

RESOLUTION NO. 2017-02

**A RESOLUTION DECLARING AN EMERGENCY AND EXEMPTING FROM FORMAL
COMPETITIVE BIDDING THE SEWER BORING CHANGE ORDER TO THE SCHOONER
CREEK UTILITY BORING CONTRACT CURRENTLY UNDER CONSTRUCTION.
PURSUANT TO OAR 137-049-0150 AND LCMC 2.05.080.A.**

WHEREAS, pursuant to the City Public Contracting Code and applicable Oregon Administrative Rules, the City Council approved a contract with K & E Excavation Inc. to remove an existing utility line from the Schooner Creek bridge and to bore a new utility line under Schooner Creek; and

WHEREAS, the contractor is currently on-site and performing the boring portion of the contract; and

WHEREAS, the Oregon Department of Transportation has announced it plans to perform a cathodic protection project on the Schooner Creek bridge beginning in the fall of 2017; such ODOT work, while desirable will necessitate the City performing unscheduled/unbudgeted work to remove the City sewer line currently attached to the Schooner Creek Bridge and perform bypass pumping of sewage with temporarily suspended bypass piping for the length of the ODOT project; and

WHEREAS, the ODOT project will necessitate, an expenditure of, conservatively, \$650,000 for the temporary bypass project which creates an increased risk of sewage discharge based on the temporary nature of the bypass construction; and

WHEREAS, the bypass creates a risk of substantial loss, damage, unnecessary or undesirable interruption or degradation of public facilities or services, and a public health threat requiring prompt award and execution of a contract to remedy the situation; and

WHEREAS, under the City's public contracting code, which implements State contracting requirements, the City Council may declare an emergency and enter into a public contract without first obtaining competitive bids or proposals; and

WHEREAS, pursuant to LCMC 2.05.080.A(2), the City Manager has filed the prerequisite written report with the Council describing the proposed contract creating a

1 permanent solution sewer bore, explaining the circumstances that create the
2 emergency, said report incorporated herein by this reference; and

3 WHEREAS, the circumstances creating the emergency include the risk to the
4 environment and public health caused by the temporary sewer bypass necessitated by
5 the ODOT project; and

6 WHEREAS, the time constraints associated with the emergency contract
7 (permanent sewer bore) make the formal competitive bidding processes impossible
8 and necessitates an emergency procurement, specifically there is insufficient time to
9 obtain easements and environmental permits and to complete competitive bidding and
10 selection of a contractor for a new bore project under Schooner Creek in time to avoid
11 the bypass project in this environmentally sensitive location; and

12 WHEREAS, the City has already approved a contract change order under
13 separate legal authority permitting the project to proceed by the existing contractor on
14 site for another utility boring project; and

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

18 Section 1. The Council finds the facts as stated in the recitals to this Resolution
19 and the Report (Council Communication) of the City Manager, are true and correct and
20 support this Resolution and are incorporated herein by this reference; and

21 Section 2. The Council finds that an emergency as defined in OAR 137-049-0150
22 and LCMC 2.05.080.A exists in that there is a substantial risk of loss, damage, or
23 unnecessary or undesirable disruption or interruption of public facilities and services, or
24 a threat to health and safety (sewage discharge), which loss may be avoided by an
25 emergency procurement of construction services; and

26 Section 3. The Council authorizes the direct award such emergency contract to
27 the existing contractor on-site (in addition to the already independently approved
change order); In the event the on-site contractor rejects the Change Order and this

1 Direct Award, the City Manager need not solicit written or oral requests for offers if the
2 Manager determines a direct award to a qualified bidder under a prior procurement for
3 boring services is possible within thirty days of approval of this Resolution.

4 Section 4. The scope of this Contract must be limited to Work that is necessary
5 and appropriate to remedy the conditions creating the Emergency – to avoid the
6 bypass; the Council authorizes the expenditure of funds as per the Council's action on
7 February 13, 2017, and any transfer Resolution adopted by Council in furtherance of
8 this project. Regardless of the status of the change order, the direct award of this
9 emergency contract shall occur within 10 days of this Resolution, unless an extension is
10 awarded by the City Manager, but in no case more than thirty days; performance and
11 payment bonds may not be waived.

12 Section 5. The Council further finds that the emergency contract specifically
13 authorized by this Resolution will result in substantial cost savings to the City, given the
14 mobilization of the existing contractor on-site, and further that the award will not
15 encourage favoritism in the awarding of the contract or substantially diminish
16 competition.

17 Section 6. This resolution shall be effective as of the date of its adoption by the
18 City Council.

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20 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 27th
21 day of February, 2017.

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DON WILLIAMS, MAYOR

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24 ATTEST:

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CATHY STEERE, CITY RECORDER

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