

**DEPARTMENT OF THE ARMY
EASEMENT FOR PUBLIC PATHWAY
LOCATED AT
YAQUINA BAY & HARBOR PROJECT
LINCOLN COUNTY, OREGON**

THE SECRETARY OF THE ARMY under and by virtue of the authority vested in the Secretary by Title 10, United States Code, Section 2668, having found that the granting of this easement will not be against the public interest, hereby grants to **THE CITY OF NEWPORT, OREGON** hereinafter referred to as the grantee, an easement for a public bike and pedestrian pathway, hereinafter referred to as the facilities, over, across, in and upon the lands of the United States as identified in **Exhibit "A"**, attached hereto and made a part hereof, hereinafter referred to as the premises.

THIS EASEMENT is granted subject to the following conditions:

1. TERM

This easement is granted for a term of 25 years beginning 21 March 2016 and ending 20 March 2041.

2. CONSIDERATION

The consideration for this easement shall be the construction, operation and maintenance of a public pathway for the benefit of the United States and the general public in accordance with the terms herein set forth.

3. NOTICES

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the grantee, to **City Manager, City of Newport, 169 SW Coast Hwy, Newport, Oregon 97365**; and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, Portland District, PO Box 2946, Portland, Oregon 97208-2946, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", "Installation Commander", or "said officer" shall include their duly authorized representatives. Any reference to "grantee" shall include assignees, transferees and their duly authorized representatives.

5. SUPERVISION BY THE DISTRICT ENGINEER

The construction, operation, maintenance, repair or replacement of said facilities, including culverts and other drainage facilities, shall be performed at no cost or expense to the United States and subject to the approval of the District Engineer, Portland District, hereinafter referred to as said officer. Upon the completion of any of the above activities, the grantee shall immediately restore the premises to the satisfaction of said officer. The use and occupation of the premises for the purposes herein granted shall be subject to such rules and regulations as said officer prescribes in writing from time to time.

6. APPLICABLE LAWS AND REGULATIONS

The grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

7. CONDITION OF PREMISES

The grantee acknowledges that it has inspected the premises, knows the condition, and understands that the same is granted without any representation or warranties whatsoever and without any obligation on the part of the United States.

8. INSPECTION AND REPAIRS

The grantee shall inspect the facilities at reasonable intervals and immediately repair any defects found by such inspection or when required by said officer to repair any such defects.

9. PROTECTION OF GOVERNMENT PROPERTY

The grantee shall be responsible for any damage that may be caused to property of the United States by the activities of the grantee under this easement, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all causes. Any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

10. RIGHT TO ENTER

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to remove timber or other material, except property of the grantee, to flood the premises and/or to make any other use of the lands as may be necessary in connection with government purposes, and the grantee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

11. RIGHT TO CONNECT

The United States reserves the right to make such connections between the pathway herein authorized and roads and streets on other government lands as said officer may from time to time consider necessary, and also reserves to itself rights-of-way for all purposes across, over or under the right-of-way hereby granted; provided that such rights shall be used in a manner that will not create unnecessary interference with the use and enjoyment by the grantee of the right-of-way herein granted.

12. OTHER AGENCY AGREEMENTS

It is understood that the provisions of the conditions on **SUPERVISION BY THE DISTRICT ENGINEER** and **RIGHT TO ENTER** above shall not abrogate or interfere with any agreements or commitments made or entered into between the grantee and any other agency of the United States with regard to financial aid to the grantee in connection with the construction, maintenance, or repair of the facilities herein authorized.

13. TERMINATION

This easement may be terminated by the Secretary upon 30 days written notice to the grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

14. SOIL AND WATER CONSERVATION

The grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the grantee during the term of this easement, and the grantee shall take appropriate measures to prevent or control soil erosion within the right-of-way herein granted. Any soil erosion occurring outside the premises resulting from the activities of the grantee shall be corrected by the grantee as directed by said officer.

15. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground and water. The grantee shall comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this easement. The grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The use of any pesticides or herbicides within the premises shall be in conformance with all applicable Federal, state, interstate, and local laws and regulations. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

c. The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the grantee's activities, the grantee shall be liable to restore the damaged resources.

16. ENVIRONMENTAL CONDITION OF PROPERTY

The proposed action will result in a very minor disturbance to the environment. A Report of Availability dated **January 18, 2019**, states that no extraordinary circumstances exist. Due to the minor environmental risks associated with the proposed action, this action is excluded from the ECP requirement per Engineer Regulation 200-2-3.

17. HISTORIC PRESERVATION

The grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

18. NON-DISCRIMINATION

a. The grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin or religion.

b. The grantee, by acceptance of this easement, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. Section 2000d); the Age Discrimination Act of 1975 (42 U.S.C. Section 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 195) issued as Department of Defense Directive 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the grantee, its agents, successors, transferees, and assignees.

19. RESTORATION

On or before the termination or revocation of this easement, the grantee shall, without expense to the United States and within such time as said officer may indicate, restore the premises to the satisfaction of said officer. In the event the grantee shall fail to restore the premises, at the option of said officer, said improvements shall either become the property of the United States without compensation therefore, or said officer shall have the option to perform the restoration at the expense of the grantee, and the grantee shall have no claim for damages against the United States or its officers or agents for such action.

20. DISCLAIMER

This instrument is effective only insofar as the rights of the United States in the premises are concerned; and the grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this easement does not eliminate the necessity for obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. Section 403), Section 404 of the Clean Water Act (33 U.S.C. Section 1344) or any other permit or license which may be required by Federal, state, interstate or local laws in connection with the use of the premises.

21. EXECUTIVE ORDER 13658

It has been determined this contract is not subject to Executive Order 13658 or the regulations issued by the Secretary of Labor in 29 CFR part 10 pursuant to the Executive Order, and the following provisions.

22. EXECUTIVE ORDER 13658 HOLD HARMLESS AND INDEMNIFICATION

If a duly authorized representative of the United States discovers or determines, whether before or subsequent to executing this contract, that an erroneous determination regarding the applicability of Executive Order 13658 was made, contractor, to the extent permitted by law, agrees to indemnify and hold harmless the United States, its officers, agents, and employees, for and from any and all liabilities, losses, claims, expenses, suits, fines, penalties, judgments, demands or actions, costs,

fees, and damages directly or indirectly arising out of, caused by, related to, resulting from or in any way predicated upon, in whole or in part, the erroneous Executive Order 13658 determination. This includes contractor releasing any claim or entitlement it would otherwise have to an equitable adjustment to the contract and indemnifying and holding harmless the United States from the claims of subcontractors and contractor employees.

23. EXECUTIVE ORDER 13706

It has been determined this contract is not subject to Executive Order 13706 or the regulations issued by the Secretary of Labor in 29 CFR part 13 pursuant to the Executive Order.

24. DISCLAIMER

This instrument is effective only insofar as the rights of the United States in the property are concerned, and the grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this easement does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. Section 403), Section 404 of the Clean Water Act (33 U.S.C. Section 1344) or any other permit or license which may be required by Federal, state or local statute in connection with use of the premises.

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THIS EASEMENT is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of Army, this 13th day of May, 2019.



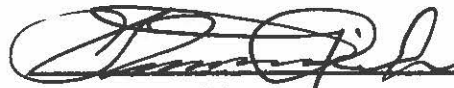
AMANDA J. DETHMAN
District Chief of Real Estate
Real Estate Contracting Officer

THIS EASEMENT is also executed by the grantee this 25th day of March, 2019.



SPENCER NEBEL
City Manager
City of Newport

Approved as to Form



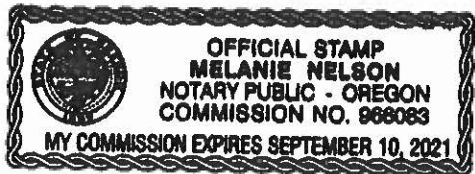
City Attorney

ACKNOWLEDGMENT

STATE OF OREGON)
) :ss
COUNTY OF LINCOLN)

On this 25 day of March, 2019, before me the undersigned Notary Public, personally appeared **Spencer Nebel**, known to me to be the person described in the foregoing instrument, who acknowledged that they executed the same in the capacity therein stated and for the purposes therein contained.

GIVEN under my hand and seal, this 25 day of March, 2019.



Melanie Nelson
NOTARY PUBLIC

(Seal)

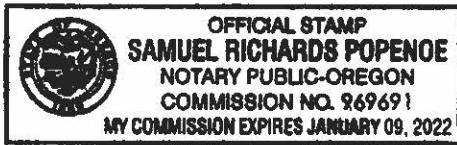
My commission expires on the 10 day of September, 2021.

ACKNOWLEDGMENT

STATE OF OREGON)
) :ss
COUNTY OF MULTNOMAH)

BEFORE ME, a Notary Public in and for Multnomah County, personally appeared Amanda J. Dethman, to me known to be the identical person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the said instrument by authority of the Secretary of the Army, for the purposes therein expressed as the act and deed of the United States.

GIVEN under my hand and seal, this 13th day of May, 2019.



[Handwritten Signature]

NOTARY PUBLIC

(Seal)

My commission expires on the 9th day of January, 2022.

CERTIFICATE OF AUTHORITY

I, Margaret M. Hawker, certify that I am the City Recorder for the City of Newport, Oregon, and that Spencer R. Nebel who signed the foregoing instrument on behalf of the grantee was then City Manager of the City of Newport, Oregon. I further certify that the said officer was acting within the scope of powers delegated to this governing body of the grantee in executing said instrument.

CITY OF NEWPORT

Date: March 25, 2019


Margaret M. Hawker, City Recorder



LAND MANAGEMENT MAP
YAQUINA BAY AND HARBOR
 OUTGRANT: LEASE



Sec. 17
 T.11S., R.11W.,
 W.M.



Vicinity Map

DACW57-2-17-0023



0.12 Acres

NOTES:

ENCLOSURE 1



DATE	ISSUED BY	PROJECT NO.	DATE

LAND MANAGEMENT MAP
CITY OF NEWPORT
 LINCOLN COUNTY

of
Exhibit A
 Sheet of

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