



AGENDA

ASTORIA CITY COUNCIL

October 17, 2016

7:00 p.m.

2nd Floor Council Chambers

1095 Duane Street · Astoria OR 97103

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **REPORTS OF COUNCILORS**

4. **CHANGES TO AGENDA**

5. **CONSENT CALENDAR**

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

- (a) City Council Minutes of 9/19/16
- (b) Boards and Commissions Minutes
 - (1) Historic Landmarks Commission Meeting of 8/16/16
 - (2) Planning Commission Meeting of 7/26/16
 - (3) Planning Commission Meeting of 8/2/16
- (c) 17th Street Dock Division of State Lands (DSL) Lease Renewal (Public Works)
- (d) Public Safety Radio Upgrade (Police)
- (e) Accept Grant from Oregon State Parks and Recreation Department to Support Site-Specific Park Plan at Shively and McClure Parks (Parks)

6. **REGULAR AGENDA ITEMS**

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

- (a) Cancellation of Public Hearing for Plan Amendment: Article 3 Accessory Dwelling Units (Community Development)
- (b) Cancellation of Public Hearing for Plan Amendment: Article 9 Administrative Procedures (Community Development)
- (c) 50th Street Trestle Repair Project – Authorization to Award Construction Contract (Public Works)
- (d) 2017 Trolley Trestle Repair Project – Contract for Design Services (Public Works)
- (e) Agreement for City Attorney Legal Services (City Council)

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

8. **EXECUTIVE SESSION**

- (a) ORS 192.660(2)(i) – Performance Evaluations of Public Officers and Employees

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 YUILL, CITY MANAGER'S OFFICE, 503-325-5824



CITY OF ASTORIA
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October 12, 2016

M E M O R A N D U M

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: ASTORIA CITY COUNCIL MEETING OF OCTOBER 17, 2016

CONSENT CALENDAR

Item 5(a): City Council Minutes

The minutes of the City Council meeting of September 19, 2016 are enclosed for review. Unless there are any corrections, it is recommended that Council approve these minutes.

Item 5(b): Boards and Commissions Minutes

The minutes of the (1) Historic Landmarks Commission meeting of 8/16/16, (2) Planning Commission meeting of 7/26/16, and (3) Planning Commission meeting of 8/2/16 are enclosed. Unless there are any questions or comments regarding the contents of these minutes, they are presented for information only.

Item 5(c): 17th Street Dock Division of State Lands (DSL) Lease Renewal (Public Works)

The City is required to have a Lease for a portion of the State owned submerged lands that the 17th Street Dock sits over. While the City owns the property, the State has ownership of the submerged lands (the river bottom). The current Lease expired in November of 2015. Staff has been working with the State Division of State Lands (DSL) to complete the new Lease Agreements and now have all of the required documents ready for City Council consideration. Since a small portion of the 17th Street Dock lies over property owned by Stopwater LLC (Bar Pilots), the City prepared a Sublease Agreement that will allow Stopwater to lease the submerged land from DSL and then sublease it to the City. Stopwater will pass through the Lease fee with a small administrative fee to cover reimbursement of their staff time. The City will also reimburse Stopwater \$2,500 for their actual costs to prepare the documentation for the Sublease. The fee for the Lease with DSL will be \$1,896.75 per year and the fee for the Sublease from Stopwater will be \$633.00 per year for a total of \$2,529.75. The attached Lease Agreement, Sublease Agreement and Consent to Sublease

have been reviewed as to form by City Attorney Blair Henningsgaard. Funds for the Lease will be paid from the 17th Street Dock Fund. It is recommended that Council authorize the Mayor to sign the DSL Lease Agreement for the 17th Street Dock, the Sublease Agreement with Stopwater LLC, and the DSL Consent to Sublease.

Item 5(d): Public Safety Radio Upgrade (Police)

The Public Safety communications network is comprised of multiple radios located at eight individual sites. These sites serve all the public safety agencies in Clatsop County. A simulcast system allows the disparate repeaters to act as one allowing for maximum coverage throughout the County. The ability to simulcast has been one of our long term communications infrastructure goals and with the financial partnership of the Astoria 9-1-1 Fire Subscribers we can take the first step towards our second simulcast frequency. In conjunction with the Astoria 9-1-1 Fire Subscribers, staff would like to purchase one (1) Motorola GTR 8000 base radio with associated software making simulcasting possible. The current Fire Repeater on Megler Mountain is at the end of its service life and needs replacement. By replacing this aging repeater with a GTR 8000, the Fire community will have taken their first step towards simulcasting. Having two county-wide simulcast channels has always been a communications goal for our Public Safety partners. This base radio with associated equipment is WSCA (Western States Contracting Alliance) contract priced at \$10,640 each. The Emergency Communications Fund has \$2,500 available in Network Maintenance toward the purchase of one radio with the local Fire Departments contributing the balance of \$8,140. It is recommended that Council approve the purchase of one (1) GTR 8000 base radio by Astoria 9-1-1 totaling \$10,640 with the local Fire Departments reimbursing the Emergency Communications Fund \$8,140.

Item 5(e): Accept Grant from Oregon State Parks and Recreation Department to Support Site-Specific Park Plan at Shively and McClure Parks (Parks)

The Astoria Parks and Recreation Department has been successful in receiving \$40,000 in grant funding from the Oregon Parks and Recreation Department to support site-specific park planning at Shively Park and McClure Park. The Parks and Recreation Department's draft Comprehensive Master Plan recommends completing site-specific park plans at several locations. During the community input process for the Parks and Recreation Comprehensive Master Plan, Shively Park ranked as the community's highest priority and McClure Park ranked as the second highest priority for site master plans. On May 2, 2016 Council approved the application to the Oregon Parks and Recreation Department Local Government Grant Program in the amount of \$40,000 to support funding site plans for Shively Park and McClure Park. The required 40% match, in the amount of \$16,000 cash, is budgeted in the Capital Improvement Fund in addition to an in-kind management and administration contribution of \$11,000. On September 15, 2016 the Parks and Recreation Department was informed that its grant application was successful. The tentative timeline for these projects is provided in Director Cosby's memo. It is recommended that Council accept the Oregon Parks and Recreation Department Local Government Grant to support

funding site plans for Shively Park and McClure Park and approve the Local Government Grant Program Agreement.

REGULAR AGENDA ITEMS

Item 6(a): Cancellation of Public Hearing for Plan Amendment: Article 3 Accessory Dwelling Units (Community Development)

Item 6(b): Cancellation of Public Hearing for Plan Amendment: Article 9 Administrative Procedures (Community Development)

A public hearing notice for the October 17, 2016 City Council meeting regarding two separate Astoria Development Code amendment applications was mailed anticipating the Planning Commission's review would be complete in time for this October 17th meeting; however, the hearing remains open at the Planning Commission. These City Council hearings will be rescheduled after the Astoria Planning Commission has made a recommendation. Any required mailed notices and newspaper notice will be provided once the hearing date has been set. The Astoria Planning Commission will hold a work session for further discussion on A16-02 -Article 3: Accessory Dwelling Units on Wednesday, October 19, 2016 at 6:30 p.m. in the Council Chambers and will continue the discussion at their regular meeting on October 25, 2016 at 6:30 p.m. in the Council Chambers. No action is required by the City Council; however the items had to be listed on the Council agenda since the public notice was provided.

Item 6(c): 50th Street Trestle Repair Project – Authorization to Award Construction Contract (Public Works)

OBEC Consulting Engineers recently completed an inspection of the trestles and track associated with the City owned railroad right-of-way to determine condition and repair priorities. As part of this effort, timber trestles east of 39th Street were inspected to ensure appropriate repairs can be made to facilitate continued use of the River Trail. The inspection found that a number of structural members supporting the River Trail walkway over the 50th Street Trestle need immediate replacement. The City coordinated with OBEC to develop a scope of work for the needed repairs. Staff used the informal Request for Quotes (RFQ) process since the work was estimated to cost less than \$100,000. The following competitive quotes for the project have been received:

<u>Contractor</u>	<u>Total Quote</u>
Columbia Dockworks	\$14,588
Mark Baldwin Construction	\$27,800
Bergerson Construction	\$31,446

Funding for this project is available in the Riverwalk – Trestles improvement budget of the Promote Astoria Fund. Additional trestle repairs will be required prior to trolley operation in 2017. The contract has been approved as-to-form by the City Attorney. It is recommended that Council authorize the award of a construction contract to Columbia Dockworks, Inc., in the amount of \$14,588 for the 50th Street Trestle Repair Project.

Item 6(d): 2017 Trolley Trestle Repair Project – Contract for Design Services (Public Works)

The City of Astoria has approximately 4.7 miles of railroad track and eight timber trestles formerly owned and operated by Burlington Northern Railroad from the Port of Astoria to Tongue Point. The Astoria Riverfront Trolley currently operates on approximately three miles of this track and over four of the trestles. The Trolley provides passenger service from Portway Street to 39th Street. Due to the age of the railroad infrastructure, the effort required to maintain the track and structures has been increasing rapidly. This year OBEC Consulting Engineers inspected the trestles and track to identify condition and determine repair priorities. At the July 18, 2016 Council Meeting, City staff presented three options for managing the maintenance needs of the Trolley and River Trail infrastructure. Council approved a hybrid approach which focuses available funding resources on maintaining the structures and track west of 39th Street (active rail) and provides minimal repairs and more frequent inspection to ensure safe operation of the River Trail east of 39th Street. Immediate maintenance needs for the trestles and track will need to be addressed prior to Trolley operation in 2017. OBEC provided a design services proposal to assist the City with completion of this maintenance work. Their scope of work includes design, permit review, bid support and construction assistance. This work is proposed to be completed for the not-to-exceed amount of \$23,122. The immediate maintenance needs, including trestles and track repair, are estimated at around \$320,000 for the 2016-2017 Fiscal Year. Staff recommends funding the immediate repairs using the Promote Astoria Fund. The City Attorney has reviewed the contract and approved it as to form. It is recommended that Council authorize award of a Personal Services Contract to OBEC Consulting Engineers in the amount of \$23,122 for design services for the 2017 Trolley Trestle Repair Project.

Item 6(e): Agreement for City Attorney Legal Services (City Council)

On September 6, 2016 an item regarding City Attorney Legal Services was deferred to a subsequent meeting as Attorney Henningsgaard was unable to be in attendance. The provisions contained in the agreement for legal services between Blair Henningsgaard and the City of Astoria remains unchanged from what was included in the September 6th packet. The agreement replaces the Legal Services agreement dated December 20, 2010. The compensation section includes an annual increase of \$3,000, from \$84,000 to \$87,000, for routine services, and non-routine matters will increase \$10 per hour from \$180 per hour to \$190 per hour. No other changes are contained in this agreement. The effective date is August 1, 2016. The Fiscal Year 2016-2017 budget includes a budget of \$87,000 for legal services in the City Attorney department of the General Fund. It is recommended that Council consider approve the revised agreement.

EXECUTIVE SESSION

Item 8(a): ORS 192.660(2)(i) – Performance Evaluations of Public Officers and Employees

The City Council will meet in executive session to discuss a performance evaluation.

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

Councilors Present: Mayor Pro Tem Nemlowill, Warr, Price. Ward 2 is vacant.

Councilors Excused: Mayor LaMear

Staff Present: City Manager Estes, Community Development Director Cronin, Parks and Recreation Director Cosby, Finance Director Brooks, Fire Chief Ames, Police Chief Johnston, Public Works Director Cook, and City Attorney Henningsgaard. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

City Manager Estes confirmed that former Councilor Herzig had provided notice that his seat was now vacant.

REPORTS OF COUNCILORS

Item 3(a): Councilor Warr reported that he attended Ray Goforth's celebration of life. He was amazed at the affection such a huge diversity of the community held for her. Ms. Goforth was instrumental in getting the Maritime Memorial built. The event was wonderful and he believed the community said a proper good bye to Ms. Goforth.

Mayor Pro Tem Nemlowill added that Ray Goforth was known as the Mayor of Uniontown.

Item 3(b): Councilor Price reported that the Citizen's Police Academy began the week before. The academy is held every Thursday from 6:00 pm to 9:00 pm and there is still space for more people to join. She knew a lot about police operations, but had learned a lot from the one session she attended. She was looking forward to completing the course. She announced that Raina Christian's Harvest Moon Festival installation is up and it is very beautiful, particularly in the evening. Ms. Christian brought a lot of honor to herself, her family, Astoria, and her Chinese heritage. She opened Councilor Price's imagination to what should be and what could be at Heritage Square if the project were completed. She saw many pieces of art that she had never noticed before. She congratulated and thanked Ms. Christian, noting that she is a high school senior with an enormous amount of poise and creativity. She attended City Hall Week for the first time. The League of Oregon Cities asked cities to rate a variety of subjects, and then they picked the top four to advocate for at the upcoming legislative session. The four priorities were property taxes, recreational immunity, transportation, and the Public Employees Retirement System (PERS). She was grateful that Senator Johnson was in Astoria because she gave an enormous amount of background information and understanding about what this meant and what the legislature was likely to do. Councilor Price also noted that Brew Fest would be next weekend.

Item 3(c): Mayor Pro Tem Nemlowill explained she was wearing a sports jersey because Director Cronin was the self-described point guard for the Blazers when they visited Astoria earlier that day. The team raised a Blazers flag at City Hall and a wonderful event was planned at Heritage Square. The Blazer broadcasters, dancers, and team ambassadors visited local schools to donate playground equipment, basketball hoops, balls, and \$1,000 to the Parks Community Fund for scholarships. She reported that the Parks Department received a grant, made possible in part by the new Parks Master Plan, which will allow the City to do some work at parks. The City also won several awards for the Parks Master Plan. She asked Director Cosby to give more details.

Director Cosby announced the Oregon Parks and Recreation Department granted the City a Local Planning Grant for \$40,000 to create site plans for McClure and Shively Parks, a top recommendation in the Parks Master Plan. The City is providing a \$16,000 match and some administrative time to the grant. This fall, the City will procure a consultant to do the planning and design work. Public participation will be conducted January through April 2017 and final plans will be complete in June 2017. The Parks Department won two awards over the last week for their Parks Master Plan. One award was from the Oregon Parks and Recreation Association for planning. The other award was from the Oregon Chapter of American Planning Association for public involvement and participation. The City is happy that Parks Master Plan has resulted in wonderful outcomes after all the work that was put into it.

Mayor Pro Tem Nemlowill called for a round of applause for Ian Sisson and Director Cosby.

CHANGES TO AGENDA

There were no changes.

PROCLAMATIONS

Item 5(a): Domestic Violence Awareness Month

Mayor Pro Tem Nemlowill read the proclamation declaring October as Domestic Violence Awareness Month.

CONSENT CALENDAR

The following items were presented on the Consent Calendar:

- 6(a) Authorization to Award Professional Services Contract for 33rd and Leif Erikson Streetlight Project (Public Works)
- 6(b) Purchase of Non-Invasive Cardiac CPR Support Pump (Fire)
- 6(c) Addition of Job Title of Human Resources Support for Schedule F-1 of Salary Resolution No. 16-12 (Finance)
- 6(d) Pump Station No. 1 Upgrades – Progressive Design Build Contract Amendment for Additional Work (Public Works)
- 6(e) Revision of Aquatic Center Supervisor Job Description and Addition of Position to Schedule E, Range 36, of Salary Resolution No. 16-12 (Parks)

City Council Action: Motion made by Councilor Price, seconded by Councilor Warr, to approve the Consent Calendar. Motion carried unanimously. Ayes: Councilors Price and Warr and Mayor Pro Tem Nemlowill; Nays: None. Ward 2 is vacant.

REGULAR AGENDA ITEMS

Item 7(a): Liquor License Application from Jeremy French, doing business as Reveille Ciderworks, Located at 1343 Duane Street, for a New Outlet for a Winery License (Finance)

A Liquor License Application has been filed by Jeremy French, doing business as Reveille Ciderworks, Located at 1343 Duane Street, Astoria. The application is for a New Outlet for a Winery License. The appropriate departments have reviewed the application and it is recommended that Council consider approval of the application.

Mayor Pro Tem Nemlowill declared a potential conflict of interest, as her husband owns Fort George Brewery. However, Reveille Ciderworks is not currently a client. She did not believe this would be a direct conflict and planned to vote.

Councilor Warr noted that Staff has not taken a position, either for or against the application. City Manager Estes explained that while Staff had recently taken a position on some liquor license applications, Staff does not typically take any position. He confirmed that Staff had no concerns with this application.

Councilor Price asked if the Police Department had reviewed the application because she had never seen an application submitted to Council without a note from the Police Department. Chief Johnston replied the Police Department does not usually comment on liquor license applications unless there are substantive factors that would lead the Department to make a recommendation.

City Council Action: Motion made by Councilor Warr, seconded by Councilor Price to approve the Liquor License Application by Jeremy French, dba Reveille Ciderworks, for a New Outlet for a Winery License. Motion carried unanimously. Ayes: Councilors Price and Warr and Mayor Pro Tem Nemlowill; Nays: None. Ward 2 is vacant.

Item 7(b): Public Hearing and Contract Award for Bear Creek Dam Valve Repair (Public Works)

The City of Astoria's Bear Creek Dam is a 90-foot high concrete dam built in 1912, which was raised 15 feet 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. In 2013, a seismic failure was performed and is now complete. It was determined that the dam does not need to be structurally modified/mitigated to protect against seismic failure. The City has some work to do at the headworks to prevent future dam overtopping events. Future projects consist of repair to the 63-year-old main drainage piping, a probable maximum flow study for the watershed, and a possible future overflow weir to the east of the Bear Creek Reservoir. This memorandum relates to repairs of the drainage piping for the dam. Staff is recommending that a \$30,000 contract be executed with Dam Maintenance Management, a company that specializes in dam rehabilitation and maintenance. In order to sole source to this firm, our City Code requires that an exemption findings be prepared and a public hearing be held. Findings have been prepared and are outlined in the memo to Council. The contract and the exemption findings have been reviewed by City Attorney, Blair Henningsgaard. It is recommended that Council conduct a public hearing for the purposes of taking public comments on the findings for exemption from the competitive solicitation requirements, and adopt findings that authorize the sole sourcing of the goods and services contract with Dam Maintenance Management to provide valve repair services for the not-to-exceed amount of \$30,000.

Mayor Pro Tem Nemlowill opened the public hearing at 7:20 pm and called for public comments. Hearing none, she closed the public hearing at 7:20 pm and confirmed there was no Council discussion.

City Council Action: Motion made by Councilor Price, seconded by Councilor Warr to adopt findings that authorize the sole sourcing of the goods and services contract with Dam Maintenance Management to provide valve repair services for the not-to-exceed amount of \$30,000. Motion carried unanimously. Ayes: Councilors Price and Warr and Mayor Pro Tem Nemlowill; Nays: None. Ward 2 is vacant.

Item 7(c): FEMA Pipeline Road Waterline Bank Stabilization Project – Construction Contract Award (Public Works)

In the winter of 2015, Oregon experienced a severe weather pattern that caused damaging winter storms. Astoria experienced a washout along Pipeline Road where a 21" diameter water transmission main crosses a ravine. As a result of the damage, a Federal declaration of emergency was declared on February 17, 2016 and the Federal Emergency Management Agency (FEMA) Public Assistance Program funds became available to assist communities with the repair of their damages. Staff is currently awaiting final funds award and an Army Corp of Engineers (ACOE) permit for the project. Because the engineer's estimate was under \$100,000, per City code, staff requested construction quotes from local contractors for the work. Following is a summary of the quotes received:

Contractor	Total Quote
Big River Construction	\$44,837.00
Vinson Brother Construction	\$65,767.10

Funding for the project will temporarily come from the Public Works Improvement Fund and will be reimbursed by FEMA (75 percent) and Oregon's Infrastructure Finance Authority (25 percent). As of the date of this memo, staff has been informed that the ACOE permit will not be issued in time to complete the project this year. The National Marine Fisheries Service did not agree with the repair method approved by FEMA and requested that other options be evaluated. Because the evaluation will be time consuming, a permanent repair will not be executed until next summer. To protect the City water main, FEMA proposed stockpiling riprap at the site in preparation for a temporary repair this winter. Staff would monitor the stability of the water main and implement the placement of the riprap on an as-needed basis. The most efficient method to implement the emergency preparations would be to execute the contract with Big River with a conditional Notice to Proceed. This would authorize the work necessary to prepare for and implement needed protection over the winter. It is recommended that the City Council authorize the award of a contract to Big River Construction, Incorporated in an amount not-to-exceed \$44,837.00 for the Pipeline Road Bank Stabilization Project temporary.

City Engineer Harrington said Staff has worked with FEMA, the Oregon Department of Fish and Wildlife (ODFW), and ACOE to develop a repair plan. The Department of State Lands (DSL) determined this project was exempt from certain regulations and has issued the City a permit to do the work. As the rest of the permitting process was taking time, the City received an extension to complete the in-water work by October 15, 2016. The City recently found out that the National Marine Fisheries would not issue a permit unless a bioengineered solution was used to repair the riprap. Staff does not believe a bioengineered solution would work. Over the next year, before National Marine Fisheries makes a decision on an approved alternative, the City will conduct an alternatives analysis, a cost benefit analysis, and possibly a hydraulic study. The water line at risk is the water supply for the entire city and about 4,000 of the 5,000 outlying water districts. Therefore, the National Marine Fisheries agreed to an interim solution to place rock material at the site, monitor the site, and place rock anytime the line is at risk. The placement of rock will be approved through an emergency action that requires the City to notify the ACOE permit. Any rock placed will need to be removed as part of the final project. FEMA has adjusted their project worksheet to include payment for this work. He has not confirmed whether the IFA will be able to increase their award amount, but FEMA has. He confirmed with City Attorney Henningsgaard that the best way to prepare for the emergency action will be to enact a contract under a limited status. Staff recommends the contract be awarded to Big River Construction because they were the lowest bidder on the planned project and they already conduct the same activities like building access roads and moving the same rock materials. Big River will only be authorized to enhance the existing access road, mobilize equipment, stockpile rock, and be prepared to place the rock.

Councilor Warr said he did not understand how National Marine Fisheries became involved in a pipeline project. Engineer Harrington explained that the location of the riprap is vulnerable because it crosses a creek. When the pipeline was built, the pipe was laid in the creek below the creek bed. The creek bed has eroded in the past and the City has always been able to repair the erosion. However, environmentalists are now advocating against placing rock in natural drainages. He confirmed that under the Endangered Species Act and because the State has jurisdiction over the water, National Marine Fisheries and the ACOE must review this project. A recent study has indicated the creek contains at least two endangered species, Coho and steelhead. There are no barriers to fish spawning in the area because there is a fish passage culvert above the site.

Councilor Price asked if FEMA would reimburse the City for the full amount of this work. Engineer Harrington noted that he had not yet received the revised project worksheet describing the work. City Manager Estes clarified that FEMA has stated they would pay for the originally agreed upon 75 percent of the revised price. The IFA stated they would provide funds for the 25 percent match. However, the City has not received confirmation that the IFA will provide 25 percent of the revised price. Therefore, the City may have to bear some of the cost through infrastructure funds, but the amount will be small.

City Council Action: Motion made by Councilor Price, seconded by Councilor Warr to authorize the award of a contract to Big River Construction, Incorporated in an amount not-to-exceed \$44,837.00 for the Pipeline Road Bank Stabilization Project temporary. Motion carried unanimously. Ayes: Councilors Price and Warr and Mayor Pro Tem Nemlowill; Nays: None. Ward 2 is vacant.

Item 7(d): Ordinance Readopting Local Fuel Tax (1st reading) (Finance)

Ordinance No. 07-02 was adopted August 20, 2007, concerning the provision for administration, enforcement, and collection of three cents per gallon business license tax on motor vehicle fuel dealers. The use of tax revenue is for the construction, reconstruction, improvement, repair, maintenance, operation and use of City owned roads and streets within the City of Astoria, roads and streets for which City is contractually or legally obligated to operate and maintain, or roads and streets for which the City has accepted responsibility under intergovernmental agreement. City of Astoria and City of Warrenton adopted three cents per gallon business license tax ordinances at the same time and both will sunset in 2017, unless re-adopted. Astoria and Warrenton desire to continue the road tax for road maintenance by readopting their respective ordinances.

The City of Astoria has an Intergovernmental Agreement (IGA) with the Oregon Department of Transportation (ODOT) for the collection and administration of the City's fuel tax, which was amended in May, 2016 to coincide with City of Warrenton's IGA ending September, 2016. Both Agreements have been extended through September 30, 2021. It is advantageous to have the ordinance renewal coincide with the timeline for the IGA with ODOT and early readoption by both Councils is being sought. City Attorney Henningsgaard prepared the

readoption ordinance, which is attached. It is recommended that the City Council conduct the first reading of the proposed ordinance readopting a motor vehicle fuel tax.

Director Cook stated the City generally receives between \$19,000 and \$20,000 per month in tax revenue for an average of \$200,000 per year.

City Council Action: Motion made by Councilor Nemlowill, seconded by Councilor Price to conduct the first reading of the proposed ordinance readopting a motor vehicle fuel tax. Motion carried unanimously. Ayes: Councilors Price and Warr and Mayor Pro Tem Nemlowill; Nays: None. Ward 2 is vacant.

Director Cook conducted the first reading of the ordinance readopting a motor vehicle fuel tax.

Item 7(e): Economic Development Strategy: Approve Professional Services Contract (Community Development)

The City Council adopted a Fiscal Year 2015-16 Goal to "Promote positive economic development through strengthening partnerships." On March 21, 2016, the City Council authorized a solicitation for professional services to assist the City in creating an economic development strategy. A \$40,000 grant was awarded to the City by the Department of Land Conservation & Development (DLCD) to offset a portion of the costs. A Request for Qualifications (RFQ) was advertised in April 2016 whereby four proposals were received. City staff asked community partners to help review and score the proposals. The group included:

Kevin Leahy	Clatsop Economic Development Resources
Jim Knight	Port of Astoria
Jim Servino	Chamber of Commerce
Patrick Wingard	Department of Land Conservation & Development

The initial scoring did not result in a clear winner; therefore, City staff asked the consultants for an interview with the community partners. Based on the scoring of the original four proposers, City staff organized three interviews on June 15, 2016 at the Fort George Lovell Showroom. Based on responses from the evaluators and subsequent discussions, Community Attributes Inc. (CAI) from Seattle was selected as the preferred consultant.

In addition to the grant funds, staff is proposing matching funds from the Astor West Urban Renewal District where the majority of the city's employment land (i.e., light industrial) is located. These funds are included in the adopted Fiscal Year 2016-17 Budget for Astor West under materials and services and a request is included in a separate memo to the Astoria Development Commission. The contract is in a "Not to Exceed" amount of \$80,000 with the grant matching dollar for dollar based on a scope of work with specific deliverables required for each payment.

The end product will be a clear and concise action plan that makes the case for why Astoria is doing an economic development strategy, what will be accomplished such as specific outcomes, and which stakeholders are responsible for implementing the strategy over a five-year period. There are three objectives that will help achieve the goal:

- update the City's economic data through an economic opportunities analysis and potentially update the City's Comprehensive Plan Economic Element,
- develop a technically sound, cohesive economic development strategy based on current data and trends in the region, and
- better define the City's role in achieving community economic development aspirations through current and planned implementation measures (i.e. toolbox), including capital improvements, technical and financial assistance, and development code streamlining.

A public outreach strategy will be developed with the consultant. A centerpiece of the strategy is a Mayor appointed citizens advisory committee to help guide the project and provide advice on technical and policy questions that will arise. The project kickoff is scheduled for October 5, 2016 at Fort George Lovell Showroom and features a moderated panel presentation of economic development experts. The Council, business community, and general public are invited to attend. If the City Council authorizes the contract, work can begin immediately and the public outreach strategy can be implemented. The City Attorney has reviewed the contract

as to form. It is recommended that Council authorize a professional services contract with CAI in a not to exceed amount of \$80,000.

Director Cronin gave a presentation that defined economic development and the City's economic goals, explained how this project was different from other community development projects, recommended public involvement strategies, outlined Staff's request of City Council, and reviewed the most recent updates on the project.

Councilor Warr asked why the City needed to get involved in economic development. When he was first elected to the City Council, there were 16 economic development committees in the county, including the Chamber of Commerce, City of Astoria, and Clatsop Community College. None of the committees were able to make any substantive efforts to develop the economy. Skip Hauke intuitively understood the City was going nowhere, so he developed Clatsop Economic Development Resources (CEDR) and all of the individual groups dissolved their economic development committees. Now, the community has an organization that has received statewide and national awards almost every year for the last five or six years. Staff's proposal looks good; however, he was concerned about another economic development committee. Director Cronin said the Mayor-appointed committee was just for one project and the Mayor has not notified him that she wanted the committee to continue after the project is complete. He attends CEDR Board meetings to make sure the community and county are coordinating on economic development. Mary McArthur and Kevin Leahy will both be on the committee. City Manager Estes explained that this committee would be similar to the project committee created when the City updated its Transportation System Plan (TSP). The committee will be comprised of a group of individuals that will provide guidance, make a recommendation to City Council, and then dissolve.

Councilor Warr understood Staff was following City Council's goal because it will strengthen partnerships with other groups, which he supported.

Mayor Pro Tem Nemlowill believed this project could make a big impact if the Comprehensive Plan is amended to reflect this economic strategy. She asked how the Comprehensive Plan might change. Director Cronin confirmed that some of the economic development strategies in the current Plan are outdated and that new strategies have emerged and should be added to the Comprehensive Plan. The consultants and the committee will be tasked with making sure the Plan still makes sense for today and for the next five to 20 years. Recommended amendments to the Comprehensive Plan will be presented to the Planning Commission first, and then to City Council.

Mayor Pro Tem Nemlowill said diversification in the economy is important. The City cannot put all of its eggs in one basket. Tourism saved Astoria when fishing and logging declined. Now, a year-round community needs more than tourism. She believed the economic development strategy was a good move.

Councilor Price asked when the committee was formed and who was appointed. Director Cronin listed the members of the committee, as follows: Mary McArthur (Col-Pac), Kevin Leahy (CEDR and Small Business Development Center), Jim Servino (Chamber of Commerce), Skip Hauke (Chamber of Commerce), Jim Knight (Port of Astoria), Gary Kobes (Port of Astoria), Dave Kroening (Buoy Beer), Josh Allison (Reach Break Brewing), Eric Thorsen (Columbia Memorial Hospital), JoAnn Zahn (Clatsop Community College), Leslie McCray (Sunday Market), Walt Postlewait (Craft3), Jorge Gutierrez (Lower Columbia Hispanic Council), Alisa Dunlap (Pacific Power), Andrew Bornstein (Bornstein Seafood).

Councilor Price said the project sounded good, but she shared the concerns of her colleagues. She hoped conversations would be citywide, especially when discussing changes to the Comprehensive Plan. She was concerned about the lack of public discussion about changing the Development Code. She asked Staff to explain why it was difficult to choose a contractor because the wording in the Staff report could be interpreted several ways. Director Cronin said the committee recognized this was the first time this strategy would be pursued. Therefore, the committee and Staff were very intentional about choosing the right contractor. He believed the contractor would bring a fresh approach to the project. He also believed City Council would be positively surprised to see how community attributes will communicate information in a very simple way. The best consultants are very good at creating infographics that summarize a lot of technical information. He must communicate very complex projects in very simple terms. He confirmed that none of the other community partners has ever worked with this contractor before.

City Council Action: Motion made by Councilor Price, seconded by Councilor Warr to authorize a professional services contract with CAI in a not to exceed amount of \$80,000. Motion carried unanimously. Ayes: Councilors Price and Warr and Mayor Pro Tem Nemlowill; Nays: None. Ward 2 is vacant.

Director Cronin announced that on October 5th, the Economic Development Committee will have a kick-off meeting. He invited the public to attend. Kevin Leahy will give a Power Point presentation. Other presenters will include Chris Breitmeyer (Clatsop Community College President), Shawn Busse (Kinesis), Jim Knight (Port of Astoria), and Adam Zimmerman (Craft3 President and CEO). The meeting will be held at Fort George and will begin at 6:00 pm.

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

Jim Krettler, 1660 SE 1st, Astoria, said two weeks ago, he read in the newspaper that City Council voted to outsource control of the parking downtown. He supported downtown parking enforcement, but was opposed to outsourcing. His house was broken into while he hosted an event for the City because it was publicly advertised that he would be at the event and not at home. He also had his identity stolen and this took years to fix. The newspaper has recently published articles about a person who was sentenced for stealing from his or her dad, a person who was convicted of stealing from his or her employer, and a person who stole from a non-profit. He has given his information to the City, but not so the City can share it with private groups or individuals. He has been very careful about where his information goes. After reading about the outsourcing, he called Councilor Warr and Mayor LaMear. He has not heard back from the Mayor, but Councilor Warr returned his call. The Police Chief came to his store and was very respectful. However, he was concerned about some of the comments Chief Ames made. Chief Ames had said any information given to the City could be given to anyone the City sees fit to share it with. He told the Chief he believed there was a difference between a City employee and a private individual. Chief Ames then stated he did not believe there was a difference. He was disturbed to learn that the Police Chief did not believe there was any difference between highly trained police officers and rental cops. He understood Council has made its decision on the information they had at the time. However, he wanted to know what knowledge the Councilors had at the time and how each Councilor made his or her decision. He asked Councilor Price who would have the information the City is giving to the Astoria Downtown Historic District Association (ADHDA).

Mayor Pro Tem Nemlowill asked Mr. Krettler what information he had been asked to provide.

Mr. Krettler replied the information about his vehicle and the business he works for. The information would allow someone to determine when he worked, the hours the store is open, and when no one is at his house. A thief could break into his house knowing no one was present based on that information.

Mayor Pro Tem Nemlowill encouraged Mr. Krettler to ask his questions, but noted it was up to each Councilor to decide if they wanted to answer at that time. She explained that Councilors often need to do research before they are able to answer the public's questions.

Mr. Krettler believed his questions should have been answered by Council before a decision was made. He asked who would have access to his personal information.

Councilor Price stated she did not understand the question and said the City would not be giving the ADHDA any information. She explained that the City is giving the ADHDA the ability to police parking. The parking enforcement officer will write down the license plate number of any vehicle that is in the wrong place at the wrong time. Anyone could do this.

Mr. Krettler said he was an employee of a downtown business, so he must park outside of the downtown district. If the ADHDA is not being given any information, that is great. However, he wanted to know who would get the information. He wrote his information down and gave it to the City. A questionnaire must be filled out when applying for a business license so the police will know. John Hord would tell him that his car was not supposed to be in the area. He would tell Mr. Hord that he was just unloading stuff for his store and would move the vehicle. Mr. Hord knew the information that he had provided to the City.

City Manager Estes said even he knew which car and license plate Mr. Krettler had because he works downtown as well. The parking enforcement officer will know who works downtown just from developing relationships.

Mr. Krettler asked if the parking officer would be the only one with that information. Chief Ames had indicated the officer would have that information.

City Manager Estes explained that the information on business licenses is public information. Therefore, the information provided to the parking officer is public record. Most downtown merchants know which vehicles belong to which people because it is a small group. The information that will be provided is already public information and will not include information like Social Security numbers.

Mayor Pro Tem Nemlowill directed City Manager Estes to speak with Mr. Krettler the next day. She also recommended that Mr. Krettler come to City Council again if he still had concerns after speaking with City Manager Estes.

City Manager Estes noted that Chief Ames had visited Mr. Krettler in an attempt to answer all of his questions and address his concerns. He believed there were differences of opinion about that conversation. He confirmed he would follow up with Mr. Krettler.

Mr. Krettler confirmed this was acceptable, but he still wanted to know what information the City Council had been given. If he has identity theft or another break in as a result of this decision, would the City indemnify every single employee? He stated that Mayor Pro Tem Nemlowill was involved with two businesses and if her husband gave the downtown business his information, he and his business would be liable. He wanted to know what liability the City would have in that case. The form the City gave him does not say the information he wrote down was public record.

City Manager Estes said anything submitted to the City is public.

Mr. Knight understood that if he did not want his information public, he should not give it to the City. He asked if his business license would be rejected if he did not give the City his information.

City Manager Estes said he would discuss this after the meeting, but noted that anyone who sees Mr. Krettler driving to and from work knows what kind of car he drives.

Mr. Krettler asked City Manager Estes to confirm which car he had driven to work that day. City Manager Estes responded that because Mr. Krettler was concerned about that information being public, he did not believe it was appropriate to say it on record. He agreed to discuss the issues after the meeting. Mr. Krettler said he was still unsatisfied with Council's decision. He wanted to know what City Council would do for him if he had a theft as a result of their decision.

Councilor Price said the parking officer would enforce parking and give out information. All of Astoria's uniformed police officers do the same thing. This parking officer will be dedicated to the downtown area and will do the same thing a police officer would do, but would not be a uniformed police officer. She asked if Mr. Krettler would not trust a person hired by the ADHDA to do the same thing a police officer would.

Mr. Krettler said he could not know without knowing the person.

Councilor Price said Mr. Krettler might not know the police officers either and asked again if that was his concern. She did not understand the basis of his concern.

Mr. Krettler said anyone who has experienced identity theft and a break in at home would understand. He hoped Councilor Price never had to go through all that. When he brought documentation to the Police Department to show he had theft in an open case, Staff told him to hire a private lawyer. The City would not deal with it.

Councilor Price clarified that the intent of her comment was to say there is no difference between a police officer and a community outreach officer.

Mr. Krettler disagreed, just as he had disagreed with Chief Johnston.

Councilor Warr said he and Mr. Krettler had also disagreed when they spoke over the phone. He noted that Mr. Krettler worked for the City for 30 years and for most of that time, parking control was done by a part-time City employee. He did not believe there was a difference between a part-time City employee and part-time employee of the ADHDA. Anyone walking up and down the street trying to provide traffic control will know every vehicle and who drives the vehicles.

Mr. Krettler asked if the parking officer would be the only person who would have that information. City Manager Estes confirmed that only one person would be hired to enforce parking downtown. Mr. Krettler asked if this person would be bonded and background checked. City Manager Estes explained that after completing the hiring process, the person hired would be deputized as a special officer, per City Code. Mr. Krettler confirmed that just one person would have his information. He asked how the information would be secured.

City Manager Estes explained that any parking control officer hired, including Mr. Hord, would know which vehicles belong to which downtown employees. The officer will develop knowledge and a working relationship with all of the downtown merchants. This parking enforcement method will be more relationship driven than before, which is a positive thing for the downtown area.

Mr. Krettler said when he worked for the City, the City was liable for its employees' conduct and behavior. He asked if the ADHDA will be liable in this case.

Councilor Warr said the employee would be a special deputy and he did not believe anything would be different from the way it always has been. He did not understand where Mr. Krettler was coming from.

Mayor Pro Tem Nemlowill stated she had not done a good job keeping public comments to three minutes each and the meeting needs to move on. She directed Mr. Krettler to express his concerns outside of the meeting.

Dulcye Taylor, 1287 Commercial Street, Astoria, announced that this was Alana Garner's last City Council meeting. The ADHDA is looking for a new Executive Director, as Ms. Garner has submitted a resignation. Ms. Garner did an excellent job for downtown Astoria and the ADHDA will miss her.

Alana Garner, 1 12th Street, Suite 14, Astoria, said the 15th Annual Pacific Northwest Brew Cup would be from noon on Friday, September 23rd through 4:00 pm on Sunday, September 25th, east of the Barbey Maritime Center. This year's special feature is a custom stein that looks like the Astoria Column that will be raffled off. The ADHDA still needs volunteers for the event. Anyone interested volunteering can sign up online at www.pacificnorthwestbrewcup.com. Her three years with the ADHDA have been wonderful and she has enjoyed working with area organizations and the City.

ADJOURNMENT

There being no further business, the meeting was adjourned at 8:14 pm to convene the Astoria Development Commission meeting.

ATTEST:

APPROVED:

Finance Director

City Manager

HISTORIC LANDMARKS COMMISSION MEETING

City Council Chambers

August 16, 2016

CALL TO ORDER – ITEM 1:

A regular meeting of the Astoria Historic Landmarks Commission (HLC) was held at the above place at the hour of 5:15 p.m.

ROLL CALL – ITEM 2:

Commissioners Present: President LJ Gunderson, Vice President Michelle Dieffenbach, Commissioners Jack Osterberg, Paul Caruana, Mac Burns, Kevin McHone, and Thomas Stanley.

Staff Present: Planner Nancy Ferber. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

APPROVAL OF MINUTES – ITEM 3(a):

President Gunderson asked if there were any changes to the minutes. There was none.

Commissioner Caruana moved to approve the minutes of June 21, 2016 as presented; seconded by Commissioner Burns. Motion passed 6 to 0 to 1. Ayes: Vice President Dieffenbach, Commissioners Caruana, Osterberg, Burns, Stanley, and McHone. Nays: None. Abstentions: President Gunderson.

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):

EX16-07 Exterior Alteration EX16-07 by Samuel E. Johnson to replace an existing garage door with carriage doors, replace flat roof with gabled roof, and replace siding on an existing garage at 3774 Grand in the R-2, Medium Density Residential zone.

President Gunderson asked if anyone objected to the jurisdiction of the 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.

Commissioner Burns declared Dr. Johnson was a colleague, but he had not discussed the project with him. This would not affect his decision.

President Gunderson said she drove by the property.

Vice President Dieffenbach declared she had spoken to the Applicant three or four years ago about projects on his house. She believed she could be objective.

President Gunderson requested a presentation of the Staff report.

Planner Ferber presented the Staff report and recommended approval with conditions. No correspondence has been received.

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

Samuel E. Johnson, 3774 Grand, Astoria, thanked the Commission for taking care of the city. He has lived in three historic houses, one in Portland that he restored, one on Davenport that he restored, and this one that he

intends to restore. He thanked Planner Ferber for helping him through the process, which was much easier than in Portland.

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

Commissioner Osterberg agreed that the project met all of the criteria and the architecture would be of appropriate size and scale.

Commissioner Stanley moved that the Historic Landmarks Commission adopt the Findings and Conclusions contained in the Staff report and approve Exterior Alteration EX16-07 by Samuel E. Johnson; seconded by Commissioner Burns. Motion passed unanimously.

President Gunderson read the rules of appeal into the record.

ITEM 4(b):

EX16-08 Exterior Alteration EX16-08 by Michelle Dieffenbach, Rickenbach Construction to add a 600 square foot addition on the west side of an existing historic single family dwelling at 500 Duane in the R-2, Medium Density Residential zone.

President Gunderson asked if anyone objected to the jurisdiction of the 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.

Vice President Dieffenbach stepped down from the dais.

President Gunderson stated she drove by the property.

President Gunderson requested a presentation of the Staff report.

Planner Ferber presented the Staff report and recommended approval with conditions. No correspondence has been received.

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

Greg Allen, 92771 Timberman Rd., Astoria, said he was excited to work on this project.

Commissioner Osterberg asked if the proposed entry door would match or be similar to the existing door or other doors on the house.

Patti Breidenbach, 500 Duane, Astoria, said the proposed door would be of a different style because the existing doors are not original to the house. She researched the time period and wanted to do something close to the Craftsman style of 1906. The proposed door will let more light into the hallway. She confirmed the new door would not match the existing door, but would match or be similar to the types of doors that were appropriate for the original architectural character of the house.

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

Commissioner Caruana said he liked that the addition would be separated from the house and the skylights would not be seen.

President Gunderson said the house is surrounded by trees, so the skylights are a good idea.

Ms. Breidenbach noted there was already a skylight on the main structure.

Commissioner Osterberg moved that the Historic Landmarks Commission adopt the Findings and Conclusions contained in the Staff report and approve Exterior Alteration EX16-08 by Michelle Dieffenbach; seconded by Commissioner Burns. Motion passed unanimously.

President Gunderson read the rules of appeal into the record.

Vice President Dieffenbach returned to the dais.

ITEM 4(c):

NC16-04 New Construction NC16-04 by Jorge and Heather Vazquez of Pelayos to install a tent canopy for covered seating adjacent to food vending truck in the parking lot of an existing gas station at 1701 Marine Drive in the FA, Family Activities zone.

President Gunderson asked if anyone objected to the jurisdiction of the 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 also serves on the Design Review Committee (DRC). The Committee approved this project last week, but she did not believe that would impact her decision.

President Gunderson requested a presentation of the Staff report.

Planner Ferber presented the Staff report and recommended approval with conditions. No correspondence has been received. She confirmed that approval of this request would allow the Applicant to take the tent down for the winter and put the tent back up in the spring in the proposed location.

President Gunderson opened public testimony for the hearing, confirmed the Applicant was not present, and called for any presentations by persons in favor of, impartial to or against the application. Seeing none, she called for closing remarks of Staff. There were none. She closed the public testimony portion of the hearing and called for Commission discussion and deliberation.

Commissioner Stanley confirmed the permit was necessary because the tent would be up for more than 30 days.

President Gunderson said the Applicant has done everything necessary. It was unfortunate that he had to go through the DRC and HLC to get permits in addition to purchasing the tent. His cost to complete the legal process far exceeds the cost of the tent.

Commissioner Osterberg agreed and said maybe this could prompt Staff to amend the Code. He found it difficult to understand why the Building Code considered this tent a structure because it has no occupancy. He agreed with the Staff report. This is a semi-permanent structure surrounded by historic structures and new construction is not required to match anything. Additionally, the criterion encourages new construction to refrain from matching. He understood the HLC was supposed to consider the scale, style, height, and architecture of surrounding structures. However, he could not imagine requiring a tent or canopy to somehow replicate or match a historic structure.

Vice President Dieffenbach agreed it was too bad this project had to be reviewed by the Commission. However, she could think of numerous tent styles she would not find compatible in certain areas. Even though this temporary tent is defined as a permanent structure, the HLC should be careful what it does with the Code.

Commissioner Caruana said the HLC did not believe the smoking structure at the Rosebriar was appropriate. This tent will not withstand a storm because it is not constructed for the environment. When the tent stops working, a tin version will likely be built. However, material changes would have to be approved. He believed the tent should be taken down for at least one day out of every month just to avoid this process. He did not want to approve this tent because the HLC did not approve the smoking structure at the Rosebriar. These structures seem functional and temporary, but they are still in place 20 years later.

Commissioner Osterberg said he did not expect this tent to be a long-term structure, nor did he expect it to be up during the winter.

Commissioner Osterberg moved that the Historic Landmarks Commission adopt the Findings and Conclusions contained in the Staff report and approve New Construction NC16-04 by Jorge and Heather Vazquez; seconded by Commissioner Burns. Motion failed 3 to 4. Ayes: President Gunderson, Commissioners Osterberg, and Burns. Nays: Vice President Dieffenbach, Commissioners Caruana, Stanley, and McHone.

Planner Ferber confirmed the Applicant could not have the tent up for more than 30 days. She has discussed the options with the Applicant, who indicated he wanted a permanent location for his customers to sit and did not want to bother with taking the tent down over and over. She and Director Cronin are considering Code amendments related to umbrellas, tents, and sidewalk furniture. Tables with umbrellas would not be reviewed by the HLC because they are not considered structures.

Commissioner Osterberg suggested Staff consider a 30-day permit with extension options that could be approved administratively.

President Gunderson read the rules of appeal into the record.

STATUS UPDATES – ITEM 5(a):

Status report photographs are included for the following: NC15-08 for 726 27th Street by Dan Peters. The project is complete or near completion and conditions have been met. This status report is for Commission information.

REPORTS OF OFFICERS/COMMISSIONERS – ITEM 6:

Planner Ferber reviewed the update on a recent Oregon Supreme Court ruling on historic structures, which was included in the agenda packet. She also noted the recently sold Flavel property would be nominated for a Restore Oregon grant for façade improvements. There would be no HLC meeting in September.

PUBLIC COMMENTS – ITEM 7:

ADJOURNMENT:

There being no further business, the meeting was adjourned at 5:50 pm.

APPROVED:

Planner

ASTORIA PLANNING COMMISSION MEETING

Astoria City Hall
July 26, 2016

CALL TO ORDER:

President Pearson called the meeting to order at 6:38 pm.

ROLL CALL:

Commissioners Present: President David Pearson, Vice President Kent Easom, McLaren Innes, Daryl Moore, Jan Mitchell and Frank Spence

Commissioners Excused: Sean Fitzpatrick

Staff Present: Community Development Director Kevin Cronin and Planner Nancy Ferber. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

APPROVAL OF MINUTES: June 28, 2016

Commissioner Spence noted that he had made the comments in the last paragraph on Page 5, not Vice President Easom.

Vice President Easom noted he was not present at the June meeting, but was quoted throughout the minutes.

President Pearson moved that the Astoria Planning Commission table approval of the minutes until the next regular meeting for revisions; seconded by Commissioner Spence. Motion passed unanimously.

PUBLIC HEARINGS:

President Pearson explained the procedures governing the conduct of public hearings to the audience and advised that handouts of the substantive review criteria were available from Staff.

ITEM 4(a):

CU16-07 Conditional Use CU16-07 by Katrina and Aaron Gasser to utilize a finished bedroom and bath in the basement for a home stay lodging at 774 Alameda in the R-1, Low Density Residential zone.

President Pearson asked if anyone objected to the jurisdiction of the Planning Commission to hear this matter at this time. There were no objections. He asked if any member of the Planning Commission had any conflicts of interest or ex parte contacts to declare.

Commissioner Spence declared that he knew Katrina Gasser through the Kiwanis Club, but he did not believe this would affect his ability to make an impartial decision. He confirmed he had not discussed this project with Ms. Gasser.

Vice President Easom declared that his company manages the property next door to the Applicant's property. However, he did not believe this would change his decision.

President Pearson called for the Staff report.

Planner Ferber reviewed the written Staff report. No correspondence had been received and Staff recommended approval of the request with the conditions listed in the Staff report.

Commissioner Innes asked if approving this request would create the potential for more home stay lodgings in R-1 zones. Planner Ferber confirmed that all home stay lodgings would require a Conditional Use Permit.

President Pearson opened the public hearing and called for a presentation by the Applicant.

Katrina Gasser, 774 Alameda Avenue, Astoria, said she believed she had met all of the conditions and looked forward to hosting based on her understanding of the City's expectations.

Commissioner Spence asked how the Applicant planned to advertise the availability of the rental. Ms. Gasser said she would use the Airbnb application.

President Pearson called for any testimony in favor of, impartial to, or opposed to the application. Hearing none, he closed the public hearing and called for Commission discussion and deliberation.

Vice President Easom was concerned about parking three cars tandem with a guest. He believed cars would end up parking on the street, which would burden the neighborhood. The grassy area could not be made into a parking spot because of the location of the utility pole. He did not believe the parking requirement had been met.

President Pearson said he was okay with the three off-street parking spaces because there was no sidewalk. However, the situation would change if a sidewalk were installed.

Commissioner Spence agreed with Staff's conclusion that the criteria had been met and he had no objections.

Commissioner Mitchell did not believe it was likely that the City would install a sidewalk in the near future. She also believed the neighborhood would have to request sidewalks and participate in the process.

Planner Ferber said she had confirmed with Public Works that no pedestrian improvements were planned for that area. However, if pedestrian improvements were made in the future, parking would need to be moved to the grassy area. Director Cronin added that sidewalks could be installed through a variety of processes and programs, but it was not likely a sidewalk would be installed in that area anytime soon.

Commissioner Mitchell said she has stayed at lodgings advertised on Airbnb. It is up to the neighborhood to decide how onerous this home stay lodging would be, but no one has shown up in opposition. Therefore, she agreed with the Staff report. If a problem arises, it would be remedied in the future.

Commissioner Moore said he had no issues with the request.

Commissioner Innes said she was undecided. She was concerned about parking, but there was a chance that cars would not end up in the street. She planned to vote in favor of the request.

Commissioner Moore moved that the Astoria Planning Commission adopt the Findings and Conclusions contained in the Staff report and approve Conditional Use CU16-07 by Katrina and Aaron Gasser; seconded by Commissioner Mitchell. Motion passed 5 to 1. Ayes: President Pearson, Commissioners Moore, Mitchell, Spence, and Innes. Nays: Vice President Easom.

President Pearson read the rules of appeal into the record.

ITEM 4(b):

CU16-08 Conditional Use CU16-08 by Jeremy Towsey-French to locate a ciderworks (light manufacturing) and small taproom in an existing commercial building at 1343 Duane Street, Suite B in the C-4, Central Commercial zone.

President Pearson asked if anyone objected to the jurisdiction of the Planning Commission to hear this matter at this time. There were no objections. He asked if any member of the Planning Commission had any conflicts of interest or ex parte contacts to declare. Hearing none, he asked Staff to present the Staff report.

Planner Ferber reviewed the written Staff report. No correspondence had been received and Staff recommended approval of the request with the conditions listed in the Staff report.

Commissioner Spence asked why the building's address was on Duane Street when the building fronts 13th Street. Staff was unsure of the history of the building and confirmed for Vice President Easom that the entire building had one owner and three separate lease spaces. One space held Reach Break Brewing, one would hold the ciderworks, and Staff was unsure how the third space was being used.

President Pearson opened the public hearing and called for a presentation by the Applicant.

Jeremy Towsey-French, 4005 NE Multnomah Street, Portland, said he appreciated Staff's guidance and assistance. He thanked the craft beverage community in Astoria for being welcoming and helpful. Astoria has always been his home away from home and he looked forward to making the city his home. He came from a small town in rural Iowa about the same size as Astoria, but it lacked the grace and charm of a rough coastal town. This is a large endeavor for his family, but it is also an important opportunity for him to be part of a business community that he has learned to respect and appreciate. He confirmed that the third space was used as an office and the owner did not intend to lease the space. He has a separate lease for the 650-foot space and his business is a separate legal entity. He has a handshake partnership with Reach Break because they rely on each other for restroom maintenance plans and other things. They have a very good relationship. For taxation purposes, the brewery and ciderworks must remain separate business entities.

President Pearson called for any testimony in favor of, impartial to, or opposed to the application. Hearing none, he closed the public hearing and called for Commission discussion and deliberation.

Vice President Easom believed the ciderworks was a great use of the building. Commissioner Mitchell believed the business would add life and complexity to the area. President Pearson agreed that the request met the criteria. Commissioner Innes said she loved that the area had been cleaned up and the exterior had been redone nicely.

Vice President Easom moved that the Astoria Planning Commission adopt the Findings and Conclusions contained in the Staff report and approve Conditional Use CU16-08 by Jeremy Towsey-French; seconded by Commissioner Moore. Motion passed unanimously.

President Pearson read the rules of appeal into the record.

STATUS REPORTS/ANNOUNCEMENTS:

Item 5(a): Parks Master Plan

Director Cronin stated the Parks Master Plan was approved by City Council and implementation of some projects would begin this year.

Item 5(b): Museum of Whimsy

Planner Ferber stated all of the conditions for Conditional Use Permit CU16-03 had been completed.

Item 5(c): Astor West Urban Renewal District Expansion Open House July 28, 2016

Director Cronin announced that the City and Chamber of Commerce were hosting the open house. Duane Street, the retaining wall, and the district's expansion will be discussed, but no presentation will be given. He explained that the open house format was in response to the current culture, as people do not want to spend more than five or ten minutes at a meeting.

Item 5(d): Planning Commission Meeting – August 2, 2016

Director Cronin said three applications would be reviewed at the August 2nd meeting. No public comments have been received yet, but Staff expected more audience members than usual. At this point, no regular meeting would be scheduled in August unless an item is continued from the August 2nd meeting.

Commissioner Spence asked if the Planning Commission would review any permits for Charlie's Chop House. Director Cronin said no, the business's use is permitted outright in the downtown area.

REPORTS OF OFFICERS/COMMISSIONERS:

Director Cronin briefly updated the Commission on efforts to deal with housing issues in the area. City Council supports accessory dwelling units (ADUs), so the Planning Commission will review ADUs at a public hearing in September. Codes pertaining to residential uses will be reviewed separately. Construction excise taxes have been approved by the legislature and Council has directed Staff to find out how much the City can generate. The tax is a percentage of the value of building permits and can be used for certain affordable housing projects. Staff is working on an economic development strategy five-year action plan and he hopes Council will approve a contract with a consultant by August 15th. After Labor Day, an open house with a panel presentation will be scheduled.

Vice President Easom asked when Staff would begin on the Downtown Core Vision Plan to finish the Riverfront Vision Plan. Director Cronin said Staff met with the Department of Land Conservation and Development (DLCD) to discuss funding opportunities for the project. Staff will not apply for funds until grants become available, which will be 2017 at the earliest. Staff is waiting to hear back on their grant proposal to redo the streetscape on West Marine Drive in Uniontown. If the City receives the grant, Staff would not have time for other projects as workloads are already being juggled.

Commissioner Mitchell was concerned about timing. She believed Astoria dodged a bullet in 2008. As a planner, she learned to go for the projects that could really change things when a good Council was in place and space was available. She understood Staff was overworked, but hoped the City did not repeat what happened in 2006 and 2007 along the waterfront and in downtown.

Director Cronin said he preferred to hire Columbia River Estuary Study Taskforce (CREST) and just let Staff administer the grant because the project will be very controversial. He was concerned that Staff would get bogged down by the project and other work would be jeopardized.

PUBLIC COMMENTS: None.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 7:13 pm.

APPROVED:

Community Development Director

ASTORIA PLANNING COMMISSION MEETING

Astoria City Hall
August 2, 2016

CALL TO ORDER:

President Pearson called the meeting to order at 6:30 pm.

ROLL CALL:

Commissioners Present: President David Pearson, Vice President Kent Easom, McLaren Innes, Sean Fitzpatrick, Daryl Moore, Jan Mitchell and Frank Spence

Staff Present: Community Development Director Kevin Cronin, City Attorney Blair Henningsgaard, and Planner Nancy Ferber. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

PUBLIC HEARINGS:

President Pearson explained the procedures governing the conduct of public hearings to the audience and advised that handouts of the substantive review criteria were available from Staff. He announced that the public hearing for Item 3(b): Conditional Use CU16-06 would be conducted last.

ITEM 3(a):

CU16-05 Conditional Use CU16-05 by Robert Johnston to locate light manufacturing (smoking and packaging nuts) and retail sales in an existing commercial building at 1820 SE Front Street in the S-2, General Development Shorelands zone.

President Pearson asked if anyone objected to the jurisdiction of the Planning Commission to hear this matter at this time. There were no objections. He asked if any member of the Planning Commission had any conflicts of interest or ex parte contacts to declare. Hearing none, he asked Staff to present the Staff report.

Planner Ferber reviewed the written Staff report. No correspondence had been received and Staff recommended approval of the request with the conditions listed in the Staff report.

President Pearson opened the public hearing and confirmed the Applicant did not have a presentation. He called for any testimony in favor of, impartial to, or opposed to the application. Hearing none, he closed the public hearing and called for Commission discussion and deliberation.

Commissioner Fitzpatrick said there was no difference between cooking in the kitchen and mixing dry rubs in the kitchen. Commissioner Mitchell added there would be no expansion. The building has had trouble maintaining businesses, so this might help the business remain ongoing. President Pearson agreed that the proposal met the criteria the Commission had been asked to review.

Vice President Easom moved that the Astoria Planning Commission adopt the Findings and Conclusions with the conditions contained in the Staff report and approve Conditional Use CU16-05 by Robert Johnston; seconded by Commissioner Fitzpatrick. Motion passed unanimously.

President Pearson read the rules of appeal into the record.

The Planning Commission proceeded to Item 3(c): Conditional Use CU16-09 at this time.

ITEM 3(c):

This Item was addressed immediately following Item 3(c): Conditional Use CU16-05.

CU16-09

Conditional Use CU16-09 by Becka Blacksten to locate a day care in an existing commercial building at 609 Bond Street in the C-3, General Commercial zone.

President Pearson asked if anyone objected to the jurisdiction of the Planning Commission to hear this matter at this time. There were no objections. He asked if any member of the Planning Commission had any conflicts of interest or ex parte contacts to declare. Hearing none, he asked Staff to present the Staff report.

Planner Ferber reviewed the written Staff report. No correspondence had been received and Staff recommended approval of the request with the conditions listed in the Staff report.

President Pearson opened the public hearing and confirmed the Applicant did not have a presentation. He called for any testimony in favor of, impartial to, or opposed to the application. Hearing none, closed the public hearing and called for Commission discussion and deliberation.

Commissioner Innes asked if the Applicant had discussed using the nearby park. Director Cronin confirmed Staff had discussed the park with the Applicant during the preapplication conference. The Applicant uses the park and she had been in contact with Parks Director Cosby about the use of the park.

Commissioner Innes said she was glad because it costs quite a bit to keep the park open.

Commissioner Fitzpatrick said the request seemed reasonable. The Applicant is already operating in the neighborhood and there are no issues with the existing business. The space seems like a logical place to grow into and it puts the daycare on the same side of the street as the park.

Commissioner Mitchell said she lives a few blocks from site. This is a good use because there are kids and school busses in the neighborhood. The community needs after school resources for kids. The park makes the location much nicer and she did not believe it would be overused. The daycare next to the park is a great connection.

Commissioner Spence said he visited the site and believed a fully equipped fenced and playground right behind the building is a great asset and benefit to the Applicant. He agreed there was a need for daycare.

Vice President Easom moved that the Astoria Planning Commission adopt the Findings and Conclusions with conditions contained in the Staff report and approve Conditional Use CU16-09 by Becka Blacksten; seconded by Commissioner Mitchell. Motion passed unanimously.

President Pearson read the rules of appeal into the record.

The Planning Commission proceeded to Item 3(c): Conditional Use CU16-06 at this time.

ITEM 3(b):

This Item was addressed immediately following Item 3(c): Conditional Use CU16-09.

CU16-06

Conditional Use CU16-06 by Mo's Clam Chowder / Newport Pacific Corporation to locate a tourist oriented activity, indoor family entertainment (viewing chowder production) and eating/drinking establishment in an existing building at 101 15th Street in the A-2A, Aquatic Two A Development and S-2A, Tourist Oriented Shorelands zone.

President Pearson asked if anyone objected to the jurisdiction of the Planning Commission to hear this matter at this time. There were no objections. He asked if any member of the Planning Commission had any conflicts of interest or ex parte contacts to declare.

Commissioner Fitzpatrick declared ex parte contacts. People have wanted to speak to him about this application at just about every event he has attended over the past six to eight weeks. He has suggested it would be best for everyone if people attended the public hearing to speak to the entire Planning Commission.

Vice President Easom declared ex parte contacts similar to Commissioner Fitzpatrick's, noting he had not discussed this request with anyone.

President Pearson asked Staff to present the Staff report.

Director Cronin reviewed the written Staff report. He reminded that audience members could refer to the criteria when providing testimony. If the request does meet the criteria, the Commission can place conditions of approval on the application or reverse Staff's recommendation. If Staff's recommendation is reversed, Staff will need to create findings in support of the decision. He also reminded that Planning Commission does not review designs, as the Design Review Committee is tasked with doing so. Additionally, there is no Design Overlay Zone for this property. Applicable criteria do not specify any type of architecture, vernacular, or other form based requirements. However, materials are specified in the Development Code. The only public comment received to date was available at the dais. Staff recommended approval of the request with the conditions listed in the Staff report.

Commissioner Fitzpatrick noted that each of the three uses in the building had its own parking requirements and it appeared as if more parking would be needed. Director Cronin said he used a stricter standard when calculating the necessary parking and the square footage was not included in the parking requirements for employees.

Commissioner Mitchell said the architectural drawing was nice, but it gave the impression of far more space between the railroad tracks, the right-of-way, and the building. She asked if the drawing assumed a parking lot would be built across the pilings. Director Cronin deferred to the Applicant to answer that question.

Vice President Easom asked if the Historic Landmarks Commission (HLC) would review this project. Director Cronin confirmed the building was outside of the Downtown Historic District, which was inventoried in the early 1990s. An inventory sheet was included in the Staff report.

Commissioner Mitchell asked if the Riverfront Vision Plan had any impact on this project. Director Cronin replied no, this building resides in the Urban Core, which is the last of the four sections of the riverfront identified by the Plan. Therefore, there were no additional regulations related to the Plan for this part of Astoria.

President Pearson opened the public hearing and called for a presentation by the Applicant.

Jolie Mancroft, 589 S.E. Vista Drive, Newport, President of Newport Pacific, said over 40 years ago, her father approached Mo Niemi, who had established a restaurant 30 years prior, with idea to expand the business into other towns along the Oregon Coast. Over 16 years, they built restaurants in Lincoln City, Florence, and Cannon Beach. Although some might consider Mo's a chain restaurant, she felt that Mo's was far from that. They are a family business that is about guests, the wellbeing of their crew, and the success of the cities they reside in. Over the last 70 years, together with Mo's family, they have grown Mo's into a restaurant that serves delicious seafood and chowder with a smile. They are also committed to each community they reside in to make them unique and better places, from holding senior class fish fries to raising money for drug-free graduations, purchasing over 50 hanging baskets to line the streets of Lincoln City, donating endless pots of chowder for high school sporting events, holding fundraisers to combat bullying in schools, to feeding chowder to everyone who helps at beach clean-ups and sandcastle contests. She could go on and on about what they do each year to support their communities. Mo's strives to find the best way to support the communities with time and talent, not just cash donations. They also help communities by providing jobs with competitive wages, benefits, retirement plans, and scholarships to trade schools and universities. If they are able to build a Mo's in Astoria, they plan to employ about 30 full time employees and about 50 part time employees. When she was approached by former Mayor Willis Van Dusen about five years ago, he believed Mo's would be a great fit for Astoria. She still agrees to this day. Mo's in Astoria will be unique because it will be their only restaurant that will show guests how the chowder is made, give them the opportunity to learn about chowder production, the history of Mo's, and the history of Astoria. They will try to do everything possible to be good neighbors and attract people to Astoria.

Joey Sheer, 12965 SW Herman Road, Tualatin, AKS Engineering and Forestry, said he had been coming to Astoria his whole life, but this was the first time he had been in a professional capacity. He said it was funny that the Staff report mentioned Buoy Beer. Several years ago, he attended a planning conference in Portland, along with Astoria's Planning Department Staff and one of the men who opened Buoy Beer. The session he attended

was laid out as a model for successful collaboration between a city and a private business to get the brewery and restaurant off the ground. The seminar stuck with him and now he has come to this meeting to see references to Buoy Beer, which submitted a similar application. He has tried to model his approach in the same way in the context of uses and the waterfront location. He has worked with Staff, including the Fire Chief, to put the application together. He appreciated Staff's time and attention to answer their questions and work with him through the process.

Staff gave a good summary and provided some technical details. He gave a PowerPoint presentation that reviewed some of the key elements of the project, adding that the Staff report was much more detailed. Currently, the existing building is underutilized, as the vast majority of the space is vacant. The waterfront location is unique and ideal for an iconic Oregon seafood restaurant like Mo's. The site is located at the end of 15th Street along the Riverwalk, which makes it easily accessible to pedestrians, bicyclists, vehicles, the trolley, and public transit. He hoped the location would attract locals and tourists to the waterfront with spillover benefits for the surrounding businesses in the area. The restaurant will be open to the general public and the floor layout puts the waterfront front and center with a lot of windows and high ceilings that will give visitors stellar views. An outdoor patio and dining area with roll-up doors will provide visual access to the waterfront. The chowder production facility will be integrated with the restaurant, as illustrated on the preliminary building plans included in the agenda packet. This will provide visitors with an opportunity to observe how the famous Mo's clam chowder is made. The plan is for this area to be separated from the restaurant by windows or Plexiglas. Informational materials will explain the process and Mo's history, which is linked to the Oregon Coast history. Anyone who comes to the restaurant will have an opportunity to see the chowder making process and history. They are able to accommodate all of the required parking on the site and landscaping for the parking area in excess of the requirements. He displayed a Google street view of the existing façade and said a project architect developed the design shown in the application. Per the Findings and Conditions in the Staff report, they are willing to work with the City to revise the southern façade to provide a more appropriate window. He was confident they could work with the architect to create a façade that meets the Conditions and respects the storefront window design concept. Mo's is a family owned seafood business with a long history on the Oregon coast and except for their recent opening at Portland International Airport; this would be the first new Mo's in many decades. Clearly, they are very cautious and careful about when, where, and how they open new restaurants because they recognize that moving into a new city means becoming a part of that community. He supports Staff's findings and concurred with the conditions of approval. He respectfully requested the Planning Commission approve the application.

Commissioner Fitzpatrick said he recently saw the Mo's at the airport and asked how many locations they had. Ms. Mancroft said Newport Pacific had four locations and Mo's family owned two locations in Newport. Mo's family is part of Newport Pacific. She explained that they did not look for an establishment at the airport. The airport came to them in Cannon Beach and said they wanted to give a little taste of all places in Oregon in the airport. The airport also has Made in Oregon, Henry's Tavern, and places where people can enjoy a little taste of all of Oregon. The Mo's at the airport is a small quick service place that serves fish and chips and chowder. It is good exposure for the coast.

Commissioner Fitzpatrick asked where the ingredients in the clam chowder came from. Ms. Mancroft said the potatoes come from Washington or Idaho, depending on the year. The bacon comes from Columbia, depending on supplies. This has been an extremely crazy clam season, so the surf clams are from the east coast. Sometimes they get razor clams, depending on availability. They go through hundreds of thousands of pounds of clams, so sometime they are cut off from the Oregon coast and have to get them somewhere else. All of the other ingredients come from a local distributor.

Commissioner Moore said the parking diagram in the Staff report does not indicate where the railroad tracks or the trolley tracks are located. He asked if the tracks and Riverwalk were outside of the diagram and if there was room for people to walk across the parking lot. He also wanted to know if the parking lot was 15 feet from the railroad tracks. Mr. Sheer said he did not know the exact distance from the tracks. Director Cronin displayed a map and explained the location of the Riverwalk relative to the parking lot. He noted the sidewalk, the area for vehicles, and the off-street parking area. The Riverwalk will not cross into the property, just adjacent and parallel to the property. He did not have an overlay of the tracks or the continuance of the Riverwalk, but Staff has assumed the Riverwalk would remain adjacent and parallel to the parking. Mr. Sheer added that the building front is actually being moved back to accommodate more space. That is why some of the diagrams make the space look tighter.

Commissioner Mitchell asked how much of the building would be cut off. Ms. Mancroft said the building would be reduced from 20,000 square feet to a 16,000 square foot building.

Commissioner Moore confirmed the assumption was that the parking would not impede the Riverwalk and people will not have to walk around the parking lot. Commissioner Mitchell added that cars go by that location, not just people walking. Therefore, a lane of at least 11 feet will be necessary.

Commissioner Innes could not understand where the loading zone began. She asked how a truck would get into the loading zone and if it would back up to the building. Mr. Sheer said the truck would come through the u-shaped area of the parking lot. Loading is typically done during off hours, so vehicles will not be parked in the area. Trucks should be able to pull through. The area has been designed to accommodate emergency services, so trucks should be able to enter and exit going forward.

Commissioner Innes said she was unable to tell from the map where the street becomes a loading zone, but she assumed the loading zone was close to the building. Mr. Sheer referred to the diagram on the screen and explained where the loading zone began. Director Cronin added that the foot of 15th Street is vacated and the Applicant's property begins on the other side of the railroad.

Commissioner Mitchell understood the parking lot provided about 10 parking spaces. She asked where the rest of the parking would be located. Mr. Sheer said the property extension to the east contains a long narrow strip with existing striped parking currently reserved for Vintage Hardware. Ms. Mancroft added there were 20 more parking spots in that area.

Commissioner Mitchell said those parking spots were used, but not for Vintage Hardware. Director Cronin said Staff would suggest the Applicant relabel the parking. Mr. Sheer noted the parking was not located in a public right-of-way, but on private property.

Commissioner Mitchell said she still believed the parking was a bit crowded.

President Pearson called for any testimony in favor of the application.

Jesse Miller, 2908 Marine Drive, Apartment 1, Astoria, urged the Planning Commission to vote yes for Mo's. He is a full-time college student at Clatsop Community College. He and many other students would like to have a very nice restaurant that is affordable and within walking distance of the college.

Willis Van Dusen, 2314 Irving, Astoria, said his business, Van Dusen Beverages, is the oldest family business in Oregon established in 1849. He was here in support of another family business and urged the Planning Commission to vote in favor of Mo's. Mo's chowder is the type of business Astoria needs. When he was mayor, he and former City Manager Paul Benoit worked very hard to get Ms. Mancroft to consider Astoria. This is the fourth location and this is the best location. They had considered the old train depot at the Maritime Museum, the old Red Lion and Riverwalk Inn, the Seafarer, and Pier 39. This location is the best. He spent from 1985 to 2015 on Astoria City Council, the last 24 years as Mayor. He worked very hard with the team to develop this Riverwalk and the zoning and the planning. This is the perfect use and they are the perfect family. He reminded that Burlington Northern abandoned Astoria and the City fought to get the right-of-way. Tom Carmichael and Pat Lavis sued the City because they wanted to put buildings on the right-of-way, but the City of Astoria prevailed. The one stretch of the Riverwalk that is privately owned is this property. He was glad the Commissioners asked if the Riverwalk would remain. The property is leased. It is the only property from Alderbrook to the roundabout that is not public property. The Riverwalk started with the 6th Street tower, then the 17th Street Dock, the Maritime Memorial, and slowly more projects were added. But it was always a working riverfront. He strongly believed this was the perfect business and that it met the criteria.

Another reason Astoria needs Mo's is because the town needs more business women. Ms. Mancroft runs Mo's by herself. Someone at the Sunday Market said they did not want Mo's in Astoria because they were a chain. However, Astoria has Pig and Pancake. Bob and William Poole started out in Seaside, Astoria, and Cannon Beach. They were a very small family owned business. Astoria also has Fultano's. Robert Fulton wanted to start the chain to get buying power and now there are several Fultano's. Doogers, started by Doug Reece, his college roommate, had locations in Seaside, Warrenton, and Cannon Beach. When he lost his Cannon Beach

restaurant, he put one in Long Beach. Jason Thiel owns Gino's Pizza. Englund Marine is also a family owned chain. Those are not like Target, Wal-Mart, or Sam's Club. Van Dusen Beverages has been doing business with Mo's for 30 years. His dad dealt with Tom Becker, Ms. Mancroft's grandfather, 30 years ago in Cannon Beach. He was 32 at the time and delivered their products to Mo's. The two companies got to know each other very well. Ms. Mancroft was not involved with the business at that time, but she has developed into a very successful and confident young woman. He believed Astoria should help her become part of the community. He was proud of what Ms. Mancroft has done for Mo's. He is president of the trolley association and part of the problem with Mo's is that Ms. Mancroft must work on parking and getting to and from Mo's without using automobiles. Ms. Mancroft has already approached the trolley association, which is very willing to work with her. The trolley could add another stop or create a different schedule to help alleviate part of the parking problem and congestion. This is a great project and he hoped the Commission would approve it.

Loren Matthews, 8120 7th Street, Astoria, said he has lived in Astoria for 58 years and served on City Council for a total of 12 years over two terms. He has also been very involved with the Chamber of Commerce and the Scandinavian Festival. He was on Council with Mr. Van Dusen when the City began talking about starting the Riverwalk. The old Riverwalk was dingy. The railroad did not want anyone in the area, so the Riverwalk was built in stages. It turned out very nice and has brought the city back to the waterfront, especially with the trolley. In 1999, 15,000 people rode the trolley, but last year there were over 50,000 riders on a limited schedule. He has eaten at Mo's and believed it was a good restaurant. Many people look forward to going to Mo's and he believed it would be a great addition to the area. As the Riverwalk has developed over the last few years, this area was neglected a little bit. However, the area is going through resurgence with two new restaurants and Mo's will only enhance the area. Later this month, the Scandinavian Festival will present a proposal to City Council to build in People's Park, right across from Mo's. The Rotary Club built a viewing platform in the park, but it was removed because it had rotted. The Scandinavian Club had been looking for a place to establish a monument in honor of the Scandinavians who came to Astoria in the late 1800s and early 1900s. They would like to put the monument in People's Park. He believed Mo's would enhance the park and make the area viable. He urged the Commission to vote yes. The height will not interfere with that stretch of the track.

Bruce Connor, 323 Alameda, Astoria, said he owns Sundial Travel and Tours and is the marketing director for the Port of Astoria. He spoke with Chris Holen at Baked Alaska and Peter Roscoe of Fulio's, who are prospective competitors, about Mo's coming to Astoria. He wanted to find out if sales would be diluted by another restaurant, but they both agreed Mo's would enhance the businesses. Mo's marketing is excellent and they would market the City of Astoria in a way that has not been done. The competitors were positive and said they would welcome another restaurant into their cluster. He encouraged the Commission to vote yes.

President Pearson called for any testimony impartial to the application. Hearing none, he called for any testimony opposed to the application.

Dan O'Donnell, 992 15th Street, Astoria, said he was not opposed to Mo's as a business or restaurant, but he was opposed to the industrial kitchen Mo's would use as part of the facility, which is marked as a secondary function of the building. However, the Applicants have stated the industrial kitchen would be used to process hundreds of thousands of pounds of clams in Astoria's downtown riverfront area. He was also concerned about parking, safety, and riverfront access. The initial conditional use application talked about the proposed use being a seafood restaurant, office, and industrial kitchen, with an emphasis on the industrial kitchen, which everyone seems to be glossing over. The kitchen will be 40 percent of the building and used to process clams and making chowder. There is no mention of the tourist use in the initial proposed use. He believed this was because it was one of the conditions of using the space. The ability to see the chowder making through a Plexiglas window has somehow made this a tourist attraction. He believed this was just a way to get past the conditions of approval. Page 1 of the Staff report mentions the building will be used as tourist-oriented retail sales and light manufacturing. This light manufacturing was previously referred to as an industrial kitchen.

- Page 2 of the Staff report acknowledges that the building was only built in 1924, but the Riverwalk itself is historic even if it is not classified that way, and that there is limited one-way access for vehicles along the Riverwalk. This is a particularly difficult choke area for traffic. He believed anyone who had tried to drive through that area on a Sunday would agree that the traffic gets quite heavy. Many of the one-way streets in the area get convoluted and crossing over Commercial along 15th Street on busy days is very difficult. This will not make things any easier.

- Page 3 of the Staff report mentions the proposed chowder production will be an accessory use, yet it takes up 40 percent of the building and will be processing hundreds of thousands of pounds of clams and many gallons of dairy. Staff began with an unfounded assumption that the uses were aligned, but he preferred they had not included this assumption in the Staff report. It would have been better for Staff to start this from a neutral perspective. Page 4 of the Staff report says the Applicants intend to locate an eating and drinking establishment, tourist-oriented retail sales, and indoor family entertainment, which are allowed conditional uses. Industrial kitchen is not mentioned. Essentially, we are talking about a clam chowder factory. He understood this factory would produce clam chowder for all of the other retail outlets, including Costco. This will be a non-trivial, non-restaurant amount of chowder that will be produced downtown on the Riverfront.
- The Staff report also states that any exterior alterations would need to comply with Article 4, but the front of the building will be demolished to make room for the car park. The diagram shows a two-story tower at the front with a neon blue Mo's sign, which does not fit in with the style of the Astoria riverfront.
- Page 6 of the Staff report indicates the chowder production will take up approximately 5,300 square feet, which is about 40 percent of the building. That is not an accessory usage. They are setting up a factory downtown. The Applicant has said they would try to curtail truck deliveries to off peak times, but there is no guarantee. We do not know what size trucks will come through or how many trucks. Even though the car park is designed with a u-turn, there are cars all around the area that the trucks will have to negotiate with. It will be a very tight fit for people trying to get through.
- Page 9 of the Staff report mentions odor, which is particularly important. Section M states that no use shall generate odor. When people talk about old Astoria, they talk about how Astoria used to smell like fish. People used to hate how much Astoria smelled like fish. He did not understand how hundreds of thousands of pounds of clams could be processed without any mention of air filtration or odor mitigation to keep downtown on the Riverwalk from smelling like clams. The Findings gloss over this issue, saying the production process would generate some odor common to cooking food processes such as a restaurant. This will not be clam chowder production at a restaurant scale. This is 5,000 square feet of clam production. Staff does not consider this extensive or a nuisance. He disagreed and said the odor would be quite noticeable from several blocks away.
- Page 13 of the Staff report says Mo's chowder would give a competitive edge to the foodie production field in Astoria. He did not know how Mo's chowder tasted, but doubted it could be considered a foodie niche. It is more of a comfort food or general seafood. Section S says light manufacturing as food production is an accessory to the eating, drinking, and retail sales. He disagreed.
- The Staff report also says the building would be reconfigured for pedestrian-related access. This is another big issue. People will be walking and bicycling through the car park area and there is no reference in the Staff report about a bicycle thoroughfare. Many people use the bike path to get from one end of town to the other. The continuous Riverwalk will be cut to put the car park in because there is not enough room for the number of people expected. This hinders bike access and makes it dangerous. Staff has agreed that the proposed façade is not appropriate. Section T says consideration should be given to sidewalks, bike paths, and other transportation and that suitability should be determined in part by potential impacts of these facilities on safety, traffic flow, control, and emergency vehicle movements. Anyone who lives within earshot of Commercial or Bond can hear the fire engines take ten minutes to get from one end to the other because there is so much traffic. This will not make things better. There are many one way streets and a section where people try to cross Commercial. This will overload the area with more traffic than it can handle.
- Page 14 of the Staff report says if the actual traffic count exceeds the planned amount, or the parking strategy is ineffective, a traffic study will be required and mitigation measures determined. This will be difficult one year after the fact. The location is bordered by water and one of the biggest streets in town. The only place to get more parking space is People Place Park. That would eat into the green space and could prevent the Scandinavian monument.
- Page 15, Section U of the Staff report says food production along with the restaurant will require more water than some other uses generally in the downtown area; however, supply is not an issue. This is because it is an industrial kitchen. Let's not forget this. He has not seen anywhere in the document how much water the Applicant plans on using or where the water will be disposed of. It would be interesting to know how all of these clams will be processed without extra infrastructure for the water. He wanted to know where the chowder was currently being made and whether Staff could have done a study on how much they produce, what goes into their systems and what comes out of their systems. He asked if an impact study had been done on the current chowder manufacturing facility. He asked why the facility needed to be brought downtown. He was not objecting to the restaurant, but he does not welcome a clam factory on the riverfront.
- Page 16 of the Staff report says the request does not meet all applicable review criteria as submitted. So, obviously more work and more consideration is necessary. He was still not sure whether the rail lines were

included in the plan and this should be considered more before approving this request. Traffic mitigation will be too late after one year and the Staff report makes no mention of bike access for what is our highway for cyclists getting through town. Visitors to Astoria spend an estimated \$135 to \$140 million because of the historic buildings, magnificent river, and quality, unique restaurants, not for the McDonald's, Pig and Pancake, Burger King, or Fultano's. Astoria's vision, which is still incomplete, should preserve the riverfront. We should use this as an opportunity to finish Astoria's Riverfront Vision Plan to preserve the riverfront, walking spaces, reduce fish and industrial smells in the downtown area, and preserve historic values. Once these riverfront spaces are gone, they are gone for good. This is a particularly important space because it is the one that will cut the Riverwalk in half. He questioned why the City would bring an industrial kitchen to a downtown riverfront location when there are plenty of places to do this away from the gateway to the downtown.

Zach Tutor, 1592 Franklin, Astoria, said he has not done any research like others have, but as a 20-year resident of Astoria, he has many friends who work in the service industry. Mo's is a great company, but something like that coming to Astoria takes away from the small businesses. This is counterproductive in Astoria because we are about a small, growing community. People come in off the boats and ride the trolley. Many elderly people do not leave the trolley and seeing Mo's as they ride will distract them from walking through town to find a place to eat and see other places. Half of the fun in Astoria is walking through town to find a place to eat and finding a cute shop to look at. He did not believe Mo's was right for that location in Astoria. There are many other locations to put a Mo's and Astoria should be looking at putting other things in that building.

President Pearson called for the Applicants' rebuttal.

Mr. Sheer said Staff addressed the commercial kitchen in the Staff report and said he agreed with the Findings. The Findings reflect a consistency on the part of the City about how accessory uses, light manufacturing and commercial scale uses, are treated. Buoy Beer is manufacturing beer at their location and the City found that was an accessory use because it is a minor square footage compared to the overall use and is in conjunction with the other activities going on at the site. The same thing is true for Mo's, which is primarily a restaurant by square footage and traffic. The kitchen facility is an accessory to the restaurant and there will be crossover that will provide an opportunity for entertainment and education. Mo's is very proud of their history and he tried to include some of it in the application. It is a good story to tell and it ties into the history of the Oregon coast. He believed this would be a legitimate amusement or entertainment factor. In regards to parking and safety, he met with the Fire Chief who was concerned with emergency vehicle access to the site. The proposed design is reflective of changes made in response to the Fire Chief's comments. As far as he knows, all of the parking and safety requirements have been met. Emergency services must deal with traffic congestion and they have done their best to address the issue.

Ms. Mancroft said all of their chowder was currently being produced in Newport on the third story of the original Mo's. They are looking for another location because their current location is at capacity, especially during the summer. They try to keep up and keep everything within the Food and Drug Administration (FDA) guidelines. They are surviving, but if given the opportunity to build another restaurant in Astoria, they will need to build another chowder factory. No matter where they go, they would have to build a combined facility in order to save money. Buying one piece of property instead of two is more economically savvy. The Astoria facility will not take over all of the chowder production, but will just take over maybe the north half of their locations. No decisions have been made about how much each production facility will make. The clams are produced in an outside clam producing facility and they arrive at Mo's already chopped. Mo's does not have shells and there will not be a huge issue with garbage odors. They do have garbage, but not any more than a restaurant would produce. The chowder facility will use less water than the restaurant because the chowder is not full of water. The only reason the infrastructure needs to be updated is to add sprinklers to the pilings and the restaurant portion of the building.

Mr. Sheer added that the Public Works Department had a representative at the preapplication meeting. All of the questions about infrastructure and building codes were addressed. He also believed the site is so attractive because it has the potential of being a high traffic location. Mo's will not develop the building or any of the parking on any areas within public rights-of-way or existing easements. He hoped cyclists would be riding on the river trail, not on the private property. Obviously, it is in Mo's best interest to have a safe environment.

Ms. Mancroft said she had proposed to install a stop sign, so cars stop on their way out of the turnaround. Additionally, Mo's never accepts deliveries during business hours and truck drivers know that they cannot deliver

any product between 10:00 am and 7:30 pm. Deliveries are always made during the morning hours, so trucks should not be a huge problem.

Mr. Sheer reiterated that Staff has addressed all of the applicable criteria in good detail. The application meets all of the criteria. Staff has also recommended conditions that would allow the application to meet the criteria and Mo's agrees with those conditions of approval. He asked the Commission to consider the application based on the criteria that has been presented and their past interpretations of the criteria.

Mr. Van Dusen confirmed that no deliveries could be made to Mo's during their business hours.

Ms. Mancroft did not believe deliveries could be made to any restaurant during business hours.

President Pearson closed the public hearing and called for Commission discussion and deliberation.

Commissioner Moore said he reviewed the City's Codes regarding light manufacturing and industrial kitchens. In April 2014, the Code was amended to include examples of light manufacturing like food products, breweries, distilleries, clothing, electronics, and wood working. Heavy manufacturing is defined differently. He believed an industrial kitchen meets the definition of light manufacturing in the Codes.

Commissioner Mitchell said she remembered the area before the Riverwalk. She moved to Astoria in part because it was a working town. A lot of the planning that went into the Riverwalk was for a working waterfront. There is no attempt here to become a Santa Cruz, Carmel, or Cannon Beach. Astoria has a deep history of loggers and fisherman and it did not smell as good as Buoy Beer when it was a shrimp processing facility. However, people walked their dogs in that area anyway. This is part of what makes Astoria authentic. We have held on to our connection to the river, fish, the odors, the sounds of the water, and all that is common to Astoria. Therefore, she did not believe the City needed make things pretty. She appreciated the comments about small businesses and Mo's being a family operation. She had not considered some of the other businesses that the community loves that have expanded beyond the area. She was not persuaded that the odor of chopping onions and potatoes would be an issue and people like to see how things are made. She believed Mo's would fit with the nature of the location. She noted that the Planning Commission makes recommendations, not decisions, and therefore suggested that the Applicant's make a map that delineates the railroad right-of-way, car lanes, and bike lanes. Such a map will make it easier for City Council to make a decision.

Director Cronin clarified that the Planning Commission would be making a decision on this application. This is not a legislative amendment, so a quasi judicial decision must be made.

Commissioner Fitzpatrick thanked everyone who spoke. He understood that public hearings can be an imposition on one's schedule, but he appreciated all of the views and opinions. He was concerned about parking and did not believe 31 spaces would be enough. He was also concerned about the Riverfront Vision Plan because this site is in the portion of the Plan that the Planning Commission has not yet reviewed. The Commission has had some very impassioned discussions about the Plan and almost everyone who has spoken about the Plan has said no hotels or restaurants on the north side of the trolley tracks. However, the Commission has not had the opportunity to look into this area of the riverfront. He was concerned that the current Codes do not prohibit hotels or restaurants in this location.

Commissioner Spence believed the facility would definitely need a lot more water. Findings on Page 16 of the Staff report state the existing water supply is inadequate and a review by the Fire Department will require the facility to have a fire suppression system throughout the building. Contractors are working with the Public Works Department and will pay for a larger water line to the facility. Staff has indicated that even with the larger water line, the new use would not overburden existing utilities. The Commission must review facts and their opinions and biases should not be taken into consideration when making a decision. Astoria has a Development Code and a Comprehensive Plan and if applicants meet the conditions that are spelled out, they are entitled to have the business at that location, regardless of their name. Staff has done an excellent job. The public does not see that there are 17 pages in the Staff report, which is single-spaced and quotes each section of the various Codes and conditions that the Applicants must meet. He believed, and Staff's Findings state that, the Applicants have met the criteria. He supported Staff's recommendation for approval.

Vice President Easom said he found no reason to deny the request.

Commissioner Moore said he was concerned about traffic, but was also confident that Staff could evaluate the potential impact. Their evaluation and his visualization of the project did not seem to change much. Vintage Hardware is pretty popular and they take in quite a bit of traffic. The parking diagram may actually provide a clearer delineation of where pedestrians and bicyclists should be going, which might be closer to the railroad tracks than the parked cars. There is no easement for the Riverwalk in front of that property, so anything the Applicant does to allow access is a positive change for that section of the Riverwalk. The Planning Commission does not review the neon signs. He said he was in favor of the application, despite the comments suggesting the request be denied. There are no facts that would inhibit a positive vote.

Commissioner Innes said after reviewing the facts, she saw no reason to deny the request.

Commissioner Mitchell was concerned about the condition requiring a traffic assessment after one year. The City will not give away a park to accommodate parking, so she wanted to know what Staff would do if more parking were needed. Director Cronin said Staff would work directly with the Applicant on a parking demand mapping strategy, which considers ways to reduce demand for off-street parking in that location and on-street parking in the downtown area. This provides an incentive to promote bicycle, pedestrian, and public transit traffic to employees.

Commissioner Mitchell said getting around the area, particularly on weekends, is already crazy. Director Cronin added that the current traffic analysis indicates there are no issues.

President Pearson noted this project is in A-2A zone, no visibility of the waterfront will be lost, and it uses an existing structure built in 1924. The building has been modified many times throughout its uses, which is typical of any healthy working waterfront. This project is a natural evolution of that. Significant visual and pedestrian access will be preserved, in addition to the trolley line and Riverwalk. Every other aspect of this location will remain as is and the project meets all of the City's parking requirements. Making chowder in a town that once had 38 canneries along the waterfront will have a minimal impact on manufacturing along the waterfront. This fits with Astoria's heritage and meets the economic development policy, which the Commission is also asked to review. He believed this would be a good reuse of the property and he fully supported the request.

Commissioner Spence moved that the Astoria Planning Commission adopt the Findings and Conclusions contained in the Staff report and approve Conditional Use CU16-06 by Mo's Clam Chowder / Newport Pacific Corporation; seconded by Commissioner Moore. Motion passed unanimously.

President Pearson read the rules of appeal into the record.

The Planning Commission proceeded to Item 4: Reports of Officers and Commissioners at this time.

REPORTS OF OFFICERS/COMMISSIONERS:

This Item was addressed immediately following Item 3(c): Conditional Use CU16-06.

Director Cronin updated the Commission on the following:

- Library Director Meet and Greet – Thursday, August 4th at the Barbey Center from 4:30 pm to 5:30 pm.
- No Planning Commission meeting would be held on August 23rd.
- Corrections to the June minutes would be presented for approval and a public hearing on accessory dwelling units would be held at the next Planning Commission meeting in September.
- Building Official/Code Enforcement Officer - Three candidates were interviewed, but none would work for out for Astoria. Therefore, the contract with Building Department LLC has been extended. He would meet with the County Building Official and County Community Development Director on Thursday to discuss options. He has also discussed sharing a building official with Cannon Beach.

Vice President Easom believed the City needed to fill the position urgently, but understood the budget constraints. Director Cronin noted that the last fiscal year ended with about \$380,000 in revenue. This will not increase unless fees increase. If he is unable to work something out with the contractor, the county, or Cannon Beach, he will raise the salary for the position and try to recruit again.

Director Cronin noted that all of the Conditional Use Permits approved over the last six months have turned into businesses.

Commissioner Mitchell asked for an update on the request for a chowder boat near the marina. Director Cronin said he believed the Applicant has decided not pursue a lease with the Port at this time.

Commissioner Mitchell understood Staff time was limited, but wanted the City to move ahead with the remainder of the Riverfront Vision Plan. The City dodged a bullet in 2007 and 2008, as the project discussed tonight would have been a condominium. Commissioner Moore recommended Commissioner Mitchell take her concerns to City Council. Director Cronin explained that Staff time and funding were necessary. The City has been lucky to receive grants from the State to fund consultant time for the previous sections of the Plan. Staff has contacted the Department of Land Conservation (DLCD) about the next round of grants, which will be awarded spring or summer of 2017. Additionally, Staff is working to complete City Council Goals from the last fiscal year. However, City Council has not set goals for the new fiscal year because one of last year's goals is a Strategic Plan.

Commissioner Moore thanked Staff for the Staff reports they prepared for tonight's public hearings.

PUBLIC COMMENTS:

ADJOURNMENT:

There being no further business, the meeting was adjourned at 8:24 pm.

APPROVED:


Community Development Director



CITY OF ASTORIA
Founded 1811 • Incorporated 1856

Date: October 11, 2016

MEMORANDUM

TO: MAYOR AND CITY COUNCIL
FROM:  BRETT ESTES, CITY MANAGER
SUBJECT: 17TH STREET DOCK DIVISION OF STATE LANDS LEASE RENEWAL

DISCUSSION/ANALYSIS

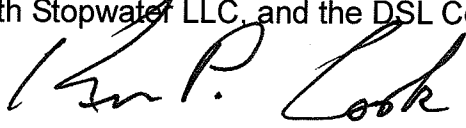
The City is required to have a lease for a portion of the State owned submerged lands that the 17th Street Dock sits over. While the City owns the property, the State has ownership of the submerged lands (the river bottom). Our current lease expired in November of 2015. We have been working with the State Division of State Lands (DSL) to complete the new lease agreements and now have all of the required documents ready for City Council consideration.

Since a small portion of the 17th Street Dock lies over property owned by Stopwater LLC (Bar Pilots), the City prepared a sublease agreement that will allow Stopwater to lease the submerged land from DSL and then sublease it to the City. Stopwater will pass through the lease fee with a small administrative fee to cover reimbursement of their staff time. The City will also reimburse Stopwater \$2,500 for their actual costs to prepare the documentation for the sublease. The fee for the lease with DSL will be \$1,896.75 per year and the fee for the sublease from Stopwater will be \$633.00 per year for a total of \$2,529.75.

The attached lease agreement, sublease agreement and Consent to Sublease form have been reviewed as to form by the City Attorney, Blair Henningsgaard. Funds for the lease will be paid from the 17th Street Dock Fund.

RECOMMENDATION

It is recommended that City Council authorize the Mayor to sign the DSL Lease Agreement for the 17th Street Dock, the Sublease Agreement with Stopwater LLC, and the DSL Consent to Sublease form.

Submitted By 
Ken Cook, Public Works Director

Prepared By 
Jeff Harrington, City Engineer

**STATE OF OREGON
DEPARTMENT OF STATE LANDS
AMENDED AND RESTATED
SUBMERGED AND SUBMERSIBLE LAND LEASE**

20713-ML

This Lease is an amendment to and restatement of that certain submerged and submersible lands lease, 20713-ML, dated the 4th day of January, 2001, by and between the State of Oregon, by and through the Oregon State Land Board and the Department of State Lands, and City of Astoria, as Lessee:

The State of Oregon, by and through the Oregon State Land Board and the Department of State Lands ("State"), hereby leases to the person(s) herein named ("Lessee"), the following described lands on the terms and conditions stated herein (the "Lease"):

NAME of LESSEE:
City of Astoria

ADDRESS:
1095 Duane St.
Astoria, OR 97103

Legal classification of Lessee is a Municipal Corporation,

Lands situated in Clatsop County more fully described as follows:

PARCEL 1

Beginning at the point where the Southeast corner of Tax Lot 300 and Southwest corner of Tax Lot 100 intersect, located in the Northwest ¼ of the Southeast ¼ of Section 8, Township 8 North, Range 9 West, Willamette Meridian, Clatsop County, Oregon in the City of Astoria and on the South bank of the Columbia River.

Thence riverward following an extension of the East boundary of Tax Lot 300, North a distance of 250 feet, more or less to a TRUE POINT OF BEGINNING.

Thence downstream and West following said Pierhead Line a distance of 80 feet more or less, to a point;

Thence turning 90° North and riverward, following a line perpendicular to the Pierhead Line a distance of 60 feet more or less to a point;

Thence turning 90° East and upstream, following on a line that is parallel to the Pierhead Line, a distance of 375 feet more or less to a point which is also 60 feet from the Pierhead Line;

Thence turning 90° South and traveling shoreward a distance of 60 feet more or less to a point that intersects the Pierhead Line;

Thence turning downstream and following said Pierhead Line a distance of 295 feet more or less to a point, which intersects the East boