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract Documents or to the work to be performed thereunder, shall in any way affect its obligation on this bond, and it does hereby waive notice of any change, extension of time, alteration, or addition to the terms of the Contract Documents.

IN WITNESS WHEREOF, the above parties bounded together have executed this instrument this <u>22nd</u> day of <u>January</u> 20<u>21</u>, the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative, pursuant to authority of the governing body.

| CONTRACTOR:      | Michels Corporation  | CO Sta   | a l          |
|------------------|--|--|--------------|
|                  | By: HOdell   | The second and se | OKTL         |
|                  |  | SO & C AR  | Attest       |
| SURETY:          | Continental Casualty Company &<br>Liberty Mutual Insurance Company | TO & F AO  | ήt.          |
|                  | By Deephalton  | (seal)   | u Enghansper |
|                  | Heather R, Goedlel, Attorney-in-Fa                                 | of W. NU.IN  | Attest       |
| APPROVED AS TO F | ORM: Male  |  |              |
|                  | OWNER  |  | Date         |
|                  |  |  |              |

NOTE: The SURETY named on this bond shall be one who is licensed to conduct business in the state where the project is located, and named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act for the SURETY at the time of the signing of this bond.

Storm Pipe Rehabilitation and Outfall F Erosion and Slope Repair Payment Bond

**PERFORMANCE BOND** 

BOND NO. 30117672/190046394

AMOUNT: \$1,668,787.00

KNOW ALL MEN BY THESE PRESENTS, that Michels Corporation

of 1715 16th Street SE, Salem, OR 97302

hereinafter called the CONTRACTOR (Principal), and Continental Casualty Company & Liberty Mutual Insurance Company, a corporation duly organized and existing under and by virtue of the laws of the State of IL & MA hereinafter called the SURETY, and authorized to transact business within the State of OR

as SURETY, are held and firmly bound unto \_\_\_\_\_ City of Newport

as OWNER (Obligee), in the sum of: <u>One Million Six Hundred Sixty Eight Thousand Seven Hundred Eighty Seven</u> & 00/100 DOLLARS (\$ 1,668,787.00 ),

lawful money of the United States of America, for the payment of which, well and truly be made to the OWNER, the CONTRACTOR, and the SURETY bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents as follows:

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

WHEREAS, the CONTRACTOR has executed and entered into a certain Contract hereto attached, with the OWNER, dated <u>January 22</u>, 2021, for STORM PIPE REHABILITATION AND OUTFALL F EROSION AND SLOPE REPAIR at NEWPORT MUNICIPAL AIRPORT.

NOW, THEREFORE, if the CONTRACTOR shall in all things perform all the terms and conditions of the within and foregoing Contract as provided in the Contract Documents to be by such CONTRACTOR performed, and shall honor all claims for defective work made within 1 year after the completion and acceptance of the foregoing Contract, and shall pay over, make good, and reimburse to the OWNER, all loss or damage which the OWNER may sustain by reason of failure or default on the part of CONTRACTOR, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

PROVIDED, HOWEVER, that the SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract Documents or to the work to be performed thereunder, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract Documents.

IN WITNESS WHEREOF, the above parties bounded together have executed this instrument this <u>22nd</u>day of <u>January</u>, 20<u>21</u>, the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative, pursuant to authority of its government, body.

| CONTRACTOR:    | Michels Corporation  | $\rho \rightarrow \rho$ |
|----------------|--|-------------------------|
| SURETY:        | By: Continental Casualty Company & Continental Casualty Company & Continental Casualty Company | Attest                  |
|                | By Oclother Attorney-in-Fact   | Enghauser               |
| APPROVED AS TO | FORM:OWNER   | Date                    |

NOTE: The SURETY named on this bond shall be one who is licensed to conduct business in the state where the project is located. All bonds signed by an agent must be accompanied by a certified copy of the authority to act for the SURETY at the time of the signing of this bond.

Storm Pipe Rehabilitation and Outfall F Erosion and Slope Repair Performance Bond

# **Surety Acknowledgment**

| State of  | Minnesota | }    |
|-----------|-----------|------|
|           |           | } ss |
| County of | Hennepin  | }    |

On this <u>22<sup>nd</sup></u> day of <u>January</u> 20<u>21</u>, before me personally came <u>Heather R. Goedtel</u>, to me known, who being by me duly sworn, did depose and say that she is the Attorney-in-Fact of <u>Continental Casualty Company & Liberty Mutual Insurance Company</u> described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to said instruments is such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/she/his name to it by like order.



