

**AGREEMENT FOR REAL PROPERTY  
BOUNDARY ADJUSTMENTS AND EASEMENT GRANTS**

THIS AGREEMENT FOR REAL PROPERTY BOUNDARY ADJUSTMENTS AND EASEMENT GRANTS (this “**Agreement**”) is made on this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Salem, an Oregon municipal corporation (“**City**”), and the State of Oregon, acting by and through the Oregon Department of Administrative Services (“**State**”). City and State are each a “**Party**” and together the “**Parties.**”

**RECITALS**

A. General Location. The real property that is the subject of this Agreement is located in Salem, Marion County, Oregon, in the general area shown on Exhibit A.

B. State Master Parcel. State owns certain real property located in Salem, Marion County, Oregon, being Tax Lots 073W250000700 and 073W250000600, as shown on Exhibit B (together the “**State Master Parcel**”). The State Master Parcel is approximately 297.24 acres (294.37 plus 2.87 acres). For the avoidance of doubt, such Tax Lots comprising the State Master Parcel are comprised of various existing lots of record.

C. State Adjustment Property. A portion of the State Master Parcel is the “**State Adjustment Property**,” as shown on Exhibit C. The State Adjustment Property is comprised of the Geer Park Property and the Old Public Easement Strip, as defined in Recitals D and E below and as shown on Exhibit C.

D. Geer Park Property.

(1) A portion of the State Adjustment Property is that certain improved real property, commonly known as “Geer Community Park,” as shown on Exhibit C (the “**Geer Park Property**”). The Geer Park Property is approximately 44.43 acres.

(2) Pursuant to that certain Ground Lease dated August 28, 2000 and amended December 20, 2004 (as so amended, the “**Geer Park Lease**”), City leases the Geer Park Property. The initial term of the Geer Park Lease expires August 28, 2040.

E. Old Public Easement Strip.

(1) A “Public Easement” granted by State in favor of City, dated November 29, 2010 and recorded December 16, 2010 in Reel 3242, Page 387 of the records of Marion County (the “**Old Public Easement**”), runs across the State Master Parcel, as shown on Exhibit C (the “**Old Public Easement Area**”).

(2) A portion of the Old Public Easement Area is part of the State Adjustment Property, as shown on Exhibit C (the “**Old Public Easement Strip**”).

(3) The portion of the Old Public Easement Area that is not the Old Public Easement Strip is the “**Old Public Easement Remainder**,” as shown on Exhibit C.

F. City Rail Spur Strip. The State Master Parcel is bisected by a strip of land (formerly a railroad right-of-way) owned by City, being Tax Lot 073W2500799, as shown on Exhibit B (the “**City Rail Spur Strip**”). The City Rail Spur Strip is approximately 6.51 acres.

G. City Adjustment Property. A portion of the City Rail Spur Strip is an area of approximately 3.50 acres, as shown on Exhibit D (the “**City Adjustment Property**”).

H. The Adjustment Properties. The City Adjustment Property and the State Adjustment Property are each an “**Adjustment Property**” and together the “**Adjustment Properties**.”

I. Acquisition of Adjustment Properties. City wishes to acquire the State Adjustment Property from State, and State wishes to acquire the City Adjustment Property from City.

J. Required Land Use Action. In order for City to acquire the State Adjustment Property, and for State to acquire the City Adjustment Property, the boundaries of the Adjustment Properties must be modified through a property line adjustment, subdivision action or other land use action approved by City (the “**Required Land Use Action**”).

K. New Public Easement. The Parties wish to extinguish the Old Public Easement, and for State to grant to City a non-exclusive public access easement (the “**New Public Easement**”) over and across the Old Public Easement Remainder, as shown on Exhibit E (the “**New Public Easement Area**”).

L. Pedestrian Easement. The Parties wish for State to Grant to City a non-exclusive pedestrian access easement (the “**Pedestrian Easement**”) over and across a portion of the State Master Parcel, as shown on Exhibit E (the “**Pedestrian Easement Area**”).

## AGREEMENTS

The Parties hereby agree as follows, for good and valuable consideration which is hereby acknowledged:

### 1. **Transactions between the Parties.**

1.1 Generally. This Agreement contemplates certain transactions between the Parties, as set forth below in Sections 1.2 through 1.5 and on the other terms and conditions set forth herein:

(a) City’s conveyance of the City Adjustment Property to State, and State’s conveyance of the State Adjustment Property to City;

(b) termination of the Old Public Easement, and State’s grant of the New Public Easement to City;

- (c) State’s grant of the Pedestrian Easement to City; and
- (d) certain actions and obligations related to the Pedestrian Crossing Area (as defined in Section 1.5 below).

1.2 Conveyance of Adjustment Properties. The conveyance of the City Adjustment Property to State, and of the State Adjustment Property to City, will be effectuated by a series of property line adjustments undertaken pursuant to the Required Land Use Action, with the final such adjustments accomplished as part of Closing (as defined in Section 8.1 below).

1.3 Grant of New Public Easement. At Closing, the Parties shall execute:

- (a) a document terminating the Old Public Easement (the “**Old Public Easement Termination Agreement**”); and
- (b) a document granting to City the New Public Easement over and across the New Public Easement Area and memorializing the Parties’ agreements regarding the New Public Easement (the “**New Public Easement Agreement**”).

1.4 Grant of Pedestrian Easement. At Closing, the Parties shall execute a document granting to City the Pedestrian Easement over and across the Pedestrian Easement Area and memorializing the Parties’ agreements regarding the Pedestrian Easement (the “**Pedestrian Easement Agreement**”), including, without limitation, the following: City’s responsibility to maintain the Pedestrian Easement Area; the responsibilities of the Parties with regard to maintenance and repair of the Crossing Signal Equipment and the Crossing Improvements (as defined in Sections 1.5(b) and (c) below, respectively); and City’s agreement to hold State harmless from liability arising from the use of the Pedestrian Easement Area, or any portion thereof, by use other than access to or from the Oregon State Hospital.

1.5 Pedestrian Crossing Area.

- (a) *Pedestrian Crossing Area.* The Parties intend to make certain improvements to a portion of the Pedestrian Easement Area as shown on Exhibit F (the “**Pedestrian Crossing Area**”) and as set forth in this Section 1.5.
- (b) *Crossing Signal Equipment.* On or before Closing, City shall, at City’s sole cost and expense, purchase and deliver to State the signalized pedestrian crossing equipment described on Exhibit G (the “**Crossing Signal Equipment**”), which State shall then own, and shall install as set forth in Section 1.5(d) below.
- (c) *Installation of Crossing Improvements.* Within one (1) year after Closing, City shall, at City’s sole cost and expense, make certain improvements to the Pedestrian Crossing Area, as shown on Exhibit H (the “**Crossing Improvements**”). The Crossing Improvements shall include a sidewalk that connects with the existing sidewalk on the north side of Recovery Drive in the area shown on Exhibit F. Before City constructs the Crossing Improvement, City shall deliver to State proposed plans for the construction of the Crossing Improvements, which shall include,

without limitation, the locations for State's installation of the Crossing Signal Equipment. State shall, within thirty (30) days after delivery of such plans and in State's reasonable discretion, either approve the plans or request modifications thereto.

(d) *Installation of Crossing Signal Equipment.* Within ninety (90) days after City installs the Crossing Improvements, State shall, at State's sole cost and expense, install the Crossing Signal Equipment in the location shown on City's plans for the Crossing Improvements as approved by State pursuant to Section 1.5(c) above.

(e) *Maintenance and Repair.* State shall, at its sole cost and expense, maintain and repair the Crossing Signal Equipment such that it remains in good condition, and as may be required by any applicable law, statute or ordinance. City shall, at its sole cost and expense, maintain and repair the Crossing Improvements, such that they remains in good condition, and as may be required by any applicable law, statute or ordinance.

## **2. Title Company and Title Reports.**

2.1 Title Company. Within three (3) business days after the Effective Date, the Parties shall deposit an executed copy of this Agreement with AmeriTitle at 320 Church Street NE, Salem, Oregon (the "**Title Company**").

