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**RESOLUTION NO. 2023-02**

**A RESOLUTION OF THE CITY OF LINCOLN CITY AUTHORIZING  
AND DIRECTING DISPOSITION OF AN EASEMENT INTEREST IN  
CITY REAL PROPERTY FOR PURPOSES OF UNDERGROUND  
ELECTRIC UTILITY LINES / EQUIPMENT TO SERVICE CITY FACILITIES.**

**RECITALS**

- 10 A. The City of Lincoln City is the legal owner of real property with improvements located at  
11 located at the City water tank off SE Lee Ave, SE ¼ of the NE ¼ of Section 22, Township  
12 7S, Range 11W of the Willamette Meridian, Lincoln County, State of Oregon Tax Lot 07-  
13 11-22-AD-00100-00 (hereinafter subject property) being more particularly described and  
14 shown in Exhibit A and B of the Underground Right of Way Easement attached hereto and  
15 made a part hereof by this reference (Attached).  
16
- 17 B. PacifiCorp and City desire to install underground electric facilities to service the  
18 City's future pump station on the subject property and PacifiCorp requires an  
19 easement for such purposes;  
20
- 21 C. On January 23, 2023, the Lincoln City City Council, in the Council Chambers at 801  
22 SW Highway 101, Lincoln City, Oregon conducted an advertised public hearing on  
23 the proposed sale / conveyance of an easement interest in the subject property,  
24 pursuant to ORS 221.725, and ORS 271.310.  
25
- 26 D. The advertised purpose of the conveyance /sale, and the reason the City Council  
27 finds it necessary or convenient to sell /convey the property, to PacifiCorp is the  
28 City's desire to provide safe and efficient provision of electrical service to the City's  
29 pump station property.  
30
- 31 E. The nature of the sale / conveyance of an easement interest was duly advertised as a  
32 conveyance to PacifiCorp of an easement interest ten feet wide and 30 feet in  
33 length, generally perpendicular to S.E. Lee Ave.  
34
- 35 F. The January 23, 2023 City Council public hearing and Resolution staff reports are  
36 incorporated herein by this reference. All evidence of market value was fully disclosed  
37 and entered into the record at the public hearing on January 23, 2023.  
38
- 39 G. Pursuant to ORS 221.725, any resident of the City was provided with an opportunity to  
40 present oral or written testimony on the subject of the sale to the City Council at the  
41 public hearing.  
42

1 H. After hearing the staff report, public input, and due deliberation, Council made the  
2 findings set forth herein and directed the sale / conveyance of the easement interest in  
3 City real property with the conditions identified in the staff report and this Resolution.  
4

5 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LINCOLN**  
6 **CITY, AS FOLLOWS:**  
7

8 **SECTION 1. RECITALS.** The above recitals are true and correct and are incorporated  
9 herein by this reference.  
10

11 **SECTION 2. FINDINGS.**  
12

13 The Council finds and determines that the relevant statutory criteria for disposition of City  
14 real property are found in or referenced in ORS Chapter 271 (specifically ORS 271.310) as  
15 well as ORS 221.725.  
16

17 **ORS 271.310. Transfer or lease of real property owned or controlled by**  
18 **political subdivision; Procedure in case of qualified title.**  
19

20 (1) Except as provided in subsection (2) of this section, whenever any political  
21 subdivision possesses or controls real property not needed for public use, or  
22 whenever the public interest may be furthered, a political subdivision may sell,  
23 exchange, convey or lease for any period not exceeding 99 years all or any part  
24 of their interest in the property to a governmental body or private individual or  
25 corporation. The consideration for the transfer or lease may be cash or real  
26 property, or both.  
27

28 \*\*\*  
29

30 (4) Unless the governing body of a political subdivision determines under  
31 subsection (1) of this section that the public interest may be furthered, real  
32 property needed for public use by any political subdivision owning or controlling  
33 the property shall not be sold, exchanged, leased or conveyed under the  
34 authority of ORS 271.300 to 271.360, except that it may be exchanged for  
35 property which is of equal or superior useful value for public use. Any such  
36 property not immediately needed for public use may be leased if, in the  
37 discretion of the governing body having control of the property, it will not be  
38 needed for public use within the period of the lease.  
39

40 **221.725 Sale of city real property; publication of notice; public hearing.**  
41

42 (1) Except as provided in ORS 221.727, when a city council considers it necessary  
43 or convenient to sell real property or any interest therein, the city council shall publish



1 a notice of the proposed sale in a newspaper of general circulation in the city, and  
2 shall hold a public hearing concerning the sale prior to the sale.

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

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

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

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

20  
21 The Council finds and determines that it has received all information necessary to make a  
22 decision based on the Staff Report, public hearing testimony and the exhibits and evidence  
23 received.


24  
25 The Council finds and determines that this proposal to sell / convey an easement interest in the  
26 subject property to PacifiCorp for the purpose of providing underground utility service to the City's  
27 property and future pump station meets all applicable statutory minimum criteria for eligibility to  
28 sell / convey real property (or an interest therein), as more fully set forth herein. Further the City  
29 Council finds and determines that the proposed disposition of an easement interest in real  
30 property is deemed "necessary or convenient" to the City, and "furthers the public interest" as  
31 the sale will further the City Council's desire to provide safe and efficient provision of electric power  
32 to essential City utility facilities (future pump station). The Council further finds and determines that  
33 the easement portion of the City property identified herein is not necessary for City use. The  
34 findings herein are supported by competent substantial evidence in the whole record,  
35 incorporated herein by this reference.

36  
37 **SECTION 3. ORDER.** Based on the above Findings set forth herein and based upon the  
38 evidence in the whole record, the City Council hereby approves and directs the sale /  
39 conveyance of an easement interest in the subject real property, subject to all identified  
40 conditions, included or referenced herein. The real property sale / conveyance of an  
41 easement interest is delegated to the City Manager and City Attorney who are  
42 authorized to execute such easement agreements, contracts, deeds and other documents  
43 necessary to complete the authorized disposition of an interest in real property. The  
44 manager is authorized to restrict access to adjacent lands (contrary to the general language

1 of the proposed easement). The City Attorney must approve all documents as to form. The  
2 Manager is expressly delegated the authority to sign documents for the City. The Manager  
3 and Attorney are authorized to expend funds necessary to effectuate the sale/conveyance,  
4 including but not limited to purchase of insurances and other title company services and  
5 products. When not specifically allocated to a party, costs are split between the parties.  
6

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

9  
10 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 23<sup>rd</sup> day of January  
11 2023.  
12

13  
14   
15 \_\_\_\_\_  
16 SUSAN WAHLKE, MAYOR  
17 City of Lincoln City  
18

19 ATTEST:

20  
21  
22   
23 \_\_\_\_\_  
24 JAMIE YOUNG, CITY RECORDER  
25

26 APPROVED AS TO FORM

27  
28   
29 \_\_\_\_\_  
30 RICHARD APPICELLO, CITY ATTORNEY



Return to: Pacific Power  
**PO Box 788 / 416 NE Hwy 101**  
Lincoln City, OR 97367

CC#: 11236 WO#: 8134856

**UNDERGROUND RIGHT OF WAY EASEMENT**

For value received, *City of Lincoln City, a municipal corporation* ("Grantor"), hereby grants to PacifiCorp, an Oregon corporation, its successors and assigns ("Grantee"), a perpetual easement for a right of way **10** feet in width and **30** feet in length, more or less, for the construction, reconstruction, operation, maintenance, repair, replacement, enlargement, and removal of Grantee's underground electric distribution and communication lines and all necessary or desirable accessories and appurtenances thereto, including without limitation: wires, fibers, cables and other conductors and conduits therefor; and pads, transformers, switches, cabinets, vaults on, across, or under the surface of the real property of Grantor in *Lincoln County, State of Oregon*, as more particularly described as follows and/or shown on Exhibit(s) *A and B* attached hereto and by this reference made a part hereof:

A portion of:

***That real property more particularly described on Exhibit "B"***

Assessor's Map No.: **07-11-22-AD**

Parcel No.: **00100-00**

Together with the right of ingress and egress for Grantee, its contractors, or agents, to the right of way ~~from adjacent lands of Grantor~~ for all activities in connection with the purposes for which this easement has been granted; and together with the present and (without payment therefor) the future right to keep the right of way clear of all brush, trees, timber, structures, buildings and other hazards which might endanger Grantee's facilities or impede Grantee's activities.

At no time shall Grantor conduct or permit any ground penetrating activity or excavation in the right of way without the express written consent of the Grantee. Subject to the foregoing limitations, the right of way may be used for other purposes not inconsistent, as determined by the Grantee, with the purposes for which this easement has been granted.

**JURY WAIVER.** TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS EASEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE, OR TO REQUEST THE CONSOLIDATION OF, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH

A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THIS PARAGRAPH WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

Grantor represents and warrants that it possesses all right, title and interest in and to the right of way area, free and clear of any lien, security interest, encumbrance, claim, license or other restriction that would interfere with Grantee's use of the right of way area for the purposes contemplated hereunder.

The rights and obligations of the parties hereto shall be binding upon and shall benefit their respective heirs, successors and assigns and shall run with the land.

Dated this 23<sup>rd</sup> day of December, 20    .

**CITY OF LINCOLN CITY**

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

Its: \_\_\_\_\_ **GRANTOR**

**REPRESENTATIVE ACKNOWLEDGEMENT**

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } SS.

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

by \_\_\_\_\_, as \_\_\_\_\_,  
Name of Representative Title of Representative

of \_\_\_\_\_  
Name of Entity on behalf of whom this instrument was executed

\_\_\_\_\_  
Notary Public

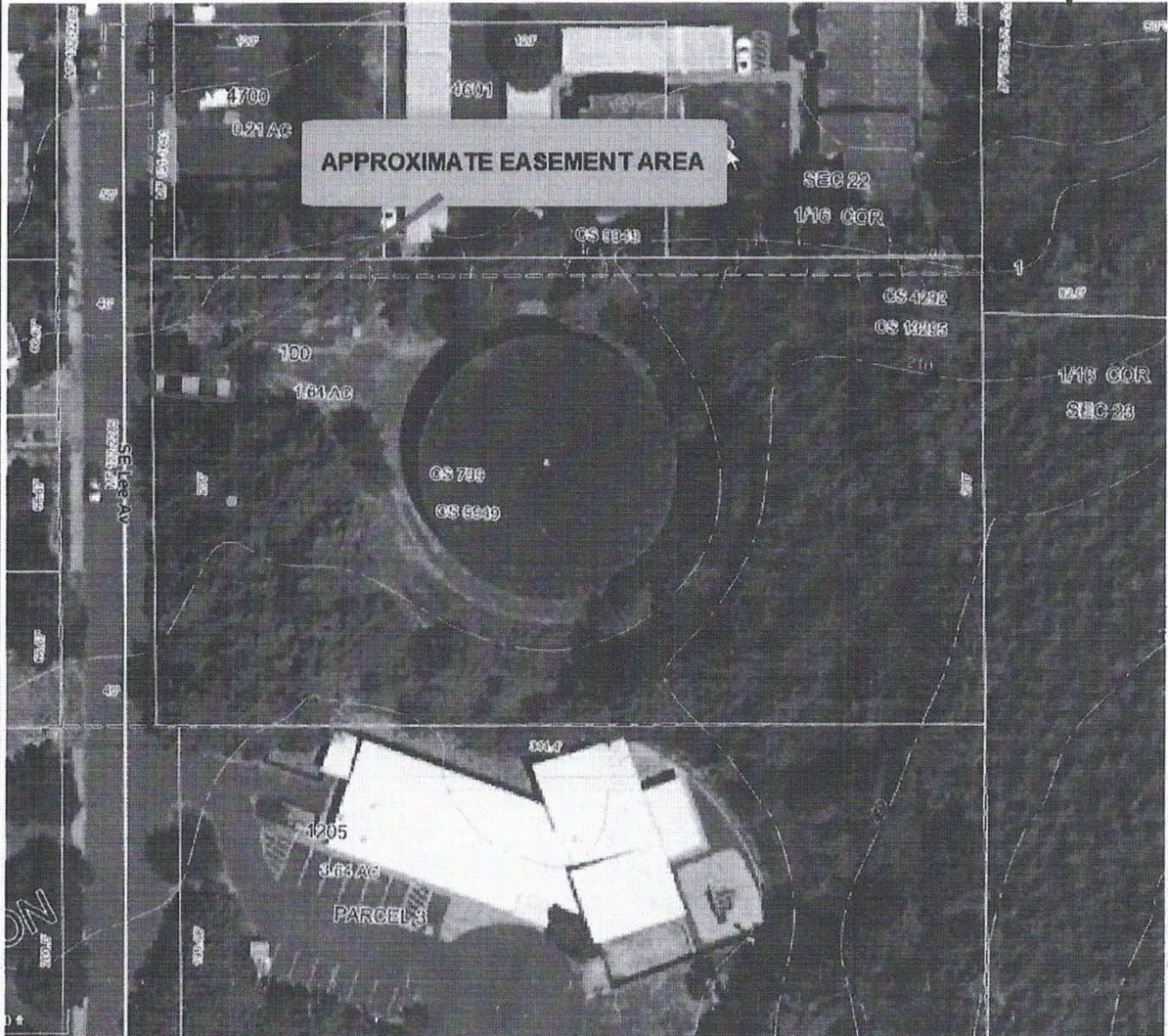
My commission expires: \_\_\_\_\_



**PROPERTY DESCRIPTION**

In the S.E. 1/4 OF THE N.E. 1/4 of Section 22, Township 7S, Range 11W  
of the Willamette Meridian, Lincoln County, State of Oregon.

Map / Tax Lot or Assessor's Parcel No.: 07-11-22-AD-00100-00



CC#: 11236 WO#: 8134856 ROW#:

Landowner: City of Lincoln City

Drawn by: J. Lee

**EXHIBIT A**

This drawing should be used only as a representation of the location of the easement area. The exact location of all structures, lines and appurtenances is subject to change within the boundaries of the described easement area.





**PROPERTY DESCRIPTION**

A portion of:

Beginning at a point which is 7.8 feet North and 945.46 feet East from the Southwest corner of the Northeast quarter of the Northeast quarter of Section 22, Township 7 South, Range 11 West of the Willamette Meridian, in Lincoln County, Oregon; thence East 373.9 feet; thence South and parallel with the East line of said Section 22, 200 feet; thence West 373.9 feet to a point that is South of the point of beginning; thence North 200 feet to the point of beginning, reserving and excepting nevertheless the Westerly 20 feet of said property for purposes of ingress and egress as a public roadway.

TOGETHER WITH an easement described as follows:

Beginning at a point which is North 207.8 feet and East 965.46 feet from the Southwest corner of the Northeast one quarter of the Northeast one quarter of Section 22, Township 7 South, Range 11 West, Willamette Meridian, in Lincoln County, Oregon; thence South parallel to the East line of Section 22, 400 feet; thence West 40 feet; thence North parallel to the East line of said Section 22, 400 feet; thence East 40 feet to the point of beginning, for the purposes of ingress and egress and for public roadway purposes.

CC#: 11236 WO#: 8134856

Grantor Name: City of Lincoln City

**EXHIBIT B**

**PACIFIC POWER**  
A DIVISION OF PACIFICORP