Notary Fublic

#### POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company (herein called "the CNA Companies"), are duly organized and existing insurance companies having their principal offices in the City of Chicago, and State of Illinois, and that they do by virtue of the signatures and seals herein affixed hereby make, constitute and appoint

Laurie Pflug, Brian D. Carpenter, Jessica Hoff, Nicole Langer, Craig Olmstead, Trisha Kasper, Blake S. Bohlig, Heather R. Goedtel, Kelly Nicole Enghauser, Michelle Halter, Individually

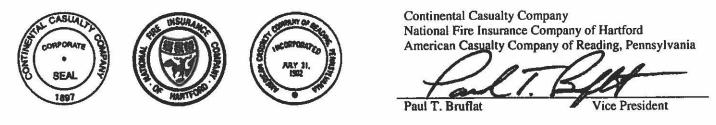
of Bloomington, MN, their true and lawful Attorncy(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on their behalf bonds, undertakings and other obligatory instruments of similar nature

#### - In Unlimited Amounts -

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of their insurance companies and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law and Resolutions, printed on the reverse hereof, duly adopted, as indicated, by the Boards of Directors of the insurance companies.

In Witness Whereof, the CNA Companies have caused these presents to be signed by their Vice President and their corporate seals to be hereto affixed on this 2nd day of December, 2019.



State of South Dakota, County of Minnehaha, ss:

On this 2nd day of December, 2019, before me personally came Paul T. Bruflat to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company described in and which executed the above instrument; that he knows the seals of said insurance companies; that the seals affixed to the said instrument are such corporate seals; that they were so affixed pursuant to authority given by the Boards of Directors of said insurance companies and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said insurance companies.

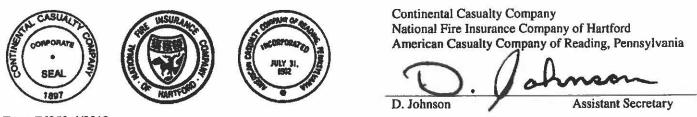


My Commission Expires June 23, 2021

Notary Public J. Mohr

#### CERTIFICATE

I, D. Johnson, Assistant Secretary of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Law and Resolution of the Board of Directors of the insurance companies printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said insurance companies this <u>22nd</u> day of <u>January</u>. <u>2021</u>.



Form F6853-4/2012

Go to www.cnasurety.com > Owner / Obligee Services > Validate Bond Coverage, if you want to verify bond authenticity.



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

> Liberty Mutual Insurance Company The Ohio Casualty Insurance Company West American Insurance Company

Certificate No: 8202635-190003

## **POWER OF ATTORNEY**

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, <u>Blake S.</u> Bohlig, Brian D. Carpenter, Kelly Nicole Enghauser, Heather R. Goedtel, Michelle Halter, Jessica Hoff, Nicole Langer, Craig Olmstead, Laurie Pflug

all of the city of <u>Bloomington</u> state of <u>Minnesota</u> each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 21st day of November , 2019 .





Liberty Mutual Insurance Company The Ohio Casualty Insurance Company West American Insurance Company

Ry

David M. Carey, Assistant Secretary

State of PENNSYLVANIA County of MONTGOMERY SS

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Not valid for mortgage, currency rate, interest r On this <u>21st</u> day of <u>November</u>, <u>2019</u> before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA Notarial Seal Tenese Pastella, Notary Public Upper Merion Twp., Montgomery County My Commission Expires March 28, 2021 Member, Pennsylvania Association of Notarles

Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seat of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attomeys-infact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 22nd day of January , 2021



By:

Renee C. Llewellyn, Assistant Secretary

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## **CERTIFICATE OF LIABILITY INSURANCE**

Page 1 of 2

DATE (MM/DD/YYYY) 01/20/2021

L

| C  | HIS CERTIFICATE IS ISSUED AS A LERTIFICATE DOES NOT AFFIRMATI<br>ELOW. THIS CERTIFICATE OF INS   | VEL'<br>URA          | Y OR                   | NEGATIVELY AMEND,<br>DOES NOT CONSTITUT   | EXTE               | ND OR ALT   | ER THE CO                                 | VERAGE AFFORDED BY   | THE            | POLICIES               |
|--|--|----------------------|------------------------|---|--------------------|---|---|--|----------------|------------------------|
| 1  | EPRESENTATIVE OR PRODUCER, AI<br>MPORTANT: If the certificate holder i<br>SUBROGATION IS WAIVED, subject                                       | s an                 | ADD                    | ITIONAL INSURED, the p  | olicy(             | ies) must ha  | ve ADDITION                               | IAL INSURED provisions   | or be<br>A sta | endorsed.<br>tement on |
| l fl   | als certificate does not confer rights t   | o the                | cert                   | ificate holder in lieu of su  | ich en             | dorsement(s   | ).  | equite an endorsement.   |                |                        |
| -  | DUCER  | 0.000                | 6000 TO                |   | CONTA<br>NAME:     | CT Willis T   | owers Wats                                | on Certificate Center  | 40             |                        |
| A CONTRACT OF THE OWNER | lis Towers Watson Midwest, Inc.  |                      |                        |   | PHONE              | p. Ext): 1-877  | -945-7378                                 | (A/C, No): 1-  | - 888 -        | 467-2378               |
|  | 26 Century Blvd  |                      |                        |   | E-MAIL             | SS: Certifi   | cates@willi                               |  |                |                        |
| · · · · · · · · · · · · · · · · · · ·  | . Box 305191<br>hville, TN 372305191 USA   |                      |                        |   | AUUKE              |   |   |  |                | NAIC #                 |
|  |  |                      |                        |   |                    | RA: Greenw  |   |  |                | 22322                  |
| INICI  | JRED   |                      |                        |   |                    | RB: XL Ins  |   |  |                | 24554                  |
|  | hels Corporation   |                      |                        |   |                    |   |   | rance Company  |                | 37885                  |
| 10000  | 5 16th St SB   |                      |                        |   |                    |   |   | urance Company   |                | 26883                  |
| 381  | em, OR 97302   |                      |                        |   | INSURE             |   |   |  |                |                        |
|  | 7.0  |                      |                        |   | INSURE             | IRF:  |   |  |                |                        |
|  |  |                      |                        | NUMBER: W19907462   |                    |   | 100000                                    | REVISION NUMBER:   |                |                        |
|  | HIS IS TO CERTIFY THAT THE POLICIES<br>NDICATED. NOTWITHSTANDING ANY RE<br>ERTIFICATE MAY BE ISSUED OR MAY<br>XCLUSIONS AND CONDITIONS OF SUCH | QUIF<br>PERT<br>POLI | REMEI<br>AIN,<br>CIES. | NT, TERM OR CONDITION<br>THE INSURANCE AFFORDI<br>LIMITS SHOWN MAY HAVE   | OF AN<br>ED BY     | Y CONTRACT<br>THE POLICIE<br>REDUCED BY   | OR OTHER I<br>S DESCRIBEI<br>PAID CLAIMS. | DOCUMENT WITH RESPECT  | TO M           | VHICH THIS             |
| INSR   | TYPE OF INSURANCE  |                      | SUBR                   | POLICY NUMBER   |                    | POLICY EFF<br>(MM/DD/YYYY)  | POLICY EXP<br>(MM/DD/YYYY)                | LIMITS   |                |                        |
|  | COMMERCIAL GENERAL LIABILITY   |                      |                        |   |                    |   |   | EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$  |                | 3,000,000              |
| x  |  |                      |                        |   |                    |   |   | MED EXP (Any one person) \$  |                |                        |
| <b>^</b>   |  | Y                    | Y                      | CGD740955303  |                    | 02/01/2020  | 02/01/2021                                | PERSONAL & ADV INJURY \$   |                | 3,000,000              |
| 1  |  |                      | 3                      |   |                    | Structure (Second Second |   | GENERAL AGGREGATE \$   |                | 6,000,000              |
|  | GEN'L AGGREGATE LIMIT APPLIES PER:<br>POLICY X PRO-<br>JECT LOC  |                      |                        |   |                    |   |   | PRODUCTS - COMP/OP AGG \$  |                | 6,000,000              |
|  |  |                      |                        |   |                    |   |   | PRODUCTS-COMPTOP AGG \$  |                |                        |
| <u> </u>   |  |                      | $\vdash$               |   |                    |   |   | COMBINED SINGLE LIMIT S  |                | 5,000,000              |
|  | X ANY AUTO   |                      |                        |   |                    |   |   | (Ea accident)  BODILY INJURY (Per person) \$   |                |                        |
| A  | OWNED SCHEDULED  | Y                    | 1                      | CAD740955403  | 02/01/2020 02/01/2 | 02/01/2021  | BODILY INJURY (Per accident) \$           |  |                |                        |
|  | AUTOS ONLY AUTOS<br>HIRED NON-OWNED  |                      |                        |   |                    |   |   | PROPERTY DAMAGE  | -              |                        |
|  | AUTOS ONLY AUTOS ONLY  |                      |                        |   |                    |   | (Per accident) \$                         |  |                |                        |
| -  | UMBRELLA LIAB X OCCUR  |                      |                        |   |                    |   |   | EACH OCCURRENCE \$   |                | 10,000,000             |
| B  | X EXCESS LIAB CLAIMS-MADE  |                      |                        | US00077661L120A   |                    | 02/01/2020  | 02/01/2021                                | AGGREGATE \$   |                | 10,000,000             |
|  | DED RETENTION \$   |                      |                        |   |                    |   |   | s  |                |                        |
| $\vdash$   | WORKERS COMPENSATION   |                      | -                      |   |                    |   | 545                                       | X PER OTH-   |                |                        |
| c  | AND EMPLOYERS' LIABILITY Y / N<br>ANYPROPRIETOR/PARTNER/EXECUTIVE  |                      |                        |   |                    |   |   | E.L. EACH ACCIDENT \$  |                | 1,000,000              |
|  | OFFICER/MEMBEREXCLUDED?  | N/A                  |                        | CWD740955103  |                    | 02/01/2020  | 02/01/2021                                | E.L. DISEASE - EA EMPLOYEE \$  |                | 1,000,000              |
|  | If yes, describe under<br>DESCRIPTION OF OPERATIONS below  |                      | 3                      |   |                    |   |   | E.L. DISEASE - POLICY LIMIT \$   |                | 1,000,000              |
| С  | Workers Compensation - WI  |                      |                        | CWR740955203  |                    | 02/01/2020  | 02/01/2021                                | And a second | 1,000          | ,000                   |
| 97.9   | and Employers Liability  |                      |                        |   |                    |   |   | E.L. Disease-Each Emp \$3  | 1,000          | ,000                   |
|  | Work Comp: Per Statute   |                      |                        |   |                    |   |   | E.L. Disease-Pol Lmt \$2   | 1,000          | ,000                   |
| DES  | CRIPTION OF OPERATIONS / LOCATIONS / VEHIC   | ES (/                | CORD                   | 101, Additional Remarks Schedul   | le, may b          | e attached if mor   | e space is requir                         | ed)  |                |                        |
|  | 5 ATTACHED   |                      |                        |   |                    |   |   |  |                |                        |
|  |  |                      |                        |   | CAN                | TELLATION   | 10 °C-00                                  |  |                |                        |
| CE   | RTIFICATE HOLDER   |                      |                        |   | SHC                | EXPIRATION  | DATE THE                                  | ESCRIBED POLICIES BE CAN<br>REOF, NOTICE WILL BE<br>Y PROVISIONS.  |                |                        |
|  |  |                      |                        |   | AUTHO              | RIZED REPRESE   | NTATIVE                                   |  |                |                        |
| 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1  | ty of Newport, Oregon  |                      |                        |   |                    |   |   |  |                |                        |
|  | 9 SW Coast Highway<br>wport, OR 97356  |                      |                        |   | Set 9. How         |   |   |  |                |                        |
|  | aporer on sisso  |                      | 5.3                    | of the second |                    |   |   | ORD CORPORATION. A   | ll riah        | ts reserved.           |
| AC   | ACORD 25 (2016/03) The ACORD name and logo are registered marks of ACORD   |                      |                        |   |                    |   |   |  |                |                        |

SR ID: 20626184

AGENCY CUSTOMER ID:

LOC #: \_\_



#### ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

| AGENCY                                 | NAMED INSURED                  |
|--|--------------------------------|
| Willis Towers Watson Midwest, Inc.     | Michels Corporation            |
| POLICY NUMBER                          | 1715 16th St SE                |
| See Page 1                             | Salem, OR 97302                |
| CARRIER NAIC COD<br>See Page 1 See Pag | E 1 EFFECTIVE DATE: See Page 1 |

#### ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM TITLE: Certificate of Liability Insurance FORM NUMBER: \_\_\_\_\_25

Project: 21010700-Storm Pipe Rehabilitation and Outfall F Erosion and Slope Repair.

Project Address: Newport, OR.

City of Newport, Oregon, Precision Approach Engineering, Inc., Owner and all other governmental bodies with jurisdiction in the area involved in the Project, their officers and employees are Additional Insureds with respect to the General Liability and Auto Liability coverages and the work performed by the Named Insured when required by written contract, agreement or permit executed prior to loss.

Such insurance as is afforded to Additional Insureds shall be Primary and Non-contributory with any other insurance available to Additional Insureds if required by contract executed prior to loss.

Waiver of Subrogation applies in favor of Additional Insureds with respects to General Liability.

INSURER AFFORDING COVERAGE: AIG Specialty Insurance Company POLICY NUMBER: CPO 8197229 EFF DATE: 02/01/2019 EXP DATE: 02/01/2021 NAIC#: 26883

TYPE OF INSURANCE: Contractors Pollution LIMIT DESCRIPTION: Each Loss Aggregate

LIMIT AMOUNT: \$5,000,000 \$5,000,000

ACORD 101 (2008/01)

The ACORD name and logo are registered marks of ACORD BATCH: 1956126

CERT: W19907462

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#### ENDORSEMENT #

This endorsement, effective 12:01 a.m., February 1, 2020, forms a part of Policy No. CGD740955303

issued to M10, INC. by Greenwich Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### CANCELLATION NOTIFICATION TO OTHERS ENDORSEMENT

In the event coverage is cancelled for any statutorily permitted reason, other than nonpayment of premium, advanced written notice will be mailed or delivered to person(s) or entity(ies) according to the notification schedule shown below:

| Name of Person(s) or Entity(ies)     | Mailing Address: | Number of Days<br>Advanced<br>Notice of<br>Cancellation: |
|--------------------------------------|------------------|--|
| As per schedule on file with company |                  | 30   |

All other terms and conditions of the Policy remain unchanged.

IXI 405 0910

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#### ENDORSEMENT #

This endorsement, effective 12:01 a.m., February 1, 2020, forms a part of Policy No.CAD740955403

issued to M10, INC. by Greenwich Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### CANCELLATION NOTIFICATION TO OTHERS ENDORSEMENT

In the event coverage is cancelled for any statutorily permitted reason, other than nonpayment of premium, advanced written notice will be mailed or delivered to person(s) or entity(ies) according to the notification schedule shown below:

| Name of Person(s) or Entity(ies)     | Mailing Address: | Number of Days<br>Advanced<br>Notice of<br>Cancellation: |
|--------------------------------------|------------------|--|
| As per schedule on file with company |                  | 30   |
|                                      |                  | and they at Mark   |

All other terms and conditions of the Policy remain unchanged.

IXI 405 0910

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# WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WC 99 06 57

#### (Ed. 12/10)

#### ENDORSEMENT #

This endorsement, effective 12:01 a.m., February 1, 2020 forms a part of Policy No. CWD740955103 issued

to M10, INC. by XL Specialty Insurance Company.

#### THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### CANCELLATION NOTIFICATION TO OTHERS ENDORSEMENT

This endorsement modifies insurance provided under the following:

#### WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY

In the event coverage is cancelled for any statutorily permitted reason, other than nonpayment of premium, advanced written notice will be mailed or delivered to person(s) or entity(ies) according to the notification schedule shown below:

| Name of Person(s) or Entity(ies)     | Mailing Address: | Number of Days<br>Advanced<br>Notice of<br>Cancellation: |
|--------------------------------------|------------------|--|
| As per schedule on file with company |                  | 30   |

All other terms and conditions of the Policy remain unchanged.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective February 1, 2020 Policy No. CWD740955103 Endorsement No.

Insured M10, INC.

Insurance Company

XL Specialty Insurance Company

Countersigned by \_\_\_\_

WC 99 06 57 Ed. 12/10

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Premium

#### WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WC 99 06 57

(Ed. 12/10)

#### ENDORSEMENT #

This endorsement, effective 12:01 a.m., February 1, 2020 forms a part of Policy No. CWR740955203 issued

to M10, INC. by XL Specialty Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### CANCELLATION NOTIFICATION TO OTHERS ENDORSEMENT

This endorsement modifies insurance provided under the following:

#### WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY

In the event coverage is cancelled for any statutorily permitted reason, other than nonpayment of premium, advanced written notice will be mailed or delivered to person(s) or entity(ies) according to the notification schedule shown below:

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|--------------------------------------|------------------|--|
| As per schedule on file with company |                  | 30   |

All other terms and conditions of the Policy remain unchanged.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective February 1, 2020 Policy No. CWR740955203 Endorsement No.

Insured M10, INC.

Premium

Insurance Company XL Specialty Insurance Company Countersigned by\_

WC 99 06 57 Ed. 12/10

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After all the above requested information is complete and signatures obtained, return this form, along with the original document to the City Manager for signature. No documents should be executed prior to the City Manager's approval as evidenced by signature of this document.

City Manager Signature:

2/16/21 Date:

Date:

Once all signatures and certificates of insurance have been obtained, return this document, along with the original, fully-executed agreement, MOU, or other document to the City Recorder. A copy of grant agreement and all project funding documents, must be forwarded to the Finance Department for tracking and audit purposes.

| City Recorder Signature:    | nhe |
|-----------------------------|-----|
| Date posted on website:2/19 | 121 |

Date: 2/2//3

Sign-Off Sheet for Documents Obligating the City - Rev. 1/18

# **CITY MANAGER REPORT AND RECOMMENDATIONS**



Meeting Date: October 2, 2023

## Agenda Item:

Authorization to Approve a Consent to Assignment of Contractual Obligations between the City of Newport and Pall Water to Trojan Technologies Corporation Effective June 13, 2023.

## **Background:**

The Čity has a number of agreements with Pall Water relating to the filtration system at the water treatment plant. Under the assignment, Trojan Technologies Corporation, or an affiliate, will have all rights and be liable for all obligations and responsibilities for any existing contracts or agreements between the City and Pall Water. City Attorney, David Allen, reviewed the consent document and recommends Local Contract Review Board approval, with a minor wording change in the fifth whereas clause that he will go over with Council at the time of the agenda item.

## **Recommendation:**

I recommend the City Council, acting as the Local Contract Review Board, consider the following motion:

I move to authorize the consent to assignment of all rights and obligations that currently exist between Pall Water and the City of Newport to Trojan Technologies Corporation effective June 13, 2023, and authorize Assistant City Manager/City Recorder, Erik Glover, to sign the consent to assignment.

## Fiscal Effects:

The consent to assignment will keep in effect any existing agreements between the City and Pall Water by transferring those commitments to Trojan Technologies Corporation.

<u>Alternatives:</u> None recommended.

Respectfully submitted,

PULI

Spencer Nebel City Manager

## CONSENT TO ASSIGNMENT

This consent "Consent" is granted by the undersigned in favor of Trojan Technologies Corporation and is effective June 13, 2023.

Whereas, City of Newport and, Pall Water, also known as Pall Advanced Separations Systems, a division of Pall Corporation, are party to that certain City of Newport dated March 16, 2023, including any amendments (the "Agreement");

And Whereas, Pall Water also known as Pall Advanced Separations Systems, a division of Pall Corporation, is a part of Danaher Corporation's Environmental & Applied Solutions ("EAS") segment.

And Whereas Danaher Corporation. has announced its intention to separate its EAS segment to create an independent, publicly traded company, Veralto (the "Transaction"), (see: Danaher Announces Intention to Separate Environmental & Applied Solutions Segment to Create an Independent, Publicly Traded Company - Sep 14, 2022.<sup>1</sup>

And Whereas, in connection with such transaction, the Pall Water assets, including the Agreement, will be assigned and transferred by Pall Corporation to Trojan Technologies Corporation or an affiliate thereof (the "Assignment"). The anticipated Assignment date is scheduled to occur on or about August 21, 2023.

And Whereas, the Agreement requires the consent of the undersigned to an assignment of the Agreement, not to be unreasonably withheld or delayed;

And Whereas, Pall Water has requested the consent of the undersigned to the Assignment;

NOW THEREFORE, for good and valuable consideration, the receipt of which is acknowledged by the undersigned, the undersigned agrees as follows:

- 1. The undersigned hereby unconditionally and irrevocably consents to the Assignment and the Transaction; and
- 2. The undersigned hereby acknowledges and agrees that no breach or default under the Agreement shall arise solely from the Assignment, and that the Agreement remains in full force and effect in accordance with its terms; and
- 3. Upon the Assignment, Trojan Technologies Corporation or an affiliate thereof will have all rights, and be liable for all obligations and responsibilities, under the Agreement as if the original party; and
- 4. To the extent the undersigned has additional contracts with Pall Water, this Consent shall also serve as notice hereunder; and
- 5. This consent shall be governed by the laws governing the Agreement.

## [SIGNATURE PAGE FOLLOWS]

<sup>&</sup>lt;sup>1</sup><u>https://investors.danaher.com/2022-09-14-Danaher-Announces-Intention-to-Separate-Environmental-Applied-Solutions-Segment-to-Create-an-Independent,-Publicly-Traded-Company</u>

## **IN WITNESS** whereof this Consent has been executed as of the date first above.

## Acknowledged and Agreed to by:

## [INSERT COUNTER PARTY AS IT APPEARS IN THE CONTRACT]

| By:    |  |
|--------|--|
| Name:  |  |
| Title: |  |
| Date:  |  |

#### TROJAN TECHNOLOGIES CORPORATION

| By: DocuSigned by:<br>Lewin Speler            |
|---|
| Name: Kevin <sup>9</sup> Spein <sup>452</sup> |
| Title: V.P. Global Sales                      |
| Date: 13-Jun-23   13:25 PDT                   |

#### CM Hall's City Council Report, 9/4 - 10/1, 2023

- 9/5/23: City Council Work Session
- 9/5/23: City Council Meeting
- 9/6/23: Parks Committee Meeting
- 9/18/23: City Council Work Session
- 9/18/23: City Council Meeting
- 9/19/23: Bayfront Business Meeting with Derrick Tokos re. Parking Management
- 9/21/23: Social Media Strategies Webinar for LGBTQ+ Elected Officials
- 9/22/23: Newport Pride: Bier One Social
- 9/23/23: Newport Pride: Proclamation at City Hall
- 9/23/23: Newport Pride: Drag Bingo at 60+ Activity Center
- 9/23/23: Newport Pride: Purple Reign Fabulous Formal
- 9/24/23: Newport Pride: Friends & Family Picnic
- 9/25/23: Special City Council Meeting: Councilor Interviews
- 9/25/23: 60+ Committee Meeting
- 9/26/23: Fostering Pride Lincoln County
- 9/28/23: Ursula Marinelli's Retirement Reception
- 9/30/23: Healthy Expo

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This consent "Consent" is granted by the undersigned in favor of Trojan Technologies Corporation and is effective June 13, 2023.

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And Whereas, Pall Water also known as Pall Advanced Separations Systems, a division of Pall Corporation, is a part of Danaher Corporation's Environmental & Applied Solutions ("EAS") segment.

And Whereas Danaher Corporation. has announced its intention to separate its EAS segment to create an independent, publicly traded company, Veralto (the "Transaction"), (see: Danaher Announces Intention to Separate Environmental & Applied Solutions Segment to Create an Independent, Publicly Traded Company - Sep 14, 2022.<sup>1</sup>

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- 4. To the extent the undersigned has additional contracts with Pall Water, this Consent shall also serve as notice hereunder; and
- 5. This consent shall be governed by the laws governing the Agreement.

## [SIGNATURE PAGE FOLLOWS]

<sup>&</sup>lt;sup>1</sup><u>https://investors.danaher.com/2022-09-14-Danaher-Announces-Intention-to-Separate-Environmental-Applied-Solutions-Segment-to-Create-an-Independent,-Publicly-Traded-Company</u>

## **IN WITNESS** whereof this Consent has been executed as of the date first above.

## Acknowledged and Agreed to by:

## [INSERT COUNTER PARTY AS IT APPEARS IN THE CONTRACT]

| By:    |  |
|--------|--|
| Name:  |  |
| Title: |  |
| Date:  |  |

#### TROJAN TECHNOLOGIES CORPORATION

| By: DocuSigned by:<br>Lewin Speler            |
|---|
| Name: Kevin <sup>9</sup> Spein <sup>452</sup> |
| Title: V.P. Global Sales                      |
| Date: 13-Jun-23   13:25 PDT                   |