# AGENDA ASTORIA CITY COUNCIL MEETING

Tuesday, September 24, 2013 7:00p.m. 2<sup>nd</sup> 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. PRESENTATIONS

- (a) Jake Kaup Astoria Student who Achieved the Rank of Eagle Scout, the Highest Rank of the Boy Scouting Program
- (b) Armory Building

# 6. 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.

- (a) City Council Minutes of 8/19/13
- (b) Boards and Commission Minutes
  - (1) Historic Landmarks Commission Meeting 7/16/13
  - (2) Library Board Meeting 7/23/13
- (c) Update on Delinquent Transient Room Taxes (Finance)
- (d) Grant Applications for Restoration of City Hall First Floor Windows and Doors (Community Development)
- (e) Memorandum of Understanding with the US Coast Guard (USCG) for Fire Protection and Emergency Medical Services for USCG Cutters Alert and Steadfast and Facilities (Fire)
- (f) 2013 Crack Sealing Project Authorization to Award (Public Works)
- (g) Star of the Sea Lease Amendment (Parks)

# 7. REGULAR AGENDA ITEMS

- (a) Ordinance Amending Certain Provisions Dealing with Public Offenses (1<sup>st</sup> reading) (City Attorney)
- (b) Authorization to Purchase Three Vehicles for Public Safety (Police)
- (c) Public Hearing to Exempt Contract from Competitive Solicitation Requirements Public Safety Vehicle Upfitting (Police)
- (d) 17<sup>th</sup> Street Pier Lease with United States Coast Guard (City Manager)
- (e) 11<sup>th</sup> Street CSO Separation Project Pay Adjustment No. 5 (Public Works)
- (f) Liquor License Application from Sara Maya-Garcia and Juan Ramirez-Jimenez doing business as Montealban Mexican Restaurant Located at 2975 Marine Drive for a New Outlet – Full On-Premises Sales Commercial Establishment License (Finance)

# **REGULAR AGENDA ITEMS** (continued)

- (g) Public Safety Building Seismic Upgrade Required Photovoltaic System Emergency Contract Award (Police)
- (h) Authorization to Award Bear Creek Dam Seismic Study Contract (Public Works)
- (i) <u>ADDED ITEM</u>: DEQ Mutual Agreement and Order Amendment regarding Wastewater Treatment Plant (Public Works

# 8. EXECUTIVE SESSION

(a) ORS 192.660(2)(e) – Real Property Transactions

# 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 JULIE LAMPI, CITY MANAGER'S OFFICE, 503-325-5824.

MANAGER\AGENDA\AGENDA 9-24-13.DOC

September 18, 2013

# MEMORANDUM

- TO: ASTORIA CITY COUNCIL
- FROM: PAUL BENOIT, CITY MANAGER

# SUBJECT: ASTORIA CITY COUNCIL MEETING OF SEPTEMBER 24, 2013

# **PRESENTATIONS**

# Item 5(a): Jake Kaup – Astoria Student who Achieved the Rank of Eagle Scout, the Highest Rank of the Boy Scouting Program

## Item 5(b): <u>Armory Building</u>

City Manager Paul Benoit will provide a verbal update on plans to acquire the Armory Building and adjacent parking area.

## CONSENT CALENDAR

## Item 6(a): <u>City Council Minutes</u>

The minutes of the City Council meeting of August 19, 2013 are enclosed for review. Unless there are any corrections, it is recommended that Council approve these minutes.

## Item 6(b): Boards and Commissions Minutes

The minutes of the (1) Historic Landmarks Commission meeting of 7/16/13, and (2) Library Board meeting of 7/23/13 are enclosed. Unless there are any questions or comments regarding the contents of these minutes, they are presented for information only.

# Item 6(c): Update on Delinquent Transient Room Taxes (Finance)

Two hotel operations have been delinquent in the payment of their transient room taxes with the City over the past year. The first is the Riverwalk Hotel (former Red Lion). This property is currently behind \$63,391.51. As can be

seen from the attached report, this includes partial balances for March and April, full balances for May and June, and estimates for July and August as they have failed to file their return for those months. Staff has made multiple attempts to communicate with the hotel operator and have received little in the way of constructive feedback and communication. Since this hotel operation is located on Port property, statues do not allow for the filing of a lien. Staff is working with the City Attorney on this matter. The second hotel is the Best Western Hotel (Genesis Hotel LLC) located at Smith Point. Council was notified earlier in the year that they were in arrears and were placed on a payment plan. They have since completely caught up all past due payments. This item is for information only and requires no action by Council.

# Item 6(d): <u>Grant Applications for Restoration of City Hall First Floor Windows and</u> <u>Doors (Community Development)</u>

The windows and front entry door surround are deteriorating and in need of repair. The windows are steel and have rusted and the caulking is deteriorating. The front entry surround is also steel and is rusted, and has missing pieces that have been replaced with painted wood. Staff has contacted a local metal craftsman for a proposal on how the windows and doors could be preserved and restored. The estimate submitted is for \$14,250 with a total estimated budget of \$15,000 which includes staff time and miscellaneous expenses for the project.

Staff has identified potential grant opportunities through the State Historic Preservation Office (SHPO) and through the Kinsman Foundation to assist in funding of this project. Staff proposes to submit a grant application to the Kinsman Foundation for \$5,000 and to SHPO Preserve Oregon grant for \$7,500 to complete the restoration work. Depending on the City's success in obtaining one or both of these grants, the proposed project could cost the City between \$2,500 and \$10,000. City funds would be available for the required match on this project. It is recommended that the City Council approve the submittal of grant applications to SHPO Preserve Oregon in the amount of \$7,500 and to the Kinsman Foundation in the amount of \$5,000 for the restoration of City Hall first floor windows and front entry doorway.

# Item 6(e): <u>Memorandum of Understanding with the US Coast Guard (USCG) for Fire</u> <u>Protection and Emergency Medical Services for USCG Cutters Alert and</u> <u>Steadfast and Facilities (Fire)</u>

USCG Cutters Alert (WMEC 630) and Steadfast (WMEC 623) are located at the 17<sup>th</sup> Street Pier in the City of Astoria. Recently, the USCG expressed interest in renewing an agreement that would allow for fire protection and emergency medical services to their Cutters and facilities. The attached Memorandum of Understanding (MOU) was negotiated with the USCG and satisfies their need for emergency services. Responsibilities of the USCG and the City of Astoria Fire Department are clearly spelled out in the MOU. Procedures for the recovery of costs incurred by the Astoria Fire Department would be the same as those spelled out in the Memorandum of Agreement between the USCG located at Tongue Point and the City of Astoria. Termination of the MOU between the USCG Cutters Alert and Steadfast is possible by either party upon 30 days written notice. It is recommended that Council approve the Memorandum of Understanding with the USCG for fire protection and emergency medical services to the USCG Cutters Alert and Steadfast and facilities located at the 17th Street Pier, Astoria, Oregon.

# Item 6(f): 2013 Crack Sealing Project – Authorization to Award (Public Works)

As part of the City's pavement maintenance program, crack sealing is proposed for selected streets to help prevent accelerated asphalt deterioration. The crack sealing project is part of the larger pavement preservation effort that includes maintenance patching, street reconstruction, and major overlay work. While the project solicitation was sent to seven prospective crack sealing contractors, only one quote was received for the work from Pacific Asphalt Surface Sealing LLC in the amount of \$12,596.40. This quote was less than half of the Engineer's Estimate. To take full advantage of dry weather, the project was authorized to proceed by the City Manager on September 9th, with formal authorization to be requested from Council at the September 24th City Council meeting. It is recommended that Council post authorize the award of a construction contract to Pacific Asphalt Surface Sealing, LLC in the amount of \$12,596.40 for the 2013 Crack Sealing Project. Project funding will come from the Fuel Tax Fund.

# Item 6(g): Star of the Sea Lease Amendment (Parks)

Each year the Lease between the St. Mary, Star of the Sea Catholic Church (Lessor) and the City of Astoria (Lessee) is reviewed. As per the guidelines of section 5.5 of the Lease which stipulates an annual review of the Lessee's monthly utilities reimbursement payment to Lessor (in this case, for natural gas and electricity usage), the following changes are proposed. Instead of calculating the utilities at a rate of 60% of the total monthly gas and electrical bills, the Lessee will now pay a flat rate of \$800.00 per month as a utilities reimbursement payment. This is a \$1,800.00 annual reduction in the utility rate from last year's amendment. At the end of the term ending July 31, 2014, if the agreed upon \$800.00 per month exceeds the total utility expense, the Lessor agrees to credit Lessee the difference as an energy saving incentive. In addition, Section 9 of the original lease has been amended to allow the currently unused third floor library space to be sublet to Shooting Stars Child Care Development Center. Subletting this space will generate additional revenue for the City without impacting programs or operations. Based on the data received for utilities, gas and electric, from October 2012 to June 2013, and the opportunity to generate revenue from unused space, it is recommended that Council approve the Lease addendums.

# **REGULAR AGENDA ITEMS**

# Item 7(a): Ordinance Amending Certain Provisions Dealing with Public Offenses (1<sup>st</sup> reading)

City Attorney Blair Henningsgaard has drafted this ordinance for Council's consideration. The amendments proposed would accomplish the following:

- (1) Amend Astoria Code 1.101(3) to allow the imposition of fines greater than \$1,000 for building violations.
- (2) Amend the title of Astoria Code 5.115 to "Offensive Public Conduct" rather than "Public Indecency." Changing the name will allow the City to more effectively utilize this ordinance.
- (3) Amend Astoria Code 5.010 to prohibit loaded firearms in public places and bring this ordinance into compliance with state law.

It is recommended that Council conduct the first reading of this ordinance.

# Item 7(b): <u>Authorization to Purchase Three Vehicles for the Police and Fire</u> <u>Departments (Police)</u>

Astoria Police and Fire Departments have three vehicles that are in need of replacement this fiscal year. The vehicles are a 1998 Ford Explorer with 123,000 miles, a 2007 Chevy Tahoe with 130,000, and a 1999 Ford Crown Victoria Police Interceptor (CVPI) with 112,000 miles. All vehicles are in poor condition. Two of these vehicles will be replaced with a 2014 Chevy Tahoe Police Package Vehicle (PPV) and assigned to patrol. The third will be replaced with a 2014 Chevy Tahoe 4x4 Special Services Vehicle (SSV) and used by the Fire Department as a Command Vehicle. Staff has researched the Oregon State Purchasing Program and located the vehicles from Hubbard Chevrolet. The Tahoe 2014 PPV is available for \$28,643 and the 2014 Chevy Tahoe SSV is available for \$32,507. The total purchase price is \$89,793. Ocean Crest was contacted and is unable to provide a competitive bid. The Finance Department has recommended spreading the purchase over two years. This amount is included in the adopted budget. A separate authorization will be requested for the set up and equipment for the vehicles. It is recommended that Council approve the purchase of three vehicles from Hubbard Chevrolet. The total cost of \$89,793 is within the approved budget.

# Item 7(c): <u>Public Hearing to Exempt Contract from Competitive Solicitation</u> <u>Requirements – Public Safety Vehicle Upfitting (Police)</u>

The Astoria Police Department has identified the need to keep consistency in the setup of public safety vehicles. As both vehicles and public safety equipment have become more complex systems, this work has become much more specialized. After two years of competitive bids we have found that Cascade Mobile of Longview has been competitive in pricing. We have also found their quality of work and follow up on issues that develop to be without compare in the industry. Additionally they are our two way radio vendor and have the capability of doing a complete build including radio integration and programming. This is not true for any other vendor that we have found.

Staff believes it to be in the best interest of the City to exempt this contract from the standard competitive bid process and award a Personal Services Contract to Cascade Mobile of Longview. Such an exemption requires a public hearing be held and findings supporting this special solicitation method be adopted. It is recommended that Council conduct a public hearing for the purpose of taking public comment on the findings for exemption from competitive solicitation requirements and adopt findings that authorize the direct appointment process to contract with Cascade Mobile for the upfitting of three public safety vehicles in an amount not to exceed \$30,000.

# Item 7(d): <u>17<sup>th</sup> Street Pier Lease with United States Coast Guard (City Manager)</u>

The City Lease with the United States Coast Guard (USCG) for the 17<sup>th</sup> Street Pier and associated amenities was entered into in 1992. The Lease expires on September 30, 2013. City staff has been working with the USCG Planning and Real Property Section on a new Lease. Negotiations have been completed and a new Lease is ready for consideration by the City Council. Key provisions are as follows:

- Monthly Lease rate of \$17,075.
- Annual base rent on Pier (\$147,000) will be subject to a 2% escalation rate calculated annually.
- The Lease is renewable annually over the next 19 years beyond the initial 1 year term. After 20 years, the Lease is subject to renegotiation.

The renegotiated Lease is very favorable to the interests of both the USCG and the City of Astoria. For the City's part, the new rate is sufficient to fully cover all debt service obligations on the Pier and to build an appropriate reserve for both routine and prospective long term maintenance needs associated with the facility. I recommend that Council approve the Lease and authorize the Mayor to sign on behalf of the City. The Lease has been reviewed by City Attorney Henningsgaard and approved as to form.

# Item 7(e): <u>11<sup>th</sup> Street CSO Separation Project – Pay Adjustment No. 5 (Public Works)</u>

The 11<sup>th</sup> Street Combined Sewer Overflow (CSO) Separation project primarily consists of installing over 10,000 linear feet of new stormwater pipe. Due to the extent of utility replacement work along 8<sup>th</sup> Street, the entire roadway, from Commercial to Niagara, will be rebuilt from curb to curb and most of the sidewalk will be replaced. In March, Council awarded the construction contract to Tapani, Inc. for the bid amount of \$5,717,177. A 15% contingency (\$857,577) was incorporated due to the scope, scale, and potential for encountering

unknown conditions during construction. Pay adjustment No. 5 for \$69,755.12 includes a variety of changes that are itemized in the memo provided in the agenda packet. The largest line item in this change order is for labor and equipment standby time due to the discovery of the historic trolley rail. Included in the specifications for the 11<sup>th</sup> Street CSO Separation project was a monetary incentive to complete the 8<sup>th</sup> Street and Commercial intersection prior to the contract deadline. Tapani was able to complete this work four days early, so with an incentive of \$2,500 per day, they are due an additional \$10,000 for this accomplishment. This change order also includes a \$4,243.54 cost due to another CenturyLink conflict and will be included in the claim to CenturyLink. Other work associated with this change order was due to adjustments for field conditions and changes that benefit the operation and maintenance of the system. It is recommended that the City Council authorize this pay adjustment for the 11<sup>th</sup> Street CSO Separation project for \$69,755.12. Funds are available for this project through IFA funding.

# Item 7(f): Liquor License Application from Sara Maya-Garcia and Juan Ramirez-Jimenez doing business as Montealban Mexican Restaurant Located at 2975 Marine Drive for a New Outlet – Full On-Premises Sales Commercial Establishment License (Finance)

A liquor license application has been filed by Sara Maya-Garcia and Juan Ramirez-Jimenez doing business as Montealban Mexican Restaurant, located at 2975 Marine Drive, Astoria. The application is for a New Outlet-Full On-Premises Sales Commercial Establishment License. The appropriate departments have reviewed the application. It is recommended that Council approve the application.

# Item 7(g): <u>Public Safety Building Seismic Upgrade Required Photovoltaic System</u> Emergency Contract Award (Police)

Proposals were recently solicited for the Public Safety Building Seismic Upgrade grant required Photovoltaic (Solar) System. The solar panels will be affixed to the Public Safety Building roof and are expected to supply approximately 10% of the building's electrical needs. On September 17, 2013, Inland Electric, Inc., provided the sole bid for the complete 10KW system in the amount of \$64,350. The project will be fully funded through the balance remaining of the Oregon Emergency Management (OEM) Seismic Rehabilitation Grant. This aspect of the project faced a number of delays due to the shakeout of suppliers in the solar industry. As such, OEM granted a final extension for completion to December 31, 2013. With a 90 day completion contract, the project has a very short time frame. The contract requires the contractor to provide a performance and payment bond, insurance certificates and schedule of values. It is expected that these documents will not be completed and presented to the City Attorney until after Council has met. Due to the very short timeframe for preparing contract documents and completing all associated work, it is recommended that Council award the contract to Inland Electric, Inc., for the Public Safety Building Seismic Upgrade Photovoltaic

System, contingent on contract documents being reviewed and approved as to form by the City Attorney.

# Item 7(h): <u>Authorization to Award Bear Creek Dam Seismic Study Contract (Public</u> <u>Works)</u>

The City of Astoria's Bear Creek Dam is a 90-foot high concrete gravity dam built in 1912 and raised in 1953. The Oregon Water Resources Department (OWRD) has classified the dam as a high hazard dam due to the dam's proximity to human population areas downstream. The classification is not a result of the dam's age or condition, but the age and current condition does affect the probability of failure during a significant seismic event. The OWRD has determined that the City should initiate a seismic failure analysis. A previous study completed 20 years ago did not include enough detail to determine the actual risk of failure as a result of a Cascadia Subduction Zone earthquake.

The first step in the process is to hire a consultant that specializes in the type of analysis necessary to determine if the dam is at risk, and if so, what steps to take to reduce the risk of damage and potential failure during a significant seismic event. While it is anticipated that the study may lead to conclusions more favorable than the previous study, there is the possibility that the conclusions may result in OWRD mitigation requirements. OWRD has provided a \$50,000 grant to assist the City with the first phase of the required studies. The study would be completed in the three phases listed below. Only the first phase is proposed at this time. The scope of future phases would be dependent on the results of Phase 1.

Qualification statements were received on August 6, 2013 from four firms and are listed in the order in which they scored in staff's evaluation: Cornforth Consultants, CH2MHill, Landau Associates, and Shannon & Wilson. All four firms specialize in seismic stability evaluation of dam structures. The evaluation team determined that Cornforth Consultants would be the suitable firm for this project. Staff has negotiated a scope of work and contract with the consultant and OWRD has approved the scope of work. The fee for the proposed work is \$99,865 with the City share being \$49,932.50. The work is planned to take place over the next 4-6 months and be complete no later than the end of the current fiscal year. It is recommended that Council execute a contract with Cornforth Consultants for a total not to exceed \$99,865, for geotechnical engineering services on the Bear Creek Dam Seismic Analysis Project.

# **EXECUTIVE SESSION**

# Item 8(a): ORS 192.660(2)(e) – Real Property Transactions

The City Council will recess to executive session to discuss a real property transaction issue.

# NO DOCUMENTATION IS INCLUDED FOR THIS AGENDA ITEM

#### **CITY OF ASTORIA** City Council Chambers August 19, 2013

## CITY COUNCIL JOURNAL OF PROCEEDINGS

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

Councilors Present: LaMear, Herzig, Warr, Mellin, Mayor Van Dusen

Staff Present: City Manager Benoit, City Engineer Harrington, City Support Engineer Moore, Community Development Director Estes, Finance Director Carlson, Fire Chief Ames, Parks and Recreation Director Cosby, Police Chief Curzon, and City Attorney Henningsgaard,. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

# SISTER CITY TRIP TO WALLDORF, GERMANY

# Item 3(a): City Council discussed their recent trip to Astoria's Sister City, Walldorf, Germany

Mayor Van Dusen explained some of the differences between the local governments in Astoria and Walldorf, including the authority of each City Council and the positions of Burgermeister and Mayor. He read a letter from Burgermeisterin Christiane Staab, the first female Burgermeister in Walldorf, thanking Astoria for participating in the Sister City Celebration.

City Manager Benoit displayed a slide show of various events during the Sister City Celebration. City Council and staff offered the following key comments about the photographs:

- The Astor House in Walldorf was built using a donation from John Jacob Astor when he died. The house, now a museum, was originally built for the poor. A special exhibit will remain on display for the next year.
  - The sale of the Astor House to the museum helped the Astor Foundation continue the work of housing the poor and elderly. City Council toured an assisted living center and nursing home that is run by the foundation.
- Events included an outdoor interdenominational church service, a guided tour of the downtown area and an event at The Astoria Hall of Sport and Culture.
- Andreas Staab, who is married to Burgermeisterin Staab, is a judge and the highest ranking Colonel in the German Army.
- The Astoria logo is one of six that appear on what looks like a maypole at the entrance to Walldorf.
- The downtown area is open only to pedestrians on weekends. Blue lights that illuminate walkways at night are installed in the ground and the streets are cobblestone.
  - The Astoria Pharmacy is a shop in Walldorf with a history that dates back to Roman times.
- Councilor Herzig told the history of a former Jewish synagogue that survived Kristallnacht. The inscription above the door is in German and Hebrew. He and Councilor Mellin discussed the significance of Jewish history to Walldorf and Astoria.
- All fire department staff in Walldorf are volunteers.
- Walldorf City Council is comprised of 22 elected councilors from six different political parties.
- The American flag was displayed throughout Walldorf as part of the celebration.
- The City of Walldorf signed a renewal of the 50-year sister city relationship.
  - In a gift exchange, Astoria City Councilors presented the Walldorf City Council with a plaque featuring the combination of both City logos to commemorate the 50<sup>th</sup> year of the relationship and a panoramic picture of the city of Astoria. The plaque was created by local artist Scott Leahing. The picture was taken and donated by Matthew Mathers, also a local artist.
- Events included a presentation at the Walldorf Library, visits to schools and the early childhood center, a
  tour of local businesses and the inauguration of the Astoria Circle roundabout. Imbedded in the sidewalk of
  the Astoria Circle roundabout is a statement about the sister city relationship.
  - High school students explained how the higher education system works. Stools in the classroom are built with a rocking motion to reduce stress and promote good posture.
  - The common room of the library is an open and versatile room that opens to a courtyard.
  - Walldorf contains a mix of local and worldwide businesses. The group visited the headquarters of two large corporations and a small family-owned business in the business district.

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- The group toured the European Parliament in Strasbourg, France, followed by a reception hosted by the German American Club and then a concert in Astor Park.
  - The parliament has over 700 delegates and over 1,000 interpreters who work full time. Delegates are seated according to their political views rather than by country. Germany has 86 delegates in the parliament.
  - At the reception, a poster of the Astoria Regatta was presented to the German American Club.
  - Former Burgermeister Criegee, whom Criegee Circle at the Astoria Column is named after, attended the reception.
  - At the concert, the musicians were playing instruments made by John Jacob Astor's older brother. The concert ended with a fireworks show, which was a surprise even to Walldorf citizens.

City Manager Benoit displayed and reviewed the expenses incurred with the trip to Walldorf. Airfare for seven people was the largest expense at \$1,850 per person. Total expenditures to date are \$15,501.56. He noted the City of Walldorf covered all expenses for food and lodging.

Mayor Van Dusen noted that the lapel pins were expensive, but it was nice that the Astoria delegation had them to hand out at various events. He asked if more expenditures would be incurred. City Manager Benoit replied that he expects a few more receipts for postage to be submitted. A few miscellaneous items may accumulate to a few hundred dollars, but the expenditures to date are about 98% of the total expenditures expected. He confirmed that the unaccounted for expenditures would be less than \$500.

Bruce Conner, 323 Alameda, Astoria, Chairman of the Sister City Committee, thanked City Council for joining the committee in cementing the relationship. The week in Walldorf has tripled Astoria's understanding about why the relationship is so important. Since Mr. Conner has been Chairman of the Sister City Committee, he has made five trips to Walldorf. This trip was the only trip that was funded by the City. The student exchange program is an important component of the relationship. High school students attend the sister school twice a year.

Jim Pierce, Warrenton, state he is in charge of the Astoria High School Exchange Program, which has been ongoing for 40 years. This was his 10<sup>th</sup> trip to Walldorf with the students. He usually takes students to Walldorf during spring break; however, this time he took the students for the celebration. The exchange program is an important opportunity for students to learn a different culture and build friendships with students from another country. Walldorf believes the exchange program is important as well and has offered financial assistance to Astoria's students when they were unable to afford the trip. The students also learn to appreciate what they have in the United States.

Mayor Van Dusen called for anyone with questions or comments about the trip to Walldorf to come forward.

Councilor Herzig clarified that the airfare came out of the Promote Astoria Fund, which is the City fund that receives hotel lodging taxes. By law, money in this fund can only be spent on tourism related activities.

Mellissa Yowell, 690 17th Street, Astoria, asked how to apply for money from the Promote Astoria Fund.

Mayor Van Dusen stated that Astoria's room tax is 9%. He explained that a certain percentage of the fund is earmarked for the Chamber of Commerce. Residents can attend the budget meetings or speak to their elected officials to request funds.

• This year, the Budget Committee decided to allocate \$30,000 for arts and culture related events. The City is trying to create a fund specifically for arts and culture events that individuals and groups can apply for. The application process in being developed.

Mushi Mayflower, 1011 Jerome, Astoria, asked how City Council would use what they learned on the trip to benefit Astoria.

Councilor LaMear stated that she took pictures of things that may be good for Astoria to consider. Councilors are constantly looking for ways to improve various aspects of life in Astoria. Keeping the renovation of the Astoria Library in mind, she paid special attention to the library in Walldorf. While not spectacular, the Walldorf library was well organized and well arranged. She described how the courtyard complemented the library

space. Several things were discussed on the trip that will be considered for Astoria in the future. Ways to improve economy and atmosphere in town were discussed as well as the pros and cons of Walldorf's pedestrian only zone.

Mayor Van Dusen believed the history was important. Germany and America were enemies during World War II. Walldorf is a prominent city in the middle of Germany that reached out to an American city with a Jewish mayor right after the war to develop the Sister City relationship. During the celebration, Walldorf emphasized their desire to have a relationship based on peace, which he believed is more important than an economic trip; Astoria was not trying to get business from Walldorf. The history of the relationship is priceless.

Councilor Mellin stated that Walldorf has a main street named for Astoria's former Mayor Harry Steinbock. Many new residents in Astoria are unaware of who Mr. Steinbock is, yet he is honored in Walldorf. Councilor LaMear suggested Astoria honor Mr. Steinbock for approving the Sister City relationship during his term as Mayor in 1963.

Miriam Hurley, Astoria, believed this trip to Walldorf helps Astoria residents to think globally, which is important for peace. She thanked City Council for participating in the celebration.

Mayor Van Dusen called for a moment of silence in memory of Bill Henningsgaard and his son Maxwell Henningsgaard, who were killed in a plane crash earlier in the week.

#### **REPORTS OF COUNCILORS:**

**Item 4(a):** Councilor Herzig reported that he would be hosting a Meet the Public event on Thursday, August 22, 2013 at 5:30 p.m. in the Library Flag Room, which has been published in the newspaper. Council members will be happy to answer questions about the trip to Walldorf individually at any time as there was a lot to share.

Mayor Van Dusen added it is the duty of City Council members to do so.

**Item 4(b):** Councilor LaMear reported that she attended the public meeting about the library renovations at the Liberty Theater that was well attended. People had the opportunity to express what they wanted in a future library. She also attended a meeting about signage in the downtown area. The City and the Astoria Downtown Historic District Association (ADHDA) are working on way-finding signage to be installed throughout the city. People walking along the Riverwalk have no way to determine their location in relation to the streets. Signs along the Riverwalk will signify when one is on 12<sup>th</sup> Street, for example. This will let people know how to get to the Column, Fort George and other places. This project will be lead by Parks and Recreation Director Angela Cosby, who will ensure consistent and adequate signage without installing too many signs. Councilor LaMear stated she will attend a two-day Oregon Coast Economic Summit in Lincoln City beginning Tuesday, August 20, 2013. Summit discussions will center on stimulating the economy, supporting current jobs, and creating new jobs.

**Item 4(c):** Councilor Mellin stated that Peter Roscoe did a great job with the Regatta. He is a hero in Astoria for keeping the Regatta going. Frank Preusser, who restored the Column in 1995, gave a presentation on how he planned to continue the Column's renovation. She congratulated Director Cosby on her first few months with the City. She encouraged everyone to look at the lettering on the sign at Fort Astoria Park, which can now be read from one's vehicle. Director Cosby is doing a great job.

#### Item 4(d): Councilor Warr No reports.

**Item 4(e):** Mayor Van Dusen reported that a retirement ceremony was held on Sunday, August 18, 2013 for National Guard Generals Fred Rees and Caldwell. General Rees served as a General longer than any other National Guard member in the country did. He was appointed General in 1987. Both Generals publicly addressed Mayor Van Dusen, who attended as Astoria's representative, and said that City staff's organization during the hurricane of 2007 was better than any other municipality.

# CHANGES TO AGENDA: No changes.

#### **PRESENTATIONS:**

# Item 6(a): Introduction of the New ADHDA Executive Director Alana Garner

Dulcye Taylor, Astoria Downtown Historic District Association (ADHDA) President, 865 11<sup>th</sup> Street, Astoria, thanked City staff for working with the ADHDA and noted that the sign at the east end of town has been refreshed. Brew Cup will be held at the end of September 2013. Oregon Main Street will be on October 2, 2013. This free event is open to the public and people can registration online at the Oregon Main Street website. Michelle Reeves had recommended that the ADHDA hire an executive director so the ADHDA could continue its work through such big events and partnerships. Ms. Taylor introduced Alana Garner, the new Executive Director of the ADHDA.

Alana Garner, 486 12<sup>th</sup> Street, Suite H, Astoria, said she looks forward to working with the City and the community. She encouraged everyone to attend the Oregon Main Street conference being held October 2–4, 2013. An evening reception at the Barbey Center will be on Wednesday evening.

## Item 6(b): <u>CSO Program: Review of Completed Project Performance and Overview of Future</u> <u>Projects</u>

Since April 2012, HDR Engineering has been managing the hydrologic and hydraulic model that is used to delineate and scope each CSO project. This model contains important information regarding the storm and sewer infrastructure, geographic areas that flow to each pipe segment, rainfall information, and historic flows that are used to predict the system response after CSO project completion. There is ongoing maintenance and calibration that must occur to the model so that it most closely mimics actual conditions in the field and gives the City the most accurate data for the design of future CSO projects. The Council presentation by HDR Engineering and City staff will include a brief history of the CSO Program, CSO projects that have been completed to date, scope of the next CSO project and anticipated strategy for the future of the CSO Program. The goal of the presentation will be to provide the Council with an updated look at the status and future direction of the CSO Program.

Support Engineer Moore and Lisa Tamura, Project Manager and Technical Expert with HDR Consulting presented the CSO Project update via PowerPoint, reviewing the work completed and upcoming CSO projects for the city.

Mayor Van Dusen commented that the City is about 50 to 60 percent through the CSO Program, but the environmental requirements are 85% complete.

Engineer Moore explained that staff wanted to update Council on the entire project since staff is attempting to obtain funding for the next CSO project. She wanted Councilors to be able to answer questions from their constituents about the CSO Program.

Councilor Herzig confirmed with Engineer Moore that the CSO Program is federally mandated, but is not federally funded; the City has to pay for the CSO projects.

Mayor Van Dusen stated that City Council has not yet agreed to timelines noted in the presentation. He advised staff to postpone finding funding until City Council has discussed the timelines. Engineer Moore assured that any agreements would be presented to City Council.

# Item 6(c): Ghadar Party Celebration (October 4 - 5, 2013)

Councilor Mellin will give a status report regarding the Centenary of the founding of the Ghadar Party in Astoria, Oregon scheduled to be held on October 4th and 5th.

Councilor Mellin stated Mac Burns and Alana Kujala would present the update on the Centenary.

Mac Burns, 960 Franklin Avenue, Astoria, Director, Clatsop County Historical Society, reminded that City Council approved a commemorative proclamation that has been published worldwide. Astoria will host a celebration October 4–5, 2013 to commemorate the 100-year anniversary of the founding meeting of the

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City Council Journal of Proceedings August 19, 2013 Ghadar Party, which was held in the local Finnish Socialist Hall in May of 1913. The fact that Astoria was the birthplace of a significant political movement was largely unknown until an article, written by Joanna Ogden, appeared in the *Oregon Historical Quarterly Journal* in the summer of 2012. He reviewed the history of the Punjabi Indian population in Astoria and the political movement that involved the Ghadar Party.

Alana Kujala, Event Coordinator, Astoria Warrenton Chamber of Commerce, explained that the City reached out to the Chamber after the proclamation was approved. The Chamber and the Historical Society formed a committee to coordinate the celebration event. The schedule of events during the celebration can be found on the Clatsop County Historical Society website and at <u>www.AstoriaGhadar100.org</u>. All of the events are free and open to everyone.

Councilor Warr asked how many people were expected to attend the event. Ms. Kujala responded that the estimated number of attendees is unknown, but the committee is planning for 50 to 500 attendees. The venues would accommodate flexible crowds. Several events are planned, including a large panel discussion at the Liberty Theater. Smaller events will be held at Heritage Square and the Clatsop County Historical Society. A variety of audiences has been targeted. Phone calls about the event are being routed through the Historical Society, which receives three phone calls and two to three emails each week about the event. Most of these calls and emails are from San Francisco, California and Canada. Local and regional press will be used to advertise the event. Some press outside of the local area will also be used to target other large populations.

Councilor Mellin noted that about 1,000 copies of the 2012 article published in the Oregon Historical Quarterly Journal are available at the Heritage Center for \$5.00 each.

Mayor Van Dusen thanked Mr. Burns and Ms. Kujala for their work on this event. He noted that India has created a postage stamp to commemorate the celebration in Astoria. The City has proofs of the stamps.

#### **CONSENT CALENDAR:**

The following items were presented on the Consent Calendar:

7 (a) City Council Minutes 8/5/13

**City Council Action:** Motion made by Councilor Mellin, seconded by Councilor LaMear, to approve the Consent Calendar. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

#### **REGULAR AGENDA ITEMS**

#### Item 8(a): <u>Public Hearing and Ordinance Vacating a Portion of the 1<sup>st</sup> Street Right-of-Way</u> <u>Adjacent to 2044 Southeast D Street (emergency adoption – 1<sup>st</sup> and 2<sup>nd</sup> reading and</u> <u>adoption) (Public Works)</u>

The City received a request from Tamara Stanley, property owner of 2044 SE D Street, for the vacation of a 16' by 50' portion of the unimproved 1st Street right- of-way to accommodate a portion of the existing house and associated improvements that were built over the property line many years ago. Ms. Stanley is in the process of selling her property and the sale cannot be completed until the encroachment issue is resolved. She has requested that the City Council finds that an emergency exists and, if approved by the Council, the ordinance become effective immediately. At their August 5, 2013 meeting, the Astoria City Council acted to schedule a public hearing on the proposed street vacation on August 19, 2013 at 7:00 p.m. It is recommended that the Astoria City Council conduct the public hearing, declare that an emergency exists, and hold the 1st and 2nd readings of the ordinance to vacate a 16' by 50' portion of the unimproved 1st Street right-of-way adjacent to 2044 SE D Street.

Mayor Van Dusen asked why this was an emergency. City Manager Benoit explained that a portion of the Applicant's home was built in the right-of-way. In order to conclude the sale of the home, the City must vacate the right-of-way immediately to accommodate the property owner.

Mayor Van Dusen called for questions by Council members. Hearing none, he opened the public hearing at 7:59 p.m. and called for anyone wanting to address the City Council on the vacation of this right-of-way to come forward with any comments or concerns.

Dale Barrett, OTAK, 4253 A Highway 101 North, Astoria, stated he represents the property owner, Tamara Stanley. Approximately three feet of the house sits in the right-of-way. The street was built in the early 1880s by the plat of Williamsport. The house was built in the 1940s or 1950s. A deck with some improvements extends out from the house. He gave the Councilors copies of maps previously provided to staff. The original plat showed the street was 70 feet wide. The Applicant is requesting a 50-foot by 15-foot area be vacated by the City and become the property of the adjoining landowner. This is a minimal amount of land that will not affect the road. He explained that the lending institution has required a clean title. In the past, a license to use about three feet of the street was accepted. Today, lending institutions have different requirements. The right-of-way issues need to be resolved so that no part of the house is illegally in the street.

Tamara Stanley, 2044 SE D Street, Astoria, said she bought the house about seven years ago and has just become aware of this issue. She needs to sell the home because her children are in college. This situation has been stressful and she hopes City Council will approve the application so she can sell the home.

Denise Fuller, 2164 SE D Street, Astoria, explained that she lives across the street, adjacent to the Applicant. She supports the application as it does not affect her property or the traffic.

City Manager Benoit noted that a letter was submitted today by Dolores Skillstad. Copies of the letter were provided for the Councilors at the dais.

Dolores Skillstad, 2314 SE Front Street, Williamsport, stated she has no argument with the application. She asked for clarification on which portion of D Street contains the right-of-way to be vacated. The map is not clear and D Street appears to go in two different directions.

City Manager Benoit responded that a portion of SE 1<sup>st</sup> Street, east to west, contains the right-of-way to be vacated. Ms. Skillstad said that D Street runs north and south and was to be designated as a county road at one time. City Manager Benoit explained that property's address is D Street. The property is a corner lot and the right-of-way to be vacated is on SE 1<sup>st</sup> Street. Mayor Van Dusen handed Ms. Skillstad a copy of the map and showed her the property.

Ms. Skillstad stated she has done a lot of research on this property. The streets in Williamsport were sold to the adjacent property owners, so the property owners already own the portion of street immediately adjacent to their property.

Mr. Barrett added that the ordinance must state that the only portion of 1<sup>st</sup> Street to be vacated is adjacent to Lots 16 and 17, not the entire street. City Manager Benoit confirmed that this was already stated in the ordinance.

Mayor Van Dusen closed the public hearing at 8:06 p.m.

Councilor Herzig clarified that this is not a request to expand or develop the property, but to formalize a preexisting arrangement. Mr. Barrett added the request is to keep existing improvements on its own property.

City Manager Benoit added that in an emergency, the 1<sup>st</sup> reading must be a reading of the ordinance in its entirety.

**City Council Action:** Motion made by Councilor Warr, seconded by Councilor Mellin to declare an emergency and conduct the 1<sup>st</sup> reading of the ordinance to vacate a 16' by 50' portion of the unimproved 1st Street right-of-way adjacent to 2044 SE D Street. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

Director Cosby conducted the 1<sup>st</sup> reading of the entire ordinance to vacate a 16' by 50' portion of the unimproved 1st Street right-of-way adjacent to 2044 SE D Street.

**City Council Action:** Motion made by Councilor LaMear, seconded by Councilor Herzig to conduct the 2<sup>nd</sup> reading of the ordinance to vacate a 16' by 50' portion of the unimproved 1st Street right-of-way adjacent to 2044 SE D Street. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

Director Cosby conducted the 2<sup>nd</sup> reading of the ordinance by title only to vacate a 16' by 50' portion of the unimproved 1st Street right-of-way adjacent to 2044 SE D Street and declaring an emergency.

**City Council Action:** Motion made by Councilor Herzig, seconded by Councilor Mellin to adopt the ordinance to vacate a 16' by 50' portion of the unimproved 1st Street right-of-way adjacent to 2044 SE D Street on an emergency situation. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

Mayor Van Dusen noted the ordinance goes into effect immediately.

#### Item 8(b): <u>Historic Properties Ordinance Amendment A13-03 (2<sup>nd</sup> reading and adoption)</u> (Community Development)

This proposed ordinance received its first reading at the August 5, 2013 Council meeting. The ordinance establishes how historic properties are designated, the process for review of exterior alterations, new construction, demolition, appeals, and lists exceptions to the review process. In January 2008, the City Council adopted a Historic Preservation Plan, which identified suggested amendments to the ordinance and proposed projects to support historic preservation. Within the last few years, the State and National terms used for historic properties has changed and, therefore, the City Historic Properties Ordinance needs to be amended to reflect the new terminology. At its July 16, 2013 meeting, the Historic Landmarks Commission held a public hearing and unanimously recommended that the City Council adopt the proposed amendment. It is recommended that Council conduct the second reading and adopt the ordinance.

City Manager Benoit noted that the former motion had been distributed to City Council.

**City Council Action:** Motion made by Councilor Mellin, seconded by Councilor LaMear to conduct the 2<sup>nd</sup> reading and adopt the Findings and Conclusions contained in the staff report and the ordinance amending the Historic Properties Ordinance. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

City Manager Benoit conducted the 2<sup>nd</sup> reading of the Historic Properties Ordinance Amendment A 13-03.

#### Item 8(c): Liquor License Application from David Kroening, Andrew Bornstein, Jerry Kasinger, Luke Colvin, Jack Berka, David Snodgrass, Pamela Snodgrass, Joe Haggren and Mark Rose, dba River Barrel Brewing, Inc., located at the foot of 7<sup>th</sup> Street for a New Outlet – Full On-Premises Sales- Brewery License (Finance)

A liquor license application has been filed by David Kroening, Andrew Bornstein, Jerry Kasinger, Luke Colvin, Jack Berka, David Snodgrass, Pamela Snodgrass, Joe Haggren and Mark Rose doing business as River Barrel Brewing Inc., located at the foot of 7th Street, Astoria. The application is a New Outlet – Full On-Premises Sales – Brewery License. The appropriate departments have reviewed the application and it is recommended that Council consider approval.

Mayor Van Dusen declared that the company he owns with his brother sells soft drinks. There is a chance his company may be selling to the Applicants, but he did not believe this will affect his vote on the decision. He called for the public to come forward with any comments, questions or concerns. Hearing none, he called for Council discussion.

Councilor Herzig was concerned that this brewery is located near the Columbia House Condominiums. He suggested this matter be postponed until the neighborhood could be surveyed further. The live music, disk jockey music and dancing that is planned in an outdoor area, which will be open until 10:00 p.m., may affect the neighborhood. He would like to have more input from the neighborhood before approving the application.

Mayor Van Dusen did not believe the Columbia House Condominiums were near the brewery. Councilor Herzig stated he was in the area earlier that day and the condominiums are within earshot of the brewery, just along the Riverwalk. The brewery is also near fish processing plants. He was unsure of how well an outdoor bar would do in the presence of the smell of fish. City Manager Benoit clarified the brewery will be located in the former Bornstein Seafood Plant that sits over the water. The building is supported by pilings at the foot of Center Street.

Councilor LaMear respectfully disagreed with Councilor Herzig. The condominiums are four blocks from the brewery, which is a wonderful use of the property.

Mayor Van Dusen stated he would vote in favor of the application, but appreciates Councilor Herzig's concerns because neighborhoods should be consulted. There have been instances where an application was approved without consulting the neighborhood. The building needs a lot of work and is difficult to use. After losing Number 10 Sixth Street, this brewery will be beneficial to Astoria.

**City Council Action:** Motion made by Councilor LaMear, seconded by Councilor Warr to approve the Liquor License Application by David Kroening, Andrew Bornstein, Jerry Kasinger, Luke Colvin, Jack Berka, David Snodgrass, Pamela Snodgrass, Joe Haggren and Mark Rose doing business as River Barrel Brewing Inc. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Mellin and Mayor Van Dusen; Nays: Councilor Herzig.

#### Item 8(d): Liquor License Application from Todd Shelton and Lawrence Cary, dba North Coast Distillery LLC, located at 1270 Duane Street, for a New Outlet – Distillery License (Finance)

A liquor license application has been filed by Todd Shelton and Lawrence Cary doing business as North Coast Distillery LLC, located at 1270 Duane Street, Astoria. The application is a New Outlet - Distillery License. The appropriate departments have reviewed the application and it is recommended that Council consider approval.

Mayor Van Dusen called for public comment regarding the application.

Sylvia Davis, 2775 Steamwhistle Way, Astoria, stated the plumbing store was purchased 10 years ago for the purpose of installing dressing rooms, bathrooms, and storage on street level for the Liberty Theater; instead, the second floor was renovated and now, apparently, there is not a lot of extra money left, so the Theater has rented it out to the distillery. Donated funds cannot be used to install the dressing rooms because the Theater has a contract with the distillery. She was unsure why this building was chosen, as there are many other empty buildings in Astoria. The building should be left strictly to the Liberty Theater. Until then, Astoria will not have a top-notch performing arts center. She asked City Council to deny the application.

Mayor Van Dusen stated he will not take part in the discussions or vote on this application because he is a Liberty Theater board member, which creates a conflict of interest.

Councilor Mellin stated this proposal was presented to City Council several months ago and no one from the Liberty Theater has voiced their concerns. Ms. Davis responded that she just heard about the distillery within the last month. She suspected it is too late, but believed it important to raise the issue and for the city of Astoria to know about it.

Councilor Herzig said he has been approached about this issue by people who were not sure of the application's status and whether it would be presented to City Council, which is probably the reason for the lack of public input. A number of people have shared their concerns that by leasing the space to a distillery for 10 years, the Theater is sacrificing some of its functionality as a fully equipped Theater. Lack of ground floor handicap accessible dressing rooms for the next 10 years is going to be problematic.

City Manager Benoit noted the application was the subject of a conditional use permit. A public hearing and notice was conducted at the Planning Commission level, so there was a public process. The Planning Commission voted unanimously to support the conditional use request. The Liberty Theater owns the entire building and the Liberty Theater is making decisions about what is in the best interest of the Theater.

Councilor LaMear confirmed that the Applicants were not present to respond to questions.

Community Development Director Brett Estes, 1095 Duane Street, Astoria, reiterated statements made during the Planning Commission's public hearing, stating that Liberty Theater Director Rosemary Baker-Monaghan attended the public hearing and stated the Theater has other projects they would like to implement. Renting out the building would provide the Theater with rental income to raise funds for a future expansion while doing the other projects. It was noted that this would be an interim use. Discussions at the public hearing revealed how easy it would be for the facility to relocate. Applicant Lawrence Cary stated the equipment is easy to move and the distillery can relocate anytime the Theater decides it would like to use the space. The distillery was interested in this space because it was built as an automobile repair facility that includes a roll-up door and high ceilings, which is conducive to this type of use.

Councilor Mellin stated that the issues with the application appear to have been discussed. Director Estes added that the land use and planning permits have been approved.

Councilor Warr confirmed with Director Estes that during the public hearing it was stated that all of the equipment is semi-portable and can be easily moved without harming the building. He believed the Liberty Theater would keep the property and develop it if they had the opportunity. This is an interim solution to a problem and he supports the application.

**City Council Action:** Motion made by Councilor Warr, seconded by Councilor LaMear to approve the Liquor License Application by Todd Shelton and Lawrence Cary doing business as North Coast Distillery LLC. Motion carried 3 to 1. Ayes: Councilors LaMear, Warr, and Mellin; Nays: Councilor Herzig.

#### Item 8(e): Liquor License Application from Stephen C. and Karen Allen, dba Andrew & Steve's Chartroom/Astoria Brewing Company, located at 1196 Marine Drive, for an Additional Privilege – Brewery License (Finance)

A liquor license application has been filed by Stephen C. and Karen Allen doing business as Andrew & Steve's Chartroom/Astoria Brewing Company, located at 1196 Marine Drive, Astoria. The application is an Additional Privilege - Brewery License. The appropriate departments have reviewed the application and it is recommended that Council consider approval.

Mayor Van Dusen stated that the company he and his brother own sells soft drinks to the Applicants, but he can vote impartially on this issue.

Councilor Mellin said that Council has been hearing about this for a long time, so the planning was done well.

Councilor Herzig added that the Andrew & Steve's is an existing facility. The application is for an additional privilege. He supports the application.

**City Council Action:** Motion made by Councilor Mellin, seconded by Councilor Warr to approve the Liquor License Application by Stephen C. and Karen Allen doing business as Andrew & Steve's Chartroom/Astoria Brewing Company. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

#### Item 8(f): <u>Wastewater Treatment Plant Effluent Treatment Upgrades – Pay Adjustment No. 1</u> (Public Works)

In November 2012, the construction contract was awarded to R&G Excavating (R&G). Since that time, R&G has been working through submittals, procuring long-lead time equipment and has mobilized to the site. Due to the nature of the improvements, primary construction activity needs to occur during the drier summer months when the flows to the treatment plant are at their lowest point. The major construction effort began the last week of June. Pay adjustment No. 1 for \$25,223.97 includes several changes that are itemized below:

Α.	Concrete leveling base in chlorine contact basin	\$20,966.36
В.	Installation of new conductors to chemical feed building	\$9,513.70

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C.	Upgrade main electrical distribution panel	\$250.00
D.	Contraction contribution (credit)	(\$5,506.09)

It is recommended that the City Council authorize Pay Adjustment #1 for the Wastewater Treatment Plant Effluent Treatment Upgrades project for \$25,223.97. Funds are available for this project through IFA funding.

**City Council Action:** Motion made by Councilor LaMear, seconded by Councilor Mellin to authorize Pay Adjustment #1 for the Wastewater Treatment Plant Effluent Treatment Upgrades project for \$25,223.97. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

#### Item 8(g): <u>Proposal to Allocate City Funds to Assist Citizens Experiencing Financial Hardship</u> with Utility Bills (Councilor Herzig)

Councilor Drew Herzig has proposed setting aside \$10,000 to create a water/sewer assistance fund, for Astoria residents who are dealing with significant financial hardship. At Councilor Herzig's request, the Astoria City Council agreed to discuss establishment of such an assistance program at their regular meeting of August 19th. In preparation for the Council meeting, Councilor Herzig, City Manager Paul Benoit, and Finance Director Mark Carlson met with George Sabol and Cheryl Waite of Clatsop Community Action (CCA), to discuss the possibility of partnering to implement such a fund. Guidelines for eligibility could include, among other criteria, federally determined income limits and city residency (no support for commercial operations). Councilor Herzig will present his proposal to the Council in greater detail. If Council chooses to move forward with such a program, City staff will meet again with Mr. Sabol of Clatsop Community Action to determine the formal structure needed for managing this fund.

Councilor Herzig explained that this proposal is in response to the recent increase in water and sewer rates, which will create a financial hardship for some citizens. Currently, there is no community service agency that can assist citizens with water and sewer payments. He has proposed that the fund start with a balance of \$10,000 that he hopes will increase over the years. He wants the City to partner with CCA to administer the fund. Eligible requirements are based on federal poverty income levels. He has consulted with the City of Salem, who has a similar fund. Research indicates that this fund will not be able to assist everyone who needs help, but it is important to get the fund started. Finance Director Carlson has stated that the Sewer Water Assistance Relief Fund can accept tax-deductible donations as soon as the fund is created. He is hopeful that the City can help some of the people in Astoria who need help paying their bill.

Councilor Mellin asked what part of the budget the funds would be taken from. Councilor Herzig believed Director Carlson said the money would be taken from Public Works. City Manager Benoit added that City Council can decide where the funds come from. Staff believes it is appropriate to take the funds from the water rates, which is part of the Public Works budget.

Councilor Mellin stated the citizens who are paying their water bills will be subsidizing this fund. The public should be allowed to give input on this issue and be informed that they will be supplementing the water bills for those who cannot afford to pay them. She recalled discussions about adding a notice to the water bills to inform citizens about the proposed fund and request feedback. This concerns everyone in Astoria. The City needs to find out if citizens are willing to pay a higher bill to supplement those who are unable to pay their bills.

Councilor Herzig clarified that creating this fund will not increase the water or sewer rates. Increases in water and sewer rates are due to the funding of the CSO Program. Councilor Mellin asked where the funds would come from.

Mayor Van Dusen interjected that he supports the idea, but disagrees with staff that this money should come out of the Public Works budget. He suggested using funds from the sale of city property or property taxes would be more appropriate. The fund would only benefit residents in the city of Astoria. Many people that do not live in Astoria are paying high water rates. He believed funding should come from outside of the Public Works budget. Public Works funding only comes from user fees. He asked if staff had suggestions for alternative revenue sources. City Manager Benoit noted the Capital Improvement Fund is where revenue from City property sales is deposited. He also suggested using the Contingency Fund. Mayor Van Dusen added citizens can also make donations, but agreed the funds should not come from the water rates.

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Councilor Mellin noted that Astoria has lower water rates than Warrenton, Gearhart and Seaside, despite the increases. During the last two budget cycles, arts funding was cut to increase funding for poverty programs, which received \$50,000 during the last budget cycle. The Budget Committee's next plan had been to include the arts in the Promote Astoria Funds, which involved the application completed by Richard Hurley. She understood people are having trouble paying their bills, but does not fully understand how this fund would work. The water bill is not the only bill that people have to pay and all citizens must figure out how to pay all of their bills.

Mayor Van Dusen suggested separating this discussion into two different issues: one, whether to create the fund and two, determining the source of funding.

Councilor Warr liked Mayor Van Dusen's suggestion. When Councilor Herzig mentioned this fund at the last City Council meeting on August 5, 2013, he understood that a one time deposit of \$10,000 would create the fund. Tonight, Councilor Herzig's comments led him to believe that the fund would become an annual program that would possibly grow. He was concerned about how the fund would grow. He wanted to know how eligibility requirements would be set. Potential liabilities to the City need to be determined prior to implementing the program. He noted the City has not backed away from its responsibilities to its citizens who are struggling. As mentioned, about \$45,000 has been given to poverty programs out of last year's budget. During the same budget cycle, Clatsop County reduced its giving from \$30,000 to \$7,500. The City of Warrenton did not budget any funds for poverty programs. Astoria is doing what it should; however, he did not believe that adding more funds to another poverty program is wise, especially without more knowledge about the program.

Councilor Herzig replied that the details of the program have been discussed at length. A single household with income of less than \$1,000 each month is at the federal poverty level. This is extreme poverty. Citizens who meet the federal poverty level guidelines and other qualifications would be eligible to receive a reduction on their surcharge of about \$15.00 off of each bill. A lot of parameters have been discussed and the fund is not designed to give money away. People must be in extreme poverty and have a delinquent notification. Discussions centered on making the application difficult enough that only people who really need the assistance will qualify. The fund will not be able to assist everyone in need, but it is important to get the fund started.

Councilor Mellin said she understood Councilor Herzig differently now. She recalled him saying that the fund was to prevent people from falling through the cracks, not for people living in extreme poverty. She also recalled statements that the fund was to assist people who would rather spend their money on having fun, going out to dinner and going shopping instead of paying for their water bills. Councilor Herzig responded that he did not make those remarks, adding that George Sabol can attest to how hard he fought for eliminating the requirement of a delinquent notice; however, the CCA believed a delinquent notice will demonstrate an extreme need and the requirement was necessary. Councilor Herzig stated that he had vetoed the requirement of a cut off notice.

Councilor LaMear supported Councilor Herzig. She is unsure how the program will work, but equated it to Oregon HEAT, which assists people who cannot afford to heat their homes. She donates to the Oregon HEAT program. Water is a basic need like shelter and food, so this is a worthwhile venture. More research about how the program will work may need to be conducted prior to voting on this issue. She is confident that if the fund is administered by the CCA, they will ensure that poverty levels or other requirements are met. Councilor LaMear supported the fund, but did not believe City Council is ready to vote on the issue.

George Sabol, 911 Nautical Drive, Hammond, CCA Director, confirmed that Councilor Herzig did not want recipients of these funds to have to wait until their situation was extreme. A good negotiation took place. If certain parameters were not required, too many people would qualify for funds. Many CCA programs are run this way. Applicants must show that they are in extremis, which is unfortunate but that is how people coming to CCA receive help. He noted that CCA was not pushing the program, but appreciates the City of Astoria and City Council because they do give more than other cities and the county. He thanked the City for all that they do for the people in the community. CCA feels administering this fund is a way for them to give back to the City if the City gives CCA more funding.

Mr. Sabol stated that CCA's mission statement is "To help people meet basic needs". Basic needs are primarily housing and food. They administer the Oregon HEAT program and the Regional Food Bank, which services 37

City Council Journal of Proceedings August 19, 2013 different agencies in Clatsop County. CCA grows its own food and helped pass a fishing law to help people get more protein. Federal funds, state funds and grants are used to assist with housing programs. Hill Top lowincome housing is owned and operated by the CCA. CCA does offer energy assistance program, which is what the subject program would be based upon. He noted CCA helps people in prioritizing which bills to pay. Many people who would need these funds will be coming to the CCA for assistance anyway and it would be best to help them before they are extremis. The CCA is open and willing to do what the City wants.

Mayor Van Dusen said he supports the proposal, but would like staff to present some funding options. Room taxes cannot be used; however, the Contingency Fund or Capital Improvement Fund may be an option. He called for anyone who would like to address the Council on this issue to come forward.

Terry Remington, 3695 Irving, Astoria, read her statement into the record and provided a copy to staff. She explained that seniors survive on Social Security benefits, even after working all their lives, saving money, investing wisely, and being frugal with their money. Seniors cannot afford exorbitant medical bills or home repairs. The cost of essentials rises only by a few dollars here and there, but it all adds up. These costs will continue to rise and people are unable to pay their bills. This is a dead end street for seniors as their financial situation will never change, especially for those who live alone and have no family support. Public housing for seniors costs taxpayers money. At least 40 funds exist for various improvements and projects, but there is no help for those who cannot pay their bills. The energy assistance and food is minimal, but it does help. She hopes assistance for water surcharges becomes available. No matter how water is rationed, the surcharge will continue to rise. She asked City Council to consider the dignity of seniors and the disabled when structuring the final proposal. It is humiliating to receive a delinquent notice or shut off threat after always paying a bill on time. This will affect credit ratings. Frequent trips to the CCA are difficult for the disabled. She suggested offering a senior discount on water bill surcharges for seniors who are on a limited income, participate in the Medicaid or other programs. A water bill surcharge discount would be simple and humane.

Wayne Mitts, 511 Exchange Street, Astoria, suggested that the City find out how many seniors receive water bills from the City of Astoria. He has seen a lot of changes during the 60 years he has lived in Astoria. Five senior citizens live in the 6<sup>th</sup> Street area and any other seniors live all over town. He plans to apply for these funds if the assistance fund is approved. He lives alone and each water bill is over \$100, which is a financial burden as his only income is Social Security benefits. He suggested the City find out how many seniors live in Astoria and make sure seniors know how to qualify and apply for this aid.

Kitty Paino, 2060 Irving Avenue, Astoria, said four or five seniors on food stamps and Medicaid live in her neighborhood. According to the State Department, Astoria has 640 seniors. She was unaware of how many pay their own water bills. Using \$10,000 to pay half of the water surcharges would only serve 111 people, so \$10,000 is not enough. She supports donations but a seed fund is necessary. Astoria is lucky to have CCA because they can monitor and administer the fund so staff does not have to. She disagreed that Astoria has the lowest water rates. She believed Warrenton is the only city with higher water rates than Astoria.

Councilor Herzig noted at the meeting, it was decided that if Council approves creating this fund, staff would meet with CCA to formulate the policy and procedures for administering this fund. Income amounts for various sized households have already been obtained. All of the details can be determined and brought back to City Council. He did not have the authority to direct staff and the CCA to do all of this work and he did not want staff or the CCA to waste their time. Developing this policy would be the next step. He confirmed that he planned for the fund to be an annual fund that starts with \$10,000. He hopes people will donate to the fund as people become aware of it. The water and sewer rates will continue to increase through 2020. The City needs to start addressing this issue, but will not be able to assist everyone the first year. It is possible that the City will find other ways to generate income for the fund. Applicants would have their assistance renewed on an annual basis and the fund is not a give-away by any means. He hopes the City can find a way to provide assistance on an ongoing basis.

Councilor Warr said he would like to see a proposal, or a variety of proposals, before making a decision about whether to support the fund; at this point the details were too unclear.

Councilor Herzig confirmed his request was that Council authorize staff to return with more information, which he understood was also what Council wanted.

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Councilor Mellin suggested designating \$10,000 of the \$50,000 already donated to be used for utility bill assistance. Next year, alternate funding could be discussed during budget planning meetings.

Councilor LaMear supported the program but agreed that the source of funding must be identified prior to voting. She believed \$10,000 could be used to leverage other grants and donations. People will be willing to donate, especially if they hear compelling testimonies like the one given by Ms. Remington.

Mayor Van Dusen believed taking the funding from the Public Works fund, as recommended by staff, will affect water rates. Councilor Herzig agreed with finding other sources of funding.

Mr. Sabol was concerned about taking \$10,000 from the \$50,000 that has already been donated. The City has already given the CCA \$15,000 and he would not be willing to allocate \$10,000 of that to water bills because the water rates are not a high priority. Food and housing would take higher priority. The grant was written for funds to be spent on food and housing, which is what the money will be spent on. He explained that he was trying to be realistic and added that CCA will have a long line of people who want assistance if eligibility requirements were not so strict. He did not want to jeopardize what the City has already done for the CCA. He will present the idea of using already donated funds to the Board of Directors. As the fund grows, more people will be applying for assistance. The CCA does not have adequate staff to accommodate 200 to 300 more applicants.

## Item 8(h): Astoria Landfill Closure Plan (Public Works)

The City has been in the process of obtaining Oregon Department of Environmental Quality (DEQ) approval of a Landfill Closure Plan for the inactive landfill located along Williamsport Road. The City hired Maul Foster Alongi (MFA) in November of 2012 and they have been working with the City and DEQ to prepare a Landfill Closure Plan that meets all state requirements. MFA's report was submitted to the City and DEQ for a preliminary review and all comments have been addressed. The report has now been submitted to the City Council for approval before going to DEQ for final approval. The complete 100+ page plan has been electronically forwarded to the Mayor and Council for their review and is included in this agenda packet. The landfill closure requirements will include:

- 1) Capping of old garbage areas
- 2) Post closure monitoring
- 3) Financial assurance

It is recommended that Council approve the Landfill Closure Report and authorize MFA to submit the plan to DEQ on the City's behalf for final acceptance.

City Manager Benoit added that Columbia Memorial Hospital, Recology, the Astoria School District and DEQ were all involved of the development of this plan.

Mayor Van Dusen noted many hours have been spent working on this important plan. The team has done a great job and he is in favor of the plan.

Councilor Mellin stated she was in favor of the plan, recalling that at one time the City believed this project would not be possible.

**City Council Action:** Motion made by Councilor Mellin, seconded by Councilor LaMear to approve the Landfill Closure Report and authorize MFA to submit the plan to DEQ on the City's behalf for final acceptance. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

#### Item 8(i): Sale of Excess City Property – Procedures (Public Works)

At its August 5, 2013 meeting, the City Council authorized a contract with Area Properties to market excess City property. Area Properties will begin marketing the properties immediately, as directed by Council. Sale of any property will be brought before the Council as required by the City's Real Property Sale Procedures, Section 1.500 through Section 1.510. City Code requires the City Manager to submit a report to Council of any proposed sale. After considering the sale at a regular meeting, a public hearing shall be scheduled, and a notice advertised and sent to all property owners who reside within 250 feet of the property. Council can, after

hearing public testimony, approve or reject the sale. If the Council approves the sale, it will be conducted by the Public Works Director with specific instructions by the Council. It is recommended that the City Council approve marketing excess City property with the understanding that the procedures outlined above will be followed for any individual properties that are brought to the City by Area Properties.

City Manager Benoit believed the proposed process would be more efficient than holding a public hearing in advance of receiving an offer to purchase a piece of property. Any offer made will be contingent upon City Council approval. This will prevent the City from debating the merits of selling a property that no one has any interest in purchasing.

Councilor Warr agreed with City Manager Benoit. City Manager Benoit confirmed that the ordinance would not need to be amended; City Council can direct staff to follow the proposed process.

Councilor Herzig thanked City Manager Benoit for developing this process, which allows time for appropriate public input in an efficient manner. He appreciated City Council's patience as he has insisted on more public input and this is a good solution.

**City Council Action:** Motion made by Councilor Herzig, seconded by Councilor Warr to approve marketing excess City property with the understanding that the procedures outlined will be followed for any individual properties that are brought to the City by Area Properties. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

#### Item 8(j): <u>Heritage Square – Grant Application to Support Design Work (Community</u> <u>Development)</u>

The City has an opportunity to apply for a grant from the Ford Family Foundation to fund architectural and structural engineering work on Phase 2 of Heritage Square to include the amphitheater and plaza area east of the Garden of Surging Waves. The Ford grant would provide detailed architectural and structural engineering plans to allow for construction at such time that the City Council chooses to move forward. No City match would be proposed with this application. It is recommended that the City Council authorize the preparation of a Ford Family Foundation application not to exceed \$250,000 for the design of Heritage Square, Phase 2.

**City Council Action:** Motion made by Councilor Warr, seconded by Councilor Herzig to authorize the preparation of a Ford Family Foundation application not to exceed \$250,000 for the design of Heritage Square, Phase 2. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

# Item 8(k): 11th Street CSO Project - Intersection and Street Improvements (Public Works)

At the start of the Combined Sewer Overflow (CSO) Project, City Council direction to staff was to ensure that streets in poor condition that were being impacted by CSO work be repaired and/or reconstructed and brought to City standards. Following that direction, the construction plans for the 11th Street CSO project incorporated details for the reconstruction of impacted intersections and substandard road sections. Intersection and street section reconstruction was included in the contractor's work and is shown in the construction plans; however, due to a staff technical error, the bid form and list of contract unit prices inadvertently did not incorporate provisions for bidding and payment of the reconstruction work. Although the reconstruction work is included as part of the contractor's scope and was always fully expected to be performed, an adjustment to the contract is required for payment purposes. The reconstruction work is anticipated to cost within a range of \$275,000 to \$350,000 and would be funded from the budgeted project contingency. It is recommended that Council authorize a payment allocation for the 11th Street CSO project in an amount not to exceed \$350,000 for the planned reconstruction of failing intersections and street sections.

**City Council Action:** Motion made by Councilor Warr, seconded by Councilor LaMear to authorize a payment allocation for the 11th Street CSO project in an amount not to exceed \$350,000 for the planned reconstruction of failing intersections and street sections. Motion carried unanimously. Ayes: Councilors LaMear, Warr, Herzig, Mellin and Mayor Van Dusen; Nays: None.

# **NEW BUSINESS & MISCELLANEOUS, PUBLIC COMMENTS**

Peter Roscoe, 857 Florence Avenue, Astoria, thanked City staff for helping out at the Regatta. All departments worked hard, especially to make sure that the parade route was accessible. Planner Johnson and Director Estes assisted with applications for the Heritage Award. Every time the Regatta planning committee asked the City for help, staff assisted. The Regatta was terrific.

Mayor Van Dusen called for a round of applause for Mr. Roscoe, as he saved the Regatta. Mr. Roscoe appreciated the applause but noted that he did not work on the Regatta alone; many volunteers assisted.

Mr. Roscoe supported Council's decision regarding Heritage Square, which is a great community space and was used for many different purposes during the Regatta.

Mayor Van Dusen stated that Public Works staff and the Oregon Department of Transportation (ODOT) have been working together to improve traffic safety for pedestrians in Astoria. This is also a goal of the City Council. Recently, ODOT approved \$450,000 in funding dedicated to improve the downtown traffic signals. Improvements being discussed included countdown pedestrian signals, upgraded signal controllers, enhancements that will allow for future upgrades and flexibility. Improvements along the State highway from Portway Street to 45<sup>th</sup> Street will include upgraded signal and Continental crosswalk striping in non-signalized areas outside downtown. This will be funded through ODOT's Quick Fix Grant and should be completed in September 2013. He commended staff for their work.

#### ADJOURNMENT

There being no further business, the meeting was adjourned at 9:11 p.m. to convene the Executive Session.

#### **EXECUTIVE SESSION**

The City Council Executive Session was convened at 9:15 p.m.

Item 9(a): ORS 192.660(2)(d) - Labor Negotiation Consultations

Item 9(b): ORS 192.660(2)(e) - Real Property Transactions

The City Council Executive Session was adjourned at 9:35 p.m.

ATTEST:

APPROVED:

Finance Director

**City Manager** 

# HISTORIC LANDMARKS COMMISSION MEETING

City Council Chambers July 16, 2013

#### CALL TO ORDER - ITEM 1:

A regular meeting of the Astoria Historic Landmarks Commission was held at the above place at the hour of 5:17 p.m.

#### ROLL CALL - ITEM 2:

Commissioners Present:	President LJ Gunderson, Vice President Michelle Dieffenbach, Commissioners Jack Osterberg, Thomas Stanley, and Mac Burns.
Commissioners Excused:	Kevin McHone
Commissioners Absent:	Paul Caruana
Staff Present:	Community Development Director Brett Estes, City Attorney Blair Henningsgaard and Planner Rosemary Johnson.

#### APPROVAL OF MINUTES - ITEM 3(a):

President Gunderson called for any changes to the June 18, 2013 minutes. There were none. Commissioner Stanley moved to approve the minutes of the June 18, 2013 Historic Landmarks Commission meeting; seconded by Commissioner Burns. Motion passed unanimously.

#### PUBLIC HEARINGS:

President Gunderson explained the procedures governing the conduct of public hearings to the audience and advised that the substantive review criteria were listed in the Staff report.

#### ITEM 4(a):

HD 13-02 Historic Designation HD13-02 by Jerry Ostermiller and Lynn Johnson to designate the existing single family dwelling as historic at 390 Franklin in the R-2, Medium Density Residential zone.

President Gunderson asked if anyone objected to the jurisdiction of the Historic Landmarks Commission (HLC) to hear this matter at this time. There were no objections. President Gunderson asked if any member of the HLC had a conflict of interest, or any ex parte contacts to declare. President Gunderson declared that she is a neighbor and friend of the Applicants. She and the Applicants have not discussed the application and her relationship with the Applicants will not affect her decision. Commissioner Burns declared that he and Mr. Ostermiller had been colleagues when Mr. Ostermiller was at the Columbia River Maritime Museum, but he can be impartial in this matter. President Gunderson requested a presentation of the Staff report.

Planner Johnson presented the Staff report, noting one letter of objection had been received from George McCartin that was not received in time to include in the Staff report. Copies of the letter were distributed to the Commissioners. Mr. McCartin objects to the alterations that have been done to the building, including the carport, and does not consider this style of building to be historic. Staff recommends approval of the request.

The Commission reviewed the letter of objection from Mr. McCartin. President Gunderson opened public testimony for the hearing and asked for the Applicant's presentation.

Lynn Johnson, 390 Franklin, Astoria, believed the house is historic because it is one of the first passive solar houses in Astoria. The design is from an Astoria architect and the first female architect in Oregon. The house looks like a doublewide mobile home from the street; however, the interior of the house is amazing. The interior includes Douglas fir beams, mahogany paneling, and huge windows. The Applicants believe it is a historic house by now in Astoria. She believes the carport was part of the original design as it was included in the blueprints and

the builder's specifications. The deck that is visible from the street was replaced when the Applicants moved into the house. The original deck was an enclosed deck located in the small area in between the two wings. Another deck located to the east was falling apart when the Applicants moved in, so they replaced that deck. A new roof has been installed, but it has not changed anything about the house. The Applicants have done some painting, added new carpet, and installed a new furnace and water heater, but everything else is essentially as they found it; they are the second owners of the house. They were surprised to find the blueprints and builder's specifications in the house when they moved in.

Commissioner Osterberg asked if the Applicant believed the carport conforms to the plans included in the Staff report labeled South Elevation. Ms. Johnson answered yes, noting Blair Henningsgaard was in Astoria when the house was built and should remember whether the carport was built with the house or added later. She confirmed that the carport looks exactly like the plans. Commissioner Osterberg understood that the carport was built some time after the house, but was constructed according to the original architectural plans. Ms. Johnson believed the carport was built at the same time as the house because it is connected with stairs that go up to the house. Also, a 6 foot by 20 foot storage area was built on the carport and a deck on top of the carport, which was not constructed. She is certain that the carport and storage area were built at the same time because they are connected with the sloping driveway.

# President Gunderson called for any presentations by persons in favor of, impartial to, or against the application.

Blair Henningsgaard, 1482 Jerome, Astoria, spoke impartial to the application. He said he remembered when the house was built. The construction was of note in the community because of its location, and because the architect and the owner of the house were famous in the community. As a child, he would watch the construction of the house because there was a lot of public interest in it, as the house does not look like other houses in Astoria. The carport has always been part of the property. During that time, cars were longer, and a longer car would not be able to drive up the driveway on the east side

Elaine Saunders, 2854 Grand, Astoria, asked if the house had sliding windows. Ms. Johnson replied the house has one sliding door that opens to the patio. Ms. Saunders said her issue was trying to adhere to other homes that are historic in the area where she would be building, and one item was no sliding windows. She asked how approving the designation may affect someone wanting to build something in Ms. Johnson's neighborhood. Could another house of the same style be built in the neighborhood or one that looks like homes that one would normally consider historic? Planner Johnson explained that new construction in a historic neighborhood must be compatible with adjacent historic properties. Staff considers specific features of multiple historic properties in an area. Sliding windows would not be approved in the Adair Oppertown neighborhood, which is Ms. Saunders' neighborhood, as there are no mid-century designated homes in that area. In the Hobson-Flavel neighborhood, a more modern house compatible with Ms. Johnson's home would be acceptable. Criteria are specific to each neighborhood and building, not to the entire city. Ms. Saunders noted that unfortunately, the home next to hers has sliding windows, but it is not a historic property. Director Estes added that historic homes that are more modern require a different approach. Homes built in the 1950s and 1960s are now eligible to become designated as historic. Any home at least 50 years old and of historic significance is eligible for historic designation.

President Gunderson called for any closing remarks from Staff. Planner Johnson noted that she only included one page of the plans in the Staff report; there were other parts to the permits. Also, everything displayed on the computer monitor is included in the Staff report, so there is nothing to add to the record.

President Gunderson closed the public testimony portion of the hearing and called for Commission discussion and deliberation.

Commissioner Stanley stated the HLC has approved historic designations of homes that have had changes and additions over time, which became part of the history of the house. He appreciated the letter of objection as it shows concern for Astoria's heritage. However, part of Astoria's heritage is changes. He sees changes and additions to this property as part of the history of the home therefore, he supports the application.

Vice President Dieffenbach believes the house, because of its history and style, is a wonderful example of the Pacific Northwest Regional style. The home has a place in history and she supports the application.

Commissioner Osterberg supported the application as all the requirements for being included as a historic landmark have been met. He disagreed with comments in the letter of opposition about the style of the home. Including mid-century modern architecture and not focusing on Victorian and Craftsman era homes is good for Astoria. He hopes to see more good examples of mid-century modern architecture. Regarding Mr. McCartin's objection to the carport, he stated that the carport appears to have been originally conceived by the architect and appears to be built exactly as planned. While he appreciates Mr. McCartin's thoughtful letter, he does believe the historic designation is appropriate.

Commissioner Burns agreed, adding that it is exciting to recognize historic styles other than Victorian. Ebba Wicks Brown is significant to the history of Oregon and he supports the application.

President Gunderson echoed the comments made, adding it is exciting to start considering different styles of architecture. She supports the application.

Vice President Dieffenbach moved that the Historic Landmarks Commission adopt the Findings and Conclusions contained in the Staff report and approve Historic Designation HD13-02 by Jerry Ostermiller and Lynn Johnson; seconded by President Gunderson. Motion passed unanimously.

President Gunderson read the rules of appeal into the record.

#### ITEM 4(b):

NC 13-03 New Construction NC13-03 by Elaine Saunders to construct a two-car garage with a studio above for an existing two-family dwelling at 2854 Grand in the R-2, Medium Density Residential zone.

President Gunderson asked if anyone objected to the jurisdiction of the Historic Landmarks Commission (HLC) to hear this matter at this time. There were no objections. President Gunderson asked if any member of the Historic Landmarks Commission had a conflict of interest, or any ex parte contacts to declare. None declared. President Gunderson requested a presentation of the Staff report.

Planner Johnson presented the Staff report, which recommends approval with conditions. Because the 5-foot or 10-foot setback would be compatible with the other setbacks of historic and non-historic properties in the area, Staff recommends that the approval include either the 5-foot or 10-foot setback, depending on the variance approval. One piece of correspondence has been received, which is included in the packet.

Commissioner Osterberg noted that Franklin Avenue was referenced on Page 3 of the Staff report. Planner Johnson agreed the sentence "The rear yard is not visible from Franklin but is visible from the alley." should be removed.

Commissioner Osterberg understood why Staff recommended Conditions 1 and 2; however the Finding for Criterion B is that the proposed structure is compatible. He asked if Staff meant that the proposed structure would be compatible upon the adoption of Conditions 1 and 2. Planner Johnson confirmed that is correct and added language to the last paragraph of Criterion B on Page 6 stating, "With the conditions noted, the proposed structure ....".

President Gunderson opened public testimony for the hearing and asked for the applicant's presentation.

Elaine Saunders, 7541 SW Capitol Hill Rd, Portland, OR stated she was available to answer questions.

Commissioner Osterberg noted that two different garage styles appear to be shown on Page 2 of the Staff report. He asked which style is being proposed, or if the Applicant is asking the HLC to consider both styles. Ms. Saunders explained the elevation drawing was taken from a packaged plan, which she discussed with Planner Johnson. She clarified that she wants lights so she is proposing that shown in the bottom drawing.

Commissioner Osterberg recalled Ms. Saunders describing how she would paint or treat the door in some way to make it appear to be two smaller doors. Ms. Saunders answered yes, she would have done that; she was unsure what type of doors would be available, but would like the 16-foot door to appear as two separate doors, as shown

in the picture. Commissioner Osterberg said she would have to find out what the manufacturer can produce or just paint the door.

Ms. Saunders asked what Condition 2 stated. Planner Johnson replied that the windows must be installed to the same historic depth, how far in the windows are from the plane of the house, so that the glass is not in line with the plane of the house, but setback.

President Gunderson called for any presentations by persons in favor of, impartial to, or against the application. Seeing none, she closed the public testimony portion of the hearing and called for Commission discussion and deliberation.

The Commissioners concurred with the recommendations by Staff.

Commissioner Osterberg moved that the Historic Landmarks Commission adopt the Findings and Conclusions contained in the Staff report with the following corrections: Page 3, Paragraph 1, delete Sentence 2. Page 6, Paragraph 4, add: "With the conditions noted, the proposed structure ....", and approve New Construction NC13-03 by Elaine Saunders; seconded by Commissioner Burns. Motion passed unanimously.

President Gunderson read the rules of appeal into the record.

Ms. Saunders asked if her house on Grand was considered historic. Planner Johnson replied the house is designated as historic. Ms. Saunders asked why the house at 390 Franklin was not automatically designated as historic. Planner Johnson explained that entire neighborhoods are inventoried periodically. The Adair-Uppertown neighborhood was recently inventoried and about 170 buildings were designated as historic. In addition to designations resulting from an inventory, an individual property owner can apply for the historic designation. The Hobson-Flavel neighborhood has not been inventoried, so the prior agenda item applicant, Ms. Johnson, requested an individual designation.

Ms. Saunders asked if Staff would deal with the variance, noting she believes her neighbors were concerned about the garage being 5-feet from the sidewalk. Planner Johnson replied Staff would discuss the variance issues with Ms. Saunders separately Director Estes added that variances are approved via a separate process.

ITEM 4(c):

ITEM 4(c):

A 13-03

Amendment A 13-03 by Brett Estes, Community Development Director, City of Astoria, to amend Development Code Article 6, Historic Properties, to include the new State classification terms for historic properties, to establish Type I, II, and III permit levels of review to allow more administrative review, City Wide. Staff recommends that the Historic Landmarks Commission forward the amendment to the City Council for adoption.

President Gunderson asked if anyone objected to the jurisdiction of the Historic Landmarks Commission (HLC) to hear this matter at this time. There were no objections. President Gunderson asked if any member of the HLC had a conflict of interest, or any ex parte contacts to declare. None declared. President Gunderson requested a presentation of the Staff report and recommendations.

Planner Johnson presented the Staff report along with additional amendments that she made after the meeting packets were distributed. Copies of the amendments, which were based on Commissioner comments over the last few days, were distributed to the HLC.

- She explained that in response to Commissioner comments, Staff worked to tighten up some of the more subjective Code sections that did not have clear and concise criteria so they were more in line with land use regulations. She reviewed some the new Code changes with these comments:
  - Criteria were added for Historic Designation. These criteria, which were taken from the evaluation sheet used when doing historic designations, must be in compliance with the Comprehensive Plan.
  - Section 6.050.C.2 regarding Type I permits was amended to clarify that criteria must be addressed.

- In Section 6.050.C.2(a)(1), the term "highly visible" which is discretionary, has been removed. Language was also added stating, "Mechanical equipment or other items on a street elevation may be up to one square foot." Therefore, anything larger would have a more detailed review.
- Section 6.050.C.2(a)(3) was amended to state, "Will not result in an increase in the envelope." Envelope is now defined as the exterior of the enclosed building, which would exclude decks and stairs.
- In Section 6.050.C.2(f), the reference to T1-11 skirting was removed as it is a product name brand. Because more modern buildings are coming in that may have used more contemporary materials, language was added stating, "Skirting must be compatible with the structure."
- Section 6.050.D clarified that all of the criteria must be met and the first sentence amended to state, "Projects that are limited in scope or an alteration of less than 10% of the footprint that meets the criteria below are classified as Type II Certificate of Appropriateness permits," Footprint is defined to include all structures built 12 inches above grade; therefore, footprint would include stairs, decks, and anything on the outside of the building.
  - Type II permits come before the Historic Preservation Officer for review and allow for up to a 10% increase in footprint on the rear or non-visible elevations. Additionally, the envelope of the building cannot be increased.
- Section 6.050.D.2(e) was amended to allow the Historic Preservation Officer to review changes to an existing, non-conforming deck of less than 10%; otherwise, changes will come to the HLC.
- Section 6.050.D.2(j) was amended to allow a Type II review through the Historic Preservation Officer for improvements, including new design, size or material, that are consistent with existing historic features, including those that are an improvement compared to what currently exists. Currently, the Code requires any proposals that are a historical improvement to come before the HLC.
  - Public review will still be required.
  - "Consistent with" is now defined, per the Historic Preservation Ordinance, as, "Similar to the original historic feature in design, size, and raw material, or would meet the commonly acceptable intent of the original feature." Department of Land Conservation and Development (DLCD) representative Patrick Wingard advised Staff that this definition would be appropriate to remove the discretionary element while still provide flexibility.
- In Section 6.050.F, a sentence was deleted from the second paragraph about the criterion/guidelines/standards for exterior alteration is not an exclusive list as this opens up the number of things that can be reviewed.
- Staff recommends that the HLC forward the proposed amendments to the City Council with a recommendation for approval.
- Additional correspondence has been received that is not contained in the packet; a letter from George McCartin citing concerns with solar energy and requesting that the HLC require disclosure of historic designations as part of real estate transactions.
  - She explained that concerns regarding solar energy will be addressed under a separate Code amendment. A solar energy code will be presented to the Astoria Planning Commission in the next few months for consideration and recommendation to City Council. The proposed code includes criteria for applying solar energy to historic properties. These criteria, which are based on National Park Service and State Historic Preservation Office recommendations regarding applications of solar energy, were reviewed by the HLC in 2012.
  - Real estate laws require disclosure of any information that is known about a property. However, some realtors and property owners are unaware of historic designations. State law prohibits the addition of historic designation to the deed or the assessor records. The City is currently working toward getting the new Geographic Information System (GIS), which would note the historic designations of each property, on the City's website and therefore, accessible to all realtors, property owners, and citizens. The City cannot require or codify that realtors advise about historic designations.

Commissioner Osterberg understood Mr. McCartin was requesting that installing solar panels on a historic structure be made easier for homeowners. He asked where solar panels were referenced in the ordinance. Planner Johnson reiterated that a separate solar ordinance addressing the installation of solar panels on historic structures would come before the HLC and Planning Commission for review and adoption separately. The solar ordinance has not been finalized and Staff did not want to postpone the amendments currently being proposed.

Commissioner Osterberg noted that Oregon State Law regulates real estate transaction disclosures. Neither the HLC nor City Council can require disclosure of historic designations. He asked for clarification of the terms "design review" and "historic design review." Planner Johnson replied that both terms, as used in Article 6 of the Development Code, refer to historic properties. Article 14 of the Development Code, regards non-historic design review codes, which fall under the jurisdiction of the Design Review Committee. Commissioner Osterberg suggested the term "historic" be added to "design review", "design review criteria" and "design review process" throughout Article 6. City Attorney Henningsgaard agreed, noting other examples. Consistency with the language will make the Code more clear that it only refers to historic properties. Commissioner Osterberg suggested that Staff update the language prior to presenting the Code amendment to City Council.

President Gunderson opened public testimony for the hearing, noting that presentation of the Staff report served as the Applicant's presentation. She called for any presentations by persons in favor of, impartial to, or against the application. Hearing none, she closed the public testimony portion of the hearing and called for Commission discussion and deliberation.

President Gunderson appreciated Commissioner Osterberg's suggestion and favored forwarding the amendments to City Council for approval. Commissioner Stanley appreciated the reduction of bureaucracy. Commissioner Osterberg added that he appreciates the amendments as other jurisdictions have had success with the Type I, II, and III process. Some property owners may believe the new process is more cumbersome. However, Staff can easily explain the simplicity and cost savings of the new process. Staff's consideration of the entire ordinance was very thorough and comprehensive

Vice President Dieffenbach supported the amendments. Several of the issues addressed by the amendments have been discussed over the years and it is good to see them revised and placed in the Code. Commissioner Burns said he supports any changes that simplify the process, so he supports the amendments. President Gunderson agreed the amendments make the process more user-friendly.

Commissioner Osterberg moved that the Historic Landmarks Commission adopt the Findings and Conclusions contained in the Staff report with the clarifications and amendments presented by Planner Rosemary Johnson, approve Amendment A 13-03 as requested by Brett Estes. Community Development Director, City of Astoria to amend Development Code Article 6, Historic Properties and forward the revised amendment to City Council for adoption; seconded by Commissioner Burns. Motion passed unanimously.

Planner Johnson announced the amendments were scheduled for public hearing at the August 5, 2013 City Council meeting.

REPORTS OF OFFICERS/COMMISSIONERS - ITEM 5:

No reports.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 6:20 p.m.

ATTEST:

APPROVED:

Secretary

Community Development Director / Assistant City Manager

#### Astoria Public Library Astoria Library Board Meeting July 23, 2013 3:30 p.m.

**Present:** Library Board members David Oser, Gregory Lumbra, and Susan Brooks. ALFA representative Charlotte Langsev; and staff Library Director Jane Tucker.

Excused: Arlene LaMear and Iliana Arroyo

Call to Order: Chairman David Oser called the meeting to order at 3:30 p.m.

Approval of Minutes: The minutes of June 25, 2013 were approved as submitted.

Approval of Agenda: The agenda was approved as submitted.

#### Library Director's Report:

Director Tucker reported that the Library Advocate's meeting was held July 10, 2013. She asked for feedback from Chairman Oser and Mr. Lumbra about the meeting. Ms. Brooks was not able to attend.

Mr. Lumbra recalled that Ruth Metz and Associates solicited opinions concerning various aspects of the renovation. A lot of community input was received, especially from the Astoria Downtown Historic District Association (ADHDA), and was reviewed. Ms. Metz explained her processes and he understood she would continue to solicit input from various groups, and then give a presentation on August 6, 2013 at the Liberty Theatre. He was encouraged by the energy and direction of the discussions. There was no hesitancy about the renovation

Chairman Oser had been concerned that people would complain about the library, but no one complained. People had a real understanding that the library has limited resources and what they were trying to accomplish had to be done within limited resources. People also had a clear vision of what they wanted from the library. Discussion focused largely on the special nature of what libraries will be in the future, such as a community center, gathering place, etc. Several comments regarded the inadequacy of the existing meeting space, which people understood was not reflection on Staff.

Ms. Langsev believed the meeting covered everything well, listening to some of the basic requests made was interesting.

Director Tucker reported she received positive feedback from those who attended the meeting. Director Tucker noted Jeff Smith had said that the library's programs and services had grown to the point that the building is getting in the way of the library's success

After the Advocates meeting, stakeholder meetings were held. She reviewed the schedule of events for the next several months, which includes Library Board meetings, hosting a booth at both the Farmers' and Sunday Markets, and focus groups and stakeholder meetings with Ms. Metz.

- The library driveway would be blocked off because it was being reconstructed, having been done wrong initially. The driveway was being reconstructed due to the CSO project work.
- New doors, costing approximately \$6,000, have been ordered after one of the 10<sup>th</sup> Street doors broke. Because this was considered an emergency, Director Tucker was working with Morris Glass, who responded to the emergency.
- The 4<sup>th</sup> year of a Libraries ROCC Grant, in the amount of \$95,040, was awarded on June 28<sup>th</sup>. The current grant is being closed out by the Seaside library by July 31, 2013.
- The June 2013 benchmark statistics are down due to construction. The number of programs is down 33%; program attendance down 54%; and patron requests are down 50%. Donations have increased while circulation has decreased. She was surprised the decreases were not greater given the extent of the construction chaos.

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 She clarified that the values in the Library Use Calculator must be updated after July 1, 2013 in order to receive accurate statistics. Staff researched the formulas used by other Oregon libraries and that used by the Astoria Library is in line with Timberland Regional Library and others.

- The Value of Service only includes the items specified in the calculator, such as book costs, not the cost of delivering library services. The tool is primarily used to educate the public on what their visit to the library was worth. Staff has been plugging in the library's statistics to get the library's estimated value to the community each month.
- She stated that she recently completed the Astoria Citizen's Police Academy.
- Staff has been subpoenaed to appear in court on September 17, 2013 regarding the incident that occurred in May 2013.
- The Summer Reading Program is doing well. The last performance for the children is scheduled for July 26, 2013. She reported on the growth of the teen program noting that the library has a program every day of the week, which keeps Staff busy. The program conducted by OMSI was limited to 36 participants and sold out. All summer program participants will be invited to attend a party at Lum's Auto where drawings for Kindles will be held. Children who participated in Warrenton's Summer Reading Program will be invited as well. The countywide Summer Reading Program has 12 sponsors, including Kiwanis.

Chairman Oser noted the chart that explained how the retail values were estimated has not been updated since 2009. He believed the library should include more realistic values, despite the values used by other libraries. The calculator is an online tool used by Library Staff. She reiterated that Staff had checked and the numbers were in the ball park.

#### Board Reports: No reports.

#### Update on ALFA Activities:

Ms. Langsev reported that at the last meeting, ALFA voted to change meeting days to the fourth Tuesday of each month from 2:00 p.m. to 3:00 p.m. ALFA's account balance is \$3,944.95.

#### New Business:

Chairman Oser noted the library policies need to be reviewed later this fiscal year to see about any needed changes, updates, or additions. He suggested that the role and limitations of the Library Board be clarified. This will not be added to the agenda until about November 2013.

Ms. Brooks announced that Dee Burke is publicly promoting the Library Passport program and shared a couple stories about what she was doing.

Director Tucker noted the Multnomah Library became a District Library on July 1, 2013 and is not currently participating in the Library 2 Go Program.

#### Old Business:

#### Item 8(a): Consideration to Expand the Library Board

Chairman Oser noted this item is a placeholder on the agenda to remind the Board to keep possible expansion in mind. Mr. Lumbra recalled his suggestion at previous meetings that the Board should wait to receive input from Ruth Metz and that Ms. LaMear had commented that the Board did not need to be expanded because renovation tasks would be delegated to other groups. He believed the topic should remain on the agenda as a reminder for the Board to consult with Ms. Metz. Ms. Brooks confirmed that all of the Library Board positions are filled.

#### Item 8(b): Renovation Update

Director Tucker distributed the media plan outlining how public involvement will be promoted. The venue for the August 6<sup>th</sup> public meeting can accommodate 150 people. She reviewed events related and leading to the August 6<sup>th</sup> meeting with these key comments:

- On July 26<sup>th</sup>, Ms. Metz, Director Tucker, and Director Estes will speak live on KAST with Tom Freel. Then, they will record an interview with Donna Quinn for KMUN that will be played the following week. Director Tucker and Director Estes have requested time to speak at the ADHDA meeting on August 2<sup>nd</sup>.
- Director Estes sent notice of the August 6<sup>th</sup> meeting to 50 of his Facebook contacts.
- She offered to provide Board members with a press release to forward information to their personal contacts. She, Ms. Metz and Director Estes developed a press release together so they are aware of what is being published. This press release is being used in various forms.

- Chairman Oser offered the Board's assistance with any publicity efforts. ALFA members may be available to help as well.
- Also on July 26, 2013, Director Tucker and Ms. Metz will meet with Tita Montero from Tongue Point. Later that day, Ms. Metz will host a focus group at the library at 1:30 p.m. or 2:00 p.m.
- Arrangements for August 6<sup>th</sup> still need to be made. She reviewed the agenda for the evening, noting the doors will open at 5:00 p.m. Ms. Metz will present the preliminary results of her needs assessment and then Kathy Page and Lucian Kress will present a slideshow on the 21<sup>st</sup> century library. The Board is expected to facilitate conversations in the McTavish Room immediately following the presentations. The event will end at 7:30 p.m. as the venue must be vacated by 8:00 p.m. ALFA will provide simple refreshments
  - After the August 6<sup>th</sup> meeting, she, Director Estes, and the consultant team would meet to review the results and fine tune next steps.
- Three to four more volunteers are still needed for the Sunday Market booth on August 18, 2013. Ami, Director Estes and Chairman Oser will work the morning shift. Patty Skinner and Ms. Metz will work the afternoon shift. Ms. Arroyo had said she would like to volunteer at the booth. Chairman Oser, Mr. Lumbra and Director Tucker will be out of town.
- Representatives from the Institute of Museum and Library Services (IMLS) will visit the morning of August 8<sup>th</sup> to learn about the Libraries ROCC Program.
- September 10<sup>th</sup> is the tentative date for the second public meeting regarding the renovation and the same promotional efforts would be made for that meeting. This might be a good time for Board members to speak on the radio.

Chairman Oser stated he would be out of town on August 6<sup>th</sup> but his wife will be attending. Mr. Lumbra and Ms. Brooks stated they would attend. Director Tucker believed Ms. Arroyo had previously stated she would be present as well.

Chairman Oser commented this is the calm part of the project. Director Tucker noted all this work was completed while five summer reading programs per week were going on and a staff member was away for a conference. She expects to have a successful needs assessment and noted that a lot of great information is being received.

#### Board Member Comments: No comments.

Public Comments: No members of the public were present.

#### Items for Next Meeting's Agenda:

Chairman Oser noted the next meeting's agenda has already been discussed.

Adjournment: There being no further business, the meeting was adjourned at 4:20 p.m.

Respectfully submitted,

By Jane Tucker, Astoria Library Director



September 10, 2013

#### MEMORANDUM

TO: MAYOR AND CITY COUNCIL FRØM: PAUL BENOIT, CITY MANAGER SUBJECT: Delinquent Transient Room Taxes

CITY OF ASTORIA

Discussion

Two hotel operations have been delinquent in the payment of their transient room taxes with the City over the past year.

The first is the Riverwalk Hotel (former Red Lion). This property is currently behind \$63,391.51. As can be seen from the attached report, this includes partial balances for March and April, full balances for May and June, and estimates for July and August as they have failed to file their return for those months. Staff have made multiple attempts to communicate with the hotel operator and are receiving little in the way of constructive feedback and communication. Since this hotel operation is located on Port property, statues do not allow for the filing of a lien. Staff are working with the City Attorney on this matter.

The second hotel is the Best Western Hotel (Genesis Hotel LLC) located at Smith Point. Council was notified earlier in the year that they were in arrears and were placed on a payment plan. They have since completely caught up all past due payments.

**Recommendation** 

No action is requested at this time as this is an update only.

By:

Mark Carlson, CPA Finance Director



# INVOICE

# **City of Astoria**

1095 Duane Street Astoria, OR 97103 Phone: (503) 325-5821 Fax: (503) 325-2997

TO Hospitality Masters LLC Seth Davis & Brad Smithart 400 Industry Astoria, OR 97103 Phone: (503) 724-8404 DATE: SEPTEMBER 10, 2013 INVOICE # 91013

#### **DUE UPON RECEIPT**

Customer ID #38

# Make checks payable to City of Astoria

DATE	DESCRIPTION	AMOUNT
03/31/13	Month Ended March 31, 2013 - Room Tax Due 4-15-13	4,132.48
03/31/13	Month Ended March 31, 2013 – Penalty 10%	413.25
03/31/13	Month Ended March 31, 2013 – Additional Penalty 15%	619.87
03/31/13	Month Ended March 31, 2013 – Interest – 1% per month (Through 8-31-13)	165.29
08/12/13	Payment – Check #706	(1,246.09)
	Total due for March 2013:	4,084.80
04/30/13	Month Ended April 30, 2013 - Room Tax Due 5-15-13	5,804.27
04/30/13	Month Ended April 30, 2013 - Penalty – 10%	580.43
04/30/13	Month Ended April 30, 2013 - Additional Penalty - 15%	870.64
04/30/13	Month Ended April 30, 2013 - Interest – 1% per month (Through 8-31-13)	174.13
08/12/13	Payment – Check #705	(3,010.99)
	Total due for April 2013:	4,418.48
05/31/13	Month Ended May 31, 2013 - Room Tax Due 6-15-13	7,884.85
05/31/13	Month Ended May 31, 2013 – Penalty – 10%	788.49
05/31/13	Month Ended May 31, 2013 – Additional Penalty – 15%	1,182.73
05/31/13	Month Ended May 31, 2013 – Interest – 1% per month (Through 8-31-13)	157.70
1994 - 1995 - 1995 - 1995 - 1995 - 1995 - 1995 - 1995 - 1995 - 1995 - 1995 - 1995 - 1995 - 1995 - 1995 - 1995 -	Total due for May 2013:	10,013.77
06/30/13	Month Ended June 30, 2013 - Room Tax Due 7-15-13	9,118.23
06/30/13	Month Ended June 30, 2013 - Penalty - 10%	911.82
06/30/13	Month Ended June 30, 2013 – Additional Penalty – 15%	1,367.73
6/30/13	Month Ended June 30, 2013 - Interest - 1% per month (Through 8-31-13)	91.18
	Total due for June 2013:	11,488.96
07/31/13	Estimated for Month Ended July 31, 2013 - Room Tax Due 8-15-13	12,605.57
07/31/13	Estimated for Month Ended July 31, 2013 – Penalty – 10%	1,260.56
e yana yana ƙwallon manazar na kana ƙwallon ƙasar ka	Total estimated due for July 2013:	13,866.13

	Total Amounts Due:	\$ 63,391.51
	Total estimated due for August 2013:	19,519.37
08/31/13	Estimated for Month Ended August 31, 2013 - Room Tax Due 9-15-13	19,519.37



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COMMUNITY DEVELOPMENT

September 16, 2013

 TO:
 MAYOR AND CITY COUNCIL

 FROM:
 AUL BENOIT, CITY MANAGER

 SUBJECT:
 GRANT APPLICATIONS FOR RESTORATION OF CITY HALL STEEL FRAME FIRST FLOOR WINDOWS AND DUANE STREET ENTRY DOOR SURROUND

## Background

In 2012, the City did major renovation to the interior of the City Hall building including restoring the original lobby chandelier and creating a main entry lobby to all departments. Exterior repair was done in 2007 on the roof and facade to fix leaks and damage to the exterior wall. However, the windows and front entry door surround have not yet been repaired and are deteriorating. Windows are steel and have rusted and caulking is deteriorating. Some windows have broken panes. The front entry surround is also steel and is rusted, and has missing pieces that have been replaced with painted wood. Staff has contacted a local metal craftsman for a proposal on how the windows and door surround could be preserved and restored. The estimate submitted is for \$14,250 with a total estimated budget of \$15,000 which includes staff time and miscellaneous expenses for the project.

Staff has identified two potential grant opportunities to assist in funding of this project. Preserve Oregon is a grant through the State Historic Preservation Office (SHPO) for building restoration. SHPO Grants require a 1:1 match and are limited to a maximum of \$20,000. This grant application is due by September 30, 2013. The City has coordinated with SHPO and has gone through a required pre-application process and has been approved to determine this is an eligible project.

In addition, the Kinsman Foundation of Oregon/Washington provides grants up to \$5,000 to non-profits organizations and governments for building restoration with no requirement for matching funds. There is no deadline for applications as they are reviewed throughout the year as they are submitted. If granted, the Kinsman funds could be used as a part of the required match for the SHPO grant.

The proposal is to restore the window frames on the first floor of the building, and reglaze/recaulk the window frame surroundings. The ironwork on the entrance would be restored, and the wood panel would be replaced with steel. Without the proposed restoration, the steel/metal features will continue to deteriorate beyond repair and will eventually need to be replaced rather than restored. This project would preserve the original historic materials and design of the building features and would further the overall facade improvements of the Downtown as envisioned by our involvement in the Main Street Program. Staff proposes to submit a grant application to the Kinsman Foundation for \$5,000 *T:\General CommDev\Grants\Preserving Oregon\City Hall Windows & Door.2013\CC memo for grant application.doc* 

and to SHPO Preserve Oregon grant for \$7,500 to complete the facade restoration. Depending on the City's success in obtaining one or both of these grants, the proposed project could cost the City between \$2,500 to \$10,000. City funds would be available for the required match on this project.

#### **Recommendation**

It is recommended that the City Council approve the submittal of grant applications to SHPO Preserve Oregon in the amount of \$7,500 and to the Kinsman Foundation in the amount of \$5,000 for the restoration of City Hall first floor windows and front entry doorway.

Mari By: Rosemary Johnson, Planner Through: Brett Estes Community Development Director



CITY OF ASTORIA Founded 1811 • Incorporated 1856

September 13, 2013

MEMORANDUM

TO: MAYOR AND CITY COUNCIL FROM: PAUL BENOIT, CITY MANAGER SUBJECT: MEMORANDUM OF UNDRESTANDING BETWEEN CITY OF ASTORIA AND U.S. COAST GUARD

## DISCUSSION/ANALYSIS

U.S Coast Guard (USCG) Cutters ALERT (WMEC 630) and STEADFAST (WMEC 623) are located at the 17<sup>th</sup> Street Pier in the City of Astoria. Recently, the USCG expressed interest in renewing an agreement that would allow for fire protection and emergency medical services to their Cutters and facilities. The attached Memorandum of Understanding (MOU) was negotiated with the USCG and satisfies their need for emergency services. Responsibilities of the USCG and the City of Astoria Fire Department are clearly spelled out in the MOU. Procedures for the recovery of costs incurred by the Astoria Fire Department would be the same as those spelled out in the Memorandum of Agreement between the USCG located at Tongue Point and the City of Astoria.

Termination of the MOU between the USCG Cutters Alert and Steadfast is possible by either party upon 30 days written notice.

#### RECOMMENDATION

Staff recommends authorizing approval of the Memorandum of Understanding between the City of Astoria and the USCG for fire protection and emergency medical services to the USCG Cutters Alert and Steadfast and facilities located at the 17<sup>th</sup> Street Pier, Astoria, Oregon.

Ted Ames, Fire Chief

## MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF ASTORIA FIRE DEPARTMENT AND THE UNITED STATES COAST GUARD CUTTERS ALERT (WMEC 630) AND STEADFAST (WMEC 623) REGARDING FIRE PROTECTION SERVICES AT 17<sup>TH</sup> STREET PIER, ASTORIA, OR

1. <u>PARTIES.</u> The parties to this agreement are the City of Astoria Fire Department (AFD) and the United States Coast Guard Cutters ALERT (WMEC 630) and STEADFAST (WMEC 623).

#### 2. AUTHORITY.

- a. 14 USC 141 (b) authorizes the U. S. Coast Guard to avail itself of the personnel and facilities of any federal, state, or local agency to perform any activity for which such personnel or facilities are especially qualified.
- b. As to any response occurring in an area of concurrent legislative jurisdiction, the substantive statutory and administrative authority for the response is as provided under Oregon law and applicable local ordinances, rules, and regulations.
- c. As to any response occurring in an area of exclusively federal legislative jurisdiction, pursuant to Coast Guard Regulations, Commandant Instructions M5000.3B, Section 4-1-1, the Commanding Officers of ALERT and STEADFAST, hereby authorizes and requests the AFD to apply their education, training, and experience to respond on the Commanding officer's behalf to any emergency at 17<sup>th</sup> St Pier, Astoria, involving the safety of human life or the protection of property.
- d. 31 USC 1342 authorizes the Commanding Officers of ALERT and STEADFAST to accept the services of the AFD for the purpose of preserving the safety of human life or the protection of property.
- 3. <u>PURPOSE</u>. The purpose of this Agreement is to set forth terms by which the AFD will provide immediate emergency response to the United States Coast Guard Cutters ALERT and STEADFAST (vessels) home ported in Astoria, OR for the protection of life and property from fire by way of firefighting and emergency medical service by the AFD.

#### 4. **RESPONSIBILITIES**,

a. The COAST GUARD:

- 1. All requests for fire or emergency medical equipment and personnel shall be made by telephone via the 911 operator unless that service is out-ofcommission. The city fully recognizes and understands that USCGC ALERT and STEADFAST are federal property and that the Commanding Officers have ultimate authority for what takes place onboard these vessels.
- 2. Any request for aid under this agreement shall include a description by a Coast Guard representative of the type/nature of the fire/emergency to which response is requested, and shall specify the location to which equipment and personnel are to be dispatched.
- 3. USCGC ALERT and STEADFAST personnel shall take initial actions to respond to all emergencies and shall remain in charge of all emergency efforts onboard the vessel. The Engineer of the Watch (EOW) shall act as the On-Scene Leader and shall remain at the scene of the emergency.
- 4. The OOD shall provide a crewman as an escort for every AFD fire team that embarks the vessel. These escorts shall guide the AFD teams to the scene of the emergency via a safe route and shall remain on-scene to assist with the identification and employment of the vessel's emergency equipment.

#### b. The AFD:

- 1. On request made to the AFD by a representative of the Coast Guard Cutter ALERT or STEADFAST, firefighting and/or emergency medical equipment and personnel of the AFD shall be dispatched to the vessel as determined and directed by the AFD. The AFD shall not come aboard any vessel against the wishes of the Commanding Officer or his/her designated representative, the Officer of the Day (OOD).
- 2. The amount and type of equipment and the number of personnel to be furnished shall be determined by the AFD.
- 3. AFD equipment and personnel shall report to the Quarterdeck of the affected vessel. Upon arrival, the senior AFD Fire Officer shall be briefed by the OOD. This briefing shall include location and status of emergency, Coast Guard initial actions and ability to assist, and any special circumstances that could hamper firefighting or endanger the lives of the firefighters.
- 4. All equipment used by the AFD in carrying out this agreement shall, at the time services are rendered, be owned, controlled, or employed in accordance with existing mutual aid agreements. All personnel acting for the AFD under this agreement shall, at the time of such action, be an employee or a volunteer member of the AFD or acting in accordance with existing mutual aid agreements.

5. Once on-scene, all decisions shall be a cooperative effort between the EOW and AFD team leader.

#### 5. POINTS OF CONTACT.

- a. USCGC ALERT Officer of the Deck (OOD) Phone: (503) 338-7780
- b. USCGC STEADFAST Officer of the Deck (OOD) Phone: (503) 325-6812
- c. Fire Chief Ted Ames Astoria Fire Department 555 30<sup>th</sup> St. Astoria, OR 97103 Phone: (503) 298-2520 Email: tames@astoria.or.us

#### 6. OTHER PROVISIONS.

- a. UNIFIED INCIDENT COMMAND. Once the need for AFD personnel to commit to the emergency has been determined, the OOD and the senior AFD Fire Officer shall act as a Unified Incident Command. This Unified Command shall develop a plan of action with radio input provided by the EOW. In the event of response by other Coast Guard units, these personnel shall fall directly under the control of the EOW. As expected within a Unified Incident Command, USCGC ALERT and STEADFAST personnel shall work in a spirit of cooperation with the members of the AFD in any situation that requires joint effort. The AFD's maritime emergency response expertise is formally recognized and shall bear considerable weight in all decisions. Should a disagreement regarding emergency operations occur that cannot be resolved to both parties' satisfaction, the AFD is within its rights to withdraw its equipment and personnel to protect city and private property adjoining the vessel. In addition, if the OOD feels the AFD's actions and tactics are jeopardizing the integrity of the vessel or lives of the crew, the Coast Guard may refuse the AFD's services.
- b. REIMBURSEMENT. Reimbursement to the city for the cost of emergency services provided to the vessels is governed by 15 U.S.C. §2210, as amended, and the implementing of regulations set forth in Title 44 C.F.R., Part 151, as amended. Any such claim for reimbursement of firefighting costs may also include costs associated with emergency medical services, to the extent where they are normally rendered by a fire service in connection with a fire.

- c. COORDINATION AND JOINT TRAINING. USCGC ALERT, USCGC STEADFAST and AFD personnel shall conduct joint training and drills as often as deemed necessary by the Coast Guard's Senior Officer Present Afloat (SOPA) and the AFD. At a minimum, this training shall consist of semi-annual familiarization tours for AFD personnel.
- d. CLAIMS. To the extent permitted by law, and in accordance with 42 U.S.C. 1856A(a), each Party waives all claims against the other for compensation for any loss, damage, personal injury, or death occurring as a consequence of the performance of this Agreement, except those caused in whole or in part by the negligence of an officer, employee, or agent of another Party. No Party waives or relinquishes any immunity or defense on behalf of itself, its officers, employees and agents as a result of the foregoing sentence or its execution of this Agreement and the performance of the covenants contained herein. Such waiver does not include waiver of reimbursement claims in accordance with 15 U.S.C. 2210.
- 7. <u>EFFECTIVE DATE</u>. The terms of this agreement shall become effective upon the date of the last party signs this MOA.
- 8. <u>MODIFICATION</u>. Both parties agree to review this MOA one year from the date of the last signature, and annually thereafter, for accuracy and completeness. If revisions are necessary, this MOA will be amended and new signatures and dates will be completed. If revisions are unnecessary, then the review date and reviewing parties shall be noted.
- 9. <u>TERMINATION</u>. The terms of this MOA, as modified with consent of both parties, shall remain in effect until cancelled upon agreement of the parties. Either party upon thirty (30) days written notice to the other party may terminate this agreement.

APPROVED BY;

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C.C. Alcock, CAPT USCG Commanding Officer and SOPA USCGC STEADFAST (WMEC 623) Date:

tor

B.R. Anderson, CDR, USCG Commanding Officer USCGC ALERT (WMEC 630) Date: 9/4/2013 Willis L. Van Dusen, Mayor City of Astoria

Date:

Paul Benoit, City Manager City of Astoria

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

# APPROVED AS TO FORM:

City Attorney

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

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CITY OF ASTORIA Founded 1811 • Incorporated 1856

September 11, 2013

## MEMORANDUM

TO: MAYOR AND CITY COUNCIL FROM PAUL BENOIT, CITY MANAGER SUBJECT: 2013 CRACK SEALING PROJECT - AUTHORIZATION TO AWARD

### DISCUSSION/ANALYSIS

As part of the City's pavement maintenance program, crack sealing is proposed for selected streets to help prevent accelerated asphalt deterioration due to rainwater infiltration saturating the road base. The crack sealing project is part of the larger pavement preservation effort that includes maintenance patching, street reconstruction, and major overlay work.

City staff has completed a citywide pavement survey of the most heavily traveled streets. Using that survey, staff compiled a list of streets that are good candidates for crack sealing. The list of streets is detailed in the attached Request for Quotes. It is anticipated that this work will be completed with minimal traffic disruption to City residents.

While the project solicitation was sent to seven prospective crack sealing contractors, only one quote was received for the work.

Contractor	Total Quote \$12,596.40	
Pacific Asphalt Surface Sealing LLC.		

The quote received is less than half of the Engineer's Estimate which represents a very competitive price, despite being the only quote provided.

Due to the need to take full advantage of dry weather, the project was authorized to proceed by the City Manager on September 9th, with formal authorization to be requested from Council at the September 24th City Council meeting.

## **RECOMMENDATION**

It is recommended that City Council post authorize the award of a construction contract to Pacific Asphalt Surface Sealing, LLC in the amount of \$12,596.40 for the 2018 Crack Sealing Project. Project funding will come from the Fuel Tax Fund.

Submitted By

Ken P. Cook, Public Works Director

Prepared By

Nathan Crater, Assistant City Engineer

CITY HALL •1095 DUANE STREET • ASTORIA, OREGON 97103 • WWW.ASTORIA.OR.US

#### 60.01.00 - GENERAL

**THIS AGREEMENT,** made and entered into this \_\_\_\_\_\_ day of \_\_\_\_\_\_, 2013, by and between Pacific Asphalt Surface Sealing, LLC., 455 East Dartmouth Street, Gladstone, OR 97027, hereinafter called "CONTRACTOR" and the City of Astoria, a municipal corporation, hereinafter called "CITY."

#### WITNESSETH:

That the said **CONTRACTOR** and the said **CITY**, for the consideration hereinafter named agree as follows:

#### 60.2.00 - DESCRIPTION OF WORK

The **CONTRACTOR** agrees to perform the work of:

#### 2013 Crack Sealing Project

and do all things required of it as per his bid, all in accordance with the described bid, a copy of which is hereto attached and made a part of this contract.

#### 60.3.00 - COMPLETION OF CONTRACT

The **CONTRACTOR** agrees that the work under this contract shall be performed within 30 calendar days of Notice to Proceed. If conditions beyond the control of the **CONTRACTOR** prevents completion of the project within the time set, **CONTRACTOR** may request a reasonable extension of time in accordance with APWA General Requirements. If said **CONTRACTOR** has not fully completed this contract within the time set or any extension thereof, he shall pay liquidated damages in accordance with Section 108.6.00 of the Supplementary Conditions to General Requirements.

#### 60.4.00 - CONTRACT PRICE

The contract price for this project is \$12,596.40. Payment will be made in accordance with ORS 279C.560 including progress payments at the end of each month. Retainage will be withheld in accordance with ORS 279C.550 - .565.

#### 60.5.00 - CONTRACT DOCUMENTS

The **CONTRACTOR** and the **CITY** agree that the plans, specifications (including the APWA Oregon Chapter 1990 Standard Specifications for Public Works Construction with 1996 revisions), general conditions, supplementary conditions, call for bids, special provisions to the engineering specifications, instructions to bidders, all addenda and all modifications thereto and bid are, by this reference, incorporated into this contract and are fully a part of this contract.

#### 60.6.00 - CHANGES IN WORK

With the consent of the **CONTRACTOR's** surety, the **CITY** may change the plans, specification, character of the work, or quantity of work, provided the total value of all such changes, both additive and deductive, does not exceed the following:

**A.** An increase or decrease of more than 25 percent of the total cost of the work calculated from the original proposal quantities and the unit contract prices; or,

**B.** An increase or decrease of more than 25 percent in the quantity of any one major contract item.

For condition b) above, a major item is defined as any item that amounts to 10 percent or more of the total contract price. If it is necessary to exceed this limitation, the change shall be by written supplemental agreement between the **CONTRACTOR** and **CITY**.

Any change shall be in writing and state the dollar value, method of payment, and any adjustments in contract time, and shall provide for the signatures of the **CONTRACTOR** and **CITY**.

Changes in plans and specifications, requested in writing by the **CONTRACTOR**, which do not materially affect the work, may be granted by the Engineer. Payment will be made in accordance with Section 60.4.00 of this contract.

#### 60.7.00 - COMPLIANCE

The **CONTRACTOR** specifically agrees to comply with all laws, ordinances, and regulations applicable to municipal contracts and to make prompt payment of all amounts that may be due from said **CONTRACTOR** in the way of taxes or lawful deductions and to make prompt payment of all labor and materials, and save the **CITY** harmless from any damages or claims whatsoever in the performance of this contract.

The **CONTRACTOR** further agrees to comply with all laws, ordinances, rules, orders and regulations relating to the performance of the work, the protection of adjacent property, and the maintenance of passageways, guard fences, or other protective facilities.

**CONTRACTOR** agrees to take every precaution against injuries to persons or damage to property.

The **CONTRACTOR** agrees that the work will be done to the satisfaction and approval of the Engineer of the **CITY** of Astoria.

**CONTRACTOR** agrees to store his apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of their work or the work of any other employees or persons.

**CONTRACTOR** agrees to hold the **CITY** free and harmless from all liability to persons and property for failure to leave the premises in a safe condition and to make payment to all persons employed by them in such project.

## 60.8.00 - ADDITIONAL CONTRACTOR RESPONSIBILITIES

**CONTRACTOR** is responsible for obtaining and paying for all necessary permits. **CONTRACTOR** shall verify existing conditions and locations of all utilities and shall notify the Engineer of any discrepancies that may affect the work.

**CONTRACTOR** is responsible for contacting the utilities to have the lines relocated or repaired as necessary.

# 60.9.00 - CONTRACTOR IS INDEPENDENT CONTRACTOR

**A. CONTRACTOR's** services shall be provided under the general supervision of **CITY**'s project director or his designee, but **CONTRACTOR** shall be an independent **CONTRACTOR** for all purposes and shall be entitled to no compensation other than the compensation provided for under Section 60.4.00 of this Contract.

**B.** CONTRACTOR acknowledges that for all purposes related to this Contract, CONTRACTOR is and shall be deemed to be an independent CONTRACTOR and not an employee of 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 CONTRACTOR 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 repayment of any amounts from CONTRACTOR under the terms of the Contract; to the full extent of any benefits or other remuneration CONTRACTOR 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 CONTRACTOR or to a third party) as a result of said finding.

**C.** The undersigned **CONTRACTOR** hereby represents that no employee of the **CITY** of Astoria, or any partnership or corporation in which a **CITY** employee has an interest, has or will receive any remuneration of any description from the **CONTRACTOR**, either directly or indirectly, in connection with the letting or performance of this Contract, except as specifically declared in writing.

# 60.10.00 SUBCONTRACTS - RELATIONS WITH SUBCONTRACTORS, ASSIGNMENTS AND DELEGATION

**A. CONTRACTOR** shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by **CITY** of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between subcontractor and **CITY**.

**B. CONTRACTOR's** relations with subcontractors shall comply with ORS 279C.580. In accordance with that statute:

1. **CONTRACTOR** shall include in each subcontract for property or services entered into by the **CONTRACTOR** and a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract:

(a) A payment clause that obligates the **CONTRACTOR** to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 day out of such amounts as are paid to the **CONTRACTOR** by the contracting agency under the contract; and

(b) An interest penalty clause that obligates the **CONTRACTOR**, if payment is not made within 30 days after receipt of payment from the contracting agency, to pay to the first -

tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. A CONTRACTOR or first-tier sub-contractor may not be obligated to pay an interest penalty if the only reason that the CONTRACTOR or first-tier sub-contractor did not make payment when payment was due is that the CONTRACTOR or first-tier subcontractor did not receive payment from the contracting agency or CONTRACTOR when payment was due. The interest penalty shall be: (A) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and (B) Computed at the rate specified on ORS 279C.515 (2).

2. CONTRACTOR shall include in each of the CONTRACTOR's subcontracts, for the purpose of performance of such contract condition, a provision requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards of subsection (1) of this section in each of the first-tier subcontractor's subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

The above required clauses are required by ORS 279C.580 (3) and (4) and all the provisions of ORS279C.580 are applicable.

C. CONTRACTOR certifies that all subcontractors performing work described in ORS 701.005(3) or ORS 671.520(1) will be registered with the Construction Contractors Board or by the State Landscape Contractors Board before the subcontractors commence work under this contract.

D. Assignment or Transfer Restricted. The CONTRACTOR shall not assign, sell, dispose of, or transfer rights nor delegate duties under the contract, either in whole or in part, without the CITY's prior written consent. Unless otherwise agreed by the CITY in writing, such consent shall not relieve the CONTRACTOR of any obligations under the contact. Any assignee or transferee shall be considered the agent of the CONTRACTOR and be bound to abide by all provisions the contract. If the CITY consents in writing to an assignment, sale, disposal or transfer of the CONTRACTOR's rights or delegation of the CONTRACTOR's duties, the CONTRACTOR and its surety, if any, shall remain liable to the CITY for complete performance of the contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the CITY otherwise agrees in writing.

E. CONTRACTOR certifies that CONTRACTOR has not discriminated and will not discriminate against minority, women or small business enterprises in obtaining any required subcontracts.

#### 60.11.00 - EARLY TERMINATION

A. This Contract may be terminated without cause by mutual written consent of the parties. In addition, the parties may agree to terminate the contract:

1. If work under the Contract is suspended by an order of a public agency for any reason considered to be in the public interest other than by a labor dispute or by reason of any third party judicial proceeding relating to the work other than a suit or action filed in regard to a labor dispute; or

2. If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Contract.

B. Payment. When a Contract, or any divisible portion thereof, is terminated pursuant to this section, the CITY shall pay the CONTRACTOR a reasonable amount of compensation for preparatory work completed and for costs and expenses arising out of termination. The CITY shall also pay for all work completed, based on the contract price. Unless the work completed is subject to unit or itemized pricing under the Contract, payment shall be calculated based on percent of contract completed. No claim for loss anticipated profits will be allowed.

C. Responsibility for Completed Work. Termination of the contract or a divisible portion thereof pursuant to this section shall not relieve either the CONTRACTOR or its surety of liability for claims arising out of the work performed.

D. Termination under any provision of this paragraph shall not affect any right, obligation or liability of CONTRACTOR or CITY which accrued prior to such termination.

E. If work is suspended under circumstances described in A (1) but the contract is not terminated, the CONTRACTOR is entitled to a reasonable extension of time to complete the contract, and reasonable compensation for all costs resulting from the suspension plus reasonable allowance for overhead with respect to such costs.

#### 60.12.00 - CANCELLATION FOR CAUSE

CITY may cancel all or any part of the Contract if CONTRACTOR breaches any of the terms herein or in the event of any of the following: Insolvency of CONTRACTOR; voluntary or involuntary petition in bankruptcy by or against CONTRACTOR; appointment of a receiver or trustee for CONTRACTOR, or an assignment for benefit of creditors of CONTRACTOR. 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.

#### 60.13.00 - NONWAIVER

The failure of the CITY to insist upon or enforce strict performance by CONTRACTOR 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.

#### 60.13.01 - REMEDIES

Consequences for Contractor's failure to perform the scope of work identified in the invitation to bid or the Contractor's failure to meet established performance standards may include, but are not limited to:

(A) Reducing or withholding payment;

(B) Requiring the contractor to perform, at the contractor's expense, additional work necessary to perform the identified scope of work or meet the establish performance standards; or

(C) Declaring a default, terminating the public contract, and seeking damages and other relief available under the terms of the public contract or other applicable law.

(D) Liquidated damages as calculated in Division 98, Supplementary Conditions, Section 108.6.00

#### 60.14.00 - SUIT OR ACTION

In the event suit or action is instituted to enforce any of the terms of this agreement, 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.

#### 60.15.00 - 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 bid of the **CONTRACTOR**, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said bid conflicting herewith.

#### 60.16.00 - INDEMNIFICATION

The **CONTRACTOR** agrees to indemnify and to hold harmless the **CITY**, its officers, employees and agents against and from any and all loss, claims, actions, suits, including costs and attorney's fees, for or on account of injury, bodily or otherwise, to, or death of persons, damage to or destruction of property belonging to **CITY**, **CONTRACTOR** or others, resulting from **CONTRACTOR's** negligence.

#### 60.17.00 - WORKERS' COMPENSATION

All employers, including **CONTRACTOR**, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. **CONTRACTOR** shall ensure that each of its subcontractors complies with these requirements. (ORS 279C.530 (2)).

## 60.18.00 - LABORERS AND MATERIALMEN, CONTRIBUTIONS TO INDUSTRIAL ACCIDENT FUND, LIENS AND WITHHOLDING TAXES

**CONTRACTOR** shall make payment promptly, as due, to all persons supplying **CONTRACTOR** labor or material for the prosecution of the work provided for this contract.

**CONTRACTOR** shall pay all contributions or amounts due the Industrial Accident Fund from **CONTRACTOR** or any subcontractor incurred in the performance of the contract.

**CONTRACTOR** 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.

CONTRACTOR shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

## 60.19.00 - PAYMENT OF CLAIMS BY PUBLIC OFFICERS; PAYMENT TO PERSONS FURNISHING LABOR AND MATERIALS; AND COMPLAINTS

A. If the CONTRACTOR fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CONTRACTOR or a subcontractor by any person in connection with the public contract as such claim becomes due, the proper officer or officers representing the municipality may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the CONTRACTOR by reason of such contract.

B. If the CONTRACTOR or a first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the public contracting agency or a CONTRACTOR, the CONTRACTOR or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 30-day period that payment is due under ORS 279C.580 and ending upon final payment, unless payment is subject to a good faith dispute as defined in 279C.580. The interest penalty shall be as provided in ORS 279C.580.

C. If the CONTRACTOR or a sub-contractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

D. The payment of a claim in the manner here authorized shall not relieve the CONTRACTOR or the CONTRACTOR's surety from obligation with respect to any unpaid claims.

#### 60.20.00 - HOURS OF LABOR

No person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, the employee shall be paid at least time and a half pay:

A For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

B. For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; and

C. For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

D. CONTRACTOR must give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees of the number of hours per day and days per week that the employees may be required to work.

**E. CONTRACTOR** will comply with the requirements of ORS 279.C545 regarding time limitation or claim for overtime, posting of circular.

#### 60.21.00 - PAYMENT OF MEDICAL CARE

**CONTRACTOR** 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 **CONTRACTOR**, of all sums which the **CONTRACTOR** agrees to pay for such services and all moneys and sums which the **CONTRACTOR** 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.

#### 60.22.00 - DRUG TESTING PROGRAM

**CONTRACTOR** shall demonstrate, to the satisfaction of the Public Works Director that an employee drug-testing program is in place. **CONTRACTOR** may attach hereto a written description of his drug testing program, or a copy of the adopted drug-testing program, to comply with this condition.

#### 60.23.00 - PREVAILING WAGE RATE

A. <u>Prevailing Wage Rate</u>. If this contract is subject to both ORS 279C.800 to ORS 279C870 and the Davis-Bacon Act (40 USC 3141 *et seq*) every contract and subcontract must provide that the worker whom the **CONTRACTOR**, subcontractor, or other person who is a party to the contract uses in performing all or part of this contract, must be paid not less than the higher of the applicable state prevailing rate of wage for each trade or occupation as defined by the Commissioner of the Bureau of Labor and Industries in the applicable publication entitled *Definitions of Covered Occupations for Public Works Contracts in Oregon* or federal prevailing rate of wage. A current copy (title page only) of Prevailing wage Rates for Public Works contracts in Oregon is included in Section 40 of the specifications. A web site where these publications are available is <a href="http://egov.oregon.gov/BOLI/WHD/PWR/pwr.state.shtml">http://egov.oregon.gov/BOLI/WHD/PWR/pwr.state.shtml</a>

**B.** <u>Statutory Public Works Bond</u>. CONTRACTOR shall have a Public Works bond on file with the Construction Contractors Board before starting work on the project, unless exempt under the terms of ORS 279C.836. CONTRACTOR shall include a provision in every subcontract requiring the subcontractor to have a public works bond on file with the Construction Contractors Board before starting work on the project, unless exempt under the terms of ORS 279C.836.

C. <u>Certified Payroll Reports</u>. CONTRACTOR or CONTRACTOR's surety and every subcontractor or subcontractor's surety shall file certified payroll reports with the CITY in conformance with ORS 279C.845. The CITY is required to withhold 25% of amounts earned by CONTRACTOR if certified payroll reports are not submitted as required.

#### 60.24.00 - INSURANCE

A. <u>Commercial General Liability</u>. CONTRACTOR shall obtain, at CONTRACTOR'S expense and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage with limits of not less \$1,000,000 per occurrence

and the annual aggregate not less than \$2,000,000. Coverage shall include contractors, subcontractors and anyone directly or indirectly employed by either. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis, and coverage will be primary, not contributory. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than \$1,000,000 for each job site or location. Each annual aggregate limit will not be less than \$2,000,000.

**B.** <u>Automobile Liability</u>. Contract shall obtain, at Contractor'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). Combined singe limit per occurrence will not be less than \$1,000,000.

**C.** <u>Additional Insured</u>. The liability insurance coverage shall include CITY and its officers and employees as Additional Insured but only with respect to **CONTRACTOR'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, **CONTRACTOR** 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.** <u>Notice of Cancellation or Change</u>. 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 **CONTRACTOR** 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.

### 60.25.00 - PERFORMANCE AND PAYMENT BOND

The **CONTRACTOR** further agrees to furnish a performance bond and a payment bond in approved forms each in the amount of 100% for the full performance and payment of the terms of this contract.

#### 60.26.00 - CERTIFICATION OF COMPLIANCE WITH TAX LAWS

As required by ORS 305.385(6), **CONTRACTOR** certifies under penalty of perjury that the **CONTRACTOR**, to the best of **CONTRACTOR's** knowledge, is not in violation of any of the tax laws described in ORS 305.380(4).

#### 60.26.01 - CITY OCCUPATION TAX

Prior to starting work, **Contractor** shall pay the City occupation tax and provide the Public Works Department with a copy of occupation tax receipt. **Contractor** shall, likewise, require all subcontractors to pay the City occupation tax and provide a copy of the receipt to the Public Works Department prior to commencement of work.

### 60.27.00 - NO THIRD PARTY BENEFICIARIES

This agreement and each and every provision is for the sole benefit of the CITY and CONTRACTOR and no third parties have any rights or benefits except to the extent expressly provided herein.

APPROVED AS TO FORM: Digitally signed by Blair Henningsgaard. o. ou. email=blairestorialaware. c-US Date: 2013.09.09.041127-0800 City Attorney **CITY OF ASTORIA**, a municipal of the State of Oregon

BY: Mayor

Date

ATTEST:

**City Manager** 

Contractor

Date

Date

#	Item Description	Quantity	Unit	Unit Price	Total
1	Mobilization	1	LS	1,200.00	\$1,200.00
2	Traffic Control	1	LS	1,3 50.00	\$ 1350.00
3	Crack Sealing	19,320	LF	\$0.52	\$ (0,046.40
				Total Quote	\$12,596.40

Please review the attached project specification and sample City construction contract. The City will execute this contract with the selected Contractor.

The selected contractor will be required to furnish a performance bond and a payment bond on approved forms each in the amount of 100% for the full performance and payment of the terms of this contract.

The City may modify the project scope to match the available funding.

· Contractor shall read and comply with the attached documents before finalizing a quote. Quotes are due September 5, 2013 by 2:00 p.m.

Please send sealed quotes to:

Nathan Crater, P.E. Assistant City Engineer 1095 Duane St Astoria. OR 97103

CORPORATION:

SECURITY NUMBER:

Fax and emailed quotes are acceptable, but will require acknowledgement of receipt. All work and material shall meet APWA and City of Astoria Standards and Special Provisions.

SPHANT SURFACE See Ing U.C. M Theodore STOUTT / OWNER SIGNED (NAME AND TITLE) EAST DONTMONTH STREET MAILING ADDRESS = LADSTONE, OR 97027 CITY, STATE, AND ZIP CODE PHONE NUMBER: 503-233-6415

YES

CONTRACTOR BOARD NO. OR CLB # 1812-32

NIA

 $\boldsymbol{X}$ IF NO, TAX ID NUMBER OR SOCIAL NO



## MEMORANDUM

DATE:	September 12, 2013
TO:	MAYOR AND CITY COUNCIL
	PAUL BENOIT, CITY MANAGER
SUBJECT:	STAR OF THE SEA LEASE AMENDMENT

## DISCUSSION

Each year the lease between the St. Mary, Star of the Sea Catholic Church (Lessor) and the City of Astoria (Lessee) is reviewed. As per the guidelines of section 5.5 of the Lease which stipulates an annual review of the Lessee's monthly utilities reimbursement payment to Lessor (in this case, for natural gas and electricity usage), the following changes are proposed. Instead of calculating the utilities at a rate of 60% of the total monthly gas and electrical bills, the Lessee will now pay a flat rate of \$800.00 per month as a utilities reimbursement payment. This is a \$1,800.00 annual reduction in the utility rate from last year's amendment. At the end of the term ending Jul 31, 2014, if the agreed upon \$800.00 per month exceeds the total utility expense, the lessor agrees to credit Lessee the difference as an energy saving incentive.

In addition, section 9 of the original lease has been amended to allow the currently unused third floor library space to be sublet to Shooting Stars Child Care Development Center. Subletting this space will generate additional revenue for the City without impacting programs or operations.

## RECOMMENDATION

Based on the data received for utilities, gas and electric, from October 2012 to June 2013, and the opportunity to generate revenue from unused space, staff is recommending these Lease addendums.

Angela Cosby () Director of Parks & Recreation

#### **EXHIBIT B TO LEASE**

## **AMENDMENT FOR LEASE TERM 2013-2014**

1. The lease between St. Mary, Star of the Sea Catholic Church, Astoria, Oregon (Lessor) and the City of Astoria, an Oregon Municipal Corporation (Lessee), executed September 16, 2011, and commencing October 1, 2011, (see paragraph 2.1) is amended as follows:

As per the guidelines of paragraph 5.5 of the lease which stipulates an annual review of the Lessee's monthly utilities reimbursement payments to Lessor (in this case, for natural gas and electricity usage), the following changes have been made in the utilities expense calculation for the lease term of August 1, 2013 to July 31, 2014.

A. The Lessee's utilities reimbursement payment to the Lessor shall no longer be calculated as a variable monthly expense of 60% of the total of the monthly gas and electrical bills from the premises located at 1411 Grand Ave., Astoria, OR with a \$600 monthly ceiling. Instead, <u>Lessee will pay a flat rate of \$800 per month as a utilities</u> <u>reimbursement payment</u>, which shall be paid in addition to the agreed upon monthly rental rate for August 2013 - July 2014. This is a \$150 reduction in the utility rate from the August 1, 2012- July 31, 2013 amendment. This \$800 figure is based on the average of 70% of actual gas and electrical expenditures (\$12,308.87) from August 2012 to July 2013 in the amount of \$720 (See attached financials), plus \$80 for any fluctuations in gas and electricity.

B. At the end of the term beginning August 1, 2013 and ending July 31, 2014, if the previously agreed upon \$800 per month annual total ( $800 \times 12 \text{ months} = 9,600.00$ ) exceeds 70% of the total utilities expense for gas and electrical usage for same 1411 Grand Ave. location for August 2013 to July 2014, Lessor agrees to credit Lessee the difference as an energy saving incentive. If the \$9,600.00 <u>does not cover</u> 70% of the total gas and electric utilities, the City of Astoria will be invoiced the difference at the end of the lease term.

2. The above amendment shall become effective on August 1, 2013 and will apply through July 31, 2014. After the completions of this term, Lessor and Lessee shall

continue to examine and renegotiate the method and/or rate of utilities reimbursement on an annual basis as outlined in paragraph 5.5 of the lease.

3. Lessor is amending paragraph 9 of the original lease and allowing Lessee to sublet the <u>Library space only</u> (located on the 3<sup>rd</sup> floor of the attached Exhibit A to this Amendment), to Shooting Stars Child Development Center. The term of this sublet will be September 1, 2013 – August 31, 2014. All terms of this sublet are to be negotiated between Lessee and Shooting Stars Child Development Center, in writing, with a copy provided to the Lessor.

4. All other terms and conditions of the original lease shall remain in full force and effect.

#### SIGNATURES:

Lessor: St. Mary, Star of the Sea Catholic Church, Astoria, Oregon Lessee: The City of Astoria, An Oregon Municipal Corporation

Printed Name Pastor/President Printed Name: Title:\_\_\_\_\_

Date:

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

Printed Name: Title:\_\_\_\_\_

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

**REGULAR** FENDA ITEMS – Item 6(a)



CITY OF ASTORIA

0401-36-16

New

August 22, 2011

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM: AUL BENOIT, CITY MANAGER

SUBJECT: LEASE OF A PORTION OF THE FORMER STAR OF THE SEA SCHOOL

## **DISCUSSION AND ANALYSIS**

Star of the Sea School closed in July of 2011. The Parks and Recreation staff has been working with Father Ken and church leadership to open a new recreation center in a portion of the former school. This program will provide a much needed service for our community.

The attached Lease Agreement between the Star of the Sea Catholic Church and the City of Astoria will allow for use of Star of the Sea School to run the "Astoria Recreation Center", a recreation program for adults and youth. This Lease Agreement has been reviewed and approved as to form by the City Attorney.

## RECOMMENDATION

It is recommended that Council approve the Lease Agreement to rent space at Star of the Sea School through the Catholic Church for the purpose of running a recreation program.

J.P/Moss Parks and Recreation Director

Special City Council Minutes 912/11

WWW.ASTORIA.OR.US CITY HALL • 1095 DUANE STREET ASTORIA, OREGON 97103 503-325-5824 • FAX 503-325-2017



#### LEASE

LESSOR: St. Mary, Star of the Sea Catholic Church, Astoria, Oregon ("Lessor");

LESSEE: The City of Astoria, an Oregon Municipal Corporation ("Lessee").

#### 1. <u>PREMISES</u>

The premises are those portions of the Star of the Sea School located at 1411 Grand Ave, Astoria, OR 97103 described on Exhibit A annexed hereto (referred to hereafter as "the premises").

#### 2. <u>TERM</u>

- 2.1 Initial Term: The initial term of this lease shall commence August 15, 2011 and continue through July 31, 2014.
- 2.2 Renewal Option. If this lease is not in default at the time each option is exercised or at the time the renewal term is to commence, Lessee shall have the option to renew this lease for 2 successive terms of 3 years each, as follows:
  - (1) Each of the renewal terms shall commence on the day following expiration of the preceding term.
  - (2) The option may be exercised by written notice to Lessor given not less than 90 days prior to the last day of the expiring term. The giving of such notice shall be sufficient to make the lease binding for the renewal term without further act of the parties. Lessor and Lessee shall then be bound to take the steps required in connection with the determination of rent as specified below.
  - (3) The terms and conditions of the lease for each renewal term shall be identical with the original term except for rent and except that Lessee will no longer have any option to renew this lease that has been exercised. Rent for a renewal term shall be the greater of (a) the rental during the preceding original or renewal term or (b) a reasonable rental for the ensuing term.
  - (4) If the parties do not agree on the rent within 60 days after notice of election to renew, the rent shall be determined by a qualified, independent real property appraiser familiar with commercial rental values in the area. Lessee shall choose an appraiser from a list of not fewer than five such individuals submitted by Lessor. If Lessee does not make the choice within five days after submission of the list, Lessor may do so. If Lessor does not submit such a list within 10 days after written request from Lessee to do so, Lessee may name as an

arbitrator any individual with such qualifications. Within 30 days after appointment, the appraiser shall return a decision, which shall be final and binding upon both parties. The cost of the appraisal shall be borne equally by both parties.

## 3. <u>RENT</u>

3.1 Lessee shall pay Lessor the sums each month as basic rent during the lease term:

August 15 - October 31 2011	No rent
November 2011-July 2011	\$1,100
August 2012-July 2013	\$1,300
August 2013-July 2014	\$1,500

- 3.2 Lessee shall pay as additional rent any taxes and all insurance costs, utility charges and other sums Lessee is required to pay under this lease.
- 3.3 Rent shall be payable to Lessor on the first day of each month in advance at the place stated in paragraph 27 of this agreement.

#### 4. <u>USE OF PREMISES</u>

- 4.1 Lessee shall use the premises as a facility for educational and fitness programs and for no other purpose whatsoever without Lessor's prior written consent.
- 4.2 Lessee will not make any unlawful, improper or offensive use of the premises. Lessee will not permit any objectionable noise or odor to escape or to be emitted from the premises. Lessee shall regularly occupy and use the premises for the purpose stated in paragraph 4.1 above and shall not abandon or vacate the premises for more than ten days without Lessor's prior written consent.
- 4.3 Lessee will refrain from any use which would be reasonably offensive to other Lessees or owners or users of neighboring premises or which would tend to create a nuisance or damage the reputation of the premises.
- 4.4 Lessee will not sell or permit to be sold any product, substance or service upon or about the premises, except as Lessee may be licensed by law to sell and as may be expressly permitted herein.
- 4.5 Lessee will not allow any fire or other hazard to exist on the premises, or any condition which would make it impossible to insure the premises against casualty, or would increase the insurance rate. Lessee will not install any power machinery on the premises without Lessor's written consent. Lessee will not store gasoline or other highly combustible materials on the premises at any time.

- 4.6 Lessee shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the premises. Lessee may use or otherwise handle on the premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the business specified in Section 4.1. Lessee may store such Hazardous Substances on the premises only in quantities necessary to satisfy Lessee's reasonably anticipated needs. Lessee shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the premises. Upon the expiration or termination of this Lease, Lessee shall remove all Hazardous Substances from the premises. The term Environmental Law shall mean any federal, state, or local statute, regulation or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment. The term Hazardous Substance shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions. In addition to any indemnification required under paragraph 14.2 of this agreement, Lessee shall pay all costs and expenses associated with cleanup or remediation of the release of any Hazardous Substance, and shall indemnify. defend and hold Lessor harmless from and against any and all losses, liabilities, claims and expenses (including reasonable attorney fees through appeal and fees of environmental engineers, consultants or other experts) arising out of or in any way relating to any default by Lessee pursuant to this section. The provisions of this paragraph shall survive the expiration or earlier termination of the lease.
- 4.7 If known or suspected asbestos containing building materials have been identified on the premises, Lessor shall inform Lessee as required by Environmental Law. Lessee shall comply with all federal, state and local rules and regulations pertaining to asbestos containing building materials and shall cooperate with Lessor regarding same.

#### 5. <u>UTILITIES</u>

Lessor shall provide heat, light, water, power, gas, electricity, sewage, sewage service charges, and other utilities currently used on said property during the term hereof. Lessor shall also provide janitorial services and garbage. Lessee shall reimburse Lessor \$300 per month for janitorial service and shall be responsible for any excess or special garbage charges incurred as a result of Lessee's activities.

## 6. <u>REPAIRS, MAINTENANCE AND IMPROVEMENTS</u>

Except as otherwise provided in this lease, Lessee shall maintain the premises in good order and repair, including but not limited to any building or other improvement now or during the term situated on the premises.

Lessee shall promptly replace all glass which may be broken or cracked during the term of this lease in any window or door on the premises with as good or better quality and kind as that in use before it was so broken or cracked.

Lessor shall be responsible to keep the sidewalks adjacent to the premises free and clear of ice, snow, rubbish, debris and obstructions; and to remove ice, snow, rubbish or debris to accumulate on the roof of the building.

Notwithstanding any other provisions of this lease, it is understood and agreed that Lessor shall maintain in good order and repair the exterior walls, roof, gutters, downspouts, structural portions and foundations of the building now situated on the property. Lessor shall also maintain any heating and air conditioning system, interior wiring, plumbing and drain pipes to sewers and light fixtures now or during the term of this lease situated on the property. Lessor's obligation to maintain in good order and repair requires Lessor to do so within a reasonable time after receiving notice of the need for maintenance or repair.

- 6.2 Lessor shall have the right to alter, repair, improve or add to the premises, and for that purpose at any time may erect scaffolding and all other necessary structures on the premises. Lessor and Lessor's representatives, contractors and workers may enter the premises for that purpose with such materials as Lessor may deem necessary. Lessee waives any claim to abatement of rent or damages, including loss of business resulting therefrom.
- 6.3 Lessor shall not be required to make any repairs, alterations, additions or improvements to the premises during the term of this lease, except those specifically provided for in this lease.
- 6.4 Lessee will make no alterations, additions or improvements to the premises without Lessor's prior written consent. All such permitted alterations, additions or improvements shall be made in a good and workmanlike manner by licensed contractors, shall be in compliance with applicable law and building codes, and shall be the property of Lessor.
- 6.5 If Lessee fails or refuses to make repairs that are required by this Section 6, Lessor may make the repairs and charge the actual cost of repairs to Lessee. Lessee shall reimburse such expenditures by Lessor on demand.

## 7. OVERLOADING OF FLOORS

Lessee will not overload the floors of the premises in such a way as to cause any undue or serious stress or strain upon any part of the premises. Lessor shall have the right, at any time, to call upon any competent engineer or architect whom Lessor may choose, to determine whether or not the floors or any part of the premises are being overloaded so as to cause any undue or serious stress or strain on the premises. The decision of the engineer or architect shall be final and binding upon Lessee. In the event that it is the opinion of the engineer or architect that the stress or strain is such as to endanger or injure any part of the premises, Lessee agrees immediately to relieve the stress or strain, either by reinforcing the premises or by lightening the load which causes such stress or strain, in a manner satisfactory to Lessor.

## 8. LESSOR'S RIGHT OF ENTRY

Lessor, Lessor's agents and representatives may, at any reasonable time, enter the premises for the purpose of examining the condition of the premises, or for any other lawful purpose.

### 9. ASSIGNMENT and SUBLETTING

Lessee will not sell, assign, sublet, mortgage, or in any other manner transfer this lease or any interest in this lease without Lessor's prior written consent.

### 10. <u>LIENS</u>

- 10.1 Lessee will not permit any lien of any kind, type or description to be placed or imposed upon any part of the land or improvements in which the premises are situated.
- 10.2 If Lessee fails to pay any claims for work done on and for services rendered or material furnished to the premises, Lessor may do so and collect the costs as additional rent. Such action shall not constitute a waiver of any right or remedy which Lessor may have on account of Lessee's default.

## 11. ADVERTISING SIGNS

Lessee shall not make use of the outside walls of the premises, or allow signs or devices of any kind to be attached or suspended from the premises for advertising or displaying the name or business of Lessee or for any purpose whatsoever without Lessor's prior written consent. Lessee may make use of the windows of the premises to display Lessee's name and business.

#### 12. INSURANCE AND INDEMNITY

- 12.1 <u>Insurance</u>. During the term of this agreement Lessee shall maintain in force at its own expense, each applicable insurance as indicated below. <u>No waiver of any insurance required under this lease shall be effective without the prior</u> written authorization of the Risk Management Office of the Archdiocese of Portland in Oregon.
  - A. <u>Workers' compensation</u>. Lessee shall provide evidence of insurance in compliance with ORS 656.017, which requires subject employers to

provide Oregon workers' compensation coverage for all their subject workers and employer's liability insurance.

- B. <u>Liability insurance</u>. Lessee shall provide evidence of comprehensive general liability insurance with a combined single limit per occurrence of not less than \$1,000,000 each occurrence for bodily injury and property damage, and professional liability insurance, if licensed or other professional services are to be provided. If any services or activities involving minors are provided, evidence of sexual misconduct insurance in an amount not less than \$1,000,000 must also be provided. Evidence of comprehensive automobile liability insurance shall also be provided when Lessee will operate, maintain, load or unload any vehicle(s) on the premises.
- C. <u>Personal property insurance</u>. Lessee shall insure all of Lessee's belongings upon the premises.
- D. <u>Notice of cancellation or change</u>. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days prior written notice from Lessee or its insurer(s) to Lessor.
- Ε. Certificates of insurance. As evidence of the liability insurance coverages required by this lease, Lessee shall furnish insurance certificates and endorsement(s) acceptable to Lessor prior to Lessor's execution of this lease and at any expiration of such coverages for the duration of this lease. The endorsement(s) shall name the Lessor and the Archdiocese of Portland in Oregon, their officers, employees, agents and volunteers as additional insureds, but only with respect to Lessee's use of the premises. The endorsement(s) also shall state that the insurance is primary and not contributing with any insurance or self-insurance of the Lessor and the Archdiocese of Portland in Oregon. Lessee shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance. Failure to timely provide the evidence of insurance required by this lease may result in a penalty of \$100.00 per month in addition to base rent, and may also result in a declaration of default under this lease.
- 12.2 Indemnity. Lessee shall indemnify, defend and hold harmless Lessor and the Archdiocese of Portland in Oregon, their officers, employees and agents, from and against any and all claims, losses, liabilities, damages, costs, actions or expenses (including attorney fees) arising out of or related to any activity of Lessee on the premises or any condition of the premises in the possession of or under the control of Lessee, as well as those arising from Lessee's failure to comply with any covenant of this lease. Lessor shall have no liability to Lessee for any loss or damage caused by third parties or by any condition of the

premises, except to the extent the same is the result of Lessor's negligence or willful failure to effect any repair or maintenance which is the responsibility of Lessor under this lease.

## 13. BACKGROUND CHECKS

If Lessee uses the premises for any services or activities involving minors, Lessee warrants that any person involved in providing such services or activities will be appropriately background checked and determined to be suitable for such involvement with minors.

#### 14. FIXTURES

All partitions, plumbing, electrical wiring, additions to or improvements upon the premises, whether installed by Lessor or Lessee, shall become a part of the premises as soon as installed and be the property of Lessor unless otherwise herein provided.

#### 15. LIGHT AND AIR

This lease does not grant any rights of access to light and air over the premises or any adjacent property.

## 16. DAMAGE BY CASUALTY OR FIRE AND DUTY TO REPAIR

In the event of the total damage or destruction of the premises or of the improvements in which the premises are located by fire or other casualty, either party may terminate this lease as of the date of fire or casualty. In the event damage or destruction to the premises or the improvements in which the premises are located by fire or other casualty is less than total, but the cost of repairs would exceed ten percent or more of the replacement value of the premises or such improvements before the casualty (as determined by Lessor), then Lessor may or may not elect to repair such damage. Written notice of Lessor's election shall be given to Lessee within fifteen days after the occurrence of the casualty. If notice is not given, Lessor shall be deemed to have elected not to repair. In the event Lessor elects not to repair, then this lease shall terminate as of the date of the damage. If either the premises or the improvements in which the premises are located are partially destroyed, but the damage does not amount to the extent indicated above, or if greater than indicated above and Lessor elects to repair, then this lease shall not terminate, and Lessor shall repair the damage and shall have the right to take possession and occupy, to the exclusion of Lessee, all or any part of the premises thereof to make the necessary repairs. Lessee agrees to vacate upon request all or any part of the premises which Lessor may require for the purpose of making necessary repairs. For the period of time from the day of the casualty and until repairs have been completed, there shall be an abatement of rent as the nature of the injury or damage and its interference with the occupancy of the premises by Lessee shall warrant in Lessor's reasonable judgment. Lessee's occupancy and full rent shall resume immediately upon Lessor's completion of the

repairs. However, if the premises are slightly injured and the damage shall not cause any material interference with the occupation of the premises by Lessee, then Lessor shall repair the damage and there shall be no abatement of rent.

## 17. EMINENT DOMAIN

- 17.1 If Lessor receives written notice of a condemnation proceeding or of any action in lieu thereof, Lessor shall promptly notify Lessee. Unless all or any substantial part of the premises is condemned or purchased by any public or private entity, the lease shall continue, and Lessor shall be entitled to all of the proceeds of condemnation, and Lessee shall have no claims thereto.
- 17.2 If all or any substantial part of the premises are condemned or purchased by any public or private entity with the power of condemnation, this lease may be terminated on written notice from the Lessor to the Lessee. In that instance, Lessee shall not be liable for any rent after the termination date. Lessee shall not be entitled to and expressly waives any right to any part of the condemnation award or purchase price, or other claims against Lessor as a result of the condemnation.

## 18. FOR SALE AND FOR LEASE SIGNS

- 18.1 During the period of 60 days prior to the date fixed for the termination of this lease, Lessor may post on the premises or in the windows, signs notifying the public that the premises are "for lease."
- 18.2 Lessor may at anytime post signs on the premises that the premises are "for sale".

### 19. DELIVERING UP PREMISES ON TERMINATION

- 19.1 At the expiration of the lease term or upon any sooner termination, Lessee will peaceably and quietly quit and deliver up the premises and all future erections or additions to or upon the premises broom-clean and in as good order and condition as received, reasonable use and wear excepted.
- 19.2 Lessee will, upon expiration or termination of this lease, remove all Lessee's furnishings, personal property and trade fixtures. Lessor may claim and remove at Lessee's expense all of such items left behind, and the provisions of Section 22.4 shall apply.

#### 20. TAX EXEMPTION

20.1 If Lessee is a tax-exempt organization, then the parties acknowledge that they have been granted exemptions or the right to claim exemptions from taxation for their property. The parties further acknowledge that the real property under this

lease is intended to be exempt from taxation so long as the leased premises are used by Lessee in the manner required by law for the exemption from taxation of property owned or being purchased by Lessee. Lessor shall cooperate with Lessee in this regard. Lessee shall file any documents which may be required to obtain or continue exemption from taxation for the leased premises. If Lessee is not a tax-exempt organization, then Lessee acknowledges that Lessor is a nonprofit corporation and that the subject property is exempt from real and personal property taxes. The parties further acknowledge that the rent payable by Lessee under this lease has been established to reflect the savings resulting from the exemption from taxation.

20.2 In the event any taxes, assessments or other public charges are levied against the premises by reason of the occupancy, use or possession of said premises by Lessee, all of which are collectively referred to as "taxes", Lessee shall pay, as additional rent and before delinquency, all such taxes. Upon receipt, Lessor shall forward to Lessee for timely payment, any invoice for such taxes. Lessee shall furnish to Lessor official receipts of the appropriate taxing authority or other proof satisfactory to Lessor evidencing that such payment has been made. Taxes for the years in which this lease commences or terminates shall be prorated based upon the portion of the tax year during which this lease was in effect. In the event Lessee shall desire to contest in good faith any assessment or tax, Lessee, at its sole cost and expense, may file all such protests or other instruments and institute and prosecute proceedings for the purpose of such contest. Lessee shall pay such protested taxes when due despite such protest if such payment is necessary to avoid a lien upon the premises. Lessee shall timely furnish to Lessor copies of all correspondence and documents pertaining to any proceedings contesting any tax. Lessee shall, if required by Lessor, furnish to Lessor reasonable indemnity against any loss by reason of such contest. If any special assessment is permitted by law to be bonded and paid in installments, Lessee may follow this procedure and in such case shall pay all said installments as the same become due; provided however, any amount owing for said special assessment upon termination of this lease shall be paid by Lessee immediately upon termination.

#### 21. DEFAULT/BANKRUPTCY

21.1 If Lessee shall be in arrears in the payment of rent for a period of ten days, or if Lessee shall fail or neglect to perform or observe any of the covenants and agreements contained in this lease on Lessee's part and default shall continue for ten days or more after written notice of such failure or neglect is given to Lessee, or if Lessee shall be declared bankrupt or insolvent according to law, or if any assignment of Lessee's property shall be made for the benefit of creditors, or if on the expiration of this lease Lessee fails to surrender possession of the premises, Lessor may terminate this lease and, lawfully, at Lessor's option immediately without demand or notice, enter the premises and repossess and expel Lessee and remove Lessee's effects at Lessee's expense, forcibly if necessary and store the same, all without being deemed guilty of trespass and without prejudice to any remedy which might be used for arrears of rent preceding breach of covenant.

- 21.2 Neither the termination of this lease by forfeiture nor the taking or recovery of possession of the premises shall deprive Lessor of any other action, right, or remedy against Lessee for possession, rent or damages, nor shall any omission by Lessor to enforce any forfeiture, right or remedy to which Lessor may be entitled be deemed a waiver by Lessor of the right to enforce the performance of all terms and conditions of this lease by Lessee.
- 21.3 In the event of any re-entry by Lessor, Lessor may lease or relet the premises in whole or in part to any Lessee or Lessees who may be satisfactory to Lessor, for any duration, and for the best rent, terms and conditions as Lessor may reasonably obtain. Lessor shall apply the rent received from any such Lessee first to the cost of retaking and releting the premises, including remodeling required to obtain any such Lessee, and then to any arrears of rent and future rent payable under this lease and any other damages to which Lessor may be entitled.
- 21.4 Any property that Lessee leaves on the premises after abandonment or expiration of the lease, or for more than ten days after any termination of the lease by Lessor, shall be deemed to have been abandoned. Lessor may remove and sell the property at public or private sale as Lessor sees fit, without being liable for any prosecution or damages. The net proceeds of any such sale shall be applied toward the expenses of Lessor and rent, and the balance of such amounts, if any, shall be held for and paid to Lessee.
- 21.5 Should Lessee be or become the debtor in any bankruptcy proceeding, voluntarily, involuntarily or otherwise, either during the period this lease is in effect or while there exists any outstanding obligation of Lessee, Lessee agrees to pay Lessor's reasonable attorney fees and costs which Lessor may incur as the result of Lessor's participation in such bankruptcy proceedings.

## 22. HOLDING OVER

If Lessee for any reason shall hold over after the expiration of this lease, such holding over shall not be deemed to operate as a renewal or extension of this lease, but Lessor shall have the option (a) to treat Lessee as a Lessee from month to month, subject to all of the provisions of this lease, which may be terminated at will at any time by Lessor on written notice given not less than 10 days prior to the termination date which shall be specified in the notice (Lessee waiving any other notice as would otherwise be provided by law with respect to a month-to-month tenancy) or (b) to eject Lessee from the premises and recover damages for wrongful holdover.

### 23. <u>NON-WAIVER</u>

Waiver by either party of strict performance of any provision of this lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

## 24. ATTORNEY FEES

If suit or action is instituted to enforce compliance with any provision or covenant of this lease, the prevailing party shall be entitled to recover, in addition to costs, such sums as the court may adjudge reasonable as attorney fees at trial and on any appeal or review therefrom. Lessee agrees to pay and discharge all Lessor's costs and expense, including Lessor's reasonable attorney fees that shall arise from enforcing any provision or covenant of this lease even though no suit or action is instituted.

#### 25. <u>NOTICES</u>

All notices required or permitted to be given under this lease shall be in writing and shall be deemed given and received two days after deposit in the United States Mail, postage prepaid, addressed as follows:

If to Lessor:	St. Mary, Star of the Sea Catholic Church 1465 Grand Ave, Astoria, Oregon
With a copy to:	Property Manager Archdiocese of Portland in Oregon 2838 E. Burnside Street, Portland, OR 97214
If to Lessee:	City Manager City of Astoria 1095 Duane Street, Astoria, OR 97103

#### 26. <u>HEIRS AND ASSIGNS</u>

All right, remedies and liabilities given to or imposed upon either of the parties shall extend to, inure to the benefit of and bind, as the circumstances may require, the heirs, successors, personal representatives and so far as this lease is assignable by the terms hereof, to the assigns of such parties.

#### 27. <u>RECORDATION</u>

This lease shall not be recorded without the written consent of Lessor.

## 28. <u>AMENDMENTS</u>

The Amendment form attached as Exhibit B shall be used to incorporate revisions or additional provisions to be made to this lease after its execution. Any fully executed Amendment shall be incorporated herein and made a part of this lease effective as of the date the last signer signed the Amendment.

**IN WITNESS WHEREOF,** the Parties have, on this \_\_\_\_\_ day of \_\_\_\_\_, 2011 set their hands by and through their duly authorized agents.

LESSEE:

## LESSOR:

CITY OF ASTORIA

ST. MARY, STAR OF THE SEA CATHOLIC CHURCH, ASTORIA, OREGON

By:\_

Willis L. Van Dusen, Mayor

By:\_

Kenneth Sampson, Pastor

By:\_

Paul Benoit, City Manager

## EXHIBIT A TO LEASE

#### BETWEEN (Name of Parish Corporation)

and

(Name of Lessee)

(Description and/or map of Premises)

Star of the Sea Lease - Page 13 of 14

## **EXHIBIT B TO LEASE**

## AMENDMENT TO LEASE

- 1. The lease between the (Name of Parish Corporation) (Lessor) and (Lessee), dated ("Lease") is amended as follows:
- 2. The above amendment shall become effective on \_\_\_\_\_
- 3. All other terms and conditions of the original Lease shall remain in full force and effect.

**IN WITNESS WHEREOF,** the Parties have, on this \_\_\_\_\_ day of \_\_\_\_\_, 2011 set their hands by and through their duly authorized agents.

LESSEE:

#### LESSOR:

CITY OF ASTORIA

ST. MARY, STAR OF THE SEA CATHOLIC CHURCH, ASTORIA, OREGON

By:

Willis L. Van Dusen, Mayor

By:

Kenneth Sampson, Pastor

By:

Paul Benoit, City Manager

## **APPROVED AS TO FORM:**

City Attorney

Star of the Sea Lease - Page 14 of 14



September 12, 2013

## MEMORANDUM

TO: MAYOR AND CITY COUNCIL

CITY OF ASTORIA

FROM: () PAUL BENOIT, CITY MANAGER

SUBJECT: ORDINANCE AMENDING CERTAIN PROVISIONS DEALING WITH PUBLIC OFFENSES

## DISCUSSION/ANALYSIS

City Attorney Blair Henningsgaard has drafted this ordinance for Council's consideration. The amendments proposed would accomplish three things:

- Amend Astoria Code 1.101(3) to allow the imposition of fines greater than \$1,000 for building violations.
- 2) Amend the title of Astoria Code 5.115 to "Offensive Public Conduct" rather than "Public Indecency." Changing the name will allow the City to more effectively utilize this ordinance.
- 3) Amend Astoria Code 5.010 to prohibit loaded firearms in public places and bring this ordinance into compliance with state law.

## **RECOMMENDATION**

It is recommended that Council conduct the first reading of this ordinance.

## ORDINANCE NO. 13-\_\_\_\_

## AN ORDINANCE AMENDING CERTAIN PROVISIONS DEALING WITH PUBLIC OFFENSES

## THE CITY OF ASTORIA ORDAINS AS FOLLOWS:

**Section 1. Penalties for Building Enforcement.** Astoria Code Section 1.010(3) is amended to provide:

(3) Fines fees and costs imposed pursuant to Sections 5.680, 5.682, 5.720 are not subject to the limitations of Subsection (1) and the abatement of a nuisance under Section 5.706 through 5.728 is a remedy in addition to any penalty for violation of the Code."

<u>Section 2.</u> The title of Astoria Code Section 5.115 is amended to "Offensive Public Conduct."

**Section 3.** Astoria Code Section 5.010 is amended to provide:

#### 5.010 Carrying a Loaded Firearm in a Public Place Unlawful.

(A) No person may possess a loaded firearm in a public places as defined in ORS 161.015.

- (B) Subsection (A) does not apply to or affect:
  - (1) A law enforcement officer in the performance of official duty.

(2) A member of the military in the performance of official duty.

(3) A person licensed to carry a concealed handgun.

(4) A person authorized to possess a loaded firearm while in or on a public building or court facility under ORS 166.370.

(5) An employee of the United States Department of Agriculture, acting within the scope of employment in the course of the lawful taking of wildlife.

<u>Section 4.</u> <u>Effective Date.</u> The City Council finding urgent need to adopt these amendments to bring the Astoria Code into compliance with Oregon law, this ordinance will be effective immediately upon passage by the City Council.

ADOPTED BY THE CITY COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2013.

APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2013.

ATTEST:

Mayor

**City Manager** 

ROLL CALL ON ADOPTION YEA NAY ABSENT Councilor LaMear Herzig Mellin Warr Mayor Van Dusen

Page 1 of 1



CITY OF ASTORIA POLICE DEPARTMENT

September 16, 2013

MEMORANDUM

## TO: MAYOR AND CITY COUNCIL FROM: PAUL BENOIT, CITY MANAGER SUBJECT: AUTHORIZATION TO PURCHASE THREE VEHICLES FOR THE POLICE AND FIRE DEPARTMENT

## **DISCUSSION/ANALYSIS**

Astoria Police and Fire departments have three vehicles that are in need of replacement this fiscal year. The vehicles are a 1998 Ford Explorer with 123,000 miles which is in poor condition, a 2007 Chevy Tahoe with 130,000 which is in poor condition and a 1999 Ford Crown Victoria Police Interceptor (CVPI) with 112,000 miles also in poor condition. Two of these vehicles will be replaced with a 2014 Chevy Tahoe Police Package Vehicle (PPV). The third will be replaced with a 2014 Chevy Tahoe 4x4 Special Services Vehicle (SSV).

The two 2014 Chevy Tahoe PPVs will be assigned to patrol. The 2014 Chevy Tahoe SSV will be assigned to the Fire Department as a Command Vehicle.

Staff has researched the Oregon State Purchasing Program and located the vehicles from Hubbard Chevrolet. The Tahoe 2014 PPV is available for for \$28,643. The 2014 Chevy Tahoe SSV is available for \$32,507. The total purchase price is \$89,793.

The Finance Department has recommended spreading the purchase over two years. This amount is included in the adopted budget. A separate authorization will be requested for the set up and equipment for the vehicles.

Ocean Crest was contacted and is unable to provide a competitive bid.

#### RECOMMENDATION

It is recommended that Council approve the purchase of three vehicles from Hubbard Chevrolet. The total cost of \$89,793 is within the approved budget.

Brad Johnston, Deputy Chief of Police



CITY OF ASTORIA POLICE DEPARTMENT

DATE: September 16, 2013

MEMORANDUM

TO: MAYOR AND CITY COUNCIL FROM: PAUL BENOIT, CITY MANAGER

# SUBJECT: Public Safety Vehicle Upfitting – Public Hearing to Exempt Contract from Competitive Solicitation Requirements

## **DISCUSSION/ANALYSIS**

The Astoria Police Department has identified the need to keep consistency in the set up of public safety vehicles. As both vehicles and public safety equipment have become more complex systems this work has become much more specialized. Public safety equipment is frequently designed to work tapping into a vehicles onboard systems, utilizing sensors and switches within the vehicle to activate public safety equipment or for public safety equipment to access vehicle equipment. In other cases equipment must be isolated from the vehicles systems.

Consistency in equipment set up is important for the officers utilizing the cars. With five patrol vehicles assigned to the twelve officers working patrol they frequently will need to move between vehicles. Having to know the idiosyncrasies between vehicles is not something officers should be faced with when responding to emergencies. When faced with a stress filled response the officers need to have the assurance that their vehicle is equipped, and operates just like the other vehicles in the fleet.

For several years the department has utilized a company in Salem who was part of the Oregon State Cooperative Procurement Agreement. This agreement allowed the city to utilize this vendor without the need to go out to competitive bids. This company has had several internal changes that make this arrangement less desirable. Because of the distance, this arrangement became less and less desirable as changes to vehicle set ups required either six hours of travel time or the cost of a service call from the dealer.

Over the last two years the city has completed an independent competitive bid process and found that the original provider in Salem cost a significant amount more for the service. After two years of competitive bids we have found that Cascade Mobile of Longview has been competitive in pricing. We have also found their quality of work and follow up on issues that develop to be without compare in the industry. Additionally they are our two way

radio vendor and have the capability of doing a complete build including radio integration and programming. This is not true for any other vendor that we have found.

The department strongly believes that continuing to let this project to bids annually is detrimental to the goals of the department. This work is highly specialized and needs to be consistent year after year. To accommodate this consistency we are requesting that the City Council exempt the contract from Competitive Solicitation Requirements in the Astoria City Code.

## **EXEMPTION & PERSONAL SERVICES CONTRACT AWARD**

Findings for an Exemption from the Competitive Solicitation Requirements (per City Code Section 1.966) are as follows:

(1) The nature of the contract or class of contracts for which the special solicitation or exemption is requested;

The contract class for which the exemption is requested is a personal services contract for the acquisition and installation of public safety equipment for emergency vehicles.

(2) The estimated contract price or cost of the project, if relevant;\$29,214 for the setup of three public safety vehicles (two police patrol vehicles and one fire command vehicle)

(3) Findings to support the substantial cost savings, enhancement in quality or performance or other public benefit anticipated by the proposed selection method or exemption from competitive solicitation;

The Department has worked with Cascade Mobile for approximately four years on a variety of small contracts. They have demonstrated a high level of understanding of the Department's needs and options available. Exempting this relationship from competitive solicitation allows the department to ensure a consistency in the outfitting of police cars from year to year.

(4) Findings to support the reason that approval of the request would be unlikely to encourage favoritism or diminish competition for the public contract or class of public contracts, or would otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the solicitation requirements that would otherwise be applicable under these regulations;

The Department is not aware of other vendors that are within an hour drive who are accomplished in this nature of work. The majority of Clatsop County police departments are utilizing this vendor. Moving to a competitive bid process will require the Department to look at vendors further away increasing staff time in dealing with the vendors, moving the vehicles back and forth, and risk a lack of consistency between vehicles. No local vendors offer this service.

(5) A description of the proposed alternative contracting methods to be employed;

Direct Appointment.

(6) The estimated date by which it would be necessary to let the contract(s);

Staff is recommending Cascade Mobile be awarded a personal services contract after council consideration of the proposed exemption.

## RECOMMENDATION

It is recommended that the City Council conduct a public hearing for the purpose of taking public comment on the findings for exemption from competitive solicitation requirements and adopt findings that authorize the direct appointment process to contract with Cascade Mobile for the upfitting of three public safety vehicles for the not to exceed amount of \$30,000.

Brad Johnston, Deputy Chief of Police



September 12, 2013

MEMORANDUM

TO: MAYOR AND CITY COUNCIL FROM: PAUL BENOIT, CITY MANAGER

SUBJECT: 17<sup>TH</sup> STREET PIER LEASE WITH UNITED STATES COAST GUARD

## **DISCUSSION/ANALYSIS**

The City Lease with the United States Coast Guard (USCG) for the 17<sup>th</sup> Street Pier and associated amenities was entered into in 1992. The Lease expires on September 30, 2013. City staff has been working with the USCG Planning and Real Property Section on a new Lease. Negotiations have been completed and a new Lease is ready for consideration by the City Council. Key provisions are as follows:

- Monthly Lease rate of \$17,075.
- Annual base rent on Pier (\$147,000) will be subject to a 2% escalation rate calculated annually.
- The Lease is renewable annually over the next 19 years beyond the initial 1 year term. After 20 years, the Lease is subject to renegotiation.

The renegotiated Lease is very favorable to the interests of both the USCG and the City of Astoria. For the City's part, the new rate is sufficient to fully cover all debt service obligations on the Pier and to build an appropriate reserve for both routine and prospective long term maintenance needs associated with the facility.

## RECOMMENDATION

I recommend that Council approve the Lease and authorize the Mayor to sign on behalf of the City. The Lease has been reviewed by City Attorney Henningsgaard and approved as to form.

## **U. S. GOVERNMENT LEASE FOR REAL PROPERTY**

DATE	OF	LEASE

September 16, 2013

LEASE NO.

**PURPOSE.** Pursuant to specific Congressional appropriations and 14 U.S.C. §88, the statutory authority to render aid to distressed persons, vessels, and aircraft on and under the high seas and all waters over which the United States has jurisdiction, the U.S. Coast Guard maintains a need for pier space at strategic locations up and down the United States Coast Line. To maintain the effectiveness of the U.S. Coast Guard in the Astoria, OR region, a new lease must be executed in order to support the overall mission of the Coast Guard.

**THEREFORE THIS LEASE**, made and entered into this date by and between City of Astoria, OR, whose address is **1095 Duane Street**, Astoria, Oregon 97103, and whose interest in the property hereinafter described is that of owner ("LESSOR"), and the Commanding Officer, U.S. Coast Guard SILC, Product Line Division, Portfolio Management Branch, Oakland, California, on behalf of the UNITED STATES OF AMERICA, hereinafter called the ("Government:"), for the consideration hereinafter mentioned.

WITNESSETH: The parties hereto for the considerations hereinafter mentioned, covenant and agrees as follows:

1. Lessor hereby leases to the Government the following described premises: 13,000 square feet Berthing Pier located at 17<sup>th</sup> St. in Astoria, OR; as depicted in Exhibit "A" and described in Exhibit "A-1", a 2 unit 506 square feet storage building; as depicted in Exhibit "A" and described in Exhibit "A-2" and total of 120 parking spaces that are depicted in Exhibit "A". All amenities outlined in both Exhibits "A-1" and "A-2" are hereby made a part of the lease.

To be used for: Pier, mooring and berthing rights, along with storage, trash and parking access for Coast Guard personnel.

2. **TO HAVE AND TO HOLD** the said premises with their appurtenances for the term beginning on <u>October 1, 2013</u> Through September 30, 2014 subject to termination and renewal rights as may be hereinafter set forth.

3. The Government shall pay the Lessor annual rent of \$204,900, at the rate of \$17,075 per month in arrears ("Rent"). Rent for a lesser period will be prorated, provided appropriations are granted by Congress. Electronic (ACH) Rent payments shall be made payable to Lessor.

Accounting Data: 2/D/401/121/30/0/3C/75110/2329 FY14 \$204,900

4. The Government may terminate this lease at any time by giving at least <u>thirty (30)</u> days' notice in writing to the Lessor. Said notice shall be computed commencing with the day after the date of mailing.

5. This lease may be renewed at the option of the Government, for the following term: nineteen (19), one (1) year renewal terms, provided notice is given in writing to the Lessor at lease thirty (30) days before the end of the original lease and all conditions, excluding a 2% escalation, of this lease shall remain the same during the renewal term. The 2% escalation rate is only calculated on \$147,000 of the above first year total and then adjusted outward. Said notice shall be computed commencing with the day after the date of mailing.

6. The Lessor shall furnish to the Government the following:

a. Moorage space for U.S. Government purposes including the USCGC Alert, USCGC Steadfast, or such other Coast Guard vessels that may be berthed at the 17<sup>th</sup> Street pier in Astoria, Clatsop County, State of Oregon.

b. Unrestricted use of the 17<sup>th</sup> Street pier herein leased. Exclusive use of the electrical and water/sewer facilities.

c. LESSOR shall maintain the premises and any and all equipment, fixtures, and appurtenances, furnished by the lessor under this lease in good repair and tenantable condition, except in the case of damage arising from the act or the negligence of the GOVERNMENT's agents or employees. For the purpose of maintaining said premises and property, the

LESSOR may at reasonable times, and with the approval of the authorized GOVERNMENT representative in charge, enter and inspect the same and make any necessary repairs thereto.

d. Mooring space at a minimum depth of 18 feet at mean low water, and shall provide adequate maneuvering space for mooring and unmooring.

e. Use of the boat basin fronting on the waterfront facility herein provided to such extent as is necessary to permit free and unrestricted ingress and egress of GOVERNMENT vessels to the moorage provided.

f. Maintenance and repair for the dock facilities (including camel logs) due to normal use and deterioration.

g. Permission for the GOVERNMENT to install, maintain and replace the GOVERNMENT's pipe line for fueling of vessels. Line shall remain the property of the GOVERNMENT and will be removed from the leased premises upon termination or expiration of this lease. LESSOR shall have no responsibility for spills, leaks, or ruptures from this line; unless it's a direct result from LESSOR's activities arising from the act or the negligence of the LESSOR.

h. The right for the GOVERNMENT to construct and maintain two (2) quarter deck shacks, of approximately 80 square feet, with prior approval from the LESSOR.

- i. Adequate cleats or bitts for mooring lines.
- j. Electrical power distribution and control: two (2) 480 VAC, 3-phase, 60 cycles, 60 A Outlets.
- k. Sewage line with quick disconnect to service the Coast Guard Vessel(s).
- 1. At a minimum 350' of water line with hydrant and two (2) ship connections.
- m. Fire protection facilities per the National Fire Code.
- n. Lessor will notify the Government, in writing, within thirty (30) days of any:
  - 1) Transfer of ownership of the described premises.
  - 2) Change of payment or mailing address for ACH payments
- 7. The following are attached and made a part hereof:a. The General Clauses (GSA form 3517B as amended) Attachment "A"

8. UTILITIES: Government is responsible for payment of all utility charges directly, including electrical power, water/sewer service, trash removal and telephone service.

9. SUCCESSORS BOUND: The Lease shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors, and assigns.

10. GOVERNMENT LIABILITY: The Government, in the manner and to the extent provided by the Federal Tort Claims Act (28 USC Sections 2671-2680 as amended) shall be liable for, and shall hold Owner harmless from, claims for damage or loss of property, personal injury or death caused by the acts or omissions of the Government, its officers, employees and agents in the use of the leased premises.

11. SUBLETTING/ASSIGNMENT: Government may not sublet or assign lease premises to without the prior written consent of the Lessor, which consent shall not be unreasonably withheld.

12. ENVIRONMENTAL PROTECTION: Government may not unlawfully pollute the air, ground or water, nor create a public nuisance. Licensee shall, at no cost to the Licensor, promptly comply with all applicable Federal, state, and local laws, regulations, and directives regulating the quality of the environment. This does not affect the Government's right to contest the validity of such laws, regulations or directives or to try to enjoin their applicability. Government shall use all required means to protect the environment and natural resources from any damage arising from Licensee's use of the facility and activities incident to its use. If any damage results to the environment or natural resources, Government shall restore the environment or damaged resources. Government agrees to comply with all applicable federal, state and local environmental laws and regulations, including, but not limited, to those laws concerning any petroleum products, toxic substances, medical wastes and hazardous materials, substances or wastes.

13. ANTI-DEFICIENCY ACT: (31 USC §1341 as amended). Nothing in this Lease shall constitute an obligation of funds of the United States in advance of appropriation thereof.

14. INDEMIFICATION: The Government, in the manner and to the extent provided by the Federal Tort Claims Act (28 USC Sections 2671-2680 as amended) shall be liable for, and shall hold Lessor harmless from, claims for damage or loss of property, personal injury or death caused by the acts or omissions of the Government, its officers, employees and agents in the use of the leased premises.

15. INSURANCE: Government is a self-insured entity and as such is not required to provide Lessor with any certificate of insurance or notice of renewal, termination, cancellation, expiration or alteration of insurance policy.

#### 16. OWNERSHIP OF IMPROVEMENTS:

It is understood and agreed that any improvements added by the Government belong to the Government.

15. OFFICIALS NOT TO BENEFIT: No member or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Lease or any benefit to arise there from, but this provision shall not be construed to extend to this Lease if made with a corporation whose membership, includes a member or delegate to Congress or Resident Commissioner, who indirectly receives a general benefit from this Lease.

16. AMENDMENT OR MODIFICATION: No amendment or modification shall be valid unless evidenced by an agreement in writing signed by both parties.

17. GOVERNING LAW: The parties shall construe the Lease to be in accordance with and governed by the laws of the State of Oregon, insofar as those laws are consistent with applicable federal laws and regulations.

18. SEVERABILITY: If any term or provision of this Lease is held invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each term and provision hereof shall be valid and enforced to the fullest extent permitted by law.

#### 19. PAYMENTS OF TAXES AND ASSESSMENTS:

The Government is not responsible for or liable for the payment of any real property taxes, personal taxes or assessments levied or assessed upon or against the leased premises.

20. ENTIRE AGREEMENT: This Lease, with attachment, constitutes the only agreement between Lessor and Government. Any prior understanding or representation of any kind, which proceeded the date of this Lease, are not binding on either party, except to the extent the understandings are incorporated into this Lease.

21. MUTUAL AUTHORITY: Lessor and Government represent and warrant to each other that they have full right, power and authority to enter into this Lease without the consent or approval of any other entity or person and make these representations knowing that the other party will rely thereon. Furthermore, the signatories on behalf of Lessor and Government further represent and warrant that they have full right, power and authority to act for and on behalf of Lessor and Government in entering into this lease.

22. ATTORNEY FEES: To the extent not in conflict with federal law, should any dispute arise between the parties hereto or their legal representatives, successors and assigns concerning any provision of this Lease or the rights and duties of any person in relation thereto, the party prevailing in such dispute shall be entitled, in addition to such other relief that may be granted, to recover reasonable attorneys' fees and legal costs in connection with such dispute as determined by the judgment or award of any court or tribunal of competent jurisdiction.

 23. LEASE ADMINISTRATION:
 The following office shall administer this Lease: Commander (s) Maintenance and Logistics Command Pacific 1301 Clay Street, Suite 700N Oakland, CA 94612-5203

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 24. LEASE PAYMENTS: The following office processes lease payments: US Coast Guard Finance Center (Team 2A) 1430 Kristina Way Chesapeake VA 23326-1728

25. TAX IDENTIFICATION: Government regulations require a Lessor tax identification number (TIN/SSN). Lessor hereby certifies that the following TIN/SSN and telephone number are correct:

TIN/SSN: \_\_\_\_\_\_\_

Date

Signature

26. PAYMENT BY ELECTRONIC FUNDS TRANSFER-CENTRAL CONTRACTOR REGISTRATION: a. Method of Payment:

1) All payments by the Government under this contract shall be made by electronic transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "AFT" refers to the funds transfer and may also include the payment information transfer.

2) In the event the Government is unable to release one or more payments by EFT, the Lessor agrees to either accept payment by check or some other mutually agreeable method of payment or request the Government extend the payment due date until such time as the Government can make payment by EFT (see paragraph (d) of this clause).

b. Lessor EFT information. The Government shall make payment to the Lessor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Lessor shall be responsible for providing the updated CCR database.

c. Mechanisms for EFT payment. The Government may make payments by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

d. Suspension of payment. If the Lessor EFT information in the CCR database is incorrect, then the Government need not make payment to the Lessor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

e. Lessor EFT arrangements. If the Lessor has indentified multiple payment receiving points (i.e., more than one remittance address and/or EFT information set) in the CCR database, and the Lessor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the f irst payment receiving point (EFT information set or remittance address is applicable) listed in the CCR database.

f. Liability for incomplete or erroneous transfer:

1) If an incomplete or erroneous transfer occurs because of Government used the Lessor's EFT information incorrectly, the Government remains responsible for making a correct payment, paying any prompt payment penalty due and recovering any erroneously directed funds.

2) If any incomplete or erroneous transfer occurs because the Lessor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and if funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Lessor is responsible for recovery of an erroneously directed funds or if the funds remain under the control of payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

g. EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

h. EFT and assignment claims. If the Lessor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Lessor shall require as a condition of any such assignment, that the assignee shall

register in the CCR database and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Lessor. EFT information that shows the ultimate recipient of the transfer to be other than the Lessor, in the absence of proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

i. Liability for change to EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information made by the Lessor's financial agent.

j. Payment information. The payment or disbursing office shall forward to the Lessor available payment information that I suitable for transmission as of the date of release of EFT instruction to the Federal Reserve System. The Government may request the Lessor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

27. AUTHORITY. The undersigned employee of the government hereby attests that said employee has the authority to enter into this lease upon behalf of the United States Government, acting by and through the United States Coast Guard.

28. OWNERSHIP: The Lessor affirms and warrants that the Lessor owns/possesses the property and such lease is and will be effective for all heirs, assignors, executors, administrators and successors, and to the Lessor for the described property.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

LESSOR				
SIGNATURE	SIGNATURE			
NAME OF SIGNER	NAME OF SIGNER			
IN PRESEN	NCE OF			
SIGNATURE	SIGNATURE			
NAME OF SIGNER	NAME OF SIGNER			
UNITED STATES	OF AMERICA			
SIGNATURE	NAME OF SIGNER David E. Brumley OFFICIAL TITLE OF SIGNER			
	Realty Specialist Contracting Officer United States Coast Guard			

CATEGORY	CLAUSE NO.	48 CFR REF.	CLAUSE TITLE
GENERAL	1	EE2 270 11	SUBLETTING AND ASSIGNMENT SUCCESSORS BOUND
	3	552.270-11 552.270-23	SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT
	4 5	552.270-24 552.270-25	STATEMENT OF LEASE SUBSTITUTION OF TENANT AGENCY
	6	552.270-26	NOWAIVER
	7 8	552.270-28	INTEGRATED AGREEMENT MUTUALITY OF OBLIGATION
PERFORMANCE	9 10 11	552.270-19	DELIVERY AND CONDITION DEFAULT BY LESSOR PROGRESSIVE OCCUPANCY
	12	002.270-10	MAINTENANCE OF THE PROPERTY, RIGHT TO INSPECT
	13 14		FIRE AND CASUALTY DAMAGE COMPLIANCE WITH APPLICABLE LAW
	15 16	552.270-12	ALTERATIONS ACCEPTANCE OF SPACE AND CERTIFICATE OF OCCUPANCY
PAYMENT	17 18 19 20 21	52.204-7 552.270-31 552.232-23 552.270-20 52.232-33	CENTRAL CONTRACTOR REGISTRATION PROMPT PAYMENT ASSIGNMENT OF CLAIMS PAYMENT PAYMENT BY ELECTRONIC FUNDS TRANSFER—
	21	52.252-55	CENTRAL CONTRACTOR REGISTRATION
STANDARDS OF CONDUC	CT 22	52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT
	23 24 25	552.270-32 52-203-7 52-223-6	COVENANT AGAINST CONTINGENT FEES ANTI-KICKBACK PROCEDURES DRUG-FREE WORKPLACE
	26	52.203-14	DISPLAY OF HOTLINE POSTER(S)
ADJUSTMENTS	27	552.270-30	PRICE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY
	28	52-215-10	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA
	29 30	552.270-13	PROPOSALS FOR ADJUSTMENT CHANGES
AUDITS	31 32	552.215-70 52.215-2	EXAMINATION OF RECORDS BY GSA AUDIT AND RECORDS—NEGOTIATION
DISPUTES	33	52.233-1	DISPUTES

## GENERAL CLAUSES (Acquisition of Leasehold Interests in Real Property)

LABOR STANDARDS	34 35 36	52.222-26 52.222-21 52.219-28	EQUAL OPPORTUNITY PROHIBITION OF SEGREGATED FACILITIES POST-AWARD SMALL BUSINESS PROGRAM REPRESENTATION
	37 38	52.222-35 52.222-36	EQUAL OPPORTUNITY FOR VETERANS AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES
	39	52.222-37	EMPLOYMENT REPORTS VETERANS
SUBCONTRACTING	40	52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT
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	43	52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN
	44	52.219-16	LIQUIDATED DAMAGES—SUBCONTRACTING PLAN
	45	52.204-10	REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS

The information collection requirements contained in this solicitation/contract that are not required by regulation have been approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act and assigned the OMB Control No. 3090-0163.

#### GENERAL CLAUSES (Acquisition of Leasehold Interests in Real Property)

#### 1. SUBLETTING AND ASSIGNMENT (JAN 2011)

The Government may sublet any part of the premises but shall not be relieved from any obligations under this lease by reason of any such subletting. The Government may at any time assign this lease, and be relieved from all obligations to Lessor under this lease excepting only unpaid rent and other liabilities, if any, that have accrued to the date of said assignment. Any subletting or assignment shall be subject to prior written consent of Lessor, which shall not be unreasonably withheld.

#### 2. 552.270-11 SUCCESSORS BOUND (SEP 1999)

This lease shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors, and assigns.

#### 3. 552.270-23 SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT (SEP 1999)

(a) Lessor warrants that it holds such title to or other interest in the premises and other property as is necessary to the Government's access to the premises and full use and enjoyment thereof in accordance with the provisions of this lease. Government agrees, in consideration of the warranties and conditions set forth in this clause, that this lease is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this lease. Government agrees, however, within twenty (20) business days next following the Contracting Officer's receipt of a written demand, to execute such instruments as Lessor may reasonably request to evidence further the subordination of this lease to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by Lessor if such easement does not interfere with the full enjoyment of any right granted the Government under this lease.

(b) No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this lease so long as the Government is not in default under this lease. Lessor will include in any future mortgage, deed of trust or other security instrument to which this lease becomes subordinate, or in a separate non-disturbance agreement, a provision to the foregoing effect. Lessor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the Contracting Officer promptly upon demand.

(c) In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the Lessor under this lease, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such purchasers or transferees and the Government; provided, further, that the Contracting Officer and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this lease, or other writings, as shall be necessary to document the foregoing relationship.

(d) None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

#### 4. 552.270-24 STATEMENT OF LEASE (SEP 1999)

(a) The Contracting Officer will, within thirty (30) days next following the Contracting Officer's receipt of a joint written request from Lessor and a prospective lender or purchaser of the building, execute and deliver to Lessor a letter stating that the same is issued subject to the conditions stated in this clause and, if such is the case, that (1) the lease is in full force and effect; (2) the date to which the rent and other charges have been paid in advance, if any; and (3) whether any notice of default has been issued.

(b) Letters issued pursuant to this clause are subject to the following conditions:

(1) That they are based solely upon a reasonably diligent review of the Contracting Officer's lease file as of the date of issuance;

(2) That the Government shall not be held liable because of any defect in or condition of the premises or building;

(3) That the Contracting Officer does not warrant or represent that the premises or building comply with applicable Federal, State and local law; and

(4) That the Lessor, and each prospective lender and purchaser are deemed to have constructive notice of such facts as would be ascertainable by reasonable pre-purchase and pre-commitment inspection of the Premises and Building and by inquiry to appropriate Federal, State and local Government officials.

#### 5. 552.270-25 SUBSTITUTION OF TENANT AGENCY (SEP 1999)

The Government may, at any time and from time to time, substitute any Government agency or agencies for the Government agency or agencies, if any, named in the lease.

#### 6. 552.270-26 NO WAIVER (SEP 1999)

No failure by either party to insist upon the strict performance of any provision of this lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent or other performance by either party during the continuance of any such breach shall constitute a waiver of any such breach of such provision.

#### 7. INTEGRATED AGREEMENT (JUN 2012)

This Lease, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of the Lease. Except as expressly attached to and made a part of the Lease, neither the Request for Lease Proposals nor any pre-award communications by either party shall be incorporated in the Lease.

#### 8. 552.270-28 MUTUALITY OF OBLIGATION (SEP 1999)

The obligations and covenants of the Lessor, and the Government's obligation to pay rent and other Government obligations and covenants, arising under or related to this Lease, are interdependent. The Government may, upon issuance of and delivery to Lessor of a final decision asserting a claim against Lessor, set off such claim, in whole or in part, as against any payment or payments then or thereafter due the Lessor under this lease. No setoff pursuant to this clause shall constitute a breach by the Government of this lease.

#### 9. DELIVERY AND CONDITION (JAN 2011)

(a) Unless the Government elects to have the space occupied in increments, the space must be delivered ready for occupancy as a complete unit.

(b) The Government may elect to accept the Space notwithstanding the Lessor's failure to deliver the Space substantially complete; if the Government so elects, it may reduce the rent payments.

#### 10. DEFAULT BY LESSOR (APR 2012)

(a) The following conditions shall constitute default by the Lessor, and shall give rise to the following rights and remedies for the Government:

(1) Prior to Acceptance of the Premises. Failure by the Lessor to diligently perform all obligations required for Acceptance of the Space within the times specified, without excuse, shall constitute a default by the Lessor. Subject to provision of notice of default to the Lessor, and provision of a reasonable opportunity for the Lessor to cure its default, the Government may terminate the Lease on account of the Lessor's default.

(2) After Acceptance of the Premises. Failure by the Lessor to perform any service, to provide any item, or satisfy any requirement of this Lease, without excuse, shall constitute a default by the Lessor. Subject to provision of notice of default to the Lessor, and provision of a reasonable opportunity for the Lessor to cure its default, the Government may perform the service, provide the item, or obtain satisfaction of the requirement by its own employees or contractors. If the Government elects to take such action, the Government may deduct from rental payments its costs incurred in connection with taking the action. Alternatively, the Government may reduce the rent by an amount reasonably calculated to approximate the cost or value of the service not performed, item not provided, or requirement not satisfied, such reduction effective as of the date of the commencement of the default condition.

(3) Grounds for Termination. The Government may terminate the Lease if:

(i) The Lessor's default persists notwithstanding provision of notice and reasonable opportunity to cure by the Government, or

of default conditions,

(ii) The Lessor fails to take such actions as are necessary to prevent the recurrence

and such conditions (i) or (ii) substantially impair the safe and healthful occupancy of the Premises, or render the Space unusable for its intended purposes.

(4) Excuse. Failure by the Lessor to timely deliver the Space or perform any service, provide any item, or satisfy any requirement of this Lease shall not be excused if its failure in performance arises from:

(i) Circumstances within the Lessor's control;

(ii) Circumstances about which the Lessor had actual or constructive knowledge prior to the Lease Award Date that could reasonably be expected to affect the Lessor's capability to perform, regardless of the Government's knowledge of such matters;

- (iii) The condition of the Property;
- (iv) The acts or omissions of the Lessor, its employees, agents or contractors; or

(v) The Lessor's inability to obtain sufficient financial resources to perform its obligations.

(5) The rights and remedies specified in this clause are in addition to any and all remedies to which the Government may be entitled as a matter of law.

#### 11. 552.270-19 PROGRESSIVE OCCUPANCY (SEP 1999)

The Government shall have the right to elect to occupy the space in partial increments prior to the substantial completion of the entire leased premises, and the Lessor agrees to schedule its work so as to deliver the space incrementally as elected by the Government. The Government shall pay rent commencing with the first business day following substantial completion of the entire leased premise unless the Government has elected to occupy the leased premises incrementally. In case of incremental occupancy, the Government shall pay rent pro rata upon the first business day following substantial completion of each incremental unit. Rental payments shall become due on the first workday of the month following the month in which an increment of space is substantially complete, except that should an increment of space be substantially completed after the fifteenth day of the month, the payment due date will be the first workday of the second month following the month in which it was substantially complete. The commencement date of the firm lease term will be a composite determined from all rent commencement dates.

#### 12. MAINTENANCE OF THE PROPERTY, RIGHT TO INSPECT (JAN 2011)

The Lessor shall maintain the Property, including the building, building systems, and all equipment, fixtures, and appurtenances furnished by the Lessor under this Lease, in good repair and tenantable condition so that they are suitable in appearance and capable of supplying such heat, air conditioning, light, ventilation, safety systems, access and other things to the premises, without reasonably preventable or recurring disruption, as is required for the Government's access to, occupancy, possession, use and enjoyment of the premises as provided in this lease. For the purpose of so maintaining the premises, the Lessor may at reasonable times enter the premises with the approval of the authorized Government representative in charge. Upon request of the LCO, the Lessor shall provide written documentation that building systems have been properly maintained, tested, and are operational within manufacturer's warranted operating standards. The Lessor shall maintain the Premises in a safe and healthful condition according to applicable OSHA standards and all other requirements of this Lease, including standards governing indoor air quality, existence of mold and other biological hazards, presence of hazardous materials, etc. The Government shall have the right, at any time after the Lease Award Date and during the term of the Lease, to inspect all areas of the Property to which access is necessary for the purpose of determining the Lessor's compliance with this clause.

#### 13. FIRE AND CASUALTY DAMAGE (SEP 2011)

If the building in which the Premises are located is totally destroyed by fire or other casualty, this Lease shall immediately terminate. If the building in which the Premises are located are only partially destroyed or damaged, so as to render the Premises untenantable, or not usable for their intended purpose, the Lessor shall have the option to elect to repair and restore the Premises or terminate the Lease. The Lessor shall be permitted a reasonable amount of time, not to exceed **270 days** from the event of destruction or damage, to repair or restore the Premises, provided that the Lessor submits to the Government a reasonable schedule for repair of the Premises within **60 days** of the event of destruction or damage. If the Lessor fails to timely submit a reasonable schedule for completing the work, the Government may elect to terminate the Lease effective as of the date of the event of destruction or damage, or fails to diligently pursue such repairs or restore the Premises within **270 days** from the event of destruction or damage, or fails to diligently pursue such repairs or restore the Premises within **270 days** from the event of damage. During the time that the Premises are unoccupied, rent shall be abated. Termination of the Lease by either party under this clause shall not give rise to liability for either party.

This clause shall not apply if the event of destruction or damage is caused by the Lessor's negligence or willful misconduct.

#### 14. COMPLIANCE WITH APPLICABLE LAW (JAN 2011)

Lessor shall comply with all Federal, state and local laws applicable to its ownership and leasing of the Property, including, without limitation, laws applicable to the construction, ownership, alteration or operation of all buildings, structures, and facilities located thereon, and obtain all necessary permits, licenses and similar items at its own expense. The Government will comply with all Federal, State and local laws applicable to and enforceable against

it as a tenant under this lease, provided that nothing in this Lease shall be construed as a waiver of the sovereign immunity of the Government. This Lease shall be governed by Federal law.

#### 15. 552.270-12 ALTERATIONS (SEP 1999)

The Government shall have the right during the existence of this lease to make alterations, attach fixtures, and erect structures or signs in or upon the premises hereby leased, which fixtures, additions or structures so placed in, on, upon, or attached to the said premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government. If the lease contemplates that the Government is the sole occupant of the building, for purposes of this clause, the leased premises include the land on which the building is sited and the building itself. Otherwise, the Government shall have the right to tie into or make any physical connection with any structure located on the property as is reasonably necessary for appropriate utilization of the leased space.

#### 16. ACCEPTANCE OF SPACE AND CERTIFICATE OF OCCUPANCY (JAN 2011)

(a) Ten (10) working days prior to the completion of the Space, the Lessor shall issue written notice to the Government to schedule the inspection of the Space for acceptance. The Government shall accept the Space only if the construction of building shell and TIs conforming to this Lease and the approved DIDs is substantially complete, and a Certificate of Occupancy has been issued as set forth below.

(b) The Space shall be considered substantially complete only if the Space may be used for its intended purpose and completion of remaining work will not unreasonably interfere with the Government's enjoyment of the Space. Acceptance shall be final and binding upon the Government with respect to conformance of the completed TIs to the approved DIDs, with the exception of items identified on a punchlist generated as a result of the inspection, concealed conditions, latent defects, or fraud, but shall not relieve the Lessor of any other Lease requirements.

(c) The Lessor shall provide a valid Certificate of Occupancy, issued by the local jurisdiction, for the intended use of the Government. If the local jurisdiction does not issue Certificates of Occupancy or if the Certificate of Occupancy is not available, the Lessor may obtain satisfaction of this condition by obtaining the services of a licensed fire protection engineer to verify that the offered space meets all applicable local codes and ordinances to ensure an acceptable level of safety is provided. Under such circumstances, the Government shall only accept the Space without a Certificate of Occupancy if a licensed fire protection engineer that the offered space is compliant with all applicable local codes and ordinances.

#### 17. 52.204-7 CENTRAL CONTRACTOR REGISTRATION (FEB 2012)

#### (a) <u>Definitions</u>. As used in this clause----

"Central Contractor Registration (CCR) database" means the primary Government repository for Contractor information required for the conduct of business with the Government.

"Data Universal Numbering System (DUNS) number" means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

"Data Universal Numbering System +4 (DUNS+4) number" means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same concern.

"Registered in the CCR database" means that-

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record "Active". The Contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.

(b) (1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS +4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

(i) Via the Internet at <u>http://fedgov.dnb.com/webform</u> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

- (2) The offeror should be prepared to provide the following information:
  - (i) Company legal business.
  - (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.
  - (iii) Company Physical Street Address, City, State, and ZIP Code.
  - (iv) Company Mailing Address, City, State and ZIP Code (if separate from physical).
  - (v) Company Telephone Number.
  - (vi) Date the company was started.
  - (vii) Number of employees at your location.
  - (viii) Chief executive officer/key manager.
  - (ix) Line of business (industry).
  - (x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g) (1) (i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in <u>Subpart 42.12</u>, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of <u>Subpart 42.12</u> of the FAR; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR <u>Subpart 32.8</u>, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via CCR accessed through https://www.acquisition.gov or by calling 1-888-227-2423, or 269-961-5757.

#### 18. 552.270-31 PROMPT PAYMENT (JUN 2011)

The Government will make payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. All days referred to in this clause are calendar days, unless otherwise specified.

#### (a) Payment due date-

(1) *Rental payments.* Rent shall be paid monthly in arrears and will be due on the first workday of each month, and only as provided for by the lease.

(i) When the date for commencement of rent falls on the 15th day of the month or earlier, the initial monthly rental payment under this contract shall become due on the first workday of the month following the month in which the commencement of the rent is effective.

(ii) When the date for commencement of rent falls after the 15th day of the month, the initial monthly rental payment under this contract shall become due on the first workday of the second month following the month in which the commencement of the rent is effective.

(2) *Other payments.* The due date for making payments other than rent shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the

Contractor.

(ii) The 30th day after Government acceptance of the work or service. However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date shall be deemed to be the 30th day after the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

#### (b) Invoice and inspection requirements for payments other than rent.

(1) The Contractor shall prepare and submit an invoice to the designated billing office after completion of the work. A proper invoice shall include the following items:

- (i) Name and address of the Contractor.
- (ii) Invoice date.
- (iii) Lease number.
- (iv) Government's order number or other authorization.
- (v) Description, price, and quantity of work or services delivered.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the remittance address in the lease or the order).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(2) The Government will inspect and determine the acceptability of the work performed or services delivered within seven days after the receipt of a proper invoice or notification of completion of the work or services unless a different period is specified at the time the order is placed. If actual acceptance occurs later, for the purpose of determining the payment due date and calculation of interest, acceptance will be deemed to occur on the last day of the seven day inspection period. If the work or service is rejected for failure to conform to the technical requirements of the contract, the seven days will be counted beginning with receipt of a new invoice or notification. In either case, the Contractor is not entitled to any payment or interest unless actual acceptance by the Government occurs.

(c) Interest Penalty.

(1) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made by the due date.

(2) The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date.

(3) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233–1, Disputes, or for more than one year. Interest penalties of less than \$1.00 need not be paid.

(4) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(d) *Overpayments.* If the Lessor becomes aware of a duplicate payment or that the Government has otherwise overpaid on a payment, the Contractor shall—

(1) Return the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(i) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected lease number; (iii) Affected lease line item or sub-line item, if applicable; and

(iii) Lessor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

#### 19. 552.232-23 ASSIGNMENT OF CLAIMS (SEP 1999) (Applicable to leases over \$3000.)

In order to prevent confusion and delay in making payment, the Contractor shall not assign any claim(s) for amounts due or to become due under this contract. However, the Contractor is permitted to assign separately to a bank, trust company, or other financial institution, including any Federal lending agency, under the provisions of the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereinafter referred to as "the Act"), all amounts due or to become due under any order amounting to \$1,000 or more issued by any Government agency under this contract. Any such assignment takes effect only if and when the assignee files written notice of the assignment together with a true copy of the instrument of assignment with the contracting officer issuing the order and the finance office designated in the order to make payment. Unless otherwise stated in the order, payments to an assignee of any amounts due or to become due under any order any order assigned may, to the extent specified in the Act, be subject to reduction or set-off.

#### 20. 552.270-20 PAYMENT (MAY 2011)

(a) When space is offered and accepted, the amount of American National Standards Institute/Building Owners and Managers Association Office Area (ABOA) square footage delivered will be confirmed by:

(1) The Government's measurement of plans submitted by the successful Offeror as approved by the Government, and an inspection of the space to verify that the delivered space is in conformance with such plans or

(2) A mutual on-site measurement of the space, if the Contracting Officer determines that it is necessary.

(b) Payment will not be made for space which is in excess of the amount of ABOA square footage stated in the lease.

(c) If it is determined that the amount of ABOA square footage actually delivered is less than the amount agreed to in the lease, the lease will be modified to reflect the amount of ABOA space delivered and the annual rental will be adjusted as follows:

ABOA square feet not delivered multiplied by one plus the common area factor (CAF), multiplied by the rate per rentable square foot (RSF). That is: (1+CAF) x Rate per RSF = Reduction in Annual Rent

#### 21. 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER—CENTRAL CONTRACTOR REGISTRATION (OCT 2003)

(a) Method of payment.

(1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) Contractor's *EFT information*. The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) *Mechanisms for EFT payment*. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR Part 210.

(d) Suspension of payment. If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) Liability for uncompleted or erroneous transfers.

(1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for—

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(f) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) *EFT* and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the CCR database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to <u>Subpart 32.8</u>, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other

than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(i) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

#### 22. 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (APR 2010) (Applicable to leases over \$5 million and performance is over 120 days.)

(a) Definitions. As used in this clause-

"Agent" means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.

"Full cooperation"—

(1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors' and investigators' request for documents and access to employees with information;

(2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require—

(i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and

(3) Does not restrict a Contractor from—

(i) Conducting an internal investigation; or

(ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

"Principal" means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a division or business segment; and similar positions).

"Subcontract" means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

"Subcontractor" means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

"United States," means the 50 States, the District of Columbia, and outlying areas.

(b) Code of business ethics and conduct.

(1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall—

(i) Have a written code of business ethics and conduct; and

(ii) Make a copy of the code available to each employee engaged in performance of the contract.

(2) The Contractor shall—

(i) Exercise due diligence to prevent and detect criminal conduct; and

(ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

(3) (i) The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed—

(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or

(B) A violation of the civil False Claims Act (<u>31 U.S.C. 3729-3733</u>).

(ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, <u>5 U.S.C. Section 552</u>, without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.

(iii) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.

(c) Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial item as defined at FAR 2.101. The Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:

(1) An ongoing business ethics awareness and compliance program.

(i) This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor's standards and procedures and other aspects of the Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.

(ii) The training conducted under this program shall be provided to the Contractor's principals and employees, and as appropriate, the Contractor's agents and subcontractors.

(2) An internal control system.

(i) The Contractor's internal control system shall-

(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) At a minimum, the Contractor's internal control system shall provide for the following:

(A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor's code of business ethics and conduct.

(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting, including—

Monitoring and auditing to detect criminal conduct;

• Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and

• Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).

• If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.

• If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.

• The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

• The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

#### (d) Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of \$5,000,000 and a performance period of more than 120 days.

(2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

#### 23. 552.270-32 COVENANT AGAINST CONTINGENT FEES (JUN 2011) (Applicable to leases over \$150,000.)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

(b) Bona fide agency, as used in this clause, means an established commercial or selling agency (including licensed real estate agents or brokers), maintained by a Contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

(1) Bona fide employee, as used in this clause, means a person, employed by a Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

(2) Contingent fee, as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

(3) Improper influence, as used in this clause, means any influence that induces or tends to induce a *Government* employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

#### 24. 52.203-7 ANTI-KICKBACK PROCEDURES (OCT 2010)

(Applicable to leases over \$150,000 average net annual rental including option periods.)

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contractor in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from-

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(5)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(5)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including paragraph (c)(5) but excepting paragraph (c)(1), in all subcontracts under this contract which exceed \$150,000.

#### 25. 52.223-6 DRUG-FREE WORKPLACE (MAY 2001)

(a) Definitions. As used in this clause-

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an Offeror/Contractor that has no more than one employee including the Offeror/Contractor.

(b) The Contractor, if other than an individual, shall—within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration—

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about—

Any available drug counseling, rehabilitation, and employee assistance

- (i) The dangers of drug abuse in the workplace;
- (ii) The Contractor's policy of maintaining a drug-free workplace;

programs; and

(iii)

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including

termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

#### 26. 52.203-14 DISPLAY OF HOTLINE POSTERS(S) (DEC 2007) (Applicable to leases over \$5 Million.)

(a) Definition.

"United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) Display of fraud hotline poster(s). Except as provided in paragraph (c)-

(1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites—

(i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

Poster(s) Obtain from

(Contracting Officer shall insert-

(i) Appropriate agency name(s) and/or title of applicable Department of Homeland Security fraud hotline poster); and

(ii) The website(s) or other contact information for obtaining the poster(s).)

(c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5,000,000, except when the subcontract—

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.

#### 27. 552.270-30 PRICE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JUN 2011) (Applicable to leases over \$100,000.)

(a) If the head of the contracting activity (HCA) or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the Federal Acquisition Regulation, the Government, at its election, may—

(1) Reduce the monthly rental under this lease by five percent of the amount of the rental for each month of the remaining term of the lease, including any option periods, and recover five percent of the rental already paid;

(2) Reduce payments for alterations not included in monthly rental payments by five percent of the amount of the alterations agreement; or

(3) Reduce the payments for violations by a Lessor's subcontractor by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was placed.

(b) Prior to making a determination as set forth above, the HCA or designee shall provide to the Lessor a written notice of the action being considered and the basis thereof. The Lessor shall have a period determined by the agency head or designee, but not less than 30 calendar days after receipt of such notice, to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The agency head or designee may, upon good cause shown, determine to deduct less than the above amounts from payments.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this lease.

#### 28. 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (AUG 2011) (Applicable when cost or pricing data are required for work or services over \$700,000.)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because-

(1) The Contractor or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor certified cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the

amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.

(c) (1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the certified cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or

Pricing Data.

(2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the certified cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if-

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted certified cost or pricing data that were incomplete, inaccurate, or noncurrent.

#### 29. 552.270-13 PROPOSALS FOR ADJUSTMENT (SEP 1999)

(a) The Contracting Officer may, from time to time during the term of this lease, require changes to be made in the work or services to be performed and in the terms or conditions of this lease. Such changes will be required under the Changes clause.

(b) If the Contracting Officer makes a change within the general scope of the lease, the Lessor shall submit, in a timely manner, an itemized cost proposal for the work to be accomplished or services to be performed when the cost exceeds \$100,000. The proposal, including all subcontractor work, will contain at least the following detail—

- (1) Material quantities and unit costs;
- (2) Labor costs (identified with specific item or material to be placed or operation to be performed;
- (3) Equipment costs;
- (4) Worker's compensation and public liability insurance;
- (5) Overhead;
- (6) Profit; and
- (7) Employment taxes under FICA and FUTA.

(c) The following Federal Acquisition Regulation (FAR) provisions also apply to all proposals exceeding \$500,000 in cost—

(1) The Lessor shall provide cost or pricing data including subcontractor cost or pricing data (48 CFR 15.403-4) and

(2) The Lessor's representative, all Contractors, and subcontractors whose portion of the work exceeds \$500,000 must sign and return the "Certificate of Current Cost or Pricing Data" (48 CFR 15.406-2).

(d) Lessors shall also refer to 48 CFR Part 31, Contract Cost Principles, for information on which costs are allowable, reasonable, and allocable in Government work.

#### 30. CHANGES (SEP 2011)

(a) The LCO may at any time, by written order, direct changes to the Tenant Improvements within the Space, Building Security Requirements, or the services required under the Lease.

(b) If any such change causes an increase or decrease in Lessor's costs or time required for performance of its obligations under this Lease, whether or not changed by the order, the Lease shall be amended to provide for one or more of the following:

- (1) An adjustment of the delivery date;
- (2) An equitable adjustment in the rental rate;
- (3) A lump sum equitable adjustment; or
- (4) A change to the operating cost base, if applicable.

(c) The Lessor shall assert its right to an amendment under this clause within 30 days from the date of receipt of the change order and shall submit a proposal for adjustment. Failure to agree to any adjustment

shall be a dispute under the Disputes clause. However, the pendency of an adjustment or existence of a dispute shall not excuse the Lessor from proceeding with the change as directed.

(d) Absent a written change order from the LCO, or from a Government official to whom the LCO has explicitly and in writing delegated the authority to direct changes, the Government shall not be liable to Lessor under this clause.

## 31. 552.215-70 EXAMINATION OF RECORDS BY GSA (FEB 1996)

The Contractor agrees that the Administrator of General Services or any duly authorized representative shall, until the expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to this contract or compliance with any clauses thereunder. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Administrator of General Services or any duly authorized representatives shall, until the expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of such subcontractor involving transactions related to the subcontract or compliance with any clauses thereunder. The term "subcontract" as used in this clause excludes (a) purchase orders not exceeding \$100,000 and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

#### 32. 52.215-2 AUDIT AND RECORDS—NEGOTIATION (OCT 2010)

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price re-determinable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) Certified *cost or pricing data*. If the Contractor has been required to submit certified cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the certified cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

- (1) The proposal for the contract, subcontract, or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the contract, subcontract, or modification; or
- (4) Performance of the contract, subcontract or modification.
- (d) Comptroller General-

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating—

(1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and

(2) The data reported.

(f) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in <u>Subpart 4.7</u>, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and—

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price re-determinable type or any combination of these;

- (2) For which certified cost or pricing data are required; or
- (3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this

clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

#### 33. 52.233-1 DISPUTES (JUL 2002)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

#### 34. 52.222-26 EQUAL OPPORTUNITY (MAR 2007)

(a) *Definition.* "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) (1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

(c) (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an

Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion;
- (iv) Transfer;
- (v) Recruitment or recruitment advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and

remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

#### 35. 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

## 36. 52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REPRESENTATION (APR 2009).

#### (a) *Definitions*. As used in this clause—

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at <u>52.217-8</u>, Option to Extend Services, or other appropriate authority.

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause. Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall re-represent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts—

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) The Contractor shall re-represent its size status in accordance with the size standard in effect at the time of this re-representation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding to this NAICS code can be found at <u>http://www.sba.gov/services/contractingopportunities/sizestandardstopics/</u>.

(d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

(e) Except as provided in paragraph (g) of this clause, the Contractor shall make the rerepresentation required by paragraph (b) of this clause by validating or updating all its representations in the Online Representations and Certifications Application and its data in the Central Contractor Registration, as necessary, to ensure that they reflect the Contractor's current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause that the data have been validated or updated, and provide the date of the validation or update.

(f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.

(g) If the Contractor does not have representations and certifications in ORCA, or does not have a representation in ORCA for the NAICS code applicable to this contract, the Contractor is required to complete the following re-representation and submit it to the contracting office, along with the contract number and the date on which the re-representation was completed:

The Contractor represents that it is, is not a small business concern under NAICS Code \_\_\_\_\_assigned to contract number \_\_\_\_\_\_

[Contractor to sign and date and insert authorized signer's name and title].

**37. 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (SEP 2010)** (Applicable to leases over \$100,000.)

(a) Definitions. As used in this clause-

"All employment openings" means all positions except executive and senior management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

"Armed Forces service medal veteran" means any veteran who, while serving on active duty in the U.S. military, ground, naval, or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).

"Disabled veteran" means----

(1) A veteran of the U.S. military, ground, naval, or air service, who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or

(2) A person who was discharged or released from active duty because of a service-

"Executive and senior management" means-

(1) Any employee

(i) Compensated on a salary basis at a rate of not less than \$455 per week (or \$380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities;

(ii) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

employees; and

(iii) Who customarily and regularly directs the work of two or more other

(iv) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; or

(2) Any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

"Other protected veteran" means a veteran who served on active duty in the U.S. military, ground, naval, or air service, during a war or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.

"Positions that will be filled from within the Contractor's organization" means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

"Qualified disabled veteran" means a disabled veteran who has the ability to perform the essential functions of the employment positions with or without reasonable accommodation.

"Recently separated veteran" means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval or air service.

(b) General.

(1) The Contractor shall not discriminate against any employee or applicant for employment because the individual is a disabled veteran, recently separated veteran, other protected veterans, or Armed Forces service medal veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified individuals, including qualified disabled veterans, without discrimination based upon their status as a disabled veteran, recently separated veteran, Armed Forces service medal veteran, and other protected veteran in all employment practices including the following:

(i) Recruitment, advertising, and job application procedures.

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.

(iii) Rate of pay or any other form of compensation and changes in compensation.

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.

(v) Leaves of absence, sick leave, or any other leave.

Contractor.

(vi) Fringe benefits available by virtue of employment, whether or not administered by the

(vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training.

(viii) Activities sponsored by the Contractor including social or recreational programs.

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(3) The Department of Labor's regulations require contractors with 50 or more employees and a contract of \$100,000 or more to have an affirmative action program for veterans. See 41 CFR Part 60-300, Subpart C.

(c) Listing openings.

(1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate employment service delivery system where the opening occurs. Listing employment openings with the State workforce agency job bank or with the local employment service delivery system.

(2) The Contractor shall make the listing of employment openings with the appropriate employment service delivery system at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State workforce agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) *Applicability*. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

INITIALS: \_\_\_\_\_\_ & \_\_\_\_\_ GOVERNMENT

#### (e) Postings.

(1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall-

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are disabled veterans, recently separated veterans, Armed Forces service medal veterans, and other protected veterans; and

(ii) Be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor. This includes implementing any sanctions imposed on a contractor by the Department of Labor for violations of this clause (52.222-35, Equal Opportunity for Veterans). These sanctions (see 41 CFR 60-300.66) may include—

- (1) Withholding progress payments;
- (2) Termination or suspension of the contract; or
- (3) Debarment of the contractor.

(g) Subcontracts. The Contractor shall insert the terms of this clause in subcontracts of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance.

# **38. 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (OCT 2010)** (Applicable to leases over \$15,000.)

(a) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as—

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

Contractor;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

- (viii) Activities sponsored by the Contractor, including social or recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

- (b) Postings.
  - (1) The Contractor agrees to post employment notices stating—

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

# **39. 52.222-37 EMPLOYMENT REPORTS VETERANS (SEP 2010)** (Applicable to leases over \$100,000.)

(a) *Definitions*. As used in this clause, "Armed Forces service medal veteran," "disabled veteran," "other protected veteran," and "recently separated veteran," have the meanings given in the Equal Opportunity for Veterans clause <u>52.222-35</u>.

(b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(1) The total number of employees in the contractor's workforce, by job category and hiring location, who are disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans.

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans; and

(3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.

(c) The Contractor shall report the above items by completing the Form VETS-100A, entitled "Federal Contractor Veterans' Employment Report (VETS-100A Report)."

(d) The Contractor shall submit VETS-100A Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date—

due; or

(1) As of the end of any pay period between July 1 and August 31 of the year the report is

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-100A. The contractor's knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under <u>38 U.S.C. 4212</u>.

(g) The Contractor shall insert the terms of this clause in subcontracts of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

# 40. 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (DEC 2010) (Applicable to leases over \$30,000.)

- (a) Definition. "Commercially available off-the-shelf (COTS)" item, as used in this clause-
  - (1) Means any item of supply (including construction material) that is-
    - (i) A commercial item (as defined in paragraph (1) of the definition in FAR 2.101);
    - (ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (<u>46 U.S.C.</u> <u>App. 1702</u>), such as agricultural products and petroleum products.

(b) The Government suspends or debars Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract, in excess of \$30,000 with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed \$30,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(d) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the Excluded Parties List System). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being in the Excluded Parties List System.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(e) Subcontracts. Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that—

(1) Exceeds \$30,000 in value; and

(2) Is not a subcontract for commercially available off-the-shelf items.

#### 41. 52.215-12 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (OCT 2010) (Applicable if over \$700,000.)

(a) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of certified cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either—

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of certified cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Certified Cost or Pricing Data— Modifications.

#### 42. 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (JAN 2011)

(Applicable to leases over \$150,000 average net annual rental, including option periods.)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, business concerns, small business concerns, business c

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) Definitions. As used in this contract—

"HUBZone small business concern" means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

"Service-disabled veteran-owned small business concern"----

(1) Means a small business concern-

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Small disadvantaged business concern" means a small business concern that represents, as part of its offer that—

(1) (i) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;

(ii) No material change in disadvantaged ownership and control has occurred since

its certification;

(iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the CCR Dynamic Small Business Search database maintained by the Small Business Administration, or

(2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.

"Veteran-owned small business concern" means a small business concern-

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

veterans.

(2) The management and daily business operations of which are controlled by one or more

"Women-owned small business concern" means a small business concern-

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

women.

(2) Whose management and daily business operations are controlled by one or more

(d) (1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(2) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting the SBA. Options for contacting the SBA include—

(i) HUBZone small business database search application web page at <a href="http://dsbs.sba.gov/dsbs/search/dsp\_searchhubzone.cfm">http://dsbs.sba.gov/dsbs/search/dsp\_searchhubzone.cfm</a>; or <a href="http://www.sba.gov/hubzone">http://www.sba.gov/hubzone</a>;

(ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416; or

(iii) The SBA HUB Zone Help Desk at hubzone@sba.gov.

# 43. 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2011) ALTERNATE III (JULY 2010 (Applicable to leases over \$650,000.)

(a) This clause does not apply to small business concerns.

(b) Definitions. As used in this clause-

"Alaska Native Corporation (ANC)" means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (<u>43 U.S.C. 1601</u>, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at <u>43 U.S.C. 1626(e)(1)</u>. This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of <u>43 U.S.C. 1626(e)(2)</u>.

"Commercial item" means a product or service that satisfies the definition of commercial item in section <u>2.101</u> of the Federal Acquisition Regulation.

"Commercial plan" means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

"Electronic Subcontracting Reporting System (eSRS)" means the Governmentwide, electronic, webbased system for small business subcontracting program reporting. The eSRS is located at <u>http://www.esrs.gov</u>.

"Indian tribe" means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (<u>43 U.S.C.A. 1601</u> et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with <u>25 U.S.C. 1452(c)</u>. This definition also includes Indian-owned economic enterprises that meet the requirements of <u>25 U.S.C. 1452(e)</u>.

"Individual contract plan" means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

"Master plan" means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

"Subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all sub-contracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with <u>43 U.S.C. 1626</u>:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of-

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

concerns:

(iii) Total dollars planned to be subcontracted to veteran-owned small business

small business;

- (iv) Total dollars planned to be subcontracted to service-disabled veteran-owned
- (v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

concerns.

(vii) Total dollars planned to be subcontracted to women-owned small business

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

- (i) Small business concerns;
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;

- (v) Small disadvantaged business concerns; and
- (vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Central Contractor Registration database (CCR), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of CCR as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

- (i) Small business concerns (including ANC and Indian tribes);
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteranowned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$650,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

- (10) Assurances that the offeror will—
  - (i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (I) of this clause. Submit the Summary Subcontract Report (SSR), in accordance with paragraph (I) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <u>http://www.esrs.gov</u>. The reports shall provide information on subcontract awards to small business concerns, (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations; and

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the SF 294 in accordance with paragraph (I) of this clause. Ensure that its subcontractors with subcontracting plans agree to submit the SSR in accordance with paragraph (I) of this clause using the eSRS.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., CCR), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

. . . . .

(III) \$150,000, indicating—	Records on each subcontract solicitation resulting in an award of more than		
	(A)	Whether small business concerns were solicited and, if not, why not;	
not, why not;	(B)	Whether veteran-owned small business concerns were solicited and, if	
solicited and, if not, why not;	(C)	Whether service-disabled veteran-owned small business concerns were	
not;	(D)	Whether HUBZone small business concerns were solicited and, if not, why	
why not;	(E)	Whether small disadvantaged business concerns were solicited and, if not,	
why not; and	(F)	Whether women-owned small business concerns were solicited and, if not,	
	(G)	If applicable, the reason award was not made to a small business concern.	
(iv)	Reco	rds of any outreach efforts to contact—	
	(A)	Trade associations;	
	(B)	Business development organizations;	

....

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and

- (D) Veterans service organizations.
- (v) Records of internal guidance and encouragement provided to buyers through—
  - (A) Workshops, seminars, training, etc.; and
  - (B) Monitoring performance to evaluate compliance with the program's

requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteranowned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or womenowned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided—

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one plan. When a modification meets the criteria in <u>19.702</u> for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at <u>52.212-5</u>, Contract Terms and Conditions Required to Implement Statutes or Executive Orders— Commercial Items, or when the subcontractor provides a commercial item subject to the clause at <u>52.244-6</u>, Subcontracts for Commercial Items, under a prime contract.

- (k) The failure of the Contractor or subcontractor to comply in good faith with-
  - (1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or
  - (2) An approved plan required by this clause, shall be a material breach of the contract.

(I) The Contractor shall submit a SF 294. The Contractor shall submit SSRs using the web-based eSRS at <u>http://www.esrs.gov</u>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) SF 294. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan. For prime contractors the report shall be submitted to the contracting officer, or as specified elsewhere in this contract. In the case of a subcontract with a subcontracting plan, the report shall be submitted to the entity that awarded the subcontract.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR <u>19.704</u>(c), the dollar goal inserted on this report shall be the sum of the base period

through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(2) SSR. (i) Reports submitted under individual contract plans-

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$550,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve-month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in the eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan-

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(iii) All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

#### 44. 52.219-16 LIQUIDATED DAMAGES—SUBCONTRACTING PLAN (JAN 1999) (Applicable to leases over \$650,000.)

(a) Failure to make a good faith effort to comply with the subcontracting plan, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its

subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

#### 45. 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (FEB 2012) (APPLICABLE IF OVER \$25,000)

(a) Definitions. As used in this clause:

"Executive" means officers, managing partners, or any other employees in management positions.

"First-tier subcontract" means a subcontract awarded directly by a Contractor to furnish supplies or services (including construction) for performance of a prime contract, but excludes supplier agreements with vendors, such as long-term arrangements for materials or supplies that would normally be applied to a Contractor's general and administrative expenses or indirect cost.

"Total compensation" means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(1) Salary and bonus.

(2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.

(3) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

(5) Above-market earnings on deferred compensation which is not tax-qualified.

(6) Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

(c) (1) Unless otherwise directed by the contracting officer, by the end of the month following the month of award of a first-tier subcontract with a value of \$25,000 or more, (and any modifications to these subcontracts that change previously reported data), the Contractor shall report the following information at <a href="http://www.fsrs.gov">http://www.fsrs.gov</a> for each first-tier subcontract. (The Contractor shall follow the instructions at <a href="http://www.fsrs.gov">http://www.fsrs.gov</a> to report the data.)

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

- (ii) Name of the subcontractor.
- (iii) Amount of the subcontract award.
- (iv) Date of the subcontract award.

(v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(vi) Subcontract number (the subcontract number assigned by the Contractor).

(vii) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(viii) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

- (ix) The prime contract number, and order number if applicable.
- (x) Awarding agency name and code.
- (xi) Funding agency name and code.
- (xii) Government contracting office code.
- (xiii) Treasury account symbol (TAS) as reported in FPDS.
- (xiv) The applicable North American Industry Classification System code (NAICS).

(2) By the end of the month following the month of a contract award, and annually thereafter, the Contractor shall report the names and total compensation of each of the five most highly compensated executives for the Contractor's preceding completed fiscal year in the Central Contractor Registration (CCR) database via <a href="https://www.acquisition.gov">https://www.acquisition.gov</a>, if—

(i) In the Contractor's preceding fiscal year, the Contractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (<u>15 U.S.C. 78m(a), 78o(d)</u>) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <u>http://www.sec.gov/answers/execomp.htm.</u>)

(3) Unless otherwise directed by the contracting officer, by the end of the month following the month of a first-tier subcontract with a value of \$25,000 or more, and annually thereafter, the Contractor shall report the names and total compensation of each of the five most highly compensated executives for each first-tier subcontractor for the subcontractor's preceding completed fiscal year at <a href="http://www.fsrs.gov">http://www.fsrs.gov</a>, if—

In the subcontractor's preceding fiscal year, the subcontractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <u>http://www.sec.gov/answers/execomp.htm.</u>)

(d) (1) If the Contractor in the previous tax year had gross income, from all sources, under \$300,000, the Contractor is exempt from the requirement to report subcontractor awards.

(2) If a subcontractor in the previous tax year had gross income from all sources under \$300,000, the Contractor does not need to report awards to that subcontractor.

(e) Phase-in of reporting of subcontracts of \$25,000 or more.

(1) Until September 30, 2010, any newly awarded subcontract must be reported if the prime contract award amount was \$20,000,000 or more.

(2) From October 1, 2010, until February 28, 2011, any newly awarded subcontract must be reported if the prime contract award amount was \$550,000 or more.

(3) Starting March 1, 2011, any newly awarded subcontract must be reported if the prime contract award amount was \$25,000 or more.

Lease Number: HSCG89-13-01-XXXX
ATTACHMENT: "A"



CITY OF ASTORIA Founded 1811 • Incorporated 1856

September 13, 2013

# MEMORANDUM

TO: MAYOR AND CITY COUNCIL FROM: PAUL BENOIT, CITY MANAGER

SUBJECT: 11<sup>TH</sup> STREET CSO SEPARATION PROJECT - PAY ADJUSTMENT NO. 5

# **DISCUSSION/ANALYSIS**

The 11<sup>th</sup> St. Combined Sewer Overflow (CSO) Separation project primarily consists of installing over 10,000 linear feet of new stormwater pipe. In certain instances, existing water and sanitary sewer pipes are being replaced where construction of the new storm pipe compromises the integrity of the existing infrastructure. Due to the extent of utility replacement work along 8<sup>th</sup> St., the entire roadway, from Commercial to Niagara will be rebuilt from curb to curb and most of the sidewalk will be replaced.

The scope of the project includes construction in the following locations:

- 8<sup>th</sup> St. from Commercial to Niagara
- 9<sup>th</sup> St. from Duane to Harrison
- 10<sup>th</sup> St. from Duane to Jerome

11<sup>th</sup> St. from Exchange to Irving

12<sup>th</sup> St. from Exchange to Kensington Irving Ave from 11<sup>th</sup> St. to 12<sup>th</sup> St. 9<sup>th</sup> St. from Marine Dr. to the outfall

In March, Council awarded the construction contract to Tapani, Inc. for the bid amount of \$5,717,177. Staff recommended and Council approved a 15% contingency on this project due to the scope, scale, and potential for encountering unknown conditions during construction. The construction contingency of 15% totals \$857,577.

Pay adjustment No. 5, for \$69,755.12, includes a variety of changes that are itemized below:

A. Work suspension delay for historic trolley tracks at 8 <sup>th</sup> and Commercial	\$17,308.37
B. Early completion incentive for 8 <sup>th</sup> and Commercial intersection	\$10,000.00
C. Addition of 60-inch diameter manhole at 9 <sup>th</sup> and Astor	\$9,493.10
D. Additional labor and materials for ADA ramps	\$6,286.96
E. Remove and restack sewer manhole at 9 <sup>th</sup> and Marine due to conflict	\$4,179.51
F. Conflict with CenturyLink duct and storm pipe at 10 <sup>th</sup> and Jerome	\$4,243.54
G. Storm pipe modification at 8 <sup>th</sup> and Exchange	\$3,810.08
H. Additional asphalt grinder mobilization for paving due to Regatta Parade	\$2,675.00
I. Reset manhole	\$1,444.16
J. Additional construction staking for Work Change Directives and ADA ramp construction	\$10,314.40

The largest line item in this change order is for labor and equipment standby time due to the discovery of the historic trolley rail. City staff has been reviewing and negotiating this cost with Tapani over the past few months. Staff is confident that the \$17,308.37 is fair and reasonable compensation to Tapani for the unforeseen delays.

Included in the specifications for the 11<sup>th</sup> St CSO Separation project was a monetary incentive to complete the 8<sup>th</sup> St and Commercial intersection prior to the contract deadline. This incentive was included in this project for the intersection work and associated highway closure to limit the disruption to the public and local businesses to the shortest duration possible.

This change order also includes cost due to another CenturyLink conflict. This amount of \$4,243.54 will be included in the claim to CenturyLink. Other work associated with this change order was due to adjustments for field conditions and changes that benefit the operation and maintenance of the system.

				Contingency
			Contingency	Balance
Pay Adjustment	Amount	Contract Amount	Balance	Percentage
		\$5,717,177.00	\$857,577.00	100%
1	\$4,391.37	\$5,721,568.37	\$853,185.63	99%
2	\$35,877.10	\$5,757,445.47	\$817,308.53	96%
3	\$69,521.82	\$5,826,967.29	\$747,786.71	91%
4	\$349,562.50	\$6,176,529.79	\$398,224.21	53%
5	\$69,755.12	\$6,246,284.91	\$328,469.09	40%

Following is a summary of the pay adjustments to date:

Staff has been working in close coordination with Tapani to keep the public informed of the project schedule as the work zones change throughout the duration of the project. Operational completion of this project must occur by December 1, 2013 according to the Amended Stipulation and Final Order signed by the City and DEQ.

# RECOMMENDATION

It is recommended that the City Council authorize this pay adjustment for the 11<sup>th</sup> Street CSO Separation project for \$69,755.12. Funds are available for this project through IFA funding.

Submitted By:

Ken P. Cook, Public Works Director

Prepared By: Moore, City Support Engineer



# Astoria <u>engineering</u> <u>division</u>

# CHANGE ORDER #5

DATE:	September 13, 2013
PROJECT:	11 <sup>th</sup> St CSO Separation
CONTRACTOR:	Tapani, Inc.

The purpose of this change order is to account for work not covered in the bid items. This change order amount constitutes total compensation for the changes indicated below.

ltem	Description	Quantity	Unit Cost	Total Cost
	See attached items A through J	1 LS	\$69,755.12	\$69,755.12
		Change	Order Total =	\$69,755.12

This Change Order becomes part of and in conformance with the existing contract. The above changes warrant a <u>0 calendar</u> day time extension.

EXPLANATION:

See attached documentation.

CHANGE ORDER ACCEPTED BY:

City Support Engineer Date

Public Works Director

Date

City Manager

Date

Mayor

Date

# City of Astoria

# **Change Order**

	Page <u>1</u> of <b>2</b>
	Contract Change Order No. 05
Contract Name 11 <sup>th</sup> Street CSO Separation Project	Orig. Contract Amt. <b>\$ \$ 5,717,177.00</b> Days
Contract No. 560736	Prev. Appvd. Changes \$ 459,352.79 Days
Contractor Tapani, Inc.	This Change \$ 69,755.12 Days
Owner City of Astoria	Revised Contract Amt. \$ 6,246,284.91 Days

This Change Order covers changes to the subject contract as described herein. The Contractor shall construct, furnish equipment and materials, and perform all work as necessary or required to complete the Change Order Items for a lump sum price agreed upon between the Contractor and <u>City of Astoria</u> otherwise referred to as Owner. Owner's Name

	Description of Changes	Increase in Contract Amount (\$)	(Decrease) in Contract Amount (\$)	Contract Time Extension (days)
Α.	PCO No. 7A: Work Suspension delay for historical trolley tracks at 8 <sup>th</sup> and Commercial	\$17,308.37		
В.	PCO No. 7B: Early completion incentive for 8 <sup>th</sup> and Commercial intersection (4 days at \$2,500.00/day)	\$10,000.00		
C.	PCO No. 31: Addition of 60-inch diameter manhole at 9 <sup>th</sup> and Astor	\$9,493.10		
D.	PCO No. 35: Cavico Northwest additional labor and materials for ADA Ramp	\$6,286.96		
E.	PCO No. 36: Removal and restacking of SSMH No. 545 at 9 <sup>th</sup> and Marine due to conflict with installation of 28-inch diameter HDPE pipe	\$4,179.51		
F.	PCO No. 39: Conflict with Century Link duct and storm drain installation at 10 <sup>th</sup> and Jerome	\$4,243.54		
G.	PCO No. 40: Storm drain line modification for 10-inch diameter line installation at 8 <sup>th</sup> and Exchange	\$3,810.08		
Н.	PCO No. 42: Additional asphalt grinder mobilization to allow early paving do accommodate Astoria Regatta Parade schedule	\$2,675.00		
1.	PCO No. 43: Resetting MH 410.1	\$1,444.16		
J.	PCO No. 44: Additional construction survey staking as required for WCDs and ADA Ramp construction	\$10,314.40		
	Totals	\$69,755.12		
	Net change in contract amount increase or (decrease)	\$69,755.12		

The amount of the contract will be increased (decreased) by the sum of \$ 69,755.12 and the contract time shall be extended by -0- calendar days. The undersigned Contractor approves the foregoing Change Order as to the changes, if any, in the contract price specified for each item including any and all supervision costs and other miscellaneous costs relating to the change in work, and as to the extension of time allowed, if any, for completion of the entire work on account of said Change Order. The Contractor agrees to furnish all labor and materials and perform all other necessary work, inclusive of the directly or indirectly related to the approved time extension, required to complete the Change order items. This document will become a supplement of the contract and all provisions will apply hereto. It is understood that the Change Order shall be effective when approved by the Owner.

Recommended:	/Construction Manager		Date:	
	(Signature)			
Accepted:	(Signature)	/Contractor	Date:	
Approved:	(Signature)	/Owner	Date:	



September16, 2013

# MEMORANDUM

TO: Mayor Van Dusen and City Council FROM: Paul Benoit, City Manager SUBJECT: Liquor License Application

CITY OF ASTORIA Founded 1811 • Incorporated 1856

## **Discussion & Analysis**

A liquor license application has been filed by Sara Maya-Garcia and Juan Ramirez-Jimenez doing business as Montealban Mexican Restaurant, located at 2975 Marine Drive, Astoria. The application is a New Outlet – Full On-Premises Sales Commercial Establishment License. A copy of the application is attached.

The appropriate departments have reviewed the application. No objections to approval were noted.

## Recommendation

Staff recommends that the City Council consider this application for approval.

Respectfully submitted

Mark Carlson, CPA Finance Director

OREGON LIQUOR CONTROL COMMISSION	DN
Application is being made for:         LICENSE TYPES         ▲ Full On-Premises Sales (\$402.60/yr)         ▲ Change Ownership         ▲ Caterer         □ Passenger Carrier         □ Other Public Location         □ Private Club         □ Limited On-Premises Sales (\$202.60/yr)         □ Off-Premises Sales (\$100/yr)         □ with Fuel Pumps         □ Brewery Public House (\$252.60)         □ Winery (\$250/yr)         □ Other:	CITY AND COUNTY USE ONLY   Date application received: 6-7-1.3   The City Council or County Commission:   (name or dity or county)   recommends that this license be:   (name or dity or county)   recommends that this license be:   Granted   Denied   By:   (signature)   (date)   Name:   Title:   OLCC USE ONLY   Application Rec'd by:   Date:   06071/3   90-day authority:   Yes
1. Entity or Individuals applying for the license: [See SECTION 1 of the G (1) <u>MAYA(barcia, Sara</u> (2) <u>Ramirez Jimenez, Juan</u> (2. Trade Name (dba): <u>Montealban Merican Rest</u> 3. Business Location: <u>2975 Marine Dr Astar</u> (number, street, rural route) (city) 4. Business Mailing Address: <u>SAME</u> (PO box, number, street, rural route) (city) 5. Business Numbers: <u>(503) 741-3103</u> (phone)	aurant
	nust fill out an Individual History form)
11. Contact person for this application: <u>Sara Maya-Gava'a</u> <u>(name)</u> (address) I understand that if my answers are not true and complete, the OLCC r	(name of city or county) (503) 332-1077 (ce11) (phone number(s)) Sara Maya 278 Yahoo, cow (e-mail address) may deny my license application.
Applicant(s) Signature(s) and Date: $0$ <td> Date Date</td>	Date Date

1-800-452-OLCC (6522) • www.oregon.gov/oicc

(rev. 08/2011)



CITY OF ASTORIA Founded 1811 • Incorporated 1856

September 18, 2013

MEMORANDUM

TO: MAYOR AND CITY COUNCIL FROM: PAUL BENOIT, CITY MANAGER SUBJECT: PUBLIC SAFETY BUILDING SEISMIC UPGRADE REQUIRED PHOTOVOLTAIC SYSTEM EMERGENCY CONTRACT AWARD

# **DISCUSSION/ANALYSIS**

Proposals were recently solicited for the Public Safety Building Seismic Upgrade grant required Photovoltaic (Solar) System. The solar panels will be affixed to the Public Safety Building roof and are expected to supply approximately ten per cent (10%) of the building's electrical needs.

On September 17, 2013 Inland Electric, Inc., provided the sole bid for the complete 10KW system in the amount of \$64,350. The project will be fully funded through the balance remaining of the Oregon Emergency Management (OEM) Seismic Rehabilitation Grant. This aspect of the project faced a number of delays due to the shakeout of suppliers in the solar industry. As such, OEM granted a final extension for completion to December 31, 2013. With a 90 day completion contract, the project has a very short time frame.

The contract requires the contractor to provide a performance and payment bond, insurance certificates and schedule of values. It is expected that these documents will not be completed and presented to the City Attorney until after Council has met.

# RECOMMENDATION

Due to the very short timeframe for preparing contract documents and completing all associated work, it is recommended that Council award the contract to Inland Electric, Inc., for the Public Safety Building Seismic Upgrade Photovoltaic System, contingent on contract documents being reviewed and approved as to form by the City Attorney.

Submitted By: *P. Curzon* 

Pete Curzon, Chief of Police



CITY OF ASTORIA Founded 1811 • Incorporated 1856

September 11, 2013

# MEMORANDUM

TO: MAYOR AND CITY COUNCIL FROM: PAUL BENOIT, CITY MANAGER SUBJECT: AUTHORIZATION TO AWARD BEAR CREEK DAM SEISMIC STUDY CONTRACT

# **DISCUSSION/ANALYSIS**

The City of Astoria's Bear Creek Dam is a 90-foot high concrete gravity dam built in 1912 and raised in 1953. The Oregon Water Resources Department (OWRD) has classified the Dam as a high hazard dam due to the dam's proximity to human population areas downstream. The classification is not a result of the dam's age or condition, but the age and current condition does affect the probability of failure during a significant seismic event. This could potentially lead to loss of life and/or significant property damage resulting from dam failure. There are approximately 129 properties and 69 homes below the dam.

The OWRD has determined that the City should initiate a seismic failure analysis to investigate potential failure modes of the dam. A previous study completed 20 years ago did not include enough detail to determine the actual risk of failure as a result of a Cascadia Subduction Zone earthquake. In general, recent earthquake events in other countries and additional studies of the Cascadia Subduction Zone and the seismic events that can be generated, have increased concerns by the OWRD regarding the stability of dams along the Oregon Coast.

Staff has been working with the State Dam Safety Engineer to develop a strategy to move forward. The first step is to hire a consultant that specializes in the type of analysis necessary to determine if the dam is at risk, and if so, what steps to take to reduce the risk of damage and potential failure during a significant seismic event. While it is anticipated that the study may lead to conclusions more favorable than the previous study, there is the possibility that the conclusions and recommendations may result in OWRD mitigation requirements. The previous study indicated that mitigation costs in the range of \$1.5 - 2 million would be required.

OWRD has provided a \$50,000 grant to assist the City with the first phase of the required studies. The study would be completed in three phases summarized below. Only the first phase is proposed at this time. The scope of future phases would be dependent on the results of Phase 1.

**Phase 1 – Site Investigation** – this phase is anticipated to cost up to \$100,000 and consists of performing field investigation work to gather data necessary for Phase 2 (Structural Evaluation)

of the dam. It is anticipated that the work performed during Phase 1 will give insight into the extent of work that will be required during Phase 2. The State of Oregon is providing a 50/50 match.

**Phase 2 – Seismic Failure Analysis (Future)** - this phase is anticipated to cost between \$120,000 to \$150,000. The Oregon Water Resources Department has indicated that grant funding to cover half of the cost of Phase 2 will be available to the City at a future date. The scope of work would include a seismic stability analysis of the dam.

**Phase 3 – Develop Design Recommendations (Future phase if needed)** – this phase would include developing design recommendations to modify the dam to withstand seismic loading and to pass the probable maximum flood flow if determined necessary during Phase 2. A projected fee has not been developed for this phase.

Qualification statements were received on August 6<sup>th</sup> from four firms and are listed in the order in which they scored in staff's evaluation: Cornforth Consultants, CH2MHill, Landau Associates, and Shannon & Wilson. All four firms specialize in seismic stability evaluation of dam structures.

Cornforth Consultants was determined by the evaluation team to be the most suitable firm for this project. This firm presented a superior understanding of the project, with a thorough, well thought out approach and preliminary scope.

Staff has negotiated a scope of work and contract that is compatible with the project goals as outlined in the request for qualifications document. The scope of work has been reviewed and approved by both the City and the Oregon Water Resources Department. The fee for the proposed work is \$99,865 with the City share being \$49,932.50. Funds for the City share of the project will come from the Public Works Improvement Fund. The contract includes two optional tasks that are not anticipated to be needed at this time. The work is planned to take place over the next 4-6 months and be complete no later than the end of the current fiscal year.

## RECOMMENDATION

It is recommended that City Council execute a contract with Cornforth Consultants for a total not to exceed amount of \$99,865, for geotechnical engineering services on the Bear Creek Dam Seismic Analysis Project.

Submitted By

Ken P. Cook, Public Works Director

JEFF HARRINGTON Prepared By

Jeff Harrington, City Engineer

# CITY OF ASTORIA CONTRACT FOR PERSONAL SERVICES

### CONTRACT:

This Contract, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_\_, 2013 by and between the City of Astoria, a municipal corporation of the State of Oregon, hereinafter called "CITY", and Cornforth Consultants, 10250 S.W. Greenburg Road, Suite 111, Portland, Oregon 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. <u>CONSULTANT SERVICES</u>

A. CONSULTANT shall perform professional services, as outlined in the Attachment A, to the City of Astoria regarding the Bear Creek Seismic Investigation- Phase 1.

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 June 30, 2014.

#### 2. <u>COMPENSATION</u>

A. The CITY agrees to pay CONSULTANT a total not to exceed \$99,865.00 for performance of those services provided herein;

B. The CONSULTANT will submit monthly billings for payment which will be based upon the percentage of work completed 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.

T:\General Eng\WATER\BEAR CREEK DAM\Seismic Study\Comforth Consultants Contract.doc

# 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. <u>CITY'S REPRESENTATIVE</u>

For purposes hereof, the CITY'S authorized representative will be Jeff Harrington, City Engineer, City of Astoria, 1095 Duane Street, Astoria, Oregon, 97103, (503) 338-5173.

# 5. <u>CONSULTANT'S REPRESENTATIVE</u>

For purposes hereof, the CONSULTANT'S authorized representative will be Andy Vessely, President, 503-451-1100.

# 6. <u>CITY'S OBLIGATIONS</u>

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 consultant for all purposes and shall be entitled to no compensation other that 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 CONSULTANT 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 disenabled provided the party so disenabled 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. <u>NONWAIVER</u>

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. <u>ATTORNEY'S FEES</u>

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. <u>APPLICABLE LAW</u>

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:

A. <u>Commercial General Liability</u>. 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 with limits of not less then \$1,000,000 per occurrence and the annual aggregate not less than \$2,000,000. Coverage shall include consultants, subconsultants and anyone directly or indirectly employed by either. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability, the combined single limit per occurrence will not be less than \$1,000,000 for each job site or location. Each annual aggregate limited will not be less than 2,000,000.

B. <u>Automobile Liability</u>. 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). Combined single limit per occurrence will not be less than \$1,000,000.

C. <u>Additional Insured</u>. 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. <u>Professional Liability Insurance</u>. The CONSULTANT shall have in force a policy of Professional Liability Insurance in an amount not less than \$1,000,000 per claim and \$2,000,000 aggregate. The CONSULTANT shall keep such policy in force and current during the term of this contract.

E. <u>Notice of Cancellation or Change</u>. 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. <u>CITY'S BUSINESS LICENSE</u>

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. <u>LABORERS AND MATERIALMEN, CONTRIBUTIONS TO INDUSTRIAL ACCIDENT FUND,</u> <u>LIENS AND WITHHOLDING TAXES</u>

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. 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.

### 21. <u>OVERTIME</u>

Employees shall be paid for overtime work performed under this contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. Sections 201 to 209).

### 22. <u>USE OF ENGINEER'S DRAWINGS AND OTHER DOCUMENTS</u>

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 without written authorization of CONSULTANT.

### 23. <u>STANDARD OF CARE</u>

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.

### 24 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.

### 25. <u>ASSIGNMENT</u>

This contract is personal to Consultant and may not be assigned or any work subcontracted without consent from the CITY.

### 26. <u>SEVERABILITY AND SURVIVAL</u>

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.

# 27. <u>COMPLETE CONTRACT</u>

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:

Attorney Attorney Henningsgaard DN: cn=Blair Henningsgaard, o, ou: email=blai@astorialaw.net, c=US Date: 2013.09.10 12:46:02 -08:00' CITY OF ASTORIA, a municipal corporation of the State of Oregon

BY: \_\_\_\_\_ Mayor

BY: \_\_\_\_\_

City Manager

Date

Date

÷

Date

BY:

Consultant

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10250 S.W. Greenburg Road, Suite 111 Portland, Oregon 97223 Phone 503-452-1100 Fax 503-452-1528

September 9, 2013

City of Astoria 1095 Duane Street Astoria, OR 97103 Attn: Jeff Harrington, P.E., City Engineer

# Proposed for Phase 1 Geotechnical Investigation Bear Creek Dam Seismic Stability Clatsop County, Oregon

Dear Mr. Harrington:

In accordance with your request, this proposal provides a scope of work and cost estimate to investigate the geotechnical conditions at Bear Creek Dam (Phase 1) in order to prepare a subsurface model for analysis (Phase 2). A third phase of work would include developing designs to enhance the seismic stability of the dam, if this study determines certain mitigations are necessary. Phases 2 and 3 are not detailed in this proposal.

### Scope of Work

Our proposed Phase 1 scope of work is in general accordance with the steps and actions listed in our Statement of Qualifications dated August 6, 2013. The work would include completing subsurface explorations, geologic and structural mapping; installing geotechnical instrumentation; and conducting both in situ and laboratory testing.

Note: We understand that the City has \$100,000 available funding for the Phase 1 investigation. The estimates from our subcontractors to perform the in-situ tests were higher than anticipated after they observed the site and appraised the subsurface conditions that would be encountered. To keep costs under \$100,000, we have made some of the in-situ tests an optional line item. We have also identified the instrumentation dataloggers as an optional line item. Optional tasks are shown in this proposal in italics.

The goal of the Phase 1 work tasks is to collect and incorporate existing information available from past investigations along with new data in Phase 1, which would serve as serve as the basis for Phase 2 stability analyses. The primary Phase 1 scope items are described in more detail in the following paragraphs.

**Project Management/Meetings.** Project management tasks would include coordination of field work and preparation of subcontract/subconsultant agreements. We would also attend several meetings and/or teleconferences with the City and OWRD. Meetings could include an on-site

P-1155

kick-off meeting and a meeting following completion of the fieldwork. Teleconferences would be held as needed to discuss fieldwork activities, findings, and results.

*Subsurface Explorations*. Five borings are planned that includes three through the dam and two on the downstream side of the dam. These borings would be drilled using casing-advancer and HQ3-wireline coring techniques.

Anticipated boring depths are shown on the following table.

As an optional task, in situ packer testing could be performed at selected depth intervals based on conditions encountered during drilling. Packer tests would be completed at the lowest practicable test pressure.

Boring Location	Depth	Details
Dam Crest on Left Side of Spillway	125 feet	HQ-3 core through dam into bedrock, collect concrete and foundation samples; <i>perform packer tests at selected intervals</i> ; install VWP in foundation
Dam Crest on Right Side of Spillway	125feet	HQ-3 core through dam into bedrock, collect concrete and foundation samples; <i>perform packer tests at selected intervals</i> ; install VWP in foundation
Dam Crest near Left Abutment	125 feet	HQ-3 core through dam into bedrock, collect concrete and foundation samples; <i>perform packer tests at selected intervals</i> ; install VWP in foundation
Right Abutment Downstream of Dam	100 feet	SPT samples at 5-ft intervals in soil, HQ3-coring of rock; <i>perform</i> packer tests at selected intervals; install VWP at depth determined during drilling
Downstream Toe of Dam	40 feet	SPT samples at 5-ft intervals in soil, HQ3-coring of rock; <i>perform</i> packer tests at selected intervals; install VWP at depth determined during drilling

Phase 1 Subsurface Exploration Program

Each boring would have a vibrating-wire piezometer (VWP) installed at a depth determined in the field based on conditions encountered during drilling. As an optional task, each VWP would be attached to a datalogger to allow continuous reading and recording of groundwater pressure. The three borings on the crest would be protected with flush-ground monuments.

*Geologic and Structural Mapping*. Detailed geologic and structural mapping would be completed on rock outcrops located in the downstream abutment areas. Rappelling techniques would be used to clear vegetation and perform the structural mapping. The purpose would be to delineate the limits and relationships of exposed individual rock units and collect discontinuity spacing, orientation, aperture, and condition. The rock structural data would be incorporated in the Phase 2 analysis model for rock slope and dam stability evaluations, and, if warranted, used to determine possible Phase 3 treatment options.

*Laboratory Testing*. Laboratory testing would be completed on recovered core samples. Tests would include point load testing on selected concrete samples and in-situ moisture content on soil samples.

*Office Tasks.* Office tasks would include preparation of summary boring logs, *reduction of packer test data*, and tabulation of rock structural data. A geotechnical data report would be prepared summarizing the results of the field and laboratory work. A general discussion on regional and site geology would be presented along with the rock mass rating for bedrock encountered beneath and adjacent to the Dam. We would provide the City with a digital draft copy for review, and five final hard copies (as well as a pdf version) of a Phase 1 geotechnical data report.

# **Cost Estimate**

Our estimated to complete the above-outlined scope of work is a Not-to-Exceed total of \$99,865. A breakdown of costs by task is provided on Table 1 below. We have also attached a detailed breakdown of tasks by hour and personnel. Optional tasks are shown in Table 2.

Table 1 – Cost Breakdown		
Project Management/Meetings		\$6,530
Subsurface Explorations		\$65,100
Geologic Mapping		\$10,475
Laboratory Testing		\$2,720
Office Tasks		\$15,040
	Total	\$99,865
Table 2 – Optional Tasks*		
Packer Tests		\$13,000

\*Includes CCI labor and reimbursables

Dataloggers

\$4,200

Total \$17,200

We assumed the following in developing costs for Phase 1:

- Field drilling would be completed in 7 field days. In our opinion, this is an aggressive schedule. We feel that 8 or 9 days is a more reasonable estimate to complete the drilling and instrumentation program; however, our subcontract driller feels that 7 days is reasonable and this keeps the total cost under \$100,000.
- Water for drilling can be pumped from the reservoir or the creek below the dam.
- The City will provide locate and mark underground utilities near the proposed drill locations.
- Boring locations will be measured using tape measure from existing dam features for preparing a site plan.
- City will provide copies of existing plan sheets.

We appreciate this opportunity to be of service and trust that this submittal is sufficient for your current requirements. If there are any questions, please call Brent Black or Andy Vessely at 503-452-1100.

Sincerely,

CORNFORTH CONSULTANTS, INC.

By

Andy Vessely, P.E., V.E.G President

# AGENDA ASTORIA CITY COUNCIL MEETING

Tuesday, September 24, 2013 7:00p.m. 2<sup>nd</sup> 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. PRESENTATIONS

- (a) Jake Kaup Astoria Student who Achieved the Rank of Eagle Scout, the Highest Rank of the Boy Scouting Program
- (b) Armory Building

# 6. 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.

- (a) City Council Minutes of 8/19/13
- (b) Boards and Commission Minutes
  - (1) Historic Landmarks Commission Meeting 7/16/13
  - (2) Library Board Meeting 7/23/13
- (c) Update on Delinquent Transient Room Taxes (Finance)
- (d) Grant Applications for Restoration of City Hall First Floor Windows and Doors (Community Development)
- (e) Memorandum of Understanding with the US Coast Guard (USCG) for Fire Protection and Emergency Medical Services for USCG Cutters Alert and Steadfast and Facilities (Fire)
- (f) 2013 Crack Sealing Project Authorization to Award (Public Works)
- (g) Star of the Sea Lease Amendment (Parks)

# 7. REGULAR AGENDA ITEMS

- (a) Ordinance Amending Certain Provisions Dealing with Public Offenses (1<sup>st</sup> reading) (City Attorney)
- (b) Authorization to Purchase Three Vehicles for Public Safety (Police)
- (c) Public Hearing to Exempt Contract from Competitive Solicitation Requirements Public Safety Vehicle Upfitting (Police)
- (d) 17<sup>th</sup> Street Pier Lease with United States Coast Guard (City Manager)
- (e) 11<sup>th</sup> Street CSO Separation Project Pay Adjustment No. 5 (Public Works)
- (f) Liquor License Application from Sara Maya-Garcia and Juan Ramirez-Jimenez doing business as Montealban Mexican Restaurant Located at 2975 Marine Drive for a New Outlet – Full On-Premises Sales Commercial Establishment License (Finance)

# **REGULAR AGENDA ITEMS** (continued)

- (g) Public Safety Building Seismic Upgrade Required Photovoltaic System Emergency Contract Award (Police)
- (h) Authorization to Award Bear Creek Dam Seismic Study Contract (Public Works)
- (i) <u>ADDED ITEM</u>: DEQ Mutual Agreement and Order Amendment regarding Wastewater Treatment Plant (Public Works

# 8. EXECUTIVE SESSION

(a) ORS 192.660(2)(e) – Real Property Transactions

# 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 JULIE LAMPI, CITY MANAGER'S OFFICE, 503-325-5824.

MANAGER\AGENDA\AGENDA 9-24-13.DOC

Copy of Phase 1 Cost Estimate Sheet - Revised Program 8-29-2013.xlsx

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CITY OF ASTORIA Founded 1811 • Incorporated 1856

September 23, 2013

# MEMORANDUM

TO: MAYOR AND CITY COUNCIL FROM: PAUL BENOIT, CITY MANAGER

# SUBJECT: MUTUAL AGREEMENT AND ORDER AMENDMENT

# **DISCUSSION/ANALYSIS**

The City was issued a National Pollutant Discharge Elimination System (NPDES) Permit on January 1, 2012 that details compliance conditions for the wastewater treatment plant (WWTP) improvements that are currently under construction. Specific permit conditions include an established completion date, reporting requirements, and the setting of interim discharge limits. City staff has been working closely with the Department of Environmental Quality (DEQ) since the NPDES Permit was issued in order to procure the necessary funding, obtain other necessary agency permits, and meet the specified compliance deadlines. The construction schedule and construction of the WWTP Effluent Treatment Upgrades Project has been thoroughly planned to meet the NPDES Permit requirements well ahead of the authorized permit completion date of July 1, 2014.

On Friday, September 13, 2013, City staff was notified by the DEQ that the Environmental Protection Agency (EPA) was intending to enforce a required schedule from an older 2002 Mutual Agreement and Order (MAO) document for the WWTP Effluent Treatment Upgrades project. That MAO has a requirement that the City, once a project is started, the necessary upgrades to the wastewater treatment plant must be completed by no later than 12 months after pre-design report approval by DEQ. Since DEQ approval was obtained on October 1, 2012, it is the opinion of EPA that the WWTP improvements must be completed by October 1, 2013 to be in compliance with the 2002 MAO. Failure to meet this completion date would result in the EPA listing the City of Astoria as "Significant non-complier". The implication for the City would be that if future fines are levied against the City's wastewater system, those fines would potentially be greater than not being listed in that category. There is also the potential for denial of Federal funding for future wastewater system upgrades.

As noted above, DEQ approval for the present WWTP Effluent Treatment Upgrades project was obtained on October 1, 2012. This approval was critical to our project schedule as it allowed the selected contractor to immediately begin the process of ordering specialized, long-lead time wastewater treatment equipment prior to the summer 2013 construction season. Until the unexpected notification of the EPA's position on September 13, 2013 regarding the project completion date, both City staff and DEQ staff were working diligently to complete the project under the specific requirements of the 2012 NPDES Permit. Neither the DEQ nor the City, had knowledge that the 2002 MAO 12 month schedule requirements would take precedence.

In support of the City and in response to the EPA interpretation of the deadlines, the DEQ has prepared Amendment No. 1 to the MAO that extends the 12 month deadline to 18 months, which would result in a completion date of April 1, 2014. City staff, DEQ, and the contractor, are highly confident that this completion deadline will be met. It will hopefully be accepted by the EPA, as the City has been working in good faith to meet the requirements as set forth in the DEQ issued NPDES permit.

The City Attorney and the City's Environmental Law Attorney have reviewed the MAO amendment and recommend authorization.

# RECOMMENDATION

Recommend that the City Council authorize Amendment No. 1 to the DEQ Mutual Agreement and Order No. WQ/M-NWR-01-284.

Submitted By:

Ken P. Cook, Public Works Director

Prepared By: \_\_\_\_\_\_\_ CINDY D. MOORE I

1	BEFORE THE ENVIRONMENTAL QUALITY COMMISSION						
2	OF 1	HE STATE OF OREGON					
3	IN THE MATTER OF:	) ) AMENDMENT NO. 1					
4	CITY OF ASTORIA	) MUTUAL AGREEMENT AND ORDER NO. WQ/M-NWR-01-284 )					
6							
7	WHEREAS:						
8	1. On February 15, 2002,	the Department of Environmental Quality (DEQ) and					
9	Permittee entered into Mutual Agreeme	ent and Order (MAO) No. WQ/M-NWR-01-284.					
10	2. Paragraph 11 of MAO s	states: "The terms of this MAO may be amended by the					
11	mutual agreement of the City and DE	Q." The construction of upgrades at the Wastewater					
12	Treatment Plant is on-going and has b	een inspected by DEQ. The construction will not be					
13	completed within the 12 month period	from date of approval of the Pre-Design Report, as					
14	described in the original agreement. A	An additional six months are needed to complete the work.					
15	NOW THEREFORE, it is stipu	lated and agreed that the compliance order of the MAO					
16	should be amended as follows:						
17	3. Paragraph 8 (5) is amen	ded to read "By no later than 18 months after Pre-Design					
18	report approval by DEQ, the city shall	complete the necessary upgrades to the wastewater treatment					
19	facilities, based on the approved Pre-D	esign report."					
20							
21	J	PERMITTEE					
22							
23	Date	Signature					
24	·	Name (print)					
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26		Title (print)					
27							
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4/20/13 Dat 

# DEPARTMENT OF ENVIRONMENTAL QUALITY and ENVIRONMENTAL QUALITY COMMISSION

for worth,

Leah K. Feldon, Manager Office of Compliance and Enforcement on behalf of DEQ pursuant to OAR 340-012-0170 on behalf of the EQC pursuant to OAR 340-011-0505

Page 2 - MUTUAL AGREEMENT AND ORDER - AMENDMENT NO.

### BEFORE THE ENVIRONMENTAL QUALITY COMMISSION OF THE STATE OF OREGON

2 IN THE MATTER OF:
3 CITY OF ASTORIA

) MUTUAL AGREEMENT ) AND ORDER ) No. WQ/M-NWR-01-284 ) CLATSOP COUNTY

# 5 WHEREAS:

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6 1. The Department of Environmental Quality (DEQ) issued National Pollutant Discharge
7 Elimination System (NPDES) Waste Discharge Permit Number 101028 (the Permit) to the City of
8 Astoria (the City) on January 13, 1993. DEQ issued the Permit pursuant to Oregon Revised Statute
9 (ORS) 468B.050 and the Federal Water Pollution Control Act Amendments of 1972, PL 92-500. The
10 Permit was renewed on February 15, 2002.

The Permit authorizes the City to construct, install, modify, and operate wastewater
 collection, treatment, and disposal facilities (wastewater facilities). The Permit authorizes discharge of
 adequately treated wastewater's into the Columbia River, waters of the state, in conformance with the
 requirements, limitations, and conditions set forth in the Permit. The Permit, as renewed, includes new,
 stringent limitations to ensure compliance with water quality standards and criteria.

3. The City discharges treated wastewater year-round into the Columbia River. The Permit
prohibits the City from discharging any wastes or conducting any activities that result in violations of
water quality standards and criteria outside of the Regulatory Mixing Zone (RMZ). The City's
wastewater facilities currently violate water quality standards and limitations outside of the RMZ. The
City and DEQ recognize that the wastewater facilities will continue to cause violations, until existing
facilities are upgraded. The City's wastewater discharge currently violates water quality standards
outside of the RMZ as follows;

(a) Violations of the in-stream water quality criteria for chlorine toxicity, pursuant to
 OAR 340-041-0205(2)(p); and

(b) Violations of the in-stream water quality criteria for ammonia toxicity, pursuant to
 OAR 340-041-0205(2)(p).

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The DEQ approved Permittee's Temperature Management Plan (TMP) on November 26, 2001, per OAR
 340-041-0120(11). The TMP shall be used to manage effluent temperature within the estuarine mixing
 zone, per OAR 340-041-0205(2)(b)(D). A Columbia River temperature of 68° F is specified to comply
 with the "fish passage" criterion, per OAR 340-041-205(2)(b)(A)(ii).

The City currently has eight pump/lift stations in its sewage collection system. Periodic
 power outages at pump/lift stations may contribute to overflows of raw sewage. Permit Schedule-F,
 Section B.6 prohibits such overflows. The City and DEQ agree that until the pump/lift station
 improvements listed in 8(a)(4) are made, overflows due to power outages may continue.

9 5. The City and DEQ agree that wastewater facilities can meet the interim effluent limits set
10 forth in Paragraph 8(b) of this MAO.

DEO and the City recognize that the Environmental Quality Commission (EQC) has the 11 6. power to impose a civil penalty and to issue an abatement order for violations of conditions of the 12 Permit. Therefore, pursuant to ORS 183.415(5), DEQ and the City agree to settle those past violations 13 referred to in Paragraphs 3 and 4 by this MAO. Both parties agree to limit and settle any possible future 14 violations referred to in Paragraph 3 until completion of Paragraph 8(a)(5), and agree to limit and settle 15 any possible future violations referred to in Paragraph 4 until July 31, 2006, per Paragraph 8(a)(6). This 16 MAO terminates MAO #WQMW-NWR-92-246 signed on January 7, 1993, to correct water quality 17 standards violations for chlorine outside of the regulatory mixing zone. MAO #WQMW-NWR-92-246 18 is no longer needed because chlorine toxicity is adequately addressed through implementation of this 19 20 MAO.

7. This MAO is not intended to settle any violation of interim effluent limitations set forth
in Paragraph 8(b). Furthermore, this MAO is not intended to limit, in any way, DEQ's right to proceed
against the City in any forum for any past or future violations not expressly settled herein.

Requiring the City to comply with the following schedule:

NOW THEREFORE, IT IS STIPULATED AND AGREED THAT:

8. The EQC shall issue a final order

(a)

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(1) By no later than <u>3 months after issuance of the Permit</u> the City shall

PAGE 2 MUTUAL AGREEMENT AND ORDER No. WQ/M-NWR-01-284

complete installation of a Columbia River monitoring station, per specifications in DEQ's letter dated
 October 27, 2000, "Columbia River Monitoring Requirements." The station shall provide river salinity
 and temperature data, and will track tidal effects on a daily basis. The station shall measure river
 velocity. The monitoring station shall be equivalent to the CORIE water quality monitoring Station am 169 (Astoria-Megler Bridge) as installed and maintained by the Oregon Graduate Institute of Science
 and Technology.

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(2) By no later than <u>12 months after issuance of the permit</u>, the City shall submit to DEQ for approval, a Pre-design Report for upgrading its wastewater treatment facilities. The Pre-design Report shall identify the process and criteria necessary to achieve and maintain minimum dilution through programmed variable effluent release; a process known as "Flow Management." "Flow Management" shall be applied to the control of temperature, and chlorine and ammonia toxicity. "Flow Management" shall maintain a minimum Regulatory Mixing Zone (RMZ) dilution of 36 at all times during effluent discharge, while complying with end-of-pipe chlorine and ammonia limits established in the renewal permit.

(3) By no later than <u>6 months after issuance of the Permit</u> the City shall
submit for DEQ approval an updated Temperature Management Plan, per OAR 340-041-0120(11) that
includes the variable release program identified in Item 8(a)(2) above. The City shall not cause a
significant temperature increase (more than 0.25 °F) at the RMZ boundary for river temperatures 68 °F
and above. Upon approval of the updated TMP and completion of the upgraded wastewater treatment
facilities as required in 8(a)(5), the City shall implement the TMP.

(4) By no later than <u>12 months after issuance of the Permit</u> the City shall
submit for DEQ approval a pump/lift station evaluation report which identifies loss-of-electric-power
and overflow alarm, telemetry, and emergency power deficiencies for each pump/lift station. City shall
also submit for DEQ approval a schedule and plans for upgrading all pump/lift stations to meet DEQ
standards for loss-of-electric-power and overflow alarms, telemetry, and emergency power. The
schedule shall have all pump/lift stations upgraded by July 31, 2006.

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(5) By no later than <u>12 months after Pre-Design Report approval by DEO</u> the

PAGE 3 MUTUAL AGREEMENT AND ORDER No. WQ/M-NWR-01-284

City shall complete the necessary upgrades to the wastewater treatment facilities, based on the approved
 Pre-design Report.

(6) By no later than *July 31, 2006* the City shall complete all pump/lift station upgrades, per 8(a)(4).

(b) Requiring the City to meet the following <u>interim, effluent limitations</u>, measured as specified in the Permit, until completion of the upgrades set forth in Paragraph 8(a)(5).

.....

Outfall Number 039 [Wastewater Treatment Facility Discharge]

9	Parameter	Limitations
.: 10	Total Chlorine Residual	Not to exceed 1.0 mg/L (daily, weekly, and monthly average)
11	BOD5 and TSS Removal Efficiency	No minimum removal efficiency
<u>_</u> 12	End-of-pipe Ammonia Measured as N	30 mg/L
2 × 13	Effluent Temperature	77.0 °F
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(c) Allowing overflows from pump/lift stations due to power outages until

completion of upgrades as set forth in Paragraph 8(a)(6).

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Requiring the City, upon receipt of a written Penalty Demand Notice from DEQ,

18 to pay the following civil penalties:

(d)

19 (1) <u>\$250</u> for each day of each violation of the compliance schedule set forth in
20 Paragraph 8(a).

21 (2) <u>\$100</u> for each violation of each interim daily or weekly effluent limitation
22 set forth in Paragraph 8(b).

23 (3) <u>\$500</u> for each violation of each interim monthly average effluent limitation
24 set forth in Paragraph 8(b).

9. All reports, notices, and other communications required under or relating to this MAO
shall be directed to the Oregon Department of Environmental Quality, Northwest Region, 2020 SW
Fourth Avenue, Suite 400, OR 97201, Telephone (503) 229-5690, Fax (503) 229-6957.

PAGE 4 MUTUAL AGREEMENT AND ORDER No. WQ/M-NWR-01-284

16 17 10. This MAO does not exempt the City from compliance with any new or modified state or federal statutes or regulations that may be required in the future. The City and DEQ shall attempt in good faith to re-negotiate the MAO if new, previously unknown violations are determined, or if in the opinion of either the City or DEQ new state or federal statutes or regulations are promulgated that affect the City's ability to comply with this MAO.

11. The terms of this MAO may be amended by the mutual agreement of the City and DEQ. DEQ reserves the right to amend the compliance schedules and/or conditions in this MAO upon finding such modification is necessary because of changed circumstances or a violation not addressed in this MAO poses a significant threat to protect public health and/or the environment. If the City opposes the amended MAO, then the City may contest the amendment according to applicable procedures of contested cases in such matters.

12 12. If any event occurs that is beyond the City's reasonable control and that causes or may 13 cause a delay or deviation in performance of the requirements of this MAO, the City shall immediately 14 notify the DEQ verbally of the cause of delay or deviation and its anticipated duration; the measures that 15 have been or will be taken to prevent or minimize the delay or deviation; and the timetable by which the 16 City proposes to carry out such measures. The City shall confirm in writing this information within five 17 (5) working days of the onset of any such event. It is the City's responsibility in the written notification to demonstrate to DEQ's satisfaction that the delay or deviation has been or will be caused by 18 19 circumstances beyond the control and despite due diligence of the City. If the City so demonstrates, the 20 DEQ shall extend times of performance of related activities under this MAO as appropriate. 21 Circumstances or events beyond the City's control include, but are not limited to, acts of nature, 22 unforeseen strikes, work stoppages, fires, explosion, riot, sabotage, or war. The DEQ may also consider 23 other circumstances or events as beyond the City's control. These other circumstances or events may 24 include, but not be limited to, changes in state statutes; substantial increased costs from unforeseen 25 problems; or delays that the DEQ agrees the City would not have been expected to anticipate. These other circumstances or events will only be considered if they are not due to the actions or inactions of the 26 27 City. Increased cost of performance or consultant's failure to provide timely reports may not be

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considered circumstances beyond the City's control.

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13. This MAO terminates MAO #WQMW-NWR-92-246 for reasons set forth in paragraph 6. 14. Regarding the violations set forth in paragraphs 3 and 4, which are expressly settled herein without penalty, the City and DEQ hereby waive any and all of their rights to any and all notices, hearing, judicial review, and to service of a copy of the final order herein. The DEQ reserves the right to enforce this MAO through appropriate administrative and judicial proceedings.

7 15. Regarding the schedule set forth in paragraph 8(a), the City acknowledges that it is 8 responsible for complying with that schedule regardless of the availability of any federal or state 9 funding.

16. 10 This MAO shall be binding on the parties and their respective successors, agents, and assigns. The undersigned representative of each party certifies that she or he is fully authorized to 11 12 execute and bind such party to this MAO.

17. The City acknowledges that it has actual notice of the contents and requirements of the 13 MAO. Failure to fulfill any of the requirements hereof would constitute a violation of this MAO and 14 15 subject the City to payment of civil penalties pursuant to Paragraph 8(d).

16 18. Any stipulated civil penalty imposed pursuant to Paragraph 8(d) shall be due upon written 17 demand. Stipulated civil penalties shall be paid by check or money order made payable to the "Oregon State Treasurer" and sent to: Business Office, Department of Environmental Quality, 811 SW Sixth 18 Avenue, Portland, Oregon 97204. Within 21 days of receipt of a "Demand for Payment of Stipulated 19 20 Civil Penalty Notice" from DEQ, the City may request a hearing to contest the Demand Notice. At any 21 such hearing, the issue shall be limited to the City's compliance or noncompliance with this MAO. The amount of each stipulated civil penalty for each violation and/or day of violation is established in 22 23 advance by this MAO and shall not be a contestable issue.

24 19. Providing the City has paid in full all stipulated civil penalties pursuant to Paragraph 8(d), 25 this MAO shall terminate 60 days after the City demonstrates full compliance with the requirements of 26 the schedule set forth in Paragraph 8(a).

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# THE CITY OF ASTORIA

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Willis L. Van Dusen Mayor, City of Astoria

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DEPARTMENT OF ENVIRONMENTAL QUALITY

lait Mullave

Neil Mullane, Administrator Northwest Region

FINAL ORDER

# **ENVIRONMENTAL QUALITY COMMISSION**

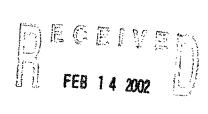
Neil Mullane

Neil Mullane, Northwest Region Administrator Department of Environmental Quality Pursuant to OAR 340-011-136(1)

PAGE 7

MUTUAL AGREEMENT AND ORDER

No. WQ/M-NWR-01-284



DEPT OF ENVIRONMENTAL CLIMALTY NOR THREAT ASSAULT

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Permit Effective Date: January 1, 2012 Expiration Date: October 31, 2016 Permit Number: 102397 File Number: 3924 Page 1 of 31 Pages E ELIMINATION SYSTEM PERMIT 1 Ouality PUBlic Montes Automitication

River

# NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM WASTE DISCHARGE PERMIT

Department of Environmental Quality Northwest Region – Portland Office 2020 SW 4th Ave., Suite 400, Portland, OR 97201 Telephone: (503) 229-5263

Issued pursuant to ORS 468B.050 and The Federal Clean Water Act

### **ISSUED TO:**

### SOURCES COVERED BY THIS PERMIT:

City of AstoriaOutfallOutfall1095 Duane StreetType of WasteNumberLocationAstoria, Oregon 97103Treated Wastewater039R.M. 18.0ColumbiaColumbiaColumbiaColumbia

Campbin of Convers	Vannee Day (VD) 9	
Combined Sewer Overflows (CSOs)	Youngs Bay (YB) & Columbia River (CR) CSO Outfalls As Follows:	
3 <sup>ra</sup> & E of Hanover	001	YB
Hanover	002	"
Denver	003	66
Florence (PS #5)*	004	
Portway	005	CR
Kingston	006	. "
Melbourne	007	66
Columbia (PS #4)*	008	66
2 <sup>nd</sup> Street	009	
3 <sup>ru</sup> Street	010	
4 <sup>th</sup> Street	010	66
5 <sup>th</sup> Street	012	<u>66</u>
6 <sup>th</sup> Street	013	
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22 <sup>na</sup> Street (PS #3)*	026	دد
27 <sup>m</sup> Street	027	٠٠
30 <sup>m</sup> Street	028	<ç
33 <sup>rd</sup> Street	029	<u>‹</u> ډ

File Number: 3924 Permit Number: 102397 Page 2 of 31 Pages

34 <sup>m</sup> Street	030	<u> </u>
35 <sup>th</sup> Street	031	CR ···
37 <sup>ar</sup> Street	032	Removed in Year-2000
44 <sup>th</sup> Street	033	Alderbrook Lagoon/CR
45 <sup>th</sup> Street (PS #1)*	034	Alderbrook Lagoon/CR
47 <sup>th</sup> Street	035	Alderbrook Lagoon/CR
48 <sup>m</sup> Street	036	Alderbrook Lagoon/CR (Sealed)
49 <sup>m</sup> Street	037	Alderbrook Lagoon/CR (Sealed)
52 <sup>nd</sup> Street	038	Alderbrook Lagoon/CR
1400 · 110 · .+		

\*Pumping or lift station.

FACILITY TYPE AND LOCATION:	<b>RECEIVING STREAM INFORMATION:</b>
Wastewater treatment facility is a 3-cell	Basin: North Coast/Lower Columbia River
stabilization lagoon system with aeration.	
Treatment facility is located at the end of	Sub-Basin: Lower Columbia/Clatskanie
$53^{rd}$ Street in Astoria, Oregon.	Receiving Stream: Columbia River
Treatment System Class: Level II	County: Clatsop
Collection System Class: Level IV	Facility Longitude & Latitude:
	124.0483/46.2464-95040D
EPA REFERENCE NO: OR-002756-1	

Permit is issued in response to Application No. 977031, received <u>September 20, 2006</u>. This permit is issued based on the land use findings in the permit record.

MAMMAnBram (Tiffany Yelton Bram) for

11/16/2011

Greg L. Geist, Manager, Water Quality Source Control Section, Northwest Region

Date

File Number: 3924 Permit Number: 102397 Page 3 of 31 Pages

# PERMITTED ACTIVITIES

Until this permit expires or is modified or revoked, the permittee is authorized to construct, install, modify, or operate a wastewater collection, treatment, control and disposal system and discharge to public waters adequately treated wastewaters only from the authorized discharge point or points established in Schedule-A and only in conformance with all the requirements, limitations, and conditions set forth in the attached schedules as follows:

	Page
Schedule A - Waste Discharge Limitations not to be Exceeded	4
Schedule B - Minimum Monitoring and Reporting Requirements	10
Schedule C – Compliance Schedules	
Schedule D - Special Conditions	
Schedule E – <i>Not Applicable</i>	•
Schedule F - General Conditions	21

Unless specifically authorized by this permit, by another NPDES or WPCF permit, or by Oregon Administrative Rule, any other direct or indirect discharge of waste is prohibited, including discharge to waters of the state or an underground injection control system.

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### SCHEDULE-A

# 1. Waste Discharge Limitations not to be exceeded after permit issuance.

### a, Treated Effluent at Outfall 039

(1) <u>May 22- October 14 (Notes 1 & 2)</u>:

	Average Eff	Juent	Monthly <sup>1</sup>	Weekly <sup>1</sup>	Daily <sup>1</sup>	
	Concentration	ons ·	Average	Average	Maximum	
Parameter	Monthly	Weekly	lb/day	lb/day	lbs	
BOD₅	30 mg/L	45 mg/L	1100	1600	2100	
(Note 3)						
TSS	50 mg/L	75 mg/L	1800	2600	3500	
(Note 3)	_					
BOD <sub>5</sub> Remova	l Efficiency		BOD <sub>5</sub> removal efficiency shall not be less			
	. •			nthly average (N		
TSS Removal ]	Efficiency			efficiency shall n		
	-	•	than 65 % monthly average (Note 4).			

<sup>1</sup> The design average dry weather flow (ADWF) for this facility = <u>4.2 MGD</u>. Summer season mass load limits in this permit are based on the ADWF. All loads are rounded to two significant figures. Worst case, 7-day average, low-flow dilution over a 10 year interval (7Q10) is the following: zone of immediate dilution (ZID) = 8.8, and mixing zone (MZ) dilution = 36.0, per City of Astoria Wastewater Treatment Plant Regulatory Mixing Zone Study dated September 2008, P. 4-7 (DEQ approved study on December 19, 2008).

(2) October 15 – May 21 (Notes 1 & 2):

	Average Eff	luent	Monthly <sup>2</sup>	Weekly <sup>2</sup>	Daily <sup>2</sup>	
	Concentratio	ons	Average	Average	Maximum	
Parameter	Monthly	Weekly	lb/day	lb/day	lbs	
BOD <sub>5</sub>	30 mg/L	45 mg/L	3200	4700	6300	
(Note 3)		_				
TSS	50 mg/L	75 mg/L	5300	7900	10500	
(Note 3)	_	Ŭ				
BOD <sub>5</sub> Removal	Efficiency		BOD <sub>5</sub> remova	BOD <sub>5</sub> removal efficiency shall not be less		
		:		nthly average (N		
TSS Removal H	Efficiency			efficiency shall n		
	_			nthly average (N		

<sup>2</sup> The design average wet weather flow (AWWF) for this facility =  $\underline{12.6 \text{ MGD}}$  (DEQ approval on December 7, 2009). Winter season mass load limits in this permit are based on the AWWF. All loads are rounded to two significant figures (Note 6).

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Other parameters (year-around)	Limitations
E. coli Bacteria (Interim Limits)	Shall not exceed 126 organisms per 100
	mL monthly geometric mean. No single
	sample shall exceed 406 organisms per
	100 ml (Note 7).
Fecal Coliform Bacteria*	Shall not exceed a median concentration
•	of 14 organisms per 100 mL; and 10% of
	the samples shall not exceed 43
	organisms per 100 mL (Notes 8 & 9).
Enterococci Bacteria*	Shall not exceed a geometric mean
	concentration of 35 organisms per 100
	mL (Notes 8 & 10).
Chlorine Residual (Interim Permit Limits)	The end-of-pipe effluent limits for
	chlorine are: daily maximum limit = 0.3
	mg/L and monthly average limit = $0.1$
	mg/L (Note 7).
Chlorine Residual	Shall not exceed 0.11 mg/L daily
	maximum and 0.04 mg/L monthly
	average (Notes 8 & 11).
Ammonia as N	No limits.
pH	Shall be within the range of $6.0 - 9.0$ .
^ · · · · · · · · · · · · · · · · · · ·	(Note 12).
Effluent Temperature	7-day mean maximum = 77.0 °F (Note 13).
·	
Maximum Daily Heat Load Limit	3.844 MW (Notes 13 & 14).
Monthly Average Heat Load Limit	2.563 MW (Notes 13 & 14).

\*Should bacteria data, as measured for a period of one year, indicate that the existing chlorine contact chamber can meet final permit limits for fecal coliform and enterococci bacteria prior to completion of Schedule-C construction; DEQ will require immediate implementation of the final bacteria limits.

(4) <u>Mixing Zone</u>: Except as provided for in OAR 340-045-0080, and the mixing zone established in this permit; no wastes shall be discharged and no activities shall be conducted which violate water quality standards.

The Regulatory Mixing Zone (RMZ) is that portion of the Columbia River contained within a radius extending two hundred (200) feet from the outfall discharge point(s) in all directions. The Zone of Immediate Dilution (ZID) shall be defined as that portion of the allowable mixing zone that is within a twenty (20) foot radius of each outfall discharge point.

# b. Outfalls Number 001 through 038 [Combined Sewer Overflows (CSOs)]

- Except as provided in OAR 340-045-080, no wastes shall be discharged and no activities shall be conducted to violate water quality standards, as adopted in OAR 340-041-0007 and OAR 340-041-0104.
- (2) Permittee shall comply with the performance standards for its 38 combined sewer overflow (CSO) outfalls (Outfalls 001 038, as listed on Pages 1 and 2 of this permit) and with the schedule for attainment thereof, in accordance with the provisions of the amended stipulation and final order (ASFO) WQMW-NWR-92-247 consistent with the control program set forth in the Permittee's <u>CSO</u>

(3)

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Facilities Plan. The CSO Facilities Plan is a Long Term Control Plan under the requirements of the United States EPA's Combined Sewer Overflow Control Policy.

# c. <u>Requirements for Operation and Maintenance of Combined Sewer Systems</u>

The following requirements are in fulfillment of the <u>Nine Minimum Controls</u> for the operation and maintenance of combined sewer systems; as set forth in EPA's <u>Combined Sewer Overflow Policy</u>, as applicable to the Permittee:

- (1) <u>Proper CSO outfall operation and maintenance</u>.
  - a. Each diversion structure shall be inspected at least once a month, and any observed defect in a diversion structure that could result in increased discharges to surface waters shall be repaired within <u>14 working days</u>.
  - b. Diversion structure inspection and repair records shall be maintained by the Permittee for Department review.

Proper sanitary collection system operation and maintenance.

- a. The Permittee shall institute an adequate operation and maintenance program for the entire sewage collection system.
- b. Maintenance records shall be maintained on all major electrical and mechanical components of the sewage system, including pumping and lift stations. Such records shall clearly specify the frequency and type of maintenance performed.
- c. These maintenance records shall be available for inspection by the Department during business hours.
- d. The collection system operation and maintenance shall be supervised by a person holding a current <u>Class IV</u> certificate for Collection System Operation, per Schedule-D, Special Condition No. 1; and Page 2 of this permit.
- (2) Maximize use of the collection system for storage.
  - a. The Permittee shall maximize in-line collection system storage.
  - b. All dams installed at diversion structures shall be maintained at their current heights (as of the date of permit issuance) or greater.
- (3) <u>Pretreatment requirements</u>. Currently a pretreatment program is not applicable to the City of Astoria. Should conditions change to require pretreatment; i.e. new industrial source connects to City's sanitary system, permittee must: notify the Department of the offending industrial source(s), receive Department approval of its pretreatment program, and implement the program as approved with requirements to assure that CSO impacts are minimized.
- (4) <u>Maximize flow to Astoria's wastewater treatment facility</u>. Permittee shall at all times maximize sanitary collection system capacity to ensure that all possible flow reaches treatment.
- (5) <u>No CSO discharges shall begin during dry weather</u>. Dry weather is defined as a time when it is not raining and has not rained in the Astoria metropolitan area for the previous eight hours. However, discharges resulting from snow or ice melting, even though there has been no precipitation for the previous eight hours or longer, shall not be considered dry weather discharges.
- (6) <u>Control of solid and floatable materials in CSOs</u>. Permittee shall maintain a pollution prevention program intended to reduce the quantity of pollutants, other than domestic sanitary wastes, entering the combined sewer system. The pollution prevention program shall include practicable measures to control the entrance of solid and floatable materials into the combined sewer system.

- (7) <u>Pollution prevention</u>. Permittee shall provide long-range planning for increased sanitary sewer flow capacity to accommodate projected population increases.
- (8) <u>Public notification</u>. Permittee shall implement the Public Notification and Education Process developed in accordance with the requirements of Schedule-D, Special Condition No. 4 of this permit.
- (9) <u>Monitoring of CSO impacts and controls</u>. By <u>July 1</u> of each calendar year, permittee shall submit to the Department a letter report documenting the activities undertaken in the prior year to implement the <u>Nine Minimum Controls</u> set forth in the United States EPA's <u>Combined Sewer Overflow Policy</u>.

### d. Groundwater Protection

No activities shall be conducted that could cause an adverse impact on existing or potential beneficial uses of groundwater. All wastewater and process related residuals shall be managed and disposed in a manner that will prevent a violation of the Groundwater Quality Protection Rules (OAR 340-040), and Schedule-D, Special Condition No. 2.

#### NOTES:

- 1. <u>Summer & Winter Season Duration</u>. The timing of seasonal effluent discharge corresponds to summer and winter seasons listed in Astoria's amended stipulated and final order (ASFO) WQMW-NWR-92-247 for combined sewer overflow (CSO) outfall control signed on October 29, 2010.
- 2. Approved Test Methods.
  - a. Whenever possible, a permittee should use a test method, as indicated in 40CFR 136.3 with a quantitation limit (QL) that is lower than the permitted effluent limit or water quality criteria for priority pollutant scans. A list of the analytic methods approved by the Department and the applicable QLs are located in the document, *Revised RPA IMD, Appendix B Quantitation Limit Tables, November 2007*, located on the web at <u>http://www.deq.state.or.us/wq/pubs/imds/rpaanmend.pdf</u>
  - b. Permittee must ensure that all monitoring analysis reports contain both the quantitation limit (QL) and detection level (DL) of the method as defined below:
    - (1) <u>Detection level</u>. Same as the "method detection limit" (MDL) derived using 40 CFR 136 Appendix B; and
    - (2) <u>Quantitation Limit</u>. Same as the "method reporting limit" (MRL). It is the lowest level at which the entire analytical system must give a recognizable signal and acceptable calibration for the analyte. It is equivalent to the concentration of the lowest calibration standard, assuming that all method-specified sample weights, volumes, and cleanup procedures have been employed."
- 3. Average Effluent Concentrations for BOD<sub>5</sub> and TSS. These concentration limits are less stringent than the minimum design criteria found in OAR 340-41-0104 (4) for discharge to the Main Stem Columbia River. Permittee's wastewater treatment lagoons qualify for alternative treatment limits, "equivalent to secondary treatment," per 40 CFR Section 133.105. "Equivalent to secondary treatment" for this facility is defined as a monthly average concentration limit of 30 mg/L for BOD<sub>5</sub> and 50 mg/L for TSS. TSS limits in the permit are allowed under alternative state requirements (ASR) previously approved by EPA for the State of Oregon. An ASR for TSS of 50 mg/L is allowed for Western Oregon, as published in 49 FR 37005, September 20, 1984. Upgrading to more stringent requirements will be deferred, until it is necessary to expand or otherwise modify or replace the existing treatment facilities, as allowed under OAR 340-041-0061 (4) c).

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4. <u>Summer Season BOD<sub>5</sub> & TSS Removal Efficiency</u>. 40CFR 133.101, Definitions, Section (g) defines facilities eligible for consideration for effluent limitations equivalent to secondary treatment, per 40 CFR 133.105. A waste stabilization treatment system qualifies for equivalent to secondary treatment, if it provides "significant biological treatment of municipal wastewater." "Significant biological treatment" is defined as, "The use of an aerobic or anaerobic biological treatment process in a treatment works to consistently achieve a 30-day average of at least 65% removal of BOD<sub>5</sub>" [40CFR 133.101(k) and 40CFR 133.105 (a) (3)]. 40CFR 133.105 (b) (3) requires that the TSS 30-day average percent removal be at least 65%.

The monthly average removal efficiency for  $BOD_5$  and TSS must be calculated as follows:

- For the May reporting period, the percent removal that is reported will be an average from April 22 May 21;
- b. For the June reporting period, two values will be reported The first average from May 22 June 21, and the second average from June 1 June 30;
- c. The October value will be the average from September 15 October 14; and
- d. For the November reporting period, two values will be reported The first average from October 15 - November 14, and the second average from November 1 - November 30.
- 5. Winter Season BOD<sub>5</sub> and TSS Percentage Removals. 40 CRF 133.103, Special Considerations, (a) Combined Sewers, states that percentage removal requirements are determined on a case-by-case basis for this type of source. The previous permit required 35% removal (winter season) for both BOD<sub>5</sub> and TSS. These same winter percentage removal limits are listed in this permit. DEQ's past and present policy is that the calculated removals are valid for the life of the facility; i.e. they are only updated if conditions change or the facility receives a major modification. Winter removals may increase in future permit renewals; as additional CSO control projects are completed according to the schedule set forth in the amended stipulation and final order, WQMW-NWR-92-247. Schedule-D, special condition No. 6, lists facility planning steps to investigate alternatives for increasing removal efficiencies. Should Schedule-D, special condition No. 6 work determine that the city's treatment facility requires a major upgrade or finds significant "changed conditions;" the Department will consider increasing winter season percentage removal limits based on the chosen alternative(s).
- 6. Suspension of Daily Mass Load Limit. On any day that the daily flow to the treatment facility exceeds the design AWWF = 12.6 MGD, the daily mass load limit does not apply. This provision does not affect compliance with weekly and monthly average mass load limits [Note: this is a more stringent interpretation of OAR 340-041-0061, 10. A) C) which allows the use of 2 x ADWF = 2 x 4.2 MGD = 8.4 MGD as the threshold for suspension of the daily mass load limit at this treatment facility]
- 7. Interim Limits for Chlorine and Bacteria. Permittee must comply with the *interim limits* listed in Schedule-A for chlorine and bacteria; until the construction compliance schedule listed in Schedule-C of this permit is completed. The Schedule-C compliance schedule provides for the design and reconstruction of the chlorine contact basin for effluent disinfection; and adds dechlorination and pH monitoring/control equipment to comply with final chlorine residual and bacteria limits specified in Schedule-A, 1.a (3) of this permit.
- 8. <u>Final Effluent Limitations</u>. The Permittee must comply with the final effluent limitation by no later than 2.5 years after the permit issuance date. The applicable compliance schedule is in Schedule-C of this permit.
- <u>Fecal Coliform Bacteria</u>. Limits are measured at end-of-pipe. These fecal coliform limits are taken from Section 10.0, Table-1 of DEQ's IMD for Bacteria Criteria for Marine and Estuarine Waters (December 30, 2010) per "Suggested Criteria Language for Permit." Additional monthly samples may be taken over

the number specified in Schedule-B, 1. B of this permit. All samples collected during the month must comply in aggregate to the limits specified in Schedule-A, 1.a (3).

- 10. Enterococci Bacteria. Limits are measured at end-of-pipe. If a single sample exceeds a concentration of <u>35 organisms per 100 mL</u>, then five consecutive re-samples may be taken at four hour intervals beginning within 28 hours after the original sample was taken. If the log mean of the five re-samples is less than or equal to <u>35 organisms per 100 mL</u>, a violation shall not be triggered. This enterococci limit is taken from Section 10.0, Table-1 of DEQ's IMD for Bacteria Criteria for Marine and Estuarine Waters (December 30, 2010) per "Suggested Criteria Language for Permit."
- 11. <u>Chlorine Residual Test Methods</u>. Permittee must apply the following to monitoring for chlorine concentrations:

Chlorine limits are established based on minimum dilutions. When the total residual chlorine limitation is lower than 0.10 mg/L, the Department will use 0.10 mg/L as the compliance evaluation level; i.e. a daily maximum and/or a monthly average concentration below 0.10 mg/L will be considered in compliance with the limitation. The chlorine quantitation limit (QL) is set at 100 ug/L on Page-3 of DEO's Addendum to Reasonable Potential IMD to revise Quantitation Limits (16Nov2007).

DEQ has a couple of sources that test for bisulfite residual, but they also test and report total residual chlorine. Astoria must test for bisulfite (even if it is not allowed as an alternate test) because it will tell the city when they are over-dosing and potentially causing a dissolved oxygen problem in the receiving stream. The requirement for bisulfite testing is listed in Schedule-B, 1.b at a 5-day/week frequency.

- 12. <u>Columbia River Data and pH Reasonable Potential Analysis</u>. DEQ's pH reasonable potential analysis (RPA) spread sheet used Columbia River water quality data gathered at upstream USGS Gauge No. 14246900 located at the Beaver Army Terminal near Quincy, Oregon.
- 13. <u>Temperature Criteria</u>. The "migration corridor" temperature criterion, per OAR 340-041-0028 (3) (d) applies to Astoria's effluent discharge. The 7-day, average maximum temperature of a stream identified as having migration corridor use may not exceed 20.0 °C (68.0 °F). Permittee shall not cause a significant temperature increase at mixing zone boundary for river temperatures 20.0 °C and above. OAR 340-041-0028 (12) (b) (A) states, prior to the completion of a temperature TMDL or other cumulative effects analysis, no single NPDES point source that discharges into a temperature water quality limited water may cause the temperature of the water body to increase more than 0.3 °C (0.5 °F) above the applicable criteria after mixing with either 25% of the stream flow, or the temperature mixing zone, whichever is more restrictive.
- 14. <u>Heat Load Limits</u>. The average monthly heat load limit (AML) is determined as the product of the average dry weather design flow (Q<sub>d</sub> = 4.2 MGD) and the difference between the 7-day mean maximum temperature (77 °F) and the stream standard (68 °F), as follows

AML = (4.2 MGD)(77 °F - 68 °F)(0.067804) = 2.563 MW

The maximum daily heat load limit (MDL) is determined as the product of the AML and the average daily flow variation (1.5 constant) for the period July through September for City of Astoria influent, as follows

MDL = (2.563 MW)(1.5) = 3.844 MW

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#### SCHEDULE-B

### 1. Minimum Monitoring and Reporting Requirements

The Permittee shall monitor the parameters as specified below at the locations indicated. The laboratory used by the Permittee to analyze samples shall have a quality assurance/quality control (QA/QC) program to verify the accuracy of sample analysis. If QA/QC requirements are not met for any analysis, the results shall be included in the report, but not used in calculations required by this permit. When possible, the permittee shall re-sample in a timely manner for parameters failing the QA/QC requirements, analyze the samples, and report the results.

a. Facility Influent.

Influent sampling locations for Astoria's wastewater treatment facility (WWTP) are the following:

Influent is sampled immediately upstream of influent Parshall flume, and

• Septage deliveries are sampled after screening at the headworks [one flow proportional sample per week (Note 1)].

Influent	Minimum	Type of Sample
Item or Parameter	Frequency	
Total flow (MGD)	Daily	Measurement, continuous recorder
Flow meter calibration	Annual	Verification (Note 2)
BOD <sub>5</sub> concentration	1 Day/Week	24-Hour, composite sample
(mg/L)	·	
TSS concentration	1 Day/Week	24-Hour, composite sample
(mg/L)		
BOD <sub>5</sub> concentration	Monthly Average	Calculation
(mg/L)		
TSS concentration	Monthly Average	Calculation
(mg/L)		
BOD₅ & TSS pounds	Weekly	Calculation
BOD₅ & TSS Pounds	Monthly Average	Calculation
pH	3 Days/Week	Grab sample
Metals: As, Cd, Cr, Cu,	Semi-annual	24-Hour, composite sample (2
Pb, Fe, Ni, Ag, Zn, Hg;		samples/year for 5 years with one sample
& hardness and pH	·	taken during summer season and one
(Note 3)		during winter season)

### b. Treated Effluent Outfall 039

At permit issuance, the WWTP effluent sampling point is located at the chlorine contact basin's discharge weir. Following the installation of dechlorination and pH adjustment equipment at this treatment facility, the effluent sampling point will be located immediately downstream of the dechlorination and pH adjustment zones. Samples for effluent toxics and temperature measurements are taken at the same location. Monitoring for ambient surface water (Columbia River) must be located upstream and outside of the regulatory mixing zone (RMZ), per Schedule-B (Note 3, last paragraph).

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Effluent	Minimum	Type of Sample
Item or Parameter	Frequency	
Total flow (MGD)	Daily	Measurement, continuous recorder
Flow meter calibration	Annual	Verification (Note 2)
BOD <sub>5</sub> concentration	1 Day/Week	24-Hour, composite sample
(mg/L)		
BOD <sub>5</sub> concentration	Monthly Average	Calculation
(mg/L)		
TSS concentration (mg/L)	1 Day/Week	24-Hour, composite sample
TSS concentration	Monthly Average	Calculation
(mg/L)		
pH	3 Days/week	Grab sample
E. coli Bacteria	1 Sample/Week	Grab sample (Note 4)
E. coli Bacteria	Monthly	Calculation of monthly geometric mean
		(Note 4)
Fecal Coliform Bacteria	1 Sample/Week	Grab sample (Note 4)
Fecal Coliform Bacteria	Monthly	Calculations for monthly median and
		percent exceeding 43 organisms per 100 mL
		(Note 4)
Enterococci Bacteria	1 Sample/Week	Grab sample (Note 4)
Enterococci Bacteria	Monthly	Calculation (monthly geometric mean)
		(Note 4)
Pounds chlorine used	5 Days/Week	Measurement
Chlorine residual	5 Days/Week	Grab
concentration (mg/L)		······································
Chlorine residual	Monthly Average	Calculation
concentration (mg/L)		· · · · · · · · · · · · · · · · · · ·
Bisulfite residual	5 Days/Week	Grab
concentration (mg/L)		
Ammonia as N,	1 Day/Week	24-hour composite
concentration (mg/L)		
Ammonia as N,	Monthly Average	Calculation
concentration (mg/L)		
BOD <sub>5</sub> & TSS pounds	Weekly	Calculation
discharged		
BOD <sub>5</sub> & TSS Pounds	Monthly Average	Calculation
Discharged	1.6 /11.0/	Calculation
BOD <sub>5</sub> & TSS Percent	Monthly %	Calculation
Removed	Dest Determine	Record (Note 5)
Sewage Solids	Each Relocation	Record (note 5)
Management	&/or Transport	
	Event	24 Hours composite comple (2 complex/see
Metals: As, Cd, Cr, Cu,	Semi-annual	24-Hour, composite sample (2 samples/year for 5 years with one sample taken during
Pb, Fe, Ni, Ag, Zn, Hg; &		summer season and one during winter
hardness and pH (Note 3)		4
	1	season).

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# c. <u>Temperature Measurements (May 22 - October 14)</u>

Item or Parameter	Minimum Frequency	Type of Sample
Influent Temperature,	One Measurement	Measurement (°C) at latest time of
Daily Maximum	During August	discharge, or between 3 and 5 PM.
	Each Year	
Effluent Temperature,	One Measurement	Measurement (°C) at latest time of
Daily Maximum	During August	discharge, or between 3 and 5 PM.
**	Each Year ·	
Columbia River	One Measurement	Measurement (°C) between 3 and 5 PM
Temperature, Daily	During August	on same day that effluent temperature
Maximum	Each Year	daily maximum measurement is taken.

d. CSO Outfall Monitoring (Outfalls 001 through 038)

For each combined sewer overflow (CSO) outfall discharge point identified on Pages 1 and 2 of this permit, outfall monitoring shall comply with the schedule listed in Astoria's amended stipulation and final order (ASFO) WQMW-NWR-92-247 for combined sewer overflow outfall control, as signed on October 29, 2010. For those CSO outfalls listed for monitoring in the ASFO, the following table applies:

### Year-Around CSO Reporting Requirements (Note 6)

Item or Parameter	Minimum Frequency	Type of Sample	
Date & Start Time	Each Occurrence by Outfall	Record	
Duration	Each Occurrence by Outfall	Measurement	
Volume	Each Occurrence by Outfall	Calculated	

### e. <u>Columbia River Ambient Metals Data</u>

Quarterly testing for each parameter listed below is required for the first two years following permit issuance. Beginning with Year-3 (following permit issuance) and continuing for the duration of this permit cycle; permittee must provide two tests per year for each metal, hardness, and pH (one during winter season and one during summer season). Metals testing can be performed concurrent with metals testing conducted under Schedule-B, 1.a and 1.b above.

Following two years of metals testing (counted from permit issuance); the Department will reevaluate metals data by reasonable potential analysis (RPA). DEQ will determine at that time whether the permit should be re-opened and permit limits added.

Item or Parameter	Minimum Frequency	Type of Sample
Metals: As, Cd, Cr, Cu, Pb, Fe, Ni, Ag, Zn, Hg; & hardness and pH (Note 3)	Quarterly	Grab samples. Quarterly for first 2-years, and semi-annual thereafter (one sample taken during summer season and one during winter season).

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#### 2. Discharge Monitoring Report (DMR) Procedures

- a. <u>Monitoring results</u> must be reported on approved forms. The reporting period is the calendar month. Reports must be submitted to the Department's Northwest Region - Portland office by the <u>15th day</u> of the following month.
- b. State <u>monitoring reports</u> must identify the name, certificate classification and grade level of each principal operator designated by the permittee as responsible for supervising the wastewater collection and treatment systems during the reporting period. Monitoring reports must also identify each system classification, as found on Page Two of this permit.
- c. Monitoring reports must include a record all applicable equipment breakdowns and bypassing.

#### 3. <u>WET Testing</u>

The Permittee shall conduct annual whole effluent toxicity (WET) testing of treatment facility effluent. The testing procedures outlined in Schedule-D, Special Condition No. 3 must be followed. WET testing must be for the fresh water environment.

### 4. Five Day Reporting of SSOs

This NPDES permit requires the Permittee to report sanitary sewer overflows (SSOs), except those caused by blockages on privately-owned lines, within 24-hours of when the Permittee becomes aware of them; whether or not they reach waters of the state. Permittee must provide follow-up written reports regarding SSOs within 5-days of becoming aware of the SSO, unless this requirement is waived by DEQ. The specific information that must be provided in written and oral reports is listed in Schedule-F, Section D.7 of this permit. Reports are to be developed using DEQ's "SSO Reporting Form" which is available on DEQ's external website. Permit holders may supplement this form with additional information such as copies of maintenance records. The SSO Reporting Form is located at the following website:

### http://www.deq.state.or.us/wq/wqpermit/sewer.htm.

#### NOTES:

- 1. <u>Septage Deliveries</u>. Septage deliveries shall be sampled (after screening) for BOD5 and TSS once per week using a flow proportional sample. Test results and daily septage delivery volumes shall be recorded in the treatment facility's log book for Department review upon request.
- 2. <u>Flow Meter Calibration</u>. The annual flow meter calibration date must be listed in the treatment facility's log book for Department review upon request.
- 3. <u>Metals Testing</u>. Whenever possible, Permittee should always use a test method per 40 CFR Part 136 with a Quantitation Limit (QL) that is lower than the permitted effluent limit or water quality criteria for priority pollutant scans. A list of the analytic methods approved by the Department and of the applicable QLs is located in the amended tables for Appendix B; Non-detect Analytical Data and Minimum Practical Quantification Levels, located on the web at:

#### http://www.deg.state.or.us/wg/pubs/imds/rpaammend.pdf.

The Permittee must ensure that all monitoring analysis reports contain both the QL and detection level of the method as defined below:

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## Detection Level: Same as the "Method Detection Limit" (MDL) derived using 40 CFR 136, Appendix B.

<u>**Ouantitation Limit:**</u> Same as the Method Reporting Limit (MRL). It is the lowest level at which the entire analytical system must give a recognizable signal and acceptable calibration for the analyte. It is equivalent to the concentration of the lowest calibration standard, assuming that all method-specified sample weights, volumes, and cleanup procedures have been employed.

		Nov 2007 Appendix B IMD
	. :	Quantitation Limit (QL) Required
Metal	Symbol	ug/L
Arsenic	As	0.05
Cadmium	Cd	0.1
Chromium	Cr	0.4
Copper	Cu	10
Lead	Pb	5
Nickel	Ni	10
Silver	Ag	1.0
Zinc	Zn	5
Iron	Fe	100
Mercury	Hg	0.01

All metals in terms of "Total Recoverable." Influent, effluent and Columbia River pH and hardness must be measured and reported, whenever metal samples are taken. Measure Columbia River hardness and pH at least 200 feet upstream of the Outfall 039 discharge point. Metal samples for the Columbia River can be taken at this same location.

- 4. <u>Bacteria Testing (*E. coli*, Fecal Coliform, and Enterococci)</u>. Sampling for fecal coliform and enterococci bacteria bacteria must begin at permit issuance along with *E. coli* testing. Fecal coliform and enterococci bacteria testing is required to gain experience in the sampling/test protocols, and to provide information on the disinfection capabilities of the existing chlorine contact chamber. When Schedule-C is satisfied (new chlorine contact chamber is operational), sampling for *E. coli* bacteria is no longer required.
- 5. <u>Sewage Solids Management</u>. If sewage solids are removed from the lagoon treatment system; the transfer date, quantity, destination, and contract hauler must be recorded in the facility's log book. The log book must be available for DEQ review upon request.
- 6. <u>CSO Outfall Overflow Monitoring Report Submittal</u>. A report (separate from the DMR) is required for each month of the year, even if no CSO discharges occur. For months with no CSO discharges, the report can be a simple statement of, "NO DISCHARGE at all CSO discharge points, as listed on Pages 1 and 2 of the permit." For months with CSO discharges, each and every violation of the amended stipulation and final order (ASFO) WQMW-NWR-92-247 must be listed and identified by CSO discharge point in the report. Rainfall data used for justification of an overflow must be attached.

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#### SCHEDULE-C

### **Permit Compliance Conditions**

- 1. <u>Chlorine Residual, pH, and Bacteria Control Compliance Schedule</u>. The following compliance schedule applies to the re-construction of the existing chlorine contact basin at the wastewater treatment facility, and the addition of dechlorination and pH control/monitoring equipment to ensure that *final* permit limits for chlorine residual and bacteria listed in Schedule-A of this permit are met. *Interim* limits for chlorine residual and bacteria are also listed in Schedule-A to bridge the construction interval leading to the required facility improvements. Schedule-A (Notes 7 & 8) references this compliance schedule. The following compliance conditions are established to facilitate a smooth transition from *interim to final* effluent permit limits for chlorine residual and bacteria:
  - a. <u>Completion date</u>. Permittee must complete the above pH, chlorine residual, and bacteria control construction by no later than <u>2.5 years following the permit issuance date</u>. Construction completion is defined as providing a complete project capable of consistently meeting *final* Schedule-A limits for chlorine residual and bacteria, and pH limits.
  - b. <u>Report #1</u>. On the one year anniversary date of permit issuance, the permittee shall submit a report that summarizes construction progress, discusses project finances, lists any significant problems that might jeopardize the permittee's compliance with the final effluent limits by 2.5 years after the permit issuance date, and discusses in detail the causes of those significant problems and the remedial actions that the permittee will implement to address, correct, and eliminate any identified significant problems and to ensure final effluent limit compliance by the final effluent limit compliance deadline in Item 1.e below.
  - c. <u>Report #2</u>. On the two year anniversary date of permit issuance, the permittee shall submit a report that summarizes construction progress, discusses project finances, lists any significant problems that might jeopardize the permittee's compliance with the final effluent limits by 2.5 years after the permit issuance date, and discusses in detail the causes of those significant problems and the remedial actions that the permittee will implement to address, correct, and eliminate any identified significant problems and to ensure final effluent limit compliance by the final effluent limit compliance deadline in Item 1.e below.
  - d. <u>Re-opener</u>. This permit may be re-opened and modified to be consistent with conditions or mitigation measures imposed as a result of EPA's Endangered Species Act consultation with NMFS and USFW on DEQ's rule authorizing the use of this compliance schedule. If such a reopener is necessary, DEQ will commence modification of this permit by notifying the Permittee and seeking public comment on the proposed modifications within two years after the later of (1) the date EPA's re-approval of Oregon's compliance schedules rule becomes final or (2) the date DEQ completes any required implementation of EPA re-approval, unless the date for completion of implementation exceeds two years from the date of EPA's action, in which case the modifications must commence within a period of four years from the date of EPA's re-approval.
  - e. <u>Final Limit Compliance Date</u>. The permittee shall comply with the *final* effluent limitations in Schedule-A, Item 1.a for chlorine residual, fecal coliform and enterococci bacteria, and pH limits by no later than 2.5 years after the permit issuance date. The permittee's failure to comply with any of these *final* effluent limitations by this final effluent limitations compliance deadline is a violation of this NPDES permit.

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f. <u>Compliance dates</u>. The Permittee is required to meet the compliance dates established in this schedule. No later than <u>14 days</u> following each milestone, the permittee must notify DEQ in writing of its compliance or noncompliance with the interim requirements. Any reports of noncompliance must include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirements.

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#### SCHEDULE-D

#### **Special Conditions**

1. <u>Operator Certification</u>. The Permittee shall comply with Oregon Administrative Rules (OAR), Chapter 340, Division 049, "Regulations Pertaining To Certification of Wastewater System Operator Personnel" and accordingly:

a. The Permittee shall have its wastewater system supervised by one or more operators who are certified in a classification <u>and</u> grade level (equal to or greater) that corresponds with the classification (collection and/or treatment) of the system to be supervised as specified on Page-2 of this permit.

<u>Note:</u> "Supervisor" is defined as the person exercising authority for establishing and executing the specific practice and procedures of operating the system in accordance with the policies of the Permittee and requirements of the waste discharge permit. "Supervise" means responsible for the technical operation of a system, which may affect its performance or the quality of the effluent produced. Supervisors are not required to be on-site at all times.

b. The Permittee's wastewater system may not be without supervision (as required by Special Condition-1.a. above) for more than <u>thirty (30) days</u>. During this period, and at any time that the supervisor is not available to respond on-site (i.e. vacation, sick leave or off-call), the Permittee must make available another person who is certified at no less than one grade lower than the system classification.

c. If the wastewater system has more than one daily shift, the permittee shall have the shift supervisor, if any, certified at no less than one grade lower than the system classification.

d. The Permittee is responsible for ensuring the wastewater system has a properly certified supervisor available at all times to respond on-site at the request of the permittee and to any other operator.

- e. The Permittee shall notify the Department of Environmental Quality in writing within <u>thirty (30)</u> <u>days</u> of replacement or redesignation of certified operators responsible for supervising wastewater system operation. The notice shall be filed with the Water Quality Division, Operator Certification Program, 2020 SW 4<sup>th</sup> Avenue, Suite 400, Portland, OR 97201-4987. This requirement is in addition to the reporting requirements contained under Schedule-B of this permit.
- f. Upon written request, the Department may grant the Permittee reasonable time, not to exceed <u>120</u> <u>days</u>, to obtain the services of a qualified person to supervise the wastewater system. The written request must include: (1) Justification for the time needed, (2) A schedule for recruiting and hiring, (3) The date the system supervisor's availability ceased, and (4) The name of the alternate system supervisor(s) as required by 1.b. above.
- 2. <u>Groundwater</u>. The Permittee shall not be required to perform a hydro-geologic characterization or groundwater monitoring during the term of this permit provided:
  - a. The facilities are operated in accordance with the permit conditions; and
  - b. There are no adverse groundwater quality impacts (complaints or other indirect evidence) resulting from the facility's operation.

If warranted at permit renewal, the Department may evaluate the need for a full assessment of the facilities impact on groundwater quality.

# 3. Whole Effluent Toxicity Testing

- a. <u>WET Testing Frequency and Season Requirements</u>. The permittee shall conduct annual whole effluent toxicity (WET) testing as specified in Schedule-B, Item No. 3 of this permit and in accordance with the following provisions:
- (1) WET testing must be performed for the fresh water environment.
- (2) A total of 4 annual WET, fresh water tests are required to be completed prior to the permittee's deadline for submitting its application in accordance with Schedule-F, Section A.4, Duty to Reapply.
- (3) In regard to the annual tests in sub-item a.(2), two fresh water tests must be conducted in two different summer seasons and two fresh water tests must be conducted in two different winter seasons.
- (4) After the initial 4 annual tests referred to in sub-item a.(2), the permittee shall conduct annual WET tests in rotating winter/summer seasons.
- b. Fresh Water WET Testing
- (1) Acute Toxicity Testing Organisms and Protocols
  - a) The Permittee shall conduct 48-hour static renewal tests with *Ceriodaphnia dubia* (water flea) and 96-hour static renewal tests with *Pimephales promelas* (fathead minnow).
  - b) All test methods and procedures shall be in accordance with Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, Fifth Edition, EPA-821-R-02-012, October 2002. Any deviation of the bioassay procedures outlined in this method shall be submitted in writing to the Department for review and approval prior to use.
  - c) Tests shall be conducted on final effluent collected as a single grab sample at the facility's permitted effluent sampling point, per Schedule-B, 1. b. No treatments to the final effluent sample (i.e. dechlorination, etc), except those included as part of the methodology, shall be performed by the laboratory unless approved by the Department prior to analysis.
  - d) Acute tests shall be conducted on a control and the following dilution series, unless otherwise approved in writing by the Department: 0%, 6%, <u>11</u>%, 20%, 50%, and 100% (worst-case ZID dilution = 8.8).
  - e) An acute WET test shall be considered to show toxicity if there is a statistically significant difference in survival between the control and <u>11</u>% percent effluent.
- (2) Chronic Toxicity Testing Organisms and Protocols
  - a) The Permittee shall conduct tests with: *Ceriodaphnia dubia* (water flea) for reproduction and survival test endpoint, *Pimephales promelas* (fathead minnow) for growth and survival test

endpoint and Raphidocelis subcapitata (green alga formerly known as Selanastrum capricornutum) for growth test endpoint.

- b) All test methods and procedures shall be in accordance with Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, Fourth Edition, EPA-821-R-02-013, October 2002. Any deviation of the bioassay procedures outlined in this method shall be submitted in writing to the Department for review and approval prior to use.
- c) Tests shall be conducted on final effluent samples collected as 24-hour composite samples at the facility's permitted effluent sampling point, per Schedule-B, 1. b. No treatments to the final effluent (i.e. dechlorination, etc), except those included as part of the methodology, shall be performed by the laboratory unless approved by the Department prior to analysis.
- d) Chronic tests shall be conducted on a control and the following dilution series, unless otherwise approved by the Department in writing: 0%, <u>3</u>%, 6%, 20%, 50%, and 100% (worst-case MZ dilution = 36.0).
- e) A chronic WET test shall be considered to show toxicity if the IC<sub>25</sub> (25% inhibition concentration) occurs at dilutions equal to or less than the dilution that is known to occur at the edge of the mixing zone, i.e. IC<sub>25</sub>  $\leq 3\%$ .

#### (3) Dual End-Point Tests -

- a) WET tests may be dual end-point tests in which both acute and chronic end-points can be determined from the results of a single chronic test. The acute end-point shall be based on 48-hours for the *Ceriodaphnia dubia* (water flea) and 96-hours for the *Pimephales promelas* (fathead minnow).
- b) All test methods and procedures shall be in accordance with Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, Fourth Edition, EPA-821-R-02-013, October 2002. Any deviation of the bioassay procedures outlined in this method shall be submitted in writing to the Department for review and approval prior to use.
- c) Tests shall be conducted on final effluent samples collected as described in Item 3.b. (1) c) above, per Schedule-B, 1. b of the permit.
- d) Tests run as dual end-point tests shall be conducted on a control and the following dilution series, unless otherwise approved by the Department in writing: 0%, <u>3</u>%, <u>11</u>%, 20%, 50%, and 100%.
- e) Toxicity determinations for dual end-point tests shall correspond to the acute, 3. b. (1) e), and chronic, 3.b. (2) e), described above.
- 4. <u>Emergency Response and Public Notification Plan</u>. The Permittee is required to develop and maintain an *Emergency Response and Public Notification Plan (the Plan)* per Schedule-F, Section B, Conditions 7 and 8. Permittee must annually update its Plan to ensure that telephone and email contact lists for applicable public agencies, including drinking water providers and satellite sanitary collection systems (districts) are current and accurate. Satellite sanitary systems must be fully informed about how to monitor and report sanitary sewer overflows (SSOs) in a timely manner. An updated copy of the Plan must be kept on file at the wastewater treatment facility for Department review. The latest plan revision

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date must be listed on the Plan cover along with the reviewer's signature. The Department requires that the date of an annual (or more frequent) notification of responsible satellite collection system staff be logged in the Plan to ensure that SSO reporting by satellite systems is complete and timely. Paper copies of emails used to verify SSO communications should be filed in an appendix to the Plan, and used as the permanent record of contact.

Notification. The Permittee shall notify the DEQ Northwest Region - Portland Office (telephone: 503.229.5263) in accordance with the response times noted in the General Conditions (Schedule-F) of this permit, of any malfunction so that corrective action can be coordinated between the Permittee and the Department.

Facility Planning to Improve Winter Season Percentage Removals for BOD<sub>5</sub> and TSS. Schedule-A, 6. Note 5 references this paragraph. Within <u>6 months</u> of permit issuance, permittee must submit an approvable facility plan (FP) for the following:

Demonstrate how the solids build-up in lagoon Cell #1 has impacted treatment ability by a. correlating percent removal with influent flow based on the weekly measurement of effluent BOD<sub>5</sub> and TSS for the past fifteen years.

- Based on the information in (a), estimate what percent removal can be expected when including b. future captured CSO flows.
- Provide alternatives for maximizing BOD<sub>5</sub> and TSS percentage removals during winter season c. flows under these conditions:
  - 1) Converting lagoon Cell #2 to complete mix treatment with lagoon Cell #1 in service;
  - 2) Converting lagoon Cell #2 to complete mix treatment with lagoon Cell #1 out of service; and
  - 3) Converting lagoon Cell #2 to complete mix treatment with lagoon Cell # 1 out of service and peaks over 12 MGD diverted to lagoon Cell #3.
- d. Discuss how ammonia and solids will be handled between lagoon cells."

Describe strategies for addressing the solids build-up in lagoon Cell #1. Sewage solids removal may be phased over a 5-year or 10-year planning horizon depending upon final disposition of sludge and costeffectiveness of removal.

Based on the facility evaluation above, the Department will determine whether there are significant "changed conditions" to warrant an adjustment to percentage removals.

Please consult Michael Pinney, PE, at DEQ Northwest Region, Source Control Section for detailed guidance on preparing the above FP submittal (telephone 503.229.5310). The FP discussed above must comply with Department guidelines for this type of submittal.

### SCHEDULE-E

### NOT APPLICABLE (Pretreatment is not required)

5.

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# SCHEDULE-F

## NPDES GENERAL CONDITIONS - DOMESTIC FACILITIES

(Schedule-F, last update 9.18.2009)

#### SECTION-A, STANDARD CONDITIONS

1. Duty to Comply with Permit

The permittee must comply with all conditions of this permit. Failure to comply with any permit condition is a violation of Oregon Revised Statutes (ORS) 468B.025 and the federal Clean Water Act and is grounds for an enforcement action. Failure to comply is also grounds for the Department to terminate, modify and reissue, revoke, or deny renewal of a permit.

# 2. Penalties for Water Pollution and Permit Condition Violations

The permit is enforceable by DEQ or EPA, and in some circumstances also by third-parties under the citizen suit provisions 33 USC §1365. DEQ enforcement is generally based on provisions of state statutes and EQC rules, and EPA enforcement is generally based on provisions of federal statutes and EPA regulations.

ORS 468.140 allows the Department to impose civil penalties up to \$10,000 per day for violation of a term, condition or requirement of a permit. The federal Clean Water Act provides for civil penalties not to exceed \$32,500 and administrative penalties not to exceed \$11,000 per day for each violation of any condition or limitation of this permit.

Under ORS 468.943, unlawful water pollution, if committed by a person with criminal negligence, is punishable by a fine of up to \$25,000, imprisonment for not more than one year, or both. Each day on which a violation occurs or continues is a separately punishable offense. The federal Clean Water Act provides for criminal penalties of not more than \$50,000 per day of violation, or imprisonment of not more than 2 years, or both for second or subsequent negligent violations of this permit.

Under ORS 468.946, a person who knowingly discharges, places, or causes to be placed any waste into the waters of the state or in a location where the waste is likely to escape into the waters of the state is subject to a Class B felony punishable by a fine not to exceed \$200,000 and up to 10 years in prison. The federal Clean Water Act provides for criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment of not more than 3 years, or both for knowing violations of the permit. In the case of a second or subsequent conviction for knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than \$100,000 per day of violation, or imprisonment of not more than \$100,000 per day of violation, or imprisonment of not more than \$100,000 per day of violation, or imprisonment of not more than \$100,000 per day of violation, or imprisonment of not more than \$100,000 per day of violation, or imprisonment of not more than \$100,000 per day of violation, or imprisonment of not more than \$100,000 per day of violation, or imprisonment of not more than \$100,000 per day of violation, or imprisonment of not more than \$100,000 per day of violation, or imprisonment of not more than \$100,000 per day of violation, or imprisonment of not more than \$100,000 per day of violation, or imprisonment of not more than \$100,000 per day of violation, or imprisonment of not more than \$100,000 per day of violation, or imprisonment of not more than \$100,000 per day of violation, or imprisonment of not more than \$100,000 per day of violation, or imprisonment of not more than \$100,000 per day of violation, or imprisonment of not more than \$100,000 per day of violation, or imprisonment of not more than \$100,000 per day of violation, or imprisonment of not more than \$100,000 per day of violation, per second per se

#### 3. Duty to Mitigate

The permittee must take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment. In addition, upon request of the Department, the permittee must correct any adverse impact on the environment or human health resulting from noncompliance with this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.

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# 4. <u>Duty to Reapply</u>

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and have the permit renewed. The application must be submitted at least 180 days before the expiration date of this permit.

The Department may grant permission to submit an application less than 180 days in advance but no later than the permit expiration date.

## 5. <u>Permit Actions</u>

This permit may be modified, revoked and reissued, or terminated for cause including, but not limited to, the following:

- a. Violation of any term, condition, or requirement of this permit, a rule, or a statute;
- b. Obtaining this permit by misrepresentation or failure to disclose fully all material facts;
- c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge;
- d. The permittee is identified as a Designated Management Agency or allocated a wasteload under a Total Maximum Daily Load (TMDL);
- e. New information or regulations;
- f. Modification of compliance schedules;
- g. Requirements of permit reopener conditions;
- h. Correction of technical mistakes made in determining permit conditions;
- i. Determination that the permitted activity endangers human health or the environment;
- j. Other causes as specified in 40 CFR 122.62, 122.64, and 124.5;
- k. For communities with combined sewer overflows (CSOs);
  - (1) To comply with any state or federal law regulation that addresses CSOs that is adopted or promulgated subsequent to the effective date of this permit;
  - (2) If new information, not available at the time of permit issuance, indicates that CSO controls imposed under this permit have failed to ensure attainment of water quality standards, including protection of designated uses;
  - (3) Resulting from implementation of the Permittee's Long-Term Control Plan and/or permit conditions related to CSOs.

The filing of a request by the permittee for a permit modification, revocation or reissuance, termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

### 6. <u>Toxic Pollutants</u>

The permittee must comply with any applicable effluent standards or prohibitions established under Oregon Administrative Rules (OAR) 340-041-0033 and 307(a) of the federal Clean Water Act for toxic pollutants, and with standards for sewage sludge use or disposal established under Section 405(d) of the Clean Water Act, within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

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#### 7. Property Rights and Other Legal Requirements

The issuance of this permit does not convey any property rights of any sort, or any exclusive privilege, or authorize any injury to persons or property or invasion of any other private rights, or any infringement of federal, tribal, state, or local laws or regulations.

### 8. Permit References

Except for effluent standards or prohibitions established under Section 307(a) of the federal Clean Water Act and OAR 340-041,0033 for toxic pollutants, and standards for sewage sludge use or disposal established under Section 405(d) of the Clean Water Act, all rules and statutes referred to in this permit are those in effect on the date this permit is issued.

### 9. Permit Fees

The permittee must pay the fees required by Oregon Administrative Rules.

# SECTION-B, OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

### 1. Proper Operation and Maintenance

The permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

#### 2. Need to Halt or Reduce Activity Not a Defense

For industrial or commercial facilities, upon reduction, loss, or failure of the treatment facility, the permittee must, to the extent necessary to maintain compliance with its permit, control production or all discharges or both until the facility is restored or an alternative method of treatment is provided. This requirement applies, for example, when the primary source of power of the treatment facility fails or is reduced or lost. It is not a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

#### 3. Bypass of Treatment Facilities

a. Definitions

- (1) "Bypass" means intentional diversion of waste streams from any portion of the treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, provided the diversion is to allow essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs b. and c. of this section.
- (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- b. Prohibition of bypass.

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- (1) Bypass is prohibited and the Department may take enforcement action against a permittee for bypass unless:
  - i. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventative maintenance; and
  - iii. The permittee submitted notices and requests as required under General Condition B.3.c.
- (2) The Department may approve an anticipated bypass, after considering its adverse effects and any alternatives to bypassing, when the Department determines that it will meet the three conditions listed above in General Condition B.3.b.(1).
- c. Notice and request for bypass.
  - (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, a written notice must be submitted to the Department at least ten days before the date of the bypass.
  - (2) Unanticipated bypass. The permittee must submit notice of an unanticipated bypass as required in General Condition D.5.

### 4. Upset

5.

- a. Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operation error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.
- b. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of General Condition B.4.c are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- c. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (1) An upset occurred and that the permittee can identify the causes(s) of the upset;
  - (2) The permitted facility was at the time being properly operated;
  - (3) The permittee submitted notice of the upset as required in General Condition D.5, hereof (24-hour notice); and
  - (4) The permittee complied with any remedial measures required under General Condition A.3 hereof.
- d. Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

# Treatment of Single Operational Upset

For purposes of this permit, A Single Operational Upset that leads to simultaneous violations of more than one pollutant parameter will be treated as a single violation. A single operational upset is an exceptional incident that causes simultaneous, unintentional, unknowing (not the result of a knowing act or omission), temporary noncompliance with more than one Clean Water Act effluent discharge pollutant parameter. A single operational upset does not include Clean Water Act violations involving discharge without a NPDES permit or noncompliance to the extent caused by improperly designed or inadequate treatment facilities. Each day of a single operational upset is a violation.

Overflows from Wastewater Conveyance Systems and Associated Pump Stations

### a. Definitions

6.

(1) "Overflow" means any spill, release or diversion of sewage including:

- i. An overflow that results in a discharge to waters of the United States; and
- ii. An overflow of wastewater, including a wastewater backup into a building (other than a backup caused solely by a blockage or other malfunction in a privately owned sewer or building lateral), even if that overflow does not reach waters of the United States.
- b. Prohibition of overflows. Overflows are prohibited. The Department may exercise enforcement discretion regarding overflow events. In exercising its enforcement discretion, the Department may consider various factors, including the adequacy of the conveyance system's capacity and the magnitude, duration and return frequency of storm events.
- c. Reporting required. All overflows must be reported orally to the Department within 24 hours from the time the permittee becomes aware of the overflow. Reporting procedures are described in more detail in General Condition D.5.

# 7. Public Notification of Effluent Violation or Overflow

If effluent limitations specified in this permit are exceeded or an overflow occurs that threatens public health, the permittee must take such steps as are necessary to alert the public, health agencies and other affected entities (e.g., public water systems) about the extent and nature of the discharge in accordance with the notification procedures developed under General Condition B.8. Such steps may include, but are not limited to, posting of the river at access points and other places, news releases, and paid announcements on radio and television.

# 8. Emergency Response and Public Notification Plan

The permittee must develop and implement an emergency response and public notification plan that identifies measures to protect public health from overflows, bypasses or upsets that may endanger public health. At a minimum the plan must include mechanisms to:

- a. Ensure that the permittee is aware (to the greatest extent possible) of such events;
- b. Ensure notification of appropriate personnel and ensure that they are immediately dispatched for investigation and response;
- c. Ensure immediate notification to the public, health agencies, and other affected public entities (including public water systems). The overflow response plan must identify the public health and other officials who will receive immediate notification;
- d. Ensure that appropriate personnel are aware of and follow the plan and are appropriately trained;
- e. Provide emergency operations; and
- f. Ensure that DEQ is notified of the public notification steps taken.

## 9. <u>Removed Substances</u>

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters must be disposed of in such a manner as to prevent any pollutant from such materials from entering waters of the state, causing nuisance conditions, or creating a public health hazard.

# SECTION-C, MONITORING AND RECORDS

### 1. <u>Representative Sampling</u>

Sampling and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples must be taken at the monitoring points specified in this permit, and shall be taken, unless otherwise specified, before the effluent joins or is diluted by any other waste stream, body of water, or substance. Monitoring points may not be changed without notification to and the approval of the Department.

# 2. Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices must be selected and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices must be installed, calibrated and maintained to insure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected must be capable of measuring flows with a maximum deviation of less than  $\pm 10$  percent from true discharge rates throughout the range of expected discharge volumes.

### 3. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR part 136, or in the case of sludge use and disposal, under 40 CFR part 503, unless other test procedures have been specified in this permit.

# 4. <u>Penalties of Tampering</u>

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit may, upon conviction, be punished by a fine of not more than \$10,000 per violation, imprisonment for not more than two years, or both. If a conviction of a person is for a violation committed after a first conviction of such person, punishment is a fine not more than \$20,000 per day of violation, or by imprisonment of not more than four years, or both.

# 5. <u>Reporting of Monitoring Results</u>

Monitoring results must be summarized each month on a Discharge Monitoring Report form approved by the Department. The reports must be submitted monthly and are to be mailed, delivered or otherwise transmitted by the 15th day of the following month unless specifically approved otherwise in Schedule B of this permit.

# 6. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR part 136, or in the case of sludge use and disposal, under 40 CFR part 503, or as specified in this permit, the results of this monitoring must be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report. Such increased frequency must

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also be indicated. For a pollutant parameter that may be sampled more than once per day (e.g., Total Chlorine Residual), only the average daily value must be recorded unless otherwise specified in this permit.

#### 7. Averaging of Measurements

Calculations for all limitations that require averaging of measurements must utilize an arithmetic mean, except for bacteria which shall be averaged as specified in this permit.

## 8. <u>Retention of Records</u>

Records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities shall be retained for a period of at least five years (or longer as required by 40 CFR part 503). Records of all monitoring information including all calibration and maintenance records, all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit and records of all data used to complete the application for this permit shall be retained for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Department at any time.

## 9. <u>Records Contents</u>

Records of monitoring information must include:

- a. The date, exact place, time, and methods of sampling or measurements;
- b. The individual(s) who performed the sampling or measurements;
- c. The date(s) analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

### 10. Inspection and Entry

The permittee must allow the Department or EPA upon the presentation of credentials to:

- a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit, and
- d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by state law, any substances or parameters at any location.

### 11. Confidentiality of Information

Any information relating to this permit that is submitted to or obtained by DEQ is available to the public unless classified as confidential by the Director of DEQ under ORS 468.095. The Permittee may request that information be classified as confidential if it is a trade secret as defined by that statute. The name and address of the permittee, permit applications, permits, effluent data, and information required by NPDES application forms under 40 CFR 122.21 will not be classified as confidential (40 CFR 122.7(b)).

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#### SECTION-D, REPORTING REQUIREMENTS

#### 1. Planned Changes

The permittee must comply with OAR chapter 340, division 52, "Review of Plans and Specifications" and 40 CFR Section 122.41(l) (1). Except where exempted under OAR chapter 340, division 52, no construction, installation, or modification involving disposal systems, treatment works, sewerage systems, or common sewers may be commenced until the plans and specifications are submitted to and approved by the Department. The permittee must give notice to the Department as soon as possible of any planned physical alternations or additions to the permitted facility.

## 2. <u>Anticipated Noncompliance</u>

The permittee must give advance notice to the Department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

#### 3. <u>Transfers</u>

5.

This permit may be transferred to a new permittee provided the transferee acquires a property interest in the permitted activity and agrees in writing to fully comply with all the terms and conditions of the permit and the rules of the Commission. No permit may be transferred to a third party without prior written approval from the Department. The Department may require modification, revocation, and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under 40 CFR Section 122.61. The permittee must notify the Department when a transfer of property interest takes place.

## 4. <u>Compliance Schedule</u>

Reports of compliance or noncompliance with, or any progress reports on interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date. Any reports of noncompliance must include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirements.

#### Twenty-Four Hour Reporting

The permittee must report any noncompliance that may endanger health or the environment. Any information must be provided orally (by telephone) to DEQ or to the Oregon Emergency Response System (1-800-452-0311) as specified below within 24 hours from the time the permittee becomes aware of the circumstances.

### a. Overflows.

(1) Oral Reporting within 24 hours.

i. For overflows other than basement backups, the following information must be reported to the Oregon Emergency Response System (OERS) at 1-800-452-0311. For basement backups, this information should be reported directly to DEQ.

- a) The location of the overflow;
- b) The receiving water (if there is one);
- c) An estimate of the volume of the overflow;
- d) A description of the sewer system component from which the release occurred (e.g., manhole, constructed overflow pipe, crack in pipe); and

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- e) The estimated date and time when the overflow began and stopped or will be stopped.
- ii. The following information must be reported to the Department's Regional office within 24 hours, or during normal business hours, whichever is first:
  - a) The OERS incident number (if applicable) along with a brief description of the event.
- (2) Written reporting within 5 days.
  - i. The following information must be provided in writing to the Department's Regional office within 5 days of the time the permittee becomes aware of the overflow:
    - a) The OERS incident number (if applicable);
    - b) The cause or suspected cause of the overflow;
    - c) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the overflow and a schedule of major milestones for those steps;
    - d) Steps taken or planned to mitigate the impact(s) of the overflow and a schedule of major milestones for those steps; and
    - e) (for storm-related overflows) The rainfall intensity (inches/hour) and duration of the storm associated with the overflow.

The Department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

- b. Other instances of noncompliance.
  - (1) The following instances of noncompliance must be reported:
    - i. Any unanticipated bypass that exceeds any effluent limitation in this permit;
    - ii. Any upset that exceeds any effluent limitation in this permit;
    - iii. Violation of maximum daily discharge limitation for any of the pollutants listed by the ... Department in this permit; and
    - iv. Any noncompliance that may endanger human health or the environment.
  - (2) During normal business hours, the Department's Regional office must be called. Outside of normal business hours, the Department must be contacted at 1-800-452-0311 (Oregon Emergency Response System).
  - (3) A written submission must be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission must contain:
    - i. A description of the noncompliance and its cause;
    - ii. The period of noncompliance, including exact dates and times;
    - iii. The estimated time noncompliance is expected to continue if it has not been corrected;
    - iv. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance; and
    - v. Public notification steps taken, pursuant to General Condition B.7
  - (4) The Department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

#### Other Noncompliance

6.

The permittee must report all instances of noncompliance not reported under General Condition D.4 or D.5, at the time monitoring reports are submitted. The reports must contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times;
- c. The estimated time noncompliance is expected to continue if it has not been corrected; and

d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

### Duty to Provide Information

7.

The permittee must furnish to the Department within a reasonable time any information that the Department may request to determine compliance with the permit or to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit. The permittee must also furnish to the Department, upon request, copies of records required to be kept by this permit.

Other Information: When the permittee becomes aware that it has failed to submit any relevant facts or has submitted incorrect information in a permit application or any report to the Department, it must promptly submit such facts or information.

# 8. <u>Signatory Requirements</u>

All applications, reports or information submitted to the Department must be signed and certified in accordance with 40 CFR Section 122.22.

## 9. Falsification of Information

Under ORS 468.953, any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, is subject to a Class C felony punishable by a fine not to exceed \$100,000 per violation and up to 5 years in prison. Additionally, according to 40 CFR 122.41(k)(2), any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a federal civil penalty not to exceed \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

### 10. Changes to Indirect Dischargers

The permittee must provide adequate notice to the Department of the following:

- Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of the Clean Water Act if it were directly discharging those pollutants and;
- b. Any substantial change in the volume or character of pollutants being introduced into the POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
- c. For the purposes of this paragraph, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

### SECTION-E, DEFINITIONS

- 1. BOD means five-day biochemical oxygen demand.
- 2. *CBOD* means five day carbonaceous biochemical oxygen demand
- 3. TSS means total suspended solids.
- 4. "*Bacteria*" includes but is not limited to fecal coliform bacteria, total coliform bacteria, and E. coli bacteria.

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- 5. FC means fecal coliform bacteria.
- 6. Total residual chlorine means combined chlorine forms plus free residual chlorine
- 7. *Technology based permit effluent limitations* means technology-based treatment requirements as defined in 40 CFR Section 125.3, and concentration and mass load effluent limitations that are based on minimum design criteria specified in OAR Chapter 340, Division 41.
- 8. mg/l means milligrams per liter.
- 9. kg means kilograms.
- 10.  $m^3/d$  means cubic meters per day.
- 11. MGD means million gallons per day.
- 12. 24-hour *Composite sample* means a sample formed by collecting and mixing discrete samples taken periodically and based on time or flow. The sample must be collected and stored in accordance with 40 CFR Part 136.
- 13. *Grab sample* means an individual discrete sample collected over a period of time not to exceed 15 minutes.
- 14. *Quarter* means January through March, April through June, July through September, or October through December.
- 15. Month means calendar month.
- 16. Week means a calendar week of Sunday through Saturday.
- 17. POTW means a publicly owned treatment works.

(Schedule-F, last update 9.18.2009)

GLS: Astoria, NPDES Permit Sept23 2011.docx Revised: November 16, 2011