



AGENDA

ASTORIA CITY COUNCIL

Monday, November 4, 2019
7:00 PM
2nd Floor Council Chambers
1095 Duane Street, Astoria OR 97103

1. CALL TO ORDER

2. ROLL CALL

3. REPORTS OF COUNCILORS

4. CHANGES TO AGENDA

5. CONSENT CALENDAR

The items on the Consent Calendar are considered routine and will be adopted by one motion unless a member of the City Council requests to have any item considered separately. Members of the community may have an item removed if they contact the City Manager by 5:00 p.m. the day of the meeting.

5.a [Astoria City Council Meeting Minutes for September 30, 2019](#)

5.b [Astoria City Council Meeting Minutes for October 7, 2019](#)

5.c [Authorization to Amend Goods and Services Contract with Lees and Associates to Update the Timeline of Delivery of Ocean View Cemetery Master Plan](#)

6. REGULAR AGENDA ITEMS

All agenda items are open for public comment following deliberation by the City Council. Rather than asking for public comment after each agenda item, the Mayor asks that audience members raise their hands if they want to speak to the item and they will be recognized. In order to respect everyone's time, comments will be limited to 3 minutes.

6.a [Consideration of Property Sale Proposals - Mill Pond](#)

6.b [Appeal \(AP19-03\) on Design Review Request \(DR19-03\) By MMCG GOI, LLC, for 2190 Marine Drive, Concerning Hearing Process](#)

- 6.c [Amendments to Grant Agreement between the State of Oregon and City of Astoria and Subgrant Agreement between City of Astoria and Blue Jumpsuit LLC for the Cleanup of the Former Astoria Warehousing Site](#)
- 6.d [Request to Trim Trees on City Property - Peter Tadei](#)
- 6.e [Authorize Geotechnical Investigation Services with Cornforth Consultants](#)
- 6.f [Resolution to transfer appropriations within Fiscal Year 2019-20 Budget for Emergency Communications Fund #132](#)
- 6.g [Dispatch Console Replacement](#)

7. NEW BUSINESS & MISCELLANEOUS, PUBLIC COMMENTS (NON-AGENDA)

THIS MEETING IS ACCESSIBLE TO THE DISABLED. AN INTERPRETER FOR THE HEARING IMPAIRED MAY BE REQUESTED UNDER THE TERMS OF ORS 192.630 BY CONTACTING THE CITY MANAGER'S OFFICE, 503-325-5824.



CITY OF ASTORIA

Founded 1811 • Incorporated 1856

MEMORANDUM • CITY MANAGER

DATE: OCTOBER 31, 2019
TO: MAYOR AND CITY COUNCIL
FROM: BRETT ESTES, CITY MANAGER
SUBJECT: ASTORIA CITY COUNCIL MEETING OF MONDAY, NOVEMBER 4, 2019

CONSENT CALENDAR

5.a [Astoria City Council Meeting Minutes for September 30, 2019](#)

5.b [Astoria City Council Meeting Minutes for October 7, 2019](#)

The minutes of the City Council meetings are enclosed for review. Unless there are any corrections, it is recommended that Council approve these minutes.

5.c [Authorization to Amend Goods and Services Contract with Lees and Associates to Update the Timeline of Delivery of Ocean View Cemetery Master Plan](#)

Per Council's adopted goal for FY19-20, the Parks and Recreation Department has contracted the services of E. Lees and Associates to develop a master plan for Ocean View Cemetery in order to provide recommendations that will lead to greater operational and financial sustainability of the site. The work being carried out by E. Lees and Associates is moving forward and tasks are being accomplished. Factors outside the control of the Parks Department and the consultant have necessitated an update to the original anticipated completion date of the plan from December 30, 2019 to February 28, 2020. Additional money would be added to the contract for the Consultant to present the final document to City Council.

It is recommended that City Council approve Amendment #1 extending the deadline for delivery of the Master Plan for Ocean View Cemetery from December 30, 2019 to February 28, 2020 and Amendment #2 increasing the total contracted amount for the Master Plan development from \$87,945.50 to \$90,865.50

REGULAR AGENDA ITEMS

6.a [Consideration of Property Sale Proposals - Mill Pond](#)

In November, 2018, the City Council authorized staff to contract with Area Properties to market the City-owned "pier lots" at the Mill Pond. The pier

lots are twelve platted lots donated to the City by the developer of the Mill Pond, Art DeMuro, in 2012. Since that time the City has paid homeowners fees in excess of \$64,000, and is currently budgeting \$ 13,000 annually for “no- build” fees, HOA dues and maintenance expenses. The lots were originally listed at \$45,000 for each pier or \$ 90,000 total. Although the lots have been available for sale periodically since 2012, no offers had been forthcoming until May of this year.

The City has received two offers; John D. Dulcich of Goldsmith Land Investments and the Mill Pond Home Owners. The offers are included in this agenda packet.

It is recommended that City Council consider each of the offers and tentatively accept one pending review by staff and the City Attorney.

6.b Appeal (AP19-03) on Design Review Request (DR19-03) By MMCG GOI, LLC, for 2190 Marine Drive, Concerning Hearing Process

Staff has received an appeal by MMCG GOI, LLC for Design Review Request (DR19- 03) concerning the Grocery Outlet proposed to be located at 2190 Marine Drive. The Grocery Outlet’s attorney has asked for verification that the Council will hold a de novo public hearing on the appeal. It is the Astoria City Council’s past practice to hear most appeals “de novo” meaning that the Council takes new testimony from the public. The other appeal option is “on the record” where limitations are in effect and there can only be re-argument of already made statements. The Council in the past has felt that having de novo hearings allows greater public participation in the decision-making process. Mayor Jones has determined that there will be no public comment received on determining the type of hearing to avoid the potential of ex parte contacts.

At Monday’s Council meeting where the type of hearing will be considered, there cannot be any discussion on the facts of the case as this must happen in a public hearing after required public notice has been provided. Staff recommends that the Council consider the appellant’s request for a de novo hearing.

6.c Amendments to Grant Agreement between the State of Oregon and City of Astoria and Subgrant Agreement between City of Astoria and Blue Jumpsuit LLC for the Cleanup of the Former Astoria Warehousing Site

At the September 30, 2019 City Council Meeting, Council approved a grant agreement between the State of Oregon and City of Astoria, as well as a subgrant agreement between the City of Astoria and Blue Jumpsuit LLC, to provide cleanup funds for the former Astoria Warehousing site that Fort George Brewery has been in the process of acquiring. It was noted at the September 30th meeting that a modification may be required following completion of the real estate transaction. Attached for City Council consideration is an amended grant agreement between the State of

Oregon and City of Astoria as well as a subgrant agreement between City of Astoria and Blue Jumpsuit LLC (representing Fort George). The amendments removed references to the Brownfield loan no longer needed; removed deadline requirements around project completion; and makes clear that Business Oregon will pay the remediation contractors directly. These changes were deemed necessary and require the City Council to modify. A representative from Business Oregon will be present at the meeting.

City Attorney Blair Henningsgaard has reviewed and approved the agreements as to form.

It is recommended that the Council approve the amended grant agreement between the State of Oregon and City of Astoria as well as the amended subgrant agreement between the City of Astoria and Blue Jumpsuit LLC.

6.d Request to Trim Trees on City Property - Peter Tadei

Peter Tadei, residing at 500 W. Lexington Ave., has submitted an application for permission to trim trees on City property. The applicant has hired a local tree service to perform the work.

Based on the information provided by the applicant and a site visit, it is recommended that the request to trim trees on City property be approved.

6.e Authorize Geotechnical Investigation Services with Cornforth Consultants

In early March, the City was notified by the property owner of 1829 Irving Avenue of slumping material under the Irving Avenue Bridge at 19th Street. City staff performed a site visit and found material had moved at the edge of the yard east of 1829 Irving Avenue. In addition, cracks had formed at the base of the fill material underneath the bridge. Since that time City staff has been monitoring the area and no further movement has been observed.

Cornforth Consultants performed a site visit in May to provide an initial assessment and assist the City with determining a path forward.

It is recommended that City Council approved the Contract for Geotechnical Investigation Services at Irving Ave and 19th St with Cornforth Consultants in the not-to-exceed amount of \$59,500.

6.f Resolution to transfer appropriations within Fiscal Year 2019-20 Budget for Emergency Communications Fund #132

ORS 294.463(2) provides guidance for the transfer of general operating contingency appropriations that in aggregate during the fiscal year are

less than 15% of the total fund appropriations. At the time the Emergency Communications Fund #132 budget was prepared the amounts reserved for future capital expenditures and part of the ending fund balance included amounts to purchase new dispatch consoles. With an immediate need to move forward with procurement, a transfer in the amount of \$85,000 from Contingency to Capital Outlay is required to provide sufficient appropriations for the procurement of identified equipment in the current fiscal year. Appropriations in ending fund balance, inclusive of reserves for future procurement, cannot be utilized in the current fiscal year and therefore contingency is proposed for the transfer. This transfer amount represents 4.75%, in aggregate, of the total budgeted appropriations in Emergency Communications Fund #132.

It is recommended that City Council consider the resolution to approve transfer of \$ 85,000 from Emergency Communication Fund # 132 Contingency to Capital Outlay.

6.g Dispatch Console Replacement

The Astoria Emergency Communications Center (referred to as Astoria Dispatch) has been accumulating necessary funds to purchase new dispatch console furniture for the past several years. These funds are currently included in our contingency funds portion of the FY 19/20 budget. A budget modification has been completed by the city's Finance Director, to allow for the expenditure in the amount of \$85,000.

This amount includes the actual console furniture at \$71,000 along with funds to cover the costs of all the other necessary sub-contractors. This would include Wadsworth Electric, Day Wireless, iFOCUS, CenturyLink, and a Project Manager.

It is recommended that City Council approve the budget modification in the amount of \$85,000, and the expenditure of \$70,640.75 for the purchase of new dispatch console furniture.



CITY OF ASTORIA

Founded 1811 • Incorporated 1856

MEMORANDUM

DATE: NOVEMBER 4, 2019
TO: MAYOR AND ASTORIA CITY COUNCIL
FROM: BRETT ESTES, CITY MANAGER
SUBJECT: ASTORIA CITY COUNCIL MEETING MINUTES FOR SEPTEMBER 30, 2019

DISCUSSION / ANALYSIS:

The minutes of the City Council meetings are enclosed for review.

RECOMMENDATION:

Unless there are any corrections, it is recommended that Council approve these minutes.

BY: JENNIFER BENOIT, EXECUTIVE ASSISTANT

ATTACHMENTS:

[ACC Sept 30 2019 draft.doc](#)

A regular meeting of the Astoria Common Council was held at the above place at the hour of 6:30 pm.

Councilors Present: Brownson, Rocka, Herman, West, and Mayor Jones.

Councilors Excused: None

Staff Present: City Manager Estes, Parks and Recreation Director Williams, Planning Consultant Johnson, Finance Director Brooks, Fire Chief Crutchfield, Police Chief Spalding, Public Works Director Harrington, Library Director Pearson, and City Attorney Henningsgaard. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

PROCLAMATIONS

Item 3(a): Domestic Violence Awareness Month

Mayor Jones read the Proclamation declaring October 2019 to be Domestic Violence Awareness Month.

Mary Steenburgen, [1:00] The Harbor, announced an open house on October 3rd from 5:00 pm to 7:00 pm. She invited everyone to attend to learn more about The Harbor, offer to volunteer, and meet their advocates. She thanked the City for its support. Sometimes, it takes survivors up to seven times to leave a domestic violence situation. In rural areas, that number is about 15 times due to lack of resources. It is important for the community to support survivors and the work the advocates are doing.

REPORTS OF COUNCILORS

Item 4(a): **Councilor Herman** reported that the entire Council attended the League of Oregon Cities (LOC) Conference in Bend. She was grateful for the opportunity and learned a lot, particularly about Oregon's property tax system and the Public Employee Retirement System (PERS). She met colleagues from all over the state. Affordable housing was of everyone's concern.

Item 4(b): **Councilor Brownson** reported that the LOC Conference was informative. He also met colleagues from around the state and spent time with his fellow Councilors. There were a lot of references to global climate change, acknowledging that it is an issue, and he would like to explore the City's options for decreasing its carbon footprint and increase energy efficiencies through infrastructure upgrades.
[6:35]

Item 4(c): **Councilor West** reported the LOC conference was informative. She learned about municipal bonds and property taxes. Issues like affordable housing and lack of childcare are issues that Bend and Sisters are struggling with just as much as Astoria. It was inspiring to hear how they are dealing with those issues. It was helpful to connect with other people in the area and her fellow Councilors. She held a Meet and Greet, where the Grocery Outlet, traffic, and the murals at Grey School were discussed.

Item 4(d): **Councilor Rocka** reported that the Council was prohibited from spending a lot of time together and discussing Council things between meetings. At the LOC Conference, Councilors did not discuss Council matters, but they did discuss things they learned at workshops. He went to a lot of different sessions and learned a lot. He looked forward to sharing ideas he picked up.

Item 4(e): **Mayor Jones** reported that after attending the conference for two years as a Councilor, it was different attending as Mayor. He attended a mayors' session on the Cascadia Subduction Zone preparation. Instead of gloom and doom, the State geologist offered optimism. Over the last 10,000 years, there are occasional 1,000-year breaks in activity and it is possible that the area is only 20 or 30 years away from the next earthquake or at the beginning of the next 1,000 year gap with no activity.

CHANGES TO AGENDA

No changes.

CONSENT CALENDAR

The following items were presented on the Consent Calendar:

- 6(a) City Council Work Session Minutes of 2/25/19
- 6(b) City Council Work Session Minutes of 8/19/19
- 6(c) City Council Work Session Minutes of 8/27/19
- 6(d) Boards and Commission Minutes
 - (1) Library Advisory Board Meeting of 8/27/19
 - (2) Design Review Commission Meeting of 5/2/19
 - (3) Planning Commission Meeting of 5/7/19
 - (4) Historic Landmarks Commission Meeting of 5/21/19
 - (5) Planning Commission Meeting of 5/28/19
 - (6) Traffic Safety Advisory Meeting of 5/28/19
- 6(e) Liquor License Application from Vesta Hospitality LLC doing business as Cannery Pier Hotel, located #10 Basin Street, for a Limited On-Premises and Off-Premises Sales License
- 6(f) Liquor License Application from New Golden Star Incorporated doing business as Golden Star Restaurant, located at 599 Bond Street, for a Full On-Premises Commercial Sales License
- 6(g) Liquor License Application from Cervesia Gratis Incorporated doing business as Fort George Brewery and Public House, located at 70 W Marine Drive, for a Wholesale Malt Beverage and Wide License
- 6(h) Intergovernmental Agreement (IGA) with Sunset Empire Parks and Recreation District

City Council Action: Motion made by Councilor Rocka, seconded by Councilor Brownson, to approve the Consent Calendar. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, West, and Mayor Jones; Nays: None.

REGULAR AGENDA ITEMS

Item 7(a): Consideration of Grant Agreement between the State of Oregon and City of Astoria, and Subgrant Agreement between the City of Astoria and Blue Jumpsuit LLC for the Cleanup of the Former Warehousing Site

During its last session, the Oregon Legislature approved House Bill 5050, which provided \$1,000,000 to the City of Astoria for warehouse cleanup. The lottery-based funds were provided to the City of Astoria in order to clean up a contaminated waterfront parcel, as well to spur job creation on a large and critical property along the Columbia River waterfront. Following passage and signing of the Bill, representatives from Business Oregon contacted City staff stating that agreements would need to be prepared and ratified for the cleanup funds to be used.

The warehouse property to receive the cleanup funds is the former Astoria Warehousing site. Fort George Brewery has been completing due diligence in acquiring this property. In-ground brownfield environmental issues were identified during this time. These funds would primarily be focused on remediation on this site. Attached for City Council consideration is a grant agreement between the State of Oregon and City of Astoria as well as a subgrant agreement between City of Astoria and Blue Jumpsuit LLC (representing Fort George).

It is recommended that the Council approve the grant agreement between the State of Oregon and City of Astoria as well as the subgrant agreement between the City of Astoria and Blue Jumpsuit LLC.

Mayor Jones noted this was the result of a long and lengthy effort working with Business Oregon, the Regional Solutions Team, Craft3, US Bank, the State Legislature, and the purchaser of the property.

Melanie Olson, Business Oregon, provided details about her role at Business Oregon and the assistance they have provided to Fort George's acquisition of the Astoria Warehouse property.

Chris Nemlowill, 478 Kensington, Astoria, said for years, Fort George has needed more space and the Astoria Warehouse property is ideal because it has loading docks. They would like to clean it up and create more jobs.

Blue Jumpsuit will be the name of the waterfront operation, named after the blue jumpsuits that were hanging on the wall for all of the employees to wear.

Councilor Herman asked if the City would be liable if the subcontractor defaulted or failed to complete the work. City Attorney Henningsgaard stated the City has required the subcontractor to agree to comply. He believed the City was protected under the agreement.

Councilor Brownson said this project looked like it would have a great outcome.

Councilor West added that Fort George has a proven track record of creating jobs and giving back to the community. She thanked Business Oregon for helping to navigate the contracts with all the parties involved.

Councilor Rocka agreed that Fort George has been an outstanding citizen in the community.

City Manager Estes explained that these agreements were necessary to facilitate closing on the property. Some slight modifications to the agreements might be necessary and if so, Staff would present them to Council for approval.

Mayor Jones called for public comments. There were none.

Mayor Jones noted that Senator Johnson helped get the funds approved in the State budget. He thanked all of the parties involved for working more than a year on the arrangement. The site will be cleaned up and jobs will be created.

City Council Action: Motion made by Councilor Rocka, seconded by Councilor West, to approve the grant agreement between the State of Oregon and City of Astoria. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, West, and Mayor Jones; Nays: None.

City Council Action: Motion made by Councilor Rocka, seconded by Councilor Brownson, to approve the subgrant agreement between the City of Astoria and Blue Jumpsuit LLC. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, West, and Mayor Jones; Nays: None.

Mayor Jones called for a recess at 6:53 pm. The meeting reconvened at 7:01 pm.

Item 7(b): Public Hearing in Consideration of Property Sale Proposals – Mill Pond

In November 2018, the City Council authorized staff to contract with Area Properties to market the City-owned “pier lots” at the Mill Pond. The pier lots are twelve platted lots donated to the City by the developer of the Mill Pond, Art DeMuro, in 2012. Since that time the City has paid homeowners fees in excess of \$64,000 and is currently budgeting \$13,000 annually for “no-build” fees, HOA dues and maintenance expenses. The lots were listed at \$45,000 for each pier or \$90,000 total. The offers as of May are included in the agenda packet.

It is recommended that City Council consider each of the offers and provide direction how they wish to proceed on the offers. Staff and the City Attorney would need to complete further work and documents based on Council's direction.

Mayor Jones opened the public hearing at 7:04 pm and called for public comments.

Cheryl Storey 2605 Mill Pond, Astoria, said she represented the Mill Pond homeowners who had donated money. The wildlife has taken over the pond since the lots were originally platted and they were very concerned about the wildlife and the construction of condominiums in the middle of the pond, which would destroy habitat. There are migratory birds in the pond each year. There are numerous articles on migratory bird mortality issues. Over a year ago, they obtained legal opinion on whether the City could change the platting and decommission the lots without formal approval from the HOA and 75 percent of lot owners. The City is allowed to dedicate property as public land under ORS 92.175. This legal opinion was provided to the City's legal counsel. She suggested the use of eminent domain under ORS 223.005, which was also outside the purview of the HOA. They began working with the City to rid itself of the pier lots and stop funding the HOA. The solution was to offer donations because no Mill Pond owner wanted the lots. At least 40 of the 70 owners in Mill Pond support de-

platting the lots. Not all in Mill Pond agree with their position, which is why they consulted with legal counsel. Some of the opposition is concerned about HOA dues, but the pier lot loss represents only 10 percent of all units for a potential \$33 adjustment in HOA dues. At this time, dues are only \$300 a year and have not changed since 2004. She asked City Council to accept the offer of \$40,000 for the pier lots, which would protect the environment for the greater good of the community.

John Ryan 2495 Mill Pond, Astoria, stated he believed the proposal by Mill Pond residents was the right thing to do for the south end of Mill Pond. It is a unique joint proposal with 16 Mill Pond residents and the City to save wildlife and the environment. The environmental statement by the City would be consistent with the goals of the Development Code.

Diane Spalding 225 23rd Street, Astoria, President, Mill Pond HOA, said the board would like a continuance, giving them time to send out a letter to the residents making them aware of the circumstances regarding the pier lots.

Josie Pepper 5276 Ash Street, Astoria, said she loved Mill Pond. Clogging up the neighborhood with housing for out-of-town, second home owners would be a mistake. The residents enjoy the neighborhood the way it is. Wildlife has become established since it was cleaned up. It would be nice to install boat docks for skiffs, canoes, and kayaks.

Pamela Mattson McDonald 258 Commercial, Astoria, said Science Friday reported on bird life and said one-third of the birds are gone. Astoria really needs waterfowl to survive. Maybe native plants could be added.

Chris Farrar, 3023 Harrison, Astoria, Director, Clatsop Soil and Water Conservation Board, said the area, which is a wetland, would be ideal for grant funding to plant native vegetation and preserve the habitat. The new Astoria Co-op facility was built on top of a wetland and spring. This is a chance to make amends and maintain wetlands. The pond is a beautiful place to visit and get in tune with nature. He urged City Council to accept the offer to preserve the area.

Judy 2705 Mill Pond, Astoria, said she was a donor and one of the people that would lose their view if structures were built. While she would lose her view, the geese would lose their home. Cormorants fish in the pond and river otters live in the pond. There are herons, fish, crayfish, and racoons. There might also be amphibians that she never sees. No one has ever done a study of the ecosystem, but much of it will be destroyed if the piers are built. Bicyclists and pedestrians pass her house every day. Many are not Mill Pond residents. It draws people from all over the area, not just Mill Pond residents.

Lisa Morley 4908 Cedar, Astoria, said she agreed Mill Pond should remain the way it is for all of Astoria. She walks through the neighborhood on a regular basis. She believed in maintaining wildlife habitat for everyone who comes through the neighborhood.

John Dulcich stated he moved to Astoria with his family in 1961. His dad was a football coach and athletic director. His mother still lives in their family home. He wanted to be a part of Mill Pond by purchasing lots, not add lots. He planned to develop quality structures similar to what is already there. He respected the neighbors who were concerned about their view and he was glad they have made an offer. However, the two offers are not apples to apples. If the residents had a non-profit group to take donations and purchase the lots so that the City netted the same, he would understand if the City went with their offer. He wanted to complete Mr. DeMuro's vision and he hoped the City Council would give his offer strong consideration.

Councilor Brownson asked what Mr. Dulcich planned to develop.

Mr. Dulcich explained that Mr. Demuro's vision was to have six units on each of the two piers. The units would be on individual lots, which would be attached. Therefore, they would be sold as townhomes or condominiums. There are a lot of height restrictions and setbacks on the piers intended to preserve the views. Due to the cost of building on piers, it may not pencil to build six units per pier. He might have to build fewer units that do not go as far out on the pier.

Councilor Rocka assumed the units would not be workforce housing.

Mr. Dulcich said no, unless there is a grant for that. However, there is no guarantee they would be second homes. Many people want to downsize and no longer want yards.

Jim Wolcott 2735 Mill Pond, Astoria, said he would not be directly affected by development of the lots. As platted, the pier lots were to have six units each as a 12-unit condominium association underneath the existing HOA. He was fully aware of this when he purchased his property. He endorsed the purchase of the lots to build them as platted. He spoke to two developers who considered this project in the past and said it would never be economically feasible as envisioned. The piers are too expensive to construct and would make the homes too expensive to be marketable. He was opposed to any plan that modified what was originally proposed.

Mayor Jones closed the public hearing at 7:28 pm and called for Council discussion and deliberation.

Mayor Jones declared that he knew Mr. Dulcich, who is a trustee of the Maritime Museum. Mr. Dulcich is a former mayor and had contributed to his mayoral campaign prior to the properties being marketed. He believed he could render an unbiased opinion on this matter. When this issue first came before Council it was a matter of fiduciary responsibility. Council had tasked Staff with innovating, being more efficient, making internal improvements and bringing ideas to Council that needed approval. This was one of the projects Staff presented to Council. The City was given the lots as an investment but has been paying HOA fees for several years. It is time to sell the lots and achieve Mr. DeMuro's vision. No one made an offer on the properties when they were put on the market, so Staff presented the Council with the offer made by Mill Pond residents to make a donation in exchange for decommissioning the lots. Several Councilors did not want to give the lots away, precluding the possibility of constructing homes and bringing in property tax revenue. However, with no offers to purchase, the Council directed Staff to work on the offer from the residents. In the meantime, Mr. Dulcich submitted his offer. Subsequent to that, the Mill Pond residents have revised their offer. Mr. Dulcich's offer would be at no cost to the City with the potential for property tax revenue. The resident's offer would cost the City about \$35,000 for a net of \$5,000 and permanent loss of potential future property tax revenue.

City Manager Estes added that after Council directed Staff to move forward on the resident's offer, some residents stated they objected because it would reduce HOA fees. Staff asked if the HOA would continue to impose their fees if the lots were de-platted and if the City would still have a financial burden if the lots were transferred as City park land. The HOA has asked for a continuance and Staff is still awaiting an answer.

Mayor Jones said even if the City no longer owed HOA fees for decommissioned lots, the City would still have a significant loss from the transaction because there would be no potential for future earnings in perpetuity. Why would the City get rid of the lots if it still had to pay HOA fees?

Councilor Herman believed it was resolved at a previous meeting that the City would not be responsible for HOA fees. City Manager Estes said no, Staff would need to investigate the fees further and present Council with a proposal.

Councilor Brownson supported a continuance. He added that there are nine other platted lots on the east and west shores that could be developed. Even if these lots were decommissioned, development could still occur on the other lots. People were not thinking about wildlife when they purchased Mill Pond properties, but were probably betting nothing would be built due to costs. He has always been in favor of wetlands and habitat. He lived in a float home community and there was no lack of wildlife because the float homes were not a deterrent. The shoreline at Mill Pond includes a public area which will continue to be maintained and provide access. He did not believe exercising eminent domain was appropriate and was skeptical about the arguments being made. The original intent was that the City would get some fiscal benefits from cleaning up Mill Pond, but it has been just the opposite. Additionally, the City has a tight budget. The Parks Department already struggles to maintain the properties it has and cannot afford to take on more. Imposing more costs on the City is irresponsible and this is an opportunity to relieve a financial burden and collect revenues in the future. He was in favor of continuing the hearing to get more information about what the City would be responsible for if the lots were de-platted. The information might not change his mind, but a continuance would give him more time to consider the concerns.

Councilor Rocka stated he also supported a continuance. He was surprised to learn that the City was paying HOA fees for the lots. If the hearing is continued, he also wanted Staff to get expert advice about whether additional development on the pond would make a significance difference to the wildlife. Planner Johnson noted that when Mill Pond was platted, no environmental reviews were done because it was a contaminated and

unhabituated pond. Currently, every time a new home is built over pilings on the pond, the Division of State Lands (DSL), the Army Corps of Engineers, and the Division of Land Conservation and Development (DLCD) to get permits and reviews of the environmental impacts. The Applicants must hire someone to help with an analysis.

Mayor Jones did not believe Staff should be asked to do an environmental impact study given the costs and the fact that the work be done at the time of development.

Councilor Rocka clarified that he wanted Staff to informally ask an avian biologist about the potential impacts, not a full environmental study. Opinions are that development would drive away the wildlife. If true, that would be a concern.

Councilor West said she agreed with a continuance as well because she needed an answer to the question about the HOA fees before making a decision. Mr. Dulcich's offer is superior to the offer made by the Mill Pond residents, which is less attractive financially. However, her responsibility is to her constituents and she had received far more feedback supporting not developing the lots. The lots have been for sale for a long time and she wished people had been more proactive about securing them if they did not want them developed.

Councilor Herman believed the hearing should be continued. Being responsible for the HOA fees would be a deal breaker for her. The Council is charged with being stewards of the tax dollars. Part of the Council's vision for the city is preserving a quality of life. Even though the homeowners' offer would mean a loss of revenue, she would support it because revenues from the condominiums that might be built would be a drop in the bucket. Additionally, while supporting the homeowners' offer would mean losing the potential for 12 homes that the city desperately needs, they would not be workforce or middle-class housing. So much wildlife habitat has been lost in the community over the last 15 years. Even though the homeowners knew those lots could be developed, the City will be better if wildlife habitat can be preserved.

Councilor West added that if the City was responsible for paying the HOA fees, she would not support the homeowners' offer.

Mayor Jones stated that he supported wildlife habitat as much as anyone, but this artificial, man-made pond sits a few yards from a four-mile wide river that is full of cormorants, river otter, duck, and geese that fly by the thousands every day. Putting homes over a portion of this pond will not cause any loss of wildlife. The wildlife may shift a few yards to a new location, but most of those species co-exist with homes over the water in many places on a regular basis. Additionally, Mill Pond was always intended to be a residential neighborhood. He questioned whether the Council would ever go into another private residential development if every single lot had not been built after several years, take the remaining lots by eminent domain, and turn them into wildlife habitat. The Council is only considering this now because it owns the lots, which were always intended for development. Regardless of HOA fees, accepting the homeowners' proposal would be a net loss to the City. Funds to run the City come from property taxes. He was not in favor of a continuance and would not vote in favor of the homeowners' offer regardless of the HOA fees.

City Manager Estes reminded that the homeowners have offered to make a donation, not purchase the lots.

Mayor Jones confirmed that the Council needed to know if HOA fees would still be due in perpetuity if the City decommissioned the lots and if would that be subject to change.

Councilor West wanted to know if the homeowners would have any opportunity to improve their offer. City Manager Estes said as long as the public hearing was open, any offer can be submitted to City Council.

Mayor Jones added that 75 percent of the HOA members would need to vote on the HOA fees. He also asked the HOA to gather data on how many members supported the offer because only 16 members have offered to make a donation so far.

Ms. Spalding said she would like at least a month to gather the data and the votes because the HOA is currently looking for a new attorney.

Councilor Brownson said he would love to consider an offer by the homeowners to purchase the lot.

Staff explained that when the subdivision was platted, a minimum number of units had to be built to meet minimum density requirements, which Staff has been tracking. If the lots were decommissioned, the land would be subtracted from the area that the minimums are based on. If the property remains platted as 12 lots but only two homes are developed, that will reduce the density of the neighborhood but not below the minimum.

City Council Action: Motion made by Councilor Brownson, seconded by Councilor West, to continue the public hearing in consideration of property sale proposals for City-owned lots in Mill Pond to November 4, 2019. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, West, and Mayor Jones; Nays: None.

Item 7(c): Public Hearing and First Reading – Amendment Request (A19-01B) for Bridge Vista Overlay Zone Codes

The City Council held a public hearing at their August 19, 2019 meeting and continued the deliberation to the September 3, 2019 meeting regarding the Bridge Vista Overlay Zone amendment changes. At that meeting, Council members expressed concern that the proposed standards did not meet their desired outcome. Due to the number of suggested changes to the draft from what was presented during the public hearing on August 19, 2019, the City Attorney advised that new public notice would be required and as well as a new public hearing on the draft amendment would need to be held. Public notice in accordance with Development Code requirements was provided.

If the draft code meets Council's expectations, it would be in order for Council to hold a public hearing and conduct a first reading of the ordinance for Bridge Vista Overlay Zone Code amendments. If the Council holds a first reading of the ordinance, the proposed amendment would be scheduled for consideration of a second reading and adoption at a future Council meeting.

Planner Johnson provided an overview of the most recent amendments via PowerPoint, as discussed by Council at their September 3rd meeting.

Mayor Jones said after the last Council meeting, comments were made that if the new proposal was adopted, the Fairfield hotel would be just the same. However, that is not true. The hotel would be a full story shorter and much narrower with a significantly larger view corridor.

Councilor Rocka stated that after the last Council meeting, he stayed awake for hours wondering if the Council had made the right decision. He believed the 0.75 floor to area ratio (FAR) would result in a lot of one-story buildings covering three-quarters of the lot. Additionally, a three-story building with 20 percent lot coverage did not seem practical. He wanted third stories to be conditional with clear standards about what would make that allowable. Additionally, landscaping should also be discussed. Planner Johnson said the currently adopted landscaping requirements for this area were not being reviewed as part of these amendments.

Councilor West asked if the pedestrian oriented zone was a separate overlay? Planner Johnson explained the pedestrian zone is a subarea overlay. The intent was to change design features for a more pedestrian friendly area.

Councilor West believed some of the concern was that the lots are so large that multiple buildings could be built on one lot. Planner Johnson said the Astoria Warehouse site was the only parcel that large. Under the new Codes, each building could be 30,000 square feet, three stories tall, and have a 60-foot wide public access corridor between each building. The parcel could accommodate five or six buildings. If the parcel was divided up and sold, each parcel would be handled on its own merit.

Mayor Jones opened the public hearing at 8:28 pm and asked if anyone objected to the jurisdiction of the City Council to hear this matter at this time. There were no objections. He explained the procedures governing the conduct of public hearings to the audience and advised that handouts of the substantive review criteria were available from Staff. He called for testimony in favor of the application.

Frank Spence, 5169 Birch Street, Astoria, Port of Astoria Commissioner, noted that the agenda packet (Page 216, Section 12) referred to the Port of Astoria West Mooring Basin District as a subarea of the Bridge Vista Overlay (BVO), which he believed was a misunderstanding. The purpose of the subarea is to permit adoption of

development standards known as a planned district that are not applicable to other properties in the BVO. The planned district can only be approved if certain criteria are met and the application to establish the district must be submitted no later than January 1, 2025. He asked if this meant that the area being referred to as the West Mooring Basin District would just be considered a subarea until a master plan application was submitted. The Port is a unique property in a unique location and with a unique function. The Port cannot and does not want to comply with the restrictions elsewhere in the overlay zone. At their next meeting, the Port will approve their 5-year strategic business plan, which would coincide with the sunset clause. The Port supports the concept of a separate planning district in the proposed ordinance.

Planner Johnson explained that Code has been written to allow the opportunity to create a planned district in the future. The Port would have to submit a master plan that meets the criteria, shows why the district is necessary, and demonstrates how the Codes as adopted would not work for the master plan. The Planning Commission and City Council would review the plan, which could be adopted if it benefited the City. Once the master plan is adopted and the district is created, Codes will be amended. The Planning Commission recommended the 5-year timeline because they wanted to allow time for the area to develop, which would serve as an indication of whether there was still support for a potential planned district. The only difference between this district and the East Mooring Basin District is the sunset clause.

Jim Knight, 42041 Eddy Point Lane, Astoria, said it was important to consider the planned districts because they would allow the City to take advantage of the community's participation in development and design. The public process is the most important part of the decisions made over the next few years, which will create a vision everyone hopes to enjoy. He asked the City Council to trust the public process and not go forth with preconceived notions of what might or might not happen. He encouraged the City Council to approve the special districts for Astoria Warehouse and the Port. It will be important for both districts to work together to create jobs and opportunities. Both properties need as much help as possible with Astoria's difficult and convoluted process and permitting challenges.

Mayor Jones called for testimony opposed to the application.

Chris Farrar, 3023 Harrison Avenue, Astoria, said the BVO area largely consists of the two planned district areas, the Port and Astoria Warehouse properties. The rest of the BVO area is a small area. The Port's support for a planned district suggests that the Port does not like the provisions that would apply to the BVO. Therefore, he wanted the planned district provisions removed from this proposal so that the entire area would be subject to the BVO requirements. Otherwise, the planned districts should not be allowed to increase building heights or building mass. He would be fine with a park or museum at the Port. The intent of the BVO was to keep buildings small and keep vistas open for the residents.

Planner Johnson clarified that height restrictions and view corridor requirements would apply to the planned districts. However, the step backs could be changed.

Mayor Jones added that the BVO Code amendments would apply to the entire BVO zone. He called for any testimony impartial to the application.

Zetty Nemlowill, 478 Kensington, Astoria, said she believed that everyone wanted character preservation, family wage jobs, redevelopment, and historic preservation. Many of the Code changes being discussed seemed based around things people do not want. She did not want the Code amendments to prevent redevelopment. The main building at the Astoria Warehouse site is over 60,000 square feet and the inside is charming, post-modern industrial. It would break the heart of anyone who had seen the inside to think about it being demolished. She hoped the Council's decision did not make good development or redevelopment impossible or so difficult no one would want to do it.

Diana Kirk 281 West Marine Drive, Astoria, Owner, Worker's Tavern, said her only concern was the 60-foot area because under the Uniontown Reborn project, the lease of 50 feet of the area at Memorial Park had not been renewed and was granted to Hollander. The City was trying to get the north side of the tracks for the memorial, Now, if Hollander builds a hotel, the Uniontown historical core will not have a view of the water. All of the Uniontown businesses along West Marine Drive have a bridge in their backyard, ODOT land in their front yard, and the Port on the other side of the road. If the Port submits a master plan, who will advocate for the Uniontown businesses? The businesses will need a lot of help to stop something that may or may not happen in the next

five years. The Uniontown historical core is older than downtown. She wanted the Council to consider the fact that the City was setting the businesses up for a secondary battle.

Planner Johnson explained that first, a master plan would be submitted to the City and reviewed by the Planning Commission and City Council at open public hearings. The City Council would vote on whether to adopt the master plan and apply the district with specific changes. Then, each development project would have to request that the planned district criteria be applied, which would require additional public reviews.

City Manager Estes added that the 60-foot corridors are required between buildings when buildings are three stories. There is no requirement for where the corridors must be located. Bay Street heads north off Marine Drive and terminates in an area that looks like a portion of Maritime Memorial Park. There is a memorandum of agreement (MOA) between the City and the Port Commission allowing the City to improve the park until the Port decides to do something else with the area. The area has been leased to Mr. Hollander. Nothing mandates a 60-foot view corridor north of Bay Street.

Planner Johnson noted that the master plan would have to be for the entire area, not just one lot.

Councilor Brownson believed the property that the City leased from the Port did not include the zone between the end of Bay Street and the memorial. City Manager Estes clarified that the area north of the tracks is leased by the City for the Maritime Memorial. Ms. Kirk was referring to property south of the tracks. The Port granted the City the use of a portion of that property on the west side of Maritime Memorial Park through an MOA.

Councilor Rocka understood the concern about the narrow corridor between two buildings. As long as Mr. Hollander went along with the current proposal, he could submit an application to build a hotel and would not have to wait for a planned district. Building a lobby between the two buildings would cut off the view from the businesses along that section of West Marine Drive.

Councilor Brownson said the beauty of the public process is the opportunity to preserve that view corridor. The only potential for a view corridor on that piece of property is the one that exists and no reduction in view corridors shall be allowed. Planner Johnson clarified that the view corridor would not protect the view down Bay Street. A structure could be placed anywhere on that lot. The protection is that the building must have a north/south orientation on the lot, which means the building must be more narrow than deep. The 60-foot wide view corridor is only required when there is more than one building on a lot. The lot is narrow but could accommodate three or four buildings. It is not likely a hotel would be built of separate buildings.

Mayor Jones noted that any Code applied to an entire zone will not be perfect on every block. The only way to make everyone happy in every case is to create a different Code for each block.

Councilor Brownson added that the pedestrian oriented zone goes into that lot. He asked what additional restrictions would be imposed. Planner Johnson said the pedestrian oriented zone only applied to design features and would not protect views.

Councilor Rocka stated that any construction in that corridor would block off Fisherman's Memorial Park. Planner Johnson explained that in order to protect the area, a view corridor would have to be required on privately owned Port property. This would require writing Code specific to one or two lots, which might not be legal and would require changes to the proposed language for the planned districts. She recommended requiring view corridors on street-end properties.

City Attorney Henningsgaard confirmed he would need to see the changes in order to determine whether a new public hearing would be required.

Chris Nemlowill, 478 Kensington, Astoria, said it felt like a lot of this was in response to a large chain hotel being permitted on the waterfront. It also seemed as if the changes were very complicated. A lot of work was put into the original BVO. It seemed like the town wants to preserve its unique identity and does not want a bunch of chain hotels on the waterfront. He supported the planned district but wondered why all of this needed to be put in place.

Nancy Montgomery 279 West Marine Drive, Astoria, said her business is at the top of Bay Street facing the view corridor. She appreciated the attention to a small parcel.

Mayor Jones closed the public hearing at 9:08 pm and called for a recess. The meeting reconvened at 9:21 pm.

Mayor Jones asked Staff to discuss the considerations regarding view corridors on street ends.

Planner Johnson explained that the current Code requires north/south rights-of-way between West Marine Drive and the Columbia River to have a 70-foot wide view corridor for the extended rights-of-way out into the river. The view corridor must be centered on the right-of-way and buildings must be set back in order to achieve the 70-foot wide corridor. She recommended amending that Code language to say not only the extended rights-of-way, but also any property within the extended rights-of-way areas. The Port is the only property with a right-of-way. Currently, the proposed Port planned district would prohibit any exceptions to the view corridor requirements. This language could be amended to allow an exception for the rights-of-way extension view corridors as noted, allowing an amendment to the view corridor with a reduction in building height, increased step-backs, or other considerations as approved by the City.

Mayor Jones stated he preferred the second option because it achieves the intended goal of preserving view corridors while allowing flexibility through the planned district.

Planner Johnson explained that the new Code language would only apply to two properties. She pointed out the location of these properties on the map. She did not believe these properties were currently platted. The proposed view corridor would not require public access. While no buildings would be allowed within the view corridor, parking could still be developed in those areas.

City Attorney Henningsgaard noted that most streets are platted all the way to the City boundaries, which extend into the middle of the river. The two pieces of private property would have to be condemned by restricting the use. Additionally, no notice has been given to those property owners of this discussion. If the Council wanted to consider moving forward on this view corridor requirement, the property owners would need to be noticed in advance and the issue would have to be continued to a date certain. The public hearing could be re-opened only to address that topic, continued, and still conduct the first reading of the ordinance tonight.

City Manager Estes clarified that if Council wanted to introduce this new concept of view corridors on street-ends, direction would need to be given to Staff.

Mayor Jones called for Council discussion.

Councilor Brownson said picking at the minutia seemed like a bad way to go. However, he was willing to advocate for the view corridor on street ends. If the view corridors are added, he also wanted the exceptions for the planned districts. He believed the Port needed all the options for flexibility it could get.

Councilor West said she only supported the additional view corridors, not the opportunities for a planned district exception. She had already heard from property owners and the public, so re-opening the public hearing was not a strong argument.

Councilor Rocka stated he wanted to hold the first reading tonight and was comfortable with either or both options for the view corridors on street ends.

Mayor Jones said he wanted to vote on a motion to hold the first reading of the amendment package as presented, approve a continuance, and direct Staff to prepare Code language for the additional view corridors for consideration on the date specified.

Councilor Herman also supported just the view corridors and not the exception. She recommended the proposal be amended to restrict one- and two-story buildings to 10,000 square feet per floor. She asked if clearly defined public access was a view corridor. Planner Johnson explained that on a three-story building, it would be considered a view/public access, which requires physical access to that corridor over private property. The proposed Code specifies a width, requires public amenities and an easement, and a direct route to the river trail or the river.

Councilor Herman confirmed with Staff that a planned district with a master plan would not allow buildings to exceed the height limits. However, the footprint of the building could be changed if it met the criteria.

Planner Johnson reminded that City Council can make changes to the Code at any time, so a future Council could change any exceptions that are approved as part of this amendment package.

Councilor Herman stated the required public access for a three-story building would be unnecessary if a street ran along the building.

Planner Johnson noted there are only two streets in the district.

Councilor West said she was not aware that the height restriction applied to the planned districts no matter what, which addresses some of Mr. Farrar's concerns. She supported Councilor Herman's recommended amendment.

Mayor Jones re-opened the public hearing at 9:49 pm to allow public testimony on October 7, 2019 on view corridors on street ends with exceptions.

City Council Action: Motion made by Councilor Brownson, seconded by Councilor West to conduct a first reading of the Ordinance amending the Bridge Vista Overlay Zone as proposed by Staff and continue the hearing to October 7, 2019 to discuss additional amendments implementing view corridors on street ends with exceptions for planned districts [3:17:30]. Motion carried 4 to 1. Ayes: Councilors Brownson, Rocka, West, and Mayor Jones; Nays: Councilor Herman.

Director Pearson conducted the first reading of the ordinance.

Item 7(d): Public Hearing and First Reading – Amendment Request (A19-05) for Uniontown Reborn Plan and Code Amendments

In 2017, the City of Astoria Community Development Department initiated the Uniontown Reborn Master Plan effort, utilizing a Transportation and Growth Management Grant from the Oregon Department of Transportation (ODOT) and the Department of Land Conservation and Development (DLCDD). The purpose was to address issues dealing with land use and transportation issues in Astoria's historic west gateway area known as Uniontown. The planning process began in earnest in the Fall of 2018 with a consultant team consisting of Jacobs Engineering and Angelo Planning Group and based on the plan development and community and stakeholder input, code amendments have been proposed.

The Planning Commission held a public hearing on August 6, 2019 and August 27, 2019 regarding the proposed code amendments. A copy of the proposed ordinances, the proposed Master Plan, and the Findings of Fact are included in the packet for Council consideration. The APC recommends that the City Council adopt the proposed amendments. The proposed ordinance has been reviewed and approved as to form by the City Attorney.

If the draft Master Plan, and code amendments meet Council's expectations, it would be in order for Council to hold a public hearing and conduct a first reading of the ordinance for the Uniontown Reborn Master Plan adoption and amendments. If the Council holds a first reading of the ordinance, the proposed amendment would be scheduled for consideration of a second reading and adoption at a future Council meeting.

Scott Richmond, Jacobs Engineering Group, and Kate Rogers, Angelo Planning Group, presented the Uniontown Reborn Master Plan via PowerPoint. Their presentation included master planning objectives, the project timeline, recommended Code amendments for two zoning areas, the intent of the recommended Code amendments, transportation and pedestrian considerations, and consideration of opportunities for public amenities.

Mayor Jones asked what the process, timeline, and funding was for adoption and implementation.

Mr. Richmond replied that from a transportation standpoint, the next step for the W Marine Drive reconfiguration would be a refinement plan with more detailed designs. The project would be dependent upon getting funding, presumably through the Statewide Transportation Improvement Program (STIP).

City Manager Estes noted that the City's Transportation System Plan (TSP) included a lane reconfiguration project from Uniontown to downtown. However, the City has not been successful at getting STIP funding for the project. Adopting the Uniontown Master Plan would make the project eligible for that funding in the future via a joint ODOT/City application.

Mayor Jones asked what the total cost would be and if the City would have to provide matching funds. City Manager Estes said this would be determined once a refinement plan was completed. STIP projects typically require a match equal to 10.27 percent of the project costs. Additionally, this area is within the Astor West Urban Renewal District, so the City could meet the match requirement with Urban Renewal funds. The Planning Commission had discussed opportunities for streetscape improvements, which have been included in the master plan. Ideally, the lane configuration would be done in concert with streetscape improvements.

Councilor West asked if Urban Renewal funds could be used for parking. City Manager Estes said yes and noted parking was one of the biggest discussion topics among businesses in Uniontown. In order to ameliorate concerns, the master plan requires that off-street parking improvements were done first.

Councilor West asked if public restroom projects were included. City Manager Estes confirmed the master plan only addressed transportation and land use.

Councilor Herman said she heard the lane configuration would occur in 2035.

Councilor Brownson explained it was a matter of getting funding and the City would not get funding during the current cycle. It could be six years before the City receives funding.

Michael Duncan, 250 W Marine, Astoria, ODOT, added that forecasting the year is required for transportation plans. There is strong support and interest in realizing these projects, but they simply did not make the cut. The timeline does take the STIP cycles into consideration. Even if the project gets funding during the next cycle, by the time it goes out to bid might be an additional two years. Six to eight years would be the earliest and 10 to 12 years would be the longest. All sorts of things can happen during the legislative session. The last transportation bill had all sorts of big projects in it. The first step is getting what the community wants into a plan just like this one.

Councilor Herman asked when the design standards would take effect if the plan was approved. City Manager Estes replied one month after adoption.

Councilor Herman believed that because of what happened with the Fairfield Inn, being very clear was important. Therefore, she recommended the word adjacent be stricken from the following sentence: "The design of new construction should respect significant original characteristics, scale, and mass of adjacent structures that are visible from the public right-of-way within three blocks of the development site." She did not want some developer saying it was not clear. To her, adjacent meant right next to a building.

Staff explained that in the BVO, in order to clarify the issues in the Fairfield appeal, the Code was amended with that language to indicate that the adjacent area was defined as the view within three blocks. In the Fairfield application, the applicability of design standards was for the entire district, which made it difficult for the Design Review Committee and City Council to determine whether something on 3rd Street should match something eight to ten blocks to the west. The area of purview was limited to give more specific criteria as to what should be considered.

Councilor Herman hoped someone would not say the word adjacent was not clear and squeeze through a design that was not compatible. Planner Johnson added that the language defines what adjacent means. Adjacent means visible from the public right-of-way and within three blocks of the development.

Councilor Rocka stated that tying off-street parking to the loss of street spaces resolved serious concerns. He was concerned about the illustration that showed a 45-foot tall building adjacent to the trolley tracks because it

seemed to be in conflict to the BVO ordinance. At one time, ODOT said a test could be done on the lane configurations using some of their cones and lines. He asked if that was still a possibility. There has not been total agreement on the lane configuration as proposed. He believed two lanes with a turning lane would be ideal through the Uniontown business district and through the multi-family housing to the west.

Mr. Duncan clarified that ODOT does pilot and demonstration projects, but that's not to say they could set out cones and replicate what is being proposed. The pilot and demonstration projects involve paint on the ground, curb to curb, but the City would not want to do lane configurations without the crossings that have been discussed for safety reasons.

Councilor Rocka said ODOT's preferred solution was two lanes heading west and one lane heading east. He asked why two lanes were necessary, when they funnel down to one again to get on the bridge.

Mr. Duncan clarified the recommendation was for two lanes, one eastbound and one westbound, and a center turn lane. It is important to think about mobility and only one lane would not meet the State's mobility targets. The State's perspective as a stakeholder in this project was to consider the movement of people and goods by meeting those mobility standards. The technical and public advisory committees indicated that the level of congestion did not align with the vision people wanted.

Councilor Rocka asked if a by-pass was still on ODOT's list.

Mr. Duncan replied there is a lot of money sitting somewhere.

City Manager Estes noted that the illustration of the building next to the trolley tracks (Page 247 of the Agenda packet) was reused from the Riverfront Vision Plan. All Staff needs to do is removed the reference to the trolley tracks in the revised version.

Councilor Brownson said Columbia to 8th Street was a safety corridor project that was proposed but will not happen. The proposal was to convert that section from four lanes to three lanes. He believed those three lanes would have been maintained through Uniontown all the way up to Basin Street. The road could be opened up at Basin Street, where the area becomes industrial. Traffic flow at the bridge intensifies. The Council should be looking at the TSP and considering Highway 30 from beginning to end. When a little section is done, the Council should make sure all sections are tied together. City Manager Estes stated the master plan accomplishes that and the lane configuration is a recommended project in the TSP.

Councilor Brownson said extending the three lanes beyond that was recommended in the TSP as well. He suggested the three lanes extend through the business district portion of Uniontown, and then open up into four or five lanes. He believed that would solve a lot of problems in that area. City Manager Estes explained that this project considered possible lane reconfigurations throughout the Uniontown area that would address the goals of better pedestrian and bicycle connectivity, while balancing freight needs and working with ODOT as a stakeholder to address the freight mobility targets. Some members of the stakeholder advisory committee, particularly Port of Astoria representatives, expressed concerns about limiting freight mobility. If a proposal did not meet ODOT's freight mobility targets, getting STIP funding would be limited.

Mr. Duncan added that the regional benefits of a project must be considered. However, freight issues are just part of the reason the State has mobility targets. That metric is considered by user groups because it is very easy to equate money with travel time, but mobility targets are like the canary in the coal mine. If the targets are being missed, everyone in the community will complain that it takes an additional 10 minutes to get from one side of Astoria to the other. He has not heard that anyone here was willing to accept that. When the other option was explored, dropping down a lane would not help congestion and the safety benefits would be significantly less. Additionally, the costs did not pencil out.

Councilor Brownson clarified that he was talking about extending the potential three lanes coming from the east into Uniontown two more blocks. He was not sure how going from one lane to two at Columbia would be any different from going from one lane to two at Basin. It would be a very positive thing for that historic section, which the City wants to be more pedestrian oriented. Four lanes plus new development on the Port will create problems with the left turn lane.

Mr. Duncan explained that the Columbia/Bond intersection has a lot of turn movements, so it is not as simple as extending three lanes through and east of that intersection. Three lanes would create merge issues, which would add to delays and create safety concerns. The idea could be tested and the plan does not preclude future designs. He was not sure this community was willing to tolerate additional delays during already congested periods.

Councilor Brownson wanted reassurance that in the future, the City could revisit this again, noting nothing will change for at least the next six years.

Mayor Jones opened the public hearing at 10:37 pm and asked if anyone objected to the jurisdiction of the City Council to hear this matter at this time. There were no objections. He explained the procedures governing the conduct of public hearings to the audience and advised that handouts of the substantive review criteria were available from Staff. He called for testimony in favor of the application.

Diana Kirk, Owner, Worker's Tavern, 281 West Marine Drive, Astoria, said she had been with the project since day one. Everyone involved worked diligently on this project and most of the concerns had been taken care of. If this passes and a property ideal for parking becomes available before the other part of the project is approved, she wanted to know if Urban Renewal funds could fund the parking now.

City Manager Estes said the Astoria Development Commission would most likely approve that funding.

Ms. Kirk stated at the very first meeting, burying the overhead lines was discussed. Sidewalks, lighting, and all kinds of issues are located in the same general area at the lines. There are 17 lines in front of her building. She asked if fund could be requested for burying the lines.

City Manager Estes said the Planning Commission added that language.

Ms. Kirk asked who would advocate for those funds since the lines were in a different area.

City Manager Estes explained that burying utility lines would be done at the same time as a road construction project. ODOT would not provide funding for that, but Urban Renewal could be a funding source. Additionally, the City would have to work with the utility providers to understand whether or not that is even possible for all of the lines and what the costs would be. If Urban Renewal funds were requested, the Development Commission would have to determine whether or not the funds were available and whether the City should spend funds on that project.

Ms. Kirk asked who would advocate for that since ODOT would be working in tandem with the City for STIP funding.

City Manager Estes said anytime a project applies for STIP funding, the City is a co-applicant. So, Staff and City Council get to weigh in. A full design process would be necessary to understand the true costs of all that work including burying utility lines.

Ms. Kirk stated that the lanes would be kept open for large trucks that are coming from two-lane roads. It is two lanes in and out of town. Lincoln City, Newport, Seaside, and Long Beach are also one lane in and one lane out. This one area in Astoria is supposed to be two lanes on one side and one lane on the other. This is just asking for cars to speed, which is Astoria's biggest problem. She did not understand why in this one section, large freight trucks are being discussed. Where are they coming from and where they going that they only need this small section of Astoria in order to move?

Pamela Mattsen MacDonald 258 Commercial, Astoria, said now that she lived in Uniontown, she was very concerned about crosswalks. She has to go downtown, but cannot cross anywhere near her house. She hoped there would be lighting to alert traffic and make traffic stop. It is important to have places for people to cross, especially if the plan is to have wider sidewalks. There is only place near Three Cups. This needs to be addressed on Marine Drive.

City Manager Estes said Public Works Staff have been talking with ODOT about improvements at 6th Street, which are recommended in the TSP. One benefit of the lane reduction project between downtown and the Doughboy is the ability to have a center turn lane with a center refuge.

Gordon Schriever 2778 Grand, Astoria, said he owned three properties on the south side of Marine Drive from Portway to the west. Marine is like a freeway, not a highway. Undergrounding the utilities is a big deal to him. There has been discussion about step backs and views, but when you step back and look, all you can see is utility poles. The project will be costly and he would be willing to pay extra property taxes if it could get done.

Nancy Montgomery, 279 West Marine Drive, Astoria, Owner, Old Finnish Meat Market, stated traffic speeds are part of the livability of the district. People who live on the west end and the businesses in the whole area consider the speeds to be scary. She was excited to see the master plan approved so that implementation could go forward.

Lisa Morley, 4908 Cedar Street, Astoria, stated she was in favor of trying to figure out how to slow traffic speeds down. She wanted to know why the bridge was not lighted like in San Francisco. Lighting the outline of the bridge would be memorable and beautiful for people who live here and for visitors.

Mayor Jones said lighting the bridge would be enormously expensive and funding for this plan would be delayed for even more years.

Ms. Morley stated funding was available for lighting the bridge.

Mayor Jones called for testimony opposed or impartial to the application. Hearing none, he closed the public hearing at 10:50 pm and called for Council discussion and deliberation.

Councilor Herman said she liked the plan, the specificity, the design standards, and the improved safety for cyclists and pedestrians. However, the City does need to come up with better and more visible crosswalks. She hoped that by the time this plan was implemented, the technology would provide for more visible crosswalks. Islands scare her because they make her feel like a sitting duck, especially being in a wheelchair.

City Council Action: Motion made by Councilor Rocka, seconded by Councilor Brownson to hold a first reading of the Ordinance implementing the Uniontown Reborn Plan and corresponding Code Amendments. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, West, and Mayor Jones; Nays: None.

Director Pearson conducted the first reading of the ordinance.

NEW BUSINESS & MISCELLANEOUS, PUBLIC COMMENTS (NON-AGENDA)

There was none.

ADJOURNMENT

There being no further business, the meeting was adjourned at 10:53 pm.

ATTEST:

APPROVED:

Finance Director

City Manager



CITY OF ASTORIA

Founded 1811 • Incorporated 1856

MEMORANDUM

DATE: NOVEMBER 4, 2019
TO: MAYOR AND ASTORIA CITY COUNCIL
FROM: BRETT ESTES, CITY MANAGER
SUBJECT: ASTORIA CITY COUNCIL MEETING MINUTES FOR OCTOBER 7, 2019

DISCUSSION / ANALYSIS:

The minutes of the City Council meetings are enclosed for review.

RECOMMENDATION:

Unless there are any corrections, it is recommended that Council approve these minutes.

BY: JENNIFER BENOIT, EXECUTIVE ASSISTANT

ATTACHMENTS:

[ACC Oct 7 2019 Final.doc](#)

A regular meeting of the Astoria Common Council was held at the above place at the hour of 7:00 pm.

Councilors Present: Brownson, Rocka, Herman, West, and Mayor Jones.

Councilors Excused: None

Staff Present: City Manager Estes, Contract Planner Johnson, Parks and Recreation Director Williams, Finance Director Brooks, Fire Chief Crutchfield, Police Chief Spalding, Public Works Director Harrington, Library Director Pearson, and City Attorney Henningsgaard. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

PRESENTATIONS

Item 3(a): Astoria School District Facility Bond Update

Craig Hoppes, Superintendent of Schools in Astoria, provided an update via PowerPoint on the progress of the facility bond that was approved in November 2018. His update included an overview of the school district's outreach efforts and the work done to date on facility upgrades and improvements. He noted the permitting process with Staff has gone smoothly and project timelines are being met. He made handouts available to the public.

PROCLAMATIONS

Item 4(a): Great Shakeout Oregon Proclamation

Mayor Jones read the proclamation declaring October 17, 2019 as the Great Oregon Shakeout Day.

City Manager Estes announced that City Hall would be conducting an earthquake drill on October 17th, along with all of the other organizations across the State of Oregon who are participating.

REPORTS OF COUNCILORS

Item 5(a): Councilor Rocka reported that he saw Peer Pressure Productions' inaugural play called *Hence Forward* and a performance by Astoria's new chamber opera company called the Cascadia Chamber Opera. He gave kudos to City Engineer Cindy Moore for the meeting she hosted for businesses affected by the Waterfront Bridge Replacement Project on 10th, 8th, and 6th Streets.

Item 5(b): Councilor West reported she also saw the play by Peer Pressure, which was fantastic. She also participated in Sunday in the Park with Art at Fort Clatsop, which had a record number turnout. The weather was spectacular, so a lot of people were out to enjoy the day and the event was a success.

Item 5(c): Councilor Brownson reported that he attended the bridge repair meeting. The City learned a lot from the last bridge project, which he hoped would help this project move forward in a cleaner way and get things done in a more timely fashion. He reported that the Police Department was looking to buy a couple of new Explorers, which will be hybrids. He was glad to see the City moving in that direction. He also attended his third forestry tour, which included Hampton Mill this year. The last mill he toured was the plywood mill at Mill Pond in 1963. The mills of today are completely different. They are clean and every part of the tree is used. Hampton has invested millions in upgrading the facility and making it more efficient. Hampton is looking for young people to fill entry level jobs so that they can promote from within. The jobs are not what they used to be. He saw a woman in a control room watching the entire operation on screens and monitoring everything. He shared an article from the New York Times on his Facebook page about cross laminate timber (CLT) as a way to sequester carbon dioxide for long term storage.

Item 5(d): **Councilor Herman** reported that she attended the Homelessness Solutions Taskforce meeting and the informational meeting about the waterfront bridges being replaced. Construction began today on 6th, 8th, and 10th Streets. The City is fortunate to have the State of Oregon paying for 90 percent of the project. The City has to complete this project or shut down the waterfront. She attended the open house for the Harbor. The ground floor of their building at 8th and Commercial used to be law offices.

Item 5(e): **Mayor Jones** had no reports.

CHANGES TO AGENDA

Mayor Jones requested that Item 8(h) be addressed as the first Regular Agenda Item. The agenda was approved with changes.

CONSENT CALENDAR

The following items were presented on the Consent Calendar:

- 7(a) City Council Special Meeting and Work Session Minutes of 9/10/10
- 7(b) Fire Department Status Update
- 7(c) Library Status Update
- 7(d) Parks and Recreation Status Update
- 7(e) Public Works Status Update
- 7(f) Finance and Administration Services Status Update
- 7(g) Community Development Department Status Update
- 7(h) Astoria Public Library Child Safety Policy

Councilor Herman thanked the department heads for providing detailed reports. Mayor Jones added that Director Pearson was able to get a \$50,000 grant from the Institute of Museum and Library Services. Public Works has also received millions in grants over the years. Staff is always encouraged to look for grant opportunities.

City Council Action: Motion made by Councilor Brownson, seconded by Councilor Herman, to approve the Consent Calendar. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, West, and Mayor Jones; Nays: None.

REGULAR AGENDA ITEMS

City Council proceeded to Item 8(h) at this time.

Item 8(a): Second Reading and Adoption of Amendment Request (A19-05) for Uniontown Reborn Plan and Code Amendments

In 2017, the City of Astoria Community Development Department initiated the Uniontown Reborn Master Plan effort, utilizing a Transportation and Growth Management Grant from the Oregon Department of Transportation (ODOT) and the Department of Land Conservation and Development (DLCD). The purpose was to address issues dealing with land use and transportation issues in Astoria's historic west gateway area known as Uniontown. The intent of the Uniontown Reborn Master Plan and implementing ordinance is stated as follows: *"The purpose of the Uniontown Reborn Master Plan is to better integrate transportation and land use planning and develop new ways to support economic development along with safety and access enhancements to improve conditions for pedestrians, bicyclists, transit users, and motorists."*

The planning process began in earnest in the Fall of 2018 with a consultant team consisting of Jacobs Engineering and Angelo Planning Group. Angelo Planning Group has worked on several long-range planning projects in Astoria, including the Riverfront Vision Plan and its implementation process. The Community Development Department staff was tasked with managing the project. Significant public involvement opportunities were designed to gain public input. This process was initiated to plan for these issues in a comprehensive manner and to set a framework for the future of the study area.

During the Plan development, three community-wide forums (11-7-18, 2-6-19, 5-22-19), and four Stakeholder and Technical Advisory Committee (STAC) meetings were held. In addition, staff and/or consultants conducted stakeholder interviews, attended neighborhood meetings, as well as distributed and tabulated surveys. A project website was developed with project overview, schedule, meeting information, and the ability for community members to respond on-line, or by contacting staff in any format.

The Planning Commission held a public hearing on August 6, 2019 and August 27, 2019. The APC recommends that the City Council adopt the proposed amendments. The proposed ordinance has been reviewed and approved as to form by the City Attorney. The City Council held a public hearing and conducted a first reading at the September 30, 2019 City Council meeting.

A copy of the proposed ordinances, the proposed Master Plan, and the Findings of Fact are attached for Council consideration. If the draft Master Plan, and code amendments meet Council's expectations, it would be in order for Council to conduct a second reading and adopt the ordinance for the Uniontown Reborn Master Plan adoption and amendments.

This item was addressed immediately following Item 8(h).

Director Brooks conducted the second reading of the ordinance.

Mayor Jones called for Council discussion and deliberation.

Councilor Rocka said there was a lot of push and pull for a very long time and the business owners and residents in Uniontown seems to have reached a point that they are comfortable with the plan and support it.

City Council Action: Motion made by Councilor Brownson, seconded by Councilor Rocka, to adopt the Findings and Conclusions contained in the Staff report and adopt the Ordinances implementing Amendment Request A19-05. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, West, and Mayor Jones; Nays: None.

Mayor Jones read the rules of appeal into the record.

Item 8(b): Continuation of Public Hearing on Amendment Request (A19-01B) Bridge Vista Overlay Zone Code

On September 30, 2019 the City Council considered a recommendation from the Astoria Planning Commission to adopt Ordinance (A19-01B) which would amend provisions of the Bridge Vista Overlay Zone (BVO), Astoria Development Code at 14.085-14.125.

At its September 30, 2019 meeting, the City Council reopened the public hearing and deliberated on the proposed amendments. The issue of existing view corridors at Basin and Bay Street was discussed and concerns were voiced by the public as well as council members that those views could be lost to future development of areas north of the street rights-of-way. A consensus was reached that these are two of only three right-of-way view corridors in the Bridge Vista Overlay Area and are worthy of protection. The City Council suggested a possible amendment to the proposed ordinance in order to protect those view corridors while allowing for possible exceptions if the Port West Mooring Basin Plan District is approved in the future. Staff was directed to prepare an amendment to address these concerns. The City Council conducted a first reading of the Ordinance as proposed at its September 30, 2019 meeting.

The council voted to continue its deliberations and reopen the public hearing on the suggested amendment to Ordinance (A19-01B) at its October 7, 2019 meeting.

Presented to the City Council is a proposed amendment that creates a 70' view easement at the north ends of Bay and Basin Streets. This amendment also includes a definition of "view corridor" as *"The unobstructed line of site of an observer looking toward an object of significance to the community such as the River, historic site, ridgeline, etc. A view corridor shall be free of structural encroachments. Parking within a view corridor is allowed unless otherwise specified."* With this definition, use of the property affected by the view corridor is still

allowed and the view corridor area could be used for the required parking and/or landscaping areas. It should not prevent development of the site.

Since the Astoria City Charter provides that an ordinance read by short title only has no legal effect if it "differs substantially" from its form as originally filed unless the new section is read "fully and distinctly" in open Council at least 12 days prior to the adoption of the ordinance (Charter Chapter VIII Section 8.2(4)) it is recommended that the proposed amended language to the draft Ordinance be read in full, that the Council hold the public hearing as announced at the September 30, 2019 meeting, close the public hearing, and if the language of the proposed amendment is acceptable move to amend Ordinance (A19-01B). At your October 21, 2019 City Council meeting, you may conduct a second reading of Ordinance (A19-01B) as amended and consider adoption of the amended ordinance.

The proposed amendment to Ordinance (A19-01B) concerning the Basin and Bay Streets view corridors is attached for Council consideration.

If the proposed amendment meets Council's expectations, it would be in order for Council to have the amended draft language read in full, hold a public hearing concerning the view corridor issue and close the public hearing and vote on the proposed amendment. The second reading and possible adoption of the ordinance as amended for Bridge Vista Overlay Zone Code amendments would be held at the October 21, 2019 meeting.

Planner Johnson read the amended draft ordinance in full and gave a PowerPoint presentation detailing the amendments.

Mayor Jones asked if requiring development to be shifted to the west would have any net affect of reducing the total amount of building square footage allowed on the lots. Planner Johnson answered no because the proposed BVO Code amendments limit the development on the sites to 50 percent lot coverage.

Mayor Jones pointed to a specific lot displayed on the screen and asked if the 70-foot view corridor requirement would prevent the owner from building two buildings on that lot. Planner Johnson explained that the proposed Code amendments also require buildings to have a north/south orientation, which means buildings would be narrower on the east/west sides. That would allow ample room for multiple buildings with the view corridor on that lot. However, room for parking would also be required.

Mayor Jones said this issue came up at the end of the last meeting and at the time, he thought it seemed reasonable. The only reconsideration he has had since then was the concern about the street that goes half way to the Riverwalk and stops. He tried to put himself in the mind of the property owner and decide how to respond. The City's street does not go through and instead of buying the land to make the street go through, the City is just telling the property owner they cannot do what they want with their land. If the same amount of development can occur on that lot, but must be shifted to the west, that does not bother him as much because the view corridor can be used to satisfy parking and landscaping requirements.

Councilor Rocka asked if an alternative view corridor would still extend to Marine Drive. Planner Johnson said no and explained that through the master plan process, an alternative public access or view corridor could be proposed.

Councilor Rocka stated one of the concerns is access to the Riverwalk. There is traffic on the Riverwalk when the cruise ships come in. If access is cut off, there is no way to get to Uniontown businesses from the Riverwalk. Planner Johnson clarified that the request was for a view corridor, not physical public access. Access to the Riverwalk would still be available via Columbia and through the Maritime Memorial property from Bay Street. The Riverwalk could also be accessed from Basin Street through a right-of-way, which she pointed out on the map displayed on the screen.

Councilor Rocka did not understand how Bay Street would be accessible if the Maritime Memorial planned to build and proposed an alternative view corridor. Planner Johnson used the map displayed on the screen to further clarify public access to the Riverwalk, pointing out several specific pedestrian routes. She also pointed out the no-build areas and view corridors.

Councilor Brownson stated the overlay requirements without the planned districts would have very little impact on development, which he supported. However, he was not partial to eliminating a view corridor in exchange for public access. He recommended the public access portion be eliminated. Additionally, the trade off for a building not to exceed 28 feet high is an unnecessary restriction. In the planned district, a six-story building could be developed and no one would notice. However, he did not believe that would happen. Limiting buildings to two stories is too Draconian. The City is not condemning properties. Landscaping and parking will be required. And in a planned district, developers will have the flexibility to build a different type of building.

Mayor Jones re-opened the public hearing at 8:09 pm called for public testimony in favor of the application.

Nancy Montgomery 1564 5th Street, Astoria, owner of 279 W. Marine Drive, Astoria, said she knew that often in development, someone's needs get left on the table. She was grateful that the City Council is willing to consider ways to incorporate and make sure the Port gets what they need. Uniontown wants to be in partnership with the Port. The City and the businesses in Uniontown can maintain view corridors and find a way to let everyone have what they are hoping for. There was mention of communication with the Port and the City about maintaining those view corridors, which was great. She hoped the Port was on board with helping everyone get what they want.

Mayor Jones called for public testimony opposed to the application.

Dirk Ron, Brownsmead, said he was concerned about the proposed height restrictions and view corridor restrictions because they would adversely impact Port of Astoria properties. The Port has focused on updates to its strategic business plan and so far, has been working together on shared planning issues. He hoped that the Port's executive director and Astoria's City Manager coordinate the navigation of this process. After a long working day, he took some questions from the *Daily Astorian* and made some comments that may not have been tactful. In subsequent conversations with Councilor Rocka, he expressed hope that the two elected bodies could work together on issues. He said he had previously sent a letter, which he read into the record.

Frank Spence, 5169 Birch Street, Astoria, Port of Astoria Commissioner, stated the proposed amendments are an indication of another restriction being imposed upon the Port. The original work of the Planning Commission made it evident that the proposed restrictions were not applicable to the Port or Astoria Warehouse properties. The amendment was proposed in two separate presentations. The second is the Planning Commission's original recommendation that the Port and Warehouse be exempt from any of the proposed restrictions on other properties and that the Port and Warehouse propose a master plan in the future, which would go through the Planning Commission process before coming to City Council for adjustment. The current proposal contemplates restrictions in creating the West Mooring Basin Planning District. Additionally, if the Port requested an exemption, four criteria must be met. All of this has been added on from the very beginning in simplicity that the Port will come back with a master plan and the City Council will control everything at that time. However, to presuppose and prescribe what the Port must do to even get to step one is improper and puts the Port in a box and hampers redevelopment if not discouraging redevelopment. He asked City Council to reconsider the proposal and deny the request.

Scott McClain P.O. Box 1294, Astoria, Port of Astoria Commissioner, said he was seriously concerned about the 28-foot height limit because it does not provide a lot of room for industrial development. It would be a challenge to build a two-story sales plaza and marketplace if the HVAC system on top of the roof were considered.

Eric Colbert 264 Bay Street, Astoria, said he moved in last December. The reason he took the apartment was because it was located on the north west corner of Bay street and has a fantastic view. He waited for years to find a place where he can look out his front window and see such a panoramic view of the river that he grew up on. If this proposal goes through, development will completely cut off all of his view, even if it is one story. He is one of a few who will be very badly impacted by these Code amendments.

Mayor Jones called for any testimony impartial to the application.

Diana Kirk 281 W. Marine Drive, Astoria, said she believed the new language changes were almost there, but not quite. The Port will have issues with any changes. Over the last six days, she has tried to educate the other businesses and residents in Uniontown about the changes. The language is not strong enough and sets the City up for a future exchange. Issues are trendy. Five years ago, she tried to buy a City lot and at that time it was very

trendy not to sell City property. Since then, Codes have changed. Developers must adapt to those trends and changes. We do not know what the Port will propose in the future. The view corridor is an exchange and the new plan sets the City up for an exchange with the Port in the future. She understood that the Port owned the land, but the City Councilors are elected to advocate for the Uniontown business owners. Uniontown business owners are asking City Council to support them and advocate for them, not advocate for the Port. That is what she asked for last week because that is what she elected her Councilor for. For the last two years, she has organized the business to be present and speaking loudly. If anything is built on that lot, it would be the only street in Astoria that cut off access to the Riverwalk from 39th to the roundabout. She did not want to see that happen. She understood the Port's position, but the businesses are old. Her business has been serving food for 100 years to Astorians. A future trade off will impact the businesses very hard and the City will set them up for another fight.

Richard Lock 264 Marine Drive, Astoria, said he represented Glen Taggard and read the following statement: "As the owner of 264 Marine Drive, I implore you to reconsider shutting off view access to Bay Street. My family has owned the building since 1976 and have faithfully paid property taxes and contributed to the local Astoria economy for many years. Our building is negatively affected by this, distorting our view and access. Historically, the end of Bay Street used to house the old boat wench shed and associated wench car, which is still there today. The mariner memorial deserves a buffer zone, which Bay street provides. My family along with former Uniontown Mayor Ray Goforth did a lot of work on the mariner memorial. Ray would turn over in her grave if she knew this committee was shutting down Bay Street for a hotel. I urge the committee to use caution with these fast-moving development ideas. The economy swells and contracts, and it occurs to me that slow, stable growth along with well-defined and vetted strategy plans will yield the best results. Paying attention to the shareholders will maintain a healthy and robust community. In conclusion, I strongly urge you to reconsider closing Bay Street. While Uniontown needs better public infrastructure, it does not deserve the committee and Council shutting off views of the river and bridge. Best regards, Glen Taggard."

Laura Sullivan 1028 Harrison Avenue, Astoria, said she did a lot of work in Uniontown and enjoyed seeing the view from Bay Street. She takes her kids to the Riverwalk and the Maritime Park. She would hate to see that go away.

Chris Farrar, 3023 Harrison Avenue, Astoria, thanked everyone who had been working on this for so long. He believed the City Council was close to a good decision. He was encouraged by the Port Commission, the changes that have come about, and their more reasonable way of conducting business. However, the Port has attended this hearing as though they are an entity of their own. The Port only operates what is owned by the citizens of the county. Because of all of the Port's problems, it is still somewhat doubtful whether the Port will survive under local leadership. There is a plan in place to pull the Port out of a hole and he hoped it worked. However, he believed their plan would be more sound if the Port became part of the community and listened to what people had been saying in this hearing for weeks about what they want the community to be. The Port, its properties, and all of its enterprises will benefit if it learns to fit in with the community instead of trying to hold out for a golden castle on the hill.

Mayor Jones called for rebuttal testimony.

Planner Johnson explained that throughout the entire BVO amendment process, Staff has made it clear that the Port, Astoria Warehouse, and the entire BVO area would be subject to the Codes as proposed. The planned districts provide future opportunities for the Port to propose a master plan stating that the current Codes could not work for them. Then, the City Council and Port could come to an arrangement where some Codes could be amended for the master plan. At no time was the Port not subject to the BVO.

Mayor Jones stated that had always been his understanding as well.

Planner Johnson continued, saying the 28-foot height limit has been proposed across the board, but the criteria would only limit the Port from going to 35 feet high, which is an option if certain criteria are met. Twenty-eight feet is only required if the Port requests an exception to the view corridor. Rooftop equipment would also be exempt from the 28-foot height limit.

Mayor Jones noted that a few people commented that if the view corridor was not adopted, access would be shut off. However, Staff has already demonstrated and clarified that none of the language discusses access, just

view corridors. Even if the view corridor is established, access to the Riverwalk would still require walking around on the sidewalk to avoid trespassing. This City is only establishing a view corridor. Planner Johnson added that the amendments would not prevent development of the rest of the lot. This proposal does not address development that could block views and the proposed view corridor would not impact development one way or another.

Mayor Jones closed the public hearing at 8:32 pm and called for Council discussion and deliberation.

Mayor Jones stated there are four criteria that would allow a future City Council to consider allowances for flexibility in the future, should a plan be submitted to reduce the view corridor. The proposed Code only allow permission for someone to ask in the future. If the view corridors are adopted, the City Council is essentially reducing the ability of the property owner to do certain things on their property. He believed it was in order to offer the possibility of consideration of future flexibility.

Councilor Brownson argued that as stated, not a lot of flexibility is provided. The proposed language actually creates more restrictions if a property owner wants a little flexibility in one direction. There is no incentive to do anything, so it is redundant. However, if the rest of the Council supports the proposal, he would still ask that a view corridor be exchanged for another view corridor, not public access. Otherwise, view corridors could be eliminated.

Mayor Jones noted that in the future, residents might want the public access. He believed the public should be able to decide at a public hearing.

Councilor Brownson stated public access already existed and creating more public access did not make sense. The proposed language creates a loophole that may create an opportunity which does nothing to preserve what this Council and the public is looking for.

Councilor Rocka said he had suggested to the Port Commission via email that it would be a good idea for the two commissions to have a joint work session. That has been underscored because there is some misunderstanding about what the City Council is doing. It would be good for the City Council to have a better understanding of what the Port has in mind. And the Port needs to have an understanding of what the City Council's vision is. The two commissions have different responsibilities. City Council wants the Port to succeed but must also represent the City and its citizens. He believed that most of the time they would agree on what was a good solution, but tonight is an example of differing opinions on what should happen. He believed Councilor Brownson made good points. He did not want Uniontown to lose what they have or go backwards. It is important for Uniontown to have public access and no matter what happens, access will continue. Cutting off businesses in Uniontown would be irresponsible. He was ready to move forward and supported Councilor Brownson's recommendation to say the view corridor has to stay where it is and as is.

Councilor West stated she agreed with Councilors Brownson and Rocka. She also wanted to meet with the Port to clarify a couple of misunderstandings around the Code. The Council must often meet in the middle to come to a solution and that has been done through consideration of implementing planned districts. This proposal is minimal and square footage would not be impacted. She supported preserving the view corridors.

Councilor Herman said the City Council and Staff works with all property owners in the community and must work with all of them fairly. Even though the Port is the largest property owner in Uniontown, there are many property owners in Uniontown. She did not believe the property owners should be held to different requirements or different standards. The Port's 2001 master plan specifically states that the foot of Basin Street should be preserved as a park or grassy area. She believed the 18-year old master plan was more relevant today than ever because the City is faced with so much pressure to develop the waterfront. She had a copy of that master plan and offered to let anyone see it. She believed the street ends should be preserved in perpetuity. Once those view corridors are lost, the City will not get them back. She did not believe the proposal would have a dramatic impact on the Port but would on some businesses if properties were developed. She supported preserving the view corridors.

City Attorney Henningsgaard explained that Part 3 of the proposed amendment could be eliminated through an amendment. Then, the Council could vote on amending the proposed ordinance.

City Manager Estes provided an explanation of the way the Code was structured and said the amendment has been coded in the applicable section of the Code as Number 3 – Setback Modifications. Planner Johnson added that the amendment for the Port master plan district is an exception to Number 3 – Setback Modifications. The original proposal states “no reduction in view corridors shall be allowed.”

City Council Action: Motion made by Councilor Brownson, seconded by Councilor Herman, to amend the proposed amendment by removing the exception language regarding the Port West Mooring Basin Planned District under Number 3 – Setback Modifications and just keep the language “No reduction in view corridors shall be allowed.” [1:43:30] Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, West, and Mayor Jones; Nays: None.

City Council Action: Motion made by Councilor Brownson, seconded by Councilor Rocka, to approve new language referring to Bay and Basin Streets view corridors as amended. [1:48:15] Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, West, and Mayor Jones; Nays: None.

Mayor Jones called for a recess at 8:48 pm. The meeting reconvened at 9:00 pm.

Item 8(c): Public Works Shops Equipment Service Truck Purchase

The Public Works Department has solicited quotes for a new 2020 Ford Equipment Service Truck to replace a 1989 Dodge Equipment Service Truck that has ended its productive service life for the City.

The Oregon DAS contract price for the Shop Equipment Truck is \$89,856.08. This includes a 2019 Ford F-550 4X4 truck priced at \$38,707.58 with a crane body addition priced at \$51,001.00 and Oregon Exempt License Plate fees of \$147.50. The crane body addition includes but is not limited to a telescopic crane, adjustable boom, and winch. There are funds appropriated in the 2019-2020 Public Works Improvement Fund for the purchase of the vehicle.

It is recommended that City Council approve the purchase of a 2020 Ford Shop Equipment Service Truck for \$89,856.08 and authorize the City Manager to sign all pertinent contracts.

City Council Action: Motion made by Mayor Jones, seconded by Councilor Rocka to approve the purchase of a 2020 Ford Shop Equipment Service Truck for \$89,856.08 and authorize the City Manager to sign all pertinent contracts.

Councilor Herman asked where the funds came from.

City Manager Estes explained that the funds for this vehicle come from the Public Works Improvement Fund and other vehicles are funded by the Capital Improvement Fund. Vehicle purchases are made when funds are available and depending on the City's needs.

Director Harrington added that the advantage to having a mechanic shop is that Staff can take care of the vehicles. This truck will be for the mechanic shop.

Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, West, and Mayor Jones; Nays: None.

Item 8(d): Fire Department Pickup Truck Purchase

The Fire Department requested and was allocated budgetary resources to purchase a new Ford pickup truck in the approved budget for FY 2019-2020.

This vehicle will replace a 1991 Ford F250 pickup truck that is used for Fire Department emergency response. This vehicle has reached the end of its service life as an emergency response vehicle and is not NFPA compliant.

The City is a member of the Oregon Cooperative Procurement Program and obtained this price through Landmark Ford who is an authorized vendor of price agreement 5550 administered by Oregon Department of Administrative Services (DAS). The City is allowed to go directly through this type of program for this

purchase. Funds are available in the 2019-2020 Capital Improvement Fund and the Fire Department materials and services budget to cover the costs of this purchase.

It is recommended that Council authorize the purchase of a 2020 Ford F350 4x4 Crew Cab Truck and Knapheide Service Body for the Fire Department at a cost of \$55,389.47.

City Council Action: Motion made by Mayor Jones, seconded by Councilor Brownson to authorize the purchase of a 2020 Ford F350 4x4 Crew Cab Truck and Knapheide Service Body for the Fire Department at a cost of \$55,389.47. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, West, and Mayor Jones; Nays: None.

Item 8(e): Authorization to Purchase Two Police Explorers Budgeted for FY 2019-2020

The Police Department requested and was allocated budgetary resources to purchase two police vehicles in the approved budget for FY 2019-2020.

These vehicles will replace two Chevrolet Tahoes that have reached the end of their useful life span and exceed 100,000 miles. Prices were obtained using the state cooperative purchasing program. Gresham Ford, provided a quote of \$37,119.68. This price includes features added by Ford Motor Company including prewiring for some of the lights and siren. These added items were recommended by our vehicle up-fitter to provide better value to the city while reducing time, material and labor costs when the vehicle is set up with emergency equipment.

It is recommended that approval be granted for the purchase of two 2020 Ford Interceptors at a cost of \$ 37,119.68 each and the associated installation of related emergency equipment at \$22,342.00 per vehicle.

City Manager Estes noted that these vehicles would be purchased through a three-year purchase/lease program.

City Council Action: Motion made by Councilor Herman, seconded by Councilor West, to approve the purchase of two 2020 Ford Interceptors at a cost of \$ 37,119.68 each and the associated installation of related emergency equipment at \$22,342.00 per vehicle. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, West, and Mayor Jones; Nays: None.

Item 8(f): Fire/Port Fireboat Memorandum of Understanding

The City of Astoria Fire Department has provided firefighters to jointly operate Port of Astoria owned boats through a Memorandum of Understanding (MOU) with the Port of Astoria since 1993. The 1993 version of the (MOU) has become outdated and both the City of Astoria Fire Department and the Port of Astoria desired to work together to update the (MOU). After several months of meetings, both the City of Astoria Fire Department and the Port of Astoria have updated the 1993 (MOU) to reflect current training standards, fire boat operations, and emergency response procedures. Attached are copies of the 1993 (MOU) as well as the revised (MOU) for Council consideration.

The updated (MOU) has been reviewed by the City Attorney as to form. The attached (MOU) clearly spells out the responsibilities of the City of Astoria Fire Department and those of the Port of Astoria. Termination of the (MOU) between the City of Astoria and the Port of Astoria may be facilitated by either party upon 30 days' notice in writing.

Staff recommends that Council approve the updated Memorandum of Understanding with the Port of Astoria for operations of the Port Fire Boat (Trident).

Councilor Brownson asked who was qualified to be a deck hand to operate and drive the boat.

Chief Crutchfield said it takes quite a bit of training to be certified through the Oregon Department of Public Safety Standards and Training (DPSST). Training was being offered when he first arrived and Astoria had seven people going through training at that time, five career members and two volunteers who are specific to the boat. The certification is basic, so Staff planned to update the MOU to get clarification with the Port on who was paying

for what and make sure maintenance and fueling is covered. The MOU also defines Staff's roles and responsibilities for checking the boat, determining when it needs maintenance, and notifying the Port so they can respond timely and get it fixed. The basic training is four hours each month to keep up skills, so Staff has identified policy to go along with the MOU that they will operate under. The river can be dangerous to anyone who does not know what they are doing, so at this time, Staff will only operate the boat during the day and in good weather. Staff will respond to fires, an active water rescue where there is a potential to save a life, and other limited responses. In the future, Staff plans on doing more training. As Staff becomes more competent and have more time operating the boat, they will expand what they respond to. In the 1993 version of the MOU, the Port had more control over operating the boat. Staff wanted to work jointly with the Port and have people trained. At this time, the Port does not have a lot of interest in having people training to operate the boat. As they gain personnel or train their personnel, the Port would be welcome to help operate the boat as long as the certifications are maintained.

Councilor Brownson asked if a commercial captain's license is required.

Chief Crutchfield said no license is required, but DPSST requires 40 hours of training. Two firefighters who were retired from the boat program volunteered to give the class in Astoria at no cost.

Councilor Brownson believed the boat was a real asset to the community. He wanted to make sure that taking on this responsibility would not unduly impact the Fire Department's ability to perform on land.

Mayor Jones explained that Staff was not taking responsibility from the Port. The Port purchased the boat with a federal port security grant and they do not have a responsibility for firefighting along the waterfront that is not their property. So, this relationship is mutually beneficial. The Port is letting the City use their boat to fight fires on the city's property.

Chief Crutchfield added that the updated MOU follows the 1993 version very closely, but Staff was able to clarify the Port and the City's responsibilities very well. The City is providing firefighting tools and personnel and operating the boat. The Port is maintaining the boat and paying for that maintenance. He believed it was a good deal and a good partnership. He hoped to continue to grow the relationship with the Port and make the fire boat work. If there is a fire in a building on the waterfront, there are areas inaccessible by land.

City Council Action: Motion made by Councilor Rocka, seconded by Councilor Brownson, to approve the updated Memorandum of Understanding with the Port of Astoria for operations of the Port Fire Boat. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, West, and Mayor Jones; Nays: None.

Item 8(g): Consideration of Lease Proposals for 17th Street Dock East End

At the September 3rd City Council Meeting Public Works staff presented a lease with the American Cruise Lines (ACL) for the east end of the 17th Street Dock for consideration. After hearing from staff, ACL and the American Queen Steamboat Company (AQSC), Council had some questions and concerns that they asked be addressed and brought back to a future meeting. The concerns raised were primarily about how scheduling would take place amongst the two primary users and how future rates would be established by ACL. The AQSC had also requested in the meeting that they be allowed to submit a proposal for a lease in their name.

American Cruise Lines and American Queen Steamboat Company have submitted proposals for review.

It is recommended that City Council consider the proposals and direct staff on how to proceed.

Director Harrington provided a summary overview of both proposals, which were included in the Agenda Packet. He noted that it was difficult to do an apples to apples comparison because the two proposals were so different. Staff used the following objectives when comparing the proposals:

- Does the proposal protect the City's financial security of dock?
 - ACL – The proposal would generate more revenue that could be used to pay down debt service and would put infrastructure improvements in the hands of the private sector resulting in less risk to the City.

- AQSC – The proposal focused on third party management of the entire dock and did not included any associated lease fees or rent. The City is not interested in third party management because no help is needed to manage the Coast Guard portion of the facility.
- Does the proposal address the City's needs?
 - ACL – The proposal does address the City's needs and is fair and equitable to all parties. The Council had expressed concerns about scheduling and rates, which he believed had been address in the supplemental information.
- Does the proposal create added economic benefit to the City as a whole?
 - ACL – The proposal adds economic benefits by putting the risk of the investment and capital improvement funding in the private sector.
 - AQSC – The proposal did not identify an economic benefit to the City.
- Does the proposal reduce Staff time?
 - ACL – The proposed lease does reduce Staff time spent on scheduling and coordinating logistics between companies.
 - AQSC – The proposal did not have any information that indicated how Staff time would be affected.

Mayor Jones called for a presentation by AQSC.

Ares Michaelides, President, American Queen Steamboat Company, said he understood the City was focused on financial security, management, competitive rates, scheduling, and reducing Staff time. He believed a management agreement was in the best interest of the City. He handed out at the dais an economic impact statement demonstrating how the pier would be managed. The handout referred to the currently proposed lease as Scenario 1, which would provide the City with \$80,000 a year and no expenses. Under the management scenario, referred to in the handout as Scenario 2, included an annual management fee of \$100,000 and estimated about 149 port calls per year between the two companies. He noted that \$100,000 was only used to make the math easy for illustrative purposed and the agreed upon amount could be lower. The City would have to charge \$1,210 per port call in order to break even and the management company would help negotiate that rate. If the City \$2,500 per port call, cash flow would total \$272,000 per year. That revenue could be used to pay down debt, for maintenance, and for capital improvements. There is a lot of negotiation that might be necessary with a management company. He proposed a company that is a sister company of AQSC's, which might be considered a conflict of interest, but it is an independent company with independent management. The City could also put it out to bid. AQSC wants to be fair, reasonable, and equitable. They want to have competitive rates. The company goes to market very early and most of their sales occur 250 to 300 days before sailing. So, not knowing where the ship is going to go makes it difficult for AQSC and their travel partners to sell cruises. Based on what they are paying at the Port, he believed AQSC would be glad to pay \$2,500 per port call.

Mayor Jones understood that AQSC was currently paying the Port \$4.30 per foot on a port call.

Eric Denley, 521 Tiffany Lane, Louisville, KY, Chief Legal Counsel for AQSC, said the cost averaged just under \$6,000 a day to tie up the American Empress at the Port. ACL's proposal normalized over the number of port calls has a daily port fee of less than \$500. Currently, AQSC pays \$720 to tie up to the City's pier when access is available. The City is giving ACL 30 years of control over a public utility at a premium and potentially at the exclusion of other competitors. He was concerned about the lease terms proposed by ACL. This year, AQSC was forced to go to the Port.

Mayor Jones said \$6,000 a day at the Port was radically different from what he had heard. The City charges \$2.00 per foot and the Port charges slightly more than twice that. He asked what fees were included in that \$6,000 a day.

Port Commissioner McClaine stated he did not know where the \$6,000 came from. He confirmed with an AQSC representative that the American Queen was 350 feet long.

Mr. Denley said the cost to go the Port was significant and spoke to the value of the City's asset. The City considers ACL's lease a benefit because it shifted the risk to ACL. However, ACL is allowed to offset 100 percent of their rent by maintaining the pier. If ACL had to pay more than their lease amount, they could terminate the lease if it was not economically viable. Additionally, ACL would not be required to put \$0.01 into

capital improvements for 30 years. As an attempt to meet the City's needs, AQSC has made some suggestions about the value of that asset and made a proposal that was fair and equitable to all parties that want to use the facility.

John Kiever, 12 Lande Way, Yountville, CA, Senior Vice President of Seaward Services, said his port experience started at California Maritime Academy. From 1988 to 2008, he was vice president of marine programming and student development at California State University Maritime, where he was also responsible for the operation of their 500-foot pier, a number of tugboats, barges, small crafts, and a Coast Guard tenant. Then, he worked for HMS Global shortly before they bought Seaward Services, which is a government contracting agency that runs ships mostly for the federal government and port operations. During his time there they have run the Navy port in Key West, a port facility in Dania, Florida for the Florida ocean testing facility, a port operation in Norfolk, Virginia for test and evaluation vessels autonomously operated, one in Eglin Air Force Base for an explosive ordinance fleet. Seaward currently has a contract in Bangor, Washington for a barge and port facility. He looked at the economics of this proposal and the port facility. The port has location and a lot of people want to use it. He believed the port was undervalued by the City, considering the price the City is charging. Since the commercial portion of the pier has a height requirement, the City should consider changing the rate structure. Most similar facilities charge by the call and by the size of the vessel, sometimes the number of passengers or the number of cargo movements, and also by the length of time the vessel is staying. All of those charges together can generate a much higher income. AQSC's proposal said the entire pier because it was their understanding that the City did not want any responsibility. However, he did not believe it would be a problem if the City just wanted them to manage the end of the pier.

Mayor Jones invited ACL to make a presentation.

Charlie Robinson, ACL, said ACL operates three vessels on the Columbia River that have stopped in Astoria three times a week since 2010. Additional boats are under construction. This proposal would provide increased port capacity and the ability to bring more ships in on a more regular weekly rotation. He firmly supported the proposal that ACL submitted to the City over the summer and negotiated with Staff. The proposal is competitive in revenue it will generate for the City and in the way it mitigates all expenses. ACL heard the feedback provided at the September 3rd meeting and he hoped they had accommodated it suitably. The proposal provides for a rent escalator that accrues through the term of the lease. The rent was increased by reducing the threshold number of dockings before additional rent kicks in. With every docking after the 110th, ACL will add \$400 to the rent. They heard concerns that leaving the docking fees solely up to ACL provided for the potential for anti-competitive behavior. So, ACL has proposed allowing the fees to be approved by the City. Force majeure control of the dock will be limited in the event that a last minute scenario comes up where they would like to have their own ship at the dock, particularly if there are a number of capital improvements made. ACL is willing to limit that substantially to a maximum of five interruptions per year. Since the City considered the words "commercially impractical" to be too ambiguous to apply to a force majeure event, ACL is fine with leaving the lease as is. Also, the City has the ability to terminate the lease should ACL fail to perform. Their proposal is more competitive now than it was and is still the most competitive proposal possible. ACL currently represents two-thirds of the dockings and expect that to increase to about three-quarters as an additional ship is added. AQSC's Scenario 1 does not account for the extra \$400 per docking above 110. Applying the 186 scheduled dockings in Scenario 2 to Scenario 1 equals an extra \$30,400 in rent payments to the City. The expenses to the City would remain zero. In Scenario 2, \$2,500 per docking is not competitive and it would be difficult for Astoria to justify that amount. That speaks to the issues the City might face with a management company. Currently, ACL pays by the foot and their vessels are smaller than the American Empress. A flat fee per call would damage their ability because they have fewer passengers to amortize the docking costs. If ACL was unable to resolve a dispute with the management company owned by the same private equity firm that owns AQSC, it could be very damaging to their ability to call on Astoria. If ACL were pushed out of Astoria, the City would lose the revenue and be left with a large management fee. He did not believe AQSC's proposal achieves the City's desire to reduce actual expenses and Staff time. ACL is the most appropriate company for Astoria to have this relationship with because of their majority use of the dock, expects future growth, and desires to improve the facilities. ACL recognized that other operators brought benefits to the town and understood the economic benefits. If Astoria decided to use a third-party management company, it should choose a truly independent company.

Alan Laster, Counsel representing ACL, said that on a couple of occasions, AQSC has said maintenance costs are offset by rent. That is not correct. The repair or replacement costs of the dolphin can offset the rent. The risk that ACL is trying to manage is that if the dolphin fails, the dock closes. ACL has agreed to take on that burden,

which is a significant expense. That is why it makes sense for this lease to be long term because it will give ACL the ability to invest in that kind of repair while also giving the City time to continue receiving rents going forward after the repairs have been made.

Councilor Herman asked what the typical docking fee was, how long the boats were, and why Astoria could not get \$2,500.

Mr. Robinson said it was \$2.00 per foot and the vessels are 230 and 300 feet. Many ports along the Columbia River do not charge any fee to dock. Portland is the only port more expensive than Astoria at about \$1,200, but they also do all of their turnaround operations at Portland.

Councilor Brownson asked if ACL had used the Port's docks and if so, what fees were charged.

Mr. Robinson stated ACL did use the Port from time to time. The Port is more expensive than Astoria, but he did not know the fees off the top of his head.

Mayor Jones noted that the 17th Street Pier just provides the dolphins and no services are provided. Director Harrington added that the City's current rate is \$2.00 per foot. Water and garbage services are available. The Port also offers sewer, fueling and other services. About a year and a half ago, Staff decided to leave the rate at \$2.00 per foot because it had recently been increased from \$1.50 per foot. However, he did not do a survey of what other ports charged for all the services. Astoria built this facility to bring in the cruise ships and he believed the rate was fair. The City could just increase the rate, but that would not accomplish the goal. The City wanted something fair and equitable that brought in more revenue and reduced risk. Instead of hiring a third-party management company, he could just hire another Staff person. Staff managed the building of the facility, has managed it, and negotiated a very good lease with the Coast Guard that generates revenue. So, Staff does not need help managing much, but just wants to get more use out of the pier and get some private investment without the taxpayers taking a lot of risk.

Mayor Jones agreed that the City did not need a management company. It does not cost \$100,000 to replace a part-time employee. Director Harrington said the real burden would fall on him or Engineer Crater to put together a design, get consultant services, and put together a bid package to make the improvements and do the permitting.

Mayor Jones asked for details about how the ACL proposal would mitigate the City's risk. Director Harrington explained that currently, if one of the dolphins failed, the City would just close the pier and there would be no revenue. The City would have to come up with the money to make the repairs. That whole time, there would be no revenue and funds would have to come out of the 17th Street budget. Every available dime of that budget is put towards debt service. Under the proposal, the company has a very high motivation factor to keep the pier open so they can stay in business and they can hire consultants and get the project designed much faster than the City can because they are exempt from the requirements that apply to public entities.

Mayor Jones asked how the longer-term lease would be an advantage to the City. City Manager Estes said the longer term would ensure that ALC could continue to dock and manage the facility after maintenance was done. Director Harrington added that ACL would be spending a lot of money. It would be risky for them to spend so much without having their investment secured by a lease. The current lease is consistent with the Division of State Lands (DSL) lease at the recommendation of DSL. The DSL lease has a maximum term of 15 years and expires in 11 years. He anticipated that if ACL proposed to make an improvement, the state could take two years to put that in place and the DSL lease would only have nine years left. So, DSL has recommended that Astoria ask for another 15-year term if ACL makes any improvements. This indicates that DSL supports and will accommodate this kind of expansion because they like to see activity in their lease areas. DSL is also interested in discussing Parcel 2, which the City may or may not need a lease on. A lot of details must be worked and there could be opportunity to amend the lease or modify the DSL lease.

Councilor Brownson said he was concerned about speculation. ACL had mentioned they would possibly make capital improvements, but that is not stated in the lease. If ACL chooses not to make the improvements, the proposal is moot.

Mr. Robertson stated ACL would like to make capital improvements to the property. However, exact improvements were not specified in the lease because ACL did not want to conduct expensive survey work without being sure of what the City would want from them. The parcel is deep enough to operate, which provides a lot of opportunities. The existing facility is fine for now, but their goal would be to bring two ships in at one time. There are several ways to make that possible with varying degrees of expense. The easiest option would be to remove some of the existing dolphins and install new dolphins inland of the existing ones so a small finger pier could be built off the end. This would allow two ships to raft against each other and drop their gangways on the new finger pier. He did not know if that would be appealing to the City and he was sure there would be a lot of public comment on that. ACL is willing to take the property as is, and then begin the discussion about how to improve it.

Mayor Jones asked how the replacement of the dolphins would be funded.

Mr. Robinson said the work would be done entirely at ACL's expense. ACL received some estimates to replace the dolphins and he believed it was feasible, given that they are building new ships and want to bring new ships to the river. Any capital improvements that ACL makes will be subject to the City's approval and ACL is fine with that because they do not want to build something the City does not want. They are open to other arrangements. A second dock could be built off the back end of the museum on the east side that would accommodate their second vessel without having any impact on the Coast Guard dock. That would be much more expensive, but it is another to tackle the same problem. If worse comes to worse and neither side guarantees the capital improvements, ACL would maintain what it has and schedule shorter visits in Astoria or rotate the boats differently to accommodate one boat at a time. He confirmed for Councilor Brownson that the maintenance of any new infrastructure would be ACL's responsibility. ACL is open to any changes, but he requested the City Council approve the proposal tonight pending those changes.

Councilor Rocka appreciated the modifications, which were a direct response to the Council's concerns. However, now he was concerned that the term of the lease could be up to 41 years and there is no guarantee of capital improvements. Director Harrington clarified that only 11 years are left on the DSL lease and it could be renewed twice for 15 years each renewal. However, the City would not have to renew the lease. He did not see the City ever making any of those improvements, especially considering the debt service that already exists on that property. The bigger concern is loss of the use of the facility. The City cannot come up with the money to make improvements, so having the costs come out of the lease as lost revenue is a good way to not have to come up with cash. The City does not have any more capacity to match grant funds or provide Staff time for such a big project.

Councilor Brownson understood that the long lease term gives the City constant income to help service some debt. Director Harrington said most importantly, the revenue guaranteed by the lease would give the City the ability to reduce debt service. He reminded that Parcel 1 is not the City's property. The City just leases it from DSL. The dolphins were paid for by surcharges and grant funds back when things were cheaper. Replacing the dolphins will be a serious project, especially to accommodate larger vessels. In order to accommodate multiple vessels, the most important thing would be managing the additional busses. He has spoken to the Maritime Museum about additional busses and an arrangement would be necessary. There have been some issues with the busses over the years, but all of those issues have been worked out. However, twice as many busses would be problematic without an arrangement. He noted that the City does not have to renew the DSL lease. However, if ACL spent money on capital improvements, it would only be fair for the City to renew the DSL lease. He suggested the lease be amended to state that if ACL makes capital improvements, the City would renew the lease with DSL, and if no capital improvements are made, the lease would be up for consideration.

Councilor Herman asked what the necessary repairs would cost in the future. Director Harrington stated that replacing all of the dolphins now with a different, more modern design and with better materials and better construction methods that would last longer would cost about \$600,000. Staff considered the costs of replacing one dolphin at a time and discovered that the permitting process for replacing all of them is very different from the permitting process for replacing just one. There is no economy of scale with this project.

Councilor Brownson was concerned that ACL had the option to extend the lease and they could perpetuate the lease for up to 40 years without the City having any say.

Councilor Rocka stated he was concerned that there was no contingency for investment.

Councilor Herman noted that if something went wrong and ACL could not dock, that would be a good motivator to get the dock fixed.

Mr. Robinson stated the renewal option in the lease was normal in this type of lease when the tenant is going to make an investment and manage everything. The extensions are negotiable, but the lease was just matched with the DSL lease because if the DSL lease is not renewed, neither would ACL renew their lease.

Mr. Michaelides said the City has an asset that is worth something and the City must figure out what the best path is to getting the best return on investment. As a gesture of good will, AQSC would consider a lease with ACL as long as AQSC is part of the negotiations to make sure the terms and conditions fit their needs in terms of competitive pricing, access to the schedule, and any other things that might impact them. AQSC wants to be the City's partner and their competitor's partner.

Mayor Jones believed that the revised proposal from ACL addressed concerns raised by Council and asked Staff to review those concerns. Director Harrington confirmed that Section 14.1 relating to termination of the lease would be amended as follows, "For each party, covenants and conditions will be revised to clarify that the nonbreaching party may terminate the breaching party on a 30-day notice if the breach is not curable."

Mr. Laster clarified that some breaches are curable, like non-payment of rent. However, some breaches cannot be fixed. The 30-day notice for something is not curable would allow the lease to end in 30 days. There is also a 30-day notice requiring curable breaches to be fixed within 30 days or the lease ends. Additionally, there is a provision allowing certain breaches to be fixed within 120 days. As long as ACL is consistently acting to cure a default during the time allowed, the default would be waived upon completing the remedy within 120 days. This is a typical default provision that provides flexibility for the types of defaults that might occur, but the timeframes could be negotiated.

Councilor Herman stated Mr. Laster's letter outlining the revisions started on Page 452 of the Agenda packet.

Mayor Jones asked ACL to review the revisions regarding the rates.

Mr. Laster stated Section 4.1 of the lease would be revised to require the docking fee charged to other river cruise operators be a fair market rate set in consultation with the City and the other cruise operators.

Councilor Rocka said the other issue was giving competitors enough time to schedule their ships.

Mr. Laster said they have proposed to honor any docking reservations a year out.

Councilor Rocka added he was also concerned because in order for the docks to continue to be functional, they would need investment. City Manager Estes clarified that there were no concerns about the dock because it was new. However, as the dock ages, resources would be needed.

Councilor Herman stated she relied on the expertise of Staff and \$2,500 is not even close to a realistic docking fee in this community. The City has to be careful with taxpayer's property and bring visitors to the community. The City is not out to make a profit but must keep the property maintained. She was comfortable with the lease with ACL.

Mayor Jones said he was not 100 percent certain about the long-term value of each proposal.

Mr. Denley stated AQSC was concerned about access. They appreciated ACL's assertion that they would honor docking schedules one year in advance.

Mr. Laster confirmed that provision would remain for the entire term of the lease.

Mr. Denley said the changes proposed by ACL does diminish their unilateral ability to schedule dockings. In 2020, their vessels are scheduled to tie up six out of seven days of each week throughout the sailing season. AQSC has significant concerns that ACL has the ability to schedule and control. It would be helpful to AQSC for the lease to include language assuring equity. ACL has more vessels, so they would desire more days.

However, the lease should clearly guarantee equity. The proposed language does not clarify the key issue of docking and places scheduling solely in their purview. The issue with the lease is that since capital improvements are not required under the lease, failure to perform capital improvements is not a condition of default.

Mayor Jones asked ACL to comment on docking equity.

Mr. Laster said ACL was more than willing to work on a mechanism that would provide comfort to AQSC that they would have docking opportunities.

Mr. Robinson confirmed that ACL intended to guarantee any other users' schedules one year out. Once those dates are guaranteed, ACL would like the right to modify those dates no more than five times per year based on a force majeure event. If a dam broke up river, that would affect everyone and could change the way ACL operated in Astoria. Other users of the dock would still have their schedules reasonably guaranteed a year out.

Councilor Brownson asked how schedules would be prioritized when both companies want the same dates.

Mr. Robinson stated that if ACL is leasing and building a dock, their schedule would be set more than a year in advance, and then other users would be accepted on the available dates. As tenant of the facility that is making a large investment in the dock, that is important. Accommodating other users is another reason that the ability to dock two boats at one time is important. Currently, the schedules are being worked out as they follow one another up and down the river.

Mr. Denley said he was not comfortable with what he just heard because ACL is not being required to build or repair the dock. The two companies do operate well together, but they also compete for business. This dock is a public utility and the lease is not a partnership because it only favors one party.

Councilor Brownson understood that AQSC believes the only remedy is to have a third party who is only interested in scheduling.

Mr. Laster responded that with a third party there would be no point in a lease. ACL would be on the hook for a minimum annual payment of \$80,000 and they would expect some priority rights in exchange for that, which he did not believe was unreasonable. He had never seen a lease structured where a tenant would not have access to the facility they are leasing when they need it. ACL and AQSC work together in about 20 different states and it is not ACL's intention to exclude them in any way. It is difficult to say contractually, but if ACL is malicious towards AQSC here, they could find a way to retaliate somewhere else. That would not be in anyone's best interest.

Councilor Brownson reminded that the Port would still be an option, so no one would be shut out of the market.

Mr. Denley said AQSC submitted their 2019 schedule after ACL did, so they had to dock at the Port 19 times this season due to scheduling conflicts. AQSC schedules between 37 and 39 port calls in Astoria. Their average cost at the Port was just under \$6,000. The guest experience is much nicer at the 17th Street Pier, which speaks to the value of the pier to ACL and AQSC. Under a management agreement, the City would have control over defining the terms and setting fees. While the two companies do work together operationally, AQSC has been in litigation with ACL since 2013. AQSC wants access and certainty that fees will be reasonable. A lot can change in 41 years.

Gary Fremault, AQSC, stated that the Port and 17th Street were not equal for passengers. The Port is clean and well maintained as an industrial port, but 24 percent of their passengers are international and when they arrive, it is their first opportunity to see Astoria. 17th Street is a much nicer entrance to the community. AQSC does provide motor coaches, but a lot of the passengers and crew like to walk into town. The company offers hikes to the Column. AQSC typically arrives in Astoria between 4:00 am and 5:30 am, and usually departs by 6:00 pm. ACL's schedule ties up the pier for much longer. It is worthy to noted that AQSC bring people in and out much more quickly and their boat brings up to 230 passengers when full. Additionally, one year in advance is not beneficial to AQSC because their schedules go out for sales and marketing two to three years in advance. Not every port locks in the schedule that far ahead, but their schedules do usually get secured at least two years out.

The industry is seeing more and more boats, but there are only a limited number of docks. So, it is important to coordinate schedules to make sure everyone gets a fair share of dockings.

Councilor Rocka did not understand how an independent scheduler would resolve this issue. One user docks twice as often as the other and there are bound to be dates that both companies want.

Director Harrington said the City allows companies to reserve dates up to two years in advance. Companies request the dates they want and Staff responds with a list of the dates that are available. There are times when a boat plans on leaving the dock at 8:00 am, but another boat wants to dock at 4:00 am. In this case, the second boat simply waits out in the river for the first boat to leave. He hoped this lease would allow resolutions like that to occur.

Councilor Rocka suggested ACL commit to making the improvements that would allow two ships to dock at the same time.

Mayor Jones said it appeared as if the Council was leaning towards the ACL lease but there were unresolved questions regarding scheduling equity considering the circumstances. Therefore, he recommended that Staff continue to work with ACL and present updates at a future meeting before Council votes on signing a contract.

Councilor Brownson also wanted firm language about ACL's commitment to making capital improvements. By adding more boats, ACL would be taking potential dock time away from the competition. However, capital improvements would open up more dock time. He wanted assurance that the capacity of the dock would increase as ACL's fleet increased.

Mr. Robinson said ACL could guarantee schedules two years out. And if there is a conflict date, ACL could agree not to spend more than 24 hours in port in order to accommodate the other user. He was reluctant to guarantee capital improvements because a proposal might end up being financially unfeasible. However, he would consider agreeing to accommodating two vessels once a fifth ship is added to their fleet.

Mayor Jones believed those changes would be reasonable. He added that the Coast Guard cutters would retire within 15 years and would not be replaced at that pier. So, at some point, the entire dock would become available.

Mr. Robinson clarified that the Coast Guard dock was not included in ACL's proposal. He asked for a right of first refusal to it, but Staff declined. So, any company would be free to offer a lease on that dock if it became available. ACL would be willing to drop from two to one renewal options if that is important to the City. At least one option to renew for 15 years would provide enough time to amortize capital improvement costs. He would like Council to make a decision on this tonight and requested that Councilors vote on it now.

Mr. Denley urged the Council to vote no on the lease as drafted. He appreciated the offer to schedule dates two years in advance, but AQSC wanted priority so they could schedule dates they could count on. He asked that ACL give AQSC 35 dates a year of AQSC's choosing.

Councilor Herman stated that AQSC does not currently get to choose 35 dates each year.

Mr. Denley said his fear was that AQSC would not get any if the City Council approves the lease.

Mr. Robinson agreed to accommodate AQSC for 35 dates and allow those dates to be schedule two years out, but he could not give another operator the first option to use the dock.

Mayor Jones confirmed that ACL had agreed to the following changes:

- The lease would have an 11-year term with the option to renew with one 15-year term
- Dates can be scheduled two years out
- If there is a scheduling conflict, ACL's vessel will remain at the dolphin for no more than 24 hours
- If a fifth ship is put in service on this route, ACL will find a way to accommodate two vessels simultaneously on the dolphins.
- AQSC will be guaranteed no less than 35 dates

Councilor Brownson noted that he had been comfortable with the lease proposal all along and it is a good deal for the City. He believed the City needed to be conservative instead of trying to project potential fees and revenues. He supported approving the lease with the changes that ACL has agreed to.

City Attorney Henningsgaard stated this was a difficult way of negotiating a lease. He recommended that City Council authorize Staff to negotiate the terms and work on the language of a new lease.

Mr. Michaelides asked if AQSC would have the opportunity to review the terms of the new lease and comment on it.

City Attorney Henningsgaard said City Council can receive comments from anyone at any time. Staff would present Council with a final version of the lease at a public City Council meeting. The lease would be included in the Agenda packet so everyone would have the opportunity to see it and City Council could take public comments on it.

City Council Action: Motion made by Councilor Brownson, seconded by Councilor Rocka, to direct Staff to revise the terms of the proposed lease for the 17th Street Pier with American Cruise Lines as discussed, and present it for City Council review at a future meeting. [3:58:33] Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, West, and Mayor Jones; Nays: None.

City Council proceeded to Item 9: New Business at this time.

Item 8(h): Discussion regarding Walldorf, Germany (Sister City) Celebration

The Mayor received a letter from Christiane Staab, Burgermeisterin of our Sister City, Walldorf Germany. The original letter and a rough translation are attached. The Mayor has requested a discussion about what if any delegation will be sent to this celebration, and how the trip could be funded. They would like a response by October 15, 2019.

This item was addressed immediately following Item 7: Consent Calendar.

Bruce Connor, 323 Alameda, Astoria, President, Sister City Committee, briefly introduced the Sister City Committee members who were present. He provided background information on the Sister City relationship and the Committee's role. The Sister City program allows both cities to develop a partnership that has included financial investments in the community and a student exchange program.

Committee members and Sister City participants shared about their experiences participating in the student exchange program, the hospitality they received in Germany, tours and events they were able to participate in as part of the Sister City program, their experience hosting visitors from Germany, and benefits to both communities. Mr. Connor briefly answered Councilor's questions about how the student exchange program works.

Mayor Jones said his first exposure to the Sister City relationship was in 2011 during the bicentennial festivities, when the entire City Council came to Astoria. They visited again for former Mayor Van Dusen's retirement and most recently for the 50th anniversary of the Astoria Megler Bridge. Astoria sent a delegation to Walldorf for the 50th anniversary of the Sister City relationship. He understood that Promote Astoria Funds were used to send City Councilors to Walldorf.

City Manager Estes confirmed that was correct and said the primary expenses have been airfare.

Mayor Jones estimated transportation and lodging expenses would be about \$2000 per person.

Councilor Brownson was in favor of sending City Council to participate in Walldorf's 1250th anniversary celebration. However, the City runs on a tight budget. He believed the international exchange and having positive interactions with European friends was important.

Councilor Rocka believed the Sister City relationship was worth investing in and that the Councilors who could attend should do so.

Councilor West said she would love to go to Walldorf. She had never traveled for anything but work but spent most of her 20s in other countries. Her experiences continue to shape who she is. Relationship building and cultural exchange is important. She had asked about funding and anticipated pushback on being fiscally responsible. The Promote Astoria Fund is funded with transient lodging taxes and the laws very specifically state what those funds can be spent on. It was fine with her that this trip would fall into that category.

Councilor Herman said she would love to go but traveling that far would not be realistic for her. She believed it was important to maintain the friendship because travel is fatal to ignorance. It is important to reach out to international neighbors in a personal way.

Mayor Jones stated he also supported the partnership and it would be appropriate for the City Council to accept their invitation and participate in the 1250th birthday of Walldorf. He advised Staff to exercise great prudence in selecting airfare and make the most reasonable arrangements.

City Council Action: Motion made by Mayor Jones, seconded by Councilor Herman, to use Promote Astoria Funds to send City Council to Walldorf, Germany and work with the Sister City Committee to identify a full delegation and coordinate with the City of Walldorf on all of the arrangements. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, West, and Mayor Jones; Nays: None.

City Council returned to Item 8(a) at this time.

NEW BUSINESS & MISCELLANEOUS, PUBLIC COMMENTS (NON-AGENDA)

There was none.

City Council recessed into Executive Session at 11:01 pm

EXECUTIVE SESSION

Item 10(a): ORS192.660(3) – Labor Negotiations

The City Council will meet in executive session to discuss labor negotiations.

The Regular Session reconvened at 11:15 pm

Mayor Jones said City Manager Estes' performance was discussed in Executive Session. The City is indebted to City Manager Estes for his hard work.

City Council Action: Motion made by Mayor Jones, seconded by Councilor Brownson, to approve a pay raise of 10 percent for City Manager Estes. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, West, and Mayor Jones; Nays: None.

City Manager Estes stated he was humbled, he enjoyed working with Staff, and he thanked City Council.

ADJOURNMENT

There being no further business, the meeting was adjourned at 11:17 pm.

ATTEST:

APPROVED:

Finance Director

City Manager



CITY OF ASTORIA

Founded 1811 • Incorporated 1856

MEMORANDUM

DATE: NOVEMBER 4, 2019
TO: MAYOR AND ASTORIA CITY COUNCIL
FROM: BRETT ESTES, CITY MANAGER
SUBJECT: AUTHORIZATION TO AMEND GOODS AND SERVICES
CONTRACT WITH LEES AND ASSOCIATES TO UPDATE THE
TIMELINE OF DELIVERY OF OCEAN VIEW CEMETERY MASTER
PLAN

DISCUSSION / ANALYSIS:

Per Council's adopted goal for FY19-20, the Parks and Recreation Department has contracted the services of E. Lees and Associates to develop a master plan for Ocean View Cemetery in order to provide recommendations that will lead to greater operational and financial sustainability of the site. The work being carried out by E. Lees and Associates is moving forward and tasks are being accomplished. Factors outside the control of the Parks Department and the consultant have necessitated an update to the original anticipated completion date of the plan from December 30, 2019 to February 28, 2020. A primary factor in this extended timeline is due to the challenge of coordinating multiple parties' availability for comment and feedback, which is a crucial component of the final plan's success. Because public and City-oversight board forums are not scheduled until mid-November, the consultant feels (and staff concurs) that extending the delivery date by two months will provide more time to distill information gleaned and, ultimately, lead to a higher quality end product that will better serve the purpose of this project.

In addition, an option included with E. Lees and Associates' initial bid for this project, which was not included in the original scope of work contracted, was to provide an onsite presentation of results and recommendations of the completed plan to City Council. Staff has determined that a presentation would be beneficial to assist in conveying important information. It is requested that the total amount contracted for the work be updated to include the cost of developing and presenting the results.

The additional cost for development, staff time, and travel expenses will be \$2,920 and will increase the contracted amount from \$87,945.50 to \$90,865.50. This is still within the total amount budgeted for the development of a cemetery master plan in the FY19-20 budget of \$100,000. This presentation will be delivered at the conclusion of the plan development process in February.

The City Attorney has reviewed the amendments and approved them both to form.

RECOMMENDATION:

It is recommended that City Council approve Amendment #1 extending the deadline for

delivery of the Master Plan for Ocean View Cemetery from December 30, 2019 to February 28, 2020 and Amendment #2 increasing the total contracted amount for the Master Plan development from \$87,945.50 to \$90,865.50

BY: TIM WILLIAMS, DIRECTOR

ATTACHMENTS:

[Lees and Associates Contract Amendment 2 Blair Approved \(2\).pdf](#)

[Lees and Associates Amend1 Blair Approved.pdf](#)



CITY OF ASTORIA

Founded 1811 • Incorporated 1856

Amendment 2 to Goods and Services Contract between the City of Astoria and E. Lees and Associates Consulting LTD.

On July 16, 2019, the City of Astoria, a municipal corporation of the State of Oregon, hereinafter called "CITY", and E. Lees & Associates Consulting Ltd., located at 509-318 Homer St, Vancouver BC Canada, V6B 2V2, hereinafter called "CONTRACTOR", duly authorized to do business in Oregon, enacted a contract to develop a master plan for Ocean View Cemetery.

This amendment, made and entered into this ____ day of _____, 2019 to the contract, hereinafter called "AMENDMENT 2" outlines a change in the completion date for the project.

AMENDMENT 1

REPLACE:

1. CONTRACTOR GOODS AND SERVICES

- d. CONTRACTOR'S services in this contract will be provided from the date of acceptance by both parties and all work will be completed no later than December 30, 2019

WITH:

1. CONTRACTOR GOODS AND SERVICES

- d. CONTRACTOR'S services in this contract will be provided from the date of acceptance by both parties and all work will be completed no later than February 28, 2020

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first written above.

Approved as to form:

CITY OF ASTORIA, a municipal
corporation of the State of Oregon

City Attorney

BY: _____

Mayor Date

BY _____

City Manager Date

BY: _____

Contractor Date



CITY OF ASTORIA

Founded 1811 • Incorporated 1856

Amendment to Goods and Services Contract between the City of Astoria and E. Lees and Associates Consulting LTD.

On July 16, 2019, the City of Astoria, a municipal corporation of the State of Oregon, hereinafter called "CITY", and E. Lees & Associates Consulting Ltd., located at 509-318 Homer St, Vancouver BC Canada, V6B 2V2, hereinafter called "CONTRACTOR", duly authorized to do business in Oregon, enacted a contract to develop a master plan for Ocean View Cemetery.

This amendment is made and entered into this ____ day of _____, 2019 to the contract, hereinafter called "AMENDMENT 1" outlines a change in the total cost of the project.

AMENDMENT 1

REPLACE:

1. CONTRACTOR GOODS AND SERVICES

- a. CONTRACTOR shall provide goods and services for the City of Astoria, as outlined in its Attachment A, which by this reference is incorporated herein.

WITH:

1. CONTRACTOR GOODS AND SERVICES

- a. CONTRACTOR shall provide goods and services to the City of Astoria, as outlined in Attachment A & B, which are incorporated herein.

REPLACE:

2. COMPENSATION

- b. The CITY agrees to pay CONTRACTOR a total not to exceed \$87,945.50 for providing goods and performance of those services provided herein;

WITH:

2. COMPENSATION

- a. The CITY agrees to pay CONTRACTOR a total not to exceed \$90,865.50 for providing goods and performance of those services provided herein;

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first written above.

Approved as to form:

CITY OF ASTORIA, a municipal
corporation of the State of Oregon

City Attorney

By: _____
City Manager Date

By: _____
Mayor Date

BY: _____
Contractor Date

Attachment A- Project Costs, Schedule, Deliverables	LEES+Associates					DEA		Subtotal USD	%
	Principal	Project Manager	Business Planner	Associate	Technical	Associate	Sr. Associate		
	EL	CH	JT	JB	CS	BH	JH		
Work Phase/Task	\$ 130.00	\$ 100.00	\$ 100.00	\$ 90.00	\$ 80.00	\$ 140.00	\$ 215.00		
PHASE 1 - Project Start Up & Background Information									
Start Up Teleconference Meeting with Client	1	2	1	1	1	1		7	
Research & Background Review		2	24	4	4	2		36	
Preliminary Market Study		4	32	4	4	2		46	
Project Management + Administration		4	2					6	
Biweekly Client Meeting - Teleconference		2	2	2		2		8	
Hours Subtotal:	1	14	61	11	9	7	0	103	
Consultant Fees Subtotal:	\$ 130.00	\$ 1,400.00	\$ 6,100.00	\$ 990.00	\$ 720.00	\$ 980.00	\$ -	\$ 10,320.00	
Phase Total:	\$ 10,320.00							\$10,320.00	12%
PHASE 2 - Site Visit + Consultation									
Preparations for Site Visit	2	4	8	16	16	2		48	
Cemetery Workshop, Stakeholder Consultation & Site Visit		16	2	16		12		46	
Follow-up Interviews with Staff and Stakeholders			8		8	8		24	
Document Findings from Site Visit & Consultation	2	4		8		8		22	
Project Management + Administration		8						8	
Biweekly Client Meeting - Teleconference		2	2	2		2	2	10	
Hours Subtotal:	4	34	20	42	24	32	2	158	
Consultant Fees Subtotal:	\$ 520.00	\$ 3,400.00	\$ 2,000.00	\$ 3,780.00	\$ 1,920.00	\$ 4,480.00	\$ 430.00	\$ 16,530.00	
Phase Total:	\$ 16,530.00							\$16,530.00	20%
PHASE 3 - Analysis and Design									
Service, Demand, Capacity + Resident Usage Analysis	2	4	16			4		26	
Price Benchmarking & Comparative Analysis	2	4	16					22	
Operations Resourcing & Governance Analysis	2	4	16	16	8	4		50	
Financial and Perpetual Care Fund Analysis	2	2	8					12	
Site analysis and Infrastructure Evaluation				12		8		20	
Engagement Summary		2		2	8	4		16	
Development of Key Analysis findings, Define Vision + Market Strategy, and Schematic Physical Concept Plan	2	8	4	24	24	4		66	
Graphics (Concept Design, Maps + Photos)			4	8	32	8		52	
Project Management + Administration		8						8	
Biweekly Client Meeting - Teleconference		2	2	2		2	2	10	
Hours Subtotal: Consultant Fees Subtotal: Phase Total:	10	34	66	64	72	34	2	282	
	\$ 1,300.00	\$ 3,400.00	\$ 6,600.00	\$ 5,760.00	\$ 5,760.00	\$ 4,760.00	\$ 430.00	\$ 28,010.00	
	\$ 28,010.00							\$28,010.00	33%
PHASE 4 - Strategic Development + Draft Master Plan Report									
Draft Report - Content	2	8	16	16	16	4	2	64	
Development of Online Survey	2	8	4	4	16	4		38	
Quality Control Review	2	6	2	4		4		18	
Preparations for Site Visit & Presentation Material					16	4	2	22	
Draft Report Presentation for Internal, Stakeholder Consultation & Public Open House		16	2	16		8		42	
Project Management + Administration		8						8	
Biweekly Client Meeting - Teleconference		2	2	2		2		8	
Hours Subtotal: Consultant Fees Subtotal: Phase Total:	6	48	26	42	48	26	4	200	
	\$ 780.00	\$ 4,800.00	\$ 2,600.00	\$ 3,780.00	\$ 3,840.00	\$ 3,640.00	\$ 860.00	\$ 20,300.00	
	\$ 20,300.00							\$20,300.00	24%
PHASE 5 - Finalized Master Plan Report									
Address & Integrate City Feedback on Draft		4	12	4	12	2		34	
Quality Control Review, Finalize & Send to City	2	4	2	4	8	2		22	
Presentation Preparations	2	4	2	4	8			20	
Project Management + Administration		4						4	
Biweekly Client Meeting - Teleconference		2	2	2		2	2	10	
Hours Subtotal:	4	18	18	14	28	6	2	90	
Consultant Fees Subtotal:	\$ 520.00	\$ 1,800.00	\$ 1,800.00	\$ 1,260.00	\$ 2,240.00	\$ 840.00	\$ 430.00	\$ 8,890.00	
Phase Total:	\$ 8,890.00							\$8,890.00	11%
Subtotal Consultant Hours:	33	156	193	173	181	109	18	833	
Subtotal Consultant Fees:	\$ 3,250.00	\$ 14,800.00	\$ 19,100.00	\$ 15,570.00	\$ 14,480.00	\$ 14,700.00	\$ 2,150.00	\$ 84,050.00	100%
							Consultant Fees:	\$ 84,050.00	
							Core Service Fees:	\$ 84,050.00	USD
							Disbursements:	\$ 3,895.50	
							Subtotal:	\$ 87,945.50	
							Taxes:	\$ -	N/A
							Total Project Cost:	\$ 87,945.50	USD

Project Disbursements				
Description	Quantity	Units	Unit Cost	Cost
Communications	1	%	\$ 150.00	\$ 150.00
Printing	1	allowance	\$ 500.00	\$ 500.00
Airfare	4	round trips	\$ 315.00	\$ 1,260.00
Car Rental	8	day	\$ 50.00	\$ 400.00
Accommodation	4	room/night	\$ 250.00	\$ 1,000.00
Food Allowance	8	days	\$ 50.00	\$ 400.00
5% Administration Fee: \$185.50				
Total Disbursements:				
\$ 3,895.50				

PROJECT: MASTER PLAN FOR OCEAN VIEW CEMETERY

DELIVERABLE ELEMENTS:

- **Evaluation of current operations and management practices**
- **Comparison of regional cemetery services**
- **Documentation and assessment of site conditions and infrastructure needs**
- **Comprehensive business case analysis**
- **Review of current policies against best practices in business management**
- **In-depth input from City and Cemetery staff, elected City leaders, local industry and citizen stakeholders, and the general public**
- **Master Plan with actionable recommendations for financial and operational sustainability**

COMPLETION DATES:

- **Start-up Meeting: ~1 week following notice to proceed**
- **Site Visit & Staff & Stakeholder Workshops: Week of July 29th**
- **Draft Master Plan Report: August 30th**
- **Draft Master Plan Presentation, Public Open House & Survey Launch: Week of Sept. 23rd**
- **Submission of Master Plan for Finalization: Nov. 8th**
- **Submission & Approval of Final Report: December 1, 2019**

ATTACHMENT B

Ocean View Cemetery Master Plan Presentation of Results and Recommendations to City Council by Lees and Associates

Presentation Preparation and Creation

	Hours	Cost
Catriona Hearn	4	\$400
Chelsea Schmidtko	6	\$480
Josh Barnes	1	\$90
Jennifer Thibert	1	\$100

		\$1,070

Travel and Presentation

Catriona Hearn	8	\$800
Round Trip Flight	-	\$450
Rental Car	-	\$100
Lodging and Per Diem	-	\$500

Total Cost:		\$2,920



CITY OF ASTORIA

Founded 1811 • Incorporated 1856

MEMORANDUM

DATE: NOVEMBER 4, 2019
TO: MAYOR AND ASTORIA CITY COUNCIL
FROM: BRETT ESTES, CITY MANAGER
SUBJECT: CONSIDERATION OF PROPERTY SALE PROPOSALS - MILL POND

DISCUSSION / ANALYSIS:

In November, 2018, the City Council authorized staff to contract with Area Properties to market the City-owned “pier lots” at the Mill Pond. The pier lots are twelve platted lots donated to the City by the developer of the Mill Pond, Art DeMuro, in 2012. Since that time the City has paid homeowners fees in excess of \$64,000, and is currently budgeting \$13,000 annually for “no-build” fees, HOA dues and maintenance expenses. The lots were originally listed at \$45,000 for each pier or \$90,000 total. Although the lots have been available for sale periodically since 2012, no offers had been forthcoming until May of this year.

On May 10, 2019, Mary Wickstrom of Area Properties was contacted by Cheryl Storey, a homeowner on Mill Pond Lane, on behalf of a group of independent Mill Pond homeowners (not the MPHOA) interested in providing a donation to the City of \$11,500 to decommission the 12 lots. This would involve pulling out the water meters and sewer connections and reconstructing the sidewalk along the street that would have provided access to each pier.

On July 1, the City Council was apprised of the offer, and directed staff to develop a formal proposal to consider the offer from the homeowners.

On July 19, Mary Wickstrom sent staff a letter of intent from John D. Dulcich of Goldsmith Land Investments, expressing interest in purchasing the lots. Staff met with Mr. Dulcich, who was provided with background information concerning the lots. On the advice of the City Attorney, Mr. Dulcich was asked to provide a formal purchase and sale agreement, which he did on August 23. The offer is for \$35,000. At the September 3 meeting, the Council scheduled a public hearing on September 30th to consider the offer, in accordance with Real Property Sales Procedures (Sec.1.500) of the City Code. A Report to Council and Call for Hearing was submitted in accordance with Section 1.505.

Staff had several conversations with Cheryl Storey concerning the offer from Mr. Dulcich, and was told if the homeowners wished, they could provide a formal offer to the City. They subsequently proffered an offer of \$40,000.

If the Dulcich offer is accepted, it would be “as is”, and the buyer would be subject to all the restrictions and requirements of the Mill Pond Homeowners Association (MPHOA) as well as the City. If the homeowners’ offer is accepted, the City could incur costs to decommission as noted above. The City Engineer has provided an estimate of the costs associated with this

work, which is \$35,000 plus a 10% contingency, or about \$3,000 per lot.

Staff has inquired of the MPHOA as to whether the organization would continue to impose fees if the property were “de-platted” and remained in City ownership. A letter from the President of the MPHOA is attached for information. A representative from the MPHOA will be in attendance at the meeting to answer any questions.

Section 1.510 Completion of Sale, states:

If the city council approves the sale, the sale shall be conducted by or arranged for by the public works director in the manner directed by the council. In approving the sale, the city council may modify any terms or conditions of the sale.

RECOMMENDATION:

It is recommended that City Council consider each of the offers and tentatively accept one pending review by staff and the City Attorney.

BY: MIKE MORGAN, PLANNER

ATTACHMENTS:

[Letter from Millpond Oct 2019.pdf](#)

[Millpond921_final2.docx](#)

[Attachment A - Millpond Offer](#)

[Attachment B - MP Owners Offer to City - Pier Lots.pdf](#)

[2. Mill Pond Pier Lot Memo re_Habitat.pdf](#)

[3. Oregon Wetlands Status.pdf](#)

[Attachment C - Mill Pond Lot Utility Sidewalk Work Est.pdf](#)

[Pier Lot Wildlife IPlea.docx](#)

[Mill Pond South End - John Ryan.pdf](#)

[Millpond Exhibit.pdf](#)

Mill Pond Village Owners Association

City of Astoria
1095 Duane St.
Astoria OR 97103

Mr. Morgan,

The Mill Pond Village Board of Directors appreciates the City's extension of time to consider the question from the Astoria City Council. The question was if the Mill Pond Village Owner's Association (MPVOA) would continue to assess HOA dues if the City chose accept the group of private owner's donation to decommission the utilities and to de-plat the 12 pier lots and convert to a City Park. The MPVOA Board sought advice from our attorney and learned that the City has the authority under ORS 271.130 to initiate vacation proceedings on the pier lots without requiring permission from the HOA. Additionally, under Section 1.12 of the MPVOA CC&Rs, once a lot becomes dedicated to public use it no longer meets the definition of "Lot" for purposes of assessment and therefore dues would no longer be required or requested. Please let me know if you have any other questions. A member of the MPVOA Board will be in attendance to answer any questions since I will be out of town that weekend.

Regards,



Diane Spalding
Chairperson



CITY OF ASTORIA

Founded 1811 • Incorporated 1856

MEMORANDUM • PUBLIC WORKS DEPARTMENT

DATE: SEPTEMBER 20, 2019
TO: MAYOR AND CITY COUNCIL
FROM: BRETT ESTES, CITY MANAGER
SUBJECT: CONSIDERATION OF PROPERTY SALE PROPOSALS – MILL POND

DISCUSSION/ANALYSIS

In November, 2018, the City Council authorized staff to contract with Area Properties to market the City-owned “pier lots” at the Mill Pond. The pier lots are twelve platted lots donated to the City by the developer of the Mill Pond, Art DeMuro, in 2012. Since that time the City has paid homeowners fees in excess of \$64,000, and is currently budgeting \$13,000 annually for “no-build” fees, HOA dues and maintenance expenses. The lots were listed at \$45,000 for each pier or \$90,000 total. Although the lots have been available for sale periodically since 2012, no offers had been forthcoming until May of this year.

On May 10, 2019, Mary Wickstrom of Area Properties was contacted by Cheryl Storey, a homeowner on Mill Pond Lane, on behalf of a group of homeowners (not the HOA) interested in providing a donation to the City of \$11,500 to decommission the 12 lots. This would involve pulling out the water meters and sewer connections and reconstructing the sidewalk along the street that would have provided access to each pier. On July 1, the City Council was apprised of the donation proposal, and directed staff to develop a formal proposal to consider.

On July 19, Mary Wickstrom sent staff a letter of intent from John D. Dulcich of Goldsmith Land Investments, expressing interest in purchasing the lots. Staff met with Mr. Dulcich, who was provided with background information concerning the lots. On the advice of the City Attorney, Mr. Dulcich was asked to provide a formal purchase and sale agreement, which he did on August 23. The offer is for \$35,000 (Attachment A). At the September 3 meeting, the Council scheduled a public hearing on September 30th to consider the offer, in accordance with Real Property Sales Procedures (Sec.1.500) of the City Code. A Report to Council and Call for Hearing was submitted in accordance with Section 1.505.

Staff had several conversations with Cheryl Storey concerning the offer from Mr. Dulcich, and was told if the homeowners wished, they could provide a formal offer to the City. Their offer of \$40,000 and supporting information is included with this memo (Attachment B).

If the Dulcich offer is accepted, it would be “as is”, and the buyer would be subject to all the restrictions and requirements of the Mill Pond Homeowners Association (MPHOA) as well as the City. If the homeowners’ offer is accepted, the City could incur costs to decommission as described. The City Engineer has provided an estimate (Attachment C) of the costs associated with this work, which is \$35,000 plus a 10% contingency, or about \$3,000 per lot.

Staff has inquired of the MPHOA as to whether the organization would continue to impose fees if the property were “deplatted” and remained in City ownership as a park, but no determination has been made at the time of memorandum preparation.

Section 1.510 Completion of Sale, states:

If the city council approves the sale, the sale shall be conducted by or arranged for by the public works director in the manner directed by the council. In approving the sale, the city council may modify any terms or conditions of the sale.

RECOMMENDATION

It is recommended that City Council consider each of the offers and provide direction how they wish to proceed on the offers. Staff and the City Attorney would need to complete further work and documents based on Council's direction.

By: 
Jeff Harrington, Public Works Director

Prepared by: 
Mike Morgan, Contract Planner

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this “**Agreement**”) is dated as of September ____, 2019 (the “**Effective Date**”), between City of Astoria, an Oregon municipal corporation (“**Seller**”), and John D. Dulcich (“**Buyer**”).

Recitals

A. Seller owns certain unimproved land located in Astoria, Oregon, commonly known as Lots 74 through 85 of the Plat of Mill Pond Village No. 3 (the “**Land**”).

B. Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, the Land and certain related property pursuant to the terms set forth in this Agreement.

Agreement

1. **Purchase and Sale.** Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions set forth in this Agreement, (a) the Land and any improvements thereon, (b) all easements, if any, benefiting the Land, and (c) all rights and appurtenances pertaining to the Land, including without limitation all assignable continuing business licenses, governmental approvals, and development rights. The items described in clauses (a) through (c) of this Section 1 shall hereinafter be collectively referred to as the “**Property**.”
2. **Purchase Price.** The purchase price for the Property (the “**Purchase Price**”) shall be the sum of Thirty-Five Thousand Dollars (\$35,000).
3. **Payment of the Purchase Price.** The Purchase Price shall be payable as follows:
 - 3.1 **Deposit.** Within three (3) business days after the Execution Date (as such term is defined in Section 21.12 of this Agreement), Buyer shall execute and deliver to Fidelity National Title, Attention: Aubry Ludberg, 600 University Street, Suite 2424, Seattle, Washington 98101 (the “**Title Company**”), as earnest money, the sum of \$5,000 (the “**Earnest Money**”). The Earnest Money shall be applied toward the Purchase Price at Closing (defined in Section 4.2 of this Agreement).
 - 3.2 **Balance of the Purchase Price.** On or before the Closing Date (as such term is defined in Section 4.2 of this Agreement), Buyer shall deposit into escrow with the Title Company, in the form of cash, wire transfer of funds, or cashier’s check, the balance of the Purchase Price, which shall be an amount equal to the Purchase Price less the amount of the Earnest Money, subject to adjustments and credits as set forth in this Agreement.
4. **Escrow.**
 - 4.1 **Opening of Escrow.** Buyer shall open escrow at the Title Company for consummating this transaction. Seller or Buyer shall deliver a copy of this Agreement, fully executed, to the Title Company. Buyer and Seller hereby authorize their respective attorneys to execute and deliver into escrow any additional or supplemental instructions as may be necessary or convenient to implement the terms of this Agreement and to close this transaction. In the

event of any conflict between such additional or supplemental instructions and the express terms of this Agreement, the terms of this Agreement shall control.

4.2 **Closing Date.** This transaction shall close at or through the office of the Title Company on a date selected by Buyer that is not more than thirty (30) days after the Due Diligence Date (as such term is defined in Section 8.2 of this Agreement). “**Closing**” shall occur when the Deed (as such term is defined in Section 9.1(a) of this Agreement) is recorded and the Purchase Price is disbursed to Seller pursuant to Section 3.2 of this Agreement.

5. Title Exceptions.

5.1 **Title Report.** A preliminary title report for issuing title insurance related to the Property (the “**Title Report**”) shall be ordered by Buyer and provided to Seller, together with copies of documents affecting title referenced in the Title Report.

5.2 **Objectionable Exceptions.** Within ten (10) days after the last to occur of the Execution Date or Buyer’s receipt of the Title Report (the “**Objection Period**”), Buyer shall notify Seller in writing of all title exceptions to which Buyer objects (the “**Objectionable Exceptions**”). Those exceptions not objected to by Buyer within the above-referenced time period shall be deemed “**Permitted Exceptions**.” Within seven (7) days after receiving Buyer’s notice of objections, Seller will notify Buyer whether Seller will remove, prior to Closing, the Objectionable Exceptions. (If Seller fails to provide such notice to Buyer within such seven (7)-day period, Seller shall be deemed to have elected not to remove the Objectionable Exceptions.) If Seller is unable or unwilling to remove any Objectionable Exceptions, Buyer shall, within five (5) business days after receiving Seller’s response (or within five (5) business days after the expiration of the seven (7)-day period for Seller’s response if Seller fails to provide notice to Buyer within such seven (7)-day period), by notice to Seller, elect whether to purchase the Property subject to the Objectionable Exceptions that will not be removed by Seller, or terminate this Agreement. If Buyer elects to terminate this Agreement, the Earnest Money shall be promptly returned to Buyer, and Buyer shall have no further obligations under this Agreement. If Buyer fails to notify Seller within such five (5) business-day period that Buyer elects to terminate this Agreement, or if Buyer elects to purchase the Property subject to the Objectionable Exceptions that will not be removed by Seller, Buyer shall be deemed to have waived its objection to such Objectionable Exceptions, and they shall be deemed “**Permitted Exceptions**.”

5.3 **Subsequently-Discovered Exceptions.** If, after the time periods set forth in Section 5.2 but before the Closing, Buyer receives notice of an additional title exception that is reported or discovered by the Title Company or Buyer, including without limitation any exception disclosed by or arising from a survey of the Property, Buyer may object to such exception by giving written notice to Seller within five (5) business days after Buyer receives notice of such exception. If such exception is not removed or resolved in a manner satisfactory to Buyer in Buyer’s sole discretion within four (4) business days after Buyer’s notice to Seller of such objection, Buyer may terminate this Agreement by notice to Seller given within such four (4) business-day period. The Closing Date shall be extended if necessary to provide Buyer with sufficient time to object to any such exception or to terminate this Agreement pursuant to this Section 5.3.

6. **Seller's Documents and Buyer's Inspections.**

6.1 **Seller's Documents.** Within five (5) days after the Execution Date, Seller shall deliver to Buyer the documents described on Exhibit A attached hereto ("**Seller's Documents**"), to the extent such documents are in the possession, custody, or control of Seller.

6.2 **Buyer's Inspections.** Subject to the provisions of this Section 6.2, Buyer and its representatives may enter upon the Property for the purpose of making any non-invasive inspection, investigation, test, or survey, including without limitation environmental assessments, of the Property as Buyer deems necessary. Buyer shall indemnify Seller for, hold Seller harmless from, and defend Seller against any loss, damage, or claim arising out of Buyer's entry and/or activities upon the Property, including without limitation any claim of lien against the Property arising from services performed on behalf of Buyer or at Buyer's request. The parties agree that (i) all inspections of the Property by Buyer or its representatives shall be conducted after reasonable prior notice to Seller; (ii) Seller shall be entitled to require that a representative of Seller accompany representatives of Buyer on all inspections of the Property; (iii) all inspections by Buyer or its representatives shall be conducted in such manner as shall be required in order not to physically damage the Property in any respect; and (iv) Buyer shall be required to obtain Seller's prior written approval of the scope and methods of any Phase II environmental assessment of the Property or other physically intrusive inspection or examination.

7. **Seller's Contingencies.** In addition to the other conditions set forth in this Agreement, Seller's obligation to close this transaction shall be subject to the following conditions:

(a) Buyer shall have complied in all material respects with all of Buyer's covenants and agreements to be performed under this Agreement; and the representations and warranties of Buyer under this Agreement shall, in all material respects, as of the Execution Date and Closing Date, be true and complete.

(b) Buyer's delivery to the Title Company on or before the Closing Date, for disbursement as provided herein, the balance of the Purchase Price pursuant to Section 3.2 of this Agreement, and any other amounts due to Seller pursuant to this Agreement, and the documents and materials described in Section 9.2 of this Agreement.

8. **Buyer's Contingencies.**

8.1 **Conditions.** Buyer's obligation to purchase the Property is subject to the satisfaction of each of the following conditions:

(a) Buyer's satisfaction, in Buyer's sole and absolute discretion, with the Property and every aspect thereof, including without limitation the physical condition of the Property, zoning and land use restrictions applicable to the Property, location of the Property, all systems, utilities, and access rights relating to the Property, the condition of title, any survey of the Property, the economic feasibility of the Property to Buyer, Seller's Documents, the suitability of the Property for Buyer's intended use, and the environmental condition of the Property.

(b) Seller having complied in all material respects with all of Seller's covenants to be performed by Seller under this Agreement (including, without limitation, the delivery of the documents and materials described in Section 9.1 of this Agreement), and the representations and warranties of Seller under this Agreement shall, in all material respects, as of the Effective Date and Closing Date, be true and complete.

(c) Issuance to Buyer at Closing of the Title Policy (as such term is defined in Section 10 of this Agreement) in the amount of the Purchase Price.

(d) There shall have been no material adverse changes to the Property or to the condition of the Property prior to Closing.

8.2 Due Diligence Date. If on or before the date that is forty-five (45) days after the Execution Date (the "**Due Diligence Date**"), any of the conditions described in Section 8.1(a) of this Agreement are not satisfied or waived by Buyer, or if Buyer otherwise determines, in its sole and absolute discretion, that the Property, or any aspect thereof, for any reason or no reason whatsoever, is not satisfactory to Buyer, Buyer may terminate this Agreement by written notice to Seller given on or before the Due Diligence Date, in which event the Earnest Money shall be promptly returned to Buyer, and Buyer shall have no further obligations under this Agreement. If Buyer fails to provide such written notice of termination on or before the Due Diligence Date, the conditions set forth in Section 8.1(a) above shall be deemed to have been satisfied or waived by Buyer, and the Earnest Money shall be deemed nonrefundable to Buyer unless Buyer terminates this Agreement pursuant to Section 5.2, 5.3, 8.3, or 19.1 of this Agreement.

8.3 Closing Conditions. If any of the conditions described in Sections 8.1(b), (c), and (d) of this Agreement have not been satisfied or waived by Buyer on or before the Closing Date, Buyer may terminate this Agreement by written notice to Seller given at any time before the Closing, in which event the Earnest Money shall be promptly returned to Buyer, and Buyer shall have no further obligations under this Agreement.

9. Deliveries to Title Company.

9.1 By Seller. On or before the Closing Date, Seller shall deliver the following in escrow to the Title Company:

(a) A statutory warranty deed (the "**Deed**"), executed and acknowledged by Seller, in substantially the same form and content as that attached hereto as Exhibit B, conveying the Property to Buyer, subject only to the Permitted Exceptions. (The Permitted Exceptions shall be set forth on Exhibit B to the Deed.)

(b) A certification of Seller representing and warranting that Seller is not a "foreign person" as defined in Internal Revenue Code Section 1445.

(c) Such proof of Seller's authority and authorization to enter into this Agreement and consummate the transaction contemplated by it, as may be reasonably required by the Title Company.

(d) Such affidavits or other documents, executed by Seller, that may be required by the Title Company to issue to Buyer the Title Policy or any extended coverage title insurance or title endorsements that may be purchased by Buyer.

9.2 **By Buyer.** On or before the Closing Date, Buyer shall deliver the following in escrow to the Title Company:

- (a) The Purchase Price in accordance with Section 3 of this Agreement.
- (b) The amount due to Seller, if any, after the adjustments and prorations are computed in accordance with Sections 11 and 12 of this Agreement.
- (c) Such proof of Buyer's authority and authorization to enter into this Agreement and consummate the transaction contemplated by it, as may be reasonably required by the Title Company.

10. **Title Insurance.** At Closing, Seller shall provide to Buyer, at Seller's expense, an ALTA standard owner's title insurance policy (the "**Title Policy**") in the amount of the Purchase Price, insuring title vested in Buyer, subject only to the Permitted Exceptions and the usual preprinted exceptions. Buyer shall have the right, if Buyer so elects, to cause the Title Policy to be issued as an extended coverage policy, provided that Buyer pays the additional premiums and all survey costs associated therewith.

11. **Adjustments.** At Closing, Seller shall pay, in the form of a credit to Buyer, for one-half of all escrow fees and costs, all real property transfer or excise taxes, Seller's share of prorations pursuant to Section 12 of this Agreement, and all recording and other charges relating to the release or reconveyance of any deeds of trust or other security instruments against the Property or Seller's interest therein. At Closing, Buyer shall pay all charges relating to the recordation of the Deed and of any security instruments relating to Buyer's financing, one-half of all escrow fees and costs, and Buyer's share of prorations pursuant to Section 12 below. Buyer and Seller shall pay their own respective legal and professional fees.

12. **Prorations.**

12.1 **General.** All utilities with respect to the Property for the month in which the Closing occurs, real estate and personal property taxes and other assessments with respect to the Property for the tax or assessment year in which the Closing occurs, and owners' association dues and assessments shall be prorated as of the Closing Date. For the purpose of calculating prorations, Buyer will be deemed to be in title to the Property and entitled to the income and responsibility for the expenses therefor, beginning at 12:01 a.m. on the Closing Date. Such prorations, if and to the extent known and agreed on as of the Closing Date, shall be paid by Buyer to Seller (if the prorations result in a net credit to Seller) or by Seller to Buyer (if the prorations result in a net credit to Buyer) by increasing or reducing the cash to be paid by Buyer at Closing.

12.2 **Utilities.** Seller shall use Seller's reasonable best efforts to have the utilities transferred to Buyer as of the Closing Date, and Seller shall be responsible for all utility services to the Property through the day prior to the Closing Date. If the Closing shall occur before the actual amount of utilities and other similar operating expenses with respect to the Property for

the month in which the Closing occurs are determined, the proration of such utilities and other similar expenses shall be upon the basis of Seller's reasonable estimate of such utilities and other similar expenses for such month. Subsequent to the Closing, when the actual amount of such utilities and other similar expenses with respect to the Property for the month in which the Closing occurs are determined, the parties agree to equitably adjust the proration of such utilities and other similar expenses and, if necessary, to refund or repay such sums as shall be necessary to effect such adjustment.

12.3 Taxes. If the Closing shall occur before the taxes payable on the Property for the tax year in which Closing occurs are known, the proration of such taxes shall be upon the basis of the taxes payable for the Property during the immediately preceding tax year. Subsequent to the Closing, but no later than sixty (60) days after the actual taxes for the Property have been determined for the tax year in which Closing occurs, the parties agree to adjust the proration of taxes and, if necessary, to refund or pay such sums as shall be necessary to effect such adjustment.

12.4 Survival. The covenants and agreements set forth in this Section 12 shall survive the Closing.

13. Seller's Representations and Warranties.

13.1 Representations and Warranties. Seller represents and warrants to Buyer as of the Effective Date and, unless Seller notifies Buyer otherwise in writing, as of the Closing, as follows:

(a) Seller has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transaction contemplated herein.

(b) The execution, delivery and performance by Seller of Seller's obligations under this Agreement do not constitute a default under any of the provisions of any law, governmental rule, regulation, judgment, decree or order by which such Seller is bound, or under any provision of any contract to which such Seller is a party.

(c) There is no litigation, claim, or arbitration pending, or, to Seller's knowledge, threatened with regard to the Property or its operation.

(d) There is no existing, pending, or intended local improvement district or any taxing authority for public improvements or work that may give rise to an assessment, lien, or imposition of any other charges against the Property or any portion thereof. There is no assessment for public improvements relating to the Property that is now due or will in the future become due.

(e) At Closing, there will be no leases, subleases, or other tenancies relating to the Property.

(f) To Seller's knowledge, the Property is not presently in violation of any law, including Environmental Laws. "**Environmental Laws**" includes any present and future local, state and federal laws, regulations, rules, or ordinances relating to the environment and environmental conditions, including without limitation the Resource Conservation and Recovery

Act of 1976 ("RCRA"), 42 U.S.C. § 6901 et seq., the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Clean Water Act, 33 U.S.C. §§ 1251 et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., and all federal, state, or local regulations, orders and decrees now or hereafter promulgated thereunder. To Seller's knowledge, there are no underground storage tanks on or under the Property.

(g) Seller has not granted an option and has not executed a contract with any other party regarding a purchase or sale of the Property or any portion thereof or interest therein that remains in effect as of the Effective Date. There are no rights of first refusal or first offer or options to purchase the Property or any portion thereof. Seller has not sold, transferred, conveyed, or entered into any agreement regarding "air rights" or other development rights, or restrictions relating to the Property.

(h) All persons and entities supplying labor, materials, and/or equipment to the Property at the request of Seller have been paid, and there are no claims of liens applicable to the Real Property.

13.2 **Survival.** The representations and warranties of Seller set forth in Section 13.1 above and elsewhere in this Agreement are true and accurate and shall survive the Closing.

14. **Buyer's Representations and Warranties.** In addition to any express agreements of Buyer contained herein, the following constitute representations and warranties of Buyer to Seller as of the Effective Date and, unless Buyer notifies Seller otherwise in writing, as of the Closing:

(a) Buyer has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transaction contemplated herein.

(b) The execution, delivery and performance by Buyer of Buyer's obligations under this Agreement do not constitute a default under any of the provisions of any law, governmental rule, regulation, judgment, decree or order by which Buyer is bound, or under any provision of any contract to which Buyer is a party or by which Buyer is bound.

15. **"AS IS" Sale.** Except for the representations and warranties of Seller set forth in this Agreement and in the Deed and any other documents executed by Seller and delivered to Buyer at Closing, the sale of the Property from Seller to Buyer is "as is, where is" condition, with all faults.

16. **Notices.** All notices or other communications required or permitted under this Agreement shall be in writing and shall be (a) personally delivered (including by means of professional messenger service), which notices and communications shall be deemed given on the date of their receipt at the office of the addressee; (b) sent by registered or certified mail, postage prepaid, return receipt requested, which notices and communications shall be deemed given two (2) business days after the date of their deposit in the United States mail; or (c) sent by

overnight delivery using a nationally recognized overnight courier service, which notices and communications shall be deemed given one business day after the date of their deposit with such courier. Notices shall be sent to the following addresses:

To Seller: City of Astoria

To Buyer: John D. Dulcich
14247 S.E. 83rd Street
Newcastle, Washington 98059

Notice of change of address shall be given by written notice in the manner detailed in this Section 16. Notices may be given by a party or a party's attorney.

17. **Brokers.** Seller represents and warrants to Buyer that no broker or finder has been engaged by Seller in connection with the transaction contemplated by this Agreement. Buyer represents and warrants to Seller that no broker or finder has been engaged by Buyer in connection with the transaction contemplated by this Agreement. Seller shall indemnify Buyer for, hold Buyer harmless from, and defend Buyer against any claims for commissions, fees, or other compensation asserted by any broker or finder claiming by, through, or under Seller; and Buyer shall indemnify Seller for, hold Seller harmless from, and defend Seller against any claims for commissions, fees, or other compensation asserted by any broker or finder claiming by, through, or under Buyer.

18. **Required Actions of Buyer and Seller.** Buyer and Seller agree to execute all such reasonable instruments and documents and to take all reasonable actions pursuant to the provisions of this Agreement in order to consummate the purchase and sale contemplated herein, and shall use their commercially reasonable efforts to accomplish the Closing in accordance with the provisions herein. The immediately preceding sentence shall not affect Buyer's right to terminate this Agreement pursuant to Sections 5.2, 5.3, 8.2, 8.3, and 19.1 of this Agreement.

19. Remedies.

19.1 **Buyer's Remedies.** If the conditions set forth in Section 7 of this Agreement are satisfied or waived by Seller and Seller fails to convey the Property to Buyer as the result of Seller's failure to perform as required by this Agreement, through no fault of Buyer, Buyer may elect (a) to terminate this Agreement by written notice to Seller of such termination, in which event the Earnest Money shall be promptly returned to Buyer, and Seller shall reimburse Buyer, within fifteen (15) days after Seller's receipt of Buyer's invoice or statement, for all of Buyer's reasonable and verifiable out-of-pocket expenses (including, without limitation, attorney fees, inspection costs and fees, and consultants' fees) incurred by Buyer in connection with this Agreement and the transaction contemplated herein, in an amount not to exceed \$25,000 (excluded from such limitation are the attorney fees that are recoverable by Buyer pursuant to Section 21.6 of this Agreement); or (b) to seek specific performance of Seller's obligations under this Agreement.

19.2 **Seller's Remedies.** If the conditions set forth in Section 8.1 of this Agreement are satisfied or waived by Buyer and the Closing of the sale of the Property fails to occur as the result of Buyer's failure to perform as required under this Agreement, through no fault of Seller, Seller's sole remedy hereunder shall be to terminate this Agreement and retain the Earnest Money. Buyer and Seller agree that it would be impractical and extremely difficult to estimate the damage that Seller may suffer in the event of such default by Buyer. Therefore, Buyer and Seller agree that a reasonable estimate of the total net detriment that Seller would suffer if Buyer defaults and fails to complete the purchase of the Property is an amount equal to the Earnest Money. This amount shall be the full, agreed, and liquidated damages for the breach of this Agreement by Buyer, and all other claims to damages or other remedies are expressly waived by Seller. The payment of this amount as liquidated damages is not intended as a forfeiture or penalty, but is intended to constitute liquidated damages to Seller. Upon such a default by Buyer, this Agreement shall be terminated and neither party shall have any further rights or obligations under it, except for the right of Seller to collect such liquidated damages from Buyer and any other rights or obligations contained in this Agreement that expressly survive termination of this Agreement. Seller and Buyer have made this provision for liquidated damages because it would be difficult to calculate, on the date hereof, the amount of actual damages for such breach, and these sums represent reasonable compensation to Seller for such breach.

20. **Assignment.** Buyer may freely assign Buyer's rights and obligations under this Agreement without the consent of Seller. Any assignee shall be deemed to have made any and all representations and warranties made by Buyer hereunder, as if the assignee were the original signatory hereto.

21. **Miscellaneous.**

21.1 **Partial Invalidity.** If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

21.2 **Waivers.** No waiver of any breach of any covenant or provision contained herein shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

21.3 **Exhibits.** The exhibits referenced in this Agreement are a part of this Agreement as if fully set forth in this Agreement.

21.4 **Successors and Assigns.** This Agreement shall be binding on and shall inure to the benefit of the permitted successors and permitted assigns of the parties to it.

21.5 **Representation.** The initial draft of this Agreement was prepared by Schwabe, Williamson & Wyatt, P.C., which represents Buyer. Seller acknowledges that Seller had an opportunity to consult with separate legal counsel prior to executing this Agreement. Seller and

Buyer waive any claim that any term or condition of this Agreement should be construed against the drafter. This Agreement will be construed as if it had been prepared by both of the parties hereto.

21.6 Attorney Fees. In the event that Seller or Buyer institutes against the other a suit, action, arbitration, or other legal proceeding of any nature whatsoever, relating to this Agreement or to the rights or obligations of the parties with respect thereto, the prevailing party shall be entitled to recover from the other party the prevailing party's reasonable attorney, paralegal, accountant, expert witness (whether or not called to testify at trial or other proceeding) and other professional fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, including but not limited to deposition transcript and court reporter costs, as determined by the judge or arbitrator at trial or other proceeding, and including such fees, costs and expenses incurred in any appellate or review proceeding, or in collecting any judgment or award, or in enforcing any decree rendered with respect thereto, in addition to all other amounts provided for by law. This cost and attorney fees provision shall apply with respect to any litigation or other proceedings in bankruptcy court, including litigation or proceedings related to issues unique to bankruptcy law.

21.7 Entire Agreement. This Agreement (including any exhibits attached to it) is the final expression of, and contains the entire agreement between the parties with respect to the subject matter of the Agreement and supersedes all prior letters of intent and understandings with respect to the subject matter of the Agreement. This Agreement may not be modified, changed, supplemented, or terminated, nor may any obligations under it be waived, except by written instrument signed by both parties. The parties do not intend to confer any benefit on any person, firm, or corporation other than the parties hereto.

21.8 Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement.

21.9 Time of Essence. Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation, and provision of this Agreement.

21.10 Construction. Headings at the beginning of each section and subsection of this Agreement are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural, and the masculine shall include the feminine, and vice versa. Unless otherwise indicated, all references to sections are to this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless the last day is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. As used in this Agreement, "**business day**" means a day other than a Saturday, Sunday or legal holiday.

21.11 **Governing Law.** The parties expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Oregon.

21.12 **Execution Date.** The “**Execution Date**” of this Agreement is the later of the dates shown beneath the parties’ signatures below.

21.13 **Section 1031 Exchange.** If either party (the “**Exchanging Party**”) intends to have the Property used as the relinquished or replacement property for an IRC Section 1031 exchange, the other party (the “**Other Party**”) will fully cooperate in such exchange as long as (a) such cooperation is at the sole expense of the Exchanging Party, (b) the Other Party assumes no additional risk or liability or loses no remedies or rights due to the exchange transaction, (c) the Closing is not delayed as a result of the exchange, and (d) the Other Party is not obligated to take title to any additional property.

21.14 **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.

[Signature Page Follows]

SELLER:

CITY OF ASTORIA, an Oregon municipal
corporation

BUYER:

By: _____

John D. Dulcich

Name: _____

Date: _____, 2019

Title: _____

Date: _____, 2019

Exhibits:

Exhibit A: Seller's Documents

Exhibit B: Statutory Warranty Deed

**EXHIBIT A
TO
PURCHASE AND SALE AGREEMENT
SELLER'S DOCUMENTS**

1. Any surveys relating to the Property.
2. Property tax statements for the Property for the 2017-2018 and 2018-2019 tax years.
3. Copies of any reports, tests, and/or studies relating to the condition of the Property, including, without limitation, environmental reports, soils and geotechnical reports, and any inspection reports.
4. Copies of any maintenance contracts, service contracts, equipment leases, and other contracts affecting the Property.
5. All permits, warranties or similar documents relevant to the Property or any rights appurtenant to the Property.
6. Any written notices or claims received by Seller with respect to the Property that remain unresolved.
7. Copies of all files, records, permits, reports, and correspondence to or from any governmental agency relating to the use, storage, release, spill, leakage, or disposal of Hazardous Materials at or affecting the Property, or any other matters that would materially affect the value of the Property.
8. Copies of any restrictive covenants and CC&Rs affecting the Property, including without limitation any CC&Rs relating to an owners' association.

**EXHIBIT B
TO
PURCHASE AND SALE AGREEMENT

STATUTORY WARRANTY DEED**

After recording, return to:

James F. Dulcich
Schwabe, Williamson & Wyatt, P.C.
1211 S.W. Fifth Avenue, Suite 1900
Portland, Oregon 97204

*Until a change is requested, all tax statements
shall be sent to the following address:*

John D. Dulcich
14247 S.E. 83rd Street
Newcastle, Washington 98059

STATUTORY WARRANTY DEED

City of Astoria, an Oregon municipal corporation, Grantor, conveys and warrants to _____, Grantee, the real property located in Clatsop County, Oregon, described on the attached Exhibit A, free of encumbrances except for those described on the attached Exhibit B.

The true consideration for this conveyance is \$35,000.

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. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. 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 DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, 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.

Dated this _____ day of _____, 2019.

GRANTOR:

CITY OF ASTORIA, an Oregon municipal corporation

By: _____

Name: _____

Title: _____

STATE OF OREGON)
)SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 2019, by _____ as _____ of City of _____, an Oregon municipal corporation, Grantor.

Notary Public for Oregon

My commission expires:_____

**EXHIBIT A
TO
STATUTORY WARRANTY DEED
(Legal Description of the Land)**

**EXHIBIT B
TO
STATUTORY WARRANTY DEED
(Permitted Exceptions)**

September 20, 2019

TO: City Council Members, Brett Estes
CC: Mike Morgan, Jennifer Benoit

RE: Mill Pond Homeowners' Donation OFFER to the City for the Mill Pond Pier Lots

Below is a summary of our updated offer related to the pier lots and said decommissioning and de-platting.

Our original offer was made under the belief the City would be saving money in the future, not that it was necessary to come up with more than enough to cover current decommissioning costs in full. Our group had been waiting for the formal paperwork from the city per the July 1st City Council meeting but none had been forthcoming. We are now receiving notices of potential sale of the property but interestingly enough, no such notices related to our offer from the July 1 meeting had been sent out.

Our group will honor its commitment and we have gone back to interested Mill Pond homeowners and raised enough to meet the current offer and slightly exceed via donations to Astoria Parks and Recreation. We also have discussed with others outside the Mill Pond neighborhood our interest in protecting the existing wildlife and the view corridor for all whom come through Astoria. Unlike proposed development, which is not guaranteed to transpire, we offer money in hand and believe our donations and de-platting the property offers the best solution to further wetlands development. The City may receive credit for wetlands on another piece of land if we can protect Mill Pond through the de-platting of the lots.

<https://www.oregon.gov/dsl/WW/Pages/Mitigation.aspx>

Please also see our attached memo related to protection of the wetlands in Mill Pond and an Oregon Wetlands score card. (Attachments 2 and 3).

The Mill Pond homeowners' increased offer is \$40,000 to the City of Astoria to cover decommissioning and de-platting the pier lots as follows:

We have raised additional funds from a number of residents, collectively referred to as the "Friends of Mill Pond." I (Cheryl Storey) am acting as the donors' representative for this offer. Our donor list includes each donor's specific contribution amount, address, and totals \$40,000 on this list.

Should City Council accept the Mill Pond homeowners' increased offer, our proposed course of action is as follows:

1. We request the City to follow-through with the formal paperwork as approved in the July 1st meeting with the increased offer of \$40,000 in donations.

2. We will work with City staff on drafting up the formal agreement and the homeowners' may consult their own legal counsel for confirmation on specific wording to protect each party's interests.
3. Once paperwork has been finalized, Cheryl Storey will collect the checks from each donor, made out to Astoria Parks and Recreation (a 501c3 organization) and deliver the checks to the applicable City staff. Delivery to be done after a fully signed agreement is made with the City related to the pier lots.
4. The City will decommission and de-platte the 12 pier lots in accordance with City standards. The de-platting of the lots will result in the lots being eliminated on the GIS maps and reflect open space similar to public parks and other City owned greenspaces.

We ask the City to negate the sale of the lots to allow for time, if necessary, to complete the details of our offer. We are willing to work with the City and the Mill Pond owners to work out the best way to turn the lots into open space, remove the annual HOA dues and no-build fees, enhance wetlands environment and wildlife habitat and build consensus in the community. Our offer benefits everyone in the community, the City, the property owners, the wildlife and future generations of visitors and residents.

Therefore, we ask that City Council to accept our offer to protect the habitat and wetlands in the Mill Pond neighborhood in perpetuity for the citizens of Astoria.

Thank you,
Cheryl Storey
2605 Mill Pond Lane

September 20, 2019

TO: City Staff and City Council

From: Cheryl Storey, 2605 Mill Pond Lane

RE: Mill Pond Pier Lots

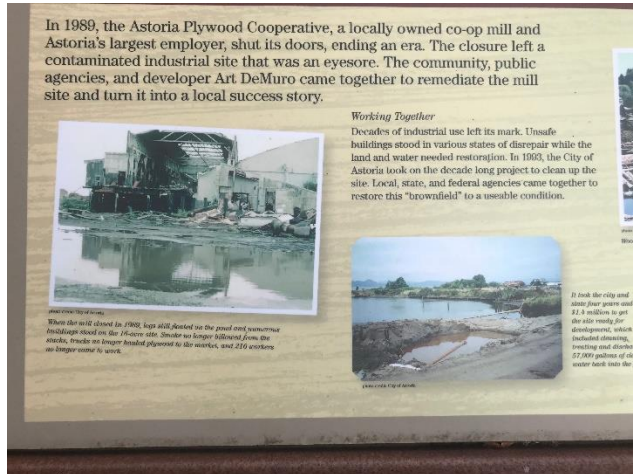
This memo is to advocate for keeping the pier lots undeveloped for the City and Community of Astoria, due to the significant environmental and wildlife factors. To summarize:

1. Please refer to e-mail with our offer, to which this memo is attached.
2. To quote an original document: *"The design of Mill Pond Village emphasizes the waterfront. The home sites offer residents a view of the beautiful Columbia River. The Mill Pond and four pocket parks scattered throughout the development provide ample recreation opportunities for both residents and the larger community."*
3. When the property was originally platted, the pond itself was simply a body of water with no life to it. Over the past 20 years, the pond has flourished and we now have wildlife that has taken up residency in the pond. Building pier lots that use up much of the pond water space impacts wildlife ability to continue to flourish in the pond.
4. People from outside Mill Pond use the open space and the water for their events and activities. Mill Pond's habitat are open to one and all. Many who work and live in the area take their breaks and in general walk around the pond for recreation. We see many from outside Mill Pond walking their dogs through the neighborhood, including local resident Ronni Harris. Elderly residents from the Gateway Senior Housing units regularly stroll the pond area.
5. We realize the City is looking for additional housing for its residents, particularly low-income. However, the development of the pier lots would not provide this type of housing, due to small unit size of each condo and the probable sales price.

Below is further discussion of the above points:

1. We are submitting our offer to the City in advance of the September 30 City Council meeting and ask the Council to consider our offer in light of protecting these wetlands and habitat.
 - a. In response to the July 1 City Council meeting authorizing City staff to move forward with a formal document accepting the Mill Pond homeowners' donations, the Mill Pond HOA landscape committee (of which I'm a member) have been looking into a grant from the State to plant natural vegetation along the sides of the pond that were/are City property, including the pier lots. The sale of the pier lots to a developer converts these lots to private property and reduces the area with which we can use such a grant (as the HOA defers to each homeowner for maintenance of their own lot).
 - b. We want to see Mill Pond itself be an established wetland environment. Eventually, we would prefer to eliminate the grass in Pergola Park and the pier lot adjacent to the park and convert to a more natural environment, which has been discussed at the HOA board level and with the landscape committee over the past couple years.
 - c. In accordance with the Mill Pond HOA CC&Rs, the HOA itself is responsible for the cost of maintaining city owned property within our development. Thus, the HOA has continued to maintain the pier lot space and decommissioning the platted space will not change the HOA's responsibility to maintain these properties.

2. The original platting of the Mill Pond neighborhood included the two pier lots with six (6) condos per pier. Over time, the pond's characteristics have changed and the original vision of 6 condos per pier covering a large portion of the pond no longer makes sense given the environmental and wildlife changes. Time has a way of making us look at how property should be treated and "developed" for future generations. If the developer wants to fulfill DeMuro's vision, such vision can be done by building single family homes on the individual pond lots that are for currently for sale. The footprint of the individual homes on the pond lots are far less than the footprint of two large pier lots with 6 condos each projecting out into the pond. *These two pier lots would have a negative impact on the Mill Pond wetland environment.*



Original views of the pond before development and wildlife began inhabiting the pond.

3. Citizens from the community regularly visit Mill Pond to view the pond and the critters that inhabit the waters.



a.

Geese flying into the pond, where pier lots w/b encroaching into this area.

b.



Blue Heron sitting in area where pier lots w/b developed. This heron sits in this location on a regular basis.

c.



Geese sitting with heron on edge of bank where pier lots w/b placed.



Geese regularly sit on this portion of grass next to Pergola Park. This section would be covered by condos built on the pier and no longer available for the geese. Mill Pond HOA maintains this area and sprinklers are located in this section of grass as well.

d.



River otter family regularly visits Mill Pond, sits along bank where pier lot is platted.

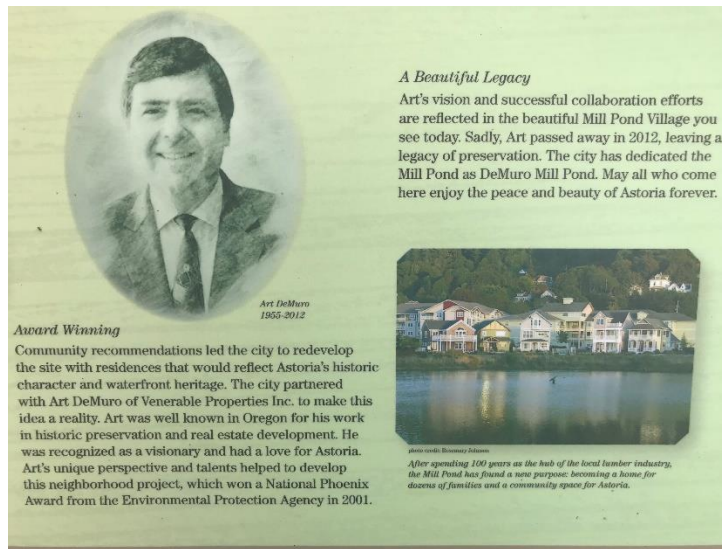
e.

4. The community uses the Pond and the greenspaces for their events and activities:



a.

Paddleboarders in the pond that live close by but are not Mill Pond residents (I asked).



b.

The City, rightly so, is very proud of how this development has turned out. The City even changed the name to "DeMuro Mill Pond."

- c. Given the new development with the Co-Op and the eventual development of the TP Freight lot, it's important we keep our current wetland environment. Our development provides access between the Riverwalk and the new Co-Op under construction and will likely be used by more in the community once the Co-Op opens for business.

5. Due to the expected construction costs of the piers themselves and ultimately the condo units, the condos are likely to be 2nd homes for non-residents rather than housing for those working in the community, whether at the hospital, Safeway or any other establishment in close proximity to the Mill Pond development. These condo units on the pier lots will do nothing to increase housing available to community residents. In addition, we've heard the developer is considering if one or two residences could be built on each pier. Two units versus six units per "lot" is not increasing density.

3.4 Summary of Current Status and Health of Oregon's Freshwater Wetlands

Janet C. Morlan

Wetlands Program Leader, Oregon Division of State Lands

Report Card

Freshwater wetland health varies by ecoregion, with urbanized and agricultural regions exhibiting the most wetland losses and degradation of wetland condition. Although data on freshwater wetland health are very limited, most indicators point toward declining health. However, there are also some positive trends in recent years.

- Oregon has lost an estimated 38 percent of its original wetlands. In the Willamette Valley, approximately 57 percent of wetlands have been lost, and a recent study shows that the valley continues to lose more than 500 acres per year. The Klamath Basin has lost an estimated 75 percent of original wetlands, primarily due to government-sponsored conversion to agricultural production.
- Statewide, 29 percent of native wetland plant communities identified to date are ranked as “imperiled.” Only a few have been studied in detail, like the Willamette Valley wet prairie (99 percent lost) and the Agate Desert vernal pools (more than 40 percent gone and what’s left highly degraded).
- Twenty-four percent of wetland-dependent amphibians are ranked as imperiled.
- Extensive modification of rivers and streams has reduced wetland area and complexity and altered wetland types and functions.
- Water quality standards for wetlands have not been established, but wetland water quality condition and trends may roughly parallel stream condition.
- Existing regulatory programs have slowed wetland loss substantially but are not sufficient in themselves to halt the loss of wetland acreage and functions.
- New wetland restoration incentive programs are helping to reverse wetland loss trends and improve wetland ecosystem health, particularly in agricultural regions.
- Principal threats to wetland ecosystem health today include continued pressure to convert wetlands to other economic uses, and the cumulative impacts from human activities—such as pollution, sedimentation, and invasion of nuisance species—on wetland condition.

Indicators

Wetland ecosystems are healthy when:

1. The area and spatial distribution of wetlands within ecoregions and within watersheds are maintained, not at historical levels in all regions, but at a level that can sustain existing key functions and services
2. Objectives and standards of state policies and regulatory programs are being met
3. Area and spatial distribution of basic wetland types appropriate to the ecoregion are maintained
4. Native plant and animal community abundance, quality, and diversity are maintained
5. They are physically connected (not fragmented) to functionally related aquatic resources, such as rivers and their flood plains, and to high quality upland habitats
6. Hydrologic characteristics, including quantity, quality and timing, are within the historical range of variability for regional types and are sufficient to sustain the wetland resource and dependent processes over the long term.

Introduction

Freshwater wetlands are a highly diverse resource that reflect the extreme physical and biological variability of the state. Although all wetlands share many basic features, their ecological functions—and thus the services they provide—differ markedly between regions and between landscapes. For example, Willamette River floodplain sloughs temporarily store flood waters, reducing peak flows downstream. The vast Klamath Basin marshes—dubbed the “Everglades of the West”—support millions of migratory waterfowl. Cascade Mountain bogs are home to rare or peculiar plants like the carnivorous sundew. And streamside wetlands in the Coast Range provide food and shelter to threatened juvenile salmon and trout.

This great diversity of wetland types and the variety of functions they perform make it difficult to generalize about wetland resource health. No one indicator provides a suitable or sufficient measure of health for all wetlands. However, wetland area is a basic indicator that can be used to track wetland extent and trends. How much of the state’s original wetlands remain? What are current loss rates? Are there disproportionate losses in some regions? These area measures are important because, to a great extent, the health of wetlands in Oregon is dependent on maintaining the remaining wetlands, a goal embodied in state and federal “no-net-loss of wetlands” policies.

However, area measures alone cannot adequately address overall wetland health. Other measures are needed—the health of native wetland plant and animal communities; the extent to which wetlands have been cut off from one another and from streams, lakes and other aquatic resources; and the degree to which water is available to sustain wetlands. These and similar “condition” indicators are needed to more fully understand the ecological health of Oregon’s wetlands today and their capacity to provide valued goods and services well into the future.

What do we know about wetland resource health in Oregon today? Historical information indicates that, in highly developed urban or agricultural regions in particular, wetlands have been drastically and often irreversibly altered. Dams, levees and diversions on major rivers and their tributaries have changed hydrologic characteristics at the most fundamental landscape levels. Cities and roads have eliminated or fragmented wetland systems. Government sponsored projects have cleared and drained vast areas of former wetlands for conversion to agricultural crops. In these regions, few naturally functioning wetlands remain to serve as reference sites for evaluating current resource health. For these reasons, maintaining wetlands within a “historical” range of variability may be a reasonable measure of resource health, but is an unachievable goal. Instead, the goal is to maintain existing wetlands or increase wetland area and functions through restoration.

Definition and indicators of a healthy wetland resource

Wetland health is evaluated by assessing wetland condition and the degree to which wetlands perform certain functions. A wetland in good condition is better able to function to its potential capacity. Wetland function and condition are important to us because of the valued goods and services that wetlands provide. Most people are familiar with the importance of wetlands for waterfowl, fish and other wetland-dependent species, yet many other functions are equally important.

For example, a watershed with an intact wetland system that provides for water storage reduces winter flooding and sustains summer stream flows. Wetlands in good condition also improve water quality by recycling nitrogen and phosphorus and filtering sediments and other pollutants—in fact, wetlands are constructed specifically for this purpose. When these services are lost in the landscape, they are extremely expensive to replace. For example, a study in Washington state valued wetlands in one basin at \$36,000-\$51,000 per acre for flood control alone (Leschine et al., 1997).

The indicators selected to assess wetland ecosystem health are described in **Table 3.4-1** and were based on three related criteria—their significance as a measure of ecosystem health, their sensitivity for detecting change, and data availability (currently available or feasible).

Current conditions and trends

Indicator 1: Change in wetland area and spatial distribution

Until better methods to assess wetland functions and condition are developed and applied statewide, wetland areal extent and distribution will continue to be an important surrogate measure of wetland resource health. Present data sources include historical wetland loss estimates, regional studies of recent (last one to two decades) status and trends, and reviews of permitted wetland losses and gains.

In considering wetland change, it is important to distinguish between “historical” wetland extent, which establishes the context, and “current” trends. An estimated 38 percent of Oregon’s historical wetlands have been lost (Dahl, 1990). Regional historical loss data are not widely available, but data for the Willamette Valley suggest a loss of approximately 57 percent of historical wetlands (Christy et al., 1998), and wetland loss in the Klamath Basin (Oregon/California) is estimated at 75 percent of original wetlands (Akins, 1970). Data on modern wetland trends show continued, gradual losses. A recent study of wetland change in the Willamette Valley shows a loss of approximately 546 acres per year.

Indicator 2: Change in wetland area due to permitted activity

Regulatory programs are a key public policy mechanism to provide protection for the wetland resource while allowing for necessary wetland alteration (Good et al., 1998). In addition to federal and state regulatory programs, the federal government and the state have adopted “no net loss of wetlands” policies and goals. Permit program outcome evaluation provides a measure of how many wetland alterations are “cap-

tured” by the permit program and how well permitted wetland losses are offset by wetland gains from compensatory mitigation.

Regulatory program evaluations indicate that small wetland losses occur through the permit process (Kentula et al., 1992; Shaich and Franklin, 1995). Losses are attributed primarily to insufficient or inadequate compensatory mitigation (wetland replacement) for permitted wetland fills. Not all wetland

Table 3.4-1. Freshwater wetland ecosystem health indicators, significance, reference condition, and data sources

Indicator and Type ¹	Significance	Reference Condition	Data Sources
1 – Change in wetland area and spatial distribution (acres/percent) Type 1 & 2	Directly measures net loss or gain of wetland acreage and indirectly measures loss or gain of wetland functions and associated goods and services	1. Pre-Euro-American settlement (~1850) as measure of historical condition 2. Modern change baseline approximately 1985-1990	Akins, 1970 Dahl, 1990 Fretwell et al., 1996 Borgias & Patterson, 1999 Christy et al., 1998 Daggett et al., 1999
2 – Permitted change in wetland area (acres/percent) Type 3	Measures outcomes of policies and programs that regulate wetland impacts	1985 (Current state & federal regulatory programs in place)	Kentula et al., 1992 Shaich & Franklin, 1995 Steve Morrow, pers. com., 1999
3 – Change in diversity and distribution of wetland types Type 1	Directly measures change in types of wetlands and indirectly measures change in structure and functions	1. Pre-Euro-American settlement 2. Mid-1980s (date of National Wetlands Inventory)	Christy et al., 1998 Daggett et al., 1998 Gwin et al., 1999 National Wetlands Inventory (NWI)
4 – Changes in native wetland plant and animal assemblages Type 1	Measures structural integrity, habitat diversity, and ecosystem stress	1. Pre-Euro-American settlement species & assemblages 2. Date community first identified and described with published data	Christy & Titus, 1997 Christy et al., 1998 Ed Alverson, pers. com., 1999 Borgias & Patterson, 1999
5 – Degree of connectivity with other aquatic resources & upland habitats Type 1 & 2	Indirect measure of aquatic ecosystem function and wetland habitat condition	1. Pre-Euro-American settlement 2. 1980s (NWI data)	National Wetlands Inventory Land Use/Land Cover mapping
6 – Changes in hydrologic characteristics Type 1 & 2	Measures change in hydrologic functions that control related wetland condition, functions & services	1. Pre-Euro-American settlement 2. Modern change baseline approx. 1985	Akins, 1970 USDA, 1977 Benner & Sedell, 1994 Fretwell, 1996 Adamus, 1998 Gwin et al., 1999 NWI

¹ Indicator Type:

- 1: Ecosystem structure- and function-based
- 2: Ecosystem goods- and services-based
- 3: Environmental policy-based

changes (losses or gains) are reflected in permit records because they were too small to meet the permit requirement threshold, were not subject to permit requirements, or were never permitted (Shaich, 2000).

Indicator 3: Change in diversity and distribution of basic wetland types

The diversity and areal extent of basic wetland types (such as forested, wet prairie, marsh, riverine, slope, isolated, etc.) that are appropriate to the ecoregion provide an indirect measure of wetland ecosystem health. Data sources include maps of historical wetland types in the region, regional status and trends studies, land cover/land use change analysis, and permit program outcome evaluation.

Wetlands are often classified by type based upon their landscape setting, water dynamics, and dominant vegetation. These different characteristics result in process differences. Human alteration often changes these basic characteristics, with a general observed trend of “simplification” of diverse ecosystems into more homogenous ones (Benner and Sedell, 1994). For example, many “riverine” wetlands—those directly connected to rivers—have been changed into “isolated” wetlands by road construction or levees, and many forested and prairie wetlands have been changed into farmed wetlands (Christy et al., 1998). An effort is underway in Oregon to classify wetlands by hydrogeomorphic type and relate these classes to specific functions (Adamus, 1998).

Indicator 4: Changes in assemblages of native wetland plants and animals

Changes in native wetland plant and animal communities appropriate for the wetland types in the ecoregion and the proportion of invasive, exotic species indicate the level of ecosystem stress. Data sources include sample-based field assessments correlated to reference sites, plant assemblage diversity surveys, and changes in rarity rankings.

The status of native wetland communities and wetland-dependent species varies considerably by region. As would be expected, urban and agricultural areas have been subject to the most loss of native communities and species. For example, Atlas Figure 19 shows the estimated historical extent of Willamette Valley wet prairie (Christy et al., 1998). Less than 1 percent remains today, too little to show up on the map (Christy, pers. com., 1999). The Oregon Natural Heritage Program (ONHP) has identified 518 wetland plant communities. Of these, 151 (29%) are ranked as imperiled (Christy and Titus, 1997). In the Willamette Valley, 32 of the 72 plant communities (44%) are ranked as imperiled. Some Oregon plant communities may be naturally rare, but ONHP estimates that approximately 90 percent of imperiled plant communities are imperiled due to human activities. Similarly, 24 percent of wetland-dependent amphibians are listed as imperiled.

Indicator 5: Degree of physical connectivity between wetlands and related aquatic resources, and between wetlands and upland habitats

Many of the wetland ecosystem services Oregonians value—such as water quality improvement and fish and wildlife habitat—require a physical connection between wetlands and associated aquatic resources like streams, riparian areas, and estuaries. Similarly, the availability of high quality upland habitat adjacent to wetlands is important for many species. Assessment data includes maps, reports, and observations of the extent to which wetlands are fragmented by dikes, levees, development, and similar features, and the extent to which uplands surrounding major wetland areas are “natural” rather than built, farmed, or logged.

Data on “connectivity” are not directly available, but National Wetlands Inventory maps and other sources indicate that may miles of rivers and streams have been disconnected from their floodplains and wetlands by levees, diversions, and road construction. This fragmentation alters the functions of these aquatic ecosystems. Data on the degree to which important wetlands are connected to high quality upland habitats are not available. However, studies to evaluate connectivity in priority regions could be readily conducted.

Indicator 6: Changes in hydrologic characteristics

Hydrology characteristics of wetlands include water quantity, duration and periodicity of flooding or saturation, and water quality. Hydrologic characteristics that depart from the normal range of variability indicate stress and probable impairment of the wetland’s ability to provide ecosystem goods and services. Data sources to assess this indicator include maps, reports and physical evidence of drainage or diking for agricultural production, urban development patterns, hydrologic characteristics of mitigation or restoration sites compared to “naturally” occurring wetlands, and direct measurement of selected hydrologic characteristics of altered sites compared to “least disturbed” reference sites.

Hydrologic characteristics of wetlands are influenced by a multitude of factors including the stream alterations noted above, dams and diversions, agricultural drainage, groundwater or surface water withdrawals, urbanization, and pollutants (Akins, 1970; Fretwell, 1996; USDA, 1977). The extent of these alterations suggest an overall “drying out” of wetlands in agricultural or semi-arid regions, with a corresponding decline in function and increased risk. These and other activities have also changed basic wetland types in highly altered regions, for example from river-associated to isolated wetlands. Gwin et al. (1999) found that wetlands created or restored for compensatory mitigation typically have very different hydrologic characteristics than the filled wetlands they are supposed to replace. Wetland water quality trends may parallel those for streams, but water quality standards for wetlands have not

yet been established and water quality is difficult to measure, due in part to the highly variable and seasonal surface water characteristics of most wetland types.

Threats, strengths, and examples

Wetland resource health can be adversely affected either directly or indirectly by human activities. Activities such as filling, draining and discharge of pollutants directly eliminate or degrade wetlands. Activities such as groundwater withdrawals or poor upland land management indirectly degrade adjacent wetlands. In highly altered regions such as the Willamette Valley or Coastal lowlands, the types, distribution, and functions of wetland ecosystems are far different than they were historically, which increases risk and also constrains management and restoration options. In addition, it is important to recognize that activities that cause wetland loss and degradation are sometimes indirectly promoted through public policies and programs intended to achieve other social or economic goals, such as economic development, increased density requirements within urban growth boundaries, waterfowl management, or protection of farmland (some of which is wetland).

Regulations and policies aimed at maintaining Oregon's wetland resource base have significantly reduced, but not prevented, wetland loss. A recent study of wetland change in the Willamette Valley ecoregion found that between 1982 and 1994, wetland loss continued to occur at an average rate of 546 acres per year (Daggett et al., 1998). A total of 6,877 acres of wetland were converted to upland land uses, representing 2.5 percent of the 1982 wetland acreage in the valley (Figure 3.4-1).

Although wetland condition was not directly evaluated, changes between wetland types provide indirect information about wetland degradation. For example, conversion of forested wetland to farmed or other emergent types (2,200 acres) indicates a loss of structurally complex wetland habitat, including riparian habitat. The study also revealed wetland gains, mostly from

abandoned or intentionally restored agricultural land. However, losses continue to outpace gains by about three to one.

Because impacts and trends vary considerably among regions, a similar study has been initiated for the Coast Range ecoregion. The results of this study should be available in 2002.

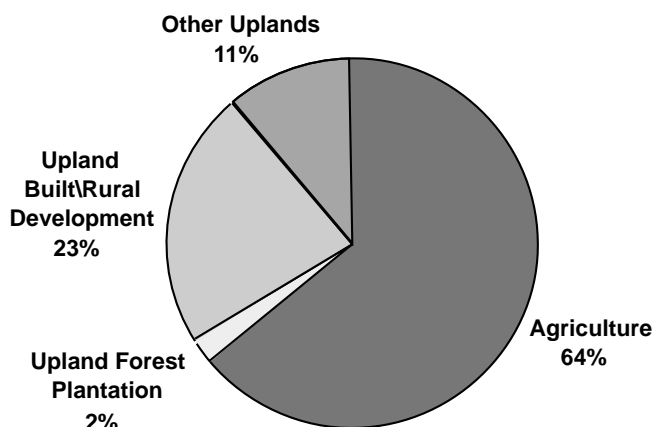
Threats to wetlands vary greatly by ecoregion and dominant land uses. For example, in the Great Basin ecoregion, major risks include poor grazing management and invasive species, whereas in the Willamette Valley ecoregion the major risks include fill for development, increased agricultural drainage, fragmentation, and pollution from urban and agricultural runoff.

Current threats to wetland health include:

- Loss due to unregulated (no permit required) or unpermitted (violation) urban and rural development (Shaich, 2000)
- Loss or degradation due to agricultural expansion or improved drainage on existing fields (USFWS, 1997; Morlan and Peters, 1999)
- Loss or degradation due to surface water diversion, groundwater withdrawal, ditching streams, and stormwater systems designed to move water quickly off the landscape (Bogges and Woods, this report; Oregon Division of State Lands, 1989)
- Grazing activities that damage vegetation and degrade streams, which lowers water tables, thereby drying streams and adjacent riverine wetlands (Kauffmann et al., 1985)
- Eutrophication due to nitrogen or phosphorus loading from agricultural or urban runoff and insufficient wastewater treatment (Adamus, 1998)
- Degradation by contaminants such as heavy metals, pesticides, oil and other pollutants and by sediment overloads from poor management of adjacent uplands
- Invasive, non-native plant and animal species that replace native species (Arnold and Anthony, this report)
- Fragmentation of wetlands into smaller, isolated units that become more vulnerable to eradication; fragmentation also impedes wildlife movements between habitat types and the smaller wetlands cannot support wildlife species that require large habitat units (Gibbs, 1993).

A number of wetland resource strengths can also be identified. Wetlands tend to be highly resilient, absorbing a considerable amount of abuse while still providing valued services. Also, wetlands that are degraded from a wildlife habitat standpoint, for example, may still provide a high level of flood storage. Many degraded wetlands can be restored to highly functional, if not historical, condition with minimal cost. In addition, degraded wetlands are often "self-restoring" if the actions that cause chronic degradation—such as cultivation, levees, or pollutants—are removed or minimized.

Figure 3.4-1. Causes of net wetland loss to Willamette Valley upland, 1982 to 1994.



Since the late 1970s, many public policies, regulations and programs—and numerous private programs—have focused on protecting and restoring wetlands. Examples include:

- State Removal-Fill Law—requires permit for wetland alterations and compensatory mitigation for permitted wetland impacts
- Sections 404 & 401 of the federal Water Pollution Control Act—similar provisions to above law and water quality standards for receiving waters
- State and federal policies setting goal of “no-net-loss” of the wetland resource
- Statewide Land Use Planning Program—cities and counties must develop protection programs for wetland resources under Goals 5 and 17
- Acquisition of important wetland sites by land trusts and public land management agencies
- Substantial increase in public funding for voluntary wetland/aquatic system restoration

The city of Eugene provides the most prominent example of successful wetland planning by a local government in Oregon. When the city discovered that much of the industrial-zoned land in West Eugene was wetland, the city embarked on developing a Wetland Conservation Plan (WCP). WCPs are an optional approach to Goal 5 wetland protection programs—more difficult to develop but with a larger “payoff” in terms of both resource protection and development certainty.

The West Eugene Wetland Plan was adopted in 1992 and approved by the state in 1994. Plan elements include a detailed wetlands inventory and function and value assessment; plan goals; designation of wetlands for protection, restoration or development; a mitigation bank program; and an acquisition program for priority wetlands (City of Eugene and Lane Council of Governments, 1992).

The plan accomplished several wetland protection goals, including land use designations and zoning provisions that provide an additional level of protection, and public acquisition of more than 2,200 acres of wetlands and adjacent uplands from willing sellers. The plan also provided advantages for developers and the business community through plan designation of specific wetlands or portions of wetlands for development, state and federal plan approval which speeds permitting for development parcels, and a mitigation bank program operated by the city, which provides an alternative for developers to meet compensatory mitigation needs in a timely, relatively hassle-free, manner.

As was envisioned in the goals, the plan has facilitated a co-evolution of economic growth and wetland preservation in the West Eugene area (Lane Council of Governments, 1999).

Significant numbers of acres of drained or diked wetlands are being restored throughout the state. For example, the Klamath Basin in the East Cascades ecoregion has been subjected to massive drainage activity dating back to the Swampland Act in 1860 (Fretwell et al., 1996). During the past fifty years, approximately 30,000 acres of wetlands adjacent to Upper Klamath Lake have been diked and drained. At the same time, water quality in the lake has declined and two indigenous fish species—the Lost River and shortnose suckers—have been listed as endangered.

In response to these concerns, a local citizens group proposed federal acquisition of drained wetlands for the purpose of wetland restoration. Congress appropriated \$2.4 million for the Bureau of Land Management to purchase the 3,200 acre Wood River Ranch property. Numerous partner groups helped to develop a resource management plan and fund restoration work.

Restoration was begun in 1996. Habitat restoration will include 1,600 acres of seasonal wetland, 1,200 acres of permanent marsh, and more than six miles of meandering stream channel habitat. In addition, 1.7 miles of the lower Wood River channel will be restored along with 25 acres of adjacent floodplain wetland (Wedge Watkins, pers. com., 1999).

Projections and conclusions

Data are not available for making accurate projections for wetland resource health but are sufficient to conclude that risks outweigh strengths. The best available data, from the Willamette Valley study, indicate that wetland losses will continue, though at much slower rates than estimated historical loss rates. Public awareness of wetland functions and services, and resultant policies and laws aimed at wetland protection and management, have slowed the rate of wetland loss. There are limited reliable data, however, on wetland health trends.

Certain trends can be expected to continue, even though the rates and resource health impacts cannot be accurately predicted. Continued population growth and economic development inevitably increase risk to wetland resource health. Direct losses of wetlands and degradation of wetland health will continue to occur. Wetlands most at risk will be the “drier” wetland types and those in urbanizing areas because they will be under the most pressure for conversion to other uses. Cumulative impacts—the accumulation of many individual actions that combined degrade wetlands—can be expected to increase, particularly in the most populated and rapidly-growing regions of the state like the Willamette Valley, Umpqua and Rogue River Valleys, and the Coast.

Unpredictable factors that could substantially affect wetlands include:

- Climatic fluctuations—wetlands are transitional between uplands and aquatic sites and even small changes in

groundwater levels can dramatically affect wetland persistence and health.

- Agricultural practices—changes in practices, economic conditions, or environmental policies and regulations can increase or decrease manipulation of agriculturally managed wetlands.
- Economic conditions—commercial, industrial and residential development is directly related to general economic trends.
- Public/political will to support or improve wetland protection laws and programs and to adequately fund local wetland planning and wetland resource acquisition and restoration.

Without changes in the current wetland management regime, data and trends indicate that wetland ecosystem health will continue to deteriorate. Wetland regulations alone are not sufficient for protecting wetland functions and services. Regulations are not comprehensive, it is difficult to address cumulative impacts or multiple objectives through a regulatory program, and the burden falls unevenly on wetland landowners. Wetland planning in urban areas has the potential to resolve many wetland use conflicts and protect important wetland resources through appropriate zoning and land use regulations. For it to work well, financial and technical assistance is crucial.

Wetland protection through acquisition or restrictive covenant and wetland restoration by private and public entities are also crucial and such programs have grown dramatically in the last decade. Most of the funding has been provided by federal programs. Challenges include using public funding for aquatic resource restoration strategically to ensure that landscape-scale functions and processes are restored and projects are sustainable over the long term. Effective restoration is needed not only to “hold the line” on wetland resource loss but to restore some of the state’s original wetland resource base (Good & Sawyer, 1998). A “net gain goal” of wetland area by 2020 would help to move the state in that direction.

What data are available and how complete are they?

Estimates of historical wetland loss in Oregon are approximate and drawn from a variety of sources (Akins, 1970; Oregon Division of State Lands, 1989; Dahl, 1990). The Willamette Valley study of recent wetland change has a relatively high level of reliability (Bernert et al., 1999). The estimate of former extent of Willamette Valley wet prairie was derived from 1850s era General Land Office Survey notes correlated with topography and soils data (Christy et al., 1998). The Oregon Natural Heritage Program database containing wetland plant community and wetland-dependent species data is based largely upon field data but reflects uneven levels of

investigation in different regions and for different groups of species (Christy and Titus, 1997). Studies of particular wetland types can provide data that are relatively complete and reliable, such as the evaluation of the extent and condition of Agate Desert vernal pools (Borgias and Patterson, 1999).

Priority information needs

The primary need is to develop and support a program for measuring and monitoring wetland ecosystem health. Pilot studies are underway in the Willamette Valley that will provide reference site data on the condition and functions of important regional wetland types. Additional studies in priority regions would add considerably to our knowledge of wetland resource health. High priority data needs include:

- National Wetlands Inventory (NWI) maps digitized statewide
- Additional Local Wetlands Inventories (more detailed than NWI) within urban areas
- Oregon Hydrogeomorphic Wetland/Riparian Assessment Project expanded beyond Willamette Valley ecoregion pilot study
- Sampling (at reference sites) of biological indicators of wetland health
- Comprehensive sampling and published description of wetland plant communities to complete the statewide wetland community classification
- Digital county soil survey data (soil series level) statewide
- Land Use/Land Cover mapping at regular intervals
- Wetland status and trends studies for additional ecoregions

Although Oregon’s wetlands comprise only a small fraction of the state’s land base, the ecosystem goods and services they deliver have disproportionately high value. Historical losses of wetlands due to urbanization and resource development have been huge and, despite recent protective measures, losses continue, albeit at much lower rates than historically. As Oregon’s population and economy continue to grow, additional wetland conversion is inevitable. Protection remains vital, but restoration of former or degraded wetlands will also be needed to maintain or increase the valuable services these ecosystems provide.

Acknowledgments

This report was completed with considerable assistance from Paul Adamus, Ed Alverson, Ken Bierly, Elaine Blok, Darrin Borgias, John Christy, Jim Good, Dennis Peters, Richard Sumner, Bruce Taylor, Ralph Tiner, and Wedge Watkins.

References

- Adamus, P.R. 1998. Guidebook for hydrogeomorphic (HGM) assessment of wetland and riparian sites in Oregon. Parts I and II. Draft. Oregon Division of State Lands, Salem, OR.
- Akins, G.J. 1970. The effects of land use and land management on the wetlands of the upper Klamath Basin. M.S. Thesis. Western Washington State College, Bellingham, WA.
- Benner, P.A. and J. R. Sedell. 1994. Upper Willamette River Landscape: an historical perspective. In: River quality: dynamics and restoration. Proceedings of the Poland/USA International Water Quality Symposium. Portland, OR.
- Bernert, J.A., J.M. Eilers, B.J. Eilers, E. Blok, S.G. Daggett, and K.F. Bierly. 1999. Recent wetlands trends (1981/82-1994) in the Willamette Valley, Oregon, USA. *Wetlands*. Vol. 19 No. 3. pp 545-559.
- Borgias, D. and C. Patterson. 1999. Assessment and map of the Agate Desert vernal pool ecosystem in Jackson County, OR: March 1998 imagery revision. Unpub. Report. U.S. Fish and Wildlife Service, Oregon Field Office, Portland, OR. 15 pp. plus color plates.
- Christy, J.A. and J.H. Titus. 1997. Native wetland plant communities and associated sensitive, threatened or endangered plant and animal species in Oregon. Oregon Natural Heritage Program, Portland, OR.
- Christy, J.A., E. Alverson, M. Dougherty, S. Kolar, L. Ashkenas and P. Minear. 1998. Presettlement Vegetation for the Willamette Valley, Oregon. Compiled from records of the general Land Office Surveyors (c. 1850). Oregon Natural Heritage Program. Portland, OR.
- City of Eugene and Lane Council of Governments. 1992. West Eugene Wetlands Plan. Lane Council of Governments, Eugene, Oregon, OR.
- Daggett, S.G., M.E. Boule, J.A. Bernert, J.M. Eilers, E. Blok, D. Peters, and J. Morlan, 1998. Wetland and Land Use Change in the Willamette Valley, Oregon: 1982 to 1994. Shapiro and Associates, Inc. Report to the Oregon Division of State Lands, Salem, OR..
- Dahl, T.E. 1990. Wetland losses in the United States, 1780s to 1980s. U.S. Fish and Wildlife Service Report to Congress, Washington, D.C.
- Fretwell, J.D., J.S. Williams and P.J. Redman, compilers. 1996. National water summary on wetland resources. U.S. Geological Survey. Water-supply paper 2425. Washington, D.C.
- Gibbs, J.P. 1993. Importance of small wetlands for the persistence of local populations of wetland-associated animals. *Wetlands* 13(1):25-31.
- Good, J.W. and C.B. Sawyer. 1998. Recommendations for a nonregulatory wetland restoration program for Oregon. Oregon Sea Grant. Corvallis, OR.
- Good, J. W., J. W. Weber, J. W. Charland, J. V. Olson, and K. A. Chapin. 1998. National coastal zone management effectiveness study: protecting estuaries and coastal wetlands. Final Report to the Office of Ocean and Coastal Resources Management, National Oceanic and Atmospheric Administration. Oregon Sea Grant Special Report PI-98-001. Corvallis, OR.
- Gwin, S.E., M.E. Kentula and P.W. Shaffer. 1999. Evaluating the effects of wetland regulation through hydrogeomorphic classification and landscape profiles. *Wetlands*, Vol. 19 No. 3. pp. 477-489.
- Kauffman, J.B., W.C. Krueger, and M. Varva. 1985. Ecology of Plant Communities of the Riparian Area Associated with Catherine Creek in Northeastern Oregon. Tech. Bull. 147. Agric. Exp. Stn., Oregon St. Univ., Corvallis.
- Kentula, M.E., et. al. 1992. Trends and patterns in Section 404 permitting requiring compensatory mitigation in Oregon and Washington, USA. *Environmental Management* 16(1):109-119.
- Lane Council of Governments. 1999. West Eugene Wetlands Plan Implementation. Lane Council of Governments, Eugene, OR.
- Leschine, T., K.F. Wellman, and T.H. Green. 1997. The economic value of wetlands: wetlands' role in flood protection in western Washington. Washington State Department of Ecology. Olympia, WA.
- Morlan, J. C. and D. Peters. Oregon study confirms continued freshwater wetland losses. *National Wetlands Newsletter*. 21(3).
- Oregon Division of State Lands and Oregon State Parks and Recreation Division. 1989. Oregon Wetlands Priority Plan. Oregon Division of State Lands. Salem, OR.
- Shaich, J. 2000. Wetland Regulatory Compliance in the Willamette Valley, Oregon: 1982 to 1994. Oregon Division of State Lands, Salem, OR.
- Shaich, J.A., and K.T. Franklin. 1995. Wetland compensatory mitigation in Oregon: a program evaluation with a focus on Portland metro area projects. Oregon Division of State Lands, Salem, OR.
- U.S. Department of Agriculture, Soil Conservation Service. 1977. Willamette Valley Drainage Guide, Oregon. Soil Conservation Service, Portland, OR.

Jennifer Benoit

From: Mike Morgan
Sent: Friday, September 20, 2019 2:03 PM
To: Jennifer Benoit
Subject: FW: Mill Pond Lot - Utility/Sidewalk Work Estimate

From: Nathan Crater
Sent: Wednesday, September 18, 2019 2:23 PM
To: Mike Morgan <mmorgan@astoria.or.us>
Cc: Jeff Harrington <jharrington@astoria.or.us>
Subject: Mill Pond Lot - Utility/Sidewalk Work Estimate

Hi Mike,

I completed a cost estimate of the work to cap utilities and replace the driveway aprons with standard sidewalk. The estimate is done assuming a contractor will complete the work, no City staff. I believe the previous numbers assumed some City staff involvement.

The estimate includes the following primary tasks.

1. Removing 12 water services.
2. Capping 12 sanitary sewer services
3. Replacing 2 joint driveway aprons with standard sidewalk
4. Constructing 2 new ADA ramps at the corner of 27th and Mill Pond Lane

The total cost estimated for this work is \$35,000, including a 10% contingency. This equates to almost \$3,000 per lot.

Please let me know if you have any questions.

Regards,

Nathan Crater, PE
City Engineer
City of Astoria
1095 Duane Street
Astoria, OR 97103
Office: 503-338-5173
www.astoria.or.us

My name is Melanie Ryan, and I've lived at 2495 Mill Pond Lane for about three years. I have come to know, not only my neighbors, but the rich and diverse wild life having also taken up residency in this unique downtown area. The pond and the park provide sustenance, shelter, and a safe refuge for a variety of animals, birds and fish that, not only pass through during their seasonal migration, but as I have witnessed, reproduce and thrive. Their presence helps in maintaining the ecological balance needed to sustain life for several species. My concern is that if you approve the development of these pier lots instead of working with mill pond homeowners in protecting the integrity of the park, the pond and its inhabitation as previously discussed,

their habitat will be lost. Pushed out by human activity these animals will no longer feel safe enough to return. I am here tonight to ask you to please consider the wildlife living in the mill pond area, and to continue working with the concerned homeowners who have banded together to protecting their habitat. Three new homes have already been approved to build on this little pond, and I'm afraid, with twelve more homes, the latter allocated for a partial build in the center of the existing city park, the wildlife will have no other choice but to relocate. The potentially displaced species are as follows.

1. Baby blue heron, I call him Safoo. His mom and dad raised him around the pond and then left it for him to watch

over. He shares the grassy knoll of the pergola park with the Canada geese when there here. I've seen him chase butterflies like they were little fish in the air. He's a year round resident.

2. Three little Mink, I call them Ticky, Tacky and Toes. Tiny and so playful live on the banks of the pond by the inlet. The family grew from two to three this year. Year round resident.

3. A family of deer. I call them the Cherry Pickers because every time my cherry tree sprouts new leaves they clean them off nicely for me. I've even seen them using the cross walk on highway 30 at night on one of their visits. Year round residents.

4. Four river otter. Even though this year they ate most of the duck eggs on the banks of the pond. That's life, and they are welcome here.
5. Several duck species have reproduced here. They come back every year as they migrate November to June. Some species are year round.
6. Canada geese are migratory and reside here Mid-June to October
7. Tern, and cormorant, year round
8. Beaver, who passes through

We, as mill ponders have learned to enjoy, honor, and coexist with the wildlife here. Their fate is in your hands.

City Council of Astoria, Oregon

18 Sep. 2019

Re. Mill Pond Pier Lots

I am writing in support of the City of Astoria accepting the offer of a donation to off-set costs for deplatting the south area of Mill Pond.

The south end of Mill Pond is a unique resource that can be protected for the conservation values of the area for perpetuity. This action ensures the view corridor for all citizens and grass and water playground for all the Columbia River waterfowl and water born mammals that we all enjoy daily.

It is with the dedication and unselfishness of the citizens of Mill Pond to donate these moneys to ensure the unique waterfowl and mammal environments are protected and available for all citizens of Astoria. The Mill Pond resources are first a gift to our citizens, then to the many tourist that are the lookie-loos entranced by the Mill Pond architecture and the view corridor from Mill Pond Lane over the pond to the river. A gift to the many riders on the trolley that will continue to see and hear the pond as it is today with the diverse waterfowl swimming in the Columbia River estuary. The seniors and residents of the adjoining apartments will continue to enjoy the walk with their dogs along Mill Pond Lane with a clear view of the pond and the river.

This is not just a view corridor for the visitors and residents of Mill Pond but an environment for the City of Astoria residents⁹ to enjoy, also the home for the many diverse types of waterfowl and mammals using this area for wintering, migration and foraging habitat.. The Council must accept this proposal to save the south end of Mill Pond for all the citizens of Astoria.

Respectfully

John Ryan
2495 Mill Pond Lane
Astoria, Oregon 97103





CITY OF ASTORIA

Founded 1811 • Incorporated 1856

MEMORANDUM

DATE: NOVEMBER 4, 2019
TO: MAYOR AND ASTORIA CITY COUNCIL
FROM: BRETT ESTES, CITY MANAGER
SUBJECT: APPEAL (AP19-03) ON DESIGN REVIEW REQUEST (DR19-03) BY
MMCG GOI, LLC, FOR 2190 MARINE DRIVE, CONCERNING
HEARING PROCESS

DISCUSSION / ANALYSIS:

Staff has received an appeal by MMCG GOI, LLC for Design Review Request (DR19-03) concerning the Grocery Outlet Store proposed to be located at 2190 Marine Drive. The Grocery Outlet's attorney has asked for verification that the Council will hold a de novo public hearing on the appeal.

It is the Astoria City Council's past practice to hear most appeals "de novo" meaning that the Council takes new testimony from the public. The other appeal option is "on the record" where limitations are in effect and there can only be re-argument of already made statements. The Council in the past has felt that having de novo hearings allows greater public participation in the decision-making process. Typically, the Council makes the decision of hearing type the night of the appeal hearing. However, in this case Grocery Outlet would like to have the appeal hearing after the new year to allow time to prepare for the hearing.

Under State of Oregon law, the City must make a final decision on land use permits, including appeals, within 120 days of deeming an application complete or an applicant can take the case to the courts for a decision. This is referred to as the "120 Day Rule". Only the applicant can extend the 120 days for a specific number of days. In this scenario, Grocery Outlet's attorney has stated they will grant an extension to the 120 Day Rule commensurate to the amount of time to allow a hearing after the beginning of the year, should Council determine they will hold a de novo hearing.

At Monday's Council meeting where the type of hearing will be considered, there cannot be any discussion on the facts of the case as this must happen in a public hearing after required public notice has been provided. As this is a "quasi-judicial" issue, Council should be aware that any ex parte contacts should be avoided. This would include any conversations, emails, social media, news paper articles, etc. Should a Council member inadvertently have an ex parte contact, all contents of that contact will need to be disclosed at the start of the public hearing on the appeal.

RECOMMENDATION:

Staff recommends that the Council consider the appellant's request for a de novo hearing.

BY: ROSEMARY JOHNSON, PLANNER

ATTACHMENTS:

[de novo request letter.docx](#)

October 23, 2019

Michael C. Robinson

Admitted in Oregon

T: 503-796-3756

C: 503-407-2578

mrobinson@schwabe.com

VIA E-MAIL

Mr. Bruce Jones, Mayor
Astoria City Council
Astoria City Hall
1095 Duane Street
Astoria, OR 97103

RE: Appeal of City of Astoria Design Review Commission (the "DRC") Decision in
City of Astoria File No. DR19-03

Dear Mayor Jones and Members of the Astoria City Council:

This office represents MMCG GOI, LLC, the Applicant. Enclosed with this letter, please find the following:

1. A Notice of Appeal meeting the requirements of Astoria Development Code ("ADC") 9.040.D.1-.3;
2. A completed and signed City of Astoria "Appeal Application" form; and
3. A check made payable to the City of Astoria in the amount of \$500.00 as the applicable appeal fee as shown in the City's current Fee Resolution.

Pursuant to ADC 9.040.F.1, "Review Consisting of Additional Evidence or De Novo Review," the Applicant respectfully requests that the City Council conduct an entire *de novo* review of the appeal. As explained in the Notice of Appeal, the DRC's failure to explain what is required for an approval under the relevant approval criteria deprived the Applicant of its full and fair opportunity to make its case and understand what was required to meet the approval criteria. The Applicant requests the *de novo* review by the Astoria City Council in order to submit new evidence addressing the reasons for the DRC's denial of the Application.

Thank you in advance for your consideration of this request.

Mr. Bruce Jones, Mayor
October 23, 2019
Page 2

Very truly yours,



Michael C. Robinson

MCR/jmhi
Enclosures

Cc Mr. Dan Dover *(via email) (w/enclosures)*
Ms. Rosemary Johnson *(via email) (w/enclosures)*
Mr. Brett Estes *(via email) (w/enclosures)*
Mr. Blair Henningsgaard *(via email) (w/enclosures)*

PDX\134354\246653\MCR\26405236.1



CITY OF ASTORIA

Founded 1811 • Incorporated 1856

MEMORANDUM

DATE: NOVEMBER 4, 2019
TO: MAYOR AND ASTORIA CITY COUNCIL
FROM: BRETT ESTES, CITY MANAGER
SUBJECT: AMENDMENTS TO GRANT AGREEMENT BETWEEN THE STATE OF OREGON AND CITY OF ASTORIA AND SUBGRANT AGREEMENT BETWEEN CITY OF ASTORIA AND BLUE JUMPSUIT LLC FOR THE CLEANUP OF THE FORMER ASTORIA WAREHOUSING SITE

DISCUSSION / ANALYSIS:

At the September 30, 2019 City Council Meeting, Council approved a grant agreement between the State of Oregon and City of Astoria, as well as a subgrant agreement between the City of Astoria and Blue Jumpsuit LLC, to provide cleanup funds for the former Astoria Warehousing site that Fort George Brewery has been in the process of acquiring. It was noted at the September 30th meeting that a modification may be required following completion of the real estate transaction. Attached for City Council consideration is an amended grant agreement between the State of Oregon and City of Astoria as well as a subgrant agreement between City of Astoria and Blue Jumpsuit LLC (representing Fort George). The amendments removed references to the Brownfield loan no longer needed; removed deadline requirements around project completion; and makes clear that Business Oregon will pay the remediation contractors directly. These changes were deemed necessary and require the City Council to modify. A representative from Business Oregon will be present at the meeting.

City Attorney Blair Henningsgaard has reviewed and approved the agreements as to form

RECOMMENDATION:

It is recommended that the Council approve the amended grant agreement between the State of Oregon and City of Astoria as well as the amended subgrant agreement between the City of Astoria and Blue Jumpsuit LLC.

BY: BRETT ESTES

ATTACHMENTS:

[C2019314 A-01 Astoria Warehouse Redevelopment restated contract.pdf](#)
[29 Oct 2019 revised Subgrant with City.pdf](#)

FIRST AMENDED AND RESTATED GRANT AGREEMENT

Project Name: Astoria Warehouse Site Cleanup and Redevelopment

Project Number: C2019314

This First Amended and Restated Grant Agreement (“Contract”) is by and between the State of Oregon, acting by and through the Oregon Infrastructure Finance Authority of the Oregon Business Development Department (“OBDD”), and the City of Astoria (“Recipient”).

Background

A. By a Grant Agreement dated October 1, 2019 (the “Original Contract”), OBDD as grantor agreed to grant to Recipient as grantee the amount of \$1,000,000 (the “Grant Proceeds”). Under the Original Contract, the Grant Proceeds were to be used to repay the outstanding principal balance of that certain Brownfields Redevelopment Fund Loan Contract, # C2019354, between the OBDD as lender to Blue Jumpsuit LLC (“Blue Jumpsuit”) as borrower (the “Loan”) at its maturity. The proceeds of the Loan, in turn, were to be used to remediate environmental contamination on the 12.1 acre former Astoria Warehousing, Inc. property located at 70 West Marine Drive, Astoria, Clatsop County, Oregon (the “Property”), with any post-remediation balance to be used for the Property’s redevelopment.

B. By a letter dated October ____, 2019, OBDD and Blue Jumpsuit mutually agreed to terminate the Loan before OBDD disbursed any Loan proceeds.

C. As a result of the Loan’s termination, the parties now amend and restate the Original Contract by deleting references to the Loan and providing that the Grant Proceeds will be used to directly pay for remediation work on the Property, with any post-remediation balance to be used for the Property’s redevelopment.

Therefore, the parties agree as follows:

This Contract amends, restates, and replaces the Original Contract in its entirety.

Capitalized terms not defined in Section 1 and elsewhere in the body of the Contract have the meanings assigned to them by Exhibit A, incorporated by this reference.

Pursuant to Oregon Laws 2019, Chapter 644, section 38 (the “Act”), OBDD is authorized to make an award to assist in financing the costs of completing the Project.

SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

Grant Proceeds Amount: \$1,000,000.

Project Completion Date: The date on which Recipient completes the Project.

Project Close-Out Deadline: 90 days after the Project Completion Date.

SECTION 2 - FINANCIAL ASSISTANCE

The OBDD shall provide Recipient, and Recipient shall accept from OBDD, a grant (the “Grant”) in an aggregate amount not to exceed the Grant Amount.

Conditions Precedent. The OBDD’s obligations are subject to the receipt of the following items, in form and substance satisfactory to OBDD and its Counsel:

- (1) This Contract duly signed by an authorized officer of Recipient; and

- (2) Such other certificates, documents, opinions and information as OBDD may reasonably require.

SECTION 3 – USE OF FUNDS; DISBURSEMENTS

- A. Use of Proceeds. The Recipient shall use the Grant Proceeds only for the purpose described in the Act. The Recipient agrees that such proceeds will be disbursed and applied as described in subsections B. and C. of this section.
- B. Brownfields Remediation Repayment. The Recipient agrees that the Grant Proceeds will be held and applied by OBDD to directly pay contractors performing remediation of environmental contamination on the Property. OBDD will disburse Grant Proceeds for remediation work (i) on a costs-incurred or reimbursement basis upon receipt of a written disbursement request accompanied by evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as OBDD may require; (ii) upon OBDD's satisfaction that all items listed in the disbursement request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project; and (iii) upon OBDD's determination that the disbursement is only for eligible costs under the Act.
- C. Property Redevelopment. In the event that Grant Proceeds remain after OBDD has applied them, on Recipient's behalf, to fully pay all necessary expenses for remediation of environmental contamination on the Property, OBDD will transfer all remaining Grant Proceeds to Recipient in one disbursement for the sole purpose of redeveloping the Property (the "Redevelopment Proceeds").

The Recipient may further transfer the Redevelopment Proceeds to a party that will redevelop the Property (the "Subrecipient"); provided, however, that Recipient shall do so by a written subgrant agreement that OBDD approves before execution by the Subrecipient. Any such agreement must provide, at the minimum, that Recipient will disburse proceeds (i) on a costs-incurred or reimbursement basis upon receipt of a written disbursement request accompanied by evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as Recipient may require; (ii) upon Recipient's satisfaction that all items listed in the disbursement request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project; and (iii) upon Recipient's determination that the disbursement is only for eligible costs under the Act.

Eligible costs are limited to:

- (i) Acquisition of land, or a legal interest in land, or existing structures, or legal interests in structures.
- (ii) Site grading or preparation or development (landscaping, paving, lighting).
- (iii) Acquisition and installation of machinery or equipment such as HVAC equipment, fixtures or materials that will become an integral part of a structure.
- (iv) Activities related to the foregoing, including planning, design, authorizing, issuing, carrying or repaying interim or permanent financing, research, land use and environmental impact studies, acquisition of permits or licenses or other services connected with construction or renovation.
- (v) Machinery or equipment owned or used by any occupant of the Property for operational purposes.

- D. Financing Availability. The OBDD's obligation to make, and Recipient's right to request, disbursements under this Contract terminate on the Project Close-Out Deadline.

- E. Conditions to Disbursements. As to any disbursement, OBDD has no obligation to disburse funds unless all following conditions are met:
- (1) There is no Event of Default.
 - (2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
 - (3) The OBDD, in the reasonable exercise of its administrative discretion, has sufficient moneys in the Fund for use in the Project and has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.
 - (4) Any conditions to disbursement elsewhere in this Contract are met.
- F. Costs of the Project. The Recipient shall apply the Grant Proceeds to the Costs of the Project in accordance with the Act and Oregon law, as applicable. Grant Proceeds cannot be used for costs in excess of one hundred percent (100%) of the total Costs of the Project.
- G. Costs Paid for by Other State Funds. The Recipient may not use any of the Grant Proceeds to cover costs to be paid for by other financing for the Project from another State of Oregon agency.
- H. Unexpended Grant Moneys. Any Grant moneys disbursed to Recipient, and any interest earned by Recipient on the Grant moneys, that are not used as set out herein or that remain after the Project is completed or this Agreement is terminated shall be immediately returned to OBDD.

SECTION 4 - COVENANTS OF RECIPIENT

The Recipient covenants as follows:

- A. Notice of Adverse Change. Recipient shall promptly notify OBDD of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or any subrecipient related to the ability of Recipient or subrecipient to perform all obligations required by this Contract.
- B. Compliance with Laws. The Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract, the Project and the operation of the road, water, and waste water systems of which the Project is a component. In particular, but without limitation, Recipient shall comply with the following, as applicable:
- (1) Oregon Tax Laws, (as defined in Section 5.F). Recipient shall also ensure that any Subrecipient is in compliance with any of the Oregon Tax Laws.
 - (2) State procurement regulations found in the Oregon Public Contracting Code, ORS Chapters 279A, 279B and 279C. Any private sector Subrecipient is not bound by this requirement.
 - (3) State labor standards and wage rates found in ORS Chapter 279C. The Recipient may rely on a determination by Oregon Bureau of Labor and Industries (“BOLI”) as to whether the Project is exempt from Oregon prevailing wage requirements under ORS 279C.800 through 279C.870 and the administrative rules promulgated thereunder (the “Prevailing Wage Rate Law”). If not exempt, Recipient shall comply, or require compliance from any Subrecipient, with the Prevailing Wage Rate Law, including A) requiring contractors and subcontractors to pay the applicable prevailing wage rate, B) requiring contractors to comply with all other BOLI requirements, including filing separate public works bonds with the Construction Contractors Board unless exempt under ORS 279C.836 and OAR 839-025-0015, and C) prohibiting contracting with any contractor on the BOLI current *List of Contractors Ineligible to Receive Public Works Contracts*.

- (4) ORS 280.518 requiring public display of information on Lottery funding of the project. Recipient shall include, and shall require any Subrecipient to include, the following statement, prominently placed, on all plans, reports, bid documents and advertisements relating to the Project:

“This Project was funded in part by the Oregon State Lottery and administered by the Oregon Business Development Department.”

These laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.

C. Project Completion Obligations. Recipient shall:

- (1) Permit, or require any Subrecipient to permit, OBDD to inspect the Project at any time.
- (2) Complete, or require any Subrecipient to complete, the Project using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of financial assistance provided pursuant to this Contract.
- (3) No later than the Project Closeout Deadline, provide OBDD with an accounting of all expenditures of the Grant Proceeds used for redevelopment of the Property, if any, including evidence that all expenditures are for eligible costs under this Contract.

D. Operation and Maintenance of the Project. Recipient shall operate and maintain the Project, or require from any Subrecipient, that the Project be operated and maintained, in good repair and operating condition so as to preserve the long term public benefits of the Project, including making all necessary and proper repairs, replacements, additions, and improvements for not less than ten years following the Project Close-Out Deadline.

E. Insurance, Damage. For a period of not less than ten years following the Project Close-Out Deadline, the Recipient shall maintain, or require any Subrecipient to maintain, insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units or commercial entities constructing, operating and maintaining similar facilities. If Recipient maintains such policies, nothing in this provision precludes Recipient from asserting a defense against any party other than OBDD, including a defense of immunity.

F. Sales, Leases and Encumbrances. For a period of not less than ten years following Project Close-Out Deadline, Recipient shall not, or will require any Subrecipient to not, sell, lease, exchange, abandon, transfer or otherwise dispose of any substantial portion of or interest in the Property, unless worn out, obsolete, or, in the reasonable business judgment of Recipient, no longer useful in the operation of the Project. Nevertheless, OBDD may consent to such disposition if it has received 90 days' prior written notice from Recipient. Notwithstanding the foregoing, OBDD hereby consents to: (i) the leasing of the Property by Blue Jumpsuit to AHI Cannery, LLC, an Oregon limited liability company (“AHI”) and from AHI to Cervesia Gratis, Inc. an Oregon corporation (“Cervesia”) in connection with the financing for the development of the Project using New Markets Tax Credits in accordance with Section 45D of the Internal Revenue Code of 1986, as amended and (ii) any transfer in connection with the foreclosure of the Property to the extent it secured those loans initiated to finance the development of the Project and (iii) any month-to-month rental of cold storage space.

G. Books and Records. The Recipient shall keep accurate books and records and maintain them according to generally accepted accounting principles established by the Government Accounting Standards Board in effect at the time. Recipient shall have these records audited annually by an independent certified public accountant, which may be part of the annual audit of all records of Recipient.

- H. Inspections; Information. The Recipient shall, or require any Subrecipient to, permit OBDD and any party designated by OBDD, at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, and any other matters related to the Project. The Recipient shall supply any related reports and information as OBDD may reasonably require.
- I. Records Maintenance. The Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Grant Proceeds for a minimum of six years, or such longer period as may be required by other provisions of this Contract or applicable law, following the Project Closeout Deadline. If there are unresolved issues at the end of such period, Recipient shall retain the books, documents, papers and records until the issues are resolved.
- J. Economic Benefit Data. The OBDD may require Recipient to submit specific data on the economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion Date. The Recipient shall, at its own expense, prepare and submit the data within the time specified by OBDD.
- K. Professional Responsibility. A professional engineer or architect, as applicable, registered and in good standing in Oregon, will be responsible for any construction design for the Project. All service providers retained for their professional expertise must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty. The Recipient shall follow standard construction practices, such as bonding requirements for construction contractors, requiring errors and omissions insurance, and performing testing and inspections during construction.
- L. Notice of Default. The Recipient shall give OBDD prompt written notice of any Default as soon as any senior administrative or financial officer of Recipient becomes aware of its existence or reasonably believes a Default is likely.
- M. Indemnity. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless OBDD and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorney's fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors; however, the provisions of this Section are not to be construed as a waiver by Recipient of any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.

SECTION 5 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

The Recipient represents and warrants to OBDD:

A. Organization and Authority.

- (1) The Recipient is a Municipality, and validly organized and existing under the laws of the State of Oregon.
- (2) The Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract, (b) incur and perform its obligations under this Contract, and (c) receive financing for the Project.
- (3) This Contract has been authorized by an ordinance, order or resolution of Recipient's governing body [that was adopted in accordance with applicable law].

- (4) This Contract has been duly executed by Recipient, and when executed by OBDD, is legal, valid and binding, and enforceable in accordance with their terms.
- B. Full Disclosure. The Recipient has disclosed in writing to OBDD all facts that materially adversely affect the Project, or the ability of Recipient to perform all obligations required by this Contract. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract is true and accurate in all respects.
- C. Pending Litigation. The Recipient has disclosed in writing to OBDD all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Recipient to perform all obligations required by this Contract.
- D. No Defaults.
- (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Contract.
- (2) The Recipient has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Recipient to perform all obligations required by this Contract.
- E. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract will not: (i) cause a breach of any agreement or instrument to which Recipient is a party or by which the Project or any of its property or assets may be bound; (ii) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.
- F. Compliance with Tax Laws. Recipient is not in violation of any Oregon tax laws, including but not limited to a state tax imposed by ORS 320.005 to 320.150 (Amusement Device Taxes) and 403.200 to 403.250 (Tax for Emergency Communications) and ORS chapters 118 (estate tax), 314, 316, 317, 318 (income tax), 321 (Timber tax) and 323 (cigarette tax) and local taxes administered by the Department of Revenue under ORS 305.620. Recipient shall include this requirement as a representation and a warranty in any subgrant to a Subrecipient.
- G. Governmental Consent. The Recipient has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Contract and the undertaking and completion of the Project.

SECTION 6 – EVENTS OF DEFAULT

Any of the following constitutes an “Event of Default”:

- A. Any false or misleading representation is made by or on behalf of Recipient, in this Contract or in any document provided by Recipient related to this Grant or the Project.
- B. Recipient fails to perform any obligation required under this Contract, other than those referred to in subsection A of this section 6, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by OBDD. The OBDD may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

SECTION 7 - REMEDIES

- A. Remedies. Upon any Event of Default, OBDD may pursue any or all remedies in this Contract and any other remedies available at law or in equity to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to any one or more of the following:
- (1) Terminating OBDD's commitment and obligation to make the Grant or disbursements of Grant Proceeds under the Contract.
 - (2) Barring Recipient from applying for future awards.
 - (3) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Contract.
 - (4) Requiring repayment of the Grant and all interest earned by Recipient on those Grant funds.
- B. Application of Moneys. Any moneys collected by OBDD pursuant to section 7.A will be applied first, to pay any attorneys' fees and other fees and expenses incurred by OBDD; then, as applicable, to repay any Grant proceeds owed; then, to pay other amounts due and payable under this Contract, if any.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to OBDD is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Contract will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The OBDD is not required to provide any notice in order to exercise any right or remedy, other than notice required in section 6 of this Contract.
- D. Default by OBDD. In the event OBDD defaults on any obligation in this Contract, Recipient's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of OBDD's obligations.

SECTION 9 - MISCELLANEOUS

- A. Time is of the Essence. Recipient agrees that time is of the essence under this Contract.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
 - (2) Nothing in this Contract gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
 - (3) This Contract will be binding upon and inure to the benefit of OBDD, Recipient, and their respective successors and permitted assigns.
 - (4) Except as provided in Subsection 4F. above, Recipient may not assign or transfer any of its rights or obligations or any interest in this Contract without the prior written consent of OBDD. The OBDD may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to OBDD, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of OBDD's Counsel. Any approved assignment is not to be construed as creating any obligation of OBDD

beyond those in this Contract, nor does assignment relieve Recipient of any of its duties or obligations under this Contract.

- (5) Recipient hereby approves and consents to any assignment, sale or transfer of this Contract that OBDD deems to be necessary.

C. Disclaimer of Warranties; Limitation of Liability. The Recipient agrees that:

- (1) The OBDD makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portion of the Project, or any other warranty or representation.
- (2) In no event are OBDD or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Contract or the existence, furnishing, functioning or use of the Project.

D. Notices. All notices to be given under this Contract must be in writing and addressed as shown below, or to other addresses that either party may hereafter indicate pursuant to this section. Notices may only be delivered by personal delivery or mailed, postage prepaid. Any such notice is effective five calendar days after mailing, or upon actual delivery if personally delivered.

If to OBDD: Assistant Director, Economic Development
Oregon Business Development Department
775 Summer Street NE Suite 200
Salem OR 97301-1280

If to Recipient: Mayor
City of Astoria
1095 Dune Street
Astoria, OR 97103

- E. No Construction against Drafter. This Contract is to be construed as if the parties drafted it jointly.
- F. Severability. If any term or condition of this Contract is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.
- G. Amendments, Waivers. This Contract may not be amended without the prior written consent of OBDD (and when required, the Department of Justice) and Recipient. This Contract may not be amended in a manner that is not in compliance with the Act. No waiver or consent is effective unless in writing and signed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.
- H. Attorneys' Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to OBDD by its attorneys.
- I. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for

Marion County (unless Oregon law requires that it be brought and conducted in another county). 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.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon’s sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- J. Integration. This Contract (including all exhibits, schedules or attachments) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.
- K. Execution in Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

The Recipient, by its signature below, acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON
acting by and through its
Business Development Department



CITY OF ASTORIA

By: _____
Chris Cummings, Assistant Director
Economic Development

By: _____
The Hon. Bruce Jones, Mayor

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

/s/ Sam Zeigler per email dated 25 October 2019
Sam Zeigler, Assistant Attorney General

Approved as to legal sufficiency

EXHIBIT A - GENERAL DEFINITIONS

As used in this Contract, the following terms have the meanings below.

“Costs of the Project” means Recipient’s actual costs (including any financing costs properly allocable to the Project) that are (a) reasonable, necessary and directly related to the Project, (b) permitted by generally accepted accounting principles to be Costs of the Project, and (c) are eligible or permitted uses of the Grant Proceeds under applicable state or federal statute and rule.

“Counsel” means an attorney at law or firm of attorneys at law duly admitted to practice law before the highest court of any state, who may be of counsel to, or an employee of, OBDD or Recipient.

“Default” means an event which, with notice or lapse of time or both, would become an Event of Default.

“ORS” means the Oregon Revised Statutes.

SUBGRANT AGREEMENT BETWEEN THE CITY OF ASTORIA AND BLUE JUMPSUIT LLC

This subgrant agreement ("Agreement") is made this ____ day of October, 2019, between the City of Astoria, a Municipal Corporation, ("Recipient") and Blue Jumpsuit LLC, an Oregon Limited Liability Company ("Subrecipient").

RECITALS:

Subrecipient is purchasing two parcels (approximately 2.29 acres) of land from Astoria Warehousing Inc. at 70 Marine Drive within the city limits of Recipient (the "Property"). The Property is described in Exhibit A. The Property contains environmental contamination.

The Subrecipient has entered into a Prospective Purchaser Agreement with Oregon Department of Environmental Quality to facilitate the cleanup and productive reuse of the Property. OBDD is granting Recipient \$1,000,000 for the purpose of paying, on Subrecipient's behalf, all necessary costs for environmental remediation of the Property. If grant funds remain after the remediation is complete, they will become available for reimbursing Subrecipient for certain of the Property's non-remediation redevelopment costs. The Property's remediation and redevelopment are collectively referred to herein as the "Project."

Recipient and OBDD have entered into a certain First Amended and Restated Grant Agreement, no. C2019314, (the "State Grant") of even date. A copy of the State Grant is attached hereto as Exhibit B. Recipient desires to enter into an agreement with Subrecipient for provision of all obligations required by the State Grant in accordance with the terms and conditions therein, and Subrecipient is willing, able, and qualified to assume the obligations.

Now therefore the parties agree as follows:

1. Definitions. All capitalized terms not defined in this Agreement have the meanings assigned to them in the State Grant.
2. Compliance with State Grant: Subrecipient shall comply with all applicable provisions of the State Grant. In the event that any term or provision of this Agreement conflicts with the State Grant, the applicable terms of the State Grant shall control.
3. Term. This Agreement is effective upon execution and shall continue until the Project Close-Out Deadline under the State Grant, unless earlier terminated or amended as provided herein, or unless extended by OBDD under the State Grant. Recipient agrees to submit any written request for an extension by Subrecipient to OBDD within 10 days of receipt.
4. Grant. Recipient shall provide Subrecipient, and Subrecipient shall accept from Recipient, a grant (the "Grant") in an aggregate amount not to exceed \$1,000,000 (the "Grant Amount"). The Grant Amount shall be retained by OBDD for the benefit of Recipient and Subrecipient and shall be applied by OBDD to directly pay contractors performing remediation of environmental contamination on the Property. For the avoidance of doubt, the primary purpose of the Grant is to pay for remediation of environmental contamination on the Property; none of the Grant Amount is available for non-

remediation redevelopment of the Property unless and until the remediation work is complete and remaining funds still exist.

5. **Property Redevelopment.** Pursuant to the State Grant, if funds remain after all necessary expenses for environmental remediation of the Property have been paid in full, the remaining State Grant funds will be delivered to Recipient in one disbursement for the purpose of paying the eligible costs of Subrecipient's redevelopment of the Property. Subrecipient shall provide Recipient with all documentation required under the State Grant to substantiate the eligible redevelopment expenditures of Subrecipient. Subrecipient may receive funds: (i) on a costs-incurred or reimbursement basis upon receipt of a written disbursement request accompanied by evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as Recipient may require; (ii) upon Recipient's satisfaction that all items listed in the disbursement request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project; and (iii) upon Recipient's determination that the disbursement is only for eligible costs under the Act.

Eligible costs are limited to: (i) Acquisition of land, or a legal interest in land, or existing structures, or legal interests in structures; (ii) Site grading or preparation or development (landscaping, paving, lighting); (iii) Acquisition and installation of machinery or equipment such as HVAC equipment, fixtures or materials that will become an integral part of a structure; (iv) Activities related to the foregoing, including planning, design, authorizing, issuing, carrying or repaying interim or permanent financing, research, land use and environmental impact studies, acquisition of permits or licenses or other services connected with construction or renovation; or (v) Machinery or equipment owned or used by any occupant of the Property for operational purposes.

6. **Indemnity.** If Recipient is obligated to expend any resources to complete the remediation of the Property, or otherwise remedy a default or comply with requirements of the State Grant or this Agreement, Subrecipient shall indemnify and hold Recipient harmless from all such expenses incurred by Recipient. To the extent authorized by law, Subrecipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless Recipient and OBDD and their officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorney's fees incurred related to any actual or alleged act or omission by Subrecipient, or its employees, agents or contractors.
7. **Notice of Adverse Change.** Subrecipient shall promptly notify Recipient of any adverse change in the activities, prospects or condition (financial or otherwise) of Subrecipient related to the ability of Subrecipient to perform all obligations required by this Agreement or the State Grant.
8. **Compliance with Laws.** The Subrecipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Agreement, the State Grant, the Project and the operation of the road, water, and waste-water systems of which the Project is a component.

9. Project Completion Obligations. Subrecipient shall:

- (a) Permit, Recipient and/or OBDD to inspect the Project at any time.
- (b) Complete the Project using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of financial assistance provided pursuant to this Agreement and the State Grant.
- (c) Comply with all Oregon tax laws, including but not limited to a state tax imposed by ORS 320.005 to 320.150 (Amusement Device Taxes) and 403.200 to 403.250 (Tax for Emergency Communications) and ORS chapters 118 (estate tax), 314, 316, 317, 318 (income tax), 321 (Timber tax) and 323 (cigarette tax) and local taxes administered by the Department of Revenue under ORS 305.620.
- (d) Comply with the State labor standards and wage rates found in ORS Chapter 279C and require contractors and subcontractors to pay the applicable prevailing wages, unless Subrecipient receives a determination by the Oregon Bureau of Labor and Industries ("BOLI") that the Project is exempt from Oregon prevailing wage requirements under ORS 279C.800 through 279C.870.

10. Operation and Maintenance of the Project. Subrecipient shall operate and maintain the Project in good repair and operating condition so as to preserve the long-term public benefits of the Project, including making all necessary and proper repairs, replacements, additions, and improvements for not less than ten years following the Project Close-Out Deadline.

11. Insurance. Subrecipient shall meet all insurance requirements of the State Grant. If insurance requirements are increased by OBDD during the term of this Agreement, Subrecipient will immediately obtain additional insurance. All policies will name OBDD and Recipient as additional insureds.

12. Sales and Encumbrances. For a period of not less than ten years following Project Close-Out Deadline, Subrecipient shall not, sell, lease, exchange, abandon, transfer or otherwise dispose of any substantial portion of or interest in the Property, unless worn out, obsolete, or, in the reasonable business judgment of Recipient, no longer useful in the operation of the Project without prior written consent from OBDD and Recipient. Provided, that OBDD and Recipient consent is not required under the following circumstances: (i) the leasing of the Property by Blue Jumpsuit to AHI Cannery, LLC, an Oregon limited liability company ("AHI") and from AHI to Cervesia Gratis, Inc. an Oregon corporation ("Cervesia") in connection with the financing for the development of the Project using New Markets Tax Credits in accordance with Section 45D of the Internal Revenue Code of 1986, as amended (ii) any transfer in connection with the foreclosure of the Property to the extent it secured those loans initiated to finance the development of the Project and (iii) month-to-month rental of cold storage space. Recipient agrees to submit any written request for a disposition by Subrecipient to OBDD within 10 days of receipt.

13. Inspections; Information. The subrecipient shall permit OBDD and any party designated by OBDD, at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements,

contracts, and any other matters related to the Project. Subrecipient shall supply any related reports and information as OBDD may reasonably require.

14. Economic Benefit Data. The State Grant requires Recipient to submit specific data reports on the economic development benefit of the remediation of the Property. Subrecipient shall promptly provide all data required by Recipient to complete such reports.
15. Professional Responsibility. If Subrecipient directly redevelops the Property, a professional engineer or architect, as applicable, registered and in good standing in Oregon, will be responsible for any construction design for the Project. All service providers retained for their professional expertise must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty. Subrecipient shall follow standard construction practices, such as bonding requirements for construction contractors, requiring errors and omissions insurance, and performing testing and inspections during construction.
16. Termination: This Agreement may be terminated by mutual consent of both parties. Termination under this section shall not affect the rights of the parties existing at the time of termination. Recipient may terminate this Agreement effective upon delivery of written notice to Subrecipient or at such later date as may be established by Recipient, if: (i) OBDD does not fund the State Grant, or terminates the State Grant to Recipient or (ii) Subrecipient is in default of the State Grant requirements and fails to correct or diligently pursue corrective action within 30 days of receipt of written notice of the condition of default.
17. Remedies. Upon any Event of Default,
 - (a) Recipient may pursue any or all remedies in this Agreement and any other remedies available at law or in equity to enforce the performance of any obligation of Subrecipient. Remedies may include but are not limited to any one or more of the following: (i) Terminating Recipient's commitment and obligation to make disbursements under this Agreement and (ii) Requiring repayment of the Grant and all interest earned by Recipient on those Grant funds.
 - (b) Application of Moneys. Any moneys collected by Recipient pursuant to this section will be applied first, to pay any attorneys' fees and other fees and expenses incurred by Recipient; then, as applicable, to repay proceeds owed to OBDD; then, to pay other amounts due and payable under this Agreement, if any.
 - (c) No Remedy Exclusive; Waiver; Notice. No remedy available to Recipient is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Agreement will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege.
18. Waiver. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. No covenant, term or condition of this Agreement shall be deemed to have been waived by either party, unless the waiver is in writing, and executed by the party against whom the waiver is asserted.

19. Severability. If any provision of this Agreement is found by a Court of competent jurisdiction to be invalid or unenforceable in any respect for any reason, the validity and enforceability of the remaining provisions of this Agreement shall not be impaired.
20. Further assurances. The parties agree to promptly execute and deliver any such further instruments and to perform any such further acts as may be required to carry out the intent and purpose of this Agreement.
21. Notices. Any notice under this Agreement shall be deemed to have been duly served if in writing, contained in a sealed envelope, and personally delivered, or send by first class mail as follows:

To Recipient: City Manager
 City of Astoria
 1095 Duane St.
 Astoria, OR 97103

To Subrecipient: Christopher Nemlowill, Manager
 Blue Jumpsuit LLC
 1483 Duane St.
 Astoria, OR 97103

Any such notice shall be deemed conclusively to have been delivered to the addressee three (3) days after deposit in the U.S. Mail.

22. Amendment. This Agreement shall not be waived, altered, modified, supplemented, or amended in any manner without a duly executed Amendment. Any amendments to this Agreement shall be effective only when reducing to writing and signed by both parties as below.
23. Entire Agreement. This Agreement, with the incorporated State Grant, constitutes the entire agreement between the parties. There are no promises, agreements, conditions or understandings, either oral or written, between the parties other than those set forth in this Agreement. This Agreement supersedes and cancels any prior written or verbal agreement between the parties for similar services.

IN WITNESS WHEREOF, the parties have signed this Agreement the day and year below written.

City of Astoria

Blue Jumpsuit LLC

By: The Hon. Bruce Jones, Mayor

By: Christopher Nemlowill, Manager

Approved as to legal sufficiency

EXHIBIT A

PARCEL 1:

Beginning at the Northwest corner of Block "A", ANNEX TO TRULLINGER'S ADDITION TO ASTORIA, in the City of Astoria, Clatsop County, Oregon; thence North 1°25' East a distance of 40.0 feet to the North line of what is now known as West Marine Drive; thence South 88°35' East, along the North line of said West Marine Drive, a distance of 10.0 feet to the true point of beginning of the tract of land herein described; thence South 88°35' East, along the North line of said West Marine Drive, a distance of 410.0 feet; thence North 1°25' East a distance of 185.0 feet, more or less, to the South line of the Spokane, Portland and Seattle Railway Company's Right of way; thence North 88°35' West, along the South line of said railroad right of way, a distance of 410.0 feet; thence South 1°25' West a distance of 185.0 feet, more or less, to the true point of beginning, all being situated in the City of Astoria, Clatsop County, Oregon.

80807DB 00901 Acct. No. 21975

PARCEL 2:

Beginning at the Northeast corner of the tract conveyed by Columbia River Packers Association, Inc., an Oregon corporation, to American Can Company, a New Jersey corporation, by deed recorded April 28, 1960, in Book 254, Page 742, Deed Records, Clatsop County, Oregon; thence South 88°35' East, along the South line of the Spokane, Portland and Seattle Railway Company right of way, to a point which bears North 88°35' West 60.0 feet from the point at which the East line of Lot 10, Block "A", of ANNEX TO TRULLINGER'S ADDITION TO ASTORIA, extended Northerly, would intersect the said South right of way line; thence South, parallel to the said extended East line of said Lot 10, to the North line of Marine Drive (formerly Astor Street); thence Westerly, along said North line of Marine Drive, to the Southeast corner of the American Can Company tract as herein described; thence North 1°25' East, along the East line of said tract, 185.0 feet, more or less, to the point of beginning, all in the City of Astoria, Clatsop County, Oregon.

80907DB 01000 Acct. No. 21976



CITY OF ASTORIA

Founded 1811 • Incorporated 1856

MEMORANDUM

DATE: NOVEMBER 4, 2019
TO: MAYOR AND ASTORIA CITY COUNCIL
FROM: BRETT ESTES, CITY MANAGER
SUBJECT: REQUEST TO TRIM TREES ON CITY PROPERTY - PETER TADEI

DISCUSSION / ANALYSIS:

Peter Tadei, residing at 500 W. Lexington Ave., has submitted an application for permission to trim trees on City property. The City owned property is to the northwest of Tadei's property and identified as Tax Lot 1100; Map 80918BB. Mr. Tadei has obtained all of the adjacent property owner's signatures (see attached permit application). The subject trees are primarily Big Leaf Maples and appear to have been trimmed in the past.

The applicant has hired a local tree service to perform the work.

Should City Council agree to approve this request, staff recommends the following conditions:

1. Applicant shall utilize any erosion control measures required to stabilize all disturbed areas and ensure that new growth is fully established.
2. The reduction in tree height shall be no more than 25%.

RECOMMENDATION:

Based on the information provided by the applicant and a site visit, it is recommended that the request to trim trees on City property be approved.

BY: NATHAN CRATER

ATTACHMENTS:

[Tree Cutting Permit - Tadei.pdf](#)

[Exhibit Map.pdf](#)



City of Astoria
1095 Duane
Astoria, OR 97103

FOR CITY USE ONLY:

Permit No. 19-194
Date: 9-26-19
Paid: 250.00 deposit

Engineering Department

Phone: 503-338-5173

Fax: 503-338-6538

**APPLICATION FOR PERMISSION TO FELL/CUT TREE(S) ON
*CITY PROPERTY OR **UNOPENED CITY RIGHT-OF-WAY**

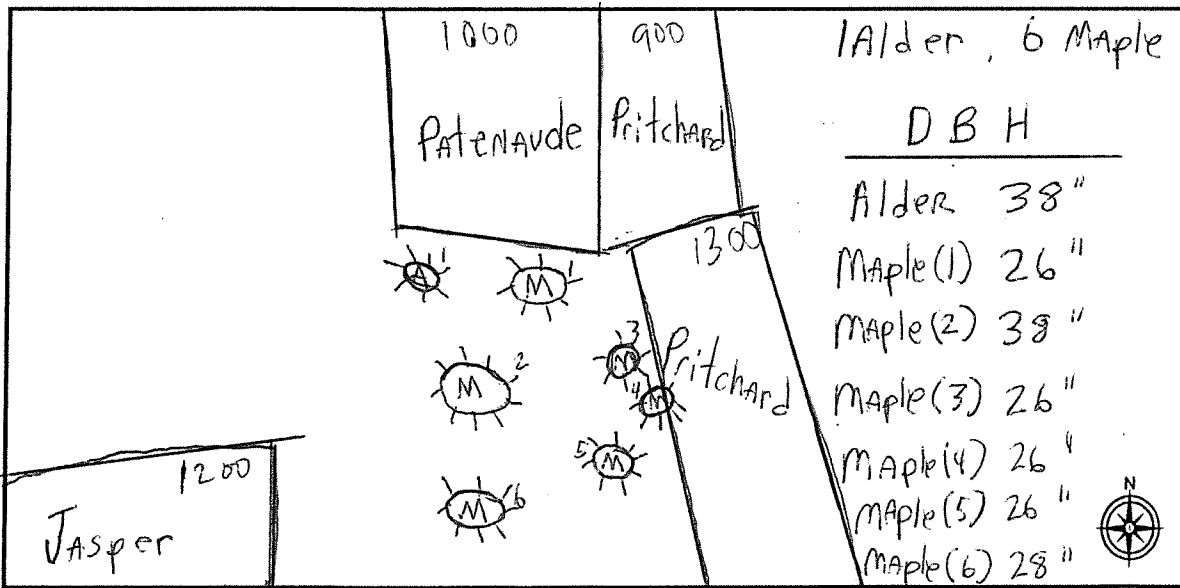
Check All that Apply

Reason: View ☒ Shades Property ☐ Hazardous ☐ Firewood ☐ Other ☐
Method: Fall ☐ Top ☐ Trim ☒

FEE: Firewood: \$20.00 Right-of-Way: \$60.00 City Property: \$250.00
Arborist Report (if required): Actual cost

Applicant: Peter Tadei Owner ☒ Renter ☐
Address: 500 W. Lexington Ave. Phone: 503-325-3400
Site Location: City of Astoria Property (1100) Map/Tax Lot 6600, 6700, 6800

Work to be performed by: BEB STONE AND TREE LLC
Mailing Address: 1472 GRAND AVE ASTORIA OR Fax: _____
Phone: 503 853 5991 Insurance Company: ATLANTIC CASUALTY Policy #: L125003594-0
INSURANCE COMPANY



Sketch Area Showing:

1. Location, size, and species of tree(s).
2. Your property.
3. Adjacent property owners as listed below.

SIGNATURE BELOW INDICATES CONCURRENCE WITH TREE CUTTING (REQUIRED ON CITY PROPERTY ONLY)

Signature	Address	Phone	Remarks
1. <u>Kathleen M. Tadei</u>	<u>4161 Floral Ave Ast</u>	<u>503-791-9071</u>	<u>OK!</u>
2. <u>Sue Pritchard</u>	<u>433 Floral</u>	<u>503-440-0191</u>	
3. <u>Marian Jasper</u>	<u>598 W LEXINGTON</u>	<u>503-325-6691</u>	<u>Go For it !!</u>
4.			
5.			
6.			

Over →

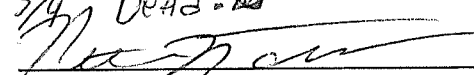
APPLICATION FOR PERMISSION TO FELL/CUT TREE(S) ON CITY PROPERTY

This is a permit to fell/cut ~~part~~ 7 tree(s) from Lot (s) 1100 Block (s) _____
 Addition _____, to the City of Astoria to the City of Astoria and to fell/cut _____ tree(s)
 from _____ Street(s) in the City of Astoria.

GENERAL CONDITIONS

Tree(s) to be felled/cut in a careful manner under the supervision and responsibility of the applicant and as specified by the City Engineer. Applicant is to remove within _____ days of cutting all such felled/cut tree(s) and all resulting debris from such City property, Streets or Alleys and to hold the City of Astoria harmless from any and all damages or claims of damages as a result of such felling or cutting. Permit expires December 31st of dated year. Permit may be revoked at any time with notice. All ordinances of the City of Astoria shall be complied with*.

SPECIAL CONDITIONS OR REMARKS

Some of these trees had been pruned in
 The past for ~~view~~ view. We are asking only
 to PRUNE Again. No trees will be felled.
 Debris will be chipped and taken off City property.
 Maple (2) is $\frac{3}{4}$ dead. 
 Signature of Applicant: _____ Date: 9 26 2019
 Conditions Accepted and Approved

Permit Approved by: _____ Date: _____

*Astoria Code 2.500 Permit for Removing Trees from Unopened City Right-of-Way

1. Prior to removing trees from unopened city rights-of-way, the owner of the underlying fee shall obtain a permit for the city engineer. In granting a permit, the city engineer shall make a written finding that one of the following criteria exists:
 - (a) Necessity to remove tree(s) which pose a safety hazard;
 - (b) Necessity to remove diseased tree(s) weakened by age, storm, fire, or other injury;
 - (c) Need for solar access, or the obtaining of views which cannot be accomplished by pruning;
 - (d) Commercial harvesting is appropriate and removal of the trees poses no threat to the physical integrity of the right-of-way or adjacent property;
 - (e) Necessity of the owner of the underlying fee to temporarily use a portion of the right-of-way for purpose of access to their property.
2. A denial of a permit may be appealed to the city council if notice of such appeal is filed with the finance director within 15 days of the date of denial.

**City of Astoria Administrative Practice Tree Removal Policy on City Property

Section 1.01 – Purpose

This administrative practice defines the practice and procedures to be used in cutting trees on City property.

Section 1.02 – Dangerous Trees

Removal of dangerous trees will be a staff decision.

Section 1.03 – Other Trees

Proposed removal of any tree or trees, other than dangerous trees, will be placed on the agenda of a City Council meeting for City Council consideration.

Exhibit Map - Request to Trim Trees on City Property - Peter Tadei



CITY OF ASTORIA
Founded 1811 • Incorporated 1856





CITY OF ASTORIA

Founded 1811 • Incorporated 1856

MEMORANDUM

DATE: NOVEMBER 4, 2019
TO: MAYOR AND ASTORIA CITY COUNCIL
FROM: BRETT ESTES, CITY MANAGER
SUBJECT: AUTHORIZE GEOTECHNICAL INVESTIGATION SERVICES WITH CORNFORTH CONSULTANTS

DISCUSSION / ANALYSIS:

In early March, the City was notified by the property owner of 1829 Irving Avenue of slumping material under the Irving Avenue Bridge at 19th Street. City staff performed a site visit and found material had moved at the edge of the yard east of 1829 Irving Avenue. In addition, cracks had formed at the base of the fill material underneath the bridge. Since that time City staff has been monitoring the area and no further movement has been observed.

Cornforth Consultants (Cornforth), who has provided geotechnical services to the City for many years, performed a site visit in May to provide an initial assessment and assist the City with determining a path forward. The area around the Irving Bridge at 19th Street is a known complex slide area with multiple historic slides converging at different depths with varying characteristics. While the movement of material appears to be shallow and localized, it is critical to confirm the cause and depth of land movement before the City moves forward with a permanent solution.

Following their site visit, Cornforth recommended that the City manually close the cracks at the base of the fill material with simple shovel technique in order to prevent stormwater from entering the cracks and further exasperating the cracking. In addition, Cornforth suggested that the City install plastic on the unvegetated slope under the bridge, again to prevent stormwater from making the localized situation worse. Both these suggested initial steps were implemented by City staff and the plastic is still present under the bridge.

The next recommended step is to perform geotechnical investigations to determine the type and cause of movement so that a more permanent solution can be developed. Cornforth provided a scope and fee to perform subsurface exploration and install an inclinometer in the land movement area that will be monitored over the wet season until summer. Attached to the contract is the detailed scope and breakdown of the fee in the total not-to-exceed amount of \$59,500. City staff has reviewed the scope and fee, and had determined it to be appropriate due to the complex nature of historic landslides and challenging access to this location.

This work will be partially paid by the Capital Improvement Fund, Slide Repair and Maintenance in the amount of \$25,000 because part of the movement is located on City property. The remaining \$34,500 will be paid through the Public Works Improvement Fund as there are stormwater facilities within this area that need to be protected.

RECOMMENDATION:

It is recommended that City Council approve the contract for Geotechnical Investigation Services at Irving Avenue and 19th Street with Cornforth Consultants in the not-to-exceed amount of \$59,500.

BY: CINDY MOORE**ATTACHMENTS:**

[A PERSONAL SERVICE CONTRACT-Cornforth \(attorney signed\).pdf](#)

CITY OF ASTORIA

CONTRACT FOR PERSONAL SERVICES

CONTRACT:

This Contract, made and entered into this ____ day of _____, 2019 by and between the City of Astoria, a municipal corporation of the State of Oregon, hereinafter called "CITY", and Cornforth Consultants, 10250 SW Greenburg Road, Suite 111, Portland, OR 97223, hereinafter called "CONSULTANT", duly authorized to perform such services in Oregon.

WITNESSETH

WHEREAS, the CITY requires services which CONSULTANT is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, CONSULTANT is able and prepared to provide such services as CITY does hereinafter require, under those terms and conditions set forth; now, therefore,

IN CONSIDERATION of those mutual promises and the terms and conditions set forth hereafter, the parties agree as follows:

1. CONSULTANT SERVICES

- A. CONSULTANT shall perform professional services, as outlined in the Attachment A, to the City of Astoria regarding the Geotechnical Investigation Services at Irving Ave and 19th St.
- B. Consultant's services are defined solely by this Contract and its attachment and not by any other contract or agreement that may be associated with this project.
- C. The CONSULTANT'S services shall be performed as expeditiously as is consistent with professional skill and the orderly progress of work. All work shall be completed no later than August 31, 2020.

2. COMPENSATION

- A. The CITY agrees to pay CONSULTANT a total not to exceed \$59,500 price for performance of those services provided herein;
- B. The CONSULTANT will submit monthly billings for payment which will be based upon the time and materials in each of the categories listed in the scope of work. Said progress billings shall be payable within 30 days of receipt by City.
- C. CITY certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract.

3. CONSULTANT IDENTIFICATION

CONSULTANT shall furnish to the CITY the CONSULTANT'S employer identification number, as designated by the Internal Revenue Service, or CONSULTANT'S Social Security number, as CITY deems applicable.

4. CITY'S REPRESENTATIVE

For purposes hereof, the CITY'S authorized representative will be Cindy Moore, Assistant City Engineer, City of Astoria, 1095 Duane Street, Astoria, Oregon, 97103, (503) 338-5173.

5. CONSULTANT'S REPRESENTATIVE

For purposes hereof, the CONSULTANT'S authorized representative will be Chris Carpenter, Senior Associate Engineer, Cornforth Consultants, 10250 SW Greenburg Road, Suite 111, Portland, OR 97223, (971) 222-2077.

6. CITY'S OBLIGATIONS

In order to facilitate the work of the CONSULTANT as above outlined, the CITY shall furnish to the CONSULTANT access to all relevant maps, aerial photographs, reports and site information which is in the City's possession concerning the project area. In addition, the CITY shall act as liaison for the CONSULTANT, assisting the CONSULTANT with making contacts and facilitating meetings, as necessary.

7. CONSULTANT IS INDEPENDENT CONSULTANT

A. CONSULTANT'S services shall be provided under the general supervision of City's project director or his designee, but CONSULTANT shall be an independent CONTRACTOR for all purposes and shall be entitled to no compensation other than the compensation provided for under Section 2 of this Contract,

B. CONSULTANT acknowledges that for all purposes related to this Contract, CONSULTANT is and shall be deemed to be an independent CONTRACTOR and not an employee of the City, shall not be entitled to benefits of any kind to which an employee of the City is entitled and shall be solely responsible for all payments and taxes required by law; and furthermore in the event that CONSULTANT is found by a court of law or an administrative agency to be an employee of the City for any purpose, City shall be entitled to offset compensation due, or, to demand repayment of any amounts paid to CONSULTANT under the terms of the Contract, to the full extent of any benefits or other remuneration CONSULTANT receives (from City or third party) as result of said finding and to the full extent of any payments that City is required to make (to CONSULTANT or a third party) as a result of said finding.

C. The undersigned CONSULTANT hereby represents that no employee of the City of Astoria, or any partnership or corporation in which a City of Astoria employee has an interest, has or will receive any remuneration of any description from the CONSULTANT, either directly or indirectly, in connection with the letting or performance of this Contract, except as specifically declared in writing.

8. CANCELLATION FOR CAUSE

CITY may cancel all or any part of this Contract if CONSULTANT breaches any of the terms herein and fails to cure such breach within 10 days after receiving notice thereof, or in the event of any of the following: Insolvency of CONSULTANT; voluntary or involuntary petition in bankruptcy by or against CONSULTANT; appointment of a receiver or trustee for CONSULTANT, or any assignment for benefit of creditors of CONSULTANT. Damages for breach shall be those allowed by Oregon law, reasonable and necessary attorney's fees, and other costs of litigation at trial and upon appeal. CONSULTANT may likewise cancel all or any part of this contract if CITY breaches any of the terms herein and be therefore entitled to equivalent damages as expressed above for CITY.

9. ACCESS TO RECORDS

CITY shall have access to such books, documents, papers and records of contract as are directly pertinent to this contract for the purposes of making audit, examination, excerpts and transcripts.

10. FORCE MAJEURE

Neither CITY nor CONSULTANT shall be considered in default because of any delays in completion of responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the party so disabled provided the party so disabled shall within ten (10) days from the beginning such delay notify the other party in writing of the causes of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation.

11. NONWAIVER

The failure of the CITY to insist upon or enforce strict performance by CONSULTANT of any of the terms of this Contract or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.

12. ATTORNEY'S FEES

In the event suit or action is instituted to enforce any of the terms of this contract, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorney's fees at trial or on appeal of such suit or action, in addition to all other sums provided by law.

13. APPLICABLE LAW

The law of the State of Oregon shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it.

14. CONFLICT BETWEEN TERMS

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the proposal of the CONSULTANT, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

15. INDEMNIFICATION

With regard to Comprehensive General Liability, CONSULTANT agrees to indemnify and hold harmless the City of Astoria, its Officers, and Employees against and from any and all loss, claims, actions, suits, reasonable defense costs, attorney fees and expenses for or on account of injury, bodily or otherwise to, or death of persons, damage to or destruction of property belonging to city, consultant, or others resulting from or arising out of CONSULTANT'S negligent acts, errors or omissions in services pursuant to this Agreement. This agreement to indemnify applies whether such claims are meritorious or not; provided, however, that if any such liability, settlements, loss, defense costs or expenses result from the concurrent negligence of CONSULTANT and The City of Astoria this indemnification and agreement to assume defense costs applies only to the extent of the negligence or alleged negligence of the CONSULTANT.

With regard to Professional Liability, CONSULTANT agrees to indemnify and hold harmless the City of Astoria, its Officers and Employees from any and all liability, settlements, loss, reasonable defense costs, attorney fees and expenses to the extent it arises out of CONSULTANT'S negligent acts, errors or omissions in service provided pursuant to this Agreement; provided, however, that if any such liability, settlements, loss, defense costs or expenses result from the concurrent negligence of CONSULTANT and the Client, this indemnification and agreement to assume defense costs applies only to the extent of negligence of CONSULTANT.

With respect to Commercial Liability and Professional Liability, CONSULTANT reserves the right to approve the choice of counsel.

16. INSURANCE

Prior to starting work hereunder, CONSULTANT, at CONSULTANT'S cost, shall secure and continue to carry during the term of this contract, with an insurance company acceptable to CITY, the following insurance, written on an occurrence basis, in amounts not less than the limitations on liability for local public bodies provided in ORS 30.272 and ORS 30.273:

A. Commercial General Liability. CONSULTANT shall obtain, at CONSULTANT'S expense and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage. Coverage shall include consultants, subconsultants and anyone directly or indirectly employed by either.

B. Automobile Liability. Automobile Liability. CONSULTANT shall obtain, at CONSULTANT'S expense and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits).

C. Additional Insured. The liability insurance coverage shall include CITY and its officers and employees as Additional Insured but only with respect to CONSULTANT'S activities to be performed under this Contract. Coverage will be primary and non-contributory with any other

insurance and self-insurance. Prior to starting work under this Contract, CONSULTANT shall furnish a certificate to CITY from each insurance company providing insurance showing that the CITY is an additional insured, the required coverage is in force, stating policy numbers, dates of expiration and limits of liability, and further stating that such coverage is primary and not contributory.

D. Professional Liability Insurance. The CONSULTANT shall have in force a policy of Professional Liability Insurance. The CONSULTANT shall keep such policy in force and current during the term of this contract.

E. Notice of Cancellation or Change. There will be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from CONSULTANT or its insurer(s) to CITY. Any failure to comply with the reporting provisions of this clause will constitute a material breach of this Contract and will be grounds for immediate termination of this Agreement.

17. CITY'S BUSINESS LICENSE

Prior to beginning work, the CONSULTANT shall have a current City of Astoria business license (occupational tax). Before permitting a sub-consultant to begin work, CONSULTANT shall verify that sub-consultant has a current City of Astoria business license.

18. WORKMEN'S COMPENSATION

The CONSULTANT, its subconsultants, if any, and all employers working under this Agreement are either subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers, or are employers that are exempt under ORS 656.126.

19. LABORERS AND MATERIALMEN, CONTRIBUTIONS TO INDUSTRIAL ACCIDENT FUND, LIENS AND WITHHOLDING TAXES

CONSULTANT shall make payment promptly, as due, to all persons supplying CONSULTANT labor or material for the prosecution of the work provided for this contract.

CONSULTANT shall pay all contributions or amounts due the Industrial Accident Fund from CONSULTANT or any subconsultants incurred in the performance of the contract.

CONSULTANT shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

CONSULTANT shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

20. NONDISCRIMINATION

It is the policy of the City of Astoria that no person shall be denied the benefits of or be subjected to discrimination in any City program, service, or activity on the grounds of age, disability, race, religion, color, national origin, sex, sexual orientation, gender identity and expression. The City of Astoria also requires its contractors and grantees to comply with this policy.

21. PAYMENT OF MEDICAL CARE

CONSULTANT shall promptly, as due, make payment to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury to the employees of such CONSULTANT, of all sums which the CONSULTANT agrees to pay for such services and all moneys and sums which the CONSULTANT collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

22. OVERTIME

Employees shall be paid for overtime work performed under this contract in accordance with ORS 653.010 to 653.261 and Fair Labor Standards Act of 1938 (29 U.S.C. Sections 201 to 209).

23. USE OF ENGINEER'S DRAWINGS AND OTHER DOCUMENTS

The CITY retains all drawings and other documents prepared by the CONSULTANT for the project after payment to CONSULTANT.

CONSULTANT will not be held liable for reuse of documents or modifications thereof for any purpose other than those authorized under this Agreement.

24. STANDARD OF CARE

The standard of care applicable to consultant's services will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time CONSULTANT'S services are performed. CONSULTANT will re-perform any services not meeting this standard without additional compensation.

25. NO THIRD PARTY BENEFICIARIES

This contract gives no rights or benefits to anyone other than the CITY and CONSULTANT and has no third party beneficiaries.

26. ASSIGNMENT

This contract is personal to Consultant and may not be assigned or any work subcontracted without consent from the CITY.

27. SEVERABILITY AND SURVIVAL

If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability shall survive termination of this Agreement for any cause.

28. COMPLETE CONTRACT

This Contract and its referenced attachments constitute the complete contract between CITY and CONSULTANT and supersedes all prior written or oral discussions or agreements. CONSULTANT services are defined solely by this Contract and its attachments and not by any other contract or agreement that may be associated with this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first written above.

Approved as to form:

CITY OF ASTORIA, a municipal
corporation of the State of Oregon

City Attorney

BY: _____
Mayor Date

BY: _____
City Manager Date

BY: Sooyun M. Ahn 10/25/2019
Consultant Date



October 4, 2019

2784

Cindy Moore, P.E.
Assistant City Engineer
City of Astoria
1095 Duane Street
Astoria, Oregon 97103

**Proposal for Geotechnical Investigation Services
Irving Avenue Bridge Landslide
Astoria, Oregon**

Dear Ms. Moore,

In accordance with your request, this proposal presents a scope of work and cost estimate to provide geotechnical services for installation of an inclinometer and subsequent instrumentation readings at the location of the landslide area below the Irving Avenue bridge in Astoria, Oregon.

BACKGROUND

It is our understanding that in late Winter to early Spring 2019, ground cracks developed on City of Astoria right-of-way adjacent to the Irving Avenue Bridge. The City documented the location of ground cracks and observed ground disturbance below the bridge at that time. Construction of the Irving Avenue Bridge generally occurred between 2014 and 2015, with contract closeout tasks extending into 2018. It is our understanding from review contract change order #15 documents that ground cracks developed under the bridge in 2015, and recommendations were provided to remove fill on the south side of the water quality swales as well as excess material on the north side of the water quality swales. In the Summer 2019, Cornforth Consultants (CCI) personnel met with the City on-site to observe the landslide conditions and additional site exploration and instrumentation needs. It is unclear from the available information if the ground cracks are associated with shallow movement of the slope south of the new bridge or due to deep-seated movement that toes out on the slope north of the bridge.

PROPOSED SCOPE OF WORK

We propose the following scope of work to provide subsurface exploration and instrumentation for evaluation of subsurface conditions and monitoring of potential landslide extents.

Task 1 – Subsurface Explorations

This task includes coordination, preparation, and on-site inspection of subsurface explorations and instrument installation. We have assumed one boring would be drilled below the Irving Avenue



Bridge to a depth of 60 feet. Due to access constraints, it is anticipated that drill equipment will need to be hand carried to the drill location. Subsurface samples would be collected to characterize the materials. The boring would be instrumented with a slope inclinometer to allow for monitoring of landslide deformation.

Task 2 – Instrument Monitoring

The slope inclinometer installed in the exploratory boring will be initialized following installation and grouting. It is anticipated that monitoring of the inclinometer will be performed every two months through May 2020. For purposes of this estimate, we have assumed four sets of inclinometer readings (including initialization visit).

Task 3 – Laboratory Testing

Laboratory testing would consist of water content determinations and visual classification of subsurface materials on all collected samples in our laboratory to support field classification and summary boring log development. Samples would be preserved, to allow for additional tests in subsequent phases if required.

Task 4 – Geotechnical Data Report

A geotechnical data report would be developed to document subsurface conditions and landslide monitoring. The geotechnical data report would include results of previous reconnaissance mapping, subsurface explorations, summary boring logs, laboratory testing and inclinometer monitoring results.

COST ESTIMATE AND SCHEDULE

Our estimated fee to complete the scope of work outlined above is a Not-to-Exceed total of \$59,500. This amount would not be exceeded without prior authorization from the City. A breakdown of costs by task is provided in the table below.

Table 1 – Cost Breakdown	
Subsurface Explorations (includes \$30,000 subcontract driller)	\$43,000
Instrument Monitoring	\$9,000
Laboratory Testing	\$750
Geotechnical Data Report	\$6,750
Total	\$59,500

We have contacted a subcontract driller who has the capability of performing the difficult access drilling. He has informed us that his earliest available opportunity to perform the work is in November. Additionally, the driller has asked to perform a site visit to assess site access constraints



(typical for difficult access jobs). We have currently in the process of scheduling this visit and therefore anticipate changes to the plan and schedule may be necessary after the driller has been to the site. We estimate that field work for the subsurface explorations will take approximately one week. Following field explorations, it is assumed that instrument monitoring will be conducted for a period of at least six months (through May 2020). We anticipate that a geotechnical data report with summary of subsurface conditions, laboratory testing results and preliminary instrumentation data would be completed approximately 8 weeks after drilling is completed.

We anticipate that this work would be performed in accordance with the standard terms and conditions of our existing on-call contract with the City.

We appreciate the opportunity to be of service to the City on this project and trust that this submittal is sufficient for your current requirements. If there are any questions, please call Chris Carpenter or myself at (503) 452-1100.

Sincerely,

CORNFORTH CONSULTANTS, INC.

Gerry Heslin, P.E.
Vice President



CITY OF ASTORIA

Founded 1811 • Incorporated 1856

MEMORANDUM

DATE: NOVEMBER 4, 2019
TO: MAYOR AND ASTORIA CITY COUNCIL
FROM: BRETT ESTES, CITY MANAGER
SUBJECT: RESOLUTION TO TRANSFER APPROPRIATIONS WITHIN FISCAL YEAR 2019-20 BUDGET FOR EMERGENCY COMMUNICATIONS FUND #132

DISCUSSION / ANALYSIS:

ORS 294.463(2) provides guidance for the transfer of general operating contingency appropriations that in aggregate during the fiscal year are less than 15% of the total fund appropriations and which may be authorized by resolution of the governing body.

At the time the Emergency Communications Fund #132 budget was prepared the amounts reserved for future capital expenditures and part of the ending fund balance included amounts to purchase new dispatch consoles. Emergency Communication staff has been able to research and obtain quotes for new dispatch consoles and there is an immediate need to move forward with the replacement of this equipment. Approval for the specific equipment purchase will be brought forward separately by the Emergency Communication Center.

With the immediate need to move forward with procurement, a transfer in the amount of \$85,000 from Contingency to Capital Outlay is required to provide sufficient appropriations for procurement of the equipment in the current fiscal year. Appropriations in ending fund balance, inclusive of reserves for future procurement, can not be utilized in the current fiscal year and therefore contingency is proposed for the transfer. This transfer amount represents 4.75%, in aggregate, of the total budgeted appropriations in Emergency Communications Fund #132.

A resolution is attached for consideration and approval.

RECOMMENDATION:

It is recommended that City Council consider the resolution to approve transfer of \$85,000 from Emergency Communications Fund #132 Contingency to Capital Outlay.

BY: SUSAN BROOKS, FINANCE DIRECTOR

ATTACHMENTS:

[Emergency Communications Fund .doc](#)

Resolution No. 19-

A RESOLUTION TRANSFERRING AMOUNTS FROM CONTINGENCY TO CAPITAL OUTLAY WITHIN THE EMERGENCY COMMUNICATIONS FUND # 132.

ORS 294.463(2) provides guidance for the transfer of appropriations up to 15%, when authorized by resolution of the governing body, and

WHEREAS, a resolution authorizing the transfer of appropriations within the Emergency Communications Fund is required after adoption of the FY 2019-201 budget.

WHEREAS, the adjusted budgets are on file in the office of the Director of Finance and Administrative Services at City Hall.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF ASTORIA:

Transferring \$ 85,000 from Contingency to Capital Outlay necessary to cover unanticipated expenses due to accelerated requirements for the replacement of dispatch consoles during the current fiscal year. The total requirements remain the same for this fund.

<u>General Fund # 132</u>	<u>Existing</u>	<u>Change</u>	<u>Adjusted</u>
Personnel Services	\$ 1,292,600	0	1,292,600
Materials and Services	177,490	0	177,490
Transfers to Other Funds	25,000	0	25,000
Capital Outlay	168,000	85,000	253,000
Contingency	150,000	(85,000)	65,000
Ending Fund Balance	<u>400,223</u>	<u>0</u>	<u>400,223</u>
Total Expenditures	<u>\$ 2,213,313</u>	<u>\$ 0</u>	<u>\$ 2,213,313</u>

ADOPTED BY THE CITY COUNCIL THIS _____ DAY OF _____, 2019.

APPROVED BY THE MAYOR THIS _____ DAY OF _____, 2019.

Mayor

ATTEST:

City Manager

ROLL CALL ON ADOPTION

YEA NAY ABSENT

Commissioner Herman
 Brownson
 Rocka
 West

Mayor Jones



CITY OF ASTORIA

Founded 1811 • Incorporated 1856

MEMORANDUM

DATE: NOVEMBER 4, 2019
TO: MAYOR AND ASTORIA CITY COUNCIL
FROM: BRETT ESTES, CITY MANAGER
SUBJECT: DISPATCH CONSOLE REPLACEMENT

DISCUSSION / ANALYSIS:

The Astoria Emergency Communications Center (referred to as Astoria Dispatch) has been accumulating necessary funds to purchase new dispatch console furniture for the past several years. These funds are currently included in our contingency funds portion of the FY 19/20 budget. A budget modification has been completed by the city's Finance Director, to allow for the expenditure in the amount of \$85,000.

This amount includes the actual console furniture at \$71,000 along with funds to cover the costs of all the other necessary sub-contractors. This would include Wadsworth Electric, Day Wireless, iFOCUS, CenturyLink, and a Project Manager.

Astoria Dispatch had last purchased two new consoles during the public safety-building remodel in 2011-2012. The pre-existing consoles were purchased in the year 2000, and are coming to the end of useful life. Since the remodel of the building, staffing needs have increased as well as technological demands.

Due to staffing issues, the amount of days and hours dispatchers are working has increased significantly. Calls for service have increased as well, adding to their workload. Some dispatchers have developed repetitive motion injuries. Because of this, ergonomics is a priority in selecting new console furniture. These repetitive motion injuries, some resulting in surgery to correct, are the reason we are moving forward with this project now.

We contacted Russ Bassett and requested information regarding their consoles. Russ Bassett has been in the industry for 55 years, manufacturing products specifically for high demand environments. Their customer base ranges from dispatch centers, local government and federal government entities including the United States Air Force and the Federal Bureau of Investigation. Russ Bassett is ANSI (American National Standards Institute) and BIFMA (Business + Institutional Furniture Manufacturers Association) certified. Both ANSI and BIFMA ensure that certified furniture manufacturers meet or exceed certain standards including ergonomics and safety.

A representative came out to take measurements of our center and gathered a list of our needs for a new setup. After submitting this information to their design team, they presented us with three options. Dispatch staff reviewed each layout and chose the best design for our current center. Dispatchers were unanimous in almost all of their decisions about layouts and

finishes.

Dispatch staff chose this layout, as it offers a linear design that will make the best use of the room and it will provide a more professional and cohesive look. Each console will have a “personal comfort system” allowing for adjustments to individual environments. The current configuration makes it difficult to access and maintain the computers and cords often become unplugged when lowering or raising the desk. The Russ Bassett design will assist with cord management and keep the computers cooler, extending the life of the equipment.

Russ Bassett’s quote came in at \$70,640.75 using the cooperative contract with HGACBuy EC07-18 for 9-1-1 Equipment & Services. The quote includes freight services, installation services and removal/disposal of existing furniture.

Funds for dispatch consoles are contained in the Contingency Funds of FY 2019-2020 budget.

RECOMMENDATION:

It is recommended that City Council approve the budget modification in the amount of \$85,000, and the expenditure of \$70,640.75 for the purchase of new dispatch console furniture.

BY: GEOFF SPALDING, CHIEF

ATTACHMENTS: