

**Chicago Title Company of Oregon**

1211 SW Fifth Ave., Ste 2130

Portland, OR 97204

Phone: (503)973-7400 Fax: (503)248-0324

3450

**Seller's Estimated Settlement Statement**

**Settlement Date:** February 01, 2023  
**Disbursement Date:** February 01, 2023  
**Order Number:** 472523000283  
**Escrow Officer:** Kayla Erne  
**Buyer:** State of Oregon, acting by and through the Oregon Department of Forestry  
**Seller:** City of Newport, Oregon, an Oregon municipal corporation  
**Property:** Newport, OR 97365  
Lincoln County  
APN/Parcel ID: R519188

	Seller	
	Debit	Credit
<b>Financial Consideration</b>		
Purchase Price		450,000.00
Exchange of Value	450,000.00	
<b>Title/Escrow Charges</b>		
Settlement or Closing Fee to Chicago Title Company of Oregon	1,200.00	
Government Lien Search to Chicago Title Company of Oregon	10.00	
Owner's Policy Premium to Chicago Title Company of Oregon	1,250.00	
Extended Coverage		
Coverage: \$450,000.00		
Version: ALTA Owner's Policy 2021		
<b>Subtotals</b>	452,460.00	450,000.00
<b>Balance Due FROM Seller</b>		<b>2,460.00</b>
<b>Totals</b>	452,460.00	452,460.00

**See signature page to follow**

**Seller's Estimated Settlement Statement**

**SELLER**

City of Newport, Oregon, an Oregon municipal corporation

BY: 

Spencer Nebel  
City Manager

Chicago Title Company of Oregon

BY: \_\_\_\_\_

Chicago Title Company of Oregon

**RECORDING REQUESTED BY:**



1211 SW Fifth Ave., Ste 2130  
Portland, OR 97204

**AFTER RECORDING RETURN TO:**

**Order No.:** 472523000283-KE  
Oregon Department of Forestry  
2600 State St., Bldg. F  
Salem, OR 97310

**SEND TAX STATEMENTS TO:**

Oregon Department of Forestry  
2600 State St., Bldg. F  
Salem, OR 97310

APN: R519188  
Map: 10-11-20-BD-00501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**STATUTORY WARRANTY DEED**

**City of Newport, Oregon, an Oregon municipal corporation, Grantor, conveys and warrants to State of Oregon, acting by and through the Oregon Department of Forestry, Grantee, the following described real property, free and clear of encumbrances except as specifically set forth below, situated in the County of Lincoln, State of Oregon:**

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

THE TRUE AND ACTUAL CONSIDERATION FOR THIS CONVEYANCE IS FOUR HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$450,000.00). (See ORS 93.030).

**Subject to:**

SEE EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF

**BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.**

# STATUTORY WARRANTY DEED

(continued)

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

Dated: January 31, 2023

City of Newport, Oregon, an Oregon municipal corporation

BY: Spencer Nebel

Spencer Nebel  
City Manager

State of OREGON

County of LINCOLN

This instrument was acknowledged before me on January 31, 2023 by City of Newport, Oregon, an Oregon municipal corporation.

Sherrilyn Marineau  
Notary Public - State of Oregon

My Commission Expires: 11/3/2024



Accepted on behalf of the State of Oregon, acting  
by and through the Oregon Department of Forestry

Michael Curran

By: Michael Curran, District Forester

## **LEGAL DESCRIPTION**

Parcel 1 of PARTITION PLAT 2003-07, County of Lincoln and State of Oregon, filed for record May 12, 2003 in the Lincoln County Partition Plat Records.

## **EXHIBIT "B"**

### **Exceptions**

**Subject to:**

Rights of the public to any portion of the Land lying within the area commonly known as roads and highways.

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Central Lincoln People's Utility District

Purpose: as set forth therein

Recording Date: November 8, 1977

Recording No: Book 81, page 521

Affects: Exact location unknown

Easements, conditions, restrictions and notes as delineated on the recorded Partition Plat 1996-7

Terms, provisions and conditions, including, but not limited to, maintenance provisions, and a covenant to share the costs of maintenance, contained in Declaration of Easement

Recording Date: October 3, 1997

Recording No.: Book 344, page 2192

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: State of Oregon, by and through its Oregon Transportation Commission, Department of Transportation, Highway Division and the operators of the Iron Mountain Quarry

Purpose: as set forth therein

Recording Date: June 5, 1998

Recording No: Book 359, page 719

Affects: Additional property

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Central Lincoln People's Utility District

Purpose: as set forth therein

Recording Date: February 19, 1999

Recording No: Book 376, page 386

Affects: Additional property

Easements, conditions, restrictions and notes as delineated on the recorded Partition Plat 2003-7

Land Partition Deferred Improvement Agreement, including the terms and provisions thereof,

Recording Date: April 3, 2003

Recording No.: 200305226

Affects: May or may not affect - no legal description was attached



ALTA AFFIDAVIT

STATE OF Oregon  
COUNTY OF Lincoln

Policy No.: [REDACTED]

I/We, the undersigned, under oath, state:

1. I/We have exclusive possession of the following described real property:  
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF
2. There have been no repairs or alterations upon said real property during the preceding seventy-five (75) days except:  
NONE
3. There are no unpaid bills for material or labor arising out of any repairs or alterations upon said property.
4. The improvements located on said real property are complete and no further labor or materials will be furnished, except:  
NONE
5. I/We have no knowledge of any liens, judgments, taxes, or other monetary encumbrances which are liens on the subject property, with the exception of those listed in the above referenced title report dated:  
January 24, 2023
6. I/We have not been notified of any intent to assess the subject property by any city, county or state agency.

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

City of Newport, Oregon, an Oregon municipal corporation

BY: [Signature]  
Spencer Nebel  
City Manager

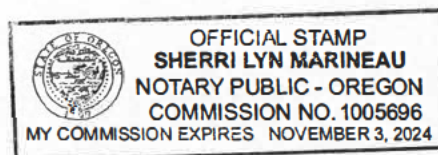
State of OREGON

County of LINCOLN

This instrument was acknowledged before me on January 31, 2023 by Spencer Nebel, as City Manager for City of Newport, Oregon, an Oregon municipal corporation.

[Signature]  
Notary Public - State of Oregon

My Commission Expires: 11/03/2024



## **EXHIBIT "A"**

### **Legal Description**

A tract of land situated in the Northwest one-quarter of Section 20 Township 10 South, Range 11 West, of the Willamette Meridian in Lincoln County, Oregon, said tract being more particularly described as follows:

Commencing at the Northeast corner of Parcel 3, Partition Plat No. 1996-7 (by Gary Nyhus), said corner being the initial point, thence South  $89^{\circ} 57' 56''$  West, a distance of 471.68 to the True Point of Beginning of the tract being herein described; thence South  $24^{\circ} 52' 26''$  West, a distance of 40.18 feet; thence South  $15^{\circ} 54' 44''$  West, a distance of 3.58 feet; thence South  $89^{\circ} 57' 56''$  West, a distance of 124.50 feet; thence North  $02^{\circ} 29' 40''$  East, 40.00 feet; thence North  $89^{\circ} 57' 56''$  East, 140.81 feet to the True Point of Beginning.



**Chicago Title**  
Company of Oregon

**CERTIFICATION OF NON-FOREIGN STATUS  
BY ENTITY TRANSFEROR  
(EACH SELLER MUST COMPLETE A  
SEPARATE CERTIFICATION)**

**Escrow Agent (Qualified Substitute):** Chicago Title Company of Oregon

**Escrow No.:** [REDACTED]

Section 1445 of the Internal Revenue Code, the Foreign Investment in Real Property Tax Act ("FIRPTA"), requires that a Transferee (Buyer) of a U.S. real property interest to withhold tax if the Transferor (Seller) is a foreign person or entity. For U.S. tax purposes (including Section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. FIRPTA withholding is not required if Seller furnishes to Buyer a Certification of Non-Foreign Status signed under penalties of perjury, stating that the Seller is not a foreign person or entity, and containing the Seller's name, address, and U.S. Taxpayer Identification Number.

Buyers who obtain Certifications from the Seller are exempt from FIRPTA withholding requirements unless the Buyer or Buyer's agent has knowledge that the Certification is false.

To inform the Transferee/Buyer that withholding of tax is not required upon the disposition of a U.S. real property interest by the Transferor/Seller, the undersigned hereby certifies the following on behalf of the Transferor/Seller:

1. City of Newport, Oregon, an Oregon municipal corporation is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations;
2. City of Newport, Oregon, an Oregon municipal corporation is not a disregarded entity as defined in § 1.1445-2(b)(2)(iii);
3. City of Newport, Oregon, an Oregon municipal corporation's U.S. Employer Identification Number (EIN) is:

and

4. City of Newport, Oregon, an Oregon municipal corporation's office address is:

169 SW Coast Hwy  
Newport, OR 97365

City of Newport, Oregon, an Oregon municipal corporation understands that this Certification may be disclosed to the Internal Revenue Service by the Transferee/Buyer and that any false statement contained herein could be punished by fine, imprisonment, or both. If this Certification is delivered to a Qualified Substitute, City of Newport, Oregon, an Oregon municipal corporation understands this Certification may be disclosed to the Buyer.

Under penalties of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of City of Newport, Oregon, an Oregon municipal corporation.

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

City of Newport, Oregon, an Oregon municipal corporation

BY: [Signature]  
Spencer Nebel  
City Manager

01/31/2023  
Date



1211 SW Fifth Ave., Ste 2130  
Portland, OR 97204  
Phone: (503)973-7400 / Fax: (503)248-0324

## PRELIMINARY STATEMENT REGARDING SELLER'S EXEMPT STATUS

OREGON REVISED STATUTES 314.258 REQUIRES TAX WITHHOLDING FOR CERTAIN TRANSFERS OF OREGON REAL PROPERTY. THIS FORM WILL BE USED TO DETERMINE THE APPLICABILITY OF STATE TAX WITHHOLDING REQUIREMENTS.


Escrow No.:	
Date of Closing:	February 1, 2023
Name of Transferor (Seller):	City of Newport, Oregon, an Oregon municipal corporation
Address or Short Description of Property Sold:	APN/Parcel ID(s) R519188 as well as Tax/Map ID(s) 10-11-20-BD-00501
Address of Transferor's Residence:	

The undersigned Transferor hereby affirms that, **as of the date of closing** with respect to the sale of the above described property closed through the above referenced escrow, the undersigned Transferor is (*check the box that applies*):

- |   |  |
|---|--|
| <input type="checkbox"/> An individual and an Oregon resident, residing at the address filled in above.   | <input type="checkbox"/> A C-corporation formed in the State of Oregon.  |
| <input type="checkbox"/> A Limited Liability Company that has more than one member and is not a "disregarded entity" within the meaning prescribed by the Oregon Department of Revenue.   | <input type="checkbox"/> A C-corporation registered and qualified to do business in the State of Oregon.   |
| <input type="checkbox"/> A Trust that is not a "disregarded entity."<br>If the Seller is a Trust:<br>Is the trust irrevocable? <input type="checkbox"/> Yes <input type="checkbox"/> No<br>Separate Tax ID No.? <input type="checkbox"/> Yes <input type="checkbox"/> No<br>If "Yes", Tax ID No.: _____ | <input type="checkbox"/> An S-corporation.   |
|   | <input type="checkbox"/> A General Partnership.  |
|   | <input type="checkbox"/> A Limited Partnership.  |
|   | <input type="checkbox"/> A Limited Liability Partnership.  |
|   | <input type="checkbox"/> A non-profit corporation.   |
|   | <input checked="" type="checkbox"/> A City, County, Municipal or Public Corporation.   |
|   | <input type="checkbox"/> An agency or instrumentality of the United States or the State of Oregon.   |
| <input type="checkbox"/> A Personal Representative or Executor of an Estate acting under judicial review.   | <input type="checkbox"/> A Transferor in a conveyance in lieu of foreclosure of a mortgage, trust deed or land sale contract with no additional consideration. |
| <input type="checkbox"/> A Conservator, Bankruptcy trustee, or any other person acting under judicial review.   |  |
| <input type="checkbox"/> A transferor in a transaction for which the total consideration (sale price) is \$100,000 or less.   |  |
| <input type="checkbox"/> None of the above.   |  |

Additional Information may be required by Escrow Agent.

**PRELIMINARY STATEMENT REGARDING  
SELLER'S EXEMPT STATUS**  
(continued)

 Title, if applicable: City Manager Date: 01-31-2023  
(Signature of transferor/authorized signer)

Transferor's Taxpayer ID No. (SSN or Employer ID No.): \_\_\_\_\_

\_\_\_\_\_  
(Signature of transferor/authorized signer) Title, if applicable: \_\_\_\_\_ Date: \_\_\_\_\_

Transferor's Taxpayer ID No. (SSN or Employer ID No.): \_\_\_\_\_

**IF YOU CHECKED ANY BOX OTHER THAN "NONE OF THE ABOVE," SUBMIT THE SIGNED AND DATED FORM TO THE CLOSING AGENT AT YOUR CLOSING APPOINTMENT OR SOONER.**

**IF YOU CHECK "NONE OF THE ABOVE," YOU MUST COMPLETE OREGON DEPARTMENT OF REVENUE (DOR) FORM WC AND SUBMIT IT TO THE CLOSING AGENT TO YOUR CLOSING APPOINTMENT OR SOONER.**

**CONTACT THE ESCROW AGENT OR DOR TO OBTAIN THE FORM AND INSTRUCTIONS.**

**LINK TO DOR'S FORMS LIBRARY - SEARCH FOR FORM OR-18: <https://www.Oregon.gov/DOR/forms/Pages/default.aspx>**



## SALE ESCROW INSTRUCTIONS

Kayla Erne, Commercial Escrow Officer  
Chicago Title Company of Oregon  
1211 SW Fifth Ave., Ste 2130  
Portland, OR 97204  
Phone: (503)973-7400 Fax: (503)248-0324

Date: January 30, 2023  
Escrow No.: [REDACTED]  
Property: APN/Parcel ID: R519188  
Tax/Map ID: 10-11-20-BD-00501

Buyer hands you herewith collected funds pursuant to the closing statement approved by the undersigned buyer and:

- Balance of funds to close escrow in the form of a wire transfer or cashier's check payable to Chicago Title Company of Oregon pursuant to the "Deposit of Funds", Paragraph 1 contained in the General Provisions attached hereto and made a part hereof
- Approved copy of Preliminary Report
- Read and approved copy of the Statutory Warranty Deed

Which you are to use and/or deliver provided you can deliver for the account of the undersigned the following:

- Properly executed Deed

describing the real property as set forth in that certain preliminary title report issued by Western Title & Escrow No. WT0247510, dated January 24, 2023, which preliminary title report the undersigned has read and does hereby approve;

AND when you can cause to be issued an **Owner's Extended** coverage form Policy of Title Insurance from **Chicago Title Insurance Company** with a liability of **Four Hundred Fifty Thousand And No/100 Dollars (\$450,000.00)** insuring the undersigned that title to the above referenced property:

### SHOWING TITLE VESTED IN

State of Oregon, acting by and through the Oregon Department of Forestry

Subject to the usual printed exclusions and exceptions, current general and special taxes for the fiscal year in which this escrow closes, and taxes for the ensuing year, if any, a lien not yet due and payable, and exceptions numbered 6, 8-15, 20 of the above referenced title report, and further subject to any new encumbrance recorded at closing.

Seller hands you herewith the following:

- Deed from City of Newport, Oregon, an Oregon municipal corporation to State of Oregon, acting by and through the Oregon Department of Forestry
- 1099 Form
- Approved copy of Preliminary Report
- Department of Revenue Documents

describing the real property as set forth in that certain preliminary title report issued by Western Title & Escrow No. WT0247510, dated January 24, 2023, which preliminary title report the undersigned has read and does hereby approve;

which you can use when you hold for the account of the undersigned Seller funds pursuant to the closing statement approved by the undersigned; and:

Prorate the following as of Recording Date of Deed:

- \_\_\_\_\_

## SALE ESCROW INSTRUCTIONS

(continued)

### ADDITIONAL INSTRUCTIONS

NONE

### GENERAL INSTRUCTIONS

The General Provisions attached to these instructions are part of these instructions.

Upon request, you are instructed to furnish any broker or lender identified with this transaction or anyone acting on behalf of such lender, any information concerning this escrow, copies of all instructions, amendments or statements.

All terms and provisions of the agreement between the parties, amendments or addendums thereto, have been complied with to the satisfaction of the undersigned parties or will be complied with outside this escrow.

**IT IS UNDERSTOOD BY THE PARTIES SIGNING THE ABOVE INSTRUCTIONS OR THOSE ESCROW INSTRUCTIONS WHICH ARE ATTACHED HERETO THAT SUCH INSTRUCTIONS CONSTITUTE THE WHOLE AGREEMENT BETWEEN THIS FIRM AS AN ESCROW AGENT AND YOU AS A PRINCIPAL TO THE ESCROW TRANSACTION. THESE INSTRUCTIONS MAY NOT INCLUDE ALL OF THE TERMS OF THE AGREEMENT WHICH IS THE SUBJECT OF THIS ESCROW. READ THESE INSTRUCTIONS CAREFULLY, AND DO NOT SIGN THEM UNLESS THEY ARE ACCEPTABLE TO YOU.**

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

REFUNDS after closing, if any:

☐ DEPOSIT (attach voided check or deposit slip OR see bank information on 'Disbursement of Proceeds/Wire Transfer Instructions')

#### BUYER(S):

State of Oregon, acting by and through the Oregon  
Department of Forestry

BY:

Michael Curran

Michael Curran  
District Forester

1/30/23

Date

Phone: 541-929-3266

Email: michael.curran@odf.oregon.gov

Forwarding Address:

## SALE ESCROW INSTRUCTIONS

(continued)

REFUNDS after closing, if any:

☐ DEPOSIT (attach voided check or deposit slip OR see bank information on 'Disbursement of Proceeds/Wire Transfer Instructions')

### SELLER(S):

City of Newport, Oregon, an Oregon municipal corporation

BY: SPN

Spencer Nebel  
City Manager

01-31-2023

Date

Forwarding Address:

Phone: 906-547-0601

Email: ~~SPN~~ S.nebel@newportoregon.gov

### RECEIVED BY:

Chicago Title Company of Oregon

By: \_\_\_\_\_

Kayla Erne, Commercial Escrow Officer

\_\_\_\_\_  
Date

## **GENERAL PROVISIONS**

### **1. DEPOSIT OF FUNDS**

The law dealing with the disbursement of funds requires that all funds be available for withdrawal as a matter of right by the title entity's escrow and/or sub escrow account prior to disbursement of any funds. Only cash or wire transferred funds can be given immediate availability upon deposit. Cashier's checks may be available one business day after deposit. All other funds such as personal, corporate or partnership checks and drafts are subject to mandatory holding periods which may cause material delays in disbursement of funds in this escrow. In order to avoid delays, all fundings should be wire transfer. Outgoing wire transfers will not be authorized until confirmation of the respective incoming wire transfer or of availability of deposited checks.

All funds received in this escrow shall be deposited with other escrow funds in a general escrow account or accounts of Chicago Title Company of Oregon, with any state or national bank, and may be transferred to any other such general escrow account or accounts. Said funds will not earn interest unless the instructions otherwise specifically state that funds shall be deposited in an interest-bearing account.

Escrow Holder receives indirect benefits including but not limited to checks, deposit slips, data processing and account service and waiving of certain fees from the depository bank where its non-interest bearing client trust accounts are maintained. Escrow Holder or its affiliates may also elect to enter into other business transactions with or obtain loans for investment or other purposes from the depository institution. These benefits are passed on to the escrow principals through lower escrow fees. Pursuant to OAR 863-50-065, a good faith estimate of the value of the benefit is Twenty-Four and 12/100 Dollars (\$24.12) per escrow. By initialing below, we hereby acknowledge advisement of the disclosure.

**NOTICE OF OPPORTUNITY.** You have the opportunity to earn interest on your escrow funds by requesting Escrow Holder to set up an interest bearing account on your behalf. Escrow Agent will inform you of any fees it will charge to establish the account. Interest earned is dependent upon the amount of the deposit, the length of time of the deposit, and the prevailing interest rate.

All disbursements shall be made by check of Chicago Title Company of Oregon. The principals to this escrow are hereby notified that the funds deposited herein are insured only to the limit provided by the Federal Deposit Insurance Corporation. Any instruction for bank wire will provide reasonable time or notice for Escrow Holder's compliance with such instruction. Escrow Holder's sole duty and responsibility shall be to place said wire transfer instructions with its wiring bank upon confirmation of (1) satisfaction of conditions precedent or (2) document recordation at close of escrow. Escrow Holder will NOT be held responsible for lost interest due to wire delays caused by any bank or the Federal Reserve System, and recommends that all parties make themselves aware of banking regulations with regard to placement of wires.

In the event there is insufficient time to place a wire upon any such confirmation or the wires have closed for the day, the parties agree to provide written instructions for an alternative method of disbursement. **WITHOUT AN ALTERNATIVE DISBURSEMENT INSTRUCTION, FUNDS WILL BE HELD IN TRUST IN A NON-INTEREST BEARING ACCOUNT UNTIL THE NEXT OPPORTUNITY FOR WIRE PLACEMENT.**

If for any reason funds are retained or remain in escrow after closing date, Escrow Agent is authorized to deduct therefrom reasonable monthly charges as custodian thereof of one percent of the original balance but not less than Ten and No/100 Dollars (\$10.00) per month. Funds deposited into this escrow are to be maintained in a federally insured trust account and any escrow related services provided to Escrow Agent by any depository bank or savings and loan association are hereby consented to and approved.

Unless specifically instructed otherwise in writing, mail all funds and instruments deliverable to the parties in favor of them to their address indicated below. At your discretion, you are authorized to receive and/or disburse any funds in connection with this escrow by electronic (wire) transfer.

The undersigned hereby authorize and instruct Escrow Holder to charge each party to the escrow for their respective Federal Express, special mail handling/courier and/or incoming/outgoing wire transfer fees. Unless specified in writing by the undersigned, Escrow Holder is authorized to select special mail/delivery or courier service to be used.

### **2. PRORATIONS AND ADJUSTMENTS**

Make each proration on the basis of the actual number of days in the year covered by said item, annualizing monthly amounts. Tax prorations shall be based on the amount of the latest available tax statement (which may include reductions based on any deferral or exemption); during periods in which the current years tax figures are not available, you shall prorate taxes or assessments upon the immediate preceding year's figures, any further adjustment in actual taxes shall be handled between the parties outside of this escrow and Escrow Agent shall have no liability for the collection or payment thereof. If the parties herein have provided Escrow Agent with a rent schedule on the subject property, you shall prorate rents and charge seller and credit buyer with any deposits paid in advance pursuant to the rent schedule approved by the parties. Seller represents that they will collect all rents which fall due prior to the close of escrow. Make no adjustment against buyer for uncollected rent. Buyer acknowledges that the assessor's office customarily mails tax notices for the July 1 to June 30 tax year in October of the tax year and that Escrow Agent cannot guarantee that the tax assessor's office will address the tax bill to Buyer. Buyer accepts responsibility for contacting the assessor's office and obtaining a tax bill in a timely manner. Buyer acknowledges that a discount applies only if taxes are paid in full on or before November 15 of the tax year and that interest and billing charges may accrue after November 15.

### **3. UTILITIES/POSSESSION**

Transfer, payment and adjustment of utilities and possession of the premises are to be settled by the parties directly and outside escrow.

### **4. PREPARATION AND RECORDATION OF INSTRUMENTS**

Escrow Holder is authorized to prepare, obtain, record and deliver the necessary instruments to carry out the terms and conditions of this escrow and to order the policy of title insurance to be issued at close of escrow as called for in these instructions. Close of escrow shall mean the date instruments are recorded.

### **5. AUTHORIZATION TO FURNISH COPIES**

You are authorized to furnish copies of these instructions, supplements, amendments, notices of cancellation and closing statements, to the Real Estate Broker(s) and Lender(s) named in this escrow.

## GENERAL PROVISIONS

(continued)

### 6. RIGHT OF CANCELLATION

Any principal instructing you to cancel this escrow shall file notice of cancellation in your office in writing. You shall, within two (2) working days thereafter, deliver, one copy of such notice to each of the other principals at the addresses stated in this escrow. If written objection is filed, you are authorized to institute an action in interpleader pursuant to provisions of paragraph number 9 contained herein,

### 7. PERSONAL PROPERTY

No examination, chattel or security interest search or insurance as to the amount or payment of personal property taxes is required unless specifically requested.

Bills of sale, if any required, are to be delivered unrecorded at the close of escrow. Escrow Agent shall have no responsibility or liability for the condition or delivery of any personal property being transferred herein.

By signing these General Provisions, the parties to the escrow hereby acknowledge that they are indemnifying the Escrow Holder against any and all matters relating to any "Bulk Sales" requirements, and instruct Escrow Holder to proceed with the closing of escrow without any consideration of matter of any nature whatsoever regarding "Bulk Sales" being handled through escrow.

### 8. RIGHT OF RESIGNATION

Escrow Holder has the right to resign upon ten (10) days written notice delivered to the principals herein. If such right is exercised, all funds and documents shall be returned to the party who deposited them and Escrow Holder shall have no liability hereunder.

### 9. ACTION IN INTERPLEADER

The principals hereto expressly agree that you, as Escrow Holder, have the absolute right at your election to file an action in interpleader requiring the principals to answer and litigate their several claims and rights among themselves and you are authorized to deposit with the clerk of the court, or with the attorney or law firm to initiate the interpleader action, all documents and funds held in this escrow. In the event such action is filed, the principals jointly and severally agree to pay your cancellation charges and costs, expenses and reasonable attorney's fees which you are required to expend or incur in such interpleader action, the amount thereof to be fixed and judgment therefor to be rendered by the court. Upon the filing of such action, you shall thereupon be fully released and discharged from all obligations imposed by the terms of this escrow or otherwise.

### 10. TERMINATION OF AGENCY OBLIGATION

These instructions shall be binding on the undersigned until the close of business thirty (30) days from date hereon and shall be performed within said period or thereafter until written demand by the undersigned is made upon you for the revocation hereof; provided however, that your agency as Escrow Holder will not extend beyond six (6) months from the date set forth herein. Any such written notices shall be effective upon receipt of such notice. This escrow may be terminated and all papers and monies returned to the parties only upon written instructions of both parties unless otherwise specified herein.

### 11. SETTLEMENT STATEMENTS

The parties hereto agree to pay all items as set forth on the approved Settlement Statements. It is understood that certain items therein may be estimated figures and are subject to adjustment.

### 12. POST CLOSING FILE PROCESSING

It is understood and agreed that the "Reconveyance Fee" specified on the Settlement Statement and on the Estimated Closing Statement is for payment of Trustee Fees, as well as reconveyance and post-closing file processing services.

### 13. COLLECTION OF FEES

Upon recordation and disbursement of documents and funds required herein, you are authorized to collect your fees earned as agreed to for your closing services. Parties agree to pay on demand, whether or not this escrow closes, any charges incurred by Escrow Holder on our behalf and its usual escrow fees and charges.

### 14. DELIVERY/RECEIPT

Delivery to principals as used in these instructions unless otherwise stated herein is to be by hand in person to the principal, regular mail, email or fax to any of the contact information provided in these instructions. If delivered by regular mail receipt is determined to be seventy-two (72) hours after such mailing. All documents, balances and statements due to the undersigned may be delivered to the contact information shown herein. All notices, change of instructions, communications and documents are to be delivered in writing to the office of Chicago Title Company of Oregon as set forth herein.

### 15. STATE/FEDERAL CODE NOTIFICATIONS

According to Federal Law, the Seller, when applicable, will be required to complete a sales activity report that will be utilized to generate a 1099 statement to the Internal Revenue Service.

The parties have satisfied themselves that the transaction covered by this escrow is not in violation of any planning or zoning law, and Escrow Agent is relieved of all liability in connection therewith, and is not concerned with the enforcement of said laws.

## GENERAL PROVISIONS

(continued)

### 16. NON-RESIDENT ALIEN

The Foreign Investment in Real Property Tax Act (FIRPTA), Title 26 U.S.C., Section 1445, and the regulations thereunder, when applicable, provide in part that a transferee (buyer) of a U.S. real property interest from a foreign person must withhold a statutory percentage of the amount realized on the disposition, report the transaction and remit the withholding to the Internal Revenue Service (IRS) within twenty (20) days after the transfer.

The following limitations on the escrow responsibilities of Escrow Holder apply, except to the extent that Escrow Holder is instructed to act, agrees to act and acts as a Qualified Substitute under FIRPTA or is instructed to act, agrees to act and acts as a transmitter of IRS forms and a withholding payment.

Escrow Holder will not determine, and will not aid in the determination of, whether the FIRPTA withholding provisions are applicable to the subject transaction. Escrow Holder will not furnish tax advice to any party to the transaction. Escrow Holder will not determine, and will not aid in the determination of, whether the transaction will qualify for a FIRPTA exception or exemption. Escrow Holder will not be responsible for the filing of any tax form with the IRS related to FIRPTA, and will not be responsible for collecting and holding any documentation from the buyer or seller on the buyer's behalf for the purpose of supporting a claim of an exception or exemption. Escrow Holder is not an agent for the buyer for the purposes of receiving and analyzing any evidence or documentation that the seller in the subject transaction is a U.S. citizen or resident alien. Escrow Holder is not responsible for the payment of this tax and/or any penalty and/or interest incurred in connection with FIRPTA, and such taxes are not a matter covered by the Owner's Policy of Title Insurance to be issued to the buyer. Escrow Holder is not responsible for the completion of any IRS document or form related to FIRPTA. The buyer is advised that (a) the buyer must independently make a determination of whether the contemplated transaction is subject to the withholding requirement; (b) the buyer bears full responsibility for compliance with the withholding requirement if applicable and for payment of any FIRPTA-related tax, interest, penalty or other expense that may be due on the subject transaction; (c) the buyer is responsible for the completion of any and all FIRPTA-related forms, including but not limited to applicable IRS documentation, and for the mailing of those forms; and (d) any FIRPTA-related form, document or information received from Escrow Holder is not tax or legal advice, should not be construed as such and should not be treated as a complete representation of FIRPTA requirements. Buyer should seek outside counsel from a qualified individual to determine any and all implications of FIRPTA and its regulations. The buyer's signature below is the buyer's acknowledgment of receiving this notice.

### 17. ENCUMBRANCES

Escrow Holder is to act upon any statements furnished by a lienholder or his agent without liability or responsibility for the accuracy of such statements. Any adjustments necessary because of a discrepancy between the information furnished Escrow Holder and any amount later determined to be incorrect upon demand of Escrow Holder, parties responsible for payment will immediately pay the amount of any such deficiency.

If a reconveyance of the deed of trust is not recorded within sixty (60) days of its being paid off, you are requested to release the deed of trust pursuant to provisions of ORS 86.720.

### 18. ENVIRONMENTAL ISSUES

Chicago Title Company of Oregon has made no investigation concerning said property as to environmental/toxic waste issues. Any due diligence required or needed to determine environmental impact as to forms of toxification, if applicable, will be done directly and by principals outside of escrow. Chicago Title Company of Oregon is released of any responsibility and/or liability in connection therewith.

### 19. USURY

Escrow Holder is not to be concerned with any questions of usury in any loan or encumbrance involved in the processing of this escrow and is hereby released of any responsibility or liability therefore.

### 20. DISCLOSURE

Escrow Holder's knowledge of matters affecting the property, provided such facts do not prevent compliance with these instructions, does not create any liability or duty in addition to these instructions.

### 21. CLARIFICATION OF DUTIES

Chicago Title Company of Oregon serves ONLY as an Escrow Holder in connection with these instructions and cannot give legal advice to any party hereto.

Escrow Holder is not to be held accountable or liable for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in this escrow, nor as to the identity, authority or rights of any person executing the same. Escrow Holder's duties hereunder shall be limited to the proper handling of such money and the proper safekeeping of such instruments, or other documents received by Escrow Holder, and for the disposition of same in accordance with the written instructions accepted by Escrow Holder.

The agency and duties of Escrow Holder commence only upon receipt of copies of these Escrow Instructions executed by all parties.

### 22. LIMITED ENGLISH PROFICIENCY

Borrowers who are limited in English proficiency in need of an interpreter or assistance translating the loan documents from English to another language should contact their lender or the Settlement Agent at (503)973-7400 as soon as possible in order for arrangements to be made.

THIS AGREEMENT IN ALL PARTS APPLIES TO, INURES TO THE BENEFIT OF, AND BINDS ALL PARTIES HERETO, THEIR HEIRS, LEGATEES, DEVISEES, ADMINISTRATORS, EXECUTORS, SUCCESSORS AND ASSIGNS, AND WHENEVER THE CONTEXT SO REQUIRES THE MASCULINE GENDER INCLUDES THE FEMININE AND NEUTER, AND THE SINGULAR NUMBER INCLUDES THE PLURAL. THESE INSTRUCTIONS AND ANY OTHER AMENDMENTS MAY BE EXECUTED IN ANY NUMBER OF COUNTERPARTS, EACH OF WHICH SHALL BE CONSIDERED AS AN ORIGINAL AND BE EFFECTIVE AS SUCH.

## GENERAL PROVISIONS

(continued)

MY SIGNATURE HERETO CONSTITUTES INSTRUCTION TO ESCROW HOLDER OF ALL TERMS AND CONDITIONS CONTAINED IN THIS AND ALL PRECEDING PAGES AND FURTHER SIGNIFIES THAT I HAVE READ AND UNDERSTAND THESE GENERAL PROVISIONS.

IT IS UNDERSTOOD BY THE PARTIES SIGNING THE ABOVE INSTRUCTIONS OR THOSE ESCROW INSTRUCTIONS WHICH ARE ATTACHED HERETO THAT SUCH INSTRUCTIONS CONSTITUTE THE WHOLE AGREEMENT BETWEEN THIS FIRM AS AN ESCROW AGENT AND YOU AS A PRINCIPAL TO THE ESCROW TRANSACTION. THESE INSTRUCTIONS MAY NOT INCLUDE ALL OF THE TERMS OF THE AGREEMENT WHICH IS THE SUBJECT OF THIS ESCROW. READ THESE INSTRUCTIONS CAREFULLY, AND DO NOT SIGN THEM UNLESS THEY ARE ACCEPTABLE TO YOU.

### END OF INSTRUCTIONS

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

#### BUYER(S):

State of Oregon, acting by and through the Oregon  
Department of Forestry

BY: Michael Curran

Michael Curran  
District Forester

1/30/23

Date

#### SELLER(S):

City of Newport, Oregon, an Oregon municipal  
corporation

BY: Spencer Nebel

Spencer Nebel  
City Manager

01/31/2023

Date

#### RECEIVED BY:

Chicago Title Company of Oregon

By: Kayla Erne

Kayla Erne, Commercial Escrow Officer

                      
Date

## FIRE STATION PROPERTY OCCUPANCY AGREEMENT

THIS FIRE STATION PROPERTY OCCUPANCY AGREEMENT (this “**Agreement**”) is made and entered into as of this 30<sup>th</sup> day of January, 2023 (the “**Effective Date**”), by and between the City of Newport, Oregon, an Oregon municipal corporation, for its Fire Department (“**City**”), and the State of Oregon, acting by and through the Oregon Department of Forestry (“**ODF**”). City and ODF are each a “**Party**” and together the “**Parties**.”

### RECITALS

A. ODF is the owner of certain real property in Newport, Lincoln County, Oregon, as shown on Exhibit A and more particularly described as follows (the “**Fire Station Property**”):

Street: 225 Northeast 73rd Street  
City/State/ZIP: Newport, Oregon 97365

B. The Fire Station Property is a portion of a parcel of certain real property that, as of the Effective Date, ODF has acquired from City, pursuant to that certain Transfer Agreement between the Parties dated July 25, 2022 (the “**Transfer Agreement**”).

C. City’s Fire Department Station No. 3400 (Agate Beach) (the “**Fire Station**”) is located on the Fire Station Property. Any reference in this Agreement to the “Fire Station Property” includes the Fire Station.

D. ODF intends to demolish the Fire Station and otherwise modify the Fire Station Property in order to construct a unit office (“**ODF’s Facility**”) on the Fire Station Property and adjacent real property; and City intends to lease a portion of ODF’s Facility to use as a new fire station.

E. The Parties have agreed that City may continue to occupy the Fire Station Property on the terms and conditions set forth below.

### AGREEMENTS

In consideration of the mutual covenants and agreements set forth herein, City and ODF hereby agree as follows:

1. **Continued Occupancy.** On the terms and conditions set forth herein, City may continue to occupy and use the Fire Station Property, for the Term of this Agreement (as defined in Section 2.1 below).

2. **Term; Notice.**

2.1 The “**Term**” of this Agreement shall commence on the Effective Date and expire thirty (30) days before the Construction Commencement Date (such date being the “**Expiration Date**”). The “**Construction Commencement Date**” is the date that ODF intends for construction to commence on ODF’s Facility.

2.2 ODF shall give City at least one hundred twenty (120) days' notice of the Construction Commencement Date.

3. **No Rent; Utilities.** City shall not pay any rent to ODF for its occupancy of the Fire Station Property; however, City shall pay any and all utilities associated with the Fire Station Property and City's use thereof.

4. **Surrender; Demolition.** City shall surrender the Fire Station Property free of any of City's personal property or fixtures. City understands, agrees and acknowledges that ODF intends to begin construction of ODF's Facility on the Construction Commencement Date; that ODF will demolish the Fire Station as part of its work on ODF's Facility; and that ODF may dispose of any personal property or fixtures left in or on the Fire Station Property as of the Expiration Date.

5. **Use.** City shall use and operate the Fire Station Property in accordance with City's past use and operations of same, and in compliance with any and all applicable federal, state and local laws, ordinances, codes, regulations and rules ("**Laws and Ordinances**").

6. **Maintenance, Repair and Replacement.** City shall, at its sole cost and expense, perform all maintenance, repair and replacement necessary or appropriate to operate and keep the Fire Station Property in condition for City's use and occupancy thereof.

7. **ODF's Entry.** For purposes relating to this Agreement or the planning and construction of ODF's Facility, ODF, its agents and employees may enter the Fire Station Property with at least one (1) business days' prior notice or, in the event of an emergency, at any time with no prior notice.

8. **Insurance.**

8.1 City's Insurance Coverage.

(a) *Generally.* City shall obtain and keep in effect during the Term of this Agreement the types of insurance coverage set forth in Section 8.1(b) below ("**City's Insurance Coverage**"). City's Insurance Coverage shall be issued by an insurance company authorized to do business in the State of Oregon. City shall pay for all deductibles, self-insurance retention and self-insurance, if any. A combination of primary and excess/umbrella insurance may be used to meet the required limits of City's Insurance Coverage.

(b) *Types of Coverage.* City shall obtain and keep in effect during the Term of this Agreement the following City's Insurance Coverage:

(i) General Liability: a commercial general liability policy, covering bodily injury and property damage. The policy shall include coverage for personal and advertising injury liability, products and completed operations and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$2,000,000.00 per occurrence, with an annual aggregate

of not less than \$4,000,000.00.

(ii) Workers' Compensation: if City employs any "subject worker" as defined in ORS 656.027, workers' compensation insurance for those workers, with statutory limits, and employer's liability insurance, with limits not less than \$500,000.00 per each accident or disease.

(c) *Additional Insured*. All of City's Insurance Coverage, except for workers' compensation, shall include an "**Additional Insured**" endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including Additional Insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to City's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of City's ongoing operations shall be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations shall be on ISO form CG 20 37 07 04 or equivalent.

(d) *Tail Coverage*. If any of City's Insurance Coverage is on a claims made basis and does not include an extended reporting period of at least twenty-four (24) months, City shall maintain either tail coverage or continuous claims-made liability coverage, provided the effective date of the continuous claims-made coverage is on or before the Effective Date, for a minimum of twenty-four (24) months following the later of:

- (i) ODF's or City's termination of this Agreement; or
- (ii) the expiration of all warranty periods provided under this Agreement.

(e) *Certificate and Proof of Insurance*. On or before the Effective Date, City shall provide to ODF a "**Certificate of Insurance**" for all of City's Insurance Coverage. The Certificate of Insurance shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate of Insurance shall also include all required endorsements or copies of applicable policy language effecting coverage required under this Agreement. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance shall include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance, ODF may request, and City shall deliver to ODF, copies of insurance policies and endorsements relating to the insurance requirements in this Agreement.

(f) *Change or Cancellation*. City shall provide at least thirty (30) days' prior notice to ODF before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s). Should the terms and conditions of City's Insurance Coverage change during the Term of this Agreement, ODF may require City to replace any coverage omitted or deleted by such change.

(g) *Insurance Requirement Review*. City agrees to ODF's periodic review of the requirements for City's Insurance Coverage under this Section 8.1 and to provide an updated Certificate of Insurance as reasonably requested by ODF.

(h) *ODF Acceptance.* All insurance providers are subject to ODF acceptance. If requested by ODF, City shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to ODF's representatives responsible for verification of City's Insurance Coverage.

8.2 ODF's Insurance. ODF is self-insured for its property and liability exposures, pursuant and subject to the Oregon Constitution and the Oregon Tort Claims Act ("**ODF's Insurance Coverage**"). A current Certificate of Insurance for ODF's Insurance Coverage is available at <http://www.oregon.gov/das/Risk/Pages/CertCovRequest.aspx>.

## 9. **Contribution.**

9.1 Generally. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a "**Third-Party Claim**") against one of the Parties (the "**Notified Party**") with respect to which the other Party (the "**Other Party**") may have liability, the Notified Party shall promptly notify the Other Party of the Third-Party Claim, and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third-Party Claim. Either Party is entitled to participate in the defense of a Third-Party Claim, and to defend a Third-Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section 9.1, and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third-Party Claim with counsel of its own choosing, are conditions precedent to the Other Party's liability with respect to the Third-Party Claim.

9.2 Third-Party Claim for which ODF is Jointly Liable. With respect to a Third-Party Claim for which ODF is jointly liable with City (or would be if joined in the Third-Party Claim), ODF shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, and actually and reasonably incurred and paid or payable by City in such proportion as is appropriate to reflect the relative fault of ODF on the one hand and of City on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODF on the one hand and of City on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODF's contribution in any instance is capped to the same extent it would have been capped under Oregon law if ODF had sole liability in the proceeding.

9.3 Third-Party Claim for which City is Jointly Liable. With respect to a Third-Party Claim for which City is jointly liable with ODF (or would be if joined in the Third-Party Claim), City shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, and actually and reasonably incurred and paid or payable by ODF in such proportion as is appropriate to reflect the relative fault of City on the one hand and of ODF on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of City on the one hand and of ODF on the other hand shall be determined by reference to, among

other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. City's contribution in any instance is capped to the same extent it would have been capped under Oregon law if City had sole liability in the proceeding.

**10. Assignment and Subletting.** City shall not voluntarily or by operation of law assign this Agreement or sublet any portion of the Fire Station Property to any entity except another government entity, and then subject to ODF's prior approval. Any assignment or sublet in contravention of this Section 10 shall be deemed null and void.

**11. Liens.** City shall pay when due all claims for work performed on the Fire Station Property by or through City or for services rendered or materials furnished to the Fire Station Property for City, and shall keep the Fire Station Property free from any liens arising by or through City. If any such lien shall at any time be filed against the Fire Station Property, or any portion thereof, City shall cause the same to be discharged of record or bonded off, as permitted by statute, within thirty (30) days after City's receipt of written notice of same.

**12. Quiet Enjoyment.** Subject to the terms and conditions of this Agreement, City shall peaceably and quietly have, hold and enjoy the Fire Station Property during the Term, without any interruption or disturbance from ODF or any party claiming by, through or under ODF.

**13. City Default.**

**13.1 Default.** The following shall be an event of default by City (a "**City Default**"): City's failure to comply with or fulfill any term, condition or obligation of this Agreement within thirty (30) days after notice from ODF specifying the nature of the failure with reasonable particularity; or, if City cannot reasonably cure such failure within such thirty (30) -day period, then within such time as City can cure the failure with reasonable good faith and diligence; provided, however, that such cure period shall not exceed sixty (60) days.

**13.2 Remedies.** Upon any City Default, ODF may exercise any one or more of the following remedies:

(a) *Cure.* At City's cost and expense, ODF may perform City's unperformed obligations that gave rise to the City Default, and charge all such costs and expenses to City pursuant to this Agreement, which City shall pay within thirty (30) days after ODF delivers an invoice therefor, together with reasonable supporting documentation of such costs and expenses.

(b) *Termination.* ODF may terminate this Agreement, re-enter and take possession of the Fire Station Property and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages to City, its property, any other persons or their property.

(c) *Right to Sue.* ODF may sue periodically to recover damages as they accrue without barring a later action for further damages.

(d) *Damages.* ODF shall be entitled to recover from City any and all damages arising from a City Default, including the following:

(i) all costs and expenses of curing the City Default; and

(ii) any expense arising from City's failure to surrender the Fire Station Property in the condition required by Section 4 above.

(e) *Other.* The foregoing remedies shall be in addition to and shall not exclude any other remedy available to ODF in law or equity.

#### **14. Notices.**

14.1 Addresses. An "**Address**" means the address set forth beneath a Party's signature on this Agreement. Any notices, demands, deliveries or other communications required under this Agreement shall be made in writing and delivered by one of the methods set forth in Section 14.2 below to ODF's Address or City's Address, as the case may be, unless one Party modifies its Address by notice to the other Party, given in accordance with Section 14.2 below.

#### **14.2 Delivery.**

<b>Method of delivery</b>	<b>When notice deemed delivered</b>
In person (including by messenger service)	the day delivered, as evidenced by signed receipt
Email	the day sent (unless sent after 5:00 p.m., P.T., in which case the email shall be deemed sent the following business day)
US Mail (postage prepaid, registered or certified, return receipt requested)	the day received, as evidenced by signed return receipt
Courier delivery (by reputable commercial courier)	the day received, as evidenced by signed receipt

If the deadline under this Agreement for delivery of a notice is a Saturday, Sunday or federal or State of Oregon holiday, such deadline shall be deemed extended to the next business day.

#### **15. Miscellaneous.**

15.1 Time is of the Essence; Calculation of Days. Time is of the essence in relation to the Parties' performance of any and all of their obligations under this Agreement. Any reference in this Agreement to "days" shall mean calendar days, unless specified as "business days." A business day is any day that is not a Saturday, Sunday or a federal or State of Oregon holiday.

15.2 Integration. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. The Parties have no understandings, agreements or representations, oral or written, regarding this Agreement that are not specified herein.

15.3 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

15.4 No Waiver of Performance. No waiver by a Party of performance of any provision of this Agreement by the other Party shall be deemed a waiver of nor prejudice the other Party's right to otherwise require performance of the same provision, or any other provision.

15.5 Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

15.6 Counterparts. This Agreement and any amendments hereto may be executed in two or more counterparts, each of which is an original, and all of which together are deemed one and the same document, notwithstanding that both Parties are not signatories to the same counterpart.

15.7 Consent. Unless otherwise specifically stated herein, any consent by a Party shall not be unreasonably withheld, conditioned or delayed.

15.8 Governing Law; Consent to Jurisdiction. This Agreement is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim between ODF (or any other agency or department of the State of Oregon) and City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the jurisdiction of the Circuit Court of Lincoln County in the State of Oregon. In no event shall this Section 15.8 be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue and waives any claim that such forum is an inconvenient forum.

15.9 Force Majeure. A Party shall not be liable for any delay in performance under this Agreement, other than payment of any money to the other Party, if such delay is caused by Casualties, strikes, lockouts, riots, wars, acts of public enemies, insurrections, acts of God, shortages of labor or materials or any other such causes not within the control of the first Party (any such event being a "**Force Majeure Event**").

15.10 Exhibit. The Exhibit listed below is incorporated as part of this Agreement:


Exhibit A: Fire Station Property

*[remainder of page intentionally left blank]*

Each person signing this Agreement below on behalf of a Party represents and warrants that he or she is duly authorized by such Party and has legal capacity to do so.

**CITY:**

City of Newport, Oregon, an Oregon municipal corporation

By: 

Date: 01-31-2023

Name: Spencer Nebel

Title: City Manager

Address:	169 SW Coast Highway
City/State/ZIP:	Newport, OR 97365
ATTN:	Spencer Nebel, City Manager, or successor
Email:	s.nebel@newportoregon.gov
Phone:	541-574-0601(provided for convenience only)

**ODF:**

The State of Oregon, by and through the Oregon Department of Forestry

By: Michael Curran  
Name: Michael Curran  
Title: District Forester

Date: 1/30/23

Address:	2600 State St., Bldg. F
City/State/ZIP:	Salem, OR 97310
ATTN:	Joseph J. Pfau, Statewide Construction Manager, or successor
Email:	joseph.j.pfau@odf.oregon.gov
Phone:	(503) 507-1527 (provided for convenience only)

#7(ser)

## EXHIBIT A

### Fire Station Property

