

AGENDA

REGULAR CITY COUNCIL MEETING

OCTOBER 24, 2022

5:30 p.m.

CITY HALL COUNCIL CHAMBER

313 COURT STREET

And

VIA ZOOM

<https://us06web.zoom.us/j/88147760127?pwd=bzF6UVBBS0EvaDIxTEVyRngrbExmQT09>

Meeting ID: 881 4776 0127

Passcode: 007612

1. CALL TO ORDER
2. ROLL CALL OF COUNCIL
3. PLEDGE OF ALLEGIANCE
4. APPROVAL OF AGENDA
5. PRESENTATIONS/PROCLAMATIONS

A. Underground Feasibility Study

6. AUDIENCE PARTICIPATION

During this portion of the meeting, anyone may speak on any subject which does not later appear on the agenda. Up to five minutes per person will be allowed. Citizens are encouraged to ask questions with the understanding that the City can either answer the question tonight or refer that question to the appropriate staff member who will get back to you within a reasonable amount of time. If a response by the City is requested, the speaker will be referred to the City Manager for further action. The issue may appear on a future meeting agenda for City Council consideration.

7. CITY MANAGER REPORT
8. CITY COUNCIL REPORTS
9. CONSENT AGENDA

Items of a routine and non-controversial nature are placed on the Consent Agenda to allow the City Council to spend its time and energy on the important items and issues. Any Councilor may request an item be "pulled" from the Consent Agenda and be considered separately. Items pulled from the Consent Agenda

CITY OF THE DALLES

"By working together, we will provide services that enhance the vitality of The Dalles."

will be placed on the Agenda at the end of the "Action Items" section.

- A. Approval of the October 10, 2022 Regular City Council Meeting Minutes
- B. Resolution No. 22-036 A Resolution Authorizing the City Manager to Execute a Grant Application on Behalf of Mid-Columbia Action Council for the Oregon Department of Energy's Community Renewable Energy Grant Program
- C. Resolution No. 22-035 Authorizing the City Manager to Execute Intergovernmental Agreements with Oregon Department of Transportation and Oregon Business Development Department to Partner in the Administration of the Disadvantaged Business Enterprise Unified Certification Program

10. PUBLIC HEARINGS

- A. Resolution No. 22-034 Adopting a Supplemental Budget for Fiscal Year 2022/2023, Making Appropriations and Authorizing Expenditures from and within Various Funds of the City of The Dalles Adopted Budget

11. CONTRACT REVIEW BOARD ACTIONS

- A. Award Contract No. 2022-005 City Water Master Plan Update

12. ACTION ITEMS

- A. Consideration Termination of 1st Street Project Grant Partnership with Oregon Department of Transportation
- B. General Ordinance No. 22-1390 An ordinance amending The Dalles Municipal Code Chapter 2.20 (Sidewalk Maintenance) and Chapter 2.24 (Public Rights-of-Way) for Legal Sufficiency
- C. Memorandum of Understanding for Purchase of Property Located within The Dalles Municipal Watershed

13. EXECUTIVE SESSION

In accordance with ORS 192.660(2)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

- A. Recess Open Session
- B. Reconvene Open Session

CITY OF THE DALLES

"By working together, we will provide services that enhance the vitality of The Dalles."

C. Decision, if any

14. ADJOURNMENT

This meeting conducted VIA Zoom

Prepared by/
Izetta Grossman, CMC
City Clerk

CITY OF THE DALLES

"By working together, we will provide services that enhance the vitality of The Dalles."



City of The Dalles Downtown Underground Feasibility Study

Presented by: Martin Stoddard, P.E.
Jerry Witkowski, P.E.



1

Overview

- I. Purpose and Overview
- II. Data Collection and Research
- III. Design Concepts
- IV. Construction Approach
- V. Cost Estimates



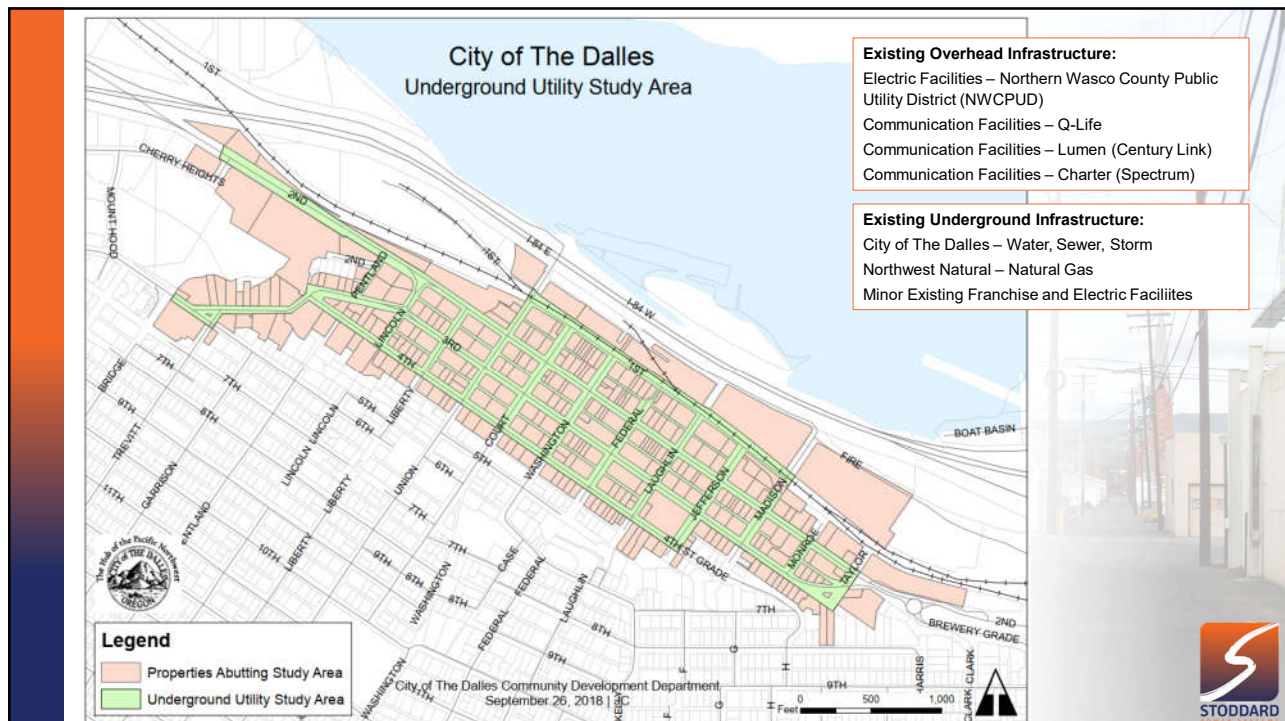
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Purpose of the Study

- The purpose of this study is to perform a thorough and comprehensive analysis of the costs of converting the existing overhead utility system to an underground configuration.
- The study identifies the most practical and economical means of converting to an underground system while maintaining a high quality of service to all utility customers.
- The study included the following tasks:
 - Data gathering and interviews
 - Detailed cost analysis
 - Preliminary Design
 - Preliminary Construction Schedule
 - Draft RFP for Design Services
 - Comprehensive Report



3



4

Data Collection

- Interviews with City of The Dalles, NWCPUD, and Q-Life
- City and PUD GIS Access which included NW Natural and Q-Life facilities
- Email and phone correspondence.
- Meeting minutes, and communication examples provided in Appendix B of report.
- Note – No response was received from Lumen or Charter after multiple attempts.



5

Data Collection



6

Data Collection

- Crestline Construction was contacted for information regarding site conditions and specific experience with undergrounding utilities in and around The Dalles downtown area.



7

General Design Considerations

- Need to avoid:
 - **Water Lines** – New lines are in roadway but older lines cross into ROW
 - **Sewer Lines**
 - **Gas Lines** – Generally randomly placed alongside roadway and sidewalks. Create an obstacle for new underground.
 - **Storm Systems**
- Traffic control and public disruption
- Service drop impacts and line extensions
- Standards such as Oregon Utilities Coordinating Council (OUCC), National Electrical Safety Code (NESC), and Common Ground Alliance



8

General Design Considerations

- The downtown core area will require a variety of open-trench and trenchless construction to accommodate all requirements.
- Specific arrangements depend on:
 - Presence of backbone lines
 - Presence of primary distribution
 - Presence of secondary distribution and service lines
 - Type and arrangement of various service provider facilities
 - Proximity to rights-of-way, easements, roadways, and sidewalks
 - Terrain and possible obstructions.



9

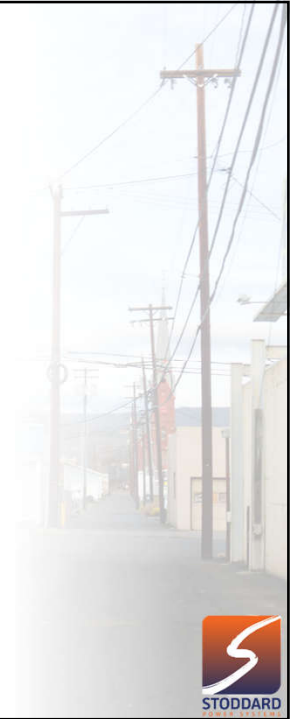
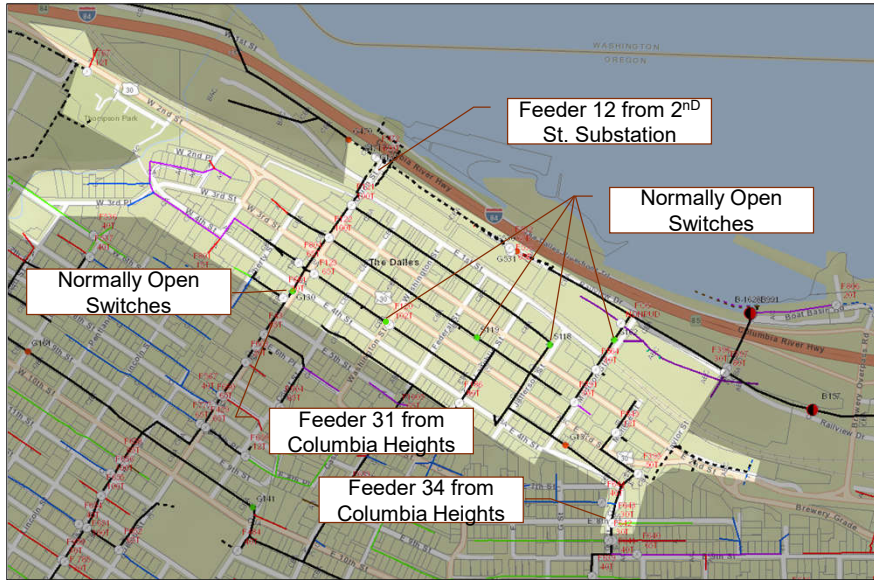
Existing Electrical System

- Primarily overhead, wood pole facilities.
- Serving approximately 600 customers in the affected area.
- Only ~2% of customers have existing underground service.
- PUD poles also support Lumen, Charter, and Q-Life systems.



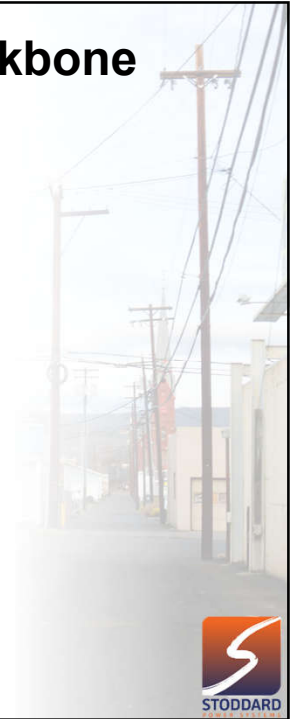
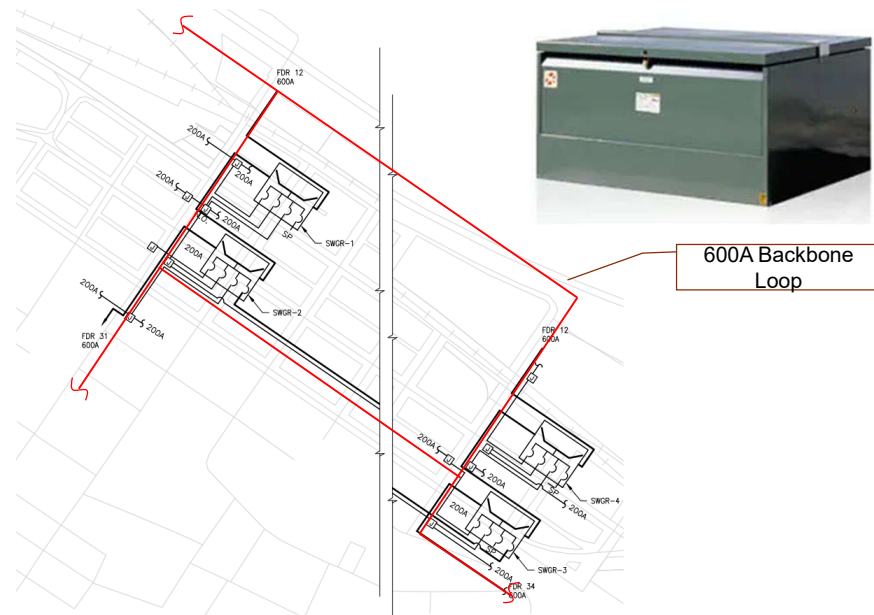
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Existing Electrical System



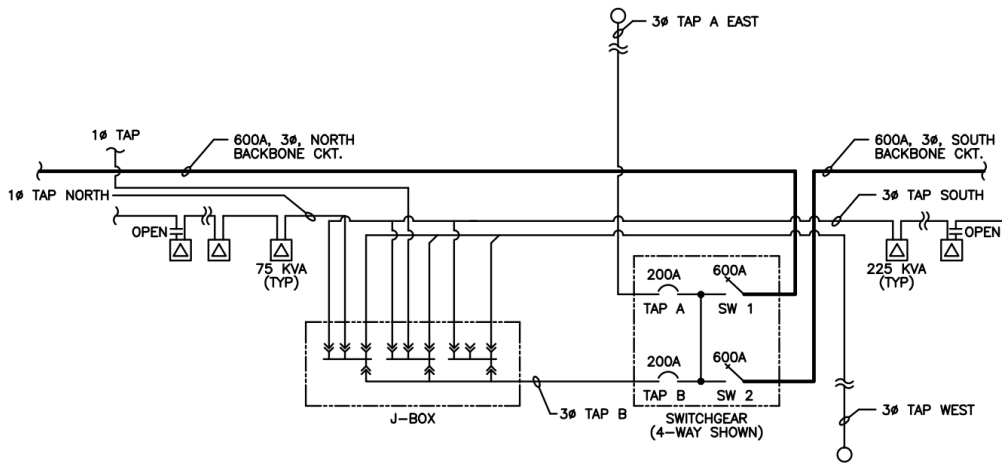
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Conceptual Underground Electrical Backbone



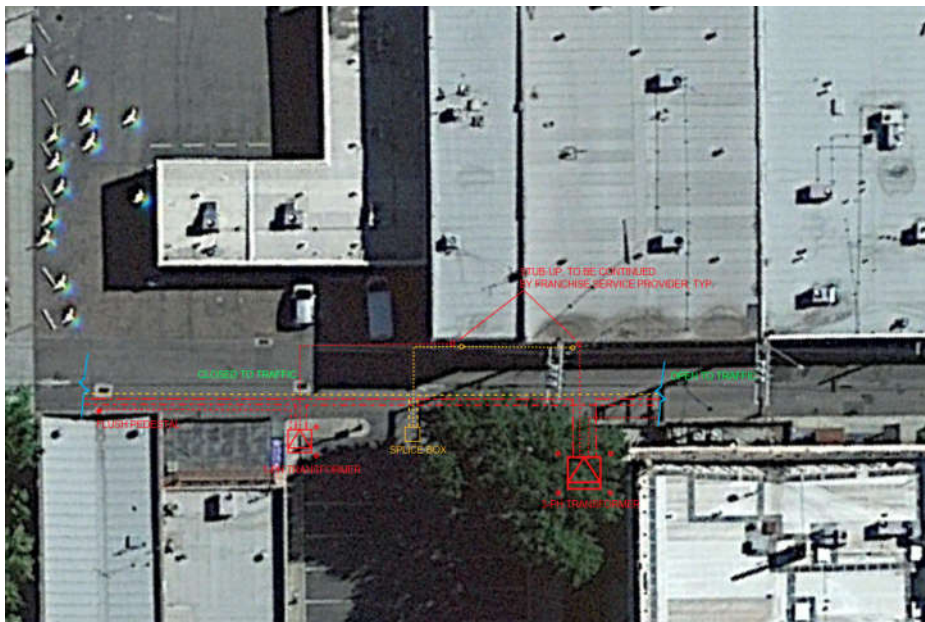
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Example Electrical Arrangement



13

Example Electrical Arrangement



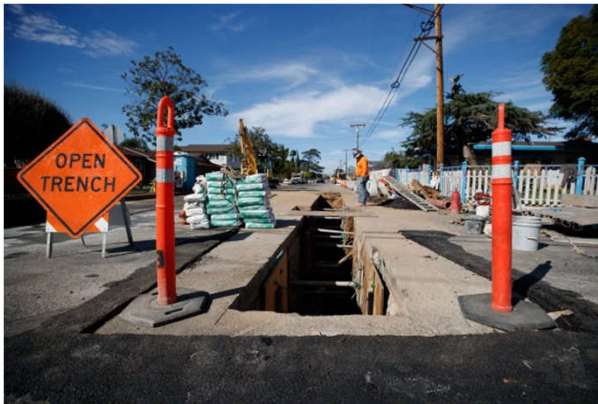
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Existing Q-Life System



15

Undergrounding Methods



Open Trenching

- Access for service laterals
- Easier to maintain required separation
- Consistent depth and easier future access
- Very disruptive



Directional Boring

- Much less disruption
- Often less expensive
- Spacing more challenging
- Poor future access



16

Conceptual Underground Electrical Design

Directional bore under roadways

Open trench in alleyways

Directional Bore

Same general approach applies to communication systems

Duct Example

17

DRAWING NOTES

- ALL MAJOR ROADWAY UNDERGROUND CONDUIT/DUCT CONSTRUCTION IS INTENDED TO BE PERFORMED BY DIRECTIONAL BORE INSTALLATION IN ACCORDANCE WITH THE CROSS SECTION DETAIL DESCRIPTION NOTED ON THE PLAN DRAWINGS. THIS APPLIES TO CONSTRUCTION PARALLELING ROADWAYS AND INTERSECTION CROSSINGS.
- ALL ALLEY WAY CONDUIT/DUCT CONSTRUCTION IS INTENDED TO BE PERFORMED BY SAWCUT OPEN-TRENCH INSTALLATION IN ACCORDANCE WITH THE CROSS SECTION DETAIL DESCRIPTION NOTED ON THE PLAN DRAWINGS. THIS WILL MORE READILY ALLOW SECONDARY/SERVICE CIRCUIT EXTENSION TO CUSTOMERS.
- WORK IN ALLEYS SHALL ONLY EXTEND HALFWAY THROUGH AN ALLEY AT ANY ONE TIME TO MINIMIZE ACCESS AND DELIVERY DISRUPTION.
- THE INTENT IS TO INSTALL A SPICE VAULT (24" X 24" PREFERRED OR 24" X 36" MAXIMUM) FOR EACH SERVICE PROVIDER AT MAJOR ROADWAY-ALLEYWAY INTERFACE JUNCTIONS, TO SPLIT FIBER COUNTS AND ADEQUATELY SERVE CUSTOMERS AS REQUIRED, PLUS ALLOWING DARK FIBER FOR FUTURE USE.
- SURFACE MOUNTED, TRAFFIC-BEARING OR BOLLARD PROTECTED HANDHOLES ARE TO BE INSTALLED IN EACH ALLEY AS OFTEN AS REQUIRED TO BREAKOUT FIBER AND SERVE CUSTOMERS.
- FOR THIS CONCEPTUAL DESIGN THE COMMUNICATION CONDUIT SELECTED IS DURA-LINE-FUTURE-PATH MULTI-DUCT HYBRID HOPE A POPULAR PRODUCT AT THIS TIME. DURA-LINE HOPE FOR SMOOTH-WALL CONDUIT, AND VIKIMATIC PVC MULTICELL CONDUIT PRODUCTS WERE ALSO CONSIDERED AND EITHER ALTERNATE WOULD PROVE ADEQUATE.

Communication System Concept

EXAMPLE LEGEND

- 15KV, 3ø 600A PRI OH OHT
- 15KV, 1ø 200A PRI OH OHT
- 15KV, 3ø 600A PRI UG OHT
- 15KV, 3ø 200A PRI UG OHT
- 15KV, 1ø 200A PRI UG OHT
- SECONDARY OHT
- COMMUNICATION
- UG BORE
- CUSTOMER SERVICE

ROADWAY BACKGROUND GUIDE

- EDGE OF ROADWAY
- EDGE OF PAVEMENT
- EDGE OF R-O-W

VAULT LOCATION GUIDE

- EDGE OF ROADWAY
- EDGE OF VAULT
- EDGE OF PAVEMENT
- EDGE OF R-O-W

VAULT IDENTIFICATION

VAULT # AMP RATING - NUMBER
 DETAIL # REFERENCE
 HORIZ. COORD. N=XXXX, E=YYYY.Y
 ELEV. = ZZ.ZZ
 STA = XXX+XX

18

Page 9 of 76

9

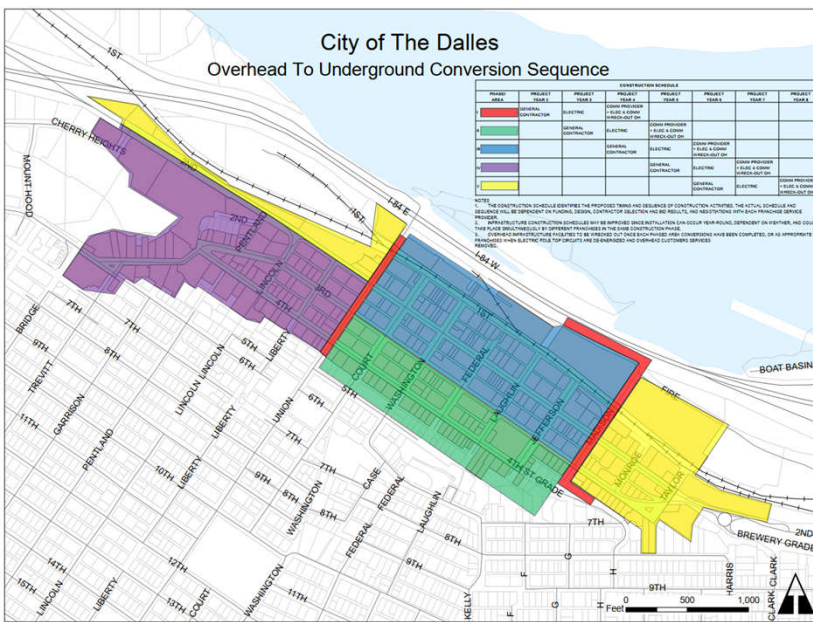
Construction Sequence

- Project duration can be expected to take 8 to 10 years.
- Major considerations in sequencing and scheduling construction:
 - Cost-effective method with reasonably constant cash flow spending each year.
 - Strategic start/stop locations between construction phases allowing subsequent phases of construction to begin at preferred interface locations.
 - Maintain service continuity during each cutover to the new facilities. As such, **new and existing systems must coexist until cutover is complete.**
 - Minimize customer inconvenience during each construction stage through well-planned sequenced construction.
 - Sequence work best suited for the overall community and reasonable for all service providers involved.



19

Phased Construction Approach

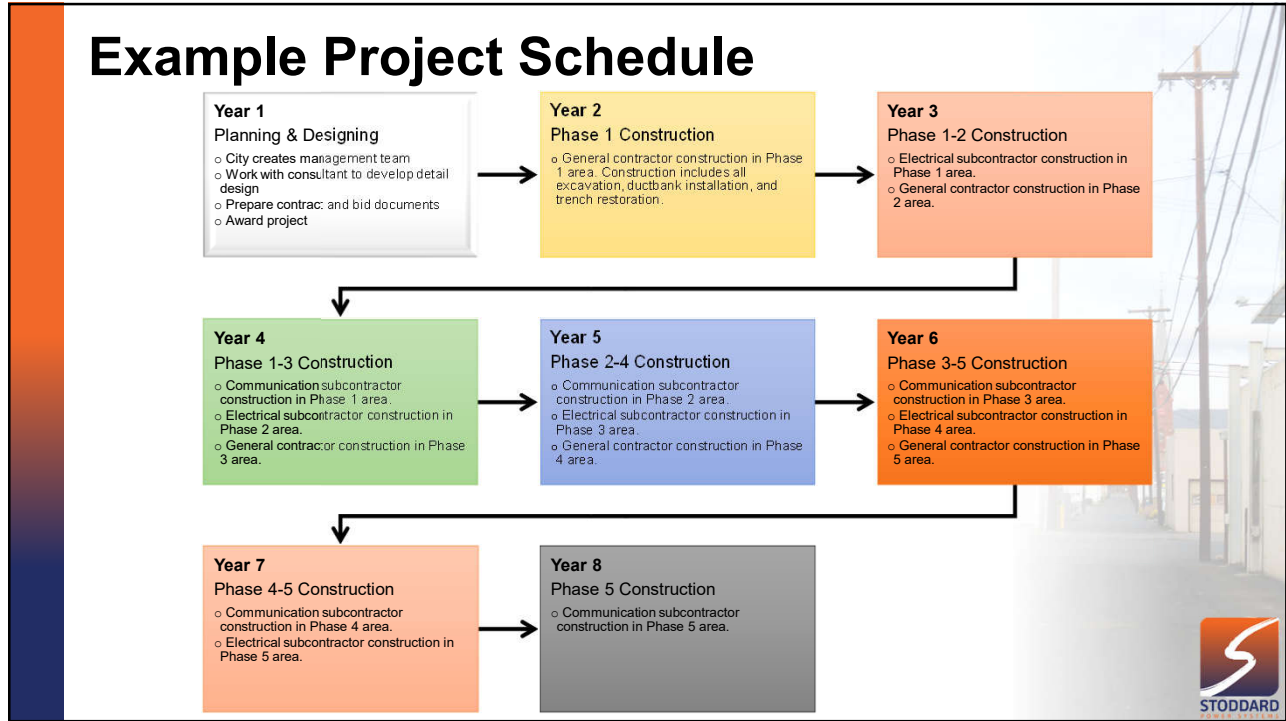


Example Sequence:

1. Establish backbone interface to electric sources
2. Establish backbone distribution and duct banks
3. Cutover electric customers by region
4. Demo overhead electrical
5. Communication move and cutover to follow electric cutover




20



21

Cost Summary

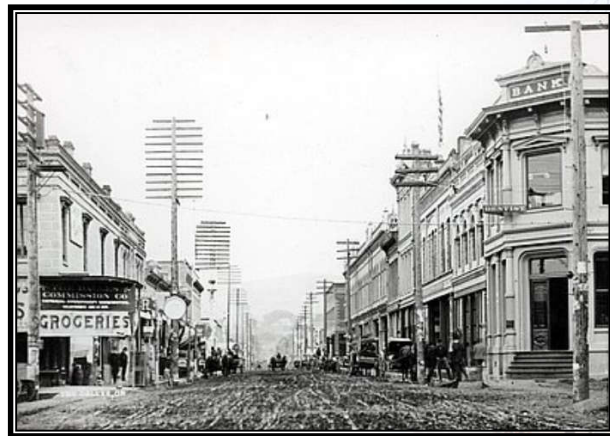
- Current supply and construction prices are very volatile and subject to large changes.
- A review of available publications indicates new underground infrastructure costs are ~\$3.9 million (M) per mile (\$2022).
- Overhead to underground conversion can be expected to cost more. The California Public Utilities Commission recently suggested costs in the range of \$1.85 M to \$6.1 M per mile.



22

Cost Considerations

- The Dalles downtown area is congested and has been developed for over 150 years.
- Construction must meet modern standards and regulations while accommodating existing infrastructure.
- Easements, ROW, etc. are not consistent and site conditions do not lend well to simple rule-of-thumb estimates.



23

Cost Estimate Method

BASIC GC - SCHEDULE B UNDERGROUND CONSTRUCTION UNITS					
Unit No.	Unit	No. of Units	Unit Price		Extended Price
			Labor	Materials	
UEB-1	LF	240		\$750.00	\$180,000.00
UEDB-1	LF	3600		\$480.00	\$1,728,000.00
UEDB-2	LF	900		\$140.00	\$126,000.00
UEDB-3	LF	500		\$120.00	\$60,000.00
UCDB-1&2*	LF	4700		\$90.00	\$423,000.00
UCDB-3&4*	LF	500		\$80.00	\$40,000.00
UTS(1&4)	LF	0		\$70.00	\$0.00
UTS(8&4)	LF	0		\$80.00	\$0.00
UTP(3&4)	LF	480		\$110.00	\$52,800.00
UTS(5&16)	LF	0		\$45.00	\$0.00
UTS(5&16)	LF	0		\$85.00	\$0.00
UTP(2&16)	LF	480		\$105.00	\$50,400.00
UTS(2&24)	LF	0		\$60.00	\$0.00
UTS(4&24)	LF	0		\$75.00	\$0.00
UTP(4&24)	LF	0		\$90.00	\$0.00
UDB(C-1-3)	LF	0		\$87.00	\$0.00
UDB(C-2-2)	LF	0		\$87.00	\$0.00
UDB(C-1-3)	LF	0		\$82.00	\$0.00
UDB(C-4-3)	LF	480		\$70.00	\$33,600.00
UDB(C-4-2)	LF	0		\$47.00	\$0.00
UDB(C-4-3)	LF	480		\$62.00	\$29,760.00
UDB(SEC SL/C)	LF	0		\$40.00	\$0.00
EUV	Ea	600		\$75.00	\$45,000.00
EUV-6A	Ea	4		\$20,000.00	\$80,000.00
EUV-6B	Ea	2		\$20,000.00	\$40,000.00
EUV-6C	Ea	0		\$20,000.00	\$0.00
EUV-2A	Ea	3		\$12,500.00	\$37,500.00
EUV-2B	Ea	10		\$12,000.00	\$120,000.00
EUV-2C	Ea	0		\$14,000.00	\$0.00
EUV-2D	Ea	0		\$10,000.00	\$0.00
EXP-IBP	Ea	0		\$2,500.00	\$0.00
EXP-IBP	Ea	0		\$3,700.00	\$0.00
ESC-PRD	Ea	0		\$15.00	\$0.00
CUV-1*	Ea	0		\$18,500.00	\$0.00
CUV-2*	Ea	0		\$16,500.00	\$0.00
CUV-3*	Ea	0		\$15,000.00	\$0.00
CUV-4*	Ea	0		\$5,000.00	\$0.00
CEH*	Ea	24		\$400.00	\$9,600.00
SDREP	LF	1440		\$500.00	\$720,000.00
SEEX	LF	420		\$500.00	\$210,000.00
Subtotal	LF	1420		\$250.00	\$355,000.00
SCHEDULE B SUBTOTAL					\$3,329,120.00

Construction Units Description Example

ELECTRICAL

UEB-1

BORE CROSSING #1, 2-6", 2-4" and 4-2" CONDUITS UNDER RAILROAD

Consists of 1 lineal foot, measured parallel to the surface of the ground, with minimum depth under railroad as required by BNSF Railway as indicated on the Drawings. This unit includes labor and materials to install directional bore casing, conduits, spacers, and intercepting adjacent conduits each end, complete. All work shall be performed in accordance with the requirements of railroad, state and local authorities. The OWNER will perform all necessary BNSF Railway crossing applications and permitting fees. The Contractor is responsible for compliance with BNSF construction and notification requirements, plus railroad inspection fees and insurance coverage.

UEDB (SECTION #)

DIRECTIONAL BORE ELECTRIC ASSEMBLY UNIT

Consists of 1 lineal foot, measured parallel to the conduit route; dimensions and materials are according to the indicated section callout. This unit includes all material and labor required for the directional bore set-up, installation of conduit, fittings, and restoration as required. To include pilot drilling, pre-ream, back-ream, re-round and straightener to ensure the furnished installation in accordance with the Specifications and Drawings. This unit includes the size and conduit quantities as indicated by section callout. This unit includes all labor and material to ensure quality and safe installation and site restoration. All work shall be performed in accordance with the requirements of state and local authorities.

EUV-6A

600 AMP PRIMARY VAULT, FOR SECTIONALIZING EQUIPMENT

Consists of one 6 foot by 11 foot concrete vault for mounting sectionalizing equipment on Special Lid with suitable cable openings to match sectionalizing equipment and non-slip access doors (Vault Type 5106 LA from Oldcastle Precast). This unit includes any excavation, backfilling, and tamping necessary for the installation of the vault. This unit also includes all labor and materials required to install the vault grounding system, end bells for conduit terminations, and cable racks and hooks for cable and splice support. Refer to detail drawings (Drawing Section) for dimensions and material to be used in completing this unit.



24

Typical Service Drop Costs

Service Provider	Account Type	Basic Cost Range
PUD Electric ⁴	Residential OH to UG	\$2,500
	Commercial 1Ø OH to UG	\$4,000
	Commercial 3Ø OH to UG	\$5,500
Lumen Communication ⁵	Residential OH to UG	\$800
	Commercial OH to UG	\$900
	Network Interface (New)	\$500
	Network Interface (Replace)	\$600
Charter Communication ⁵	Residential OH to UG	\$800
	Commercial OH to UG	\$900
	Network Interface (New)	\$500
	Network Interface (Replace)	\$600
Q-Life Communication ⁵	Residential OH to UG	\$800
	Commercial OH to UG	\$900
	Network Interface (New)	\$500
	Network Interface (Replace)	\$600

NOTES:

- Expanded service drop descriptions and estimates provided in report.
- Trench work and conduit costs not included herein, refer to detail take-off tables.
- All costs are limited to specific cable distances; cost adders apply for longer service drops.
- Customer facilities requiring electrician services expenses are not shown.
- Assume 50% of all installations will require network interface replacement.



25

Construction Cost Estimate

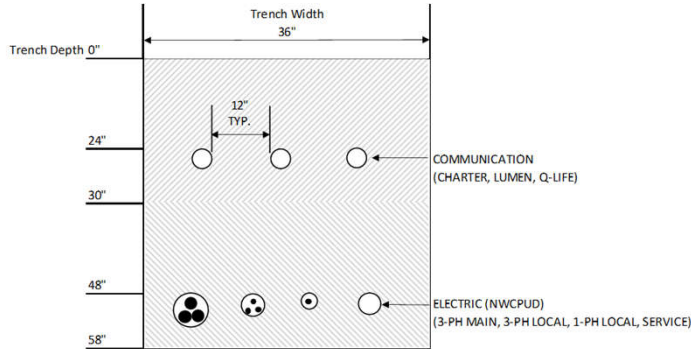
Description	Order of Magnitude Cost in Millions (2022 \$)
Design & Management	\$1.6
General Contractor	\$19.6
Electric	\$10.2
Lumen Communication	\$0.9
Charter Communication	\$0.9
Q-Life Communication	\$0.9
Total	\$33.9
Total Miles of UG Construction ⁷	11.4 miles
Cost per Total UG Construction ⁷ Mile	\$2.98

Trench work cost estimate is therefore ~\$2.98M per mile
A 15% contingency is applied to this.



26

Cost Allocation



	Width	Height	Area	Total Area	Percent of Total Area	Actual Trench Area
Communication	36	30	1080	1080	34%	712
Electric	36	58	2088	2088	66%	1376
Total:				3168	100%	2088



27

Cost Summary and Spending Schedule in (\$2022)

Construction Description	Year 1 (start-up design)	Year 2 Phase I (gc)	Year 3 Phase I-II (gc/e)	Year 4 Phase I-III (gc/e/c)	Year 5 Phase II-IV (gc/e/c)	Year 6 Phase III-V (gc/e/c)	Year 7 Phase IV-V (e/c)	Year 8 Phase V (c)	Totals
Design & Management	\$0.58	\$0.17	\$0.17	\$0.17	\$0.17	\$0.17	\$0.17	\$0.17	\$1.78
General Contractor	\$0.00	\$3.93	\$3.86	\$3.74	\$5.67	\$5.17	\$0.05	\$0.05	\$22.48
Electrical	\$0.00	\$0.00	\$2.37	\$2.60	\$2.86	\$1.82	\$1.82	\$0.23	\$11.70
Charter	\$0.00	\$0.00	\$0.02	\$0.13	\$0.25	\$0.25	\$0.17	\$0.19	\$1.01
Lumen	\$0.00	\$0.00	\$0.02	\$0.13	\$0.25	\$0.25	\$0.17	\$0.19	\$1.01
Q-Life	\$0.00	\$0.00	\$0.02	\$0.13	\$0.25	\$0.25	\$0.17	\$0.19	\$1.01
Totals	\$0.58	\$4.11	\$6.47	\$6.90	\$9.46	\$7.92	\$2.54	\$1.03	\$39.01

NOTES:

- 1.) The costs shown are 2022 dollars and include a 15% contingency.
- 2.) Start-up administrative costs, Planning Committee formation, funding and the cost of borrowing money not included.
- 3.) Engineering design, survey and project management services during construction costs are included.
- 4.) The timing and cost of work shown for years four through seven are dependent on construction conditions.
- 5.) Construction activities identified as: General Contractor (gc), Electric (e), Communication (c).



28

Additional Cost Considerations

- Additional costs can be assumed such as:
 - Related start-up administrative and organizational costs.
 - Consulting assistance costs that might be necessary to secure financing.
 - Cost to issue financing instruments.
 - Additional funding to cover interest costs as it accumulates on borrowed loan(s).
 - Engineering survey and services during construction and/or other unique construction related costs.
- These costs are assumed at 10%.
- Escalation is very difficult to predict but is estimated at 4.5%.



29

Total Project Cost Estimate - \$48M

Year	---	1	2	3	4	5	6	7	8	Total
Design & Management (\$)		\$0.50	\$0.15	\$0.15	\$0.15	\$0.15	\$0.15	\$0.15	\$0.15	\$1.55
Construction (\$)		\$-	\$3.42	\$5.47	\$5.85	\$8.08	\$6.74	\$2.06	\$0.74	\$32.37
Escalation ¹	4.5%	100.0%	104.5%	109.0%	113.5%	118.0%	122.5%	122.5%	127.0%	---
Annual Sum		\$0.50	\$3.73	\$6.13	\$6.81	\$9.71	\$8.44	\$2.71	\$1.13	\$39.17
Organization (\$)	10.0%	\$0.05	\$0.37	\$0.61	\$0.68	\$0.97	\$0.84	\$0.27	\$0.11	\$3.92
Total										\$43.08
Rounding Factor ²	1	\$1.00	\$5.00	\$7.00	\$8.00	\$11.00	\$10.00	\$3.00	\$2.00	\$48.00
									Miles	11.4
									\$ Per Mile	\$3.78
									Properties	600
									Cost Per Customer (\$)	\$71,803
									Interest Rate	6%
									Per Customer Cost/Year (10)	\$9,566

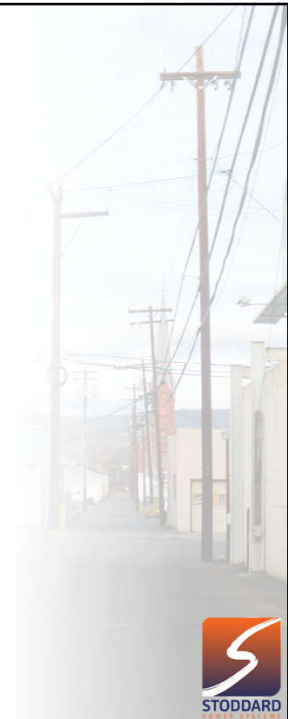
NOTES:

- 1.) A 4.5% escalation factor was assumed in this estimate. Based on the industry's most widely used construction cost indices averaged over a (3) year period from 2017 to 2022, the escalation factors range from 2.35% to 4.52%, with an average of 3.61% [Source: <https://icibuilds.com/cost-escalation-predictions-for-2022/>]. However, the average escalation factor for last year, 2020 to 2021, is 3.92% and is expected to be increasing due to ongoing inflation.
- 2.) A rounding factor of 1 is used to round up to the nearest million dollars.



30

Questions?



31



AGENDA STAFF REPORT

AGENDA LOCATION: Item #9 A-C

MEETING DATE: October 24, 2022

TO: Honorable Mayor and City Council

FROM: Izetta Grossman, CMC, City Clerk

ISSUE: Approving items on the Consent Agenda and authorizing City staff to sign contract documents.

- A. **ITEM:** Approval of the October 10, 2022 Regular City Council Meeting Minutes.

BUDGET IMPLICATIONS: None.

SYNOPSIS: The minutes of the October 10, 2022 Regular City Council meeting have been prepared and are submitted for review and approval.

RECOMMENDATION: That City Council review and approve the minutes of the October 10, 2022 Regular City Council meeting minutes.

- B. **ITEM:** Resolution No. 22-036 A Resolution Authorizing the City Manager to Execute a Grant Application on Behalf of Mid-Columbia Action Council for the Oregon Department of Energy's Community Renewable Energy Grant Program

BUDGET IMPLICATIONS: None

SYNOPSIS: Resolution No. 22-036 A Resolution Authorizing the City Manager to Execute a Grant Application on Behalf of Mid-Columbia Action Council for the Oregon Department of Energy's Community Renewable Energy Grant Program has been prepared for your review.

RECOMMENDATION: Approve Resolution No. 22-036 A Resolution Authorizing the City Manager to Execute a Grant Application on Behalf of Mid-Columbia Action Council for the Oregon Department of Energy’s Community Renewable Energy Grant Program

- C. **ITEM:** Adopting Resolution No. 22-035, a resolution authorizing the City Manager to execute intergovernmental agreements with Oregon Department of Transportation and Oregon Business Development Department to partner in the administration of the Disadvantaged Business Enterprise Unified Certification Program

BUDGET IMPLICATIONS: The Airport is obligated to maintain a DBE program to remain eligible for federal transportation funding.

SYNOPSIS: The Columbia Gorge Regional Airport (**Airport**) receives significant grant funding from the Federal Aviation Administration (**FAA**). One of the FAA’s grant assurances requires the Airport to maintain a disadvantaged business enterprise (**DBE**) program to ensure nondiscrimination with respect to the Airport’s public contracting. The Oregon Department of Transportation (**ODOT**) is responsible for ensuring compliance with federal regulations in the determination of a DBE certification and the Oregon Business Development Department (**OBDD**) certifies enterprises as DBE-eligible. ODOT, OBDD, and other local governments receiving federal transportation funding formed a partnership meeting the federal requirements to administer a unified DBE program (**UCP**) throughout Oregon by entering ODOT Agreement No. 32421 (**Current IGA**). The Current IGA expires on October 30 but staff confirmed with ODOT’s Procurement Office a new IGA (**Future IGA**) is currently being finalized and anticipated to be complete in the first week or two of November 2022. The City signed on to the unified DBE program in 2015 and must renew its participation. According to the City’s consultant managing this project, best practices to guarantee the Airport meets federal requirements involve participating in both the Current IGA and the Future IGA. Staff does not expect the Future IGA to substantively or materially differ from the Current IGA but will bring this matter back to Council if the City Attorney determines the Future IGA materially differs.

RECOMMENDATION: Adopt Resolution No. 22-035, a resolution authorizing the City Manager to execute intergovernmental agreements with ODOT, OBDD, and other federal fund recipients to partner in the administration of the DBE UCP.

MINUTES
Regular City Council Meeting
October 10, 2022
Page 1

MINUTES

CITY COUNCIL MEETNG
COUNCIL CHAMBER, CITY HALL
OCTOBER 10, 2022
5:30 p.m.

VIA ZOOM/ IN PERSON

PRESIDING: Mayor Richard Mays

COUNCIL PRESENT: Darcy Long, Tim McGlothlin, Rod Runyon

VIA ZOOM: Scott Randall, Dan Richardson

COUNCIL ABSENT: None

STAFF PRESENT: City Manager Matthew Klebes, City Attorney Jonathan Kara, City Clerk Izetta Grossman, Finance Director Angie Wilson, Interim Planning Director Joshua Chandler, Public Works Director Dave Anderson, Police Chief Tom Worthy

CALL TO ORDER

The meeting was called to order by Mayor Mays at 5:30 p.m.

ROLL CALL OF COUNCIL

Roll Call was conducted by City Clerk Grossman. present

PLEDGE OF ALLEGIANCE

Mayor Mays led the Pledge of Allegiance.

APPROVAL OF AGENDA

It was moved by Long and seconded by McGlothlin to approve the agenda as submitted. The motion carried 5 to 0; Long, McGlothlin, Runyon, Richardson, Randall voting in favor; none opposed.

MINUTES

Regular City Council Meeting

October 10, 2022

Page 2

AUDIENCE PARTICIPATION

Lisa Farquharson, CEO of The Dalles Area Chamber of Commerce announce the following:

- Explore The Dalles labeled wine from Terra Lobos now available
- Candidate Form cancelled; Chamber prepared questions for each candidate and will release the answers once compiled
- Historic Highway Century Celebration at Old St. Peters Landmark on October 22nd from 2 to 4 p.m.

Breanna Wimber, Stratton Agency said the City would be receiving a SAIF dividend in the amount of \$14,253. She noted it was a smaller dividend than in previous years. She said the dividend was not always given.

CTY MANAGER REPORT

City Manager Matthew Klebes reported:

- Letter of Support given to Columbia Gorge Community College for a \$1.6 million Ag Tech program grant
- EDA grant award \$2.8 for the Training Hangar at the Columbia Gorge Regional Airport.
 - Klickitat County is facilitating the grant
 - Due to increase in material costs there is a funding shortfall – working with EDA
- Solid Waste Advisory Council presented a 7.3% rate increase recommendation to Wasco County Commission. Wasco County approved the increase; The Dalles Disposal will be coming to City Council for the same.
- Introduced Alyssa Bachman, recently hired Paralegal for the City Attorney

In response to a question regarding the EDA grant City Manager Matthew Klebes said the grant would be budgeted before the beginning construction. He said the Community Outreach Team had made inquires while in Washington, D.C. regarding the EDA increasing funding due to the delay in award and grant deadline.

CITY COUNCIL REPORTS

Councilor McGlothlin reported:

- Ongoing meetings with St. Vincent de Paul executive board to address citizen complaints and investigate improvements to the operation.
- Attended the Mayor's task force meeting to address the issue of homelessness in our city.
- Attended the 2022 League of Oregon City Conference in Bend last Wed., and Thurs.

MINUTES

Regular City Council Meeting

October 10, 2022

Page 3

- Visited the 911 dispatch center with Chief Worthy last week.
- Connected with various constituents via email., text, or in-person contacts.
- Attend League of Oregon Cities Conference
 - Attended Unhoused session led by Mayor Mays and Mid-Columbia Community Action Council Director Kenny LaPointe.

Councilor Long reported:

- Meeting with City Manager regarding Waste Management
- Email regarding paving material being use
- Homeless calls – she asked for an update on the work being done
- Gitchell Building inquires

Councilor Runyon reported:

- Citizen questions
- Mid-Columbia Veterans Memorial Committee
- Noted: Veterans Museum at City Hall open Thursday and Friday Noon – 4:00 p.m. and nights of Council Meetings

Mayor Mays reported:

- KACI
- Economic Development Committee
- Beautification Committee Yard of the Month award
- League of Oregon Cities

Mayor Mays asked for consensus to hold the Council Goal Setting Session on November 29th 1:00 to 4:00 p.m.; and to cancel the November 28th Regular City Council Session.

CONSENT AGENDA

It was moved by Randall and seconded by McGlothlin to approve the Consent Agenda as presented. The motion carried 5 to 0; Randall, McGlothlin, Long, Richardson, Runyon voting in favor; none opposed.

Items approved on the consent agenda were: 1) The minutes of the September 26, 2022 Regular City Council Meeting.

MINUTES
Regular City Council Meeting
October 10, 2022
Page 4

CONTRACT REVIEW BOARD

Award Contract No. 2022-010 Wicks Sludge Removal Program

Public Works Director Dave Anderson reviewed the staff report.

It was moved by Long and seconded by Runyon to Authorize the City Manager to enter into contract with Fire Mountain Farms Inc. for the Wicks Sludge Removal Program, Contract No. 2022-010, in an amount not to exceed \$208,095.00

ACTION ITEMS

Community Development Department Reorganization

City Manager Matthew Klebes reviewed the staff report.

Runyon asked who currently was overseeing the General Services crew. Klebes said he was.

Runyon asked if the Codes Officer at the Police Department was different than the position discussed. Klebes said it was.

Long said economic development had long been a goal of Council and she appreciated that it was one of the first things the City Manager took on. All Councilors agreed with Long.

City Manager Klebes noted that he had vetted the reorganization with the Leadership Team.

It was moved by McGlothlin and seconded by Richardson to adopt the amended salary matrix as presented. The motion carried 5 to 0; McGlothlin, Richardson, Runyon, Long, Randall voting in favor; none opposed.

Resolution No. 22-033 A Resolution Authorizing Transfers of Funds Between Various Departments of the General Fund

Finance Director Angie Wilson reviewed the staff report. She noted there was a clerical error on the last page of the resolution that had been corrected.

It was moved by McGlothlin and seconded by Long to approve Resolution No. 22-033 A Resolution Authorizing Transfers of Funds Between Various Departments of the General Fund. The motion carried 5 to 0; McGlothlin, Long, Runyon, Richardson, Randal voting in favor; none opposed.

MINUTES
Regular City Council Meeting
October 10, 2022
Page 5

General Ordinance No. 22-1393 An Ordinance Amending The Dalles Municipal Code Chapter 4.08 (Sewers) to Revise Requirement to Install Separate Service and Manage Impermissible Wastewater Discharges

City Attorney Jonathan Kara reviewed the staff report.

Mayor Mays asked anyone in the audience would like to comment.

Katy Young, 515 West 7th Street said he had one of the shared sewers and had been looking into how to solidify the right to go onto the neighbor's land.

She said she felt there should be stronger language regarding the waiving of the triggering event.

Councilor Long asked what would happen if the owner couldn't afford to replace the line.

City Attorney Kara said the City works with people, and were flexible. He said staff experts frequently walk people through the process.

Mayor Mays asked if any Councilor wanted the Ordinance read in full.

None did.

Mayor Mays asked City Clerk Grossman to read the Ordinance by title only.

Grossman read the Ordinance by title only.

It was moved by Long and seconded by Randall to adopt General Ordinance No. 22-3193 An Ordinance Amending The Dalles Municipal Code Chapter 4.08 (Sewers) to Revise Requirement to Install Separate Service and Manage Impermissible Wastewater Discharges by title only. The motion carried 5 to 0; Long, Randall, Runyon, Richardson, McGlothlin voting in favor; none opposed.

DISCUSSION ITEMS

Gitchell/Waldron Drug Building Report

Mayor Mays said he would ask for the staff report, Council questions, then Mr. Gleason would have 3 minutes to speak on behalf of the Friends of the Gitchell Building. He said he would then entertain other comments that were not repetitive.

MINUTES

Regular City Council Meeting

October 10, 2022

Page 6

City Manager Matthew Klebes reviewed the staff report.

Council spoke in favor of Option 1, thanking the City Manager for a thorough report.

Mayor May asked for the video of the Astoria Ghost signs to be sent to Council.

Eric Gleason, 704 K Street, Friends of the Gitchell Building said Option 1 was a slam dunk.

He said the elements of Preserve; Stabilize; Enhancements was supported by the Friends of the Gitchell Building.

Gleason said they would like to offer:

- Grant location and writing efforts
- Physical labor

And Recommend:

- Restoring windows – now boarded up, but still in place
- Lighting inside

Carolyn Wood 1709 Liberty Way said it was the desire of the former Council that voted to replace the roof to preserve the building.

Bill Lennox

Susan Buce

Shelia Dooley

All spoke in favor of Option 1, saying the building was historical, only one of 3 buildings to withstand the fires and floods downtown

It was the consensus of the Council for the City Manager to move forward with development of a plan for Option 1 preservation with Ghost Signs.

City Manager Klebes said the next steps would be:

- Conversation with KPFF
- Capital Improvement plan - General Services Manager project for budgeting

EXECUTIVE SESSION

In accordance with ORS 192.660(2)(h) to consult with counsel concerning the legal rights and

MINUTES
Regular City Council Meeting
October 10, 2022
Page 7

duties of a public body with regard to current litigation or litigation likely to be filed.

Mayor Mays recessed Open Session at 6:50 p.m.

Mayor Mays reconvene Open Session at 7:55 p.m.

Decision

It was moved by Richardson and seconded by McGlothlin to direct the City Attorney to file a public nuisance action and all related actions in Wasco County Circuit Court in the matter of unlawful encroachment of the public right of way of East 9th Street, The Dalles, Oregon. The motion carried 5 to 0; Richardson, McGlothlin, Randall, Runyon, Long voting in favor; none opposed.

ADJOURNMENT

Being no further business, the meeting adjourned at 7:57 p.m.

Submitted by/
Izetta Grossman, CMC
City Clerk

SIGNED: _____
Richard A. Mays, Mayor

ATTEST: _____
Izetta Grossman, CMC City Clerk

RESOLUTION NO. 22-036

A RESOLUTION AUTHORIZIING THE CITY MANAGER TO EXECUTE A GRANT APPLICATION ON BEHALF OF MID-COLUMBIA COMMUNITY ACTION COUNCIL FOR THE OREGON DEPARTMENT OF ENERGY'S COMMUNITY RENEWABLE ENERGY GRANT PROGRAM

WHEREAS, in the 2021 Regular Session, the Oregon Legislative Assembly enrolled House Bill 2021 and established a \$50 million fund with the Oregon Department of Energy to provide certain grants (**CREP Grant**) for planning and developing community renewable energy and energy resilience projects;

WHEREAS, the CREP Grant is open to Oregon municipalities;

WHEREAS, Mid-Columbia Community Action Council (**MCCAC**) is in the planning stages of a proposed Navigation Center Project (**Project**) in The Dalles to provide services and housing programs for the unhoused in a centralized location;

WHEREAS, the City recently established a Joint Climate Resiliency Committee and supports MCCAC's proposed Project; and

WHEREAS, on June 23, 2022, the City adopted Resolution No. 22-025 resolving to support MCCAC's applications for grant funding for the proposed Project.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF THE DALLES RESOLVES AS FOLLOWS:

1. The City Council of the City of The Dalles hereby resolves to authorize the City Manager to execute a pass-through grant application on behalf of Mid-Columbia Community Action Council to apply for the Oregon Department of Energy's Community Renewable Energy Grant Program for the construction of a community energy resilience system utilizing a solar array and battery storage at the future Navigation Center to be located at 2505 West 7th Street in The Dalles.
2. This Resolution shall be effective upon adoption.

PASSED AND ADOPTED THIS 24TH DAY OF OCTOBER, 2022.

Voting Yes Councilors: _____
Voting No Councilors: _____
Abstaining Councilors: _____
Absent Councilors: _____

AND APPROVED BY THE MAYOR THIS 24TH DAY OF OCTOBER, 2022.

Richard A. Mays, Mayor

ATTEST:

Izetta Grossman, CMC, City Clerk

RESOLUTION NO. 22-035

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE INTERGOVERNMENTAL AGREEMENTS WITH
OREGON DEPARTMENT OF TRANSPORTATION AND
OREGON BUSINESS DEVELOPMENT DEPARTMENT FOR
ADMINISTRATION OF THE DISADVANTAGED
BUSINESS ENTERPRISE UNIFIED CERTIFICATION PROGRAM**

WHEREAS, the Disadvantaged Business Enterprise (**DBE**) program requires recipients of federal transportation funds establish a single process to certify businesses owned by socially and economically disadvantaged individuals in the administration of the DBE Unified Certification Function;

WHEREAS, Oregon Department of Transportation (**ODOT**) is responsible for ensuring compliance with the federal regulations in the determination of a DBE certification and Oregon Business Development Department (**OBDD**) is the sole agency authorized to certify enterprises as DBEs eligible to perform on public contracts in the State of Oregon;

WHEREAS, the Columbia Gorge Regional Airport (**Airport**) receives funding for federal transportation functions and activities and is required to comply with 49 CFR 26.18—*Requirements for a Unified Certification Program*;

WHEREAS, ODOT, OBDD, and other federal fund recipients entered into that certain Agreement No. 32421 (**Current IGA**) in 2017 and expiring October 30, 2022; and

WHEREAS, ODOT confirmed a new agreement (**Future IGA**) will be enacted on or around the Current IGA's expiration in early November 2022 to extend the partnership of the DBE program administration.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF THE DALLES
RESOLVES AS FOLLOWS:**

1. The City Manager is authorized to execute the Current IGA.
2. The City Manager is authorized to execute the Future IGA after the City Attorney reviews it for legal sufficiency and determines in a writing delivered to the City Manager whether it substantively differs from the Current IGA or otherwise materially adversely impacts the City; if the City Attorney determines the Future IGA so materially differs or adversely impacts the City, the City Manager shall not execute it and staff shall bring its execution back for Council's specific consideration at a future Council meeting.

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3. This Resolution shall be effective upon adoption.

PASSED AND ADOPTED THIS 24TH DAY OF OCTOBER, 2022,

Voting Yes	Councilors:	_____
Voting No	Councilors:	_____
Abstaining	Councilors:	_____
Absent	Councilors:	_____

AND APPROVED BY THE MAYOR THIS 24TH DAY OF OCTOBER, 2022.

Richard A. Mays, Mayor

ATTEST:

Izetta Grossman, CMC, City Clerk



AGENDA STAFF REPORT

AGENDA LOCATION: Public Hearing Item #10A

MEETING DATE: October 24, 2022

TO: Honorable Mayor and City Council

FROM: Angie Wilson, Finance Director

ISSUE: Resolution No. 22-034 Adopting a Supplemental Budget for Fiscal Year 2022/2023, Making Appropriations and Authorizing Expenditures from and within Various Funds of the City of The Dalles Adopted Budget.

BACKGROUND: Oregon Budget Law recognizes that after the beginning of the fiscal year, changes in appropriations in the budget sometimes become necessary, and so allows for those changes via supplemental budgets and budget amendments. Supplemental budgets add funds to existing budgets, while budget amendments move already budgeted funds between categories of the same fund without adding to the fund's total budget.

A Public Hearing is required for any supplemental budget that changes a fund by more than 10%. The proposed supplemental budget is more than 10% of the operating budget of either of the affected funds, so a Public Hearing is required.

A notice of the Supplemental Budget is required to be published, and that notice is scheduled to be printed in The Columbia Gorge News on Wednesday, October 19, 2022.

Resolution No. 22-034 is for a Supplemental Budget for Various Funds in the City Of The Dalles Budget.

- 1) The City's Special Grant Fund (018) has realized an additional \$150,000 in additional revenues for the CDBG Grant Program, with \$150,000 to be allocated to contractual services to provide rental assistance; and,
- 2) City's General Fund (001) has realized an additional \$150,000 in Miscellaneous Revenues, with a proposed allocation for additional legal services for the Public Records Lawsuit; and,
- 3) City's General Fund (001) has realized an additional \$287,008 in Beginning

Fund Balance, with \$287,008 to be allocated to Other uses to transfer money into the Capital Projects Fund; and,

4) City's General Fund (001) has realized an additional \$17,252 in Grant Funding for the Police Department, with \$9,500 being allocated to DUII overtime and \$7,752 for additional Body Armor.

5) The City's Capital Project Fund (037) has realized additional revenue in from the transfers in from the General fund of \$287,008, to be allocated to the transfers out to the State Office Building; and,

6) State Office Building Fund (055) has realized an additional \$287,008 in Transfers in from the Capital Project Fund, with proposed allocations \$175,000 for the New Generator and \$43,879 for the ADA Sidewalks, \$32,000 for the Exterior Painting, \$19,866 to re-tile the entryway and \$16,263 to paint the entryway.

BUDGET IMPLICATIONS: The Supplemental Budget Resolution No. 22-034 increases the Special Grant Fund budget by \$150,000; the General Fund by \$437,078; the Capital Projects Fund by \$454,260; the State Office Building Fund by \$287,078.

COUNCIL ALTERNATIVES:

- A. ***Staff Recommendation: Move to Adopt Resolution No. 22-034 Adopting a Supplemental Budget for Fiscal Year 2022/2023, Making Appropriations and Authorizing Expenditures within Various Funds of The Dalles Adopted Budget.***
- B. Council may choose to decline to make any changes to the adopted budget at this time.

RESOLUTION NO. 22-034

A RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET FOR FISCAL YEAR 2022/2023, MAKING APPROPRIATIONS AND AUTHORIZING EXPENDITURES FROM AND WITHIN VARIOUS FUNDS OF THE CITY OF THE DALLES ADOPTED BUDGET.

WHEREAS, The City’s Special Grant Fund (018) has realized an additional \$150,000 in additional revenues for the CDBG Grant Program, with \$150,000 to be allocated to contractual services to provide rental assistance; and,

WHEREAS, City’s General Fund (001) has realized an additional \$150,000 in Miscellaneous Revenues, with a proposed allocation for additional legal services for the Public Records Lawsuit; and,

WHEREAS, City’s General Fund (001) has realized an additional \$287,008 in Beginning Fund Balance, with \$287,008 to be allocated to Other uses to transfer money into the Capital Projects Fund; and,

WHEREAS, City’s General Fund (001) has realized an additional \$17,252 in Grant Revenue for the Police Department, with \$9,500 being allocated to DUII overtime and \$7,752 for additional Body Armor; and,

WHEREAS, The City’s Capital Project Fund (037) has realized additional revenue in from the transfers in from the General fund of \$287,008, to be allocated to the transfers out to the State Office Building; and,

WHEREAS, The State Office Building Fund (055) has realized an additional \$287,008 in Transfers in from the Capital Project Fund, with proposed allocations \$175,000 for the New Generator and \$43,879 for the ADA Sidewalks, \$32,000 for the Exterior Painting, \$19,866 to re-tile the entryway and \$16,263 to paint the entryway.

Summary of Supplemental Budget-Line Item Detail				
Fund	Resource	Amount	Requirement	Amount
Special Grant Fund (018)	CDBG Grant Fund	150,000	Special Grant Fund Program	150,000
	Total New Resources	150,000	Total New Requirements	150,000
	Total New Special Grant Fund Requirements			8,205,177
	New Total all Fund 018 Resources	8,205,177	New Total All Fund 018 Expenditures	8,205,177

Fund	Resource	Amount	Requirement	Amount
General Fund(001)	Miscellaneous Revenue	150,000	Legal Program	150,000
	Total New Resources	150,000	Total New Requirements	150,000
Total New General Fund Legal Department				564,030
General Fund(001)	Additional Beginning Fund Balance	287,008	Other Uses Transfers Out Program	287,008
	Total New Resources	287,008	Total New Requirements	287,008
	Total New General Fund Other Uses Department			
General Fund(001)	Grant Revenue	17,252	Police Department Program	17,252
	Total New Resources	17,252	Total New Requirements	17,252
New Police Department Requirements				4,929,359
	New Total all Fund 001 Resources	15,532,513	New Total All Fund 001 Expenditures	15,532,513
Fund	Resource	Amount	Requirement	Amount
CapitalProject Fund (037)	Transfers In from General Fund	287,008	Operating Transfers Out State Office Building	287,008
	Total New Resources	287,008	Total New Requirements	287,008
Total New Capital Project Department				868,895
	New Total all Fund 037 Resources	868,895	New Total All Fund 037 Expenditures	868,895

Fund	Resource	Amount	Requirement	Amount
State Office Building Fund (021)	Transfer In from Capital Projects Fund	287,008	Improvements Other	287,008
	Total New Resources	287,008	Total New Requirements	287,008
	Total New State Office Building Department			773,211
	New Total All Fund 021 Resources	773,211	New Total All Fund 021 Expenditures	773,211

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

Section 1. The City Council hereby adopts the Supplemental Budget for FY 22/23, increasing revenues and making appropriations as follows.

Section 2. This Resolution shall become effective upon adoption by the City Council and shall remain in effect until receipt and acceptance of the FY 22/23 audit report.

PASSED AND ADOPTED THIS 24th DAY OF OCTOBER, 2022.

Voting Yes, Councilors: _____

Voting No, Councilors: _____

Absent, Councilors: _____

Abstaining, Councilors: _____

AND APPROVED BY THE MAYOR THIS 24TH DAY OF OCTOBER, 2022.

SIGNED:

ATTEST:

Richard A. Mays, Mayor

Izetta Grossman, CMC, City Clerk



AGENDA STAFF REPORT

AGENDA LOCATION: Contract Review Board Item #11A

MEETING DATE: October 24, 2022

TO: Honorable Mayor and City Council

FROM: Dave Anderson, Public Works Director

ISSUE: Award of Water Master Plan Update contract – Contract No. 2022-005

BACKGROUND: Oregon drinking water regulations require that public water utilities develop 20-year master plans. It is common practice to update these 20-year plans about every 10 years. The City's existing Water Master Plan is 16 years old having been completed in 2006. The development of an updated Water Master Plan is included in this year's City budget.

Since 2011, Oregon public contracting laws have required that engineering contracts over \$100,000 in value be awarded utilizing Qualification Based Selection (QBS) methods without an initial consideration of price. Using QBS, a Request for Proposal (RFP) is advertised and interested engineering firms submit proposals outlining their experience and qualifications to perform the work described in the RFP. After an evaluation and ranking of proposals, the project owner (City) then enters into negotiations with the top-ranked proposer to develop a final scope of work and contract price that is fair and equitable. If negotiations fail to produce agreeable contract terms, the project owner can terminate negotiations and then initiate new negotiations with the second-ranked proposer.

Staff developed an RFP for Contract 2022-005 to update the City's 20-year Water Master Plan which was advertised in June 2022 on the City's website and in 11 different plan centers in Oregon and Washington. Pre-qualification was required wherein interested proposers had to demonstrate that they had the appropriate expertise and experience, and had successfully completed similar projects in recent years.

Proposals were opened on July 21, 2022 with three proposals being received from:

- RH2 Engineering Inc.
- Consor North America Inc. dba MurraySmith (now just Consor Engineers LLC)

- Carollo Engineers

All three firms have extensive experience developing municipal water master plans.

The proposals were reviewed, evaluated, and ranked by an evaluation committee made up of the Public Works Director, Assistant Public Works Director, City Engineer, Project Engineer and Water Quality Manager. After review of the written proposals, the committee was split between the top two firms. To break the tie, the top two proposers were invited to participate in interviews. After the interviews, the evaluation committee was unanimous in its ranking of the proposal from MurraySmith as being the most qualified for the City's contract. Shortly after the proposals were received, MurraySmith became Consor Engineers LLC; all staff related to the project will remain as proposed.

Negotiations with Consor have resulted in a scope of work and contract price presented herein for the City Council's consideration. The scope of work includes the tasks normally undertaken in a master planning effort such as 20-year population and water demand projects, water supply analyses, water system capacity evaluations, development of a 20-year Capital Improvement Plan (CIP), and a water rates and System Development Charge (SDC) assessments and recommendations. The City is at a key point in its water utility planning where its existing plan is 16 years old, continued growth in the community must be anticipated and accommodated, aging infrastructure needs to be rehabilitated or replaced, and utility knowledge must be memorialized to support the anticipated turn-over in key staff members in the near future. Therefore, in addition to the routine planning elements mentioned above, this planning effort is intended to be more robust than normal and include some "less-routine" tasks which are important to the City as this time such as:

- a detailed condition assessment of our existing (and aging) water utility infrastructure. It is important to conduct detailed condition assessments of the City's existing infrastructure because we know that we have a water treatment plant that is over 70 years old and distribution pipelines that are over 120 years old. It is important to understand the current condition and estimate the remaining useful life of these systems so that an appropriate rehabilitation and replacement program can be developed to maintain the long-term viability of the water utility.
- optional seismic evaluations of the Wicks Water Treatment Plant elements that are found to have significant remaining service life. This task is optional because it would not be efficient to expend the time and money to conduct seismic evaluations on infrastructure systems that were found to be at or very near the end of their useful life and warranted rehabilitation or replacement for non-seismic reasons.
- updating and calibration of the City's computerized hydraulic model. The existing model needs to be updated to include all of the water utility infrastructure that will be constructed under the terms of the Infrastructure Agreement with Design LLC and then calibrated to predict water system operations with those and other new systems and users in place.
- optional task to update the City's current steady-state hydraulic model for its water distribution system to a more powerful extended period simulation (EPS) model. This task is identified for implementation if it is found that a more robust hydraulic model is warranted to accurately portray the daily variations in water

use to inform these planning efforts. This task is not anticipated to be implemented unless it is needed for completion of the plan or for future model analyses.

- identification and evaluation of renewable energy opportunities associated with the water utility. This task will evaluate the opportunities to generate electricity from the water transmission lines between the Wicks Water Treatment Plant and the City, and potential downhole power generation at the planned Aquifer Storage and Recovery (ASR) wells.
- a detailed water utility rates analysis by customer class as required in the recent Infrastructure Agreement. This task will complete a thorough cost-of-service analysis related to water rates to ensure that customer classes are paying their equitable share of water utility costs rather than subsidizing or being subsidized by other classes of customers.
- and an assessment of the climate resiliency of the City's surface water supplies over the next 50 and 100-year periods. This task will apply publicly available climate models for the Columbia Basin to the City's Watershed and project future surface water flow patterns and timing.

Staff had contacted consultants prior to the last budget year to obtain a cost estimate for developing a master plan for a utility of our size, and that estimate was used to develop the budget for the project at \$550,000.00. The proposed price for the base scope of work for the project is over the budgeted amount at \$628,385.00; the total proposed cost if both optional tasks are undertaken is \$734,887.00. The increased cost is due to the additional amount of work associated with the non-routine planning tasks that are warranted to meet the City's current water utility planning needs.

BUDGET ALLOCATION: Fund 53, the Water Reserve Fund, allocates \$550,000.00 for the Water Master Plan Update Project. The proposed contract price with both optional tasks included is \$734,887.00, \$184,887.00 over the budgeted amount. The optional tasks will only be undertaken if it is determined that they are needed – i.e. seismic evaluations won't be conducted on systems determined to be at or very near the end of their useful life and an EPS model won't be developed if needed information can be developed with the existing hydraulic model.

Within Fund 53, funds are being accrued for the future repainting of the Garrison Reservoir; the current budget identifies \$1,469,735.00 for that future painting project. The proposed Water Master Plan Update project can be fully funded by using some of the Garrison Reservoir monies. With use of those funds, there are adequate funds available for this contract including the two optional tasks presented above.

COUNCIL ALTERNATIVES:

1. **Staff Recommendation:** *Move to authorize the City Manager to enter into contract with Consor Engineering LLC in an amount not to exceed \$734,887.00 for Contract No. 2022-005, the Water Master Plan Update contract.*
2. Move to authorize the City Manager to enter into contract with Consor Engineering LLC, excluding the optional "contingency" tasks identified in the proposal dated

October 2022, in an amount not to exceed \$628,385.00 for Contract No. 2022-005, the Water Master Plan Update contract.

3. Deny authorization to award contract No. 2022-005 to Consor Engineering LLC and provide additional direction to staff.



AGENDA STAFF REPORT

AGENDA LOCATION: Action Item #12A

MEETING DATE: October 24, 2022

TO: Honorable Mayor and City Council

FROM: Joshua Chandler, Interim Community Development Director
Alice Cannon, Consultant – Cannon Service Solutions

ISSUE: Consider terminating Local Agency Agreement No. 24441, an intergovernmental agreement between the City and Oregon Department of Transportation for the Urban Renewal Agency-managed project known as The Dalles Riverfront Access Project (also known as the “First Street Project.”)

BACKGROUND: In June 2008, the City of The Dalles and the Oregon State Department of Transportation (**ODOT**) entered into an agreement to accept federal funds (**\$1,566,000**) to assist with the construction of certain street and pedestrian improvements on East First Street from Union Street to Laughlin Street and to construct a plaza and below-grade bicycle/pedestrian undercrossing of the Union Pacific Railroad lines on Washington Street (**Project**).

In the early 2010s, City Council became concerned about the considerable cost and general infeasibility associated with the railroad undercrossing at Washington Street. City Council directed staff to place the project on hold until 2015. The City Council executed a new engineering contract in 2018 to continue the Project with a new Project boundary. Eliminating the Washington Street railroad undercrossing resulted in roadway improvements limited to First Street between Union and Laughlin Streets. The design is now 95% complete and is almost ready for bid.

In May 2022, the City’s engineering consultants informed staff ODOT forecasted a construction delay on the Project, extending completion from the previous estimate of Summer 2023 to (at least) Summer 2025 or Summer 2026. ODOT needs additional time to manage and process environmental permits needed for the Project.

When staff learned of the delay it asked the design consulting team to develop cost estimates comparing an ODOT-delivered Project and a City-delivered Project without the federal project grant. The team's analysis resulted in a June 2022 cost-estimate showing the City can deliver the Project one to three years earlier (**Summer 2023, 2024, or 2025**) and complete the Project at a savings of approximately **\$821,000**. This estimate considers inflation estimates and construction material cost escalation costs as of early June 2022. This added cost even assumes the City will have to repay approximately **\$320,000** of the Project grant (i.e., portion of the grant already expended since 2007).

Urban Renewal Agency Board unanimous consensus. At the July 19, 2022, Urban Renewal Agency Board (**Board**) regular meeting, staff presented a thorough summary detailing the Project status and seeking direction from the Board. In July 2022, staff informed the Board it recommends considering terminating the grant agreement in light of the significant costs and delay. After discussion, the Board concurred with staff and reached unanimous consensus to recommend Council take action to terminate the agreement with ODOT and continue the Project independently at a cost and time savings to the Urban Renewal Agency and the City.

Local Agency High Priority Project Agreement No. 24441. The agreement provides the City and ODOT may terminate the agreement by mutual written consent. The City received an email from David Amiton, ODOT Region 4 Planning & Programming Manager, on September 23, 2022, explaining ODOT's process for mutual written termination here:

Please consider this email to be ODOT's confirmation that ODOT is willing to cancel the project and terminate the agreement.

To move the project cancelation and agreement termination forward, the following steps are needed:

- a. City provides a letter (email is fine) from an authorized representative indicating their desire to cancel the project and terminate the agreement.*
- b. ODOT bills the City for any past federal expenditures attached to the grant (To date since 2008, the City has requested approximately \$320,000 in grant proceeds to fund the project).*
- c. Upon receipt of funds from the City, ODOT returns the funds to FHWA.*
- d. ODOT proceeds with the STIP amendment (i.e., project cancelation) process.*

If the City wishes to move forward in canceling the project and terminating the agreement, please undertake step 1, above.

I also spoke with ODOT Program and Funding Services about requesting an exception for repayment (partial or full) of the federal grant funds expended to date. As we are nearing the end of the federal fiscal year, they anticipate this process would take approximately four weeks and there is a 50/50 likelihood of receiving an exception. The process is essentially that that ODOT and the City

make the case/tell the story to FHWA about why an exception for repayment is warranted, and they then determine whether an exception can be granted.

Staff's recommendation here is to authorize the City Manager or designee to provide ODOT a letter indicating the City's desire to cancel the Project and terminate the agreement. According to ODOT, the City's letter will trigger a series of events leading to ODOT billing the City for its past federal expenditures connected with this grant and ultimately cancelling the State's involvement in this Project.

BUDGET IMPLICATIONS: Both ODOT and the City's engineering consultant have concluded the City can deliver the project one to three years earlier (**Summer 2023, 2024 or 2025**) if the agreement is terminated and the Project would also be completed with a savings of approximately **\$821,000**. This estimate considers inflation estimates and construction material cost escalation costs as of early June 2022. This added cost even assumes the City will have to repay approximately \$320,000 of the project grant (i.e., the portion of the \$1.64M grant already expended since 2007).

Sufficient funds were adopted by the City Council in the Fiscal Year 2022/2023 budget to cover Project costs, if led by ODOT or the City/URA.

COUNCIL ALTERNATIVES:

1. **Staff recommendation:** *Move to Authorize the City Manager or designee to write, sign, and send a letter or email to ODOT indicating the City's desire to cancel the First Street/Downtown Riverfront Access Project and terminate Local Agency High Priority Project Agreement No. 24441.*
2. Decline to so authorize the City Manager and provide additional direction.

Attachment

Attachment "A" – *Local Agency High Priority Project Agreement No. 24441*

**LOCAL AGENCY AGREEMENT
HIGH PRIORITY PROJECT**

City of The Dalles: The Dalles Riverfront Access Project

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT," and The City of The Dalles, acting by and through its elected officials, hereinafter referred to as "City," collectively referred to as the "Parties."

RECITALS

1. 1st Street and Washington Street are a part of the city street system under the jurisdiction and control of City.
2. By the authority granted in ORS 190.110, 366.572, and 366.576, ODOT may enter into cooperative agreements with the counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. Under provisions of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which provides authorization for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; ODOT is required to set aside federal funds over the five (5) years of SAFETEA-LU for projects to address High Priority Projects.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under said provisions, City agrees to design and construct pedestrian street improvements on East 1st Street from Union to Laughlin and a direct below grade bicycle/pedestrian crossing of the Union Pacific Railroad main tracks on Washington Street, hereinafter referred to as "Project." The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. The Project shall be conducted as a part of the High Priority Projects Program authorized under SAFETEA-LU. The total Project cost is estimated at \$4,837,000,

City/ODOT
Agreement No. 24441

which is subject to change. The High Priority Project funds available for the Project are estimated at \$1,566,000 with City providing the match for the federal funds and any non-participating costs, including all costs in excess of the available federal funds. The federal pro-rata funding for the project is 89.73 percent and provided federal funds will be subject to annual obligation limitations and possible rescissions. The funds shall be used for preliminary engineering, right of way, utility relocation, and construction. *No State Gas Tax Funds shall be used on this Project.*

- 3. ODOT considers City a subrecipient of the federal funds under this Agreement.
- 4. The Federal Bill Number and Project Description are as shown in the table below:

High Priority Projects Program Number	Project Description
4716	Plan, design, and construct the Dalles, Oregon Riverfront Access

- 5. The federal funding for this Project is contingent upon approval by the Federal Highway Administration (FHWA). Any work performed prior to acceptance by FHWA will be considered nonparticipating and paid for at City expense. The Catalog of Federal Domestic Assistance (CFDA) number for this Project is 20.205.
- 6. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate on completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner. The attached Special Provisions may contain additional termination conditions.
- 7. City certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within City's current appropriation or limitation of current budget. City is willing and able to finance all, or its pro-rata share of all, costs and expenses incurred in the Project up to its maximum.
- 8. This Agreement may be terminated by mutual written consent of both Parties.
- 9. ODOT may terminate this Agreement effective upon delivery of written notice to City or at such later date as may be established by ODOT, under any of the following conditions:
 - a. If City fails to provide services called for by this Agreement within the time specified herein or any extension thereof.

- b. If City fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from ODOT fails to correct such failures within ten (10) days or such longer period as ODOT may authorize.
 - c. If City fails to provide payment of its share of the cost of the Project.
 - d. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or ODOT is prohibited from paying for such work from the planned funding source.
10. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
11. The Special and Standard Provisions attached hereto, marked Attachment 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachment 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
12. City, as a recipient of federal funds, pursuant to this Agreement with ODOT, shall assume sole liability for City's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon City's breach of any such conditions that requires ODOT to return funds to the Federal Highway Administration, hold harmless and indemnify ODOT for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of City, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

City/ODOT
Agreement No. 24441

13. City shall enter into and execute this Agreement during a duly authorized session of its City Council.
14. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
15. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

IN WITNESS WHEREOF, the Parties hereto have set their hands as of the day and year hereinafter written.

This Project is in the 2006-2009 Statewide Transportation Improvement Program, (Key **#15471**) that was approved by the Oregon Transportation Commission on November 14, 2007 (or subsequently approved by amendment to the STIP).

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

City/ODOT
Agreement No. 24441

On July 31, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates to the Deputy Director, Highways, the authority to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission.

City of The Dalles, by and through its elected officials

By Nelson K Young
City Manager

Date 5-13-08

By Julia Keegan
City Recorder

Date 5-13-08

APPROVED AS TO LEGAL SUFFICIENCY

By Joe E. Furber
City Counsel

Date May 6, 2008

City Billing Address:

Mr. ~~Brian Stahl~~ David Anderson
Director Public Works ap
313 Court Street
The Dalles, OR 97058
(541) 296-5481

STATE OF OREGON, by and through its Department of Transportation

By [Signature]
Deputy Director, Highways

Date 6-11-08

APPROVAL RECOMMENDED

By [Signature]
Technical Services Manager/Chief Engineer

Date 6-11-08

By [Signature]
Region 4 Manager

Date 06-02-08

By Sam F. Wilkins, Jr.
District 9 Manager

Date 5-21-08

APPROVED AS TO LEGAL SUFFICIENCY

By [Signature]
Assistant Attorney General

Date: 6/9/08

**ATTACHMENT 1
SPECIAL PROVISIONS**

1. City, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right of way; obtain all required permits; arrange for all utility relocations or reconstruction; perform all construction engineering, including all required materials testing and quality documentation; and prepare necessary documentation to allow ODOT to make all contractor payments.
2. In the event that City elects to engage the services of a personal services consultant to perform any work covered under this Agreement, City and Consultant shall enter into a Personal Services Contract approved by ODOT's Office of Procurement Manager or designee (Salem). Said contract must be reviewed and approved by the Office of Procurement Manager or designee prior to beginning any work. This review includes, but is not limited to the Request for Proposal, Statement of Work, advertisement and all contract documents. This review and approval is required to ensure federal reimbursement.
3. ODOT may make available Region 4's On-Call PE, Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If City chooses to use said services, they agree to manage the work done by the consultant and make funds available to ODOT for payment of those services. All eligible work shall be a federally participating cost and included as part of the total cost of the Project.
4. City guarantees the availability of City funding in an amount required to fully fund City's share of the Project. Prior to award of the contract, the Project cost is defined as the engineer's estimate plus 10 percent.
5. City shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and/or service demand.
6. If City fails to meet the requirements of this Agreement or the underlying federal regulations, ODOT may withhold the City's proportional share of Highway Fund distribution necessary to reimburse ODOT for costs incurred by such City breach.

ATTACHMENT 2

STANDARD PROVISIONS

JOINT OBLIGATIONS

PROJECT ADMINISTRATION

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will further act for Agency in other matters pertaining to the Project. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

PRELIMINARY & CONSTRUCTION ENGINEERING

3. State, Agency, or others may perform preliminary and construction engineering. If Agency or others perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered by this Agreement, Agency and Consultant shall enter into a State reviewed and approved personal services contract process and resulting contract document. State must concur in the contract prior to beginning any work. State's personal services contracting process and resulting contract document will follow Title 23 Code of Federal Regulations (CFR) 172, Title 49 CFR 18, ORS 279A.055, the current State Administrative Rules and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. Subcontracts shall contain all required provisions of Agency as outlined in the Agreement. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or its consultant prior to receiving authorization from State to proceed. Any amendments to such contract(s) also require State's approval.
4. On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency, subject to any limitations imposed by state law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

REQUIRED STATEMENT FOR UNITED STATES DEPARTMENT OF TRANSPORTATION (USDOT) FINANCIAL ASSISTANCE AGREEMENT

5. If as a condition of assistance, Agency has submitted and the United States Department of Transportation (USDOT) has approved a Disadvantaged Business Enterprise Affirmative

Action Program which Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of the financial assistance agreement. Upon notification from USDOT to Agency of its failure to carry out the approved program, USDOT shall impose such sanctions as noted in [Title 49, CFR, Part 26](#), which sanctions may include termination of the agreement or other measures that may affect the ability of Agency to obtain future USDOT financial assistance.

6. **Disadvantaged Business Enterprises (DBE) Obligations.** State and its contractor agree to ensure that DBE as defined in [Title 49, CFR, Part 26](#), have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with [Title 49, CFR, Part 26](#), to ensure that DBE have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. Agency shall carry out applicable requirements of [Title 49, CFR, Part 26](#), in the award and administration of such contracts. Failure by Agency to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as State deems appropriate.
7. The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Agreement.
8. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
9. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of [ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270](#), incorporated herein by reference and made a part hereof; [Title 23 CFR Parts 1.11, 140, 710, and 771; Title 49 CFR Parts 18, 24 and 26; OMB CIRCULAR NO. A-87 and NO. A-133 Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended and provisions of Federal-Aid Policy Guide \(FAPG\)](#).

STATE OBLIGATIONS **PROJECT FUNDING REQUEST**

10. State shall submit a Project funding request to FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or construction work for the Project. **No work shall proceed on any activity in which federal-aid participation is desired until such approval has been obtained.** The program shall include services to be provided by State, Agency, or others. State shall notify Agency in writing when authorization to proceed has been received from FHWA. Major responsibility for the various phases of the Project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations.

FINANCE

11. State shall, in the first instance, pay all reimbursable costs of the Project, submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost

accounting records. Agency may request a statement of costs to date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.

PROJECT ACTIVITIES

12. State shall, if the preliminary engineering work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
13. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
14. State shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts.
15. Upon State's award of a construction contract, State shall perform independent assurance testing in accordance with State and FHWA Standards, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
16. State shall, as a Project expense, assign a liaison person to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). The liaison shall process reimbursement for federal participation costs.

RIGHT OF WAY

17. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of the Project. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project, provided Agency (or Agency's consultant) are qualified to do such work as required by the State's Right of Way Manual and have obtained prior approval from State's Region Right of Way office to do such work.
18. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each party. State shall always be responsible for requesting project funding, coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through the State's Region Right of Way offices on all projects. All projects must have right of way certification coordinated through State's Region Right of Way offices (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on the Project). Agency should contact the State's Region Right of Way office for additional information or clarification.

19. State shall review all right of way activities engaged in by Agency to assure compliance with applicable laws and regulations. Agency agrees that right of way activities shall be in accord with the Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FHWA Federal-Aid Policy Guide, State's Right of Way Manual and the Code of Federal Regulations, Title 23, Part 710 and Title 49, Part 24.
20. If any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
21. Agency insures that all Project right of way monumentation will be conducted in conformance with ORS 209.155.
22. State and Agency grants each other authority to enter onto the other's right of way for the performance of the Project.

AGENCY OBLIGATIONS

FINANCE

23. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement. If federal funds are used, Agency will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Agreement. Agency will also determine and clearly state in the Agreement if recipient is a subrecipient or vendor, using criteria in Circular A-133.
24. Agency's estimated share and advance deposit.
 - A. Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
 - B. Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
 - C. Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
 - D. Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.

25. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.
26. Costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon.
27. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear 100 percent of all costs as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear 100 percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all development costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
28. Agency shall follow requirements of the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving \$500,000 or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which the local agency participates. The cost of this audit can be partially prorated to the federal program.
29. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
30. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison Person for review and approval. Such invoices shall identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of Title 23 CFR Parts 1.11, 140 and 710, Final billings shall be submitted to State for processing within three months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering 2) last payment for right-of-way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three months from date that costs are incurred. Final billings submitted after the three months shall not be eligible for reimbursement.

31. The cost records and accounts pertaining to work covered by this Agreement are to be kept available for inspection by representatives of State and FHWA for a period of three (3) years following the date of final voucher to FHWA. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (Title 49 CFR 18.42).
32. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:
- a) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the federal-aid funds were authorized;
 - b) Right of way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right of way acquisition.
 - c) Construction proceeds after the Project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).
33. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.

RAILROADS

34. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through State's appropriate Region contact or State's Railroad Liaison. Only those costs allowable under Title 23 CFR Part 646, subpart B and Title 23 CFR Part 140, subpart I, shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

UTILITIES

35. Agency shall cause to be relocated or reconstructed, all privately or publicly-owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements of the Project. Only those utility relocations, which are eligible for federal-aid participation under, Title 23 CFR 645A, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties.

36. Agency shall follow established State utility relocation policy and procedures. The policy and procedures are available through the appropriate State's Region Utility Specialist or State's Right of Way Section Railroad Liaison, and Utility Engineer.

STANDARDS

37. Agency agrees that design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current "[State Highway Design Manual](#)" and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the Project shall be in substantial compliance with the most current "[Oregon Standard Specifications for Highway Construction](#)".

38. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "[Oregon Bicycle and Pedestrian Plan](#)", unless otherwise requested by Agency and approved by State.

39. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".

40. All plans and specifications shall be developed in general conformance with the current "[Contract Plans Development Guide](#)" and the current "[Oregon Standard Specifications for Highway Construction](#)" and/or guidelines provided.

41. The standard unit of measurement for all aspects of the Project may be either System International (SI) Units (metric), or English Units. However, all Project documents and products shall be in one or the other unit of measurement. This includes, but is not limited to, right-of-way, environmental documents, plans and specifications, and utilities. It should be recognized that the State is currently transitioning to English, and will be completely English by 2006.

GRADE CHANGE LIABILITY

42. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.

43. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.

44. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by [ORS 373.050\(1\)](#) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the project covered by the Agreement.

CONTRACTOR CLAIMS

45. Agency shall, to the extent permitted by state law, indemnify, hold harmless and provide legal defense for State against all claims brought by the contractor, or others resulting from Agency's failure to comply with the terms of this Agreement.

46. Notwithstanding the foregoing defense obligations under Paragraph 45, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of Oregon

or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Agency if the State of Oregon elects to assume its own defense.

MAINTENANCE RESPONSIBILITIES

47. Agency shall, upon completion of construction, thereafter maintain and operate the Project at its own cost and expense, and in a manner satisfactory to State and FHWA.

WORKERS' COMPENSATION COVERAGE

48. All employers, including Agency that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Agency shall ensure that each of its contractors complies with these requirements.

LOBBYING RESTRICTIONS

49. Agency certifies by signing the Agreement that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.
- D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- E. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Paragraphs 35, 36, and 47 are not applicable to any local agency on state highway projects.

**AMENDMENT NUMBER 01
LOCAL AGENCY AGREEMENT
HIGH PRIORITY PROJECT
The Dalles Riverfront Access
City of The Dalles**

This is Amendment No. 01 to the Agreement between the **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "State," and the **CITY OF THE DALLES**, acting by and through its elected officials, hereinafter referred to as "City," entered into on June 11, 2008

It has now been determined by State and City that the Agreement referenced above shall be amended to extend the termination date by reinstating the Agreement, revise the Project description, revise Exhibit A, revise the project funding, add required ADA language, add right of way language and add updated indemnification language.

1. **Effective Date.** This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.

2. **Agreement No. 24441** is hereby amended as follows:

a) Amendment of Exhibit

Exhibit A shall be deleted in its entirety and replaced with the attached Revised Exhibit A. All references to "Exhibit A" shall hereinafter be referred to as "Revised Exhibit A."

b) Amendment of Paragraphs 1, 2 and 6

TERMS OF AGREEMENT, Paragraph 1, Page 1, which reads:

Under said provisions, City agrees to design and construct pedestrian street improvements on East 1st Street from Union to Laughlin and a direct below grade bicycle/pedestrian crossing of the Union Pacific Railroad main tracks on Washington Street, hereinafter referred to as "Project." The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.

Shall be deleted in its entirety and replaced with the following:

Under said provisions, City agrees to design and construct pedestrian street improvements on East 1st Street from Madison Street to Union Street, and a pedestrian connection between Union Street and 2nd Street (approximately in the vicinity of Mill Creek), hereinafter referred to as "Project." The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.

TERMS OF AGREEMENT, Paragraph 2, Pages 1 and 2, which reads:

City of The Dalles/ODOT
Agreement No. 24441-1

The Project shall be conducted as a part of the High Priority Projects Program authorized under SAFETEA-LU. The total Project cost is estimated at \$4,837,000, which is subject to change. The High Priority Project funds available for the Project are estimated at \$1,566,000 with City providing the match for the federal funds and any non-participating costs, including all costs in excess of the available federal funds. The federal pro-rata funding for the project is 89.73 percent and provided federal funds will be subject to annual obligation limitations and possible rescissions. The funds shall be used for preliminary engineering, right of way, utility relocation, and construction. *No State Gas Tax Funds shall be used on this Project.*

Shall be deleted in its entirety and replaced with the following:

The Project shall be conducted as a part of the High Priority Projects Program authorized under SAFETEA-LU. The total Project cost is estimated at \$1,824,320, which is subject to change. The High Priority Project funds available for the Project are estimated at \$1,619,820 with City providing the match for the federal funds and any non-participating costs, including all costs in excess of the available federal funds. The federal pro-rata funding for the project is 89.73 percent and provided federal funds will be subject to annual obligation limitations and possible rescissions. The funds shall be used for preliminary engineering, right of way, utility relocation, and construction. *No State Gas Tax Funds shall be used on this Project.*

TERMS OF AGREEMENT, Paragraph 6, Page 2, which reads:

The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate on completion of the Project and final payment or ten (10) calendar years following the date that all required signatures are obtained, whichever is sooner. The attached Special Provisions may contain additional termination conditions.

Shall be deleted in its entirety and replaced with the following:

The term of this Agreement shall begin June 11, 2008 and shall terminate on completion of the Project and final payment or fifteen (15) calendar years, whichever is sooner. The attached Special Provisions may contain additional termination conditions.

c) Renumbering paragraphs

TERMS OF AGREEMENT, Paragraphs 6 through 12, shall be hereinafter re-numbered as Paragraphs 15 through 21.

TERMS OF AGREEMENT, Paragraphs 13 through 15, shall be hereinafter re-numbered as Paragraphs 26 through 28.

d) *Inserting new paragraphs 6 through 14*

Insert new TERMS OF AGREEMENT, Paragraphs 6 through 14, to read as follows:

6. Americans with Disabilities Act Compliance:

- a. When the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, the Parties shall:
 - i. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended by the ADA Amendments Act of 2008 (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - ii. Follow ODOT's processes for design, modification, upgrade, or construction of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
 - iii. At Project completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed, modified, upgraded, or improved as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/HwyConstForm_s1.aspx; and
 - iv. Promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by Agency and prior to release of any Agency contractor.
- b. City shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. City shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people

City of The Dalles/ODOT
Agreement No. 24441-1

- with disabilities, and disability organizations at least 10 days prior to the start of construction.
- c. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
- i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Any repairs or removal of obstructions needed to maintain Project features in compliance with the ADA requirements that were in effect at the time of Project construction are completed by Agency or abutting property owner pursuant to applicable local code provisions,
 - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- d. Maintenance obligations in this section shall survive termination of this Agreement.

7. Agency shall keep accurate cost accounting records. Agency shall prepare and submit monthly itemized, progress invoices for construction directly to State's Project Manager for review and approval. Such invoices will be in a form identifying the Project, the Agreement number, the invoice number or the account number or both, and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$1,619,820, including all expenses. Travel expenses will not be reimbursed.

8. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from State.

9. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv)

all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

10. Agency or its consultant shall acquire all necessary rights of way according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual. Certification of right of way acquisition work must be made by the Agency (or on behalf of its consultant) doing the work. If Agency acquires the right of way, they shall provide a letter from Agency's legal counsel certifying that 1) the right of way needed for the Project has been obtained and 2) right of way acquisition has been completed in accordance with the right of way requirements contained in this Agreement. The certification form shall be routed through the State Region 4 Right of Way Office for co-signature and possible audit. If Agency elects to have State perform right of way functions, a separate agreement shall be executed between Agency and State right of way, referencing this Agreement number.

11. Agency shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.

12. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.

13. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.

14. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of

its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.

e) Inserting new paragraphs 22 through 25

Insert new TERMS OF AGREEMENT, Paragraphs 22 through 25, to read as follows:

22. if any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
23. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
24. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such

expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

25. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
3. **Counterparts.** This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
4. **Original Agreement.** Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. Agency certifies that the representations, warranties and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2018-2021 Statewide Transportation Improvement Program, (Key #15471) that was adopted by the Oregon Transportation Commission on July 20, 2017 (or subsequently approved by amendment to the STIP).

SIGNATURE PAGE FOLLOWS

City of The Dalles/ODOT
Agreement No. 24441-1

CITY OF THE DALLES, by and through
its elected officials

By Stephen L. Lawrence
Mayor

Date June 20, 2018

By _____

Date _____

APPROVED AS TO LEGAL
SUFFICIENCY

By Gene Parker
Agency Counsel

Date June 20, 2018

City Contact:

Steven Harris - AICP II Director
Planning Department
313 Court Street
The Dalles, OR 97058
(541).296.5481 x1151
sharris@ci.the-dalles.or.us

State Contact:

David Amilton - Active Transportation
Liaison
63055 N. Highway 97, Bldg M
Bend OR, 97701-5765
(541) 388-6111
david.amilton@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By Megan Lynde
Highway Division Administrator

Date 7/12/18

APPROVAL RECOMMENDED
By [Signature]
Technical Services Manager/Chief
Engineer

Date 7/10/18

By MH C. Clark
State Right of Way Manager

Date 7/09/18

By [Signature]
Region 4 Manager

Date 7/6/18

By [Signature]
District 9 Manager

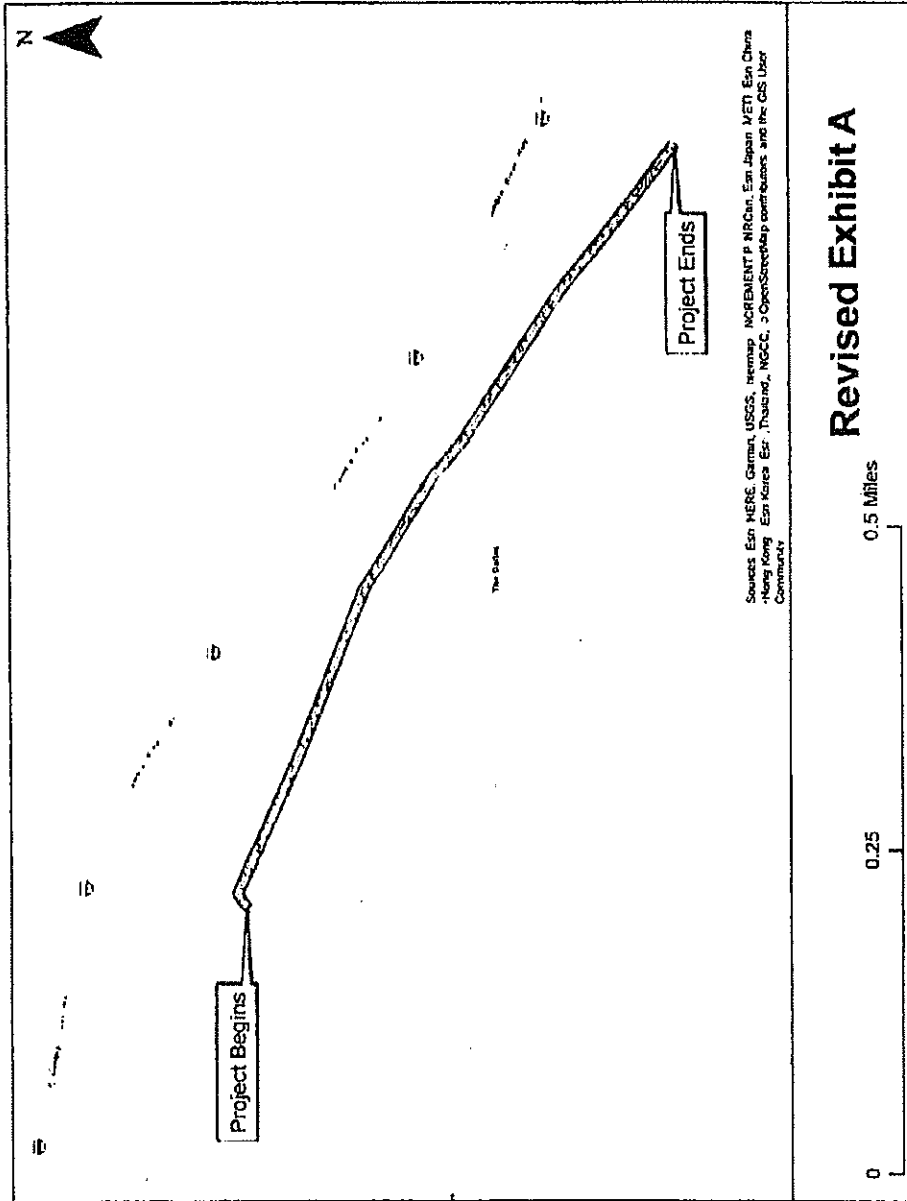
Date 7-5-2018

APPROVED AS TO LEGAL
SUFFICIENCY

By Rachel Bertoni via email
Assistant Attorney General

Date: 5/17/2018

REVISED EXHIBIT A





AGENDA STAFF REPORT

AGENDA LOCATION: Action Item #12B

MEETING DATE: October 24, 2022

TO: Honorable Mayor and City Council

FROM: Jonathan Kara, City Attorney

ISSUE: Adoption of General Ordinance No. 22-1390, an ordinance amending The Dalles Municipal Code Chapter 2.20 (Sidewalk Maintenance) and Chapter 2.24 (Public Rights-of-Way) for legal sufficiency

BACKGROUND: The City regulates sidewalk maintenance and public rights-of-way through TDMC Title 2—*Local Improvements*.

Sidewalk Maintenance

TDMC Chapter 2.20 addresses the responsibilities for sidewalk maintenance throughout the city limits and was last updated in 1997 by General Ordinance No. 97-1219. Generally, this chapter imposes a duty on the adjacent property owner to maintain sidewalks extending along their property and exempt the City from liability stemming from the owner's failure to maintain. I contacted the City's insurer to determine whether TDMC Chapter 2.20's current provisions adequately mitigate potential liabilities and it recommended the City update the Code to reflect current best practices.

The major proposed change here is the revision of TDMC 2.20.010(C)'s current language: as it stands, despite being exempt from liability for damage sustained resulting from a sidewalk's defective condition, the City could still be required to pay damages for personal injury or property damaged caused by the property owner's failure to maintain (in that case, the property owner must nevertheless reimburse the City for its actual payments). The proposed Ordinance (attached to and made part of this Staff Report as Attachment "A") instead aims to completely protect the City from liability by requiring the property owner *indemnify* the City against all liabilities for damage, injury, or loss sustained resulting from a sidewalk's defective condition (unless the City itself is the adjacent property owner).

Public Rights-of-Way

TDMC Chapter 2.24 addresses the City's regulatory control over all public rights-of-way throughout the city limits and the relevant provisions were last updated in 1997 by General Ordinance No. 97-1217. Generally, this chapter outlines the scope of the City's regulatory jurisdiction over and describes the limited ways the City grants permission to occupy its public rights-of-way. The chapter does not currently providing the City with the enforcement authority to sufficiently address situations involving unauthorized encroachments.

To address TDMC Chapter 2.24's shortcomings, the proposed Ordinance generally seeks to revise:

- TDMC 2.24.010 by broadening the definition of *owner* and adding a definition for *unauthorized encroachment*;
- TDMC 2.24.040 by giving the City flexibility in deciding the manner it grants permission to occupy or encroach on public rights-of-way; and
- TDMC 2.24.070 by improving the City's enforcement authority by:
 1. ensuring legal sufficiency by imposing a cap on the total penalty potentially imposed for construction-related violations of the chapter;
 2. imposing a duty and personal liability on an unauthorized encroachment's owner to remove the encroachment from and restore the public right-of-way to its original condition after notice from the City;
 3. allowing the City to remove unauthorized encroachments and restore the public right-of-way if the owner fails to do so, and to seek reimbursement of its actual and administrative costs in the removal and restoration;
 4. exempting the City from liability for the unauthorized encroachment's owner's failure to remove or restore, for any damage to or destruction of the unauthorized encroachment or public right-of-way, or stemming from the City's removal or restoration activities;
 5. authorizing the City to seek a personal judgment from unauthorized encroachment owners in Wasco County Circuit Court for its costs and expenses connected to enforcement of its public right-of-way jurisdiction; and
 6. declaring the installation, maintenance, or existence of an unauthorized encroachment to be a public nuisance detrimental to the public health, safety, and welfare, and allowing the City the option to abate pursuant to the provisions of TDMC Chapter 5.04—*Nuisances*.

Oregon law (ORS 294.160) requires the City provide an opportunity for interested persons to comment on the City's enactment of any ordinance prescribing a new fee: while new liabilities are not necessarily new fees and this is not a public hearing, best practices suggest the Mayor ask the audience for comment on this proposed Ordinance

before Council considers adoption.

BUDGET IMPLICATIONS: None.

COUNCIL ALTERNATIVES:

1. **Staff recommendation:** *Move to adopt General Ordinance No. 22-1390, an ordinance amending an ordinance amending The Dalles Municipal Code Chapter 2.20 (Sidewalk Maintenance) and Chapter 2.24 (Public Rights-of-Way) for legal sufficiency by title only.*
2. Move to adopt an amended General Ordinance No. 22-1390.
3. Decline formal action and provide Staff additional direction.

Attachments

Attachment “A” – *General Ordinance No. 22-1390*

GENERAL ORDINANCE NO. 22-1390

**AN ORDINANCE AMENDING THE DALLES MUNICIPAL CODE
CHAPTER 2.20 (SIDEWALK MAINTENANCE) AND
CHAPTER 2.24 (PUBLIC RIGHTS-OF-WAY)
FOR LEGAL SUFFICIENCY**

WHEREAS, the City regulates local improvements and public rights-of-way through The Dalles Municipal Code (TDMC) Title 2—*Local Improvements*, including sidewalk maintenance responsibilities and public rights-of-way permissions;

WHEREAS, TDMC Chapter 2.20 addresses sidewalk maintenance liabilities but has not been updated since 1991 and is inconsistent with the current legal landscape and the City’s insurer recommends revising TDMC Chapter 2.20 to mitigate the City’s potential liabilities consistent with current law;

WHEREAS, TDMC Chapter 2.24 addresses the City’s regulatory jurisdiction over and grants of permissions to occupy public rights-of-way within the city limits but has not been updated since 1997 and is inconsistent with the City’s current needs for flexible public rights-of-way permissions and enforcement; and

WHEREAS, the City Council considered these amendments during its regularly scheduled and noticed public meeting on October 24, 2022, and finds them in accordance with protecting and preserving the public health, welfare, and safety.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF THE DALLES
ORDAINS AS FOLLOWS:**

1. **TDMC Title 2 (LOCAL IMPROVEMENTS), Chapter 2.20 (SIDEWALK MAINTENANCE), Section 2.20.010 (Owner Responsibility and Liability)** shall be revised to read:

- A. The owner or owners of lots or tracts of land abutting or adjoining the streets within the City has the duty to maintain the sidewalks extending along, in front of, or abutting or adjoining such streets, in good repair and a safe condition, and they shall be liable to any person suffering bodily injuries or property damage resulting from any breach of this imposed duty.
- B. The City, its officers, employees, and agents shall be exempt from liability for all damage, injury, or loss to person or property sustained due to the defective condition of any sidewalk, unless the City is the owner of the lot or tract of land abutting or adjoining the defective sidewalk and breaches the duty imposed upon it pursuant to TDMC 2.20.010(A).
- C. If any party brings an action naming the City, its officers, employees, or agents connected with any alleged defective condition in a sidewalk, the owner or owners of lots or tracts of land abutting or adjoining the allegedly defective sidewalk shall indemnify, hold

harmless, and defend the City, its officers, employees, and agents, if the defective condition was the result of the breach of the duty imposed upon the owner or owners pursuant to TDMC 2.20.010(A).

D. For purposes of this chapter, “sidewalk” shall include “curb”.

2. **TDMC Title 2 (LOCAL IMPROVEMENTS), Chapter 2.24 (PUBLIC RIGHTS-OF-WAY), Section 2.24.010 (Definitions)** shall be revised to read:

For purposes of this chapter, the following mean:

“City” means the City of The Dalles, Oregon.

“Director” means the duly appointed Director of the Public Works Department or their authorized designee.

“Owner” means a person who actually or apparently owns, claims ownership of, controls, or maintains in any way an encroachment impacting a public right-of-way.

“Person” means an individual, corporation, association, firm, partnership, joint stock company, and similar business or other entities.

“Public right-of-way” means and includes, but is not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements, dedications, and all other public ways or areas, including subsurface and air space over these areas.

“Unauthorized encroachment” means a public right-of-way occupancy by persons, objects, or structures outside the scope of authority granted to a person by the City through this chapter, including unlicensed or unpermitted occupancies and occupancies never authorized by the City through franchise, easement, or other agreements.

“Within the City” means territory over which the City now has or acquires jurisdiction for the exercise of its powers.

3. **TDMC Title 2 (LOCAL IMPROVEMENTS), Chapter 2.24 (PUBLIC RIGHTS-OF-WAY), Section 2.24.040 (City Permission Requirement)** shall be revised to read:

No person may occupy or encroach on a public right-of-way without the City’s permission and the City grants permission to use public rights-of-way by, without limitation, franchises, licenses, permits, and easements.

4. **TDMC Title 2 (LOCAL IMPROVEMENTS), Chapter 2.24 (PUBLIC RIGHTS-OF-WAY), Section 2.24.070 (Violations)** shall be revised to read:

A. All construction activity of any kind where work is performed in a City public right-of-way in violation of this chapter shall be subject to a stop work order issued by the

Director and/or a fine not to exceed the sum of \$1,000.00. A separate offense shall be deemed committed on each day during or on which a violation occurs, but the total penalty imposed under this Section 2.24.070(A) shall not exceed \$10,000.00.

- B. Unauthorized encroachments on, upon, over, under, through, or into a public right-of-way shall be removed by its owner and they shall restore the public right-of-way to its original or a reasonably satisfactory condition prior to the encroachment, at no cost whatsoever to the City, within 14 days following written notice from the City or such other time agreed to in writing by the Director. The obligations to remove and restore shall survive the termination of any City permission. If the owner fails to remove or restore by the deadline imposed pursuant to this section, they shall be personally liable to the City for all costs arising from or relating to the encroachment, and the City retains the rights and privileges to:
1. Remove the unauthorized encroachment from and restore the public right-of-way without further notice as the City may determine to be necessary, appropriate, or useful in response to a public health or safety emergency, and the owner shall be responsible for reimbursing the City for its actual removal and restoration costs;
 2. Remove the unauthorized encroachment from and restore the public right-of-way within 7 days following the City's written notice to the owner of the City's intent to remove, and they shall be personally liable for paying the full cost of the removal, restoration, and any administrative costs incurred by the City in removal, restoration, and in obtaining reimbursement within 30 days of receiving a detailed invoice from the City of its actual costs;
 3. Not be liable to any person for the owner's failure to remove or restore, or for any damage to or destruction of the unauthorized encroachment or public right-of-way, stemming from the City's removal or restoration or for any consequential damages or losses resulting directly or indirectly therefrom, unless the damages or losses arise directly from the City's sole negligence or willful misconduct; and
 4. Seek a personal judgment in the Circuit Court of the State of Oregon for the County of Wasco for all costs or expenses incurred by the City pursuant to enforcement of this chapter, including without limitation the costs of removing the encroachment, restoring the public right-of-way, administrative costs, and attorneys' fees, and such costs may attach to any property owned by the owner and located within Wasco County in any other manner authorized by law.
- C. The installation, maintenance, or existence of an unauthorized encroachment is hereby declared to be a public nuisance detrimental to the public health, safety, and welfare, and the City may elect to abate unauthorized encroachments pursuant to the provisions of TDMC Chapter 5.04—Nuisances, as amended; provided, however, the owner shall be personally liable to the City for any and all costs relating to returning the public right-of-way to its original or a reasonably satisfactory condition prior to the encroachment,

including removal of structures and reconstruction of streets and/or pathways, which cost shall be imposed in any manner consistent with law, including personal civil judgment.

- 5. **TDMC Title 2 (LOCAL IMPROVEMENTS), Chapter 2.24 (PUBLIC RIGHTS-OF-WAY)** shall be amended to add a new **Section 2.24.090 (Application to Existing Agreements)** and shall read:

2.24.090 Application to Existing Agreements

To the extent this chapter is not in conflict and can be implemented consistent with existing City public right-of-way permissions, this chapter shall apply to all existing permits and encroachment, franchise, license, and easement agreements.

- 6. This Ordinance shall be effective 30 days after adoption.

PASSED AND ADOPTED THIS 24TH DAY OF OCTOBER, 2022,

Voting **Yes** Councilors: _____
Voting **No** Councilors: _____
Abstaining Councilors: _____
Absent Councilors: _____

AND APPROVED BY THE MAYOR THIS 24TH DAY OF OCTOBER, 2022.

Richard A. Mays, Mayor

ATTEST:

Izetta Grossman, CMC, City Clerk



AGENDA STAFF REPORT

AGENDA LOCATION: Action Item #12C

MEETING DATE: October 24, 2022

TO: Honorable Mayor and City Council

FROM: Dave Anderson, Public Works Director

ISSUE: Authorization of LOU for the Potential Purchase of Property in
The Dalles Municipal Watershed

BACKGROUND: City staff has previously briefed the City Council on its efforts to partner with the Columbia Land Trust (CLT) to secure funding for the purchase of one of the last remaining privately-owned parcels of land located within the drainage basin of The Dalles Municipal Watershed. Historically, the City has purchased privately-owned properties within the physical drainage of the Watershed on the rare occasions when they become available so that they can be managed for the protection of water quality. Often these purchases have occurred after the owner logs the property and thereby reduces its value making a purchase more affordable. These acquired lands then become part of the City's holdings of timber-producing lands which contribute occasional revenues to the City over time from controlled timber harvests. The City also incurs land management costs on the Watershed lands that it owns such as annual fire-protection assessments from the Oregon Department of Forestry.

Watershed lands under City ownership are managed with the primary goal of protecting water quality. Within that context timber harvests occur that focus on selective harvesting rather than clear cutting, forest management chemicals are very rarely and sparingly used, maintenance of forest health is emphasized, forest fire fuels are managed, grazing is prohibited, and public access and hunting are limited.

Earlier this year, the City Council indicated its support for staff to pursue development of a Memorandum of Understanding or similar agreement with CLT to memorialize the desire of the City to acquire the subject properties as the process will likely take 2-4 years to complete. It is intended that an agreement would be a method of documenting that desire for future staff and City Councilors' consideration.

The land under consideration for City acquisition was previously owned by SDS Lumber Company and totals approximately 3,400 acres. Some of the property burned in the 2013 Government Flats Fire and other of it was harvested following the fire. The property has been replanted with mixed stocking levels. Following the sale by SDS, the property is currently being held by an entity created for this acquisition effort called Lupine Forest LLC.

The 3,400-acre Watershed tract is part of a larger grant application being submitted by the CLT and The Conservation Fund to the US Forest Service's Forest Legacy Program which includes a total of 16,060 acres. If awarded, the grant would support the maintenance of working industrial forest lands, public recreation, wildlife habitat and, with the Watershed piece, the protection of water quality.

Attached for the Council's consideration is a draft Letter of Understanding (LOU) for consideration. If authorized, the LOU outlines the efforts of CLT and The Conservation Fund to secure funding for up to 75% of the land purchase price for the City; the City would plan to provide the remaining 25%. A very preliminary estimate of the value of the property is \$2,700,000; 25% of that would be \$675,000. The City would also plan to provide for the conservation of oak stands for wildlife habitat on the property.

BUDGET ALLOCATION: None at this time. If a grant is secured and a purchase is negotiated, there will be a future expenditure of funds in 2-4 years from the Water Reserve Fund, or other fund as may be directed by the City Council and City Manager.

COUNCIL ALTERNATIVES:

1. **Staff Recommendation:** *Move to authorize the execution of a Letter of Understanding with Columbia Land Trust and The Conservation Fund to secure funding for the purchase of approximately 3,400 acres of land owned by Lupine Forest LLC located within and near the drainage of The Dalles Municipal Watershed.*
2. Deny authorization for the Letter of Understanding and provide additional direction to staff.