2.2 Title Reports. Within ten (10) business days after the Effective Date, each Party shall deliver to the other Party a current preliminary commitment for title insurance for the first Party's Adjustment Property, issued by the Title Company, together with copies of the underlying documents (each a "**Title Report**").

**3. Documents Regarding Adjustment Properties.** Within thirty (30) days after the Effective Date, each Party shall deliver to the other Party any documents in its possession regarding environmental or other physical conditions of its Adjustment Property. Each Party understands, acknowledges and agrees that the other Party's delivery of such documents to the other Party does not in any way constitute a representation or warranty from the other Party about any matter, but rather is merely a conveyance to the other Party of documents in the other Party's possession regarding environmental and other physical conditions relating to the other Party's Adjustment Property. Each Party further understands, acknowledges and agrees that the other Party does not represent or warrant that these documents constitute all of the documents or information in the other Party's possession regarding environmental or other physical conditions relating to the other Party's Adjustment Property.

## **4. Required Land Use Action.**

### **4.1 Generally.**

(a) The conveyance of the City Adjustment Property to State, and of the State Adjustment Property to City, will be effectuated by a series of property line adjustments undertaken pursuant to the Required Land Use Action, accomplished in phases in order to comply with applicable State of Oregon statutes. For the avoidance of doubt, no real property outside of the boundaries

of the Adjustment Properties will be conveyed to either Party as part of the Required Land Use Action.

(b) City shall, at City's sole cost and expense and as set forth in this Section 4, conduct and complete all surveys, reports, drawings, analyses, and application materials required for the Required Land Use Action; construct all required on-site or off-site improvements required as a result of the Required Land Use Action; and complete any and all other required land use processes to create the following parcels, as shown on Exhibit I: the "**Main Parcel**," the "**East Parcel**" and the "**Southeast Parcel**."

(c) City shall submit its application for the Required Land Use Action within one hundred eighty (180) days of the Effective Date, and shall diligently pursue the Required Land Use Action, including obtaining final approvals from City.

4.2 Determination of Phases. Subject to State's reasonable input and objections, City shall determine the order of phases and related boundary adjustments under the Required Land Use Action in order to most efficiently achieve the final configurations shown on Exhibit J.

4.3 Delivery and Use of Materials. City shall deliver to State copies of all materials that City intends to submit as part of the Required Land Use Action, including CAD and PDF formats as appropriate. Additionally, City shall make any necessary arrangements with any third-party entity to allow State the non-exclusive use of such materials.

4.4 Cooperation by State. State shall, at no cost or expense to State, cooperate with City in connection with City's efforts to perform and pursue the Required Land Use Action, which cooperation shall include, without limitation, the execution of the application and any other documents that are reasonably necessary to obtain City's final approvals of the Required Land Use Action.

4.5 Noncompletion of Required Land Use Action. In the event that City completes at least one phase of the Required Land Use Action, but does not complete the Required Land Use Action resulting in the final modification of the boundaries of the State Adjustment Property and the City Rail Spur Strip as contemplated in Section 6 below, then State shall have the remedy of specific performance for such completion of the Required Land Use Action.

**5. Surveys of Easement Areas**. City shall, at City's sole cost and expense and concurrently with its pursuit of the Required Land Use Action, conduct all surveys, reports, drawings and other materials required to define the New Public Easement Area, the Pedestrian Easement Area and any portions thereof necessary to accomplish the granting of the New Public Easement and the Pedestrian Easement as contemplated hereunder (the "**Easement Surveys**"). City shall promptly deliver to State copies of all materials prepared for the Easement Surveys, including CAD and PDF formats as appropriate. Additionally, City shall make any necessary arrangements with any third-party entity to allow State the non-exclusive use of such materials.

**6. Intended Final Configuration and Ownership.** The Parties intend that, as of Closing, the real property that as of the Effective Date comprises the State Master Parcel and the City Rail Spur Strip will be configured as follows:

6.1 East Parcel. City will be the fee simple owner of the East Parcel, as shown on Exhibit J, including any and all lots of record comprising same. City may, as part of the Required Land Use Action, consolidate any lots of record comprising the East Parcel into a single lot of record, provided that doing so in no way extends the amount of time necessary to obtain final approval of the Required Land Use Action as contemplated herein.

6.2 Main Parcel and Southeast Parcel.

(a) *Main Parcel.* State will be the fee simple owner of the Main Parcel, as shown on Exhibit J, including any and all lots of record comprising same.

(b) *Southeast Parcel.* State will be the fee simple owner of the Southeast Parcel, as shown on Exhibit J, including any and all lots of record comprising same. For the avoidance of doubt, although the Southeast Parcel will be created by the Required Land Use Action, the creation of the Southeast Parcel is not related to the modification of the boundaries of the Adjustment Properties as contemplated herein; rather, State desires the creation of the Southeast Parcel for unrelated purposes. The creation of the Southeast Parcel will be accomplished as part of the Required Land Use Action for the purposes of administrative ease for State.

6.3 New Public Easement Area. The New Public Easement Area shall be located as shown on Exhibit J.

6.4 Pedestrian Easement Area. The Pedestrian Easement Area shall be located in the area shown on Exhibit J.

**7. Parties' Review Period.**

7.1 Contingencies. The transactions contemplated by this Agreement are contingent on the following:

(a) approval by each Party of the Title Report for the other Party's Adjustment Property; and

(b) approval by each Party of any and all aspects and characteristics of the other Party's Adjustment Property (including, without limitation, appraisals, environmental matters, survey matters and zoning).

7.2 Objection and Termination. If any condition set forth in Section 7.1 above is not satisfied to either Party's satisfaction within sixty (60) days after the Effective Date (the "**Review Deadline**"), then that Party may terminate this Agreement by so notifying the other Party on or before the Review Deadline, in which event the Parties shall have no further obligations under this Agreement. A Party's failure to timely terminate this Agreement pursuant to this Section 7.2

shall be deemed that Party's waiver or satisfaction of the conditions set forth in Section 7.1 above.

### 7.3 Access.

(a) *Generally.* From the Effective Date through the Review Deadline, each Party (as the "**Owner Party**") grants to the other Party and the other Party's agents a right of reasonable access to the Owner Party's Adjustment Property, for the purposes of inspecting the Owner's Adjustment Property pursuant to Section 7.1(b) above. With respect to any inspection or testing that is invasive or involves digging, boring or removing any portion of the Owner Party's Adjustment Property, the other Party shall first submit to the Owner Party a request for any such invasive testing, and the other Party may not proceed with any such invasive testing unless the Owner Party has given written approval of the other Party's plan; and the Owner Party's approval shall not be unreasonably withheld, conditioned or delayed. The other Party shall conduct any such invasive testing in strict accordance with the plan approved by the Owner Party. The Owner Party may have a representative present at all times during any inspection or testing on the Owner Party's Adjustment Property. The other Party shall pay when due all costs and expenses of the other Party's inspections, tests and studies of the Owner Party's Adjustment Property, regardless of whether Closing of the transactions contemplated under this Agreement takes place.

(b) *Contribution.* As relates to the Parties' access of each other's Adjustment Property pursuant to Section 7.3(a) above:

(i) *Other Party Notification.* If any third party makes any claim or brings any action, suit or proceeding relating to this Agreement and alleging a tort as now or hereafter defined in ORS 30.260 (a "**Third-Party Claim**") against a Party (the "**Notified Party**") with respect to which the other Party (the "**Other Party**") may have liability, the Notified Party shall promptly notify the Other Party 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. Either 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 the Other Party of the notice and copies required in this Section 7.3(b)(i), and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third-Party Claim with counsel of its own choosing, are conditions precedent to the Other Party's liability with respect to the Third-Party Claim.

(ii) *City Jointly Liable with State.* With respect to a Third-Party Claim for which City is jointly liable with State (or would be if joined in the Third-Party Claim), City 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 City 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 City 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. City's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if City had sole liability in the proceeding.

(iii) *State Jointly Liable with City.* With respect to a Third-Party Claim for which State is jointly liable with City (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 City in such proportion as is appropriate to reflect the relative fault of State on the one hand and of City 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 City 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 if State had sole liability in the proceeding.

## **8. Closing and Closing Date.**

8.1 Closing. So long as all conditions precedent to closing set forth herein have then been satisfied or waived in accordance herewith, the closing of the transactions contemplated herein ("**Closing**") shall take place within thirty (30) days of City's final approval of the Required Land Use Action.

8.2 Closing Date. The date on which Closing occurs is the "**Closing Date.**"

8.3 Earlier Performance of Closing-Related Actions. For the avoidance of doubt, to the extent any actions described herein are to occur at Closing, or obligations of a Party become due at Closing, those actions or obligations will occur or be fulfilled before Closing as part of a particular phase of the Required Land Use Action, as the situation may require and as agreed by the Parties.

**9. Deeds.** At Closing, each Party shall convey to the other Party any portion of its Adjustment Property not already conveyed through the Required Land Use Action, by a bargain and sale deed, together with all of the conveying Party's right, title and interest in and to any rights licenses, privileges, reversions and easements appurtenant to such Party's Adjustment Property (each a "**Deed**" and together the "**Deeds**").

## **10. Restrictions on City's Future Conveyance and Use of East Parcel.**

10.1 For a period of fifty (50) years from the Closing Date:

(a) if City sells, exchanges or otherwise conveys the East Parcel, or any portion thereof, City shall pay to State the greater of fifty percent (50%) of the value received, or thirty percent (30%)



of the then-current market value of the East Parcel or the applicable portion, as established by appraisal.

(b) if City ceases to use the East Parcel, or any portion thereof, for public park and public right-of-way purposes, City shall pay to State thirty percent (30%) of the then-current market value of the East Parcel or the applicable portion, as established by appraisal.

10.2 At Closing (or, at an earlier phase of the Required Land Use Action, as the situation may require), the Parties shall execute a recordable document containing the restrictions set forth in Section 10.1 above, which document shall then be recorded in the records of Marion County, Oregon.

## **11. Closing Costs.**

11.1 City's Closing Costs. In connection with Closing, City shall pay the following costs and expenses:

- (a) all costs and expenses of the Required Land Use Action;
- (b) all costs and expenses of the Easement Surveys;
- (c) all legal and professional fees and fees of other consultants incurred by City;
- (d) one half (1/2) of all recording fees;
- (e) one half (1/2) of the costs of any duplicating, delivery or other administrative charges imposed by the Title Company;
- (f) all taxes and assessments for the City Adjustment Property arising before the Closing Date;
- (g) all taxes and assessments for the State Adjustment Property arising on or after the Closing Date; and
- (h) the costs of the title insurance premiums, commitment fees and search fees for the issuance of an ALTA standard owner's policy for the State Adjustment Property, and the additional premium for such policy for extended coverage, if requested by City (the "**City Title Insurance Policy**").

11.2 State's Closing Costs. In connection with Closing, State shall pay the following costs and expenses:

- (a) all legal and professional fees and fees of other consultants incurred by State;
- (b) one half (1/2) of all recording fees;

- (c) one half (1/2) of the costs of any duplicating, delivery or other administrative charges imposed by the Title Company;
- (d) all taxes and assessments for the State Adjustment Property arising before the Closing Date;
- (e) all taxes and assessments for the City Adjustment Property arising on or after the Closing Date; and
- (f) the costs of the title insurance premiums, commitment fees and search fees for the issuance of an ALTA standard owner's policy for the City Adjustment Property, and the additional premium for such policy for extended coverage, if requested by State (the "**State Title Insurance Policy**").

11.3 Shared Closing Costs. All Closing costs not set forth in Section 11.1 or 11.2 above shall be allocated and prorated between the Parties in accordance with common commercial practices in Marion County, Oregon.

**12. City's Closing Deliveries.** On or before the Closing Date, City shall deliver to the Title Company the following, as may be applicable:

12.1 the executed and acknowledged Deed for the City Adjustment Property, or any portion thereof;

12.2 the executed and acknowledged acceptance of the Deed for the State Adjustment Property, or any portion thereof;

12.3 the executed and acknowledged Old Public Easement Termination Agreement;

12.4 the executed and acknowledged acceptance of the New Public Easement Agreement;

12.5 the executed and acknowledged acceptance of the Pedestrian Easement Agreement; and

12.6 all other documents required to be executed in connection with this Agreement.

**13. State's Closing Deliveries.** On or before the Closing Date, State shall deliver to the Title Company the following, as may be applicable:

13.1 the executed and acknowledged Deed for the State Adjustment Property, or any portion thereof;

13.2 the executed and acknowledged acceptance of the Deed for City Adjustment Property, or any portion thereof;

13.3 the executed and acknowledged Old Public Easement Termination Agreement;

- 13.4 the executed and acknowledged New Public Easement Agreement;
- 13.5 the executed and acknowledged Pedestrian Easement Agreement; and
- 13.6 all other documents required to be executed in connection with this Agreement.

**14. Conditions Precedent to City's Obligation to Close.** The following are conditions precedent to City's obligations to consummate the transactions described herein:

- 14.1 State shall have timely performed, in all material respects, all of the obligations required to be performed by State by the terms of this Agreement, including delivery of all of the items required to be delivered by State pursuant to this Agreement;
- 14.2 City shall have obtained a commitment from the Title Company to issue the City Title Insurance Policy for the State Adjustment Property;
- 14.3 waiver or satisfaction of the contingencies set forth in Section 7.1 above; and
- 14.4 final approval of the Required Land Use Action.

**15. Conditions Precedent to State's Obligation to Close.** The following are conditions precedent to State's obligations to consummate the transactions described herein:

- 15.1 City shall have timely performed, in all material respects, all of the obligations required to be performed by City by the terms of this Agreement, including delivery of all of the items required to be delivered by City pursuant to this Agreement;
- 15.2 State shall have obtained a commitment from the Title Company to issue the State Title Insurance Policy for the City Adjustment Property;
- 15.3 waiver or satisfaction of the contingencies set forth in Section 7.1 above; and
- 15.4 final approval of the Required Land Use Action.

**16. Representations and Warranties.**

16.1 Parties' Representations and Warranties. Each Party makes the following representations and warranties, which are true on the Effective Date and shall be true on the Closing Date as if made on the Closing Date:

- (a) *Power and Authority.* The Party is duly organized and existing under the laws of Oregon, and has the requisite right, power and authority to enter into and carry out the terms of this Agreement and the execution and delivery hereof and of all other instruments referred to herein. The Party has taken all action necessary to authorize the execution, delivery and performance of this Agreement. The performance by the Party of its obligations hereunder will not violate or constitute a default under the terms and provisions of any agreement, document or instrument to

which the Party is a party or by which it is bound or affected. All proceedings required to be taken by or on behalf of the Party to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken.

(b) *Validity of Agreement.* This Agreement and all other documents required by this Agreement to be executed by the Party shall constitute, when so executed, the valid and binding obligation of the Party, enforceable against it in accordance with their respective terms.

16.2 Survival. All representations and warranties made by the Parties hereunder shall survive Closing.

**17. Conveyance AS-IS.** Each Party understands, acknowledges and agrees that it is acquiring the other Party's Adjustment Property "AS-IS" and "WHERE-IS," with all faults and without any representations or warranties, express, implied or statutory, of any kind whatsoever (including, without limitation, any representations or warranties regarding environmental matters), by the other Party, its agents, brokers, consultants, counsel, employees, managers or any other person.

**18. Notices.**

18.1 Addresses. An "Address" means the address set forth beneath a Party's signature on this Agreement. Any notices, demands, deliveries or other communications required under this Agreement shall be made in writing and delivered by one of the methods set forth in Section 18.2 below to the other Party's Address, unless one Party modifies its Address by notice to the other Party, given in accordance with Section 18.2 below.

18.2 Delivery.

<b>Method of delivery</b>	<b>When notice deemed delivered</b>
In person (including by messenger service)	the day delivered, as evidenced by signed receipt
Email or Fax (email to all listed email addresses)	the day sent (unless sent after 5:00 p.m., P.T., in which case the email or fax shall be deemed sent the following business day)
US Mail (postage prepaid, registered or certified, return receipt requested)	the day received, as evidenced by signed return receipt
Courier delivery (by reputable commercial courier)	the day received, as evidenced by signed receipt

If the deadline under this Agreement for delivery of a notice is a Saturday, Sunday or federal or State of Oregon holiday, such deadline shall be deemed extended to the next business day.

**19. Miscellaneous.**

19.1 Time is of the Essence. Time is of the essence in relation to the Parties' performance of any and all of their obligations under this Agreement.

19.2 Calculation of Days. Any reference in this Agreement to "days" shall mean calendar days, unless specified as "business days." A business day is any day that is not a Saturday, Sunday or a federal or State of Oregon holiday.

19.3 Integration. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. The Parties have no understandings, agreements or representations, oral or written, regarding this Agreement that are not specified herein.

19.4 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

19.5 No Waiver of Performance. No waiver by a Party of performance of any provision of this Agreement by the other Party shall be deemed a waiver of nor prejudice the other Party's right to otherwise require performance of the same provision, or any other provision.

19.6 Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

19.7 Counterparts. This Agreement and any amendments hereto may be executed in two or more counterparts, each of which is an original, and all of which together are deemed one and the same document, notwithstanding that both Parties are not signatories to the same counterpart.

19.8 Governing Law; Consent to Jurisdiction. This Agreement is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim between State (or any other agency or department of the State of Oregon) and City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the jurisdiction of the Circuit Court of Marion County in the State of Oregon. In no event shall this Section 19.8 be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue and waives any claim that such forum is an inconvenient forum.

19.9 No Presumption against Drafter. No inference, presumption or conclusion shall be drawn against either Party by virtue of that Party having drafted this Agreement or any portion thereof.

19.10 Exhibits. The Exhibits listed below are incorporated as part of this Agreement:

Exhibit A: General Area

- Exhibit B: State Master Parcel and City Rail Spur Strip
- Exhibit C: State Adjustment Property
- Exhibit D: City Adjustment Property
- Exhibit E: New Public Easement Area and Pedestrian Easement Area
- Exhibit F: Pedestrian Crossing Area
- Exhibit G: Crossing Signal Equipment
- Exhibit H: Crossing Improvements
- Exhibit I: East Parcel, Southeast Parcel and Main Parcel
- Exhibit J: Final Parcel and Easement Configuration

**20. Statutory Disclaimer.** THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

*[remainder of page intentionally left blank]*

Each person signing this Agreement below on behalf of a Party represents and warrants that he or she is duly authorized by such Party and has legal capacity to do so.

**STATE:**

The State of Oregon, by and through its Department of Administrative Services

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

Name: Shannon Ryan

Its: Enterprise Asset Management Division Administrator

Address: 1225 Ferry Street SE, U-100  
City, State, ZIP: Salem, OR 97301  
ATTN: Robert Underwood, Real Estate Services  
Phone Number: 971-707-3178  
Email Addresses: Robert.underwood@das.oregon.gov  
res.info@oregon.gov

**CITY:**

The City of Salem, an Oregon municipal corporation

By: \_\_\_\_\_  
Name: Keith Stahley, ICMA-CM  
Its: City Manager

Date: \_\_\_\_\_

Address: 350 Commercial St. NE  
City, State, ZIP: Salem, OR 97301  
ATTN: Clint Dameron  
Phone Number: 503-540-2404  
Email Address: CDameron@cityofsalem.net  
Fax Number: 503-589-2054

#18(ser)



# Exhibit A General Area

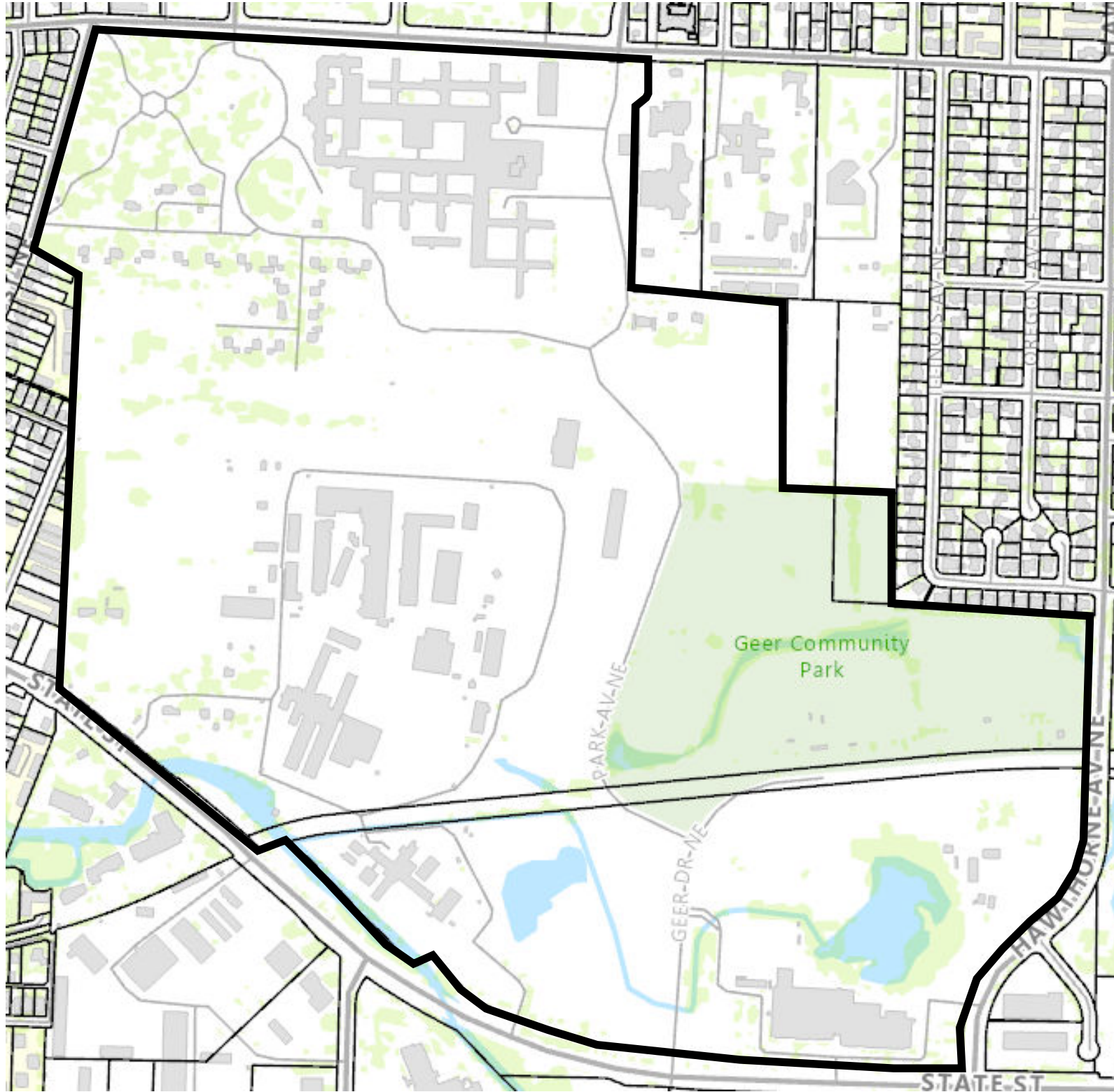
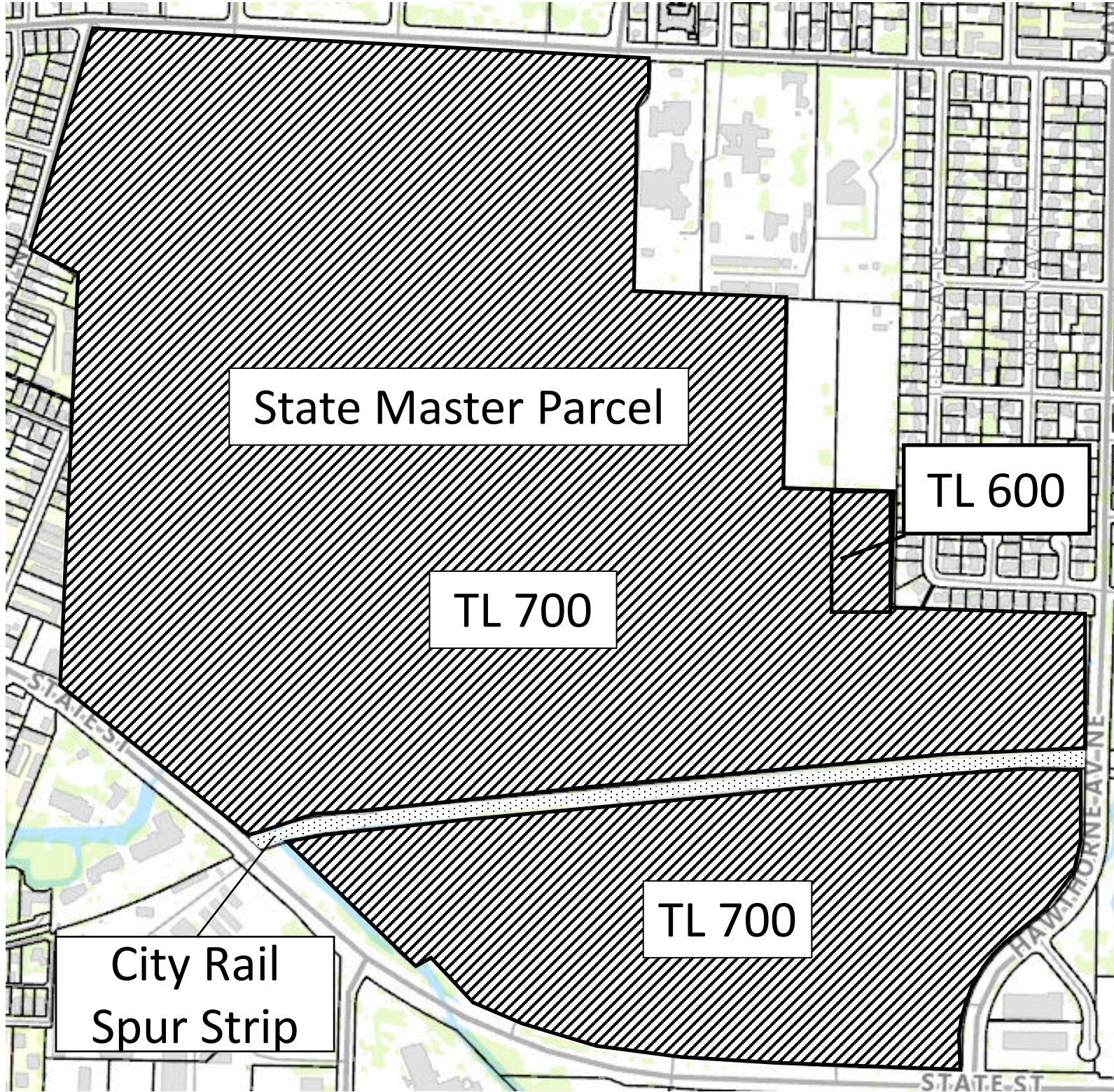


