

**WALDPOR CITY COUNCIL  
APRIL 13, 2017  
MEETING NOTICE AND AGENDA**

The Waldport City Council will meet at 2:00 p.m. on Thursday, April 13, 2017 in the City Council Meeting Room, 125 Alsea Highway to take up the following agenda:

1. CALL TO ORDER & ROLL CALL
2. MINUTES: *March 9, 2017*
3. PUBLIC COMMENTS/PRESENTATIONS
4. DISCUSSION/ACTION ITEMS
  - A) *Proclamation - Sexual Assault Awareness Month*
  - B) *Budget Committee Appointment(s)*
  - C) *McKinney Slough Bridge Replacement Project/Utility Relocation*
  - D) *Other Issues*
5. COUNCIL COMMENTS AND CONCERNS
6. REPORTS
  - City Manager*
  - City Librarian*
  - Public Works*
  - City Planner*
  - Code Enforcement*
7. GOOD OF THE ORDER
8. ADJOURNMENT

The City Council Meeting Room is accessible to all individuals. If you will need special accommodations to attend this meeting, please call City Hall, (541)264-7417, during normal office hours.

\* Denotes no material in packet

Notice given this 7<sup>th</sup> day of April, 2017 - Reda Q. Eckerman, City Recorder

**WALDPORT CITY COUNCIL  
MARCH 9, 2017  
MEETING MINUTES**

1. CALL TO ORDER AND ROLL CALL: Mayor Woodruff called the meeting to order at 2:00 p.m. Mayor Woodruff and Councilors O'Brien, Dunn, Warwick, Christenson, Cutter and Holland answered the roll. A quorum was present.

2. MINUTES: The Council considered the minutes from the February 9, 2017 meeting. Councilor Holland **moved** to accept the minutes as presented. Councilor Warwick **seconded** and the motion **carried** unanimously on a voice vote.

3. PUBLIC COMMENTS/PRESENTATIONS: John Maré addressed the Council regarding the Waldport Walkers' discovery of a small colony of people apparently camping out near the top of the Woodland Trail.

4. DISCUSSION/ACTION ITEMS:

a. Board Memberships: Discussion ensued regarding the available positions. Councilor Cutter noted that he could attend the Cascades West Area Commission on Transportation meetings as they are held in Toledo. He will continue on as the Council representative for the Council of Governments as well, however, he will not be able to serve on the Local Public Safety Coordinating Council. Councilor Holland noted that the majority of work done on that council is by email, so he would continue to serve. He will also be the alternative on the Solid Waste Advisory Council.

b. Parks & Recreation Master Plan: The Council reviewed the proposed goals and estimated costs for improvements to the City's parks. Discussion ensued regarding the Bridgeview Trail, the Lint Slough Trail, the Wazyata Beach Access, and the Old Town Trail, which all may eventually be integrated into a trail system. City Manager Kemp noted that the Feasibility Study for the Open Space had been initiated, and informed the Council of the plans for a pocket park near the new Dollar General store site.

c. Other Issues: None.

5. COUNCIL COMMENTS AND CONCERNS: None.

6. REPORTS: The reports from the City Manager, City Librarian and City Planner were included in the packet materials. City Manager Kemp reviewed his written report, noting that staff had been unsuccessful in locating any regulations regarding cats. He had provided preliminary updated cost estimates for the South Sewer LID, and consensus of the Council was to continue monitoring costs and researching potential funding opportunities, but there was no urgency in corresponding with the land owners until such time as the City decides to move forward with the project. Mr. Kemp noted the City's preparations for the upcoming August eclipse event included reserving 10 porta-potties to be placed in several locations around town. The City will also be coordinating with the School District in order to provide some facilities and designated viewing areas.

Public Works Director Andry gave a verbal report on the activities in his department, noting that the crew has been extremely busy with issues resulting from the unusual

amount of rain. In February, the water plant recorded 21.6" of rain for the month, with an additional 6" of rain already in March. However, due to the department's previous efforts, there had been no overtime for downed trees or limbs. despite the high winds and heavy rains.

7. EXECUTIVE SESSION: At 2:53 p.m., the Council recessed into Executive Session, pursuant to ORS 192.660(2)(l), to review and evaluate, pursuant to standards, criteria and policy directives adopted by the governing body, the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member unless the person whose performance is being reviewed and evaluated requests a public hearing. The topic of the discussion was a performance review for City Manager Kemp.

8. ACTIONS, IF ANY, FROM EXECUTIVE SESSION: At 3:25 p.m. the Council reconvened into Open Session. Councilor Cutter **moved** to approve a wage increase of 3% and the standard cost of living increase as provided to all City employees, effective as of July 1, 2017. Councilor Warwick **seconded**, and the motion **carried** unanimously.

9. ADJOURNMENT: At 3:27 p.m., there being no further business to come before the Council, the meeting was adjourned.

Respectfully submitted,



Reda Q Eckerman, City Recorder

APPROVED by the Waldport City Council this \_\_\_ day of \_\_\_\_\_, 2017.

SIGNED by the Mayor this \_\_\_ day of \_\_\_\_\_, 2017.

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Susan Woodruff, Mayor



# City of Waldport

P.O. Box 1120  
Waldport, Oregon  
Phone: (541) 264-7417 Fax: (541) 264-7418  
TTY: (800)735-2900

## PROCLAMATION

\*\*\*\*\*HEAR YE\*\*\*\*\*HEAR YE\*\*\*\*\*HEAR YE\*\*\*\*\*

**WHEREAS**, sexual assault affects Oregonians every day, whether as a victim or survivor, or as a family member, friend, partner, neighbor, employer or co-worker; and

**WHEREAS**, it is estimated that 1 in 4 adult women in Oregon has been the victim of forcible rape and nearly 1 in 71 adult men in have experienced rape or attempted rape in their lifetime; and

**WHEREAS**, sexual violence is preventable; and communities, including campus communities, are strengthened by encouraging healthy, non-violent interactions, relationships and social norms; and

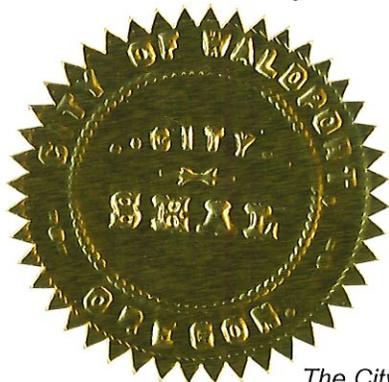
**WHEREAS**, institutions and systems can lead violence prevention by implementing policies that address disparities and promote equity for all people; and

**WHEREAS**, compassionate, courageous, and dedicated individuals and local organizations have provided services and support for victims and survivors, and worked to prevent sexual violence for decades; and

**WHEREAS**, every individual and community in Oregon has the ability and a role to play to help eliminate sexual violence by working together to promote social change.

**NOW, THEREFORE**, I, Susan Woodruff, Mayor of the City of Waldport, Oregon, do hereby proclaim April, 2017 to be "Sexual Assault Awareness Month" and encourage all residents to join in this observance.

Dated this \_\_\_\_\_ day of April 2017.



\_\_\_\_\_  
Susan Woodruff, Mayor

## Reda Eckerman

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**From:** Kerry Kemp  
**Sent:** Thursday, April 06, 2017 10:59 AM  
**To:** Reda Eckerman  
**Subject:** FW: Budget Committee

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**From:** Susan Woodruff  
**Sent:** Thursday, April 06, 2017 10:58 AM  
**To:** Kerry Kemp <kerry.kemp@waldport.org>  
**Subject:** Fwd: Budget Committee

Begin forwarded message:

**From:** Harry Dennis <[hkdennisjr@earthlink.net](mailto:hkdennisjr@earthlink.net)>  
**Subject:** Re: Budget Committee  
**Date:** March 18, 2017 at 12:50:11 PM PDT  
**To:** Susan Woodruff <[suewoodruff@peak.org](mailto:suewoodruff@peak.org)>  
**Reply-To:** Harry Dennis <[hkdennisjr@earthlink.net](mailto:hkdennisjr@earthlink.net)>

Sue,  
After thinking over your request for me to serve on the budget committee, I would be willing to do so. I worked for thirty years for city governments and have had to prepare a few budgets along the way, so I do have some experience in that area. Hope I can be of some help.

Harry



## **CITY COUNCIL MEETING AGENDA COVER SHEET FOR DISCUSSION / ACTION**

**TITLE OF ISSUE:** McKinney Slough Bridge Replacement – Utility Relocation

**REQUESTED BY:** City Manager

**FOR MEETING DATE:** April 13, 2017

### **SUMMARY OF ISSUE:**

The Oregon Department of Transportation (“ODOT”) is replacing the McKinney Slough Bridge (“Bridge”) on Highway 34 at the east side of the City of Waldport (“City”). The \$6 million project is on the 2015-2018 Statewide Transportation Improvement Program (“STIP”), and includes raising and widening the bridge, and adding ramping, retaining walls, and guardrails (“Project”). Due to the Project, ODOT is requiring the City to relocate its water infrastructure in the area.

City staff has been involved in this Project from the beginning. However, it has evolved from a straightforward retrofit to a substantial undertaking. Over the last couple of years ODOT has repeatedly delayed notifying us of what would be required of the City. Only in a meeting with ODOT on February 1, 2017, did staff learn of the potential magnitude of the Project and its impact on our infrastructure, as our current budget only included \$10,000 for replacing our line across the slough. There is no benefit to the utility relocation, as our water infrastructure in the area is stable and functional. As a matter of fact, the City already relocated one water line a few years ago (at a cost of \$29,590), which ODOT is now requiring we move again for the Project.

Given the substantial increase in scope, complexity and cost to the City, we retained Westech Engineering to assess the Project and the utility relocations being demanded by ODOT. Westech has prepared the attached technical memorandum for information. Three alternatives are discussed, with costs ranging from \$390,000 to \$520,000. Any of these alternatives will require an increase in water rates, depending on the terms of any loans. We have submitted a letter of interest to the Industrial Finance Authority (“IFA”) and Oregon Health Authority (“OHA”).

The City Council will need to make difficult choices regarding funding mechanisms for the utility relocations. Securing loans for the entire amount is problematic from both a financial and political standpoint, as water rates would need to be substantially increased without a corresponding benefit (except for the third alternative), and any future financings for critical infrastructure projects would be forestalled due to maximum debt/income ratios.

ODOT should be advised that the schedule being imposed on the City is both unreasonable and unfeasible, given that the City was essentially blindsided by the Project and its implications, as well as the timelines needed for securing financing, engineering design, regulatory approvals, and construction. There may be a phased approach that will complete some work in advance of the Project, while securing funding and designing most the work for construction later.

(As a side note, as good neighbors we have offered to help ODOT with its mitigation requirements by doing a Right of Entry to access across our former Public Works shop property to do wetlands restoration in the adjacent state lands along Lint Slough. Given the stressful direction this Project has turned, we now are somewhat reluctant with this proposition.)

**STAFF RECOMMENDATION or ACTION REQUESTED:**

Review and discuss project and financial alternatives for proceeding with utility relocation being mandated by the Oregon Department of Transportation for its McKinney Slough Bridge Replacement Project, and responding to the State with respect to the project and schedule.

**BACKGROUND:**

The McKinney Slough Bridge is located at the east edge of town along Highway 34, and is shown on the attached aerial photo. It is about 100 feet in length, and State records indicated it was constructed in 1957, per the 2015 Bridge Condition Report prepared by ODOT. Also, according to this report, it is one of three structurally deficient bridges in ODOT District 4, with its specific deficiencies of low service life and timber substructures.

Because of these deficiencies, the State programmed the bridgework and allocated funds in its 2015-2018 STIP. The original idea apparently was a rebuild of the structural supports and refurbishment. Below is a brief timeline of activities in the last several years:

- The City installed a water line running to the west and perpendicular to the Bridge, and disconnected the existing water line that was attached to it. This initial work was permitted in 2013 and completed in 2014, at a cost to the City of \$29,950.
- The City budgeted its McKinney Slough water line replacement in the fiscal year 2014-15 Capital Improvement Plan, at an estimated cost of \$10,000.
- In March of 2015 there was an initial planning meeting/phone conference. The City was put into contact with Mr. Brian Thompson of ODOT to coordinate the City's water line replacement project with the ODOT bridge project.
- ODOT held another couple of meetings/phone conferences during the initial design phase. ODOT instructed the City to wait for ODOT to get with us for coordination on our water line replacement. There was never any indication given during these meetings that the City would need to relocate its existing water infrastructure.
- Brian Thompson sent an email on November 8, 2016, with partial plans for the Project for an upcoming meeting, as well as a statement that the "Conflict Analysis" was almost completed. Still no indication of any impacts on or conflicts with the City's facilities.
- Sometime just before the upcoming meeting scheduled on February 1, 2017, Public Works received a letter from ODOT (copy attached). Although it was received in late January, the letter was dated November 30, 2016, with a deadline of i) January 6, 2017, for providing estimated time needed to relocate facilities, ii) August 10, 2017, for relocating facilities, and iii) May 12, 2017, for changes to the relocation schedule. The letter also references a drawing and previously provided preliminary plans, none of which were provided until the February meeting, and the letter also presumably includes a second (signature) page, which was missing.
- The City hosted a meeting on February 1, requested by ODOT to discuss infrastructure conflicts with the Project. This is the first meeting that ODOT explained the Project plans in detail, including potential utility conflicts. A schedule was presented in the agenda for this meeting, with utility relocations to be completed by August 10, 2017.
- Initial estimates by Public Works indicated the cost to be approximately \$130,000.
- The City requested a follow up meeting to discuss the conflicts on February 17, as well the schedule for completing utility relocations.

- The City's very rough estimate of costs were now approaching \$300,000.
- Due to the increasing complexity and potential cost associated with the utility relocation, on March 24, 2017, we hired Westech Engineering for preliminary engineering.

Please note that there has seemingly been little interaction between ODOT and the City in trying to find methods for design and construction of the Project that minimize impact to the City. The City has asked ODOT what is driving the need to widen the Bridge and raise it by approximately four feet, necessitating sloping roadways, retaining walls, and guardrails, which is further necessitating essentially eviscerating the existing water system. ODOT's apparent position, as stated in one of our meetings, is that in exchange for not requiring utilities to pay a "franchise fee," it can dictate relocation of utility facilities as needed for its projects.

### **THE BRIDGE PROJECT & ESTIMATED UTILITY RELOCATION COSTS**

The Project includes reconstructing McKinney Slough Bridge, involving demolition of the existing bridge, installing a new bridge that is wider and slopes up to a higher elevation above the slough, and adding retaining walls and guardrails. The Project is anticipated to start September 2017, with the first phase being the southern portion and the second phase being the northern portion, so as to allow for a single lane of traffic during construction.

The Project cost as identified in the STIP is \$6,042,900, of which the federal government is funding \$5,422,294, or 89.7 percent, with the state financing the remainder. The Project as it's currently designed and constructed requires an extensive amount of relocation work, at a substantial cost. Attached is a technical memorandum from Westech regarding three alternatives for your information and perusal, including a comparison:

1. Horizontal Directional Drill - \$430,000
2. Temporary Bridge Mounted Crossing - \$390,000, including \$80,000 for temporary waterline
3. New Supply Line to Merten Drive - \$520,000, including \$220,000 for a new service line (for which an easement across private property would be needed)

The relocation cost is relatively not much shy of the \$620,606 State contribution to the Project.

### **PROJECTED FINANCIAL IMPACT:**

The projected cost ranges from \$390,000 to \$520,000, depending on the alternative selected.

If the City was to undertake the relocation project in its entirety via loans, this would greatly affect our rates and ability to take on future debt. The proposed budget (which the City Council cannot deliberate on now, only during the budget adoption process and upcoming Budget Committee meeting), includes a water rate increase and projected water operating revenues of approximately \$570,000. Our debt service is projected to be approximately \$43,000, meaning our existing debt service coverage is approximately 7.6 percent.

The City's financial policy allows debt service to be up to 10 percent of operating revenues, which provides an additional \$214,000 in debt capacity. In order to stay within the financial policy, rates would need to increase between 20 to 34 percent, or between \$6 and \$11 per average residential customer. Please note that these projections are highly variable depending on project cost and interest rates, and terms. Attached is a detailed analysis showing results of the various alternatives on debt service and rates, as well as a current rate comparison.

The City has submitted a Letter of Interest to the IFA and OHA for \$130,000 in a loan from the Safe Drinking Water Fund, with a follow up email that it may be up to or more than \$300,000 (which is greater than our debt capacity of \$214,000). Staff has also asked the IFA about any special funds or grants related to ODOT-mandated projects such as this one. There doesn't appear to be anything available in that regard through IFA.

ODOT's State Utility Liaison also submitted opportunities for funding from its Utility Relocation Guide. These options include:

- Infrastructure Finance Authority
  - Community Development Block Grants
  - Safe Drinking Water Revolving Loan
  - Special Public Works Funds
  - Water/Wastewater Financing Program
- Oregon Transportation Infrastructure Bank

While some of the above may involve grant funding, most are typically loans, which does not solve the core issue related to debt burden, debt ratios and water rates.

#### **UTILITY RELOCATION & REIMBURSEMENT:**

The question of who is responsible for relocating utilities during public works projects has been a controversial and debatable issue for many decades, both at the federal and state levels.

For this Project, ODOT states that our utility relocation is not eligible for reimbursement based on the following factors:

1. The Alsea Highway was adopted into the State Highway System by the Legislature in 1921 and described in map 5B-12-21.
2. The City of Waldport city limits were expanded in 1965, 1982, 1983, and 2004 to include areas to the east, including those lands bordering and including the Bridge.
3. Per ODOT records, the City has 19 permits near the Project, dating back decades. Standard permits also have been issued in accordance with Oregon Administrative Regulation ("OAR") 734-055-0045, which states, in part, that permits are issued pursuant to Oregon law that authorizes removal, relocation, or repair of a utility facility at the sole cost of the applicant.

With respect to the OAR requirement for responding within 30 days or within the noticed time frame, the City was totally caught unaware due to the inadequacy of the notice (reference the partial letter dated November 30, 2016, but received in January 2017), as well as the lack of being provided definitive plans and a clear direction for any utility relocation until February 2017.

In addition, while it may be accurate that the OAR and permits require the relocation of utility facilities at the cost of the City, neither the permits nor the regulations contemplated a relocation project of this magnitude and cost, where a complete distribution system is being uprooted.

According to the federal guidelines, if two reimbursement policies conflict, the stricter of the two is followed on federal-aid projects. Even given ODOT's stance above, ODOT states in a paper on the derivation of its policy, that "on federal aid projects it is evident and very understandable that ODOT must follow...23 CFR 645A." This policy generally provides for federal reimbursement, up to a pro-rata share of federal participation (in this case, almost 90 percent).

Attached for information is OAR 734-055-0045, a paper on the Derivation of ODOT's Utility Relocation and Reimbursement Policy, and Federal Highway Administration 23 CFR 645A.

**REVIEW & NEXT STEPS/STAFF RECOMMENDATIONS:**

ODOT has put the City in a very difficult position, both from a financial standpoint and a political one. First, the Project has been in the design phase for several years, with ODOT pushing aside the utility relocation matter until the very end, giving the City few options. ODOT could have taken our infrastructure into account during design of the Project, but did not do so. Because of this lack of forethought by ODOT, the Project is necessitating an inordinate amount of water system relocation, without any incremental value to the City. While it is possible to finance the entire utility relocation via loans that are paid from water charges, doing this will hamper the City financially for many years to come with respect to critical capital improvement projects.

Below are the possible next steps and options for proceeding:

1. Notify ODOT of the City's inability to meet the deadline of August 10, 2017.
2. Select a preferred approach for relocating the water facilities, with an understanding not only of costs associated with each alternative, but the potential long-term benefits.
3. Engage engineer to prepare plans for the improvements and prepare cost estimate.
4. Work with ODOT on coordinating relocation activities with construction of the Project, coming up with a phased approach that minimizes impact on utilities, if possible.
5. Depending on the cost estimate and phasing of relocations, discuss and deliberate options for financing the improvements via a combination of loans and grants.
6. Apply for and secure additional loans and grants.
7. Complete those improvements that are essential for ODOT to demolish the Bridge, then later those that are required during or after construction of the Project.

Staff recommends that the City Council immediately notify ODOT that its schedule to complete all the improvements by August 10, 2017, is unreasonable and practically impossible, given the amount of work that is necessary to secure financing, design the improvements, acquire regulatory approvals, and construct the improvements. Since staff believes that this delay is a result of a lack of proper and timely communications from ODOT on the plans and demands, the City should not be liable for any increase in Project costs associated with any delays.

Staff also recommends that the City reach out to the state or federal governments, and perhaps philanthropic organizations, to seek grant funds, so that the considerable cost associated with this project can be layered and shared via a combination of loans and grants. The City financing the utility relocation in its entirety with loans paid by water users (or from other City sources) is prejudicial and jeopardizes long-term financing of improvements that benefit the City.

Attachments: Aerial photograph of McKinney Slough area  
Partial letter from ODOT dated November 30, 2016 (received late January 2017)  
Technical Memorandum from Westech Engineering dated April 3, 2017  
Financing What-if Analysis  
Water Rate Comparison  
OAR 734-055-0045  
Derivation of ODOT's Utility Relocation Policy  
Federal Highway Administration 23 CFR 645A

# Hwy 34 @ McKinney Slough



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# Oregon

Kate Brown, Governor

Received end of January 2017

## Department of Transportation

Region 2 Tech Center  
455 Airport Road SE Building A  
Salem, Oregon 97301-5395  
Telephone (503) 986-2990  
Fax (503) 986-2839

November 30, 2016

Waldport, City of  
PO Box 1120  
Waldport, OR 97394

Subject: **Conflict Letter with Non-Reimbursable Work**  
OR34: McKinney Slough Bridge  
Alsea Highway  
Lincoln County  
Key No.: 19206

Attention: Scott Andry,

The conflicting facilities are located on State highway right of way and are assumed to be located by permission of ODOT under the provisions of OAR 734-055. It is further assumed your facilities are located by permission of a standard permit and therefore are not eligible for reimbursement under the provisions of OAR 734-055-0045. If you believe the relocation of your facilities are compensable because of some prior right, you must provide evidence of the prior right such as an easement, "X" permit, or information described under ORS 366.321, and receive written authorization before doing any design or relocation work.

You are hereby directed to provide your estimated time requirements to relocate your facilities by January 6<sup>th</sup>, 2017. This letter serves as the "written notice" in accordance with OAR 734-055-045(2) which requires your company to respond within the time frame contained in this notice.

The enclosed drawing and previously provided preliminary plans represent the complete mapping of your facilities, both locatable and un-locatable underground facilities, as provided by your company in accordance with OAR 952-01-80. You must review the mapping of your facilities on the enclosed drawing and previously provided preliminary plans for completeness and accuracy and contact me immediately for corrections to errors or omissions. If errors or omissions are discovered during construction, your company may be held responsible for delay claims that are caused by your company's failure to notify ODOT of said errors or omissions.

The conflicting facilities must be completely relocated or adjusted by August 10, 2017, so as not to delay the construction of the project. *If your company can not comply with the above completion date, you must contact me and obtain written agreement on a revised relocation schedule. No changes can be made to the relocation schedule after May 12, 2017.* The relocation schedule will be specified in the project contract documents and your company will be



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**Westtech Engineering, Inc.**

CONSULTING ENGINEERS &amp; PLANNERS

3841 Fairview Industrial Drive SE, Suite 100 • Salem, OR 97302  
(503) 585-2474 • FAX (503) 585-3986**TECHNICAL MEMORANDUM****McKinney Slough Bridge Waterline Replacement Project  
City of Waldport, Oregon**

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**Date:** April 3, 2017

J.O. 3008.4000.0

**To:** Kerry Kemp, City Manager  
City of Waldport, PO Box 1120, Waldport, OR 97394**From:** Christopher Brugato, P.E.  
Westtech Engineering, Inc.

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**INTRODUCTION**

The Oregon Department of Transportation (ODOT) plans to reconstruct the Highway 34 Bridge over McKinney Slough starting in September of 2017. The proposed reconstruction work requires the relocation of portions of the City's water distribution piping within the project limits. The relocation work is required to address physical conflicts between the existing waterlines and the new bridge and/or the associated roadway improvements. The City's waterline currently crosses McKinney Slough on an above-grade structure on the south side of the existing bridge (Figure 1). The new bridge will be wider than the existing bridge and the waterline must be moved to facilitate bridge construction. In addition to this conflict, other waterlines also conflict with other elements of the project such as storm drainage piping and guardrails. ODOT recently provided the City with a detailed listing of the waterline conflicts that need to be resolved and directed the City to complete the relocation work prior to the September 2017 start date. Since the Highway 34 right of way is owned by ODOT, state law requires the City to relocate the waterlines as directed.

The City recently retained Westtech Engineering, Inc. to assist with the engineering design of the waterline relocation work. Westtech has identified three alternatives to address the waterline conflicts and prepared project budgets for each alternative. The purpose of this memorandum is to provide the City Council with relevant background information and a brief overview of the three proposed alternatives.

The remainder of this document is divided into the following topics.

- Background Information
- Alternative 1 – Horizontal Directional Drill
- Alternative 2 – Temporary Bridge Mounted Crossing
- Alternative 3 – New Supply Line to Merten Drive
- Comparison of Alternatives
- Next Steps

## BACKGROUND INFORMATION

ODOT's current plan is to install a temporary signal on either side of the bridge to reduce traffic to a single travel lane across the bridge. Traffic will initially be routed along the north half of the bridge allowing ODOT to construct the south half of the bridge. Once the south half is completed traffic will be re-routed along the south half and the north half will be constructed. Since the existing waterline is on the south side of the bridge, it must be relocated prior to the start of ODOT's project. Some consideration was given to abandoning the waterline crossing altogether. However, this option is not recommended. The existing waterline

crossing of McKinney Slough is one of two primary supply lines feeding the area along Highway 34 between McKinney Slough and Eckman Lake. The second supply line is from Nelson Wayside Drive. Both of these supply lines are needed to ensure adequate water supplies for this area of the City. As such, the McKinney Slough waterline crossing cannot be abandoned permanently. Furthermore, without a third supply line feeding this portion of the City, the McKinney Slough crossing cannot be offline for more than a few hours without impacting the water supply to the area. For these reasons, all of the alternatives discussed below include either maintaining a crossing of McKinney Slough throughout the duration of ODOT's project or providing a third supply line to this area of the City.



Figure 1: Existing Waterline Crossing of McKinney Slough

## ALTERNATIVE 1 – HORIZONTAL DIRECTIONAL DRILL

Under this option a new underground crossing of the slough would be installed using horizontal directional drilling techniques. The work would need to be completed prior to the start of ODOT's bridge construction project. Due to the limited area within the ODOT right of way, new easements would be required on the south side of the bridge for the pipe installation. Easements would need to be obtained from the owners of Grandpas Feed and Supply and some of the other adjacent property owners. The drilling operations would be disruptive to these residents. The total recommended budget for this option is approximately \$430,000 including soft costs (i.e., engineering, easements, contingency, etc.). The design for this option is more complicated than for traditional open-cut construction. This fact, combined with the need for easement acquisition, will likely result in the City being unable to achieve the September 2017 deadline. As such, this option is only feasible if ODOT agrees to delay their project. This option also has construction risk that the other options do not. The primary source of this risk is from the potential to encounter obstructions (e.g., buried wood, boulders, etc.) during the drilling operations. These obstructions can delay construction activities and drive up construction costs.

## ALTERNATIVE 2 – TEMPORARY BRIDGE MOUNTED CROSSING

Under this option a temporary waterline would be constructed on the north side of the existing bridge. The waterline would be attached to the bridge structure itself. The existing line on the south side of the bridge would be abandoned allowing construction of the south half of the bridge. Once the south half of the bridge is constructed, a new permanent line would be mounted to the new bridge structure on the south half. The temporary line on the north half would then be abandoned and the north half of the bridge would be

constructed. The total recommended budget for this option is approximately \$390,000 including soft costs. Of this amount approximately \$80,000 is for the temporary waterline. One drawback of this option is that the new permanent waterline on the south side of the bridge must be constructed in the middle of ODOT's project. This means that the City's contractor and ODOT's contractor must be working in the same area at the same time. This can lead to construction problems and is generally not recommended. To avoid this problem, the City could enter into an agreement with ODOT to have ODOT's contractor complete the waterline on the south half of the bridge. However, this presents risks since the City will not have control over ODOT's contractor. Perhaps one of the major drawbacks of this option is the high cost of the temporary line that must be abandoned.

### ALTERNATIVE 3 – NEW SUPPLY LINE TO MERTEN DRIVE

Under this option, a new supply line would be constructed to provide another water supply line to this area of the City. The existing McKinney Slough waterline crossing would be abandoned for the duration of ODOT's project. Once the new bridge is completed, a new waterline would be mounted to the bridge to restore the crossing. The proposed supply line would extend from the existing 10 inch line located at the top of the ridge above Highway 34, down an existing gravel road, and connect to the existing distribution system near the intersection of Merten Drive and Jackson Place. The total length of this line is approximately 2,000 feet. Based on preliminary discussions, the property owner appears to be in favor of the project and is willing to grant the required easements along the gravel road. The total recommended budget for this option is approximately \$520,000. This option has the primary advantage of minimizing wasted resources since none of the improvements will be temporary. This option will result in a third supply line to this portion of the City which will improve the overall system. This option also has the lowest overall risk since it primarily consists of open cut construction and does not require construction during ODOT's project. The primary drawback of this option is the high overall cost.

### COMPARRISON OF ALTERNATIVES

As described above, three alternatives were considered to replace the McKinney Slough waterline crossing. Each alternative has advantages and disadvantages. Some of these are listed in the following table.

**Table 1:** Comparison of Alternatives

Advantages	Disadvantages
Alternative 1: Horizontal Directional Drill	
<ul style="list-style-type: none"> <li>• Eliminates above-grade waterline</li> </ul>	<ul style="list-style-type: none"> <li>• Impacts to private property owners</li> <li>• Risk associated with directional drilling</li> <li>• Moderately high costs</li> <li>• Will require ODOT to delay project</li> </ul>
Alternative 2: Temporary Bridge Mounted Crossing	
<ul style="list-style-type: none"> <li>• Lowest cost</li> </ul>	<ul style="list-style-type: none"> <li>• Requires awkward construction sequencing</li> <li>• May require IGA with ODOT</li> <li>• Significant costs for temporary facilities</li> </ul>
Alternative 3: New Supply Line to Merten Drive	
<ul style="list-style-type: none"> <li>• Lowest risk</li> </ul>	<ul style="list-style-type: none"> <li>• High cost</li> </ul>

## **NEXT STEPS**

The ODOT project is on a very tight timeline. In order to complete the waterline relocation work prior to the September 2017 deadline, the City must move very quickly with the project. Final design of the improvements must begin in the coming days. As such, the selection of a preferred approach must also be made in the coming days.

The City has a meeting scheduled with ODOT on April 7, 2017 to discuss the project. This meeting may further clarify some of the details associated with the above options. If so, these additional details will be discussed at the City council meeting.

## WHAT IFS for McKinney Water Line Relocation

Budget estimates for 2017/2018 include a 3% rate increase, based upon the National Construction Cost Index, pursuant to Resolution 1143, contingent upon Council review and approval.

Estimated water base charges with 3% rate increase	347,479	
Estimated water usage charges with 3% rate increase	202,356	
Estimated water connection fees, other fees, and interest	<u>20,000</u>	
Water operating revenues estimated for 2017/2018 with 3% increase to rates		569,835
Existing debt service for 2017/2018	39,217	
Estimated debt service for loan authorized for WTP upgrades, master plan	<u>4,101</u>	
Debt service prior to McKinney water line relocation		43,318
Debt service to operating revenues prior to McKinney water line relocation		7.60%
Estimated annual debt service available within 10% of water operating revenues		13,666

<b>IF</b>	<b>McKinney water line relocation costs</b>	<b>Debt Service interest rate for 25 years</b>	<b>Annual Debt Service</b>	<b>Annual Debt Service would increase to</b>	<b>Operating Revenues to provide 10% debt limitation</b>	<b>Water Operating Rates would increase by</b>
<b>Based upon debt available</b>	\$ 214,000	4.0%	13,666	56,984	569,840	0%
<b>Alternative 1</b>	\$ 430,000	4.0%	27,525	70,843	708,430	<b>24%</b>
<b>Alternative 2</b>	\$ 390,000	4.0%	24,965	68,283	682,830	<b>20%</b>
<b>Alternative 3</b>	\$ 520,000	4.0%	33,286	76,604	766,040	<b>34%</b>

<b>IF</b>	<b>Monthly Inside City Base Rate</b>	<b>Rate per 100 cubic feet</b>	<b>Monthly Reserve Base Rate</b>	<b>Monthly Charge to Average Residential Customer using 400 cf</b>
<b>Based upon debt available</b>	18.51	2.41	4.22	\$ 32.37
<b>Alternative 1</b>	23.01	3.00	5.25	\$ 40.24
<b>Alternative 2</b>	22.18	2.89	5.06	\$ 38.79
<b>Alternative 3</b>	24.88	3.24	5.67	\$ 43.52

**2016/2017 Water and Wastewater Rate Comparison  
for Neighboring Cities and Water Districts**

For comparison, water and wastewater rates are shown for residential customers being charged for an average of 4 units of water (2,992 gallons). Rates have been converted from gallons to cubic feet where necessary.

	Water Charges	Wastewater Charges	Monthly Charges
Depoe Bay	30.47	23.78	54.25
Lincoln City	22.96	25.15	48.11
Newport	37.07	44.40	81.46
Portland	55.11	39.28	94.39
Seal Rock	51.33		
Southwest Lincoln	46.60		
Toledo	41.71	42.33	84.04
<b>Waldport</b>	<b>31.43</b>	<b>41.15</b>	<b>72.58</b>
Yachats	53.79	53.79	107.58
<b>Average</b>	<b>41.16</b>	<b>38.55</b>	<b>77.49</b>

734-055-0045

### **Removal, Relocation or Repair**

(1) The permit is issued pursuant to the law of the State of Oregon which authorizes the Commission to subsequently require applicant to remove, relocate or repair the facility covered by the permit at the sole cost of applicant.

(2) Upon receiving written notice from the Engineer to remove, relocate or repair the said facility, applicant shall within 30 days or within the time frame contained in the notice, provide to the Engineer its time estimated requirements for accomplishing the directed action.

(3) The Engineer, after applicant has provided its estimated time requirement for removal, relocation or repair of said facility, may schedule a preconstruction meeting with all applicants and affected contractors to coordinate the requested activity.

(4) The Engineer in a second notice shall direct applicant, within a specified time frame and consistent with a coordination plan, to complete the removal, relocation or repair of said facility. The time frame outlined in the notice shall take into consideration the applicant's estimated time requirements to accomplish the directed action. Such removal, relocation, or repair shall be at applicant's sole cost in accordance with said second notice and instructions received from the Engineer. Before commencing said removal, relocation or repair, applicant shall furnish such insurance and post such bond as the Engineer may consider necessary at that time in the manner provided for in OAR 734-055-0035(1) and (2).

(5) Should applicant fail to remove, relocate or repair the facility as provided in section (4) of this rule, the DM may remove, relocate or repair same and submit a statement of total costs for this work to applicant. Applicant upon receiving said statement will immediately, or within a period of time agreed upon between applicant and Engineer, pay to the Department the full amount of said removal, relocation or repair costs.

(6) If the section of highway in which applicant is required by the Engineer to remove, relocate or repair a facility is or will be under construction or reconstruction or improvement under a contract entered into between the Department and an independent contractor and applicant's failure to remove, relocate or repair said pole line, buried cable, pipe line, sign or miscellaneous facility within the time specified in section (4) of this rule, or such other time as may be specified by the Engineer, results in payment by Department to its contractor of any claim for extra compensation for any work under said contract, applicant shall be liable to the Department for payment of the amount paid to Department's contractor as a direct result of applicants failure to comply with the time requirements of the Engineer.

Stat. Auth.: ORS 184 & ORS 374

Stats. Implemented: ORS 374.310

## **DERIVATION OF ODOT'S UTILITY RELOCATION AND REIMBURSEMENT POLICY**

The purpose of this paper is to provide additional information on the derivation of reimbursement policy for utility relocation on Oregon Transportation Commission (OTC) approved projects. The State's utility relocation and reimbursement policy originates from the following sources:

- Oregon Constitution
- ORS 281.060; Relocation Duties Of Public Entity; Use Of Certain Federal Relocation Assistance Programs; Policies
- The federal Uniform Relocation Act of 1970 and its amendments of 1987
- 49 CFR 24; Uniform Relocation Assistance And Real Property Acquisition For Federal And Federally Assisted Programs
- 23 CFR 645A; Utility Relocation's, Adjustments, and Reimbursement

ODOT bases its reimbursement policy on:

**23 CFR 645A: Utility Relocation's, Adjustments, and Reimbursement** which is contained in FHWA's Program Guide for Utility Adjustments and Accommodation on Federal-Aid Projects.

On federal aid projects it is evident and very understandable that ODOT must follow the policies and procedures outlined in 23 CFR 645A. However, there are many OTC approved projects which are funded entirely with State dollars. Further, even on federal aid projects, the majority of utility reimbursement has historically been paid for using state funds. Therefore, the question of relevance and authority of 23 CFR 645A becomes apparent. In other words, are the provisions of 23 CFR 645A applicable to State funded projects or to federal aid projects when the utility reimbursement is paid with State dollars?

To answer this question, the derivation of the State's reimbursement policy must be examined. The source of the Oregon's utility reimbursement policy is vested in the Oregon Constitution.

The discussion below focuses on how each of these are related and ultimately linked to 23 CFR645A in forming the elements for ODOT's policy and procedures for utility relocation and reimbursement.

## **Oregon Constitution**

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Since 1859, Oregon's Constitution has provided the framework for the State's government. Specifically with regard to the State's taking of property for the use of roads, Article 1, Section 18 of the Constitution says:

"Private property shall not be taken for public use, nor the particular services of any man be demanded, without just compensation".

If there is a taking of private property, such as a utility's easement and facilities, the utility must be compensated and made whole.

For information purposes, the entire section of Article 1 is attached as Exhibit A.

### **ORS 281.060; Relocation Duties of Public Entity; Use Of Certain Federal Relocation Assistance Programs; Policies**

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The enabling legislation that evolved from the Constitution, is ORS 281.060. **ORS 281.060 Relocation Duties of Public Entity; Use of Certain Federal Relocation Assistance Programs; Policies**, states in part::

"Whenever any program or project is undertaken by a public entity which program or project will result in the acquisition of real property, notwithstanding any other statute, charter, ordinance, or rule or regulation, the public entity shall:

In acquiring the real property, be guided by the land acquisition policies in section 301 of the 1970 federal Act as amended by the Uniform Relocation Act amendments of 1987 and the provisions of section 302 of the 1970 federal Act."

Exhibit B contains the entire statute.

This means that the State of Oregon, specifically, ODOT uses the federal Uniform Relocation Act of 1970 and its amendments of 1987 as the basis for state policy and procedures on relocation and reimbursement.

### **49 CFR 24; Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs**

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The Uniform Relocation Act of 1970 and its amendments of 1987 were codified and implemented as:

Title 49 of the Code of Federal Regulations, Part 24 (49 CFR 24); **Uniform Relocation Assistance And Real Property Acquisition for Federal and Federally Assisted Programs**

49 CFR 24 covers all aspects of right of way acquisition for State agencies to follow including:

- Real property acquisition
- General relocation requirements
- Payments for moving and related expenses
- Replacement housing payments
- Mobile homes

Additionally, **Section 24.307; Discretionary Utility Relocation Payments** of 49 CFR 24 (see Exhibit C), refers specifically to utility relocation and reimbursement policy and procedures.

Further, **Appendix A of 49 CFR 24**, states:

**Section 24.307(c)** describes the issues which must be agreed to between the displacing agency and the utility facility owner in determining the amount of the relocation payment. To facilitate and aid in reaching such agreement, the practices in the Federal Highway Administration regulation, **23 CFR part 645, subpart A, Utility Relocations, Adjustments and Reimbursement, should be followed.**

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## Summary

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To reiterate, ODOT's utility relocation and reimbursement policy and procedures originate with the Oregon Constitution and ORS 281.060. ORS 281.060 stipulates that the federal Uniform Relocation Act, codified as 49 CFR 24, guide state policy and procedures. 49 CFR 24 further reveals that 23 CFR 645A should be followed as the policy and procedures which govern utility relocation and reimbursement.

Therefore because of this link, it is evident that for State funded projects or federal aid projects where the utility reimbursement is paid with State dollars, the provisions of 23 CFR 645A do indeed apply.

## **Exhibit “A”**

### **Oregon Constitution, Article 1, Section 18. Private Property or Services Taken For Public Use.**

Private property shall not be taken for public use, nor the particular services of any man be demanded, without just compensation; nor except in the case of the state, without such compensation first assessed and tendered; provided, that the use of all roads, ways and waterways necessary to promote the transportation of the raw products of mine or farm or forest or water for beneficial use or drainage is necessary to the development and welfare of the state and is declared a public use. [Constitution of 1859; Amendment proposed by S.J.R. No. 17, 1919, and adopted by people May 21, 1920; Amendment proposed by S.J.R. No. 8, 1923, and adopted by people Nov. 4, 1924]

## Exhibit "B"

### ORS 281.060 Relocation Duties of Public Entity; Use of Certain Federal Relocation Assistance Programs; Policies.

Whenever any program or project is undertaken by a public entity which program or project will result in the acquisition of real property, notwithstanding any other statute, charter, ordinance, or rule or regulation, the public entity shall:

- (1) Provide fair and reasonable relocation payments and assistance to or for displaced persons as provided under sections 202, 203, 204 and 206 of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Uniform Relocation Act amendments of 1987;
- (2) Provide relocation assistance programs offering to displaced persons and others occupying property immediately adjacent to the real property acquired the services described in section 205 of the 1970 federal Act as amended by the Uniform Relocation Act amendments of 1987 on the conditions prescribed therein;
- (3) In acquiring the real property, be guided by the land acquisition policies in section 301 of the 1970 federal Act as amended by the Uniform Relocation Act amendments of 1987 and the provisions of section 302 of the 1970 federal Act;
- (4) Pay or reimburse property owners for necessary expenses as specified in sections 303 and 304 of the 1970 federal Act;
- (5) Share costs of providing payments and assistance with the Federal Government in the manner and to the extent required by sections 211 (a) and (b) of the 1970 federal Act as amended by the Uniform Relocation Act amendments of 1987; and
- (6) Appoint such officers, enter into such contracts, utilize federal funds for planning and providing comparable replacement housing, and take such other actions as may be necessary to comply with the conditions and requirements of the 1970 federal Act as amended by the Uniform Relocation Act amendments of 1987. [1971 c.142 s.2; 1973 c.373 s.1; 1975 c.613 s.5; 1989 c.14 s.1]

## Exhibit "C"

### Code of Federal Regulations

#### TITLE 49 --TRANSPORTATION

##### Subtitle A --Office of the Secretary of Transportation

#### **PART 24--UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS**

##### Subpart D--Payments for Moving and Related Expenses

#### **Sec. 24.306 Discretionary Utility Relocation Payments.**

(a) Whenever a program or project undertaken by a displacing agency causes the relocation of a utility facility (see Secs. 24.2 (aa) and (bb)) and the relocation of the facility creates extraordinary expenses for its owner, the displacing agency may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

(1) The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or right-of-way; and

(2) The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement; and

(3) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the displacing agency; and

(4) There is no Federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the displacing agency's program or project; and

(5) State or local government reimbursement for utility moving costs or payment of such costs by the displacing agency is in accordance with State law.

(b) For the purposes of this section, the term extraordinary expenses means those expenses which, in the opinion of the displacing agency, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition

for use of the property, or has voluntarily agreed to be responsible for such expenses.

(c) A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally assisted program or project, less any increase in value of the new facility and salvage value of the old facility. The displacing agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. (See appendix A, of this part, Sec. 24.307.)

### **Section 24.306 Discretionary Utility Relocation Payments**

Section 24.307(c) describes the issues which must be agreed to between the displacing agency and the utility facility owner in determining the amount of the relocation payment. To facilitate and aid in reaching such agreement, the practices in the Federal Highway Administration regulation, 23 CFR part 645, subpart A, Utility Relocations, Adjustments and Reimbursement, should be followed.

**SUBCHAPTER G - ENGINEERING AND TRAFFIC OPERATIONS****PART 645 - UTILITIES****Subpart A - Utility Relocations, Adjustments, and Reimbursement**

## Sec.

645.101 Purpose.

645.103 Applicability.

645.105 Definitions.

645.107 Eligibility.

645.109 Preliminary engineering.

645.111 Right-of-way.

645.113 Agreements and authorizations.

645.115 Construction.

645.117 Cost development and reimbursement.

645.119 Alternate procedure.

Authority: 23 U.S.C. 101, 109, 111, 116, 123, and 315; 23 CFR 1.23 and 1.27; 49 CFR 1.48(b); and E.O. 11990, 42 FR 26961 (May 24, 1977).

Source: 50 FR 20345, May 15, 1985, as amended at 65 FR 70307, November 22, 2000, unless otherwise noted.

**Sec. 645.101 Purpose.**

To prescribe the policies, procedures, and reimbursement provisions for the adjustment and relocation of utility facilities on Federal-aid and direct Federal projects.

**Sec. 645.103 Applicability.**

(a) The provisions of this regulation apply to reimbursement claimed by a State Transportation Department (STD) for costs incurred under an approved and properly executed Transportation Department (TD)/ utility agreement and for payment of costs incurred under all Federal Highway Administration (FHWA)/ utility agreements.

(b) Procedures on the accommodation of utilities are set forth in 23 CFR Part 645, Subpart B, Accommodation of Utilities.

(c) When the lines or facilities to be relocated or adjusted due to highway construction are privately owned, located on the owner's land, devoted exclusively to private use and not directly or indirectly serving the public, the provisions of the FHWA's right-of-way procedures in 23 CFR 710.203, apply. When applicable, under the foregoing conditions, the provisions of this regulation may be used as a guide to establish a cost-to-cure.

(d) The FHWA's reimbursement to the STD will be governed by State law (or State regulation) or the provisions of this regulation, whichever is more restrictive. When State law or regulation differs from this regulation, a

determination shall be made by the STD subject to the concurrence of the FHWA as to which standards will govern, and the record documented accordingly, for each relocation encountered.

(e) For direct Federal projects, all references herein to the STD or TD are inapplicable, and it is intended that the FHWA be considered in the relative position of the STD or TD.

#### **Sec. 645.105 Definitions.**

For the purposes of this regulation, the following definitions shall apply:

**Authorization** - for Federal-aid projects authorization to the STD by the FHWA, or for direct Federal projects authorization to the utility by the FHWA, to proceed with any phase of a project. The date of authorization establishes the date of eligibility for Federal funds to participate in the costs incurred on that phase of work.

**Betterment** - any upgrading of the facility being relocated that is not attributable to the highway construction and is made solely for the benefit of and at the election of the utility.

**Cost of relocation** - the entire amount paid by or on behalf of the utility properly attributable to the relocation after deducting from that amount any increase in value of the new facility, and any salvage derived from the old facility.

**Cost of Removal** - the amount expended to remove utility property including the cost of demolishing, dismantling, removing, transporting, or otherwise disposing of utility property and of cleaning up to leave the site in a neat and presentable condition.

**Cost of salvage** - the amount expended to restore salvaged utility property to usable condition after its removal.

**Direct Federal projects** - highway projects such as projects under the Federal Lands Highways Program which are under the direct administration of the FHWA.

**Indirect or overhead costs** - those costs which are not readily identifiable with one specific task, job, or work order. Such costs may include indirect labor, social security taxes, insurance, stores expense, and general office expenses. Costs of this nature generally are distributed or allocated to the applicable job or work orders, other accounts and other functions to which they relate. Distribution and allocation is made on a uniform basis which is reasonable, equitable, and in accordance with generally accepted cost accounting practices.

**Relocation** - the adjustment of utility facilities required by the highway project. It includes removing and reinstalling the facility, including necessary temporary facilities, acquiring necessary right-of-way on the new location, moving, rearranging or changing the type of existing facilities and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

**Salvage value** - the amount received from the sale of utility property that has been removed or the amount at which the recovered material is charged to the utility's accounts, if retained for reuse.

**State Transportation Department** - the Transportation Department of one of the 50 States, the District of Columbia, or Puerto Rico.

**Transportation Department (TD)** - that department, commission, board, or official of any State or political subdivision thereof, charged by its law with the responsibility for highway administration.

**Use and occupancy agreement** - the document (written agreement or permit) by which the TD approves the use and occupancy of highway right-of-way by utility facilities or private lines.

**Utility** - a privately, publicly, or cooperatively owned line, facility or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public. The term utility shall also mean the utility company inclusive of any wholly owned or controlled subsidiary.

**Work order system** - a procedure for accumulating and recording into separate accounts of a utility all costs to the utility in connection with any change in its system or plant.

### **Sec. 645.107 Eligibility.**

(a) When requested by the STD, Federal funds may participate, subject to the provisions of Sec. 645.103(d) of this part and at the pro rata share applicable, in an amount actually paid by an TD for the costs of utility relocations. Federal funds may participate in safety corrective measures made under the provisions of Sec. 645.107(k) of this part. Federal funds may also participate for relocations necessitated by the actual construction of a highway project made under one or more of the following conditions when:

(1) The STD certifies that the utility has the right of occupancy in its existing location because it holds the fee, an easement, or other real property interest, the damaging or taking of which is compensable in eminent domain,

(2) The utility occupies privately or publicly owned land, including public road or street right-of-way, and the STD certifies that the payment by the TD is made pursuant to a law authorizing such payment in conformance with the provisions of 23 U.S.C. 123, and/or

(3) The utility occupies publicly owned land, including public road and street right-of-way, and is owned by a public agency or political subdivision of the State, and is not required by law or agreement to move at its own expense, and the STD certifies that the TD has the legal authority or obligation to make such payments.

(b) On projects which the STD has the authority to participate in project costs, Federal funds may not participate in payments made by a political subdivision for relocation of utility facilities other than those proposed under the provisions of Sec. 645.107(k) of this part, when State law prohibits the STD from making payment for relocation of utility facilities.

(c) On projects which the STD does not have the authority to participate in project costs, Federal funds may participate in payments made by a political subdivision for relocation of utility facilities necessitated by the actual construction of a highway project when the STD certifies that such payment is based upon the provisions of Sec. 645.107(a) of this part and does not violate the terms of a use and occupancy agreement, or legal contract, between the utility and the TD or for utility safety corrective measures under the provisions of Sec. 645.107(k) of this part.

(d) Federal funds are not eligible to participate in any costs for which the utility contributes or repays the TD, except for utilities owned by the political subdivision on projects which qualify under the provisions of Sec. 645.107(c) of this part in which case the costs of the utility are considered to be costs of the TD.

(e) The FHWA may deny Federal fund participation in any payments made by a TD for the relocation of utility facilities when such payments do not constitute a suitable basis for Federal fund participation under the provisions of Title 23, U.S.C.

(f) The rights of any public agency or political subdivision of a State under contract, franchise, or other instrument or agreement with the utility, pertaining to the utility's use and occupancy of publicly owned land, including public road and street right-of-way, shall be considered the rights of the STD in the absence of State law to the contrary.

(g) In lieu of the individual certifications required by Sec. 645.107(a) and (c), the STD may file a statement with the FHWA setting forth the conditions under which the STD will make payments for the relocation of utility facilities. The FHWA may approve Federal fund participation in utility relocations proposed by the STD under the conditions of the statement when the FHWA has made an affirmative finding that such statement and conditions form a suitable basis for Federal fund participation under the provisions of 23 U.S.C. 123.

(h) Federal funds may not participate in the cost of relocations of utility facilities made solely for the benefit or convenience of a utility, its contractor, or a highway contractor.

(i) When the advance installation of new utility facilities crossing or otherwise occupying the proposed right-of-way of a planned highway project is underway, or scheduled to be underway, prior to the time such right-of-way is purchased by or under control of the TD, arrangements should be made for such facilities to be installed in a manner that will meet the requirements of the planned highway project. Federal funds are eligible to participate in the additional cost incurred by the utility that are attributable to, and in accommodation of, the highway project provided such costs are incurred subsequent to authorization of the work by the FHWA. Subject to the other provisions of this regulation, Federal participation may be approved under the foregoing circumstances when it is demonstrated that the action taken is necessary to protect the public interest and the adjustment of the facility is necessary by reason of the actual construction of the highway project.

(j) Federal funds are eligible to participate in the costs of preliminary engineering and allied services for utilities, the acquisition of replacement right-of-way for utilities, and the physical construction work associated with utility relocations. Such costs must be incurred by or on behalf of a utility after the date the work is included in an approved program and after the FHWA has authorized the STD to proceed in accordance with 23 CFR 630, Subpart A, Federal-Aid Programs Approval and Project Authorization.

(k) Federal funds may participate in projects solely for the purpose of implementing safety corrective measures to reduce the roadside hazards of utility facilities to the highway user. Safety corrective measures should be developed in accordance with the provisions of 23 CFR 645.209(k).

(The information collection requirements in paragraph (g) of this section have been approved under OMB control number 2125-0515)

[50 FR 20345, May 15, 1985, as amended at 53 FR 24932, July 1, 1988]

#### **Sec. 645.109 Preliminary engineering.**

(a) As mutually agreed to by the TD and utility, and subject to the provisions of paragraph (b) of this section, preliminary engineering activities associated with utility relocation work may be done by:

- (1) The TD's or utility's engineering forces;
- (2) An engineering consultant selected by the TD, after consultation with the utility, the contract to be administered by the TD; or,
- (3) An engineering consultant selected by the utility, with the approval of the TD, the contract to be administered by the utility.

(b) When a utility is not adequately staffed to pursue the necessary preliminary engineering and related work for the utility relocation, Federal funds may participate in the amount paid to engineers, architects, and others for required engineering and allied services provided such amounts are not based on a percentage of the cost of relocation. When Federal participation is requested by the STD in the cost of such services, the utility and its consultant shall agree in writing as to the services to be provided and the fees and arrangements for the services. Federal funds may participate in the cost of such services performed under existing written continuing contracts when it is demonstrated that such work is performed regularly for the utility in its own work and that the costs are reasonable.

(c) The procedures in 23 CFR part 172, Administration of Engineering and Design Related Service Contracts, may be used as a guide for reviewing proposed consultant contracts.

#### **Sec. 645.111 Right-of-way.**

(a) Federal participation may be approved for the cost of replacement right-of-way provided:

- (1) The utility has the right of occupancy in its existing location because it holds the fee, an easement, or another real property interest, the damaging or taking of which is compensable in eminent domain, or the acquisition is made in the interest of project economy or is necessary to meet the requirements of the highway project, and
- (2) There will be no charge to the project for that portion of the utility's existing right-of-way being transferred to the TD for highway purposes.

(b) The utility shall determine and make a written valuation of the replacement right-of-way that it acquires in order to justify amounts paid for such right-of-way. This written valuation shall be accomplished prior to negotiation for acquisition.

(c) Acquisition of replacement right-of-way by the TD on behalf of a utility or acquisition of nonoperating real property from a utility shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*) and applicable right-of-way procedures in 23 CFR 710.203.

(d) When the utility has the right-of-occupancy in its existing location because it holds the fee, an easement, or another real property interest, and it is not necessary by reason of the highway construction to adjust or replace the facilities located thereon, the taking of and damage to the utility's real property, including the disposal or

removal of such facilities, may be considered a right-of-way transaction in accordance with provisions of the applicable right-of-way procedures in 23 CFR 710.203.

**Sec. 645.113 Agreements and authorizations.**

- (a) On Federal-aid and direct Federal projects involving utility relocations, the utility and the TD shall agree in writing on their separate responsibilities for financing and accomplishing the relocation work. When Federal participation is requested, the agreement shall incorporate this regulation by reference and designate the method to be used for performing the work (by contract or force account) and for developing relocation costs. The method proposed by the utility for developing relocation costs must be acceptable to both the TD and the FHWA. The preferred method for the development of relocation costs by a utility is on the basis of actual direct and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.
- (b) When applicable, the written agreement shall specify the terms and amounts of any contribution or repayments made or to be made by the utility to the TD in connection with payments by the TD to the utility under the provisions of Sec. 645.107 of this regulation.
- (c) The agreement shall be supported by plans, specifications when required, and itemized cost estimates of the work agreed upon, including appropriate credits to the project, and shall be sufficiently informative and complete to provide the TD and the FHWA with a clear description of the work required.
- (d) When the relocation involves both work to be done at the TD's expense and work to be done at the expense of the utility, the written agreement shall state the share to be borne by each party.
- (e) In the event there are changes in the scope of work, extra work or major changes in the planned work covered by the approved agreement, plans, and estimates, Federal participation shall be limited to costs covered by a modification of the agreement, a written change, or extra work order approved by the TD and the FHWA.
- (f) When proposed utility relocation and adjustment work on a project for a specific utility company can be clearly defined and the cost can be accurately estimated, the FHWA may approve an agreement between the TD and the utility company for a lump-sum payment without later confirmation by audit of actual costs.
- (g) Except as otherwise provided by Sec. 645.113(h), authorization by the FHWA to the STD to proceed with the physical relocation of a utility's facilities may be given after:
- (1) The utility relocation work, or the right-of-way, or physical construction phase of the highway construction work is included in an approved Statewide transportation improvement program.
  - (2) The appropriate environmental evaluation and public hearing procedures required by 23 CFR Part 771, Environmental Impact and Related Procedures, have been satisfied.
  - (3) The FHWA has reviewed and approved the plans, estimates, and proposed or executed agreements for the utility work and is furnished a schedule for accomplishing the work.
- (h) The FHWA may authorize the physical relocation of utility facilities before the requirements of Sec. 645.113(g) (2) are satisfied when the relocation or adjustment of utility facilities meets the requirements of Sec. 645.107(i) of this regulation.
- (i) Whenever the FHWA has authorized right-of-way acquisition under the hardship and protective buying provisions of 23 CFR 710.503, the FHWA may authorize the physical relocation of utility facilities located in whole or in part on such right-of-way.
- (j) When all efforts by the TD and utility fail to bring about written agreement of their separate responsibilities under the provisions of this regulation, the STD shall submit its proposal and a full report of the circumstances to the FHWA. Conditional authorizations for the relocation work to proceed may be given by the FHWA to the STD with the understanding that Federal funds will not be paid for work done by the utility until the STD proposal has been approved by the FHWA.
- (k) The FHWA will consider for approval any special procedure under State law, or appropriate administrative or judicial order, or under blanket master agreements with the utilities, that will fully accomplish all of the foregoing objectives and accelerate the advancement of the construction and completion of projects.

#### **Sec. 645.115 Construction.**

(a) Part 635, Subpart B, of this title, Force Account Construction (justification required for force account work), states that it is cost-effective for certain utility adjustments to be performed by a utility with its own forces and equipment, provided the utility is qualified to perform the work in a satisfactory manner. This cost-effectiveness finding covers minor work on the utility's existing facilities routinely performed by the utility with its own forces. When the utility is not adequately staffed and equipped to perform such work with its own forces and equipment at a time convenient to and in coordination with the associated highway construction, such work may be done by:

- (1) A contract awarded by the TD or utility to the lowest qualified bidder based on appropriate solicitation,
- (2) Inclusion as part of the TD's highway construction contract let by the TD as agreed to by the utility,
- (3) An existing continuing contract, provided the costs are reasonable, or
- (4) A contract for low-cost incidental work, such as tree trimming and the like, awarded by the TD or utility without competitive bidding, provided the costs are reasonable.

(b) When it has been determined under Part 635, Subpart B, that the force account method is not the most cost-effective means for accomplishing the utility adjustment, such work is to be done under competitive bid contracts as described in Sec. 645.115(a) (1) and (2) or under an existing continuing contract provided it can be demonstrated this is the most cost-effective method.

(c) Costs for labor, materials, equipment, and other services furnished by the utility shall be billed by the utility directly to the TD. The special provisions of contracts let by the utility or the TD shall be explicit in this respect. The costs of force account work performed for the utility by the TD and of contract work performed for the utility under a contract let by the TD shall be reported separately from the costs of other force account and contract items on the highway project.

#### **Sec. 645.117 Cost development and reimbursement.**

(a) **Developing and recording costs.** (1) All utility relocation costs shall be recorded by means of work orders in accordance with an approved work order system except when another method of developing and recording costs, such as lump-sum agreement, has been approved by the TD and the FHWA. Except for work done under contracts, the individual and total costs properly reported and recorded in the utility's accounts in accordance with the approved method for developing such costs, or the lump-sum agreement, shall constitute the maximum amount on which Federal participation may be based.

(2) Each utility shall keep its work order system or other approved accounting procedure in such a manner as to show the nature of each addition to or retirement from a facility, the total costs thereof, and the source or sources of cost. Separate work orders may be issued for additions and retirements. Retirements, however, may be included with the construction work order provided that all items relating to retirements shall be kept separately from those relating to construction.

(3) The STD may develop, or work in concert with utility companies to develop, other acceptable costing methods, such as unit costs, to estimate and reimburse utility relocation expenditures. Such other methods shall be founded in generally accepted industry practices and be reasonably supported by recent actual expenditures. Unit costs should be developed periodically and supported annually by a maintained data base of relocation expenses. Development of any alternate costing method should consider the factors listed in paragraphs (b) through (g) of this section. Streamlining of the cost development and reimbursement procedures is encouraged so long as adequate accountability for Federal expenditures is maintained. Concurrence by the FHWA is required for any costing method used other than actual cost.

(b) **Direct labor costs.** (1) Salaries and wages, at actual or average rates, and related expenses paid by the utility to individuals for the time worked on the project are reimbursable when supported by adequate records. This includes labor associated with preliminary engineering, construction engineering, right-of-way, and force account construction.

(2) Salaries and expenses paid to individuals who are normally part of the overhead organization of the utility may be reimbursed for the time worked directly on the project when supported by adequate records and when the work performed by such individuals is essential to the project and could not have been accomplished as economically by employees outside the overhead organization.

(3) Amounts paid to engineers, architects and others for services directly related to projects may be reimbursed.

(c) **Labor surcharges.** (1) Labor surcharges include worker compensation insurance, public liability and property damage insurance, and such fringe benefits as the utility has established for the benefit of its employees. The cost of labor surcharges will be reimbursed at actual cost to the utility, or, at the option of the utility, average rates which are representative of actual costs may be used in lieu of actual costs if approved by the STD and the FHWA. These average rates should be adjusted at least once annually to take into account known anticipated changes and correction for any over or under applied costs for the preceding period.

(2) When the utility is a self-insurer, there may be reimbursement at experience rates properly developed from actual costs. The rates cannot exceed the rates of a regular insurance company for the class of employment covered.

(d) **Overhead and indirect construction costs.** (1) Overhead and indirect construction costs not charged directly to work order or construction accounts may be allocated to the relocation provided the allocation is made on an equitable basis. All costs included in the allocation shall be eligible for Federal reimbursement, reasonable, and actually incurred by the utility, and consistent with the provisions of 48 CFR part 31.

(2) Costs not eligible for Federal reimbursement include, but are not limited to, the costs associated with advertising, sales promotion, interest on borrowings, the issuance of stock, bad debts, uncollectible accounts receivable, contributions, donations, entertainment, fines, penalties, lobbying, and research programs.

(3) The records supporting the entries for overhead and indirect construction costs shall show the total amount, rate, and allocation basis for each additive, and are subject to audit by representatives of the State and Federal Government.

(e) **Material and supply costs.** (1) Materials and supplies, if available, are to be furnished from company stock except that they may be obtained from other sources near the project site when available at a lower cost. When not available from company stock, they may be purchased either under competitive bids or existing continuing contracts under which the lowest available prices are developed. Minor quantities of materials and supplies and proprietary products routinely used in the utility's operation and essential for the maintenance of system compatibility may be excluded from these requirements. The utility shall not be required to change its existing standards for materials used in permanent changes to its facilities. Costs shall be determined as follows:

(i) Materials and supplies furnished from company stock shall be billed at the current stock prices for such new or used materials at time of issue.

(ii) Materials and supplies not furnished from company stock shall be billed at actual costs to the utility delivered to the project site.

(iii) A reasonable cost for plant inspection and testing may be included in the costs of materials and supplies when such expense has been incurred. The computation of actual costs of materials and supplies shall include the deduction of all offered discounts, rebates, and allowances.

(iv) The cost of rehabilitating rather than replacing existing utility facilities to meet the requirements of a project is reimbursable, provided this cost does not exceed replacement costs.

(2) Materials recovered from temporary use and accepted for reuse by the utility shall be credited to the project at prices charged to the job, less a consideration for loss in service life at 10 percent. Materials recovered from the permanent facility of the utility that are accepted by the utility for return to stock shall be credited to the project at the current stock prices of such used materials. Materials recovered and not accepted for reuse by the utility, if determined to have a net sale value, shall be sold to the highest bidder by the TD or utility following an opportunity for inspection and appropriate solicitation for bids. If the utility practices a system of periodic disposal by sale, credit to the project shall be at the going prices supported by records of the utility.

(3) Federal participation may be approved for the total cost of removal when either such removal is required by the highway construction or the existing facilities cannot be abandoned in place for aesthetic or safety reasons. When the utility facilities can be abandoned in place but the utility or highway constructor elects to remove and recover the materials, Federal funds shall not participate in removal costs which exceed the value of the materials recovered.

(4) The actual and direct costs of handling and loading materials and supplies at company stores or material yards, and of unloading and handling recovered materials accepted by the utility at its stores or material yards are reimbursable. In lieu of actual costs, average rates which are representative of actual costs may be used if approved by the STD and the FHWA. These average rates should be adjusted at least once annually to take into account known anticipated changes and correction for any over or under applied costs for the preceding period. At the option of the utility, 5 percent of the amounts billed for the materials and supplies issued from company stores and material yards or the value of recovered materials will be reimbursed in lieu of actual or average costs for handling.

(f) **Equipment costs.** The average or actual costs of operation, minor maintenance, and depreciation of utility-owned equipment may be reimbursed. Reimbursement for utility-owned vehicles may be made at average or actual costs. When utility-owned equipment is not available, reimbursement will be limited to the amount of rental paid (1) to the lowest qualified bidder, (2) under existing continuing contracts at reasonable costs, or (3) as an exception by negotiation when paragraph (f) (1) and (2) of this section are impractical due to project location or schedule.

(g) **Transportation costs.** (1) The utility's cost, consistent with its overall policy, of necessary employee transportation and subsistence directly attributable to the project is reimbursable.

(2) Reasonable cost for the movement of materials, supplies, and equipment to the project and necessary return to storage including the associated cost of loading and unloading equipment is reimbursable.

(h) **Credits.** (1) Credit to the highway project will be required for the cost of any betterments to the facility being replaced or adjusted, and for the salvage value of the materials removed.

(2) Credit to the highway project will be required for the accrued depreciation of a utility facility being replaced, such as a building, pumping station, filtration plant, power plant, substation, or any other similar operational unit. Such accrued depreciation is that amount based on the ratio between the period of actual length of service and total life expectancy applied to the original cost. Credit for accrued depreciation shall not be required for a segment of the utility's service, distribution, or transmission lines.

(3) No betterment credit is required for additions or improvements which are:

(i) Required by the highway project,

(ii) Replacement devices or materials that are of equivalent standards although not identical,

(iii) Replacement of devices or materials no longer regularly manufactured with next highest grade or size,

(iv) Required by law under governmental and appropriate regulatory commission code, or

(v) Required by current design practices regularly followed by the company in its own work, and there is a direct benefit to the highway project.

(4) When the facilities, including equipment and operating facilities, described in Sec. 645.117(h)(2) are not being replaced, but are being rehabilitated and/or moved, as necessitated by the highway project, no credit for accrued depreciation is needed.

(5) In no event will the total of all credits required under the provisions of this regulation exceed the total costs of adjustment exclusive of the cost of additions or improvements necessitated by the highway construction.

(i) **Billings.** (1) After the executed TD/utility agreement has been approved by the FHWA, the utility may be reimbursed through the STD by progress billings for costs incurred. Cost for materials stockpiled at the project site or specifically purchased and delivered to the utility for use on the project may also be reimbursed on progress billings following approval of the executed TD/utility agreement.

(2) The utility shall provide one final and complete billing of all costs incurred, or of the agreed-to lump-sum, within one year following completion of the utility relocation work, otherwise previous payments to the utility may be considered final, except as agreed to between the STD and the utility. Billings received from utilities more than one year following completion of the utility relocation work may be paid if the STD so desires, and Federal-aid highway funds may participate in these payments.

(3) All utility cost records and accounts relating to the project are subject to audit by representatives of the State and Federal Government for a period of 3 years from the date final payment has been received by the utility.

(The information collection requirements in paragraph (i) of this section have been approved under OMB Control Number 2125-0159.)

**Sec. 645.119 Alternate procedure.**

(a) This alternate procedure is provided to simplify the processing of utility relocations or adjustments under the provisions of this regulation. Under this procedure, except as otherwise provided in paragraph (b) of this section, the STD is to act in the relative position of the FHWA for reviewing and approving the arrangements, fees, estimates, plans, agreements, and other related matters required by this regulation as prerequisites for authorizing the utility to proceed with and complete the work.

(b) The scope of the STD's approval authority under the alternate procedure includes all actions necessary to advance and complete all types of utility work under the provisions of this regulation except in the following instances:

(1) Utility relocations and adjustments involving major transfer, production, and storage facilities such as generating plants, power feed stations, pumping stations and reservoirs.

(2) Utility relocations falling within the scope of Sec. 645.113 (h), (i), and (j), and Sec. 645.107(i) of this regulation.

(c) To adopt the alternate procedure, the STD must file a formal application for approval by the FHWA. The application must include the following:

(1) The STD's written policies and procedures for administering and processing Federal-aid utility adjustments. Those policies and procedures must make adequate provisions with respect to the following:

(i) Compliance with the requirements of this regulation, except as otherwise provided by Sec. 645.119(b), and the provisions of 23 CFR Part 645, Subpart B, Accommodation of Utilities.

(ii) Advance utility liaison, planning, and coordination measures for providing adequate lead time and early scheduling of utility relocation to minimize interference with the planned highway construction.

(iii) Appropriate administrative, legal, and engineering review and coordination procedures as needed to establish the legal basis of the TD's payment; the extent of eligibility of the work under State and Federal laws and regulations; the more restrictive payment standards under Sec. 645.103(d) of this regulation; the necessity of the proposed utility work and its compatibility with proposed highway improvements; and the uniform treatment of all utility matters and actions, consistent with sound management practices.

(iv) Documentation of actions taken in compliance with STD policies and the provisions of this regulation, shall be retained by the STD.

(2) A statement signed by the chief administrative officer of the STD certifying that:

(i) Federal-aid utility relocations will be processed in accordance with the applicable provisions of this regulation, and the STD's utility policies and procedures submitted under Sec. 645.119(c)(1).

(ii) Reimbursement will be requested only for those costs properly attributable to the proposed highway construction and eligible for participation under the provisions of this regulation.

(d) The STD's application and any changes to it will be submitted to the FHWA for review and approval.

(e) After the alternate procedure has been approved, the FHWA may authorize the STD to proceed with utility relocation on a project in accordance with the certification, subject to the following conditions:

(1) The utility work must be included in an approved program.

(2) The STD must submit a request in writing for such authorization. The request shall include a list of the utility relocations to be processed under the alternate procedure, along with the best available estimate of the total costs involved.

(f) The FHWA may suspend approval of the alternate procedure when any FHWA review discloses noncompliance with the certification. Federal funds will not participate in relocation costs incurred that do not comply with the requirements under Sec. 645.119(c)(1).

(The information collection requirements in paragraph (c) of this section have been approved under OMB control number 2125-0533)

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United States Department of Transportation - Federal Highway Administration

## ***CITY COUNCIL MEETING – April 13, 2017***

### **CITY MANAGER REPORT**

#### ***1. Financial Report***

Attached is a summary of the financial report for the period ending March 31<sup>st</sup>.

#### ***2. Eclipse***

The total solar eclipse will be here August 21<sup>st</sup>. City staff met with Rich Belloni of Lincoln County School District regarding its plans and ideas for the use of district facilities. Although nothing was definitive at this point on the use of its facilities, as the district is just now deliberating this for all its schools, we discussed the following items:

- Facilities discussed include school campus, open space (former high school site). The port and beach areas are other possibilities.
- A parking and circulation plan is needed, for example getting people to the open space and school campus. There may be other viewing locations as well.
- A map could be prepared, that is thematic and general for the entire county, with specific information for each local. Perhaps the schools' graphic arts classes could be involved.
- City will look at providing directional signs to get people to various locations.
- City has 10 portable toilets ordered, which will be strategically placed, and identified on the map, along with other public facilities (restrooms, community center).
- Post-event trash pickup will be an issue. Involve Dahl.
- City is not planning any events, this would be up to others, such as the chamber. Although special events permits may be required, mostly for notification and coordination purposes.
- There was hearsay that public transportation (county transit) may not run that day. This seems counter-productive to trying to get people out of their cars and have traffic flow as smooth as possible, which under the circumstances may become gridlocked in some areas of the county.

Rich will be meeting with the countywide city manager's group at our monthly meeting on April 8<sup>th</sup>.

#### ***3. Flood Mapping***

Attached is a map with information prepared by Larry Lewis, City Planner. An online map viewer with slider bar may be accessed at <http://arcgis/2nwTnXx>. A public meeting will be held May 18<sup>th</sup> from 5-7 pm. at Oregon Coast Community College in Newport.

#### ***4. Industrial Park Master Plan***

Civil West has prepared a DRAFT executive summary of the industrial park master plan, which is attached, as well as a table of contents. The draft study should be done and ready for printing in advance of this meeting for review and public consumption, prior to bringing it to Council in May or June. We anticipate sending copies (electronically or otherwise) to property owners in the area.

**5. *Water Tank***

Macpherson, Gintner & Diaz, lawyers for the City, have submitted a complaint in the Circuit Court of the State of Oregon. Attached is the complaint and exhibits, summons, certificate of acceptance, and certificate of true copy. We will have an executive session when the time comes.

**6. *Mercantile Building***

I sent a letter to the property owner a few weeks ago, and have not received any response. Our Code Compliance Officer, Trish Miller, issued a citation to the owner dated April 7<sup>th</sup>. We will continue pursuing this matter.

**7. *County EOC Open House***

The County is holding an open house of its Emergency Operations Center on April 27<sup>th</sup> from 10 a.m. – 2 p.m. at the Lincoln County Courthouse. Attached is a flyer for the event. The public is invited.

**8. *Former Public Works Shop Appraisal***

The appraisal came in at \$320,000 “as-is” market value for the property along Lint Slough, as of February 23, 2017 (say March 1<sup>st</sup>). We will track this value over time in accordance with the lease and option to purchase. There is a copy of the appraisal at City Hall, or I could email a copy you if you’d like. Although the appraisal used the prior zoning of the property, the appraiser says this doesn’t materially affect the value since the property is not along a commercial corridor.

**9. *Community Center/Farmers Market***

The City is “carving off” the farmers’ market operations from the community center management, and will become more a less a city event run by a farmers’ market manager. Mark Hovey has worked with Lou Piette the last couple of years, and is ready, willing and able to take over management duties. The City and the entire community certainly appreciates Lou’s involvement in nurturing and managing the market over the past decade, and in managing the community center.

**10. *Urban Renewal***

City Council requested a general discussion or update on urban renewal. Staff is briefly deferring the discussion to the Budget Committee meeting on April 25<sup>th</sup>, so that the citizen members on the committee may also learn about the program and plans.



# Financial Report

For period ending March 31, 2017

## Summary of Revenues, Expenses, and Changes in Fund Balances

Revenues and expenses have been categorized into operating (ongoing) and capital (long term). Capital revenues are committed, either by state or council, to fund improvements to the systems or to repayment of debt for such improvements.

Funds	General, Community	Street, Road District	Urban Renewal	Public Works	Water	Wastewater	Totals
Operating Revenues	1,030,419	221,806	-	673,570	411,964	430,198	2,767,956
Operating Expenses	831,814	180,437	4,565	630,323	435,289	396,206	2,478,635
Net Operations	198,605	41,369	(4,565)	43,246	(23,325)	33,992	289,321
Capital Revenues	40,247	-	178,766	-	65,328	48,004	332,345
Capital Outlays, Debt	181,571	-	124,805	104,395	70,099	66,313	547,183
Net Capital	(141,324)	-	53,961	(104,395)	(4,771)	(18,310)	(214,838)
<b>Net Revenue (Loss)</b>	<b>57,281</b>	<b>41,369</b>	<b>49,396</b>	<b>(61,149)</b>	<b>(28,096)</b>	<b>15,682</b>	<b>74,483</b>
Beginning Balances	538,838	170,345	248,545	153,989	249,230	327,398	1,688,345
Ending Balances	596,119	211,714	297,941	92,840	221,134	343,080	1,762,828

### Revenues

General fund received franchise taxes of \$8,152.

Library services received \$13,799 from Lincoln County Library District.

The Dancing with Sea Lions contribution and expenditure have been moved from Urban Renewal to Economic Development.

Street fund received \$9,187 in gas taxes.

Utility billings are comparable to the previous year.

### Water Billings

	YTD Usage	YTD Billings
Residential	44,993	346,980
Commercial	10,793	76,657
Multiple Dwelling	8,258	41,165
<b>Total Water</b>	<b>64,044</b>	<b>464,802</b>
<b>YTD for Last Year</b>	<b>63,352</b>	<b>449,319</b>

### Wastewater Billings

	YTD Usage	YTD Billings
Residential	25,543	274,645
Commercial	8,832	95,402
Multiple Dwelling	8,039	84,959
<b>Total Wastewater</b>	<b>42,414</b>	<b>455,006</b>
<b>YTD for Last Year</b>	<b>42,222</b>	<b>446,912</b>

PO Box 1120

Waldport, OR 97394

Phone: (541) 264-7417

Email:

finance@waldport.org

Expenditures

General fund paid Lincoln County School District \$5,000 to partner, along with COCF&R, in purchasing additional basic survival supplies for the existing disaster caches in Waldport.

Wastewater fund paid USDA \$45,418 for annual debt service for the South Wastewater Improvements.

Water system has been demanding more of public works' time.

Public Works Internal Services	YTD Billings	% of Total
Water Plant	193,333	29%
Distribution	103,336	15%
Wastewater Plant	167,036	25%
Collection	89,142	13%
Streets, Storm	98,609	15%
Other Projects	21,568	3%
<b>Total</b>	<b>673,024</b>	<b>100%</b>

Capital Outlay Projects	YTD Activity	Project to Date	Project Budget
Copier Capital Lease		-	10,000
Lint Slough Trail	8,380	17,268	40,080
Wazyata Beach Access	2,204	2,713	21,400
Parks & Recreation MP	14,117	26,046	31,530
Scenic Byway CMP	11,334	14,040	15,000
Industrial Area Master Plan	59,482	118,594	170,000
Commercial Street Improvements		-	20,000
Bridgeview Trail Engineering		-	60,950
Hwy 101 Vehicle Access	4,700	4,700	5,000
Way Finding Program		-	25,000
Industrial Park Sewerline		-	5,000
WWTP UV System Upgrade		-	90,000
Excavator	68,230	68,230	68,300
Fencing for new facility	5,795	5,795	10,000
Water Rights	10,156	64,957	
2MG Reservoir Rehabilitation	18,910	338,818	350,000
Eckman Creek Flood Repairs	840	840	178,000
Water Plant Upgrades, MP	5,325	8,366	195,000
Skyline/Chad Waterline Tie In		-	10,000
Inflow & Infiltration Mitigation	19,725	23,226	30,000
Lagoon Sludge Removal	1,170	1,170	60,000
<b>Totals</b>	<b>230,369</b>	<b>694,764</b>	<b>1,395,260</b>

Capital Outlay Projects

Adverse weather conditions slowed progress on Lint Slough trail work.

For the Wazyata Beach Access, the city submitted an Ocean Shores Permit to Oregon Parks & Recreation for proposed storm drain improvements that will extend to the beach.

For the Parks & Recreation Master Plan, the primary task remaining is the feasibility study for recreational uses at the 11.5 acre open space.

The Industrial Area Master Plan is proceeding with utility, storm drainage, and site planning.

Hope to schedule Commercial Street improvement in spring, prior to the busy season.

Upgrading the ultraviolet system at the WWTP is also scheduled for spring.

Will solicit bids for Eckman Creek water line in April.

A small cities exception to OHA backwash regulations was found allowing Waldport to proceed with an upgrade to original water plant design.

Public works has smoke tested sewer lines and will identify, map, and prioritize for I&I mitigation.

Permitting for lagoon sludge removal is scheduled for spring.

April 7, 2017

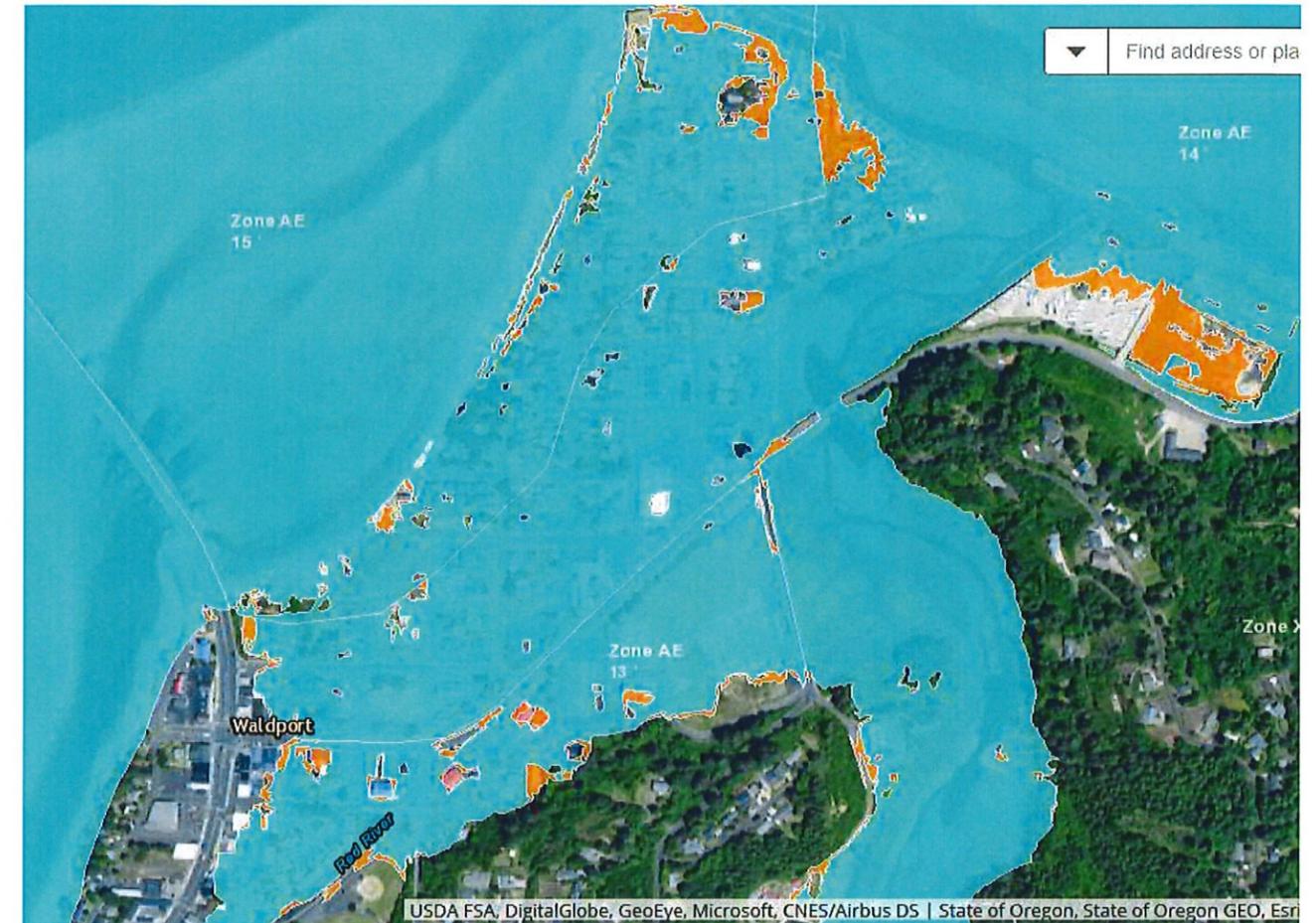
## SUMMARY OF FEMA FLOOD INSURANCE RATE MAPS

- FEMA is updating the Flood Insurance Rate Maps (FIRM).
- The draft maps for Waldport indicate that 198 buildings will be added and 58 buildings will be removed from the flood hazard zone.
- The maps below show the existing and proposed flood hazard zone in blue (■ Zone AE).
- The majority of the 198 buildings proposed to be added to the flood hazard zone are located in Old Town.
- The majority of the 58 buildings that will no longer be in the flood hazard zone are located downtown on the west side Hwy 101 and on Maple Street.

### 2009 FLOOD INSURANCE RATE MAP



### 2017 DRAFT FLOOD INSURANCE RATE MAP



Map Link: <http://arcg.is/2nwTnXx> it has a slider bar which allows you to look at changes between the current maps and the planned update throughout the county.

- A Public Meeting will be held **Thursday, May 18<sup>th</sup>, 5-7 pm at Oregon Coast Community College in Newport** to discuss the 2017 Draft flood maps and associated impacts. The city will send a notice of the public meeting to property owners who own buildings proposed to be added to or removed from the flood hazard zone. At the public meeting there will be a FEMA presentation including a FEMA insurance representative to talk about flood insurance premiums.
- Regarding flood insurance premiums for properties that haven't been but will be in a flood hazard zone.....If those property owners pay flood insurance premiums at least 30 days prior to the new map becoming effective, they will receive an initial discounted rate. Their premiums will then increase 15% annually until reaching the 'full' premium. If property owners get insurance less than 30 days before the maps are effective they will pay the full premium.
- Property owners whose buildings will be removed from flood hazard zones are encouraged to talk to their insurance agent or a FEMA insurance representative regarding the process for reducing or eliminating flood insurance premiums. It will not automatically happen.
- The Update flood maps are schedule to become effective June 2018.



# Executive Summary (Draft)

## Section 1

The City of Waldport contracted with Civil West Engineering in October 2015 to conduct a Feasibility Study (Tier 1) and Master Plan (Tier 2) for the City of Waldport Industrial Park (IP) Area. This area includes approximately 160-acres of industrially-zoned property that is located along Crestline Drive in the southern part of the city. The area is currently only marginally improved due to transportation constraints and connectivity issues with public water and sewer systems.



Figure 1.1 Vicinity Map

The City's objective is to master plan the entire 160-acre site in order to ascertain its development potential, circulation and utility infrastructure needs, and environmental impacts. Once this information has been collected and evaluated, the City's goal is to proceed with engineering the necessary improvements to prepare the site for industrial use. The full site layout is shown on Figure 1.2, which includes the industrial park and potential roadway connections.

The purpose of this planning effort is to evaluate the best opportunities for the City of Waldport to expand and develop the City's employment base. The eventual development of the Industrial Park Master Plan will support and build upon the economic development vision and goals of the local community, Lincoln County and State of Oregon.

The focus of this Master Plan is to identify access road alternatives and utility infrastructure requirements, including domestic and fire protection water services, sanitary sewer system components and storm drainage requirements in order to service the area and ready it for industrial development.

### **1.1 Need for the Industrial Park**

Goal 9 of the Waldport Comprehensive Plan, updated in September of 2013, identified the need for development of the Industrial Park area in order to create a business-friendly environment that increases living wage employment opportunities.

### **1.2 Purpose of the Master Plan**

The purpose of the Industrial Park Master Plan is to furnish Waldport with a comprehensive planning document that provides engineering assessment of system components and guidance for future planning and management of the Industrial Park over the next 20 years.

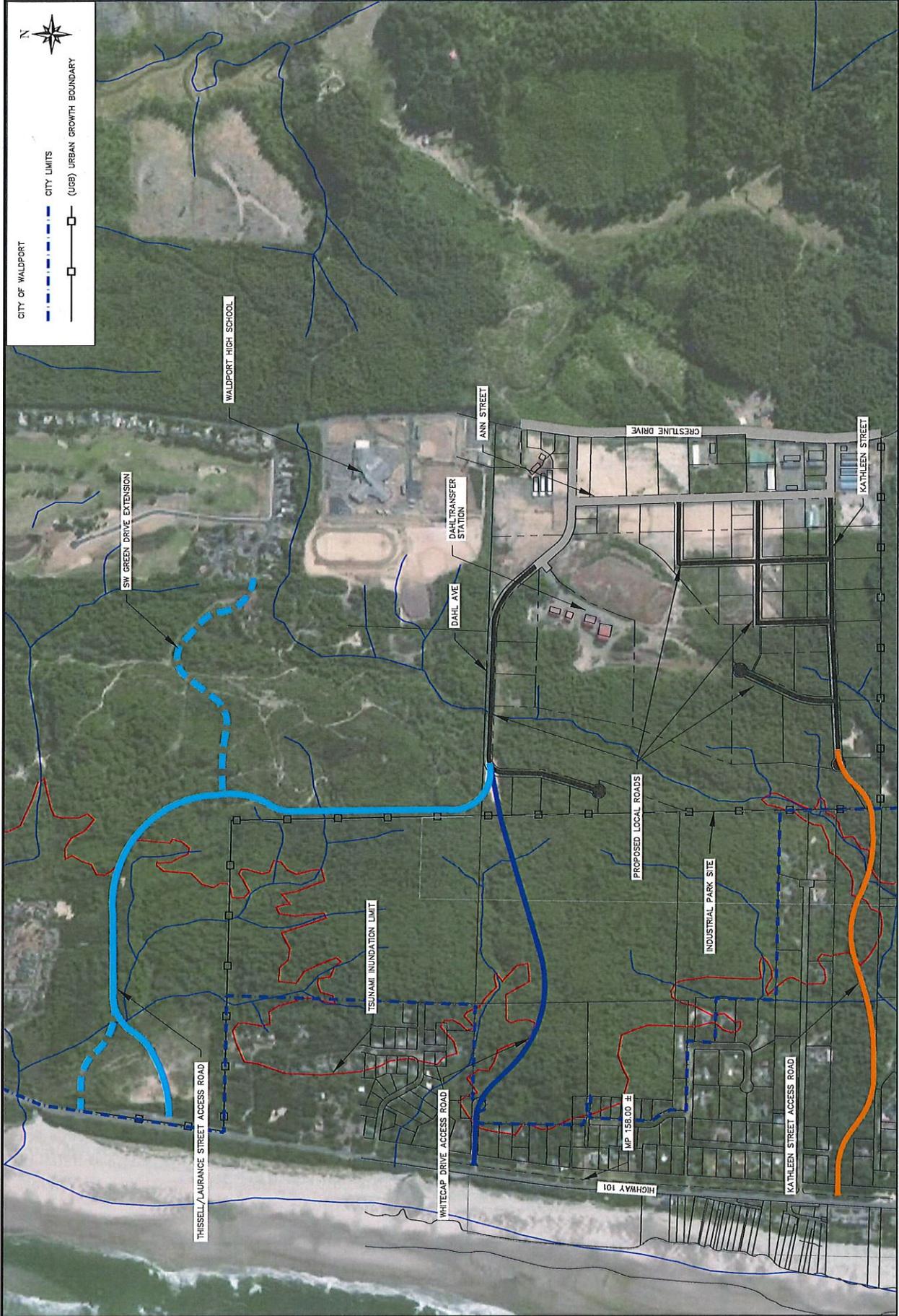
Principal plan objectives include:

- Description and mapping of existing water and sanitary sewer systems
- Prediction of phased development and associated water and wastewater demands
- Evaluation of existing wastewater and water system components
- Evaluation of the capability of the existing systems to meet future needs and regulations
- Recommendations for utility improvements needed to meet future needs and/or address deficiencies
- Recommendations for local road grades and alignments
- Recommendations for access road grades and alignments
- Recommendations for lot layout and grading schematic

This Plan details infrastructure improvements required to maintain compliance with State and Federal standards as well as provide for anticipated growth. Capital improvements are presented as projects with estimated costs to allow the City to plan and budget as needed.

### **1.3 Plan Authorization**

The City contracted with Civil West Engineering Services, Inc. on October 7, 2016 to complete this phase of the Master Plan.



## 1.4 Past Studies and Reports

A Feasibility Study of the Industrial Park was completed in August of 2016. This preliminary study determined that the desired improvements are indeed feasible, and the City is moving forward with this comprehensive analysis that is necessary for the site’s full development.

Adopted state and local plans were reviewed to establish a policy framework for the project. The following documents were among those reviewed:

- City of Waldport – Transportation System Plan, Comprehensive Plan, and Zoning Code.
- State of Oregon – Oregon Transportation Plan, Oregon Highway Plan, Oregon Bicycle and Pedestrian Plan, Transportation Planning Rule, Access Management Rule, and Pacific Coast Scenic Byway Corridor Management Plan for US 101 in Oregon.
- Southwest Lincoln County Water District (SWLCWD) – Water Management and Conservation Plan (2014).

The policy framework will provide the parameters within which the City of Waldport Industrial Area Master Plan must be developed, in order to ensure consistency between the Master Plan and existing state and local regulations.

## 1.5 Summary of Capital Improvement Projects

As part of the master planning efforts, numerous options for utility infrastructure and road alternatives were evaluated. Nonviable options were screened out, and a limited number of selected alternatives were established and evaluated in detail.

The various improvements recommended in the Master Plan are prioritized and separated into 4 zones of development (W, X, Y and Z), as shown in Figure 1.3. The zones have been grouped based on utility development sequencing, ease of construction cost and existing conditions and are described in Table 1.1, below.

**Table 1.1: Industrial Park Zone Timeline and Description**

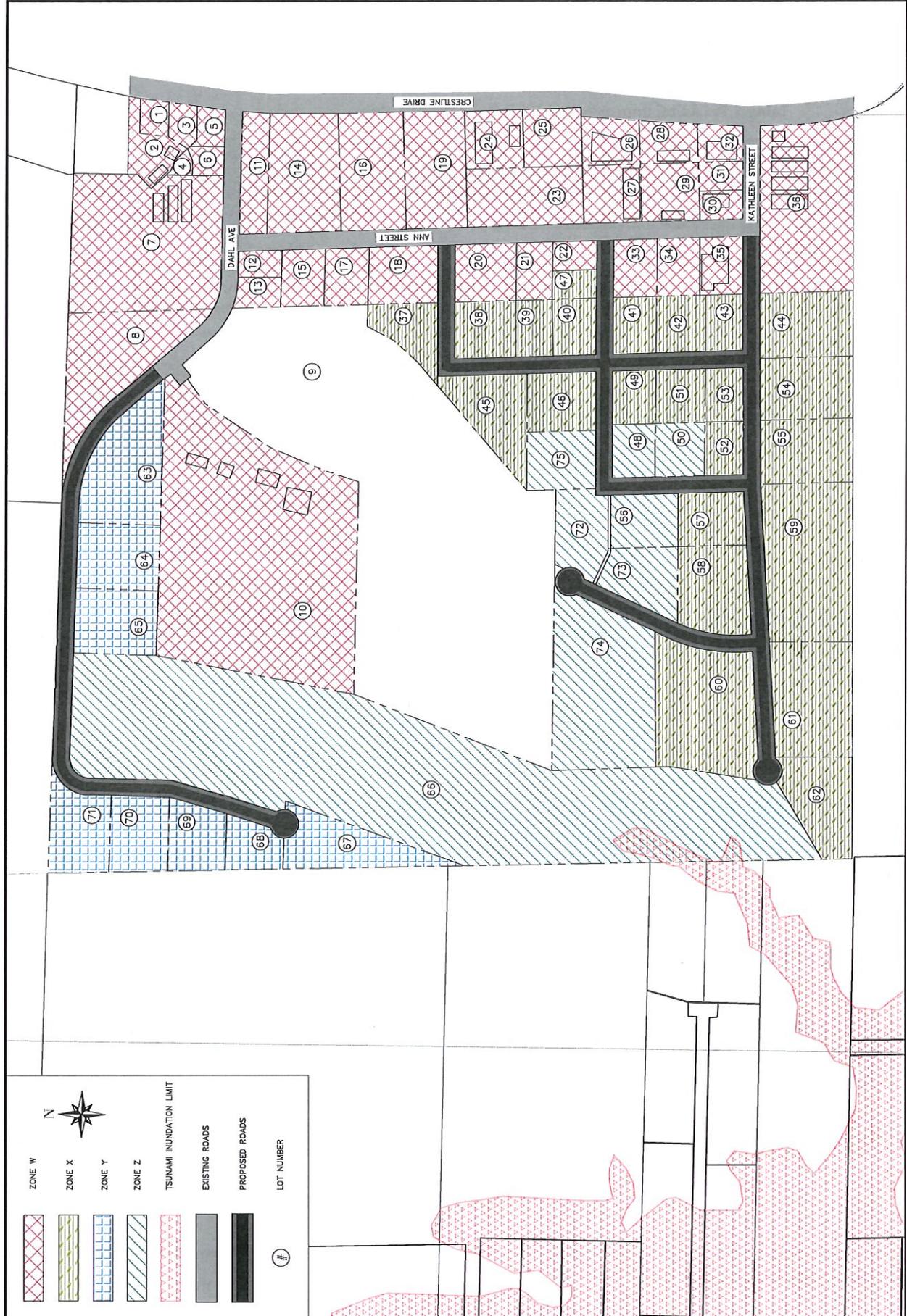
Zone	W	X	Y	Z
<b>Year Complete</b>	2020	2023	2030	2037
<b>Description</b>	<ul style="list-style-type: none"> <li>• Sewer service along Anne Street</li> <li>• Fire hydrants along Anne St</li> <li>• Main lift station at intersection of Kathleen &amp; Ann St.</li> <li>• Roadside ditch system and gravel footpath along existing Anne St.</li> </ul>	<ul style="list-style-type: none"> <li>• New roads and gravel footpaths down Kathleen St, A St, 1<sup>st</sup> St &amp; West B St</li> <li>• Sewer and water service down Kathleen Street</li> <li>• Sewer and water service along A St, 1<sup>st</sup> St &amp; West B St.</li> <li>• One lift station and force main at end of Kathleen St.</li> <li>• Power and communications along new roads</li> </ul>	<ul style="list-style-type: none"> <li>• Dahl Ave. road extension with gravel footpaths</li> <li>• Sewer and water service down Dahl Ave.</li> <li>• One lift station and force main on Dahl Ave. (1640 ft)</li> <li>• Power and communications along new roads</li> </ul>	<ul style="list-style-type: none"> <li>• New roads and gravel footpaths along East B St., 2nd St. &amp; 3rd St.</li> <li>• Two gravity pipe networks along B St., 2nd St. &amp; 3rd St.</li> <li>• Power and communications along new roads</li> </ul>

The cost estimates presented in Table 1.2 include four components: construction cost, engineering cost, contingency, and legal and administrative costs. More detailed costs for each system component are included in the applicable sections. The estimates presented herein are preliminary and are based on the level and detail of planning presented in this Study. The goal of these planning level cost estimates is to establish a reasonably

conservative budget and to allow fair cost-comparisons of alternatives. As projects proceed and more detailed, site-specific information becomes available, the estimates will require updating.

**Table 1.2: Capital Improvement Projects Cost Estimates**

Executive Summary			
Zone W			
Facility	Location	Description	Cost
Water System	Ex. Ann St., Ex. Dahl Ave, & Ex. Kathleen St.	Install Fire Hydrants along Kathleen Street.	\$50,050
Sanitary Sewer System	Ex. Ann St., Ex. Dahl Ave, Ex. Kathleen St. & Ex. Crestline Drive	Install SS Pipe Network with Lift Stations on Ann St. and Kathleen St. & Force Main along Ann St.	\$1,450,190
Local Roads	Ex. Ann St., Ex. Dahl Ave & Ex. Kathleen St.	Install Drainage Ditch and Gravel Path along existing roadsides (3,200 ft)	\$457,210
<b>Zone W Project Budget Estimate</b>			<b>\$1,957,450</b>
Zone X			
Facility	Location	Description	Cost
Water System	New Kathleen St., A St., East B St. & 1st St.	Install Water Main along roadsides	\$458,500
Sanitary Sewer System	New Kathleen St., A St., East B St. & 1st St.	Install SS Pipe Network along roadsides, and a force main along Kathleen St.	\$631,568
Local Roads	New Kathleen St., A St., East B St. & 1st St.	Install 3,675 lineal feet of Roads	\$3,763,483
<b>Zone X Project Budget Estimate</b>			<b>\$4,853,551</b>
Zone Y			
Facility	Location	Description	Cost
Water System	New Dahl Ave	Install Water Main along Roadside	\$286,300
Sanitary Sewer System	New Dahl Ave	Install SS Pipe Network with Lift Station #3 & Force Main along Dahl Ave.	\$390,481
Local Roads	New Dahl Ave	Install 2,270 lineal feet of Road	\$1,701,600
<b>Zone Y Project Budget Estimate</b>			<b>\$2,378,381</b>
Zone Z			
Facility	Location	Description	Cost
Water System	New 2nd St., 3rd St., & Utility Easement	Install Water Main along Roadside and Easement	\$170,450
Sanitary Sewer System	New B St., 2rd St. & 3rd St.	Install SS Pipe Network to tie into Kathleen Street SS Pipe Network	\$254,730
Storm Drainage	Lot 58	Storm Drainage Detention Pond	\$75,000
Local Roads	New B St., 2rd St. & 3rd St.	Install 1560 lineal feet of Road	\$1,737,571
<b>Zone Z Project Budget Estimate</b>			<b>\$2,237,751</b>
City Infrastructure			
Facility	Location	Description	Cost
Sanitary Sewer System	Crestline Drive	Force Main from IP Site to WWTP	\$1,620,500
<b>City Infrastructure Budget Estimate</b>			<b>\$1,620,500</b>
<b>Total Project Budget Estimate</b>			<b>\$13,047,632</b>



N  
 ZONE W  
 ZONE X  
 ZONE Y  
 ZONE Z  
 TSUNAMI INUNDATION LIMIT  
 EXISTING ROADS  
 PROPOSED ROADS  
 LOT NUMBER

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN

CITY OF WALDPOR, an Oregon municipal corporation,

Plaintiff,

v.

LEXON INSURANCE COMPANY, a Texas corporation; and

THE RODRIGUEZ COPORATION, an Oregon corporation,

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT  
(Breach Of Contract,  
Declaratory Judgment,  
Breach Of Performance Bond,  
Bad Faith)**

NOT SUBJECT TO MANDATORY  
ARBITRATION

Prayer: \$302,382.64  
Filing Fee: \$531.00  
Fee Authority: ORS 21.160(1)(c)

Plaintiff, City of Waldport, alleges:

**VENUE AND JURISDICTION**

**1.**

Plaintiff is a Municipal Corporation of the State of Oregon, in the County of Lincoln.

**2.**

Defendant The Rodriguez Corporation (“TRC”) is a business registered in the State of Oregon and with its principle place of business in Portland, Oregon.

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3.

Defendant Lexon Insurance Company (“Lexon”) is a business registered in the State of Texas, with its principle place of business in Tennessee, and is authorized to transact surety business in Oregon. Lexon is the Surety on Bond No. 9815859 (the “Bond”).

4.

All events that give rise to Plaintiff’s claims against Defendant TRC occurred in the County of Lincoln, Oregon.

5.

Defendant Lexon Insurance Company consented via written contract to conduct proceedings on claims under the Bond in any court of competent jurisdiction in the location in which the work subject to the Bond occurred, which is the County of Lincoln, Oregon.

**BACKGROUND INFORMATION**

6.

Plaintiff owns and operates a 2.0 million gallon water reservoir (the “Reservoir”), which stores water for general use by residents of Waldport, Oregon. In 2013, the Reservoir required maintenance to protect and extend its life, which included preparation and re-coating of its interior surfaces, (the “Work”). TRC, a general contractor, bid and was selected to be the contractor for the project (the “Project”).

7.

Plaintiff and TRC entered into a construction contract (the “Construction Contract”) establishing their respective rights and obligations on the Project, which included TRC’s obligation to prepare the Reservoir interior and apply the coating to certain standards.

8.

TRC first began work in March 2013. Approximately one year after TRC initially stopped working in June 2013, the Reservoir was drained and reopened and substantial defects were discovered in the Work, which Plaintiff subsequently demanded TRC correct.

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**9.**

Plaintiff and TRC disagreed as to the extent of the remediation required of the Work. Dyer Engineering, the engineering firm administering the Project, subsequently rendered a decision concluding the Work required complete removal and replacement, which was to be performed by June 1, 2016.

**10.**

Plaintiff demanded TRC correct the defects in the Work by June 1, 2016.

**11.**

TRC failed to correct the defects in the Work by June 1, 2016, after which Plaintiff terminated the Construction Contract.

**The Construction Contract**

**12.**

The Construction Contract contains a warranty provision requiring TRC to promptly repair and replace defective Work, stating under Paragraph 13.06:

“A. CONTRACTOR shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by ENGINEER, remove it from the Project and replace it with Work that is not defective. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).”

**13.**

Paragraph 13.07 of the Construction Contract states in part, “A. If within one year after the date of Substantial Completion ... any Work is found to be defective...CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work

1 has been rejected by OWNER, remove it from the Project and replace it with Work that is not  
2 defective...”

3 **14.**

4 Paragraph 16.02 of the Construction Contract states in part, “A. The occurrence of any  
5 one or more of the following events will justify termination for cause: 1. CONTRACTOR’s  
6 persistent failure to perform the Work in accordance with the Contract Documents...4.  
7 Contractor’s violation in any substantial way of any provisions of the Contract Documents.”

8 **15.**

9 Section 09902(3)(B) of the Construction Contract requires TRC to abrasive blast clean  
10 the internal surface of the Reservoir to the SSPC-SP 10 standard, and to keep the area of work  
11 clean and not permit blasting materials to accumulate and constitute a nuisance or hazard to  
12 prosecution of work. Section 09902(3)(J) requires all blast surfaces to be absolutely clean and  
13 dry prior to application of the coating. Section 01100(C) requires TRC to provide adequate  
14 dehumidification equipment and ventilation in accordance with the coating manufacturer  
15 specifications. Section 09902(1)(C) forbids TRC from applying the coating when the steel  
16 temperature is within 5 degrees of the dew point, and to show compliance with the  
17 dehumidification and ventilation requirements.

18 **16.**

19 Section 09902(I) states, “The tanks may be rejected if any of the following occur: a. sags  
20 or runs b. pinholes in film c. Air bubbles and air bubbles craters d. Dry spray and rough “grainy”  
21 finish e. Low film build per coat f. Excessive paint film thickness per coat g. Blistering h. Lifting  
22 or peeling i. Insufficient dehumidification and ventilation j. Poor cleaning procedures.”

1 **Dispute resolution under the Construction Contract**

2 **17.**

3 The Construction Contract vests authority to resolve disputes in the project engineer,  
4 Dyer Engineering, stating under Paragraph 9.09:

5 “A. ENGINEER will be the initial interpreter of the requirements of the Contract  
6 Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other  
7 matters relating to the acceptability of the Work, the quantities and classifications of Unit Price  
8 Work, the interpretation of the requirements of the Contract Documents pertaining to the  
9 performance of the Work, and Claims seeking changes in the Contract Price or Contract Times  
10 will be referred initially to ENGINEER in writing, in accordance with the provisions of  
11 paragraph 10.05, with a request for a formal decision.”

12 **18.**

13 Paragraph 1.01(A)(10) of the Construction Contract defines a Claim, stating, “Claim - A  
14 demand or assertion by OWNER or CONTRACTOR seeking an adjustment of Contract Price or  
15 Contract Times, or both; or other relief with respect to the terms of the Contract. A demand for  
16 money or services by a third party is not a Claim.”

17 **19.**

18 Paragraph 10.05 of the Construction Contract establishes the procedure by which the  
19 project engineer resolves disputes, stating in part, “B. ENGINEER's Decision: ENGINEER will  
20 render a formal decision in writing within 30 days after receipt of the last submittal of the  
21 claimant or the last submittal of the opposing party, if any. ENGINEER's written decision on  
22 such Claim, dispute, or other matter will be final and binding upon OWNER and  
23 CONTRACTOR unless: 1. An appeal from ENGINEER's decision is taken within the time limits  
24 and in accordance with the dispute resolution procedures set forth in Article 16...”

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**20.**

Paragraph 16.2, of the Construction Contract, as modified by Supplementary General Condition 16.2, states in part, "...No demand for arbitration of any such claim, dispute or other matter will be made later than thirty days after the date on which ENGINEER has rendered a written decision in respect thereof in accordance with paragraph [10.05]; and the failure to demand arbitration within said thirty days' period will result in ENGINEER's decision being final and binding upon OWNER and CONTRACTOR."

**The Performance Bond**

**21.**

In connection with the Construction Contract and as further consideration for the Project, Plaintiff required TRC to obtain a performance bond, for the benefit of Plaintiff, guaranteeing performance of the Construction Contract. TRC and Defendant Lexon executed such a performance bond, which is attached as **Exhibit 1** (the "Bond"), under which Plaintiff is the Owner and obligee and TRC is the Contractor and principle.

**22.**

Paragraph 1 of the Bond states, "The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for performance of the Construction Contract, which is incorporated herein by reference."

**23.**

Paragraph 3 of the Bond states in part, "... the Surety's obligations under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default...

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in

1 accordance with the terms of the Construction Contract to the Surety or to a contractor selected  
2 to perform the Construction Contract.”

3 **24.**

4 Paragraph 5 of the Bond states in part, “When the owner has satisfied the conditions of  
5 Paragraph 3, the Surety shall promptly and at the Surety’s expense take one of the following  
6 actions:

7 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and  
8 complete the Construction Contract;

9 5.2 Undertake to perform and complete the Construction Contract itself,  
10 through its agents or independent contractors;

11 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable  
12 to the Owner for a contract for performance and completion of the Construction Contract...

13 5.4 Waive its right to perform and complete, arrange for completion, or obtain  
14 a new contractor, and with reasonable promptness under the circumstances:

15 5.4.1 After investigation, determine the amount for which it may be  
16 liable to the Owner and, as soon as practicable after the amount is determined, make payment to  
17 the Owner; or

18 5.4.2 Deny liability in whole or in part and notify the Owner, citing the  
19 reasons for denial.”

20 **25.**

21 Paragraph 6 of the Bond states in part, “If the surety proceeds as provided in Paragraph  
22 5.4, and the owner refuses the payment or the surety has denied liability, in whole or in part,  
23 without further notice the Owner shall be entitled to enforce any remedy available to the owner.”

24 **26.**

25 Plaintiff demanded performance by Lexon of its obligations under Paragraph 5 of the  
26 Bond, to which Lexon responded by denying liability in whole under the Bond.

1  
2  
3 **FIRST CLAIM FOR RELIEF:**  
4 **COUNT 1 - BREACH OF CONSTRUCTION CONTRACT**  
5 **(Against Defendant The Rodriguez Corporation)**

6 **27.**

7 Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

8 **28.**

9 For valuable consideration, TRC entered into the valid and enforceable Construction  
10 Contract with Plaintiff, under which Defendant TRC implicitly agreed to perform its Work in a  
11 workmanlike manner and owed a duty of good faith to Plaintiff.

12 **29.**

13 TRC materially breached the Construction Contract by:

- 14 A) Using improper methods and materials in executing the Work, including use of  
15 products in a manner not safe for storage of drinking water;
- 16 B) Failing to adequately prepare the Reservoir for application of the coating;
- 17 C) Failing to promptly repair and replace defective Work as required by the Construction  
18 Contract;
- 19 D) Failing to perform according to the project engineer's decision, as described in detail  
20 in paragraph 37;
- 21 E) Failing to perform the Work in a workmanlike manner;
- 22 E) Persistently failing to perform according to the terms of the Construction Contract;
- 23 and
- 24 F) Substantially violating provisions of the Construction Contract.
- 25  
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**30.**

TRC materially breached its duty of good faith to Plaintiff by delaying repair of the defective Work, attempting to conceal the full extent of the defects in the Work, and otherwise avoiding its obligation to repair the defective Work.

**31.**

At the time TRC breached the Construction Contract, Plaintiff had fully performed all obligations and conditions precedent to TRC's obligations under the Construction Contract, and Plaintiff remained ready, willing and able to perform.

**32.**

As a result of TRC's breach of the Construction Contract, and after deducting any just credits for which it is entitled, Plaintiff has incurred damages of \$302,382.64 to date, plus pre and post judgment interest. Plaintiff's damages consist of \$266,977.00 for the cost of removal and replacement of the defective Work, \$16,086.00 for the cost of engineering services expended in testing the defective Work, \$2,440.64 for the costs of draining the Reservoir as necessitated by TRC's breach, and \$16,879 in attorney fees incurred as of November 18, 2015.

**33.**

Pursuant to Paragraphs 13.06, 15.02, and Supplementary General Condition 16.7 of the Construction Contract, Plaintiff is entitled to recover its reasonable attorney fees, in addition to costs and disbursements.

1 **ARBITRATION**

2 **34.**

3 The Construction Contract between Plaintiff and TRC provides for arbitration of  
4 disputes. In accordance with the Construction Contract, Count 1 of Plaintiff’s claim for Breach  
5 of Contract against TRC should be abated and transferred to private binding arbitration.  
6

7 **FIRST CLAIM FOR RELIEF:**

8 **COUNT 2 - BREACH OF CONSTRUCTION CONTRACT**

9 **ENTRY OF JUDGMENT ON ENGINEER’S 10.05 DECISION**

10 **(Against Defendant The Rodriguez Corporation)**

11 **35.**

12 Plaintiff incorporates all preceding paragraphs as if fully set forth herein, excluding  
13 Paragraph 34 regarding mandatory arbitration, which arbitration is inapplicable to this Count 2.

14 **36.**

15 Pursuant to Article 10.05 of the Construction Contract, Plaintiff submitted a claim for a  
16 formal decision by Dyer Engineering for damages owed by TRC to Plaintiff, and establishing  
17 TRC’s obligations under the Construction Contract.

18 **37.**

19 On December 14, 2015, Dyer Engineering issued a written decision (the “10.05  
20 Decision”) holding that upon termination of the Construction Contract, Plaintiff is awarded  
21 \$302,382.64 in damages against TRC, consisting of \$266,977.00 for the cost of removal and  
22 replacement of the defective Work, \$16,086.00 for the costs of engineering services expended in  
23 correcting the defective Work, \$2,440.64 for the cost of draining the Reservoir as necessitated by  
24 TRC’s breach, and \$16,879 in costs and attorney fees incurred by TRC’s breach. The 10.05  
25 Decision is attached hereto as **Exhibit 2**.  
26

1 **38.**

2 Plaintiff sent TRC a 7-day notice of termination of the Construction Contract on June 17,  
3 2016.

4 **39.**

5 TRC did not appeal or otherwise respond to the 10.05 Decision within 30 days of the date  
6 it was rendered, as required by Paragraph 10.05(B)(1) and 16.2 of the Construction Contract.

7 **40.**

8 Plaintiff fully performed all obligations and conditions precedent to Defendant's  
9 obligations under the Construction Contract and the 10.05 Decision. Plaintiff remained ready,  
10 willing and able to perform.

11 **41.**

12 The 10.05 decision is final and binding upon the parties and Plaintiff is entitled to entry  
13 of judgment based thereon.

14 **42.**

15 Pursuant to Paragraphs 13.06, 15.02, and Supplementary General Condition 16.7 of the  
16 Construction Contract, Plaintiff is entitled to recover its reasonable attorney fees, costs and  
17 expenses, including those incurred from November 18, 2015 until the date of entry of judgment.  
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**SECOND CLAIM FOR RELIEF:**  
**DECLARATORY JUDGMENT OF TRC'S CONTRACTUAL**  
**OBLIGATIONS PURSUANT TO 10.05 DECISION**  
**(Against Defendant The Rodriguez Corporation)**

**43.**

Plaintiff incorporates all preceding paragraphs as if fully set forth herein, excluding Paragraph 34 regarding mandatory arbitration, which arbitration is inapplicable to this Second Claim for Relief against TRC.

**44.**

ORS 28.010 and 28.030 provide a remedy for a declaratory judgment with regards to contractual obligations.

**45.**

In addition to the damages described in Paragraph 37, the 10.05 Decision established TRC's then-present obligations under the Construction Contract, which required TRC to completely remove and replace the defective Work in accordance with the Construction Contract by June 1, 2016, and to pay Plaintiff \$34,405.64 in costs, expenses, and attorney fees.

**46.**

Plaintiff and Defendant TRC disagree as to TRC's duties under the Construction Contract regarding the extent to which TRC was obligated to remediate the Work, the amount due to Plaintiff, and the finality and enforceability of the 10.05 decision.

**47.**

Plaintiff contends TRC was obligated to completely remove and replace the defective Work and further perform according to the 10.05 decision, and that such decision became final and binding upon the parties 30 days after it was rendered by Dyer Engineering.

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**48.**

TRC contends it was not obligated to completely remove and replace the defective Work or further perform according to the 10.05 decision, and that such decision did not become final and binding upon the parties.

**49.**

Plaintiff is entitled to a judgment declaring the 10.05 Decision to be final and binding, that TRC was obligated under the Construction Contract to completely remove and replace the Work by June 1, 2016 in accordance with the terms of the 10.05 Decision, and to pay Plaintiff \$34,405.64 in in costs, expenses, and attorney fees.

**50.**

Pursuant to Paragraphs 13.06, 15.02, and Supplementary General Condition 16.7 of the Construction Contract, Plaintiff is entitled to recover its reasonable attorney fees, costs and expenses, including those incurred from November 18, 2015 until the date of entry of judgment.

**THIRD CLAIM FOR RELIEF:**

**BREACH OF PERFORMANCE BOND**

**(Against Defendant Lexon Insurance Company)**

**51.**

Plaintiff incorporates all preceding paragraphs as if fully set forth herein, excluding Paragraph 34 regarding mandatory arbitration, which arbitration is inapplicable to claims against Lexon.

**52.**

The Bond is a valid and enforceable contract between Plaintiff, Lexon, and TRC.

**53.**

Lexon materially breached its contract with Plaintiff by:



1  
2  
3 **FOURTH CLAIM FOR RELIEF:**

4 **BAD FAITH**

5 **(Against Defendant Lexon Insurance Company)**

6 **57.**

7 Plaintiff incorporates all preceding paragraphs as if fully set forth herein, excluding  
8 Paragraph 34 regarding mandatory arbitration, which arbitration is inapplicable to claims against  
9 Lexon.

10 **58.**

11 The Bond is subject to an implied covenant of good faith and fair dealing.

12 **59.**

13 Lexon knew that the Bond was purchased to protect Plaintiff in the event that TRC  
14 defaulted under the Construction Contract.

15 **60.**

16 Lexon breached the implied covenant of good faith and fair dealing and acted in  
17 bad faith by:

- 18 A) Failing to promptly and thoroughly investigate the question of whether TRC was  
19 in default;  
20 B) Failing to fully and timely pay the amount due under the Performance Bond;  
21 and  
22 C) Placing its own financial interests above the interests of Plaintiff's.

23 **61.**

24 In agreeing to protect Plaintiff against the adverse impacts of a default by TRC, Lexon  
25 assumed a special duty of care towards Plaintiff. Pursuant to the Bond, Lexon agreed to exercise  
26 its independent judgment on behalf of Plaintiff in the event of a default by TRC.

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**62.**

As a direct and proximate consequence of Lexon's bad faith breach of the Bond, Plaintiff is entitled to recover its damages in excess of the amount of the Bond, in no event less than TRC's liability under the Construction Contract of \$302,382.64, plus costs and attorney's fees, and pre and post judgment interest.

WHEREFORE, Plaintiff prays for a judgment of this court as follows:

1. On Count 1 of its First Claim for Relief, granting judgment for Plaintiff and against Defendant The Rodriguez Corporation in the amount of \$302,382.64, plus costs and attorney fees in an amount to be determined, with pre and post judgment interest accruing at nine-percent per annum.
2. On Count 2 of its First Claim for Relief, granting judgment for Plaintiff and against Defendant The Rodriguez Corporation in the amount of \$302,382.64 plus costs and attorney fees in an amount to be determined, with pre and post judgment interest accruing at nine-percent per annum.
3. On its Second Claim for Relief, a declaratory judgment declaring the Dyer Engineering's December 14, 2015 10.05 Decision to be final and binding, and that pursuant to that decision Defendant The Rodriguez Corporation was obligated under the Construction Contract to completely remove and replace the defective Work by June 1, 2016, and to pay Plaintiff \$35,405.64 in costs, and to further perform in accordance with the 10.05 Decision.
4. On its Third Claim for Relief, granting judgment for Plaintiff and against Defendant Lexon Insurance Company in the amount of \$243,249.00, plus attorney fees in

1 an amount to be determined, with pre and post judgment interest accruing at nine-percent  
2 per annum.

3 5. On its Fourth Claim for Relief, granting judgment for Plaintiff and against  
4 Defendant Lexon Insurance Company in the amount of \$302,382.64, plus costs and  
5 attorney fees in an amount to be determined, with pre and post judgment interest accruing  
6 at nine-percent per annum.  
7

8  
9 Dated this 31st day of March, 2017.

10 MACPHERSON, GINTNER & DIAZ

11  
12 s/ Joel T. Janke

13 Joel T. Janke, OSB #143471  
14 Macpherson, Gintner & Diaz  
15 423 North Coast Highway  
16 PO Box 1270  
17 Newport, OR 97365  
18 janke@mggdlaw.com  
19 of Attorneys for Plaintiff

20 **TRIAL ATTORNEY**  
21 **Richard S. Diaz, OSB #860313**  
22 **423 North Coast Highway**  
23 **PO Box 1270**  
24 **Newport, OR 97365**  
25 **(541) 265-8881**  
26 **diaz@mggdlaw.com**

PERFORMANCE BOND

CONTRACTOR (name and address):  
The Rodriguez Corporation  
11130 SW Barbur Blvd. Suite 100  
Portland, OR 97219

SURETY (name and address of principal place of business):  
LEXON INSURANCE COMPANY  
155 NE 100TH ST, SUITE 201  
SEATTLE, WA 98125

OWNER (name and address): City of Waldport, 125 Alsea Hwy, PO Box 1120, Waldport, OR 97394

CONSTRUCTION CONTRACT

Effective Date of the Agreement: March 25, 2013  
Amount: \$243,249.00  
Description (name and location): Large Reservoir, 3536 SE Nelson Way, Waldport, Oregon

BOND

Bond Number: 9815859  
Date (not earlier than the Effective Date of the Agreement of the Construction Contract): March 25, 2013  
Amount: \$243,249.00  
Modifications to this Bond Form:  None  See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth herein, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.



CONTRACTOR AS PRINCIPAL  
The Rodriguez Corporation  
11130 SW Barbur Blvd, Suite 100  
Portland, Oregon 97219 (seal)

Contractor's Name and Corporate Seal

By: [Signature]  
Signature

Fernando Rodriguez  
Print Name

Pres.  
Title

Attest: [Signature]  
Signature

Secretary  
Title

SURETY  
LEXON INSURANCE COMPANY (seal)

Surety's Name and Corporate Seal

By: [Signature]  
Signature (attach power of attorney)

JAMES S. EWALD  
Print Name

ATTORNEY IN FACT  
Title

Attest: [Signature]  
Signature

Agent  
Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:
  - 3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
  - 3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
  - 3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
  - 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
  - 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
- 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
  - 5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
  - 5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
  - 7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
  - 7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
  - 7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within

two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### 14. Definitions

14.1 **Balance of the Contract Price:** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 **Contractor Default:** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

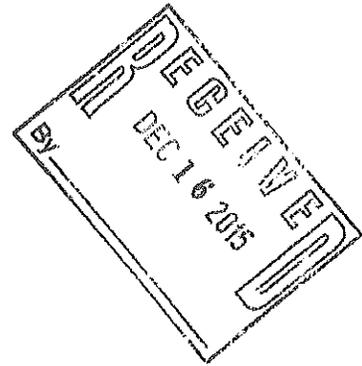
14.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:



THE DYER PARTNERSHIP  
ENGINEERS & PLANNERS, INC.



December 14, 2015

Kerry Kemp, City Manager  
City of Waldport  
PO Box 1120  
Waldport, Oregon 97394

Fernando Rodriguez  
The Rodriguez Corporation  
7805 SW 40<sup>th</sup> Ave., Suite 19031  
Portland, OR 97219

RE: City of Waldport  
Large Water Reservoir Interior Rehabilitation  
Project No. 137.25

Dear Mr. Kemp and Mr. Rodriguez,

More than fourteen days have elapsed since the notice of claim correspondence (the Claim) prepared by Macpherson, Gintner & Diaz, attorneys for the City of Waldport (City), on behalf of the City and dated November 18, 2015 was sent. The Claim was addressed and sent by certified mail to both the Dyer Partnership (Engineer) and to the Rodriguez Corporation (Contractor). No response has been received from the Rodriguez Corporation to The Dyer Partnership, the City, or the attorneys. Therefore, in accordance with the Claim in regard to Project No. 137.25, Large Water Reservoir Interior Rehabilitation, this letter provides the requested Engineer's decision.

It is our determination that the work performed does not meet the conditions of the contract specifications and that the Contractor must completely remove and replace the tank coating consistent with the determinations of the KTA, ACS, and other inspections and in accordance with the project specifications to fulfill the requirements of the contract with the City. This will require all applied interior coatings to be blasted to SSPC-10 and re-coated in accordance with the project specifications including proper control of temperature and humidity. We further determine that this work must be performed and approved under the observation of a full time NACE certified third party inspection firm. Should this work be undertaken, it must be completed by June 1, 2016 after the Contractor has provided two weeks' notice to the City of its planned start date and received the City's consent to do so.

We have determined that the City is currently due \$35,405.64 in costs from the Contractor as presented in claim 1 on page 4 of the Claim.

Mr. Kemp and Mr. Rodriguez  
December 14, 2015  
Page 2

The consequences of Failure to Perform according to this decision are, in the option of Waldport, that the Rodriguez Corporation will owe the City of Waldport \$302,382.64 for costs, losses, and damages arising out of repair of the work as itemized under part B of the Claim based on incurred costs of \$35,405.64 and a \$266,977.00 quote from a third-party contractor for labor, equipment, and materials for correction of the defective work.

Alternatively, The Dyer Partnership has determined that justification for termination of the contract for cause exists and recommends that the contract should be terminated for cause due to the Contractor's persistent failure to perform according to the procedure set forth in the contract and that should the City terminate the contract, that the Contractor owes the City \$302,382.64 in damages arising therefrom as itemized under part B of the Claim.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Dees, PE". The signature is written in a cursive style.

Michael J. Dees, PE  
Project Manager

cc: Macpherson, Gintner & Diaz, Lawyers.



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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN

CITY OF WALDPOR, an Oregon municipal corporation,

Plaintiff,

v.

LEXON INSURANCE COMPANY, a Texas corporation; and

THE RODRIGUEZ COPORATION, an Oregon corporation,

Defendants.

Case No.17CV13575

**ACCEPTANCE OF SERVICE**

I, Andrew Guess, attorney for the Defendants, hereby accept service of the following documents on behalf of The Rodriguez Corporation, but not Lexon Insurance Company, with client authorization to do the same: Service includes the following documents:

- 1. Summons
- 2. Complaint.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Andrew Guess, OSB #160298  
Attorney for Defendants

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STATE OF OREGON                    )  
  ) ss.  
County of Lincoln                    )

**CERTIFICATE – TRUE COPY**

I hereby certify that the enclosed are complete and exact copies of the original Complaint and Summons filed in case number 17CV13575.

s/ Joel T. Janke \_\_\_\_\_

Joel T. Janke, OSB #143471  
Macpherson, Gintner & Diaz  
423 North Coast Highway  
PO Box 1270  
Newport, OR 97365  
janke@mggdlaw.com  
Attorneys for Plaintiffs



# Open House Invitation: County Emergency Operations Center

Thursday, April 27, 2017  
10:00 am – 2:00 pm  
County Courthouse, Suite 103



Public Health  
Prevent. Promote. Protect.  
Lincoln County

Lincoln County Sheriff's Office and Public Health Division Leadership invite you to tour your local County Emergency Operations Center (EOC). In the preparation for the multi-state Cascadia Rising exercise in June 2016, many improvements were implemented and evaluated during the exercise. This open house event is a way to demonstrate our capabilities and emergency response features such as amateur radio and resource coordination.

**When:** Thursday, April 27, 2017, 10:00 am – 2:00 pm

**Where:** Lincoln County Courthouse - Emergency Management, Suite 103  
225 West Olive Street, Newport, OR 97365

**Who:** Open to the public

## Emergency Operations Center (EOC)

"A location from which centralized emergency management can be performed. EOC facilities are established by an agency or jurisdiction to coordinate the overall agency or jurisdictional response and support to an emergency."

EOCs help form a common operating picture of the incident, relieve on-scene command of the burden of external coordination and secure additional resources.



June 10, 2016 Cascadia Rising Exercise - County EOC

### Contact Information



Jenny Demaris,  
Emergency Manager  
Lincoln County Sheriff's Office  
(541) 265-4199  
vdemaris@co.lincoln.or.us



**Waldport Public Library  
Board of Trustees  
Minutes of Regular Meeting March 14, 2017**

**Members Present:**

Shirley Hanes, Chair  
Jan Hansen, Vice Chairman  
Brian Fodness  
Barbara Smith-Huggins  
Gary Hodges

**Others Present:**

Sue Bennett, Library Director

**Call to order, introductions & review of agenda:** Shirley Hanes, Chair, called the meeting to order at 9:30 a.m.

**Minutes:** Gary Hodges moved and Jan Hansen seconded that the minutes for the regular meeting of February 14, 2017 be approved. The minutes were unanimously approved.

**Financial Report:** The financial report was reviewed. The budget is on track.

**Committee Reports:** No Report

**Director's Report:** Ms. Bennett provided a review of the programs that occurred during the month of March; Lego competition and Young Writer's competition finished. Lego competition was awarded their prizes. In addition to the regular programs; adult craft, baby and youth story times, the library also participated in Family literacy night and Read Across America at Crestview Heights Elementary. Circulation for February continues to remain approximately the same as this time last year. Attendance for the children's programs and adult programs were well attended.

**Old Business:** None

**New Business:**

Gary Hodges asked that Sue Bennett research the future of libraries and report at the next meeting.

The Board discussed the use of MP3 players to have available for patrons to download audible books for Library 2 Go. Sue Bennett will research the possibility of the library purchasing MP3 players for check out.

**Board Members concerns:** None stated.

**Actions or Recommendations to the City Council:** None.

**Public Comment:** None.

**Announcements:** None.

**Next Regular Meeting:** Tuesday, April 11, at 9:30 a.m.

**Adjournment:** Ms. Hansen adjourned the meeting at 10:15 a.m.

**Waldport Public Library**  
**Monthly Circulation FY 2016-17**

Patron Category	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	March	April	May	June	TOTAL
LCLD-Adult	3,073	3,068	2,655	2,874	2,858	3,093	3178	2,796	3,100				
LCLD-Youth	176	174	117	96	60	37	65	113	71				
Waldport Adult	2,200	2,070	1,854	1,860	1,920	1,951	1807	1,765	2,125				
Waldport Youth	126	110	67	56	79	52	64	64	136				
CITIES (Adult & Juv)	58	28	26	41	30	25	40	37	64				
Temporary 1 yr	49	64	62	81	64	66	52	68	54				
Temporary	152	62	3	15	8	2	0	29	41				
OCCC	1	21	19	20	22	4	0	0	2				
Oregon Passport	86	60	71	77	92	67	97	126	165				
Interlibrary loan out	<u>50</u>	<u>64</u>	<u>80</u>	<u>83</u>	<u>60</u>	<u>50</u>	<u>91</u>	<u>58</u>	<u>59</u>				
Chinook Circ	5,971	5,721	4,954	5,203	5,193	5,347	5,394	5,056	5,817	0	0	0	0
% circ in public lib	50%	48%	48%	45%	48.40%	48.67%	46.87%	46.87%	49.84%				
*Non-cataloged Library2Go *	766	n/a	n/a	438	454	542	622	628	729				
	<u>179</u>	<u>186</u>	<u>202</u>	<u>220</u>	<u>238</u>	<u>177</u>	<u>225</u>	<u>181</u>	<u>226</u>				
	945	186	202	658	692	719	847	809	955	0	0	0	0
<b>GRAND TOTAL</b>	<b>6,916</b>	<b>5,907</b>	<b>5,156</b>	<b>5,861</b>	<b>5,885</b>	<b>6,066</b>	<b>6,241</b>	<b>5,865</b>	<b>6,772</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<i>Last Year</i>	<b>6,379</b>	<b>6,613</b>	<b>6,016</b>	<b>5,948</b>	<b>5,456</b>	<b>6,097</b>	<b>6,487</b>	<b>6,026</b>	<b>6,333</b>	<b>5,755</b>	<b>5,385</b>	<b>6,363</b>	<b>72,858</b>
Interlibrary loan In	49	53	*35	45	63	59	45	39	73				
Computers	1,058	1,268	979	1,018	1,093	1,034	1,004	1,016	1,238				
WiFi	362	n/a	n/a	194	258	268	301	293	339				
Patrons added	36	30	37	53	33	31	34	47	38				
Program attendance	552	342	151	329	496	229	129	521	1077				

\*Beginning ly reported as 229.  
 Closure: Aug. no mag. pb. or Wifi count 9 hours  
 July 4 - mag. pb. or Wifi count 9 hours  
 Sept 5 - Corrected to 35.  
 \*Previous ly reported as 229.

**Public Works Department**  
**Report for the month of February/March 2017**

**Water Treatment Plant**

Plant Production:	<u>6.38/7.06</u>	MG
Rainfall:	<u>21.5/19.4</u>	inches

**Wastewater Treatment Facility**

Effluent Flow:	<u>12.6/13.6</u>	MG
Rainfall:	<u>20.2/15.4</u>	Inches

**Public Works Dept.**

Alarm call outs:	<u>3/3</u>
Locates:	<u>4/8</u>
Sewer plugs:	<u>2/2</u>
Water service installations:	<u>2/3</u>
Sewer connections:	<u>0/0</u>
Water Leaks:	<u>2/3</u>

**Department General Overview**

The City of Waldport Public Works Department has been diligently working during the past months to protect our infrastructure and serve the citizens of Waldport.

Some of the public works crew projects involve reacting to several broken water lines, cleaning and inspecting sewer lines, gathering information through potholing of water lines on Lakeside drive, working on a fence at the public work shop, and cleaning the streets for the upcoming summer traffic.

As usual the plant operators are doing an exceptional job operating and maintaining the city's water treatment facilities. During February and March, the plant operators worked diligently to process great water quality standards and coordinate a few of their outstanding projects.

Administratively, we have been working hard planning our future direction as a successfully operating department. In the past months, we have been spending much of our time preparing planning for projects to include the Eckman water line installation and the upcoming McKinney Slough project.

**City of Waldport  
2017 LAND USE / BUILDING PERMIT ACTIVITY**

<b>Date</b>	<b>Application/ Activity</b>	<b>Applicant</b>	<b>Zoning</b>	<b>Tax Map/Lot Location</b>	<b>Description</b>	<b>Status</b>
<b>For the Period <u>March 1, 2017</u> through <u>March 31, 2017</u></b>						
3/14/17	Building Permit	Sandra Blanchard	R-1	13-11-30BB/800 1320 Ocean Terrace	Replace deck	Approved 3/14/17
3/21/17	Building Permit	Ryan Thomas	R-1	13-11-30AB/3100 1230 Rose St	Renovation to single family dwelling	Approved 3/27/17
3/21/17	ODOT Land Use Compatibility Statement (LUCS)	Brandt Thissel	C-1 & R-1	13-12-25/300 & 301 Hwy 101 near Breakers Dr.	LUCS for temporary access to remove timber and debris	LUCS completed 3/27/17
3/30/17	Building Permit	Clint Griffith	R-1	13-11-19AD/903 360 Edgecliff Dr	Foundation underpinning	Approved 3/31/17



# City of Waldport

P.O. Box 1120  
Waldport, OR 97394  
Phone: (541)264-7417  
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Subject: Monthly Report-March 2017

As of today, there have been 37 ordinance cases opened in 2017. Of these 18 have been worked to completion.

These cases breakdown into the following:

Attractive Nuisances	26 (Misc. junk on property)
Nuisance Vehicles	7 (Unlicensed/Inoperable vehicles left on public streets)
Structure/Buildings 0	(Dilapidated/Improperly Maintained)
Others	4 (Vegetation, Business License, Fences, Zoning, ect)

In addition to this there are still 3 cases open from 2016 for a total of 22 cases being actively worked at this time.

## Notable Cases:

