ORDINANCE NO.

Authorize the Water Bureau to acquire certain property and easements necessary for construction of the Corrosion Control Improvements Project through the exercise of the City’s Eminent Domain Authority as a last resort (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The City of Portland may exercise the power of eminent domain pursuant to Section 9-108 of the City Charter when deemed necessary by the City Council to accomplish public purposes for which the City has responsibility, provided that power is exercised in accordance with the eminent domain procedures established by Oregon Revised Statutes Chapter 35 (Eminent Domain; Public Acquisition of Property), including those procedures that apply to notification, valuation, negotiation, relocation, and early possession if necessary.

2. The City of Portland has the responsibility to provide high quality water and stewardship of the City’s water infrastructure including implementation of safety improvements which benefit City employees and the public.

3. The Corrosion Control Improvements Project (Project) has been planned in accordance with appropriate engineering standards for the construction, maintenance, and improvement of the City’s water infrastructure in a way that minimizes property damage and protects the health and safety of City employees and the public.

4. The Project will design and construct a corrosion control treatment facility at the Water Bureau’s Lusted Hill Facility. The Project will include a new building to house the new corrosion control treatment system, a new utility water pump station and associated piping and support systems.

5. The Project is part of the Water Bureau’s ongoing efforts to minimize the corrosion of lead in household plumbing and is required to meet the Oregon Health Authority’s compliance schedule with completion of the corrosion control treatment facility by April 30, 2022.

6. To accomplish the Project’s goals set forth above and to construct the Project as designed, the City must acquire the property and easements described and depicted on Exhibits A through L attached to this Ordinance and by this reference incorporated herein.
7. The cost to acquire the Project property rights will be determined by appraisals that will comply with the requirements of ORS Chapter 35, Eminent Domain; Public Acquisition of Property.

8. The estimated total Project cost is $19,916,132. Funds of $1,600,000 are available as part of the FY 2019-20 Budget. Additional funds will be requested in FY 2020-21 through FY 2022-23 Budgets.

NOW, THEREFORE, the Council directs:

a. That it is hereby declared necessary to acquire the Properties attached to this Ordinance for the Project, for which the City is authorized by law to acquire said property, and that the Project has been planned, designed, located, and will be constructed in a manner that will be most compatible with the greatest public good and the least private injury.

b. That the Administrator of the Portland Water Bureau, Chief Engineer or designee, and the City Attorney are each authorized to acquire the necessary property interests described herein for the Project under the eminent domain authority of the City, including filing an action to acquire said property interests or negotiating just compensation with property owners within available project budget funds. The Administrator of the Portland Water Bureau or designee, and the City Attorney are each further authorized to enter into obligations or agreements with property owners to address construction management concerns within available project budget funds.

c. That the power of eminent domain is hereby authorized with respect to each of the interests in the Properties. Each of the Properties acquired is subject to payment of just compensation and subject to procedural requirements of Oregon law.

d. In the event that no satisfactory compensation agreement can be reached, the City may commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition.

e. That this authorization is not intended to expand the jurisdiction of any court to decide matters determined or determinable by the City Council.

f. That the Portland Water Bureau is authorized to determine the continuing necessity or propriety of the acquisition authorized by this Ordinance, its quantity, quality, or locality, and to reduce or abandon an acquisition described on Exhibits A through L.

g. There is hereby authorized the creation of a fund in the amount estimated to be the just compensation for the Property which, if necessary, shall be deposited with the clerk of the court where a condemnation action is commenced.
h. The Chief Engineer and Administrator are hereby authorized to pay for the resulting obligations or agreements on this Project from the Water Fund when demand is presented and approved by the proper authorities.

Passed by the Council:

Commissioner Amanda Fritz
Prepared by: David Peters
Date Prepared: June 10, 2019

Mary Hull Caballero
Auditor of the City of Portland
By

Deputy
A parcel of land, located on a portion of land conveyed to Aaron and Brittany Cory by deed document 2017-137606 (recorded November 14, 2017), Multnomah County Deed Records; being situated in the Northeast quarter of Section 22, Township 1 South, Range 4 East, Willamette Meridian, Multnomah County, Oregon. Said parcel being more particularly described as follows:

BEGINNING at the Southwest corner of said Cory property, being marked by an iron rod with a plastic cap as shown on survey number 54996, Multnomah County Survey Records; thence along the West line North 31°29'08" West, 217.95 feet to an angle point in the West line; thence continuing along the West line North 22° 11'42" West, 195.14 feet to the Northwest corner of Cory, also being marked by an iron rod, as shown in survey number 54996, Multnomah County Survey Records; thence along the North line North 58° 18'16" East, 16.06 feet; thence leaving the North line South 32° 12'52" East, 432.41 feet to the South line of Cory; thence along the South line South 83°46'51" West, 16.38 feet to an angle point in the South line; thence South 79°39'49" West, 41.01 feet to the POINT OF BEGINNING.

The basis of bearing for this description is the Oregon State Plane Coordinate System - North Zone.

This parcel contains 18,117 square-feet, more or less.

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON
MAY 10, 2011
DAVID R. KING
82190
EXPIRES: 6/30/19
EXHIBIT B

THE NATURE CONSERVANCY
Bk 1233 Pg 43 (1-9-1978)

Iron rod (SN 54996)

The Sandy River
Property / Diack Trust
Doc 97-163483 (10-23-1997)

Point of Beginning
Iron rod with cap
(SN 54996)

AARON & BRITANNY CORY
Doc 2017-137606
(11-14-2017)

EASEMENT AREA

S. E. Lusted Rd.

S. E. Lusted Rd.

CITY OF PORTLAND
WATER BUREAU

EASEMENT EXHIBIT

DATE: 7/3/2018
PROJECT W02190
SCALE: 1" = 100 FT.

T1S R4E Sec 22, NE Qtr
QSEC 3766
EXHIBIT C

LEGAL DESCRIPTION FOR AN EASEMENT
CITY OF PORTLAND WATER BUREAU - JULY 3, 2018

A parcel of land, located on a portion of land conveyed to The Nature Conservancy in deed book 1233, Page 43 (recorded January 9, 1978), Multnomah County Deed Records; being situated in the Northeast quarter of Section 22, Township 1 South, Range 4 East, Willamette Meridian, Multnomah County, Oregon. Said parcel being more particularly described as follows:

BEGINNING at the Southwest corner of said Nature Conservancy property, being marked by an iron rod as shown on survey number 54996, Multnomah County Survey Records; thence along the West line of the Nature Conservancy North 27°24'40" West, 191.78 feet; thence leaving the West line South 32°12'52" East, 191.26 feet to the South line; thence along the South line South 58°18'16" West, 16.06 feet to the POINT OF BEGINNING.

The basis of bearing for this description is the Oregon State Plane Coordinate System - North Zone.

This parcel contains 1,536 square-feet, more or less.
EXHIBIT E
LEGAL DESCRIPTION FOR AN EASEMENT
CITY OF PORTLAND WATER BUREAU - March 7, 2019

A strip of land, located on a portion of land conveyed to The Sandy River Property / Diack Trust by deed document 97-163483 (recorded Oct 23, 1997), Multnomah County Deed Records; being situated in the Southeast quarter of Section 15 and the Northeast quarter of Section 22, Township 1 South, Range 4 East, Willamette Meridian, Multnomah County, Oregon. Said strip being more particularly described as follows:

BEGINNING at a brass disk marking the North quarter corner of said Section 22; thence along the North-South quarter-section line of Section 22, South 01°50'13" West, 38.98 feet; thence South 63°23'17" East, 296.15 feet; thence South 38°56'53" East, 111.07 feet; thence South 90°00'00" East, 158.40 feet; thence South 63°23'17" East, 78.16 feet; thence South 32°12'52" East, 927.85 feet; thence South 56°29'03" West, 20.49 feet; thence South 33°30'57" East, 229.83 feet to the North line of S.E. Lusted Road; thence along the North line of S.E. Lusted Road, North 79°39'49" East, 43.63 feet to the Southwest corner of that tract deeded to Aaron and Brittany Cory by document 2017-137606, Multnomah County Deed Records, being marked by an iron rod with a plastic cap as shown on survey number 54996, Multnomah County Survey Records; thence along the West line of Cory, North 31°29'08" West, 217.95 feet; thence continuing along the West line of Cory, North 22°11'42" West, 195.14 feet to the Southwest corner of that tract deeded to The Nature Conservancy in Book 1233, Page 43 (recorded January 9, 1978), Multnomah County Deed Records; thence along the West line of The Nature Conservancy, North 27°24'40" West, 191.78 feet; thence leaving the West line of The Nature Conservancy, North 32°12'52" West, 594.90 feet; thence North 63°23'17" West, 102.49 feet; thence North 00°44'46" West, 45.70 feet; thence North 63°10'44" West, 187.05 feet; thence North 89°15'56" West, 37.29 feet; thence North 63°23'17" West, 356.97 feet to the North-South quarter-section line of Section 15; thence along the quarter-section line South 00°13'49" West, 103.37 feet to the POINT OF BEGINNING.

The basis of bearing for this description is the South line of the Southeast quarter of said Section 15, held as South 88°23'13" East.

This strip contains 164,143 square-feet, more or less.
EXHIBIT F

The Sandy River Property / Diack Trust
Doc 97-163483 (10-23-1997)

The Sandy River Property / Diack Trust
Doc 97-163483 (10-23-1997)

The Nature Conservancy
Bk 1233 Pg 43 (1-9-1978)

Aaron & Britanny Cory
Doc 2017-137606 (11-14-2017)

City of Portland Water Bureau

EASEMENT EXHIBIT

DATE: 3/7/2019
T15 S R4E Sec 15, SE Qtr
T15 S R4E Sec 22, NE Qtr

PROJECT W02190
NOT TO SCALE
A parcel of land, located on a portion of land conveyed to Lusted Road Farms, LLC by deed document 2016-064481 (recorded May 26, 2016), Multnomah County Deed Records; being situated in the Southwest quarter of Section 15, Township 1 South, Range 4 East, Willamette Meridian, Multnomah County, Oregon. Said parcel being more particularly described as follows:

BEGINNING at a brass disk marking the South quarter corner of said Section 15, thence North 86°18'18" West 330.00 feet along the South line of Section 15; thence on a line parallel with the North-South centerline of Section 15, North 00°13'49" East 220.00 feet; thence on a line parallel with the South line of Section 15, South 86°18'18" East 330.00 feet to the North-South centerline; thence along the North-South centerline South 00°13'49" West 220.00 feet to the POINT OF BEGINNING.

The basis of bearing for this description is the South line of the Southwest quarter of said section 15, held as North 86°18'18" West.

This tract contains 72,467 square-feet, more or less.
EXHIBIT I

LEGAL DESCRIPTION FOR AN EASEMENT
CITY OF PORTLAND WATER BUREAU - JULY 17, 2018

A strip of land, located on a portion of land conveyed to Lusted Road Farms, LLC by deed document 2016-064481 (recorded May 26, 2016), Multnomah County Deed Records; being situated in the Southwest quarter of Section 15, Township 1 South, Range 4 East, Willamette Meridian, Multnomah County, Oregon. Said strip being more particularly described as follows:

Commencing at a brass disk marking the South quarter corner of said Section 15, thence North 86°18'18" West 330.00 feet along the South line of Section 15; thence on a line parallel with the North-South centerline of Section 15, North 00°13'49" East 148.58 feet to the POINT OF BEGINNING; thence continuing along a line parallel with the North-South centerline of Section 15, North 00°13'49" East 36.84 feet; thence North 63°23'17" West, 1099.28 feet to the West line of said Lusted Road Farms land; thence along the West line South 00°49'37" West 36.65 feet to a point which falls 577.25 feet North of the South line of Section 15, as measured along the West line of Lusted Road Farms land; thence leaving the West line South 63°23'17" East, 511.27 feet to the North line of that land conveyed to Tom Taylor in document 2009-053609, Multnomah County Deed Records; thence along the North line South 86°18'18" East, 75.05 feet to Taylor's Northeast corner; thence along the East line of said Taylor land South 00°27'27" West, 32.56 feet; thence leaving Taylor's East line South 63°23'17" East, 504.96 feet to the POINT OF BEGINNING.

The basis of bearing for this description is the South line of the Southwest quarter of said Section 15, held as North 86°18'18" West.

This strip contains 35,064 square-feet, more or less.
EXHIBIT J

Lusted Road Farms, LLC
Doc. 2016-064481

Center ¼ of
Section 15, T1S R4E

Point of Beginning

Tom Taylor
2009-053609

Brass disk at the
South ¾ of
Section 15, T1S R4E

City of Portland
Bk 932 Pg 422
(Nov 30, 1923)

CITY OF PORTLAND
WATER BUREAU
EASEMENT EXHIBIT

DATE: 7/17/2018
T1S R4E Sec 15, SW Qtr
QSEC 3665
PROJECT W02190
NOT TO SCALE
A parcel of land, located on a portion of land conveyed to Tom Taylor by deed document 2009-053609 (recorded April 21, 2009), Multnomah County Deed Records; being situated in the Southwest quarter of Section 15, Township 1 South, Range 4 East, Willamette Meridian, Multnomah County, Oregon. Said parcel being more particularly described as follows:

COMMENCING at a brass disk marking the South quarter corner of said Section 15; thence along the South line of Section 15 North 86°18'18" West 784.58 feet to a point on the extended East line of said Taylor land; thence along the extended East line and the true East line of said Taylor land North 00°27'27" East 345.49 feet to the TRUE POINT OF BEGINNING; thence continuing along the East line North 00°27'27" East 32.56 feet to the Northeast corner; thence along the North line of said Taylor land North 86°18'18" West 75.05 feet; thence leaving the North line South 63°23'17" East 83.47 feet to the TRUE POINT OF BEGINNING.

The basis of bearing for this description is the South line of the Southwest quarter of said section 15, held as North 86°18'18" West.

This parcel contains 1,220 square-feet, more or less.
EXHIBIT L

TRUE POINT OF BEGINNING

Lusted Road Farms, LLC
Doc. 2016-064481

Point of Commencement
Brass disk at the
South ¼ of
Section 15, T1S R4E

City of Portland
Bk 932 Pg 422
(Nov 30, 1923)
IMPACT STATEMENT

Date: June 10, 2019
Council Date: July 24, 2019
Legislation Title: Authorize the Water Bureau to acquire certain property and easements necessary for construction of the Corrosion Control Improvements Project through the exercise of the City’s Eminent Domain Authority as a last resort (Ordinance)
Contact Name: Michelle Cheek
Contact Phone: (503) 823-2003
Presenter Name: Teresa K. Elliott, P.E., Chief Engineer
Ben Gossett, Coordinator III

Purpose of proposed legislation and background information:

The purpose of the proposed legislation is to authorize the Water Bureau to acquire certain fee property and permanent easements necessary for the construction and maintenance of the Corrosion Control Improvements (Project) through the exercise of the City’s Eminent Domain Authority. The properties are described in Exhibits A-L attached to the Ordinance.

The Project is part of the Water Bureau’s ongoing efforts to minimize the corrosion of lead in household plumbing. The Water Bureau is required to meet the Oregon Health Authority’s compliance schedule with completion of the corrosion control treatment facility by April 30, 2022. This Project will design and construct a corrosion control treatment facility at the Water Bureau’s Lusted Hill Facility which will include a new building to house the new corrosion control treatment system, a new utility water pump station, and associated piping and support systems.

In order to accommodate construction, facility access, and future maintenance, the Water Bureau would acquire new property in fee, clarify existing property rights language, and acquire new permanent easements.

Financial and budgetary impacts:

The cost to acquire the Project property rights will be determined by an appraisal that will comply with the requirements of ORS Chapter 35, Eminent Domain; Public Acquisition of Property.
The estimated total Project cost is $19,916,132. Funds of $1,600,000 are available as part of the FY 2019-20 Budget. Additional funding will be requested in FY 2020-21 through FY 2022-23 Budgets.

The proposed legislation will not create, eliminate or re-classify any positions now or in the future.

Community impacts and community involvement:

The Project is still in an early design phase. There will likely be traffic impacts along Lusted Road, although they are anticipated to be minimal. Traffic control plans will be developed to mitigate traffic impacts on the local, rural community. It is anticipated that traffic control plans will be implemented by the hired Contractor to assure the vehicles, machinery, equipment, and supplies do not block traffic for an extended period. Traffic control plans will likely include flaggers, signs, traffic cones, road closure signs and other approved Manual on Uniform Traffic Control Devices (MUTCD) traffic control during construction to minimize local impacts. A utility corridor with utility piping will cross SE Lusted Hill Road. As a result, this road may be shut down during installation activity.

Water Bureau designated staff will inform impacted owners within the Project area of the proposed legislation to obtain eminent domain authority to acquire property rights on their property. Based on this information, area owners may testify at the City Council meeting. No other individuals are anticipated to testify.

100% Renewable Goal:

This action will not increase or decrease the City's total energy use. This action will not increase or decrease the City's renewable energy use.

Budgetary Impact Worksheet

Does this action change appropriations?

☐ YES: Please complete the information below.

☒ NO: Skip this section

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<th>Commitment Item</th>
<th>Functional Area</th>
<th>Funded Program</th>
<th>Grant</th>
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<th>Amount</th>
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Michael Stuhr, P.E., Administrator

Date: 6/17/19