Exhibit B

State Master Parcel and City Rail Spur Strip



# Exhibit C

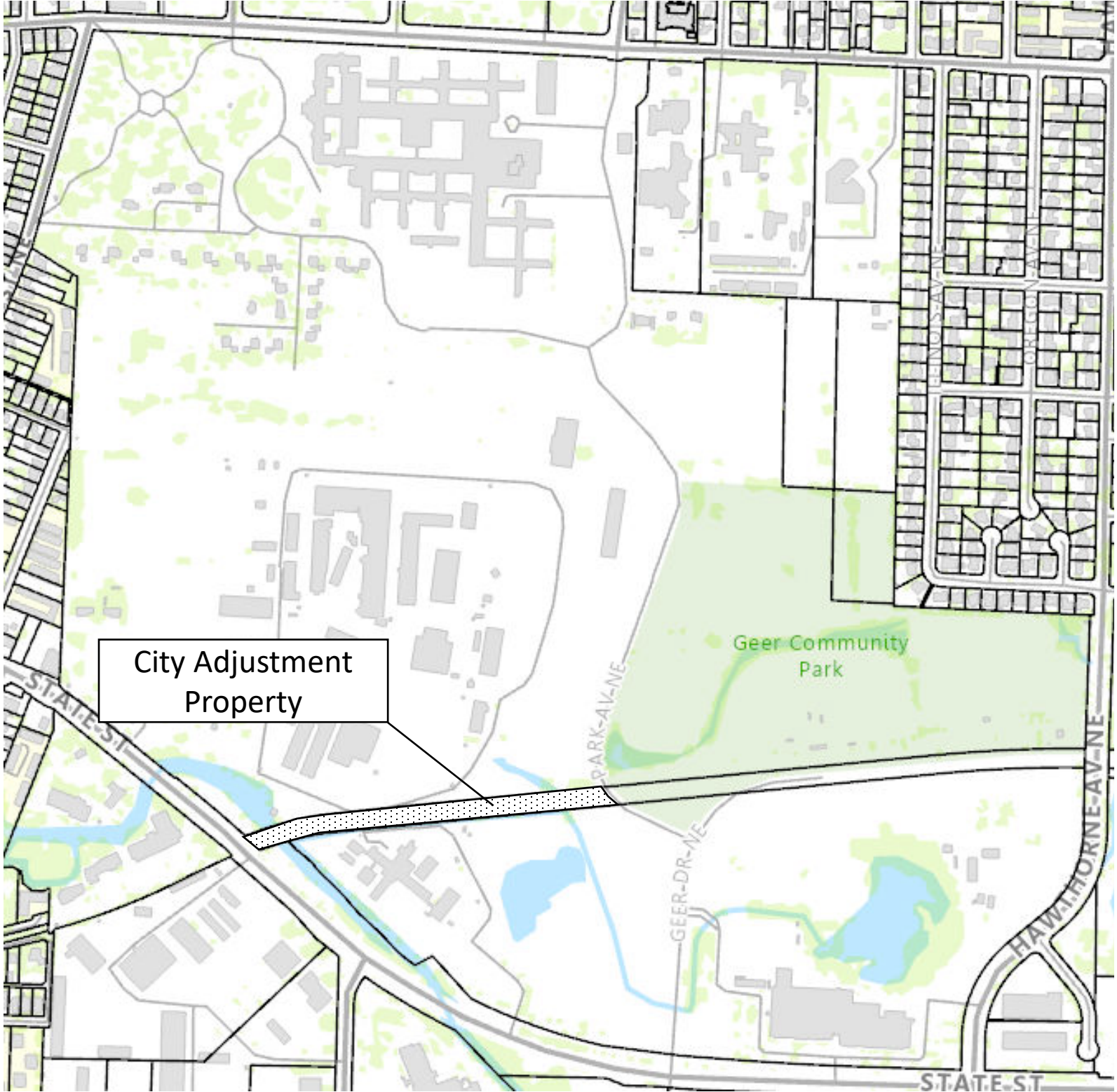
## State Adjustment Property



Old Public Easement Area

# Exhibit D

## City Adjustment Property



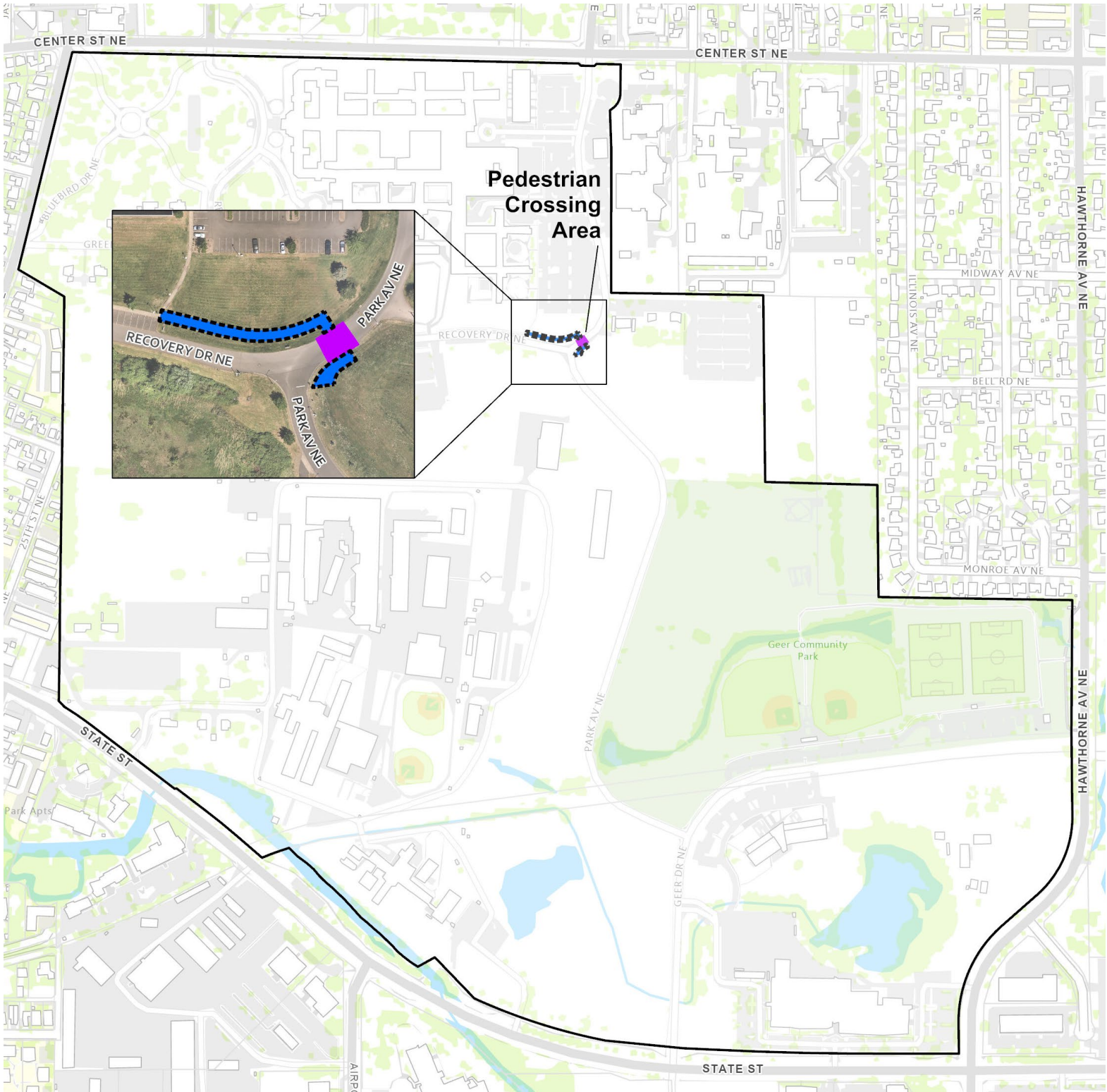
# Exhibit E

## New Public Easement Area and Pedestrian Easement Area



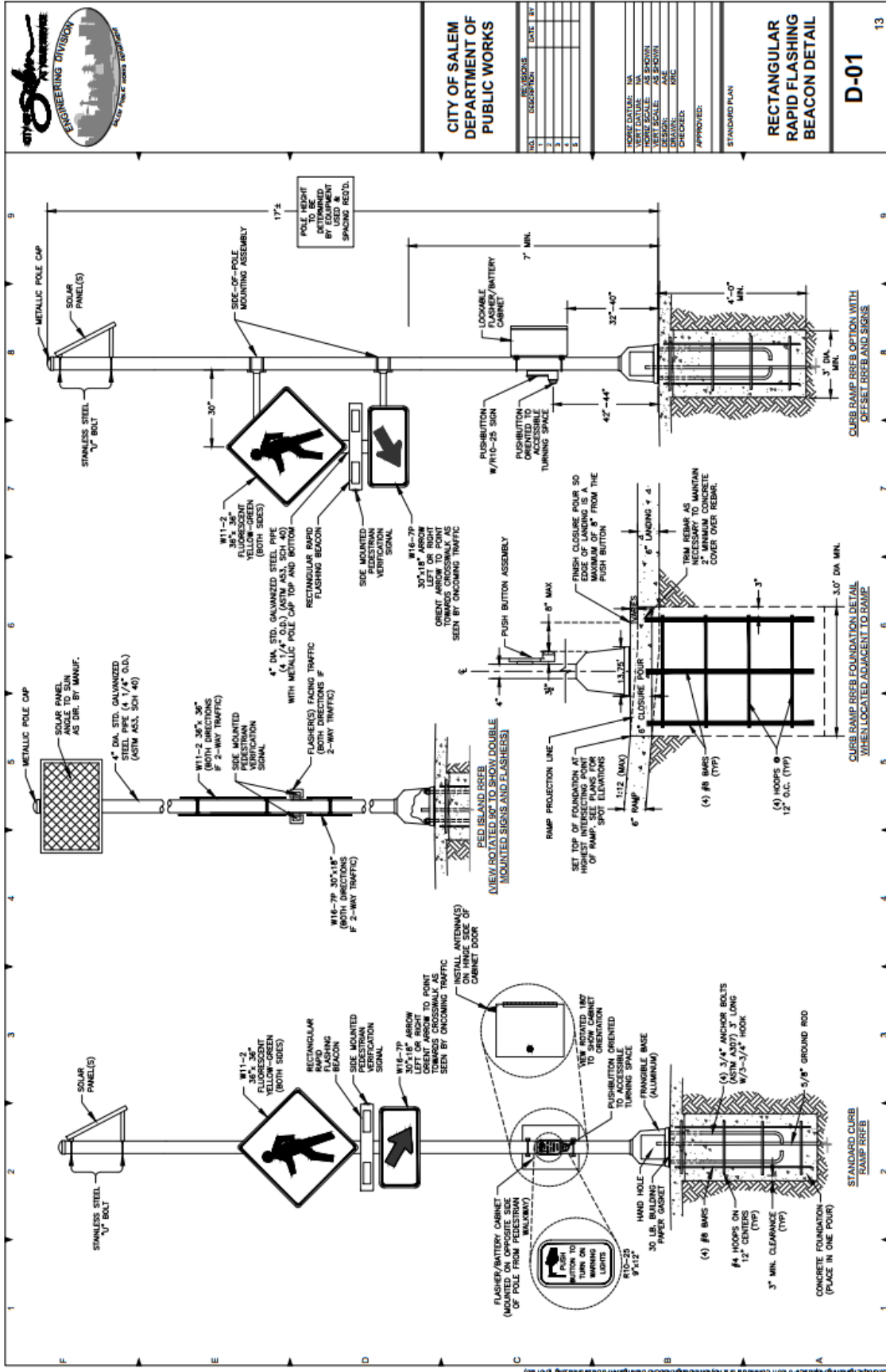
# Exhibit F

## Pedestrian Crossing Area



# Exhibit G (page 1 of 5)

## Crossing Signal Equipment



# Exhibit G (page 2 of 5)

## Crossing Signal Equipment

### **DIVISION 9—TRAFFIC CONTROL AND ILLUMINATION SYSTEMS**

—Add the following new Sections to the SCS:

#### **980 RECTANGULAR RAPID FLASHING BEACONS (RRFB)**

##### **Description**

##### 980.00 SCOPE

The purpose of this Specification is to describe the minimum acceptable design for a pedestrian crossing using a solar powered Rectangular Rapid Flashing Beacon System. The system shall be designed to operate 24 hours per day, seven days per week, with the beacons flashing for a minimum of 500 crossings per day. The system shall be designed to operate with a probability of no loss of load during all months of the year. A solar sizing report shall be submitted to support the system design.

Each system shall consist of three poles with wireless communication between the poles so that when a pedestrian activates the flashing beacons on one pole, the flashing beacons on the other two poles are also activated. The center pole does not have a pedestrian push button.

##### 980.01 GENERAL

ODOT Special Provisions Sections 00920, 00930, 00940, 00960, 00990, and 02925 of the 2015 Edition of the "Oregon Standard Specifications for Construction, ODOT/APWA," shall be considered a part of these Specifications (as applicable) the same as though contained fully herein as modified and/or supplemented as follows:

##### 980.02 EQUIPMENT LIST AND DRAWINGS

Equipment provided for this Project must comply with the current ODOT "Blue" and "Green" sheets, marked as instructed to eliminate the need for catalog cut sheets.

System components shall include, but not be limited to the following:

- (a) Poles, pole bases, foundations, and anchoring hardware.
- (b) Controllers/cabinets.
- (c) Solar system and batteries.
- (d) Wireless Communication Components/Elements.
- (e) Rectangular Rapid Flashing LED Light Bars
- (f) Crosswalk signage and mounting hardware.
- (g) Pedestrian Push Buttons.
- (h) Remote monitoring, managing and communication system components.

##### **Materials**

##### 980.10 MATERIALS

##### Pole, Foundation, and Pole Base

The pole and foundation shall be as shown on the Drawings. The base shall be an aluminum frangible base, Model No. PB-5336, 4-inch breakaway with access door and mounting hardware, as manufactured by Pelco or



# Exhibit G (page 3 of 5)

## Crossing Signal Equipment

approved equal. The base collar assembly shall be Pelco PB-5325 or approved equal. Pole caps shall also be provided and installed.

### Cabinet/Controller

The cabinet and controller shall be as manufactured by Electrotechnics Corporation (ELTEC), or approved equal. The cabinet shall be sized for the appropriate operational components and remote communication equipment. The cabinet shall be NEMA 3R aluminum, shall have screened vents to promote air flow with lockable and hinged door with tamper/vandal-resistant stainless steel hinges. Each cabinet shall be equipped with a removable control panel to which all control circuit components mount, and the necessary rigid mount for a 4-inch ID pole with 4.5-inch OD pole clamps. All necessary hardware for proper mounting shall be included.

The controller shall be compatible for a solar powered configuration, shall be completely programmable from a windows-based or other Owner-approved software, and shall be equipped with a modem and GPS receiver/antenna, standard network service, and wireless and/or radio components necessary for remote monitoring and configuration. The controller shall also include the audible messaging option.

The control panel containing the electronics shall include a solar charge controller and wireless communications between units, and shall be mounted in the cabinet using bolts with wing nuts for quick and easy removal for ease of component replacement. Additionally, the solar panels, load, and battery shall be fused for short circuit protection and ease of system maintenance.

The controller shall have the capability to adjust the brightness of the flashing beacons as outside lighting levels change between day and night (brighter during the day and less bright at night). Additionally, the controller shall have the capability to flash the rectangular rapid flashing LED light bar at the rapid wig-wag "flickering" flash pattern.

### Wireless Communications

Each system shall communicate wirelessly between the three poles. No trenching or boring will be permitted. The radio transmitter and receiver shall use an unlicensed frequency. A countdown timer shall be part of the wireless communication system to ensure that the lights will flash for a period that will allow pedestrians to safely cross the street. The amount of time will be determined by The Engineer.

The initiation of the signal for the flashers to commence flashing will be by pedestrian push button. Each time a pedestrian pushes a button, the countdown timers will reset to the preset count down time; thus allowing the beacons to flash for a full cycle for this pedestrian.

### Solar System and Battery

Solar panels shall be a total array size of 145W, top-mount, and the battery shall be 12VDC, 110 AH, side-mount, providing a minimum of 15 days of back-up battery power in the absence of sunlight while operating at full brightness.

### Flashing Beacons

Provide directional rectangular rapid flashing beacon LED light bars with smaller secondary lights mounted on each end for pedestrian notification.

### Crosswalk Signs and Hardware

Provide crosswalk signs as shown on the Drawings. Mounting hardware for the sign shall be included.

### Pedestrian Push Buttons

Pushbuttons shall be Polara 2-wire with LED and tone.

# Exhibit G (page 4 of 5)

## Crossing Signal Equipment

### Remote Monitoring, Management and Communication System

The Rectangular Rapid Flashing Beacon System shall be equipped with all necessary hardware and software components/elements to allow remote control communication, management, and monitoring of the units. Remote communication system shall use standard network cellular telephone service or be radio based. The remote management and control system proposed shall include a modem and GPS receiver/antenna, standard network service, wireless components or radio transmitters and receivers, and software necessary for remote monitoring and configuration.

The remote communication system shall be accessible from a central system or web-enabled computer, and be capable of uploading and implementing equipment preset operating levels, monitor and transmit unit location, status of battery, and solar voltage and amperage, timer configurations, and number of pushbutton activations. The system shall be able to automatically send text, email or radio alerts to preselected recipients in the event pre-set functioning thresholds fall below set limits. The system shall be capable of organizing data, performing data analysis, and generating comprehensive reports showing usage trends and data, status, and historic operating performing data reports.

The system shall be provided with 1-year service and support network usage contract.

### **Labor**

#### 980.30 LICENSED ELECTRICIANS

Installers of electrical equipment shall meet the requirements of Section 960 of these Special Provisions.

### **Construction**

#### 980.40 EXCAVATION

Remove and replace sidewalks, paved surfaces, and other materials as necessary. Restore all disturbed areas as shown on the Drawings.

#### 980.75 WARRANTY

Provide a written warranty covering the equipment and all Rectangular Rapid Flashing Beacon system components for a three-year period from the date the Engineer accepts the Work and authorizes final payment. The warranty shall recite that the manufacturer will repair or replace, at the discretion of the Engineer and at no additional cost to the Owner, any equipment and Rectangular Rapid Flashing Beacon system components that fail, within one month of the Owner's request to do so.

### **Measurement and Payment**

#### 980.80 MEASUREMENT

Measurement shall be based on the unit basis, by actual count of the number of systems installed. A system is defined as three poles per unit with the required components as outlined in subsection 980.10 of these Special Provisions.

# Exhibit G (page 5 of 5)

## Crossing Signal Equipment

### Payment

#### 980.90 PAYMENT

The accepted quantities of work performed under this Section shall be paid for at the Contract unit price, per unit of measurement, for the following items:

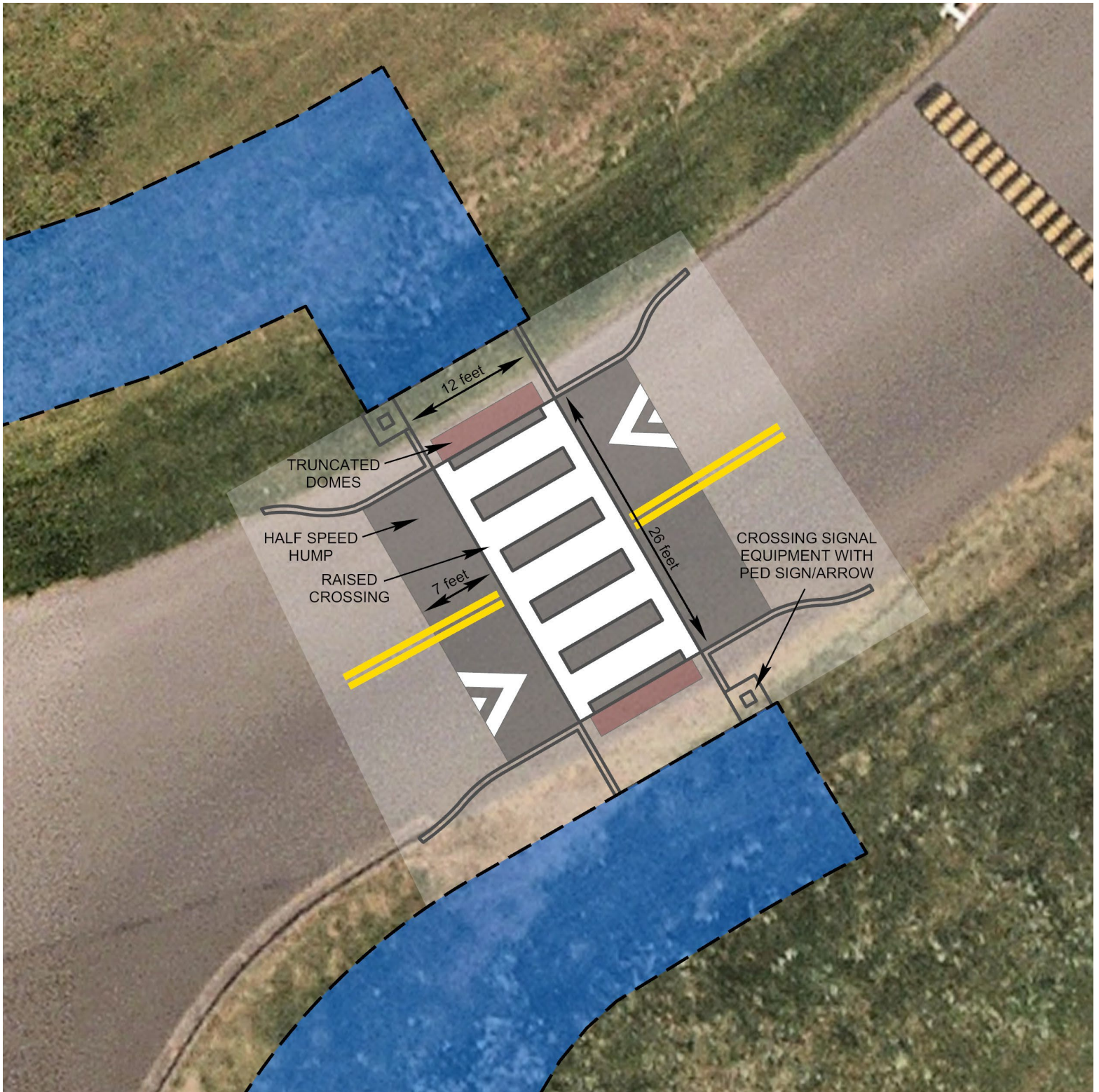
Pay Item	Unit of Measurement
(a) Rectangular Rapid Flashing Beacon System, Complete	Lump Sum

Item (a) shall include furnishing and installing all items of the Rectangular Rapid Flashing Beacon System, including but not limited to the foundation, foundation hardware, poles, pole bases, base collars, crosswalk signs and installation hardware, solar panels, batteries, controllers, controller cabinets, controller cabinet equipment, wireless radio communications, system configuration and activation, rectangular rapid flashing LED light bar, side-of-pole mounting assembly and hardware, and all appurtenant clamps, fasteners, wiring necessary for a fully functional, operational, and City-traffic-system integrated unit. Cost shall also include all labor, equipment, materials, and incidentals necessary to connect the three poles of each unit as per proposed installation layout; including but not limited to wiring, hardware, and other incidentals for completely operational connection between the unit, in full compliance with the requirements of the electrical code and these Special Provisions. The synchronized activation of all flashing beacons shall be maintained under the proposed installation lay-out. Costs shall also include furnishing and installing all required hardware and software items to adequately and remotely communicate, manage and monitor operational and usage features of the Rectangular Rapid Flashing Beacon System, including but not limited to a modem and GPS receiver/antenna, standard network service, wireless components or radio transmitters and receivers, and other necessary appurtenant items for remote communication, management, and monitoring as necessary for a fully functioning and operational system. This item shall also include the cost to provide a 1-year service and support network usage contract, if required, as part of the system being provided.

—END OF SPECIAL PROVISIONS—

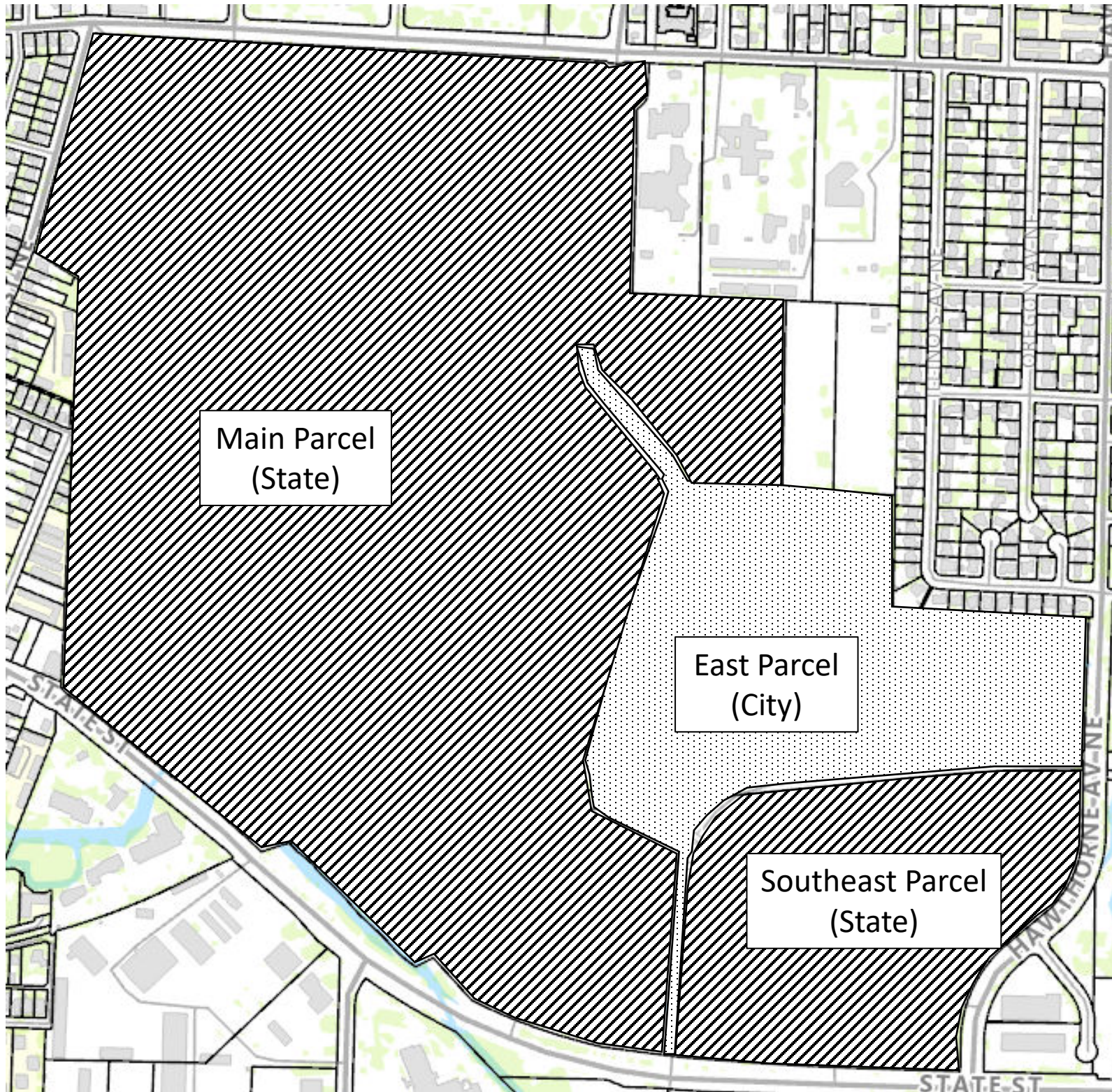
# Exhibit H

## Crossing Improvements



# Exhibit I

## Main Parcel, East Parcel and Southeast Parcel



# Exhibit J

## Final Parcel and Easement Configuration

