

**CITY OF LINCOLN CITY
LINCOLN CITY COUNCIL AGENDA**

MONDAY NOVEMBER 13, 2023, 6:00 PM

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

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

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

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

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

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

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

Agenda materials for this meeting are available at www.lincolncity.org under "Government", then select "Public Meeting Agendas, Packets & Videos". To stream the meeting in HD, please visit www.lincolncity.org/government/streaming. This meeting will be televised live on Channel 4, and rebroadcast on Channel 4 multiple times a day.

If you wish to speak on an agenda or non-agenda item, please sign up on the sheet near the entrance door to the Council Chambers. You will be called to speak during the "Public Comment" section. Comments or testimony on agenda items listed under "public hearing/public comment" will be taken at that time.

A. CALL TO ORDER

B. ROLL CALL

C. PLEDGE OF ALLEGIANCE

D. CONSENT AGENDA

1. Regular Meeting – Minutes of Joint Meeting with North Lincoln Fire – October 16, 2023, 5:00 PM
2. Regular Meeting – Minutes of Regular Meeting – October 23, 2023, 6:00 PM
3. Regular Meeting – Minutes of Work Session – October 30, 2023, 5:00 PM
4. Regular Meeting – Minutes of Work Session – November 6, 2023, 5:00 PM

E. COUNCIL DELIBERATIONS

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

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

G. PRESENTATIONS

H. PUBLIC HEARING / ORDINANCE

I. PUBLIC HEARINGS / PUBLIC COMMENTS

1. Regatta Park Playground Exemption
2. SE 2nd Street Inflow & Infiltration Project - Exemption from Public Contracting
3. NW 17th Street Public Restroom Replacement Exemption

J. ORDINANCES

K. RESOLUTIONS

4. Resolution No. 2023-29 - A Resolution Adopting Regular Procedures for Hiring a City Attorney

L. SPECIAL ORDER OF BUSINESS

5. Order Suspending Conditions of Final Order 2019-06 for 6 months

M. CITY MANAGER/CITY ATTORNEY REPORTS

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

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

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

P. ANNOUNCEMENTS OR COMMENTS BY CITY COUNCIL

Q. ADJOURNMENT

CITY OF LINCOLN CITY
CITY COUNCIL MINUTES
JOINT MEETING WITH NORTH LINCOLN FIRE AND RESCUE
OCTOBER 16, 2023, 5:00 PM

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

Approved by City Council
Date: _____

1. CALL TO ORDER

Attendee Name	Title	Status	Arrived
Judy Casper	Councilor Ward 3	Present	
Riley Hoagland	Councilor Ward 2	Late	5:08 PM
Rick Mark	Councilor Ward 3	Present	
Mitch Parsons	Councilor Ward 1	Excused	
Susan Wahlke	Mayor	Present	

Staff Present: Daphnee Legarza, City Manager; Chief Broderick, Lincoln City Police Department; Alison Robertson, Economic Development and Urban Renewal Director; Seth Lenaerts, Project Manager; Cassidy Boyle, Emergency Preparedness Coordinator; Jamie Young, City Recorder.

North Lincoln Fire & Rescue Attendees: Chief Rob Dahlman (via Zoom); Tim Beatty; James Wright; Dan Drayton; Eric Creighton; Nancy Oksenholt; Cody Height, Fire Marshall; Doug Strange, Deputy Chief.

2. DISCUSSION

A. Urban Renewal District Discussion

Alison Robertson, Urban Renewal and Economic Development Director, gave the history of the Urban Renewal Districts. The City Council, Staff, and the Fire District had a discussion on the details.

B. Relationship Building with CTSI

Chief Dahlman spoke about the relationship with Confederated Tribes of the Siletz and North Lincoln Fire and Rescue. The City Council, Staff, and the Fire District had a discussion on the details.

C. Insurance Services Office Fire Protection Classification Evaluation

Cody Heidt, Fire Marshall, explained the ISO evaluation. The City Council, Staff, and the Fire District had a discussion on the details.

D. Public Works Water Supply Issues

The City Council, Staff, and the Fire District had a discussion on the fire hydrants in the City. Ms. Legarza suggested a special meeting to discuss the fire hydrant maintenance and additional hydrants. Ms. Legarza is going to check with Public Works on the reservoir at Spring Lake.

E. Expectations of North Lincoln Fire & Rescue

The City Council, Staff, and the Fire District had a discussion on the new dispatch system and the calls with Willamette Valley 9-1-1.

1. Strategic Planning

Chief Dahlman spoke about the long-term goals and finding out the City's expectations.

2. Standards of Coverage Expectations

F. Review of Current Working Relationships

3. Disaster Planning

Chief Dahlman spoke about the electronic reader board signs. The City Council, Staff, and the Fire District had a discussion on the use of electronic signs.

4. Inspections and Plan Review

Cody Heidt, Fire Marshall, explained the inspection and plan review process. The City Council, Staff, and the Fire District had a discussion on the details of the inspections.

5. Public Safety

Chief Dahlman spoke about the relationship North Lincoln Fire has with the City. Chief Dahlman also spoke about the Narcan and overdose reporting. The City Council, Staff, and the Fire District had a discussion on the details.

III. MISCELLANEOUS

Ms. Legarza asked if there are other ODOT issues and said if there is please let the City know and it will be communicated. Chief Dahlman asked about the proposed crosswalk. Ms. Legarza said that is still on her radar. The City Council, Staff, and the Fire District had a discussion on the details.

The City Council, Staff, and the Fire District had a discussion on the crosswalks with the flashing lights, the bumps at the crosswalk at SE 3rd, and the construction at the North entrance of West Devils Lake Road.

IV. ADJOURNMENT

Mayor Wahlke adjourned the meeting at 6:19 PM.

SUSAN WAHLKE, MAYOR

ATTEST:

JAMIE YOUNG, CITY RECORDER

CITY OF LINCOLN CITY

CITY COUNCIL MINUTES OF THE MEETING

October 23, 2023, 6:00 PM

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

APPROVED BY CITY COUNCIL

DATE:

A. CALL TO ORDER

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

B. ROLL CALL

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

Staff Present: Daphnee Legarza, City Manager; Chief Broderick, Lincoln City Police Department; Alison Robertson, Economic Development and Urban Renewal Director; Seth Lenaerts, Project Manager; Anne Marie Skinner, Planning and Community Development Director; Debbie Bridges, Finance Director (via Zoom); Jamie Young, City Recorder.

C. PLEDGE OF ALLEGIANCE

Mayor Wahlke led The Pledge of Allegiance.

D. CONSENT AGENDA

MOTION: Consent Agenda
MOVER: Judy Casper, Councilor Ward 3
SECONDER: Mitch Parsons, Councilor Ward 1
AYES: Casper, Hoagland, Mark, Parsons, Wahlke
RESULT: Passed

1. Regular Meeting – Minutes of Regular Meeting – October 9, 2023, 6:00 PM
2. Dissolve Nelscott Urban Renewal Ad Hoc Committee

E. COUNCIL DELIBERATIONS

None

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

None

G. PRESENTATIONS

None

H. PUBLIC HEARING / ORDINANCE

None

I. PUBLIC HEARINGS / PUBLIC COMMENTS

1. Public Hearing for ZOA 2023-05 TSP drive projects

MOTION: Motion to Close Public Hearing for ZOA 2023-05 TSP Drive Projects
MOVER: Judy Casper, Councilor Ward 3
SECONDER: Rick Mark, Councilor Ward 3
AYES: Casper, Hoagland, Mark, Parsons, Wahlke
RESULT: Passed via Voice Vote

Mayor Wahlke opened the public hearing at 6:05 PM. There were no conflicts disclosed by the Council. Anne Marie Skinner, Planning Director, read the staff report. The City Council and Staff had a discussion. There were no Citizens present for testimony.

2. Public Hearing for ZOA 2023-06 VRD revisions

MOTION: Motion to Close Public Hearing for ZOA 2023-06 VRD revisions
MOVER: Rick Mark, Councilor Ward 3
SECONDER: Mitch Parsons, Councilor Ward 1
AYES: Casper, Hoagland, Mark, Parsons, Wahlke
RESULT: Passed via Voice Vote

Mayor Wahlke opened the public hearing at 6:24 PM. There were no conflicts disclosed by the Council. Anne Marie Skinner, Planning Director, read the staff report. The City Council and Staff had a discussion. There were 5 comments in favor emailed prior to the hearing. David Jameson, Shannon Loche, and Annette Guido all spoke in favor of ZOA 2023-06.

3. Public Hearing for ZOA 2023-07 RR height

MOTION: Motion to Close Public Hearing for ZOA 2023-07 RR Height
MOVER: Judy Casper, Councilor Ward 3
SECONDER: Mitch Parsons, Councilor Ward 1
AYES: Casper, Hoagland, Mark, Parsons, Wahlke
RESULT: Passed via Voice Vote

Mayor Wahlke opened the public hearing at 6:45 PM. There were no conflicts disclosed by the Council. Anne Marie Skinner, Planning Director, read the staff report. The City Council and Staff had a discussion. There were no Citizens present for testimony.

4. Public Hearing for ZOA 2023-08 Housing

MOTION: Motion to Close Public Hearing for ZOA 2023-08 Housing
MOVER: Judy Casper, Councilor Ward 3
SECONDER: Rick Mark, Councilor Ward 3
AYES: Casper, Hoagland, Mark, Parsons, Wahlke
RESULT: Passed via Voice Vote

Mayor Wahlke opened the public hearing at 6:47 PM. There were no conflicts disclosed by the Council. Anne Marie Skinner, Planning Director, read the staff report. The City Council and Staff had a discussion. There were no Citizens present for testimony.

5. Public Hearing: Resolution 2023-27 Supplemental Budget

MOTION: Motion to Close Public Hearing: Resolution 2023-27 Supplemental Budget
MOVER: Judy Casper, Councilor Ward 3
SECONDER: Mitch Parsons, Councilor Ward 1
AYES: Casper, Hoagland, Mark, Parsons, Wahlke
RESULT: Passed via Voice Vote

Mayor Wahlke opened the public hearing at 6:58 PM. There were no conflicts disclosed by the Council. Debbie Bridges, Finance Director, read the staff report. There were no Citizens present for testimony.

J. ORDINANCES

6. Ordinance 2023-23 for ZOA 2023-05

MOTION: Motion to Approve First Reading of Ordinance 2023-23 for ZOA 2023-05
MOVER: Rick Mark, Councilor Ward 3
SECONDER: Mitch Parsons, Councilor Ward 1
AYES: Casper, Hoagland, Mark, Parsons, Wahlke
RESULT: Passed by Roll Call Vote

7.

MOTION: Motion to Approve Second Reading and Adoption of Ordinance 2023-23 for ZOA 2023-05
MOVER: Rick Mark, Councilor Ward 3
SECONDER: Mitch Parsons, Councilor Ward 1
AYES: Casper, Hoagland, Mark, Parsons, Wahlke
RESULT: Passed by Roll Call Vote

8. Ordinance 2023-25 for ZOA 2023-07

MOTION: Motion to Approve First Reading of Ordinance 2023-25 for ZOA 2023-07
MOVER: Mitch Parsons, Councilor Ward 1
SECONDER: Judy Casper, Councilor Ward 3
AYES: Casper, Hoagland, Mark, Parsons, Wahlke
RESULT: Passed by Roll Call Vote

9.

MOTION: Motion to Approve Second Reading and Adoption of Ordinance 2023-25 for ZOA 2023-07
MOVER: Mitch Parsons, Councilor Ward 1
SECONDER: Rick Mark, Councilor Ward 3
AYES: Casper, Hoagland, Mark, Parsons, Wahlke
RESULT: Passed by Roll Call Vote

10. Ordinance 2023-24 for ZOA 2023-06 VRD to STR

MOTION: Motion to Approve First Reading of Ordinance 2023-24 for ZOA 2023-06 VRD to STR with Changes.
MOVER: Rick Mark, Councilor Ward 3
SECONDER: Judy Casper, Councilor Ward 3
AYES: Casper, Hoagland, Mark, Parsons, Wahlke
RESULT: Passed by Roll Call Vote

11.

MOTION: Motion to Approve Second Reading and Adoption of Ordinance 2023-24 for ZOA 2023-06 VRD to STR
MOVER: Rick Mark, Councilor Ward 3
SECONDER: Judy Casper, Councilor Ward 3
AYES: Casper, Hoagland, Mark, Parsons, Wahlke
RESULT: Passed by Roll Call Vote

12. Ordinance 2023-26 for ZOA 2023-08

MOTION: Motion to Approve First Reading of Ordinance 2023-26 for ZOA 2023-08
MOVER: Mitch Parsons, Councilor Ward 1
SECONDER: Judy Casper, Councilor Ward 3
AYES: Casper, Hoagland, Mark, Parsons, Wahlke
RESULT: Passed by Roll Call Vote

13.

MOTION:	Motion to Approve Second Reading and Adoption of Ordinance 2023-26 for ZOA 2023-08
MOVER:	Mitch Parsons, Councilor Ward 1
SECONDER:	Judy Casper, Councilor Ward 3
AYES:	Casper, Hoagland, Mark, Parsons, Wahlke
RESULT:	Passed by Roll Call Vote

K. RESOLUTIONS

14. RESOLUTION 2023-27 A RESOLUTION ADOPTING THE SUPPLEMENTAL BUDGET OF THE CITY OF LINCOLN CITY, OREGON, FOR THE FISCAL YEAR 2023-2024, AS APPROVED BY THE CITY COUNCIL, AND MAKING APPROPRIATIONS

MOTION:	Motion to Approve Resolution 2023-27: Supplemental Budget
MOVER:	Mitch Parsons, Councilor Ward 1
SECONDER:	Rick Mark, Councilor Ward 3
AYES:	Casper, Hoagland, Mark, Parsons, Wahlke
RESULT:	Passed by Roll Call Vote

15. RESOLUTION 2023-28 A RESOLUTION AUTHORIZING AND DIRECTING BUDGET TRANSFERS FOR THE CITY OF LINCOLN CITY, OREGON IN THE 2023-2024 FISCAL YEAR BUDGET

MOTION:	Motion to Approve Resolution 2023-28 Budget Transfer
MOVER:	Mitch Parsons, Councilor Ward 1
SECONDER:	Rick Mark, Councilor Ward 3
AYES:	Casper, Hoagland, Mark, Parsons, Wahlke
RESULT:	Passed by Roll Call Vote

L. SPECIAL ORDER OF BUSINESS

None

M. CITY MANAGER/CITY ATTORNEY REPORTS

Daphnee Legarza gave an update on current events.

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

16.

MOTION:	Motion to Direct Staff to Enter into an Exclusive Negotiating Agreement with the Proposed Developer for Item B as Discussed in the Executive Session
MOVER:	Mitch Parsons, Councilor Ward 1
SECONDER:	Judy Casper, Councilor Ward 3
AYES:	Casper, Hoagland, Mark, Parsons, Wahlke
RESULT:	Passed by Voice Vote

17.

MOTION: Motion to Direct Staff to Work with the Proposed Development Team to Acquire the Properties Associated with Item E as Discussed in Executive Session

MOVER: Mitch Parsons, Councilor Ward 1

SECONDER: Judy Casper, Councilor Ward 3

AYES: Casper, Hoagland, Mark, Parsons, Wahlke

RESULT: Passed by Voice Vote

18.

MOTION: Motion to Direct Staff to Purchase the SE 23rd Avenue Property for \$20,000 Plus all Associated Closing Costs

MOVER: Mitch Parsons, Councilor Ward 1

SECONDER: Judy Casper, Councilor Ward 3

AYES: Casper, Hoagland, Mark, Parsons, Wahlke

RESULT: Passed by Roll Call Vote

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

None

P. ANNOUNCEMENTS OR COMMENTS BY CITY COUNCIL

Councilor Parsons thanked staff for getting the ordinances in front of the Council and the Citizens for input.

Councilor Casper spoke about the sex trafficking education class that she attended on Thursday. Councilor Casper thanked Ms. Skinner for her time with the City.

Councilor Mark, Councilor Hoagland, and Mayor Wahlke also thanked Staff and Citizens for their work on the Ordinance and thanked Ms. Skinner for her time with the City.

Q. ADJOURNMENT

Mayor Wahlke adjourned the meeting at 7:36 PM.

SUSAN WAHLKE, MAYOR

ATTEST:

JAMIE YOUNG, CITY RECORDER

CITY OF LINCOLN CITY

CITY COUNCIL MINUTES OF THE WORK SESSION MEETING

October 30, 2023, 5:00 PM

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

APPROVED BY CITY COUNCIL

DATE:

1. **CALL TO ORDER**

Mayor Wahlke called the meeting to order at 5:00 PM.

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

Staff Present: Daphnee Legarza, City Manager; Jamie Young, City Recorder.

2. **DISCUSSION ITEMS**

A. City Attorney RFP

This section was postponed due to illness. Mayor Wahlke said that she has done some research and spoke to Patty. Mayor Wahlke named some places that the City could advertise for a City Attorney. Council and Staff had a discussion regarding the hiring of the City Attorney. Ms. Legarza said this will be discussed next Monday.

B. Miscellaneous

Council and Staff had a discussion on the items from the League of Oregon Cities Conference. Mayor Wahlke said that she would like to a citizen committee to review of our charter.

Councilor Casper gave an update of the deceased sea lion in the Nelscott area.

3. ADJOURNMENT

SUSAN WAHLKE, MAYOR

ATTEST:

JAMIE YOUNG, CITY RECORDER

CITY OF LINCOLN CITY

CITY COUNCIL MINUTES OF THE WORK SESSION MEETING

November 6, 2023, 5:00 PM

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

APPROVED BY CITY COUNCIL

DATE:

1. CALL TO ORDER

Mayor Wahlke called the meeting to order at 5:00 PM.

Attendee Name	Title	Status	Arrived
Judy Casper	Councilor Ward 3	Present	
Riley Hoagland	Councilor Ward 2	Late	5:11 PM
Rick Mark	Councilor Ward 3	Present	
Mitch Parsons	Councilor Ward 1	Excused	
Susan Wahlke	Mayor	Present	

Daphnee Legarza, City Manager; Abigail Edwards, Human Resources Director; Jamie Young, City Recorder

2. DISCUSSION ITEMS

A. City Attorney Request for Proposal (RFP)

Abigail Edwards, Human Resources Director, spoke about the options for a City Attorney and reviewed the previous request for proposal (RFP). The Council and Staff had a discussion.

B. Outside Agencies Grant Application Review

Daphnee Legarza, City Manager, reviewed the application received for the Outside Agencies Grant Applications. The Council and Staff discussed the options and funding.

C. Miscellaneous

Councilor Casper reported that "Dave the Dead Sea Lion" is lodged in the stairs at Olivia Beach. Councilor Casper also reported gas theft in the area. The Council and Staff discussed lighting at the City parks.

3. ADJOURNMENT

Mayor Wahlke adjourned the meeting at 5:48 PM.

SUSAN WAHLKE, MAYOR

ATTEST:

JAMIE YOUNG, CITY RECORDER

Council Communication

Regatta Park Playground Exemption

Meeting Date: November 13, 2023 Primary Staff Contact: Stephanie Reid
 Department: Public Works E-Mail: SReid@lincolncity.org
 Secondary Dept: Parks and Recreation Secondary Contacts:
 Approval: Daphnee Legarza Estimated Time: 10 minutes

Question:

Should the City Council authorize an exemption to the competitive bidding process for the Sandcastle Playground Rebuild Project?

Staff Recommendation:

Staff recommends City Council authorize an exemption to the competitive bidding process for the Sandcastle Playground Rebuild Project?

Authority:

Exemptions are allowed under ORS 279C.335 (2) providing the agency seeking an exemption follow the required procedures including preparing findings for the exemption.

Subject to subsection (4)(b) and (c) of this section, the Director of the Oregon Department of Administrative Services, a local contract review board or, for contracts described in [ORS 279A.050 \(Procurement authority\)](#) (3)(b), the Director of Transportation may exempt a public improvement contract or a class of public improvement contracts from the competitive bidding requirement of subsection (1) of this section after the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board approves the following findings that the contracting agency submits or, if a state agency is not the contracting agency, that the state agency that is seeking the exemption submits:

(a)

The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.

(b)

Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency or the state agency that seeks the exemption or, if the contract is for a public improvement described in [ORS 279A.050 \(Procurement authority\)](#) (3)(b), to the contracting agency or the public. In approving a finding under this paragraph, the Director of the Oregon Department of Administrative Services, the Director of

Transportation or the local contract review board shall consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract or class of public improvement contracts, the following:

- (A) *How many persons are available to bid;*
- (B) *The construction budget and the projected operating costs for the completed public improvement;*
- (C) *Public benefits that may result from granting the exemption;*
- (D) *Whether value engineering techniques may decrease the cost of the public improvement;*
- (E) *The cost and availability of specialized expertise that is necessary for the public improvement;*
- (F) *Any likely increases in public safety;*
- (G) *Whether granting the exemption may reduce risks to the contracting agency, the state agency or the public that are related to the public improvement;*
- (H) *Whether granting the exemption will affect the sources of funding for the public improvement;*
- (I) *Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;*
- (J) *Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;*
- (K) *Whether the public improvement involves new construction or renovates or remodels an existing structure;*
- (L) *Whether the public improvement will be occupied or unoccupied during construction;*
- (M) *Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and*
- (N) *Whether the contracting agency or state agency has, or has retained under contract, and will use contracting agency or state agency personnel, consultants*

and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency or state agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.

(c)

As an alternative to the finding described in paragraph (b) of this subsection, if a contracting agency or state agency seeks an exemption that would allow the contracting agency or state agency to use an alternative contracting method that the contracting agency or state agency has not previously used, the contracting agency or state agency may make a finding that identifies the project as a pilot project for which the contracting agency or state agency intends to determine whether using the alternative contracting method actually results in substantial cost savings to the contracting agency, to the state agency or, if the contract is for a public improvement described in [ORS 279A.050 \(Procurement authority\)](#) (3)(b), to the contracting agency or the public. The contracting agency or state agency shall include an analysis and conclusion regarding actual cost savings, if any, in the evaluation required under [ORS 279C.355 \(Evaluation of public improvement projects not contracted by competitive bidding\)](#).

(3)

In making findings to support an exemption for a class of public improvement contracts, the contracting agency or state agency shall clearly identify the class using the class's defining characteristics. The characteristics must include a combination of project descriptions or locations, time periods, contract values, methods of procurement or other factors that distinguish the limited and related class of public improvement contracts from the agency's overall construction program. The agency may not identify a class solely by funding source, such as a particular bond fund, or by the method of procurement, but shall identify the class using characteristics that reasonably relate to the exemption criteria set forth in subsection (2) of this section.

(4)

In granting exemptions under subsection (2) of this section, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board shall:

(a)

If appropriate, direct the use of alternative contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.

(b)

Require and approve or disapprove written findings by the contracting agency or state agency that support awarding a particular public improvement contract or a class of public improvement contracts, without the competitive bidding requirement of subsection (1) of this section. The findings must show that the

exemption of a contract or class of contracts complies with the requirements of subsection (2) of this section.

(c)

Require a contracting agency or state agency that procures construction manager/general contractor services to conduct the procurement in accordance with model rules the Attorney General adopts under [ORS 279A.065 \(Model rules generally\)](#) (3).

(5)

Intentionally left blank —Ed.

(a)

A contracting agency or state agency may hold a public hearing before approving the findings required by subsection (2) of this section and before the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board grants an exemption from the competitive bidding requirement for a public improvement contract or a class of public improvement contracts.

(b)

Notification of a proposed exemption under subsection (2) of this section must be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the date on which the contracting agency intends to take action to approve or disapprove the exemption.

(c)

The notice must state that in response to a written request, the contracting agency or state agency will hold a public hearing for the purpose of taking comments on the draft findings for an exemption from the competitive bidding requirement.

(d)

If the contracting agency or state agency conducts a public hearing, the contracting agency or state agency shall offer an opportunity for any interested party to appear and comment.

(e)

If a contracting agency or state agency must act promptly because of circumstances beyond the agency's control that do not constitute an emergency, notification of the proposed exemption may be published simultaneously with the agency's solicitation of contractors for the alternative public contracting method, as long as responses to the solicitation are due at least five days after the agency intends to take action to approve or disapprove the proposed exemption.

(6)

The purpose of an exemption is to exempt one or more public improvement contracts from competitive bidding requirements. The representations in and the accuracy of the findings, including any general description of the resulting public improvement contract, are the bases for approving the findings and granting the exemption. The findings may describe anticipated features of the resulting public

improvement contract, but the final parameters of the contract are those characteristics or specifics announced in the solicitation document.

(7)

A public improvement contract awarded under the competitive bidding requirement of subsection (1) of this section may be amended only in accordance with rules adopted under [ORS 279A.065 \(Model rules generally\)](#).

(8)

A public improvement contract that is excepted from the competitive bidding requirement under subsection (1)(a), (c), (d), (e), (f) or (g) of this section is not subject to the exemption requirements of subsection (2) of this section. [2003 c.794 §103; 2003 c.794 §§104,105a; 2005 c.103 §§12,13,14; 2005 c.625 §§58,59,60; 2007 c.70 §§69,70,71; 2007 c.764 §§14,15,17; 2013 c.522 §8; 2021 c.127 §1; 2021 c.630 §49a]

Council Options:

City Council may authorize an exemption to the competitive bidding process for the Sandcastle Playground Rebuild Project based on the draft findings.

City Council may authorize an exemption to the competitive bidding process for the Sandcastle Playground Rebuild Project based on modifications to the draft findings.

City Council may disagree with the findings and direct staff to procure contracts under the competitive bidding process.

Financial Impact:

The project is funded through the Parks Capital Improvement budgeted amount of \$900,000.00

Potential Motions:

Move to approve the exemption to the competitive bidding process for the Sandcastle Playground Rebuild Project based on the draft findings.

Move to authorize an exemption to the competitive bidding process Sandcastle Playground Rebuild Project with changes to the draft findings.

Move to reject the draft findings and direct staff to procure contracts under the competitive bidding process.

Attachments:

Exemption Public Notice

Draft Findings

Attachments:

Exemption Public Notice Sandcastle (PDF)

Findings in Support of Alternative Contracting Method (PDF)

**NOTICE OF PUBLIC HEARING
CITY OF LINCOLN CITY
COMPETITIVE BIDDING EXEMPTION**

Notice is hereby given that the City Council of Lincoln City will hold a public hearing to take oral and written comments on the City's draft findings in support of an exemption from competitive bidding under ORS 279C.335 for the design and construction of the Sandcastle Playground.

The City is requesting the exemption from competitive bidding to allow the use of a procurement method that presents an alternative to the traditional low-bid method of contracting. The method known as Progressive Design-Build awards projects to the contractor offering the best combination of price, technical qualifications, technical approach. The City's evaluation and scoring of competing contractor's technical qualifications and technical approach components, combined with comparison of the contractor's price component will be the basis of award.

The project is located at Regatta Park on NE 14th Street in Lincoln City Oregon. The project will replace the existing playground structure.

The draft findings may also be viewed on Lincoln City's website at www.lincolncity.org. Copies of draft findings may be obtained at a cost of 30 cents per page.

Public Hearing Information

Date: November 13, 2023

Time: City Council Meeting, 6:00 PM*

Place: City Council Chambers, 801 SW Highway 101, 3rd Floor
Lincoln City, Oregon

**(This is a regularly scheduled City Council meeting, and the public hearing will not be the first item on the agenda.)* Comments must be submitted in writing by noon on November 8, 2023 to be included in the City Council packet. Written comments received after noon November 8, 2023 will be provided to City Council at the hearing. Any person may provide oral or written comments to the City Council at the November 13, 2023 hearing. Written comments should be addressed to:

Comments on the Draft Findings should be addressed to:

Stephanie Reid, Public Works Director/City Engineer
Public Works Department
P.O. Box 50
Lincoln City OR, 97367

Date of Publication: October 30, 2023 Daily Journal of Commerce

Findings in Support of Alternative Contracting Method

For the Sandcastle Playground Re-Build Project

Introduction

Use of Alternative Contracting methods, such as the Progressive Design Build method, is made possible under ORS Chapter 279C, which permits certain contracts or classes of contracts to be exempt from competitive public bidding under strict procedural safeguards.

Pursuant to ORS 279C.335, a local contract review board may exempt specific contracts from traditional, competitive bidding by showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition and will result in cost savings to the public agency. The Oregon Attorney General's Model Public Contract Rules provide for public notice and opportunity for the public to comment on draft findings in favor of an exemption before their final adoption.

ORS 279C.330 provides that: "findings" means the justification for a contradicting agency conclusion that includes, but is not limited to, information regarding:

- Operational, budget and financial data;
- Public benefits;
- Value engineering;
- Specialized expertise required;
- Public safety;
- Market conditions;
- Technical complexity;
- Funding sources

Background

The Sandcastle Playground, located in Regatta Park, was built in 1992 and has been well cared for over the years. At 31 years old, the playground has lasted beyond its life expectancy of 20 years. While a renovation would correct many of the safety issues, the slope will require the site to be terraced. Terracing the site would make it ADA compliant and eliminate the migration of the safety surfacing (wood chips).

To properly grade the site, 50%-60% of the structure would need to be removed. A completely new playground is more cost effective and will allow us to design a new and exciting playground that will comply with the current version of ASTM (American Society for Testing and Materials) ASTM F1487 and CPSC (Consumer Product Safety

Commission) CPSC Pub. 325.

Operational, budget and financial data

A substantial portion of the cost will be to build retaining walls and grade so the site is flat, meeting ADA requirements. Playground equipment costs and selection and placement will depend on the options for grading and wall placement. The Progressive Design Build contracting method allows the contractor and the playground designers to work together to design the least cost option for retaining wall placement and height.

Market Conditions

The Progressive Design Build contracting process is a modern construction delivery method used by both public and private organizations. The team is tasked with knowing the latest construction techniques and products. The chosen contractor is given the opportunity to incorporate their knowledge of current market conditions, labor and materials availability, and construction methodologies and reduce construction time and costs.

Technical Complexity

To comply with the current version of ASTM (American Society for Testing and Materials) ASTM F1487 and CPSC (Consumer Product Safety Commission) CPSC Pub. 325 and provide an exciting and community reflective project, playground design and construction expertise is needed.

Public Safety

The Sandcastle Playground is a part of Regatta Park, which will remain available for public use during the construction.

Funding Sources

The Progressive Design Build method of contracting provides the greatest cost controls for limited budgets and therefore benefits the City. This method allows the flexibility to be able to construct the phases as funding becomes available. The approach requires the contractor to compete with other proposals and present the most affordable and efficient method of project implementation. The Progressive Design Build method allows the City to hire a playground company with the capability to work with the community to plan, design, construct and provide construction options, such as utilizing community volunteers as was used in 1992.

Unlikely to Encourage Favoritism or Diminish Competition

It is unlikely that the process of selecting a contractor through the Progressive Design Build method will encourage favoritism in the awarding of the public contract or substantially diminish competition for the public contract. Competition will not diminish because the Progressive Design Build contract will be awarded based on a competitive process, with clearly identified criteria. Any playground company with the required experience can propose.

Summary

Using the Progressive Design Build method of contracting, especially in terms of park projects which entail multiple aspects of design and build, provides consistency in entirety of project, cohesive design on all project aspects, value-added usage of City employee time, and improved follow through.

DRAFT

Council Communication

SE 2nd Street Inflow & Infiltration Project - Exemption from Public Contracting

Meeting Date:	November 13, 2023	Primary Staff Contact:	Stephanie Reid
Department:	Public Works	E-Mail:	SReid@lincolncity.org
Secondary Dept:		Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	10 minutes

Question:

Should the City Council authorize an exemption to the competitive bidding process for the SE 2nd Street Inflow & Infiltration Project?

Staff Recommendation:

Staff recommends City Council authorize an exemption to the competitive bidding process for the SE 2nd Street Inflow & Infiltration Project.

Authority:

Exemptions are allowed under ORS 279C.335 (2) providing the agency seeking an exemption follow the required procedures including preparing findings for the exemption.

Subject to subsection (4)(b) and (c) of this section, the Director of the Oregon Department of Administrative Services, a local contract review board or, for contracts described in [ORS 279A.050 \(Procurement authority\)](#) (3)(b), the Director of Transportation may exempt a public improvement contract or a class of public improvement contracts from the competitive bidding requirement of subsection (1) of this section after the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board approves the following findings that the contracting agency submits or, if a state agency is not the contracting agency, that the state agency that is seeking the exemption submits:

- (a) *The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.*
- (b) *Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency or the state agency that seeks the exemption or, if the contract is for a public improvement described in [ORS 279A.050 \(Procurement authority\)](#) (3)(b), to the*

contracting agency or the public. In approving a finding under this paragraph, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board shall consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract or class of public improvement contracts, the following:

- (A) *How many persons are available to bid;*
- (B) *The construction budget and the projected operating costs for the completed public improvement;*
- (C) *Public benefits that may result from granting the exemption;*
- (D) *Whether value engineering techniques may decrease the cost of the public improvement;*
- (E) *The cost and availability of specialized expertise that is necessary for the public improvement;*
- (F) *Any likely increases in public safety;*
- (G) *Whether granting the exemption may reduce risks to the contracting agency, the state agency or the public that are related to the public improvement;*
- (H) *Whether granting the exemption will affect the sources of funding for the public improvement;*
- (I) *Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;*
- (J) *Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;*
- (K) *Whether the public improvement involves new construction or renovates or remodels an existing structure;*
- (L) *Whether the public improvement will be occupied or unoccupied during construction;*
- (M) *Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and*

- (N) *Whether the contracting agency or state agency has, or has retained under contract, and will use contracting agency or state agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency or state agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.*
- (c) *As an alternative to the finding described in paragraph (b) of this subsection, if a contracting agency or state agency seeks an exemption that would allow the contracting agency or state agency to use an alternative contracting method that the contracting agency or state agency has not previously used, the contracting agency or state agency may make a finding that identifies the project as a pilot project for which the contracting agency or state agency intends to determine whether using the alternative contracting method actually results in substantial cost savings to the contracting agency, to the state agency or, if the contract is for a public improvement described in [ORS 279A.050 \(Procurement authority\)](#) (3)(b), to the contracting agency or the public. The contracting agency or state agency shall include an analysis and conclusion regarding actual cost savings, if any, in the evaluation required under [ORS 279C.355 \(Evaluation of public improvement projects not contracted by competitive bidding\)](#).*
- (3) *In making findings to support an exemption for a class of public improvement contracts, the contracting agency or state agency shall clearly identify the class using the class's defining characteristics. The characteristics must include a combination of project descriptions or locations, time periods, contract values, methods of procurement or other factors that distinguish the limited and related class of public improvement contracts from the agency's overall construction program. The agency may not identify a class solely by funding source, such as a particular bond fund, or by the method of procurement, but shall identify the class using characteristics that reasonably relate to the exemption criteria set forth in subsection (2) of this section.*
- (4) *In granting exemptions under subsection (2) of this section, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board shall:*
- (a) *If appropriate, direct the use of alternative contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.*

- (b) *Require and approve or disapprove written findings by the contracting agency or state agency that support awarding a particular public improvement contract or a class of public improvement contracts, without the competitive bidding requirement of subsection (1) of this section. The findings must show that the exemption of a contract or class of contracts complies with the requirements of subsection (2) of this section.*
- (c) *Require a contracting agency or state agency that procures construction manager/general contractor services to conduct the procurement in accordance with model rules the Attorney General adopts under [ORS 279A.065 \(Model rules generally\)](#) (3).*
- (5) *Intentionally left blank —Ed.*
- (a) *A contracting agency or state agency may hold a public hearing before approving the findings required by subsection (2) of this section and before the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board grants an exemption from the competitive bidding requirement for a public improvement contract or a class of public improvement contracts.*
- (b) *Notification of a proposed exemption under subsection (2) of this section must be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the date on which the contracting agency intends to take action to approve or disapprove the exemption.*
- (c) *The notice must state that in response to a written request, the contracting agency or state agency will hold a public hearing for the purpose of taking comments on the draft findings for an exemption from the competitive bidding requirement.*
- (d) *If the contracting agency or state agency conducts a public hearing, the contracting agency or state agency shall offer an opportunity for any interested party to appear and comment.*
- (e) *If a contracting agency or state agency must act promptly because of circumstances beyond the agency's control that do not constitute an emergency, notification of the proposed exemption may be published simultaneously with the agency's solicitation of contractors for the alternative public contracting method, as long as responses to the solicitation are due at least five days after the agency intends to take action to approve or disapprove the proposed exemption.*

(6)

The purpose of an exemption is to exempt one or more public improvement contracts from competitive bidding requirements. The representations in and the accuracy of the findings, including any general description of the resulting public improvement contract, are the bases for approving the findings and granting the exemption. The findings may describe anticipated features of the resulting public improvement contract, but the final parameters of the contract are those characteristics or specifics announced in the solicitation document.

(7)

A public improvement contract awarded under the competitive bidding requirement of subsection (1) of this section may be amended only in accordance with rules adopted under [ORS 279A.065 \(Model rules generally\)](#).

(8)

A public improvement contract that is excepted from the competitive bidding requirement under subsection (1)(a), (c), (d), (e), (f) or (g) of this section is not subject to the exemption requirements of subsection (2) of this section. [2003 c.794 §103; 2003 c.794 §§104,105a; 2005 c.103 §§12,13,14; 2005 c.625 §§58,59,60; 2007 c.70 §§69,70,71; 2007 c.764 §§14,15,17; 2013 c.522 §8; 2021 c.127 §1; 2021 c.630 §49a]

Council Options:

City Council may authorize an exemption to the competitive bidding process for the SE 2nd Street Inflow & Infiltration Project based on the draft findings.

City Council may authorize an exemption to the competitive bidding process for the SE 2nd Street Inflow & Infiltration Project based on modifications to the draft findings.

City Council may disagree with the findings and direct staff to procure contracts under the competitive bidding process.

Financial Impact:

The project is funded through the City's Sewer Capital Improvement budgeted amount of \$750,000.00

Potential Motions:

Move to approve the exemption to the competitive bidding process for the SE 2nd Street Inflow & Infiltration Project based on the draft findings.

Move to authorize an exemption to the competitive bidding process for SE 2nd Street Inflow & Infiltration Project with changes to the draft findings.

Move to reject the draft findings and direct staff to procure contracts under the competitive bidding process.

Attachments:

Exemption Public Notice

Draft Findings

Attachments:

Exemption Public Notice SE 2nd Street (PDF)

findings (PDF)

**NOTICE OF PUBLIC HEARING
CITY OF LINCOLN CITY
COMPETITIVE BIDDING EXEMPTION**

Notice is hereby given that the City Council of Lincoln City will hold a public hearing to take oral and written comments on the City's draft findings in support of an exemption from competitive bidding under ORS 279C.335 for the design and construction of the SE 2nd Street Infiltration and Inflow Reduction Project.

The City is requesting the exemption from competitive bidding to allow the use of a procurement method that presents an alternative to the traditional low-bid method of contracting. The method known as Progressive Design-Build awards projects to the contractor offering the best combination of price, technical qualifications, technical approach. The City's evaluation and scoring of competing contractor's technical qualifications and technical approach components, combined with comparison of the contractor's price component will be the basis of award.

The project is located at at East D River, including SE 1st and SE 2nd Streets, in Lincoln City Oregon. The project will replace the existing playground structure.

The draft findings may also be viewed on Lincoln City's website at www.lincolncity.org. Copies of draft findings may be obtained at a cost of 30 cents per page.

Public Hearing Information

Date: November 13, 2023

Time: City Council Meeting, 6:00 PM*

Place: City Council Chambers, 801 SW Highway 101, 3rd Floor
Lincoln City, Oregon

**(This is a regularly scheduled City Council meeting, and the public hearing will not be the first item on the agenda.)* Comments must be submitted in writing by noon on November 8, 2023 to be included in the City Council packet. Written comments received after noon November 8, 2023 will be provided to City Council at the hearing. Any person may provide oral or written comments to the City Council at the November 13, 2023 hearing. Written comments should be addressed to:

Comments on the Draft Findings should be addressed to:

Stephanie Reid, Public Works Director/City Engineer
Public Works Department
P.O. Box 50
Lincoln City OR, 97367

Date of Publication: October 27, 2023	Daily Journal of Commerce
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Findings in Support of Alternative Contracting Method

For SE 2nd Street Inflow & Infiltration Project

Introduction

The Use of Alternative Contracting methods, such as the Progressive Design Build method, is made possible under ORS Chapter 279C, which permits certain contracts or classes of contracts to be exempt from competitive public bidding under strict procedural safeguards.

Pursuant to ORS 279C.335, a local contract review board may exempt specific contracts from traditional, competitive bidding by showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition and will result in cost savings to the public agency. The Oregon Attorney General's Model Public Contract Rules provide for public notice and opportunity for the public to comment on draft findings in favor of an exemption before their final adoption.

ORS 279C.330 provides that: "findings" means the justification for a contradicting agency conclusion that includes, but is not limited to, information regarding:

- Operational, budget and financial data;
- Public benefits;
- Value engineering;
- Specialized expertise required;
- Public safety;
- Market conditions;
- Technical complexity;
- Funding sources

Background

The Sewer Collections team cannot access a number of feet of sewer line due to the line being completely submerged. We know lake water is infiltrating into the sewer lines and being pumped and treated downstream. This project is to design a repair to the existing 1,842 feet 14-inch asbestos cement sanitary sewer line to eliminate existing inflow and infiltration problems. This sanitary sewer line crosses a canal and Devils Lake at a very shallow depth. The Design/Build team would work with the City to review different construction methods to upgrade the sanitary sewer where the lines are probable below the water table and crosses the lake at a shallow depth.

Operational, Budget, and Financial Data

The cost to repair failed gravity sewer lines is high and the risk of change orders is also high. Using the Progressive Design Build contracting process will allow the City to know the not to exceed price and collaborate with the contractor/engineer team to determine the best method or critical repairs for the amount budgeted.

Market Conditions

The Progressive Design Build contracting process is a modern construction delivery method used by both public and private organizations. The team is tasked with knowing the latest construction techniques and products. The chosen contractor is given the opportunity to incorporate their knowledge of current market conditions, labor and materials availability, and construction methodologies and reduce construction time and costs.

Technical Complexity

There are several methods used in the industry to repair leaking sewer lines. Each has technical applications and requires experience to determine the best method for the situation. Having a civil engineer select a method and develop plans and then bid the contract does not offer the City the guaranteed lowest cost and most effective project.

Funding Sources

The Progressive Design Build method of contracting provides the greatest cost controls for limited budgets and therefore benefits the City. This method allows the flexibility to be able to construct the phases as funding becomes available. The approach requires the contractor to compete with other proposals and present the most affordable and efficient method of project implementation.

Unlikely to Encourage Favoritism or Diminish Competition

It is unlikely that the process of selecting a contractor through the Progressive Design Build method will encourage favoritism in the awarding of the public contract or substantially diminish competition for the public contract. Competition will not diminish because the Progressive Design Build contract will be awarded based on a competitive process, with clearly identified criteria. Any contractor/engineer team can propose.

Summary

Using the Progressive Design Build method of contracting allows the City to determine the best way to reduce infiltration and inflow into the sewer system and allow the contractor to determine not only the method but the approach to maintain sewer service during construction.

Council Communication

NW 17th Street Public Restroom Replacement Exemption

Meeting Date:	November 13, 2023	Primary Staff Contact:	Stephanie Reid
Department:	Public Works	E-Mail:	SReid@lincolncity.org
Secondary Dept:	Parks and Recreation	Secondary Contacts:	
Approval:	Daphnee Legarza	Estimated Time:	10 minutes

Question:

Should the City Council authorize an exemption to the competitive bidding process for the NW 17th Street Public Restroom Rebuild Project?

Staff Recommendation:

Staff recommends City Council authorize an exemption to the competitive bidding process for the NW 17th Street Public Restroom Rebuild Project?

Authority:

Exemptions are allowed under ORS 279C.335 (2) providing the agency seeking an exemption follow the required procedures including preparing findings for the exemption.

Subject to subsection (4)(b) and (c) of this section, the Director of the Oregon Department of Administrative Services, a local contract review board or, for contracts described in [ORS 279A.050 \(Procurement authority\)](#) (3)(b), the Director of Transportation may exempt a public improvement contract or a class of public improvement contracts from the competitive bidding requirement of subsection (1) of this section after the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board approves the following findings that the contracting agency submits or, if a state agency is not the contracting agency, that the state agency that is seeking the exemption submits:

- (a) *The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.*
- (b) *Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency or the state agency that seeks the exemption or, if the contract is for a public improvement described in [ORS 279A.050 \(Procurement authority\)](#) (3)(b), to the contracting agency or the public. In approving a finding under this paragraph, the Director of the Oregon Department of Administrative Services, the Director of*

Transportation or the local contract review board shall consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract or class of public improvement contracts, the following:

- (A) *How many persons are available to bid;*
- (B) *The construction budget and the projected operating costs for the completed public improvement;*
- (C) *Public benefits that may result from granting the exemption;*
- (D) *Whether value engineering techniques may decrease the cost of the public improvement;*
- (E) *The cost and availability of specialized expertise that is necessary for the public improvement;*
- (F) *Any likely increases in public safety;*
- (G) *Whether granting the exemption may reduce risks to the contracting agency, the state agency or the public that are related to the public improvement;*
- (H) *Whether granting the exemption will affect the sources of funding for the public improvement;*
- (I) *Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;*
- (J) *Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;*
- (K) *Whether the public improvement involves new construction or renovates or remodels an existing structure;*
- (L) *Whether the public improvement will be occupied or unoccupied during construction;*
- (M) *Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and*
- (N) *Whether the contracting agency or state agency has, or has retained under contract, and will use contracting agency or state agency personnel, consultants*

and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency or state agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.

(c)

As an alternative to the finding described in paragraph (b) of this subsection, if a contracting agency or state agency seeks an exemption that would allow the contracting agency or state agency to use an alternative contracting method that the contracting agency or state agency has not previously used, the contracting agency or state agency may make a finding that identifies the project as a pilot project for which the contracting agency or state agency intends to determine whether using the alternative contracting method actually results in substantial cost savings to the contracting agency, to the state agency or, if the contract is for a public improvement described in [ORS 279A.050 \(Procurement authority\)](#) (3)(b), to the contracting agency or the public. The contracting agency or state agency shall include an analysis and conclusion regarding actual cost savings, if any, in the evaluation required under [ORS 279C.355 \(Evaluation of public improvement projects not contracted by competitive bidding\)](#).

(3)

In making findings to support an exemption for a class of public improvement contracts, the contracting agency or state agency shall clearly identify the class using the class's defining characteristics. The characteristics must include a combination of project descriptions or locations, time periods, contract values, methods of procurement or other factors that distinguish the limited and related class of public improvement contracts from the agency's overall construction program. The agency may not identify a class solely by funding source, such as a particular bond fund, or by the method of procurement, but shall identify the class using characteristics that reasonably relate to the exemption criteria set forth in subsection (2) of this section.

(4)

In granting exemptions under subsection (2) of this section, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board shall:

(a)

If appropriate, direct the use of alternative contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.

(b)

Require and approve or disapprove written findings by the contracting agency or state agency that support awarding a particular public improvement contract or a class of public improvement contracts, without the competitive bidding requirement of subsection (1) of this section. The findings must show that the

exemption of a contract or class of contracts complies with the requirements of subsection (2) of this section.

(c)

Require a contracting agency or state agency that procures construction manager/general contractor services to conduct the procurement in accordance with model rules the Attorney General adopts under [ORS 279A.065 \(Model rules generally\)](#) (3).

(5)

Intentionally left blank —Ed.

(a)

A contracting agency or state agency may hold a public hearing before approving the findings required by subsection (2) of this section and before the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board grants an exemption from the competitive bidding requirement for a public improvement contract or a class of public improvement contracts.

(b)

Notification of a proposed exemption under subsection (2) of this section must be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the date on which the contracting agency intends to take action to approve or disapprove the exemption.

(c)

The notice must state that in response to a written request, the contracting agency or state agency will hold a public hearing for the purpose of taking comments on the draft findings for an exemption from the competitive bidding requirement.

(d)

If the contracting agency or state agency conducts a public hearing, the contracting agency or state agency shall offer an opportunity for any interested party to appear and comment.

(e)

If a contracting agency or state agency must act promptly because of circumstances beyond the agency's control that do not constitute an emergency, notification of the proposed exemption may be published simultaneously with the agency's solicitation of contractors for the alternative public contracting method, as long as responses to the solicitation are due at least five days after the agency intends to take action to approve or disapprove the proposed exemption.

(6)

The purpose of an exemption is to exempt one or more public improvement contracts from competitive bidding requirements. The representations in and the accuracy of the findings, including any general description of the resulting public improvement contract, are the bases for approving the findings and granting the exemption. The findings may describe anticipated features of the resulting public

improvement contract, but the final parameters of the contract are those characteristics or specifics announced in the solicitation document.

(7)

A public improvement contract awarded under the competitive bidding requirement of subsection (1) of this section may be amended only in accordance with rules adopted under [ORS 279A.065 \(Model rules generally\)](#).

(8)

A public improvement contract that is excepted from the competitive bidding requirement under subsection (1)(a), (c), (d), (e), (f) or (g) of this section is not subject to the exemption requirements of subsection (2) of this section. [2003 c.794 §103; 2003 c.794 §§104,105a; 2005 c.103 §§12,13,14; 2005 c.625 §§58,59,60; 2007 c.70 §§69,70,71; 2007 c.764 §§14,15,17; 2013 c.522 §8; 2021 c.127 §1; 2021 c.630 §49a]

Council Options:

City Council may authorize an exemption to the competitive bidding process for the NW 17th Street Public Restroom Project based on the draft findings.

City Council may authorize an exemption to the competitive bidding process for the NW 17th Street Public Restroom Project based on modifications to the draft findings.

City Council may disagree with the findings and direct staff to procure contracts under the competitive bidding process.

Financial Impact:

The project is funded through the Parks Capital Improvement budgeted amount of \$500,000.00

Potential Motions:

Move to approve the exemption to the competitive bidding process for the NW 17th Street Public Restroom Project based on the draft findings.

Move to authorize an exemption to the competitive bidding process for the NW 17th Street Public Restroom Project with changes to the draft findings.

Move to reject the draft findings and direct staff to procure contracts under the competitive bidding process.

Attachments:

Exemption Public Notice

Draft Findings

Attachments:

Exemption Public Notice Restroom (PDF)

Findings in Support of Alternative Contracting Method (PDF)

**NOTICE OF PUBLIC HEARING
CITY OF LINCOLN CITY
COMPETITIVE BIDDING EXEMPTION**

Notice is hereby given that the City Council of Lincoln City will hold a public hearing to take oral and written comments on the City's draft findings in support of an exemption from competitive bidding under ORS 279C.335 for the design and construction of the NE 17th Street Public Restroom.

The City is requesting the exemption from competitive bidding to allow the use of a procurement method that presents an alternative to the traditional low-bid method of contracting. The method known as Best-Value awards projects to the contractor offering the best combination of price, technical qualifications, technical approach. The City's evaluation and scoring of competing contractor's technical qualifications and technical approach components, combined with comparison of the contractor's price component will be the basis of award.

The project is located at NE 17th Street and Hwy 101, Lincoln City Oregon. The project will replace the existing Public Restroom.

The draft findings may also be viewed on Lincoln City's website at www.lincolncity.org. Copies of draft findings may be obtained at a cost of 30 cents per page.

Public Hearing Information

Date: November 13, 2023

Time: City Council Meeting, 6:00 PM*

Place: City Council Chambers, 801 SW Highway 101, 3rd Floor
Lincoln City, Oregon

**(This is a regularly scheduled City Council meeting, and the public hearing will not be the first item on the agenda.)* Comments must be submitted in writing by noon on November 8, 2023 to be included in the City Council packet. Written comments received after noon November 8, 2023 will be provided to City Council at the hearing. Any person may provide oral or written comments to the City Council at the November 13, 2023 hearing. Written comments should be addressed to:

Comments on the Draft Findings should be addressed to:

Stephanie Reid, Public Works Director/City Engineer
Public Works Department
P.O. Box 50
Lincoln City OR, 97367

Date of Publication: October 27, 2023 Daily Journal of Commerce

Findings in Support of Alternative Contracting Method

For the NW 17th Street Public Restroom Replacement

Introduction

Use of Alternative Contracting methods, such as the Best Value method, is made possible under ORS Chapter 279C, which permits certain contracts or classes of contracts to be exempt from competitive public bidding under strict procedural safeguards.

Pursuant to ORS 279C.335, a local contract review board may exempt specific contracts from traditional, competitive bidding by showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition and will result in cost savings to the public agency. The Oregon Attorney General's Model Public Contract Rules provide for public notice and opportunity for the public to comment on draft findings in favor of an exemption before their final adoption.

ORS 279C.330 provides that: "findings" means the justification for a contradicting agency conclusion that includes, but is not limited to, information regarding:

- Operational, budget and financial data;
- Public benefits;
- Value engineering;
- Specialized expertise required;
- Public safety;
- Market conditions;
- Technical complexity;
- Funding sources

Background

The Public Restroom at NW 17th Street was built in 1992 and while being maintained and cleaned regularly, this structure is rotting and needs to be replaced. Further, the parking and access to the site needs to be brought into ADA compliance.

Operational, Budget, and Financial Data

The City has \$500,000.00 in the budget for this project. Using the Best Value contracting process will allow the City to know the not to exceed price and collaborate with the contractor/engineer team to determine what can be constructed for this amount.

Market Conditions

The Best Value contracting process is a modern construction delivery method used by both public and private organizations. The team is tasked with knowing the latest construction techniques and products. The chosen contractor is given the opportunity to incorporate their knowledge of current market conditions, labor and materials availability, and construction methodologies and reduce construction time and costs

Technical Complexity

The options to construct a Public Restroom range from an architect designed and wood framed or in-situ built structure or a custom designed precast or prefabricated concrete building or a recast or prefabricated catalogue selection. The costs of each are very hard to estimate given site work and utilities, availability of materials, price escalation, and range of options.

Public Safety

The NW 17th Street Public Restrooms are adjacent to the NW 17th Street Public Parking Lot. To the extent the lot will be demolished for ADA improvements, the parking lot will remain open to the extent possible. The Restrooms will be closed during construction.

Funding Sources

The Best Value contracting method provides the greatest cost controls for limited budgets and therefore benefits the City. This method allows the flexibility to know the cost of the project before making the selection. The approach requires the contractor to compete with other proposals and present the most affordable and efficient method of project implementation.

Unlikely to Encourage Favoritism or Diminish Competition

It is unlikely that the process of selecting a contractor through the Best Value contracting method will encourage favoritism in the awarding of the public contract or substantially diminish competition for the public contract. In fact, this method will open up competition to pre-fabricated manufacturers/contractor teams and architect/contractor teams.

Summary

Using the Best Value contracting method, especially in terms of Public Restrooms which include a range of possibilities during this uncertain supply and cost market.

Council Communication

Resolution 2023-29

Meeting Date:	November 13, 2023	Primary Staff Contact:	Abigail Edwards
Department:	Human Resources	E-Mail:	AEdwards@lincolncity.org
Secondary Dept:	Robinson	Secondary Contacts:	Daphnee Legarza, David
Approval:	Daphnee Legarza	Estimated Time:	10 minutes

Background:

On Monday, November 6, 2023, the Lincoln City City Council held a work session and discussed the need for an updated resolution for hiring a City Attorney.

The attached resolution has been reviewed by interim legal counsel and is approved as to form and ready for adoption by the Council.

Resolution 2023-29 will update the proscribed process (previously adopted in 2012) for hiring a City Attorney. The exhibit attached to the resolution contains the same profile for the City Attorney's tasks and education requirements as adopted in 2012. These requirements continue to be in-line with the League of Oregon Cities' general guidelines for City Attorney tasks.

After reviewing the Code, Attorney David James Robinson did not find anything prohibiting advertising for both a Personal Services Contract or a Contracted Employee.

For the RFP, designated staff will follow the adopted format from LCMC 2.05.090. An option for Contracted Employment as a preference in the proposal types required in the RFP would allow both personal services contracts and staff attorney submissions.

The prior and updated resolutions state, in section 1(A)(2): ****If the RFP or recruitment is sufficient with only minor changes, the City Manager approves the revisions. If major changes to the RFP or recruitment are required, the City Council will review and approve the revised process.*" The RFP/recruitment process is not substantively changed with the updated resolution; however, the format will change to be in-line with what the LCMC requires.

Staff Recommendation:

Staff recommends the Council adopt the updated resolution so staff may proceed to advertise for a new City Attorney.

If Council decides that changes to the RFP could be substantial enough to require additional review. Staff recommends authorizing the Mayor to work with designated staff and approve the final RFP and associated advertising material.

Potential Motions:

Move to approve Resolution 2023-29, a Resolution Adopting Regular Procedures for Hiring a City Attorney, and authorize the City Manager to proceed, with designated staff, with the next steps in hiring a City Attorney.

Move to authorize the Mayor to work with designated staff for final review and approval of the RFP and associated advertising material for a new City Attorney.

Attachments:

RESOLUTION NO 2023-29 Attorney Hiring Process (PDF)

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RESOLUTION NO. 2023-29

**A RESOLUTION ADOPTING REGULAR PROCEDURES FOR
HIRING A CITY ATTORNEY**

WHEREAS, the City of Lincoln City needs to hire a City Attorney; and

WHEREAS, under Section 3 .6 of the City Charter, the City Council is responsible, by the affirmative vote of four or more of its members, for appointing the City Attorney; and

WHEREAS, it is desirable for the City Council to adopt regular procedures for the process it will follow in the selection and appointment of a City Attorney.

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

SECTION 1. RECRUITMENT AND HIRING PROCESS - CITY ATTORNEY

A. Approximate Timeline and Steps.

- 1. The City announces the need for a city attorney at a regular meeting of the City Council. (Day 1.)
- 2. The City Manager, or designated staff, reviews the most recent file copy of a request for proposals document (RFP) and/or recruitment. If the RFP or recruitment is sufficient with only minor changes, the City Manager approves the revisions. If major changes to the RFP or recruitment are required, the City Council will review and approve the revised process. (Day 30).
- 3. Designated staff submits the RFP for advertising by methods designed to attract potential candidates. Potential methods include advertising in the League of Cities publications and newspapers in the area, region, and state; circulating the announcement through the Oregon City Attorneys Association list serve; posting the announcement with the Oregon State Bar publications (including website); and advertising by other relevant methods. (Day 30 - 60)

- 1 4. The RFP or recruitment will be announced or advertised for the length of
2 time designated staff determines is necessary to attract a sufficient pool
3 of qualified candidates. If there is insufficient response by the response
4 deadline, the City may extend the time to receive applications, re-
5 advertise the position, or take other appropriate action to solicit qualified
6 candidates.
- 7 5. The City will also accept unsolicited applications for the City Attorney
8 position outside of any advertised RFP; however, the City does not have
9 an obligation to respond to or process such applications.
- 10 6. The current City Attorney will check the Oregon State Bar or other state
11 bar disciplinary history for all applicants.
- 12 7. The City Council will review all applications. If the pool includes ten or
13 more candidates, the City Manager, designated staff, and/or City Attorney
14 will first screen the applicants according to municipal law experience or
15 other equivalent legal experience. (Day 60)
- 16 8. Interviews with selected candidates will be scheduled. (Day 60 - 90)
- 17 9. The City Council will complete interviews of selected candidates and select
18 finalists for background checks.
- 19 10. The City Manager, or designated staff, will complete background checks.
- 20 11. The City Council will select a candidate or candidates for final interview, if
21 applicable.
- 22 12. Completion of final interviews if necessary.
- 23 13. Negotiations with selected candidate.
- 24 14. Announcement of City Attorney selection in public meeting. (Day 90 - 1 00)
- 25 15. Additional steps may be included in this process depending on the
26 circumstances.
- 27 16. The suggested timeline may not always be exact due to staffing and
28 scheduling need.

29
30 B. **Discussion and Selection Process.** When the City Council is engaged in the
31 steps of the process that involve the discussion and selection for further
32 consideration of individual candidates and the interviewing of candidates,
33 the City Council may elect to conduct the discussions and interviews in
34 executive session, subject to the provisions of the Oregon Open Meetings

1 Law. However, the final action on hiring a city attorney will be taken in an
2 open meeting.

3
4 **SECTION 2. CITY ATTORNEY PROFILE.** The City will use as a guideline in recruiting
5 and considering city attorney candidates during the selection process the City
6 Attorney Profile as set out in Exhibit A to this Resolution. The City will be seeking a
7 long-term city attorney.

8
9 **SECTION 3. EFFECTIVE DATE.** This resolution is effective as of the date of its
10 adoption and signature by the Mayor.

11
12 **PASSED AND ADOPTED** by the City Council of the City of Lincoln City this _____ day
13 of November, 2023.

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17 Susan Wahlke, Mayor

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20 Attest:
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23 Jamie Young, City Recorder

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26 Approved as to Form:
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29 David James Robinson, City Attorney

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**EXHIBIT A
CITY ATTORNEY PROFILE**

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City Attorney Tasks

The city attorney provides all legal services to the city, except for bond-related advice, water rights expertise, condemnation counsel, and insurance-covered claims under the Oregon Tort Claims Act.

The city attorney participates in drafting and review of city ordinances and resolutions as required. The city attorney is responsible for prosecuting traffic violations and ordinance violations (code enforcement) in municipal court.

The ideal candidate will have substantial experience providing practical legal advice to the City Council, City Manager and staff, and city boards and commissions.

The candidate should have excellent oral and written communication skills, and strong time management skills.

Education/Work History

Juris Doctorate from accredited institution.

Minimum 3 years of experience (5 years preferred) in municipal law, including but not limited to Oregon law. Specific fields include land use, contracts, real property, urban renewal, public works, environmental law, Oregon public records and meetings law, ethics, municipal finance, elections, Indian law, and other related fields.

Council Communication

Order Suspending Conditions of Final Order 2019-06 for 6 months

Meeting Date:	November 13, 2023	Primary Staff Contact:	Daphnee Legarza
Department:	City Council	E-Mail:	DLegarza@lincolncity.org
Secondary Dept:	Administration	Secondary Contacts:	Daphnee Legarza, David Robinson
Approval:	Daphnee Legarza	Estimated Time:	10 minutes

Question:

Should the City Council issue an order that suspends the requirement for Helping Hands Reentry to erect a fence and build a playground required in Final Order 2019-06 for six (6) months.

Staff Recommendation:

Staff recommends Council issue an order that suspends the requirement for Helping Hands Reentry to erect a fence and build a playground required in Final Order 2019-06 for six (6) months.

Authority:

ORS 222.410 authorizes a city to "take all action necessary or convenient for the government of its local affairs"

Background:

In 2019, the city entered a contract to purchase real property and that same year conveyed the same property to Helping Hands Reentry Outreach Centers, Inc., an Oregon nonprofit corporation. The purpose of the conveyance was to provide housing to the city's homeless population. Helping Hands would own and operate transitional housing services. There is a deed restriction on the property that the property must be used for transitional housing as proposed in CUP 2019-04 to benefit the City's homeless population and if not, the property automatically reverts to the City. (see attached Resolution No. 2020-02 adopted the findings in CUP 2019-04 and Final Order 2019-06, and Warranty Deed 2020-02759).

One of the conditions of the CUP was that prior to issuance of the certificate of occupancy for the transitional housing facility, Helping Hands had to install a 6-foot tall solid wood fence along the north property lines of Tax Lots 500 and 300 and the east property line of Tax Lot 300 to provide a buffer and screening between the uses to the north and east and the proposed use on the site. The 6-foot tall solid wood fence shall also be installed on the north 50 feet of the west property line of Tax Lot 300.

Due to circumstances that were not considered at the time and changing conditions at the site, Helping Hands has not been able to install the fence. The grade of the hill where the fence is required may not support the posts required to mount the fence. On November 6, 2023, Helping Hands passed all building inspections and the city is ready to issue a certificate of occupancy. However, the fence issue stands in between Helping Hands admitting residents for transitional housing services. They are ready to receive unhoused individuals immediately.

Helping Hands communicated with city staff that it intends to apply to the Planning Commission to reopen the CUP and attempt to have the fence requirement removed. City staff is authorized by the law as it exists to issue a temporary certificate of occupancy and that temporary certificate of occupancy would permit Helping Hands to open for services. However, the fence issue remains and must be resolved. The warranty deed references CUP 2019-04 and because of this, the fence is a requirement that attaches and runs with the land.

Council Options:

1. Approve suspension of the requirement for Helping Hands Reentry to erect a fence and build a playground required in Final Order 2019-06 for six (6) months by Order.
2. Postpone consideration to a future meeting.

Potential Motions:

1. Motion to approve Order authorizing the suspension of the requirement for Helping Hands Reentry to erect a fence and build a playground required in Final Order 2019-06 for six (6) months.
2. Motion to continue consideration of the Order to December 11, 2023.

Attachments:

Resolution 2020-02_HelpingHands (PDF)
 2020_02759_WarrantyDeed_HelpingHands_Recorded (PDF)

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RESOLUTION NO. 2020-02

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**A RESOLUTION OF THE CITY OF LINCOLN CITY AUTHORIZING AND
DIRECTING DISPOSITION OF CITY REAL PROPERTY
TO HELPING HANDS RE-ENTRY OUTREACH CENTERS FOR THE USE AS
DESCRIBED AND APPROVED IN CUP 2019-04**

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RECITALS

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- A. The City is under contract to purchase a real property with improvements located at 3454 NE Hwy 101, Lincoln City, Oregon and 2201 NE 34th Street, Lincoln City, Oregon said property being identified as 07-11-02CC Tax Lots 300 and 500 (hereinafter subject property) being more particularly described and shown in Exhibit A attached hereto and made a part hereof by this reference.
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- B. On December 9, 2019, the Lincoln City City Council, at the Council Chambers at 801 SW Highway 101, Lincoln City, Oregon conducted an advertised public hearing on the proposed sale / conveyance of the subject property, pursuant to ORS 221.725, ORS 271.310 and ORS 271.330.
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- C. The advertised purpose of the conveyance / sale, and the reason the City Council finds it necessary or convenient to sell the property, to the domestic non-profit organization "Helping Hands Re-Entry Outreach Centers" is the City Council's desire to provide the use as proposed by Helping Hands in CUP 2019-04 to the City of Lincoln City's homeless population.
- D. The nature of the sale / conveyance was advertised as a conveyance to a domestic non-profit corporation of a \$400,000 City-acquired property with a deed restriction (*fee simple determinable*) that the property must be used for the "transitional housing" facility use as proposed by Helping Hands in CUP 2019-04 to benefit the City's homeless population, – and if not, the property automatically reverts to the City. As additional security, the City may [as an additional option] retain a note, guaranty and trust deed for the purchase price of \$400,000 and require an annual payment of +/- \$13,333.33 per year which payment shall be waived annually if the non-profit entity operates the facility approved in CUP 2019-04 on the subject property meeting certain minimum thresholds as described in the note and the operator is not delinquent in any City economic development or Urban Renewal rehabilitation loan payments. The option above is in addition to any security

1 required for economic development or rehabilitation loans. A standard real
2 estate purchase and sale agreement may also be required.

3

4 E. The December 9, 2019 City Council Public Hearing and Resolution staff reports
5 are incorporated herein by this reference. It is understood and agreed that the
6 use approved in CUP 2019-04 is the use described in the application and
7 approved by the Planning Commission and despite the "label" or unfortunate
8 "branding" of the use as "Transitional Housing;" the use is not "Transitional
9 Housing" as described in ORS 446.265. All evidence of market value (in addition
10 to the purchase price paid by the City) was fully disclosed and entered into the
11 record at the public hearing on December 9, 2019.

12

13 F. Pursuant to ORS 221.725, any resident of the City was provided with an
14 opportunity to present oral or written testimony on the subject of the sale to the
15 City Council at the public hearing.

16

17 G. After hearing the staff report and public input, Council closed the hearing and
18 record and continued deliberations of the proposed Resolution to January 13,
19 2020. The primary reason for the continuation was to facilitate final resolution of
20 the pending land use application [CUP 2019-04] before the Planning Commission.
21 No appeal of the Planning Commission decision was filed.

22

23 H. On January 13, 2020, after due deliberation, Council made the findings of fact set
24 forth herein and directed the sale / conveyance of the real property with the
25 conditions identified in the staff report and this Resolution.

26

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

29

30 **SECTION 1. RECITALS.** The above recitals are true and correct and are
31 incorporated herein by this reference.

32

33 **SECTION 2. FINDINGS.**

34

35 The Council finds and determines that the relevant statutory criteria for disposition
36 of City real property are found in or referenced in ORS Chapter 271 (specifically ORS
37 271.310 and ORS 271.330) as well as ORS 221.725.

38

1 **ORS 271.310. Transfer or lease of real property owned or controlled**
 2 **by political subdivision; Procedure in case of qualified title.**

3
 4 (1) Except as provided in subsection (2) of this section, whenever any
 5 political subdivision possesses or controls real property not needed for
 6 public use, or whenever the public interest may be furthered, a political
 7 subdivision may sell, exchange, convey or lease for any period not
 8 exceeding 99 years all or any part of their interest in the property to a
 9 governmental body or private individual or corporation. The
 10 consideration for the transfer or lease may be cash or real property, or
 11 both.

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 15 (4) Unless the governing body of a political subdivision determines under
 16 subsection (1) of this section that the public interest may be furthered,
 17 real property needed for public use by any political subdivision owning or
 18 controlling the property shall not be sold, exchanged, leased or conveyed
 19 under the authority of ORS 271.300 to 271.360, except that it may be
 20 exchanged for property which is of equal or superior useful value for
 21 public use. Any such property not immediately needed for public use may
 22 be leased if, in the discretion of the governing body having control of the
 23 property, it will not be needed for public use within the period of the
 24 lease.

25
 26 **271.330 Relinquishing title of property not needed for public use.**

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29
 30 (2)(a) Any political subdivision is granted express power to relinquish the
 31 title to any of the political subdivision's property to a qualifying nonprofit
 32 corporation or a municipal corporation for the purpose of providing any of the
 33 following:

- 34 (A) Low income housing;
 35 (B) Social services; or
 36 (C) Child care services.

37 (b) As used in this subsection:

38 (A) "Qualifying nonprofit corporation" means a corporation that is a public
 39 benefit corporation as defined in ORS 65.001 (35) and that has obtained a
 40 ruling from the federal Internal Revenue Service providing that the corporation

1 is exempt from federal income taxes under section 501(c)(3) of the Internal
2 Revenue Code.

3 (B) "Social services" and "child care services" include but are not limited to
4 education, training, counseling, health and mental health services and the
5 provision of facilities and administrative services to support social services and
6 child care services.

7
8 **221.725 Sale of city real property; publication of notice; public hearing.**
9

10 (1) Except as provided in ORS 221.727, when a city council considers it
11 necessary or convenient to sell real property or any interest therein, the city
12 council shall publish a notice of the proposed sale in a newspaper of general
13 circulation in the city, and shall hold a public hearing concerning the sale prior
14 to the sale.

15 (2) The notice required by subsection (1) of this section shall be published
16 at least once during the week prior to the public hearing required under this
17 section. The notice shall state the time and place of the public hearing, a
18 description of the property or interest to be sold, the proposed uses for the
19 property and the reasons why the city council considers it necessary or
20 convenient to sell the property. Proof of publication of the notice may be
21 made as provided by ORS 193.070.

22 (3) Not earlier than five days after publication of the notice, the public
23 hearing concerning the sale shall be held at the time and place stated in the
24 notice. Nothing in this section prevents a city council from holding the hearing
25 at any regular or special meeting of the city council as part of its regular
26 agenda.

27 (4) The nature of the proposed sale and the general terms thereof,
28 including an appraisal or other evidence of the market value of the property,
29 shall be fully disclosed by the city council at the public hearing. Any resident of
30 the city shall be given an opportunity to present written or oral testimony at
31 the hearing.

32 (5) As used in this section and ORS 221.727, "sale" includes a lease-option
33 agreement under which the lessee has the right to buy the leased real property
34 in accordance with the terms specified in the agreement.

35
36 The Council finds that it has received all information necessary to make a decision based
37 on the Staff Report, public hearing testimony and the exhibits and evidence received.
38 The Staff Report and the findings therein are specifically incorporated herein by this
39 reference.
40

1 The Council finds and determines that this proposal to sell / convey the subject property
2 to "Helping Hands Re-Entry Outreach Centers," a "Qualifying non-profit corporation"
3 meets all applicable statutory minimum criteria for eligibility to sell real property, as
4 more fully set forth herein. Further the City Council finds and determines that the
5 proposed disposition of real property is deemed "necessary or convenient" to the City,
6 and "furthers the public interest" as the sale will further the City Council's desire to
7 provide the services described in approved CUP 2019-04 to the City of Lincoln City's
8 homeless population. The Council further finds and determines that the property
9 identified herein is not necessary for City use. The findings herein are supported by
10 competent substantial evidence in the whole record, incorporated herein by this
11 reference.

12
13 **SECTION 3. ORDER.** Based on the above Findings set forth or incorporated herein
14 and based upon the evidence in the whole record, the City Council hereby
15 approves and directs the sale / conveyance of the subject property to Helping Hands
16 Re-Entry Outreach Centers, subject to all identified conditions, included or
17 referenced (e.g. Staff Report conditions) herein. The real property sale /
18 conveyance is delegated to the City Manager and City Attorney who are
19 authorized to execute such purchase and sale agreements, contracts, security
20 instruments (trust deed, guaranty and note), deeds and other documents necessary
21 to complete the sale / conveyance. The City Attorney must approve all documents as
22 to form. The Manager is expressly delegated the authority to sign documents for the
23 City. The Manager and Attorney are authorized to expend funds necessary to
24 effectuate the sale/conveyance, including but not limited to purchase of real estate
25 and title company services and products. When not specifically allocated to a party,
26 closing costs are split between the parties. Closing shall occur within 60 days or this
27 authorization of this Resolution shall be null and void. The sale/conveyance is
28 subject to final land use approval, including all appeals. The real property sale is, as
29 is, and subject to all encumbrances of record.

30
31 **SECTION 4. EFFECTIVE DATE.** This resolution is effective as of the date of its
32 adoption and signature by the Mayor.

33
34 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 13th day of
35 January, 2020.

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39 DICK ANDERSON, MAYOR
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ATTEST:



CATHY STEERE, CITY RECORDER

EXHIBIT A

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R247720 & R252290 and 7-11-02CC Tax Lots 300 and 500
PARCEL 1: 3454 NE Hwy 101, Lincoln City, OR 97367
PARCEL 2: 2201 NE 34th Street, Lincoln City, OR 97367

PARCEL I:

That part of Section 2, Township 7 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, described as follows:

Beginning at a point on the North line of Government Lot 25 that is North 89° 39' East 450.19 feet from the Northwest corner of said Lot 25, said point being the Northeast corner of the premises conveyed by Woodrow C. Sax, et ux, to John R. Fuller and Anna L. Fuller, husband and wife, by deed recorded April 15, 1940 in Book 84, page 76, Deed Records for Lincoln County; thence South 0° 07' West 131 feet to the North line of N.E. 34th Street (formerly known as Lohkamp Lane); thence North 89° 39' East along the North line of said N.E. 34th Street 159 feet; thence North 0° 07' East 130.75 feet to the North line of said Government Lot 25; thence South 89° 39' West 159 feet along the North line of said lot to the point of beginning.

PARCEL II:

A tract of land situated in Government Lot 25 in Section 2, Township 7 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, described as follows:

Beginning at the Northwest corner of said Government Lot 25; thence East along the North line of said lot to the Easterly line of the Oregon Coast Highway, said point being the Northwest corner of the John R. Fuller tract described in deed recorded April 15, 1940 in Book 84, page 76, Deed Records; thence East along the North line of said Fuller tract 130 feet; thence South along the East line of said Fuller tract 50 feet to the Southeast corner thereof and the true point of beginning of the premises herein described; thence South 80 feet; thence West, parallel with the North line of said Government Lot 25 to the Easterly line of the aforementioned highway; thence Northwesterly along the Easterly line of said highway to the Southwest corner of aforementioned Fuller tract; thence East along the South line of said Fuller tract to the true point of beginning.

Lincoln County, Oregon

03/13/2020 02:42:02 PM

2020-02759

DOC-WD

Cnt=1 Pgs=3 Stn=20

\$15.00 \$11.00 \$10.00 \$60.00 \$20.00 \$7.00

\$123.00

I, Dana W. Jenkins, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed.



Dana W. Jenkins, Lincoln County Clerk



20200012

RECORDING REQUESTED BY:

CITY OF LINCOLN CITY
801 SW HWY 101, PO BOX 50
LINCOLN CITY, OR 97367

AFTER RECORDING RETURN TO:

HELPING HANDS RE-ENTRY OUTREACH CENTERS
JAY BARBER, PRESIDENT
240 S EDGEWOOD
SEASIDE, OR 97138

SEND TAX STATEMENTS TO:

HELPING HANDS RE-ENTRY OUTREACH CENTERS
JAY BARBER, PRESIDENT
240 S EDGEWOOD
SEASIDE, OR 97138

R247720 & R252290 and 7-11-02CC Tax Lots 300 and 500
PARCEL 1: 3454 NE Hwy 101, Lincoln City, OR 97367
PARCEL 2: 2201 NE 34th Street, Lincoln City, OR 97367

SPACE ABOVE THIS LINE FOR RECORDER'S USE

WARRANTY DEED

City of Lincoln City, Grantor, conveys and warrants to Helping Hands Re-Entry Outreach Centers, Grantee, the following described real property (Subject Property), free of encumbrances except that said conveyance is for only so long as the property is used for the purpose of the Helping Hands Transitional Housing program as approved in the December 17, 2019 City of Lincoln City Conditional Use Approval, File: CUP 2019-04;

The Subject Property, situated in the County of Lincoln, State of Oregon, is described below as:

PARCEL I:

That part of Section 2, Township 7 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, described as follows:

Beginning at a point on the North line of Government Lot 25 that is North 89° 39' East 450.19 feet from the Northwest corner of said Lot 25, said point being the Northeast corner of the premises conveyed by Woodrow C. Sax, et ux, to John R. Fuller and Anna L. Fuller, husband and wife, by deed recorded April 15, 1940 in Book 84, page 76, Deed Records for Lincoln County; thence South 0° 07' West 131 feet to the North line of N.E. 34th Street (formerly known as Lohkamp Lane); thence North 89° 39' East along the North line of said N.E. 34th Street 159 feet; thence North 0° 07' East 130.75 feet to the North line of said Government Lot 25; thence South 89° 39' West 159 feet along the North line of said lot to the point of beginning.

Deed: Fee Simple Determinable: so long as used as approved in CUP 2019-04

Recorded by Western Title as an accommodation only. No liability accepted for condition of title or validity, sufficiency or affect of document.

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PARCEL II:

A tract of land situated in Government Lot 25 in Section 2, Township 7 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon, described as follows:

Beginning at the Northwest corner of said Government Lot 25; thence East along the North line of said lot to the Easterly line of the Oregon Coast Highway, said point being the Northwest corner of the John R. Fuller tract described in deed recorded April 15, 1940 in Book 84, page 76, Deed Records; thence East along the North line of said Fuller tract 130 feet; thence South along the East line of said Fuller tract 50 feet to the Southeast corner thereof and the true point of beginning of the premises herein described; thence South 80 feet; thence West, parallel with the North line of said Government Lot 25 to the Easterly line of the aforementioned highway; thence Northwesterly along the Easterly line of said highway to the Southwest corner of aforementioned Fuller tract; thence East along the South line of said Fuller tract to the true point of beginning.

The true consideration for this conveyance is \$400,000 and other consideration. The actual consideration consists of or includes other property or value given or promised which is the whole consideration.


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."


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

Dated: March 11, 2020

GRANTOR: CITY OF LINCOLN CITY

ATTEST:


By: Ron Chandler
City Manager

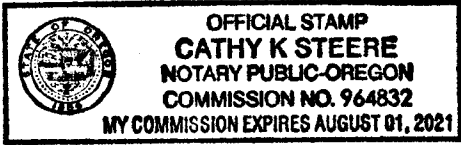

Cathy Steers
City Recorder

State of Oregon
County of Lincoln

This instrument was acknowledged before me on March 11, 2020 by Ron Chandler, as Manager of the City of Lincoln City.

Cathy K. Steere

Notary Public – State of Oregon
My Commission Expires: 08/01/2021



Richard Appicello
APPROVED AS TO FORM:
Richard Appicello, City Attorney