

ORDINANCE NO.

Authorize the Portland Water Bureau to enter into an agreement with Dean and Patricia Walter and pay consideration in the amount of \$55,000 for costs to construct a new well (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. Dean and Patricia Walter (Owner) own property located in east Multnomah County described as State ID # 1S4E23C 2200 (subject property). The property is adjacent to Portland Water Bureau property where the Bull Run Filtration Project (Project) is being planned.
2. Project planning involves conducting geotechnical borings and other sampling to evaluate subsurface conditions on the Portland Water Bureau property for Project purposes.
3. The subject property utilizes a shallow aquifer and well to provide water to the Owner's residence. The shallow nature of the well increases risk that it may be affected by the Portland Water Bureau's geotechnical drilling and future Project construction work.
4. The Portland Water Bureau desires to reduce the risk of the Project activities affecting the well by relocating it on the subject property and drilling it in a deeper aquifer.
5. The Owner has agreed to be responsible for constructing a new well using the licensed contractor in exchange for payment of consideration estimated to include all costs related to installation of the new well and reconnection to the Owner's home.
6. Owner solicited bids from licensed contractors to drill and install a new well and reconnect household plumbing.
7. The Portland Water Bureau and Owner have reached an agreement in accordance with attached Exhibit A that contains the parties' commitments related to the work to be performed, schedule, payment and other general terms and conditions.
8. The purpose of this legislation is to authorize the Portland Water Bureau to enter into the Agreement and pay Owner the agreed upon consideration so that the well relocation work may proceed.

9. The Portland Water Bureau will pay the Owner consideration in the sum of \$55,000 which provides for all costs associated with relocating their well. Funds are available in the FY 2020-21 Budget.
10. The Portland Water Bureau will have no ongoing obligation to maintain, repair, or replace the Owner's well after it has been relocated.

NOW, THEREFORE, the Council directs:

- a. That the Portland Water Bureau Director or designee is authorized to execute an agreement substantially in accordance with Exhibit A to pay Owner consideration in the amount of \$55,000 for costs to construct a new well.
- b. The agreement authorized by this ordinance is subject to approval as to form by the City Attorney's Office.
- c. The Mayor and Auditor are hereby authorized to draw and deliver checks chargeable to the Water Fund when demand is presented and approved by the proper authorities.

Passed by the Council,

Commissioner Amanda Fritz
Prepared by: Ben Gossett
October 12, 2020

Mary Hull Caballero
Auditor of the City of Portland
By

Deputy

Agenda No.
ORDINANCE NO.
 Title

Authorize the Portland Water Bureau to enter into an agreement with Dean and Patricia Walter and pay consideration in the amount of \$55,000 for costs to construct a new well (Ordinance)

<p style="text-align: center;">INTRODUCED BY Commissioner/Auditor: Amanda Fritz</p>	<p>CLERK USE: DATE FILED <u>November 9, 2020</u></p>
<p style="text-align: center;">COMMISSIONER APPROVAL</p>	<p style="text-align: center;">Mary Hull Caballero Auditor of the City of Portland</p> <p>By: <u>Keelan McClymont</u> <small>Digitally signed by Keelan McClymont Date: 2020.11.09 09:48:34 -08'00'</small> Deputy</p> <p>ACTION TAKEN:</p>
<p>Mayor—Finance & Administration - Wheeler</p>	
<p>Position 1/Utilities - Fritz <small>Date: 2020.10.15 10:54:55 -07'00'</small></p>	
<p>Position 2/Works - Ryan</p>	
<p>Position 3/Affairs - Hardesty</p>	
<p>Position 4/Safety - Eudaly</p>	
<p style="text-align: center;">BUREAU APPROVAL</p>	
<p>Bureau: Water Bureau Head: <u>Gabriel Solmer</u> <small>Digitally signed by Gabriel Solmer Date: 2020.10.13 16:40:52 -07'00'</small></p>	
<p>Prepared by: Ben Gossett Date Prepared: 10/12/2020</p>	
<p>Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p>	
<p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	
<p>City Auditor Office Approval: required for Code Ordinances</p>	
<p>City Attorney Approval: <u>Karen Moynahan</u> required for contract, code, easement, franchise, comp plan, charter <small>Digitally signed by Karen Moynahan Date: 2020.10.14 15:29:58 -07'00'</small></p>	
<p>Council Meeting Date November 18, 2020</p>	

AGENDA
<p>TIME CERTAIN <input type="checkbox"/> Start time: _____ Total amount of time needed: _____ (for presentation, testimony and discussion)</p>
<p>CONSENT <input checked="" type="checkbox"/></p>
<p>REGULAR <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)</p>

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz		
2. Ryan	2. Ryan		
3. Hardesty	3. Hardesty		
4. Eudaly	4. Eudaly		
Wheeler	Wheeler		

Ordinance Exhibit A

After recording return to:

Portland Water Bureau
Attn: Ben Gossett
1120 SW 5th Ave. Rm. 405
Portland, OR 97204

AGREEMENT AND GENERAL RELEASE

This Agreement and General Release ("**Agreement**") is entered by and between Dean D. Walter and Patricia L. Walter, husband and wife (collectively, the "**Owner**"), and the City of Portland, a municipal corporation of the State of Oregon, acting by and through the Portland Water Bureau ("**City**") effective as of _____, 2020 (the "**Effective Date**"). Owner and City are referred to collectively in this Agreement as the "**Parties**".

RECITALS

- A. Owner owns certain real property commonly known as 36322 SE Dodge Park Blvd, Boring, OR 97009, legally described as follows (the "**Subject Property**"):

All that part of tract of Block 3, EDGEWATER, in the County of Multnomah and State of Oregon, lying outside the right-of-way of the Mt. Hood Division of the Portland Electric Power Company, EXCEPTING therefrom a strip of land 20 feet in width off the Easterly side of the said Block 3, the entire distance across the same from the West line to the South line of said Block 3, said strip of land being immediately adjoining and parallel with the Westerly side line of said Railroad right-of-way.

- B. The Subject Property is adjacent to City property where the Bull Run Filtration Project (the "**Project**") is planned to be constructed.
- C. The City is conducting, has conducted in the past, and will conduct in the future, various geotechnical, groundwater, and related investigations and work for the Project on the City property and in the surrounding area, including, without limitation, boring geotechnical boreholes, underground geotechnical boring, removal of drill cuttings and mud spoils, filling bore holes with grout, boring wells for groundwater monitoring, installation of groundwater monitoring wells and equipment (piezometer), environmental investigations, drilling and underground work for installation of pipelines and other infrastructure, and decommissioning of wells and other projects (collectively, the "**City Work**").
- D. The Subject Property utilizes a shallow aquifer well to provide water for Owner's residence. The shallow nature of Owner's existing well increases risk that it could be affected by the City Work or Project.

- E. The Parties believe that a well in a deeper aquifer at a new location on the Subject Property (the “**Replacement Well**”) would reduce the risk that Owner’s well could be affected by the City Work or Project.
- F. Owner has solicited bids from contractors to drill and install the Replacement Well, to connect the Replacement Well to Owner’s residence on the Subject Property, and to connect all household plumbing and any other needed appurtenances (collectively, the “**Well Scope of Work**”). Based on those bids, the City and Owner agree that fifty five thousand dollars (\$55,000) (the “**Consideration Amount**”) is a reasonable estimate of the cost of the Well Scope of Work plus reasonable compensation to Owner in exchange for Owner releasing City from any and all past or present claims, as provided in this Agreement.
- G. The City has authority pursuant to Ordinance # _____ to enter into this Agreement and pay Owner the amounts provided in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and City hereby agree as follows:

1. **Consideration.** City will pay Owner the Consideration Amount on or before the date which is forty-five (45) days after the Effective Date. Such payment will be made in the form of an electronic payment.
 - 1.1. Contemporaneously with the execution of this Agreement, Owner will provide the City with (a) a completed IRS Form W-9, (b) an Automated Clearing House (ACH) Form indicating the bank routing number and account number where Owner desires to have such payment deposited, and (c) a voided check from that account where the payment will be deposited.
 - 1.2. Owner is solely responsible for any tax or other fee due as a result of this Agreement or Owner’s receipt of the payment provided for in this Section 1. City makes no representations or warranties regarding Owner’s tax obligations or liabilities.
 - 1.3. The release described in Section 4 below is effective on the Effective Date and is not contingent upon prior full performance by City of the terms of this Agreement or payment of the amount due under this Section 1, *provided, however*, that if the City fails to pay the Consideration Amount to Owners within the specified 45-day period, the release under Section 4 will be ineffective until the Consideration Amount is paid in full to Owners.
 - 1.4. The Parties agree that the payment under this Section 1 is a reasonable estimate of the cost of the Well Scope of Work and is reasonable compensation to Owner in exchange for Owner’s release of the City Parties under Section 4 below. Accordingly, if the Well Scope of Work costs more than the amount of the payment under this Section 1, Owner agrees to bear such additional cost to complete its obligations under Section 2.

2. Owner Responsibility.

- 2.1. On or before the date which is sixty (60) days after the Effective Date, Owner will contract with a contractor licensed in the State of Oregon to perform the Well Scope of Work. Owner may extend such 60-day period for one (1) additional thirty (30) day period by providing written notice of such extension to the City. Owner will cause the contractor to perform the Well Scope of Work in accordance with all applicable laws and regulations.
- 2.2. The Replacement Well shall be located generally in the location shown on the attached Exhibit A. This location has been agreed upon by the Parties in order to lower the risk of any future interaction between the City Work or the Project and the Replacement Well.
- 2.3. Owner will cause the contractor to complete the Well Scope of Work on or before one hundred and eighty (180) days after the Effective Date.

3. City Remedies for Failure to Complete Well Scope of Work. If Owner fails to comply with Section 2 of this Agreement, the City shall provide Owner with written notice identifying such noncompliance. Owner will have thirty (30) days from the date of such notice to (a) cure the noncompliance with Section 2 in a manner acceptable to the City in its sole but reasonable discretion or (b) to reimburse the Consideration Amount to the City. The City's remedy under this Section 3 shall be in addition to, and not a limitation of, the City's remedies otherwise available at law or in equity.

4. Release from Past and Present Claims. Owner and all of its successors in interest in the Subject Property (collectively, the "**Owner Parties**") hereby waive, release, remise, and forever discharge and hold harmless City and all of its bureaus, employees, elected officials, attorneys, contractors, and agents, and the owners, officers, directors, employees, agents, attorneys, and representatives of any of the foregoing entities (collectively, the "**City Parties**"), from any and all claims, controversies, liability, demands, damages, obligations, suits, actions, causes of action, attorney fees, and costs or other expenses (collectively, "**Claims**") relating to, connected with, or arising out of, directly or indirectly, the City Work performed on or before the Effective Date. The Claims covered by this Section 4 include, without limitation, all Claims (a) in tort, in contract, or under another body of law; (b) under statute or common law; (c) whether known or unknown as of the Effective Date; and (d) based on events which have occurred as of the Effective Date. The Owner Parties agree to fully assume the risk of any such Claims and expressly represent that the Owner Parties know of no Claim which is not released under this Agreement. This is a full and final waiver and release of any such Claims, and it is intended that it have the broadest effect possible under law.

5. Notices. Notices, demands, or requests given, made or required to be made by this Agreement shall be in writing and shall be effective, unless otherwise provided herein, when received after delivery by certified mail, postage prepaid; facsimile with electronic confirmation of receipt; or a reputable overnight courier such as USPS or Federal Express at the addresses set forth below or to any other address that a party specifies in writing.

If to Owner: Dean D. Walter and Patricia L. Walter
PO Box 666
Boring, Oregon 97009

If to City: Portland Water Bureau
Attn: Survey and Right of Way Section
1120 SW 5th Ave. Rm. 405
Portland, OR 97204

6. **Miscellaneous.**

- 6.1. *Amendment.* This Agreement shall not be modified, amended, or terminated without the prior written approval of all of the Parties.
- 6.2. *Fully-Integrated Agreement.* This Agreement contains the entire agreement and understanding of the Parties with respect to the matters described herein and supersedes all prior agreements and undertakings. The terms of this Agreement are intended by the Parties as a final expression of their agreement with respect to such matters and may not be contradicted by evidence of any prior or contemporaneous agreement, whether written or oral. The Parties further intend that this Agreement constitutes the complete and exclusive statement of its terms so that no extrinsic evidence whatsoever may be introduced in any judicial proceeding, if any, involving this Agreement.
- 6.3. *Amendment; Waiver.* This Agreement may only be modified in a writing signed by the Parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the person or entity against whom it is asserted, and any such written waiver shall only be applicable in the specific instance to which it relates and will not extend by implication to any other circumstances or be deemed to be a continuing or future waiver. A party's delay in enforcing a provision of this Agreement or its rights under this Agreement will not constitute a waiver.
- 6.4. *Severability.* If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision(s) had never been contained in this Agreement.
- 6.5. *Costs.* In any suit, action, or appeal therefrom concerning this Agreement, the prevailing or non-breaching party shall be entitled to recover its costs incurred therein from the other party, including, without limitation, reasonable attorneys' fees.
- 6.6. *Time.* The Parties agree that time is of the essence in performance of this Agreement. If the final day of a period or date of performance falls on a Saturday, Sunday, or federal holiday, then the final day of the period or the date of performance shall be deemed to fall on the next day which is not a Saturday, Sunday, or federal holiday.
- 6.7. *Governing Law and Venue.* This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, even if Oregon's choice of law rules otherwise would require application of the laws of a different jurisdiction. Any action arising out of or relating to this Agreement shall be commenced in the Circuit Court for Multnomah County, Oregon, and if

in the federal courts, in the United States District Court for the District of Oregon, Portland Division. Any arbitration or other form of alternative dispute resolution arising out of this Agreement shall take place in an appropriate forum within Portland, Oregon.

6.8. *Binding Nature; Runs with Land; Recording.* This Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the Parties. This Agreement shall be permanent and shall run with, be binding upon, benefit, and burden the Subject Property, including any partition, division, or new configuration (such as through a property line adjustment) of the Subject Property. Owner authorizes City to record this Agreement in the real property records of Multnomah County, Oregon.

6.9. *Interpretation of Agreement.* This Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision. The paragraph headings contained in this Agreement are for ease of reference only and shall not be used in constructing or interpreting this Agreement. The recitals set forth at the beginning of this Agreement are incorporated into the body of this Agreement as if fully set forth therein for background information only, and do not constitute an admission of fact or contention by the Parties.

6.10. *Authority.* The undersigned individuals executing this Agreement each represent and warrant that he, she, or it has the full power and authority to do so on behalf of the respective party and to bind said party to the terms of this Agreement. Owner represents and warrants that the undersigned, collectively, have the requisite power and authority to enter into and perform under this Agreement with respect to the Subject Property.

6.11. *Counterparts.* This Agreement may be executed and delivered in counterparts, which together shall constitute one single binding and enforceable agreement.

[Remainder of page intentionally left blank; signatures follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

OWNER:

Dean D. Walter

Patricia L. Walter

STATE OF OREGON)
) ss
COUNTY OF MULTNOMAH)

On this _____ day of _____, 2020, before me personally appeared Dean D. Walter, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he executed the same.

Notary Public for Oregon

My Commission Expires: _____

STATE OF OREGON)
) ss
COUNTY OF MULTNOMAH)

On this _____ day of _____, 2020, before me personally appeared Patricia L. Walter, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he executed the same.

Notary Public for Oregon

My Commission Expires: _____

[Signatures and notary blocks continue on next page]

CITY:

THE CITY OF PORTLAND,
a municipal corporation of the State of Oregon,
acting by and through the
PORTLAND WATER BUREAU

Sign: _____
Printed Name: Gabriel Solmer
Title: Director

STATE OF OREGON)
) ss
COUNTY OF MULTNOMAH)

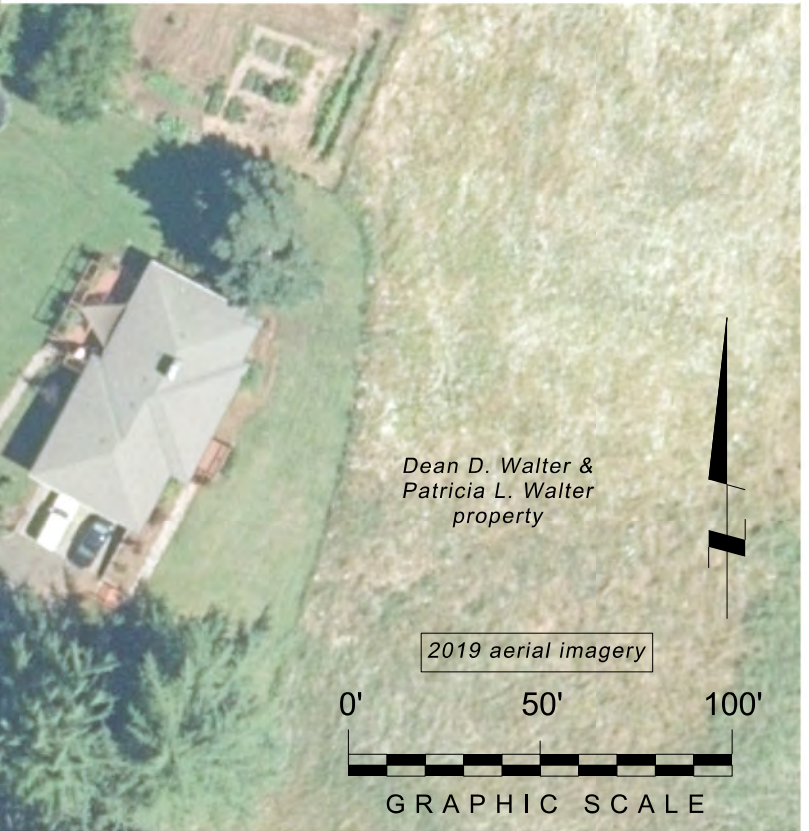
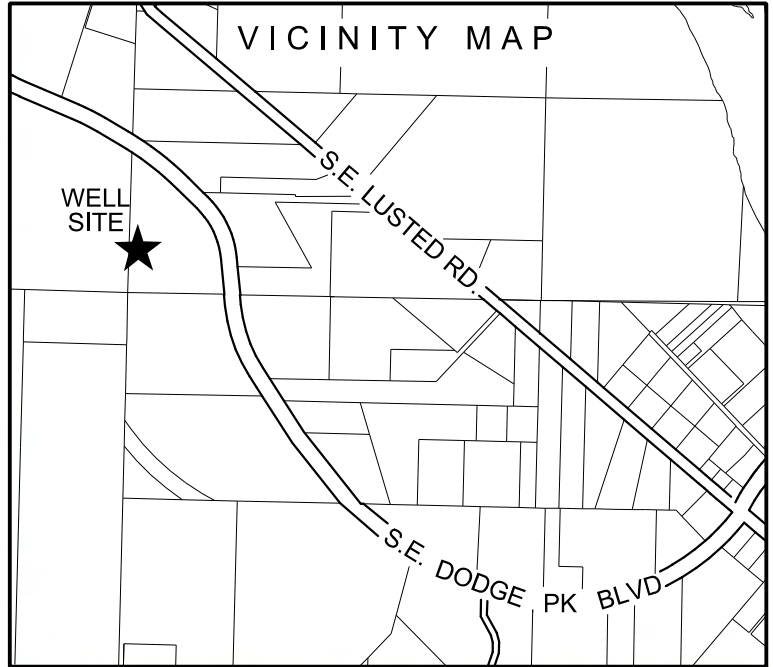
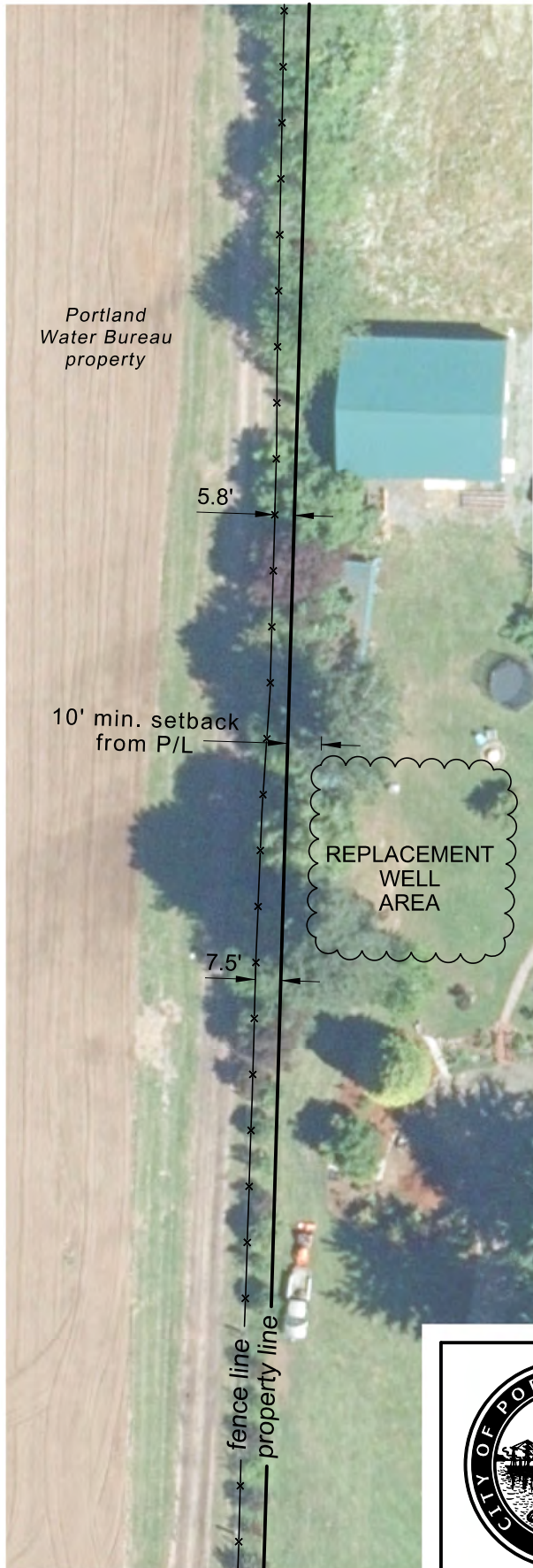
On this _____ day of _____, 2020, before me personally appeared Gabriel Solmer, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that she executed the same as Director of, and on behalf of the Portland Water Bureau of the City of Portland, a municipal corporation of the State of Oregon.

Notary Public for Oregon

My Commission Expires: _____

*Approved as to Form
Karen L. Moynahan*

EXHIBIT A - REPLACEMENT WELL LOCATION



CITY OF PORTLAND WATER BUREAU

DRAFTED BY: DRK

T1S R4E Sec 23, SW Qtr
QSEC 3867

PROJECT W02229

SCALE: 1" = 50 FT.



Amanda Fritz, Commissioner
Michael Stuhr, P.E., Administrator
1120 SW Fifth Avenue, Room 600
Portland, Oregon 97204-1926
Information: 503-823-7404
www.portlandoregon.gov/water



IMPACT STATEMENT

Date: October 12, 2020

Council Date: November 18, 2020

Legislation Title: Authorize the Portland Water Bureau to enter into an agreement with Dean and Patricia Walter and pay consideration in the amount of \$55,000 for costs to construct a new well (Ordinance)

Contact Name: David Peters, P.E., Engineering Manager - Special Projects

Contact Phone: (503) 823-2003

Presenter Name: David Peters, P.E., Engineering Manager - Special Projects
Ben Gossett, Analyst III

Purpose of proposed legislation and background information:

The Portland Water Bureau is in the process of planning and designing the Bull Run Filtration Project (Project), which is required to comply with state and federal drinking water law. The Project site is 90 acres of agricultural land the Water Bureau owns in east Multnomah County.

In addition to developing the site, the Portland Water Bureau will build large diameter pipelines to connect the site to existing infrastructure. Planning for the Project involves collecting information about subsurface conditions on the site through methods that include geotechnical drilling. Property owned by Dean and Patricia Walter (Owner) is located adjacent to the Project site and is served with water from a shallow aquifer. There is a risk that the Portland Water Bureau geotechnical drilling or future earthwork during construction could reduce the productivity of the Owner's well. The Owner claims the geotechnical work completed by the Portland Water Bureau has already impacted their supply of water. The Portland Water Bureau rejects the claim but acknowledges there is a risk that future work could impact the Owner's well.

The Portland Water Bureau desires the Owner move the well to a different location on their property where it is less likely to be impacted by the Project and drill the well to an aquifer at a deeper plane than the Project work. The Owner has agreed to be responsible for construction of a new well on their property using a licensed contractor in exchange for payment of consideration sufficient to cover the cost of relocating the well and reconnecting existing plumbing. The Portland Water Bureau and the Owner agree that \$55,000 is a reasonable

Please contact us for translation or interpretation, or for accommodations for people with disabilities.

More information · Más información · Thêm thông tin · 欲了解更多信息 · Дополнительная информация

Mai multe informații · Подробиці · Macluumaad dheeri ah · अधिक सूचना · Tichikin Poraus

www.portlandoregon.gov/water/access · 503-823-7432 (TTY: 503-823-6868, Relay: 711)

consideration based upon bids from licensed contractors. The Owner also agrees to release the Portland Water Bureau for any liability related to their damage claim.

The purpose of this legislation is to authorize the Portland Water Bureau to enter into an agreement with the Owner and pay consideration in the sum of \$55,000.

Financial and budgetary impacts:

Financial costs of the legislation are related to payment of consideration which totals \$55,000. The Water Bureau will have no ongoing obligation to maintain, repair, or replace the Owner's well after it has been relocated. Funds are available in the FY 2020-21 Budget under Project Number W02229.1.1TC

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

Community impacts and community involvement:

As part of the community outreach and relationship-building process with members of the community adjacent to the future filtration facility, the Portland Water Bureau staff have been in regular contact with the property owners. Staff worked to find agreeable solutions to concerns that they have introduced throughout the public engagement process and the individual meetings with them. As part of these discussions, an action has been identified to help support the City's commitment to being a good neighbor and further provide solutions for the adjacent community as the filtration facility is designed.

A second purpose of the proposed legislation includes reducing the likelihood that the Portland Water Bureau could impact the property adjacent to its site. The legislation is limited to a single property that shares a property boundary with the Portland Water Bureau's site and is served by a specific shallow aquifer. It is not anticipated that this legislation will contribute any burden to the neighboring properties or property owners in the surrounding community. Although the proposed legislation relates to a single parcel of property, its relationship to the Project may draw continued feedback from other property owners opposed to the project. We continue these conversations and look forward to working with all community members through our public engagement processes, the Site Advisory Group, and other channels for continuing these important conversations.

Since 2018, the Portland Water Bureau has launched an extensive public outreach and communications effort including both public and adjacent community meetings and events, digital outreach, and media relations activities, dedicating resources solely for outreach and communication activities for the Bull Run Filtration Project. The Portland Water Bureau uses and will continue to use the Filtration Project and Filtration Neighbors webpages, an updated FAQ, social media, e-newsletters, press releases, the Annual Water Quality Report, a range of mailers and postcards, monthly information events including creation of the Bull Run Filtration Site Advisory Group, and one-on-one meetings with property owners throughout the Project.

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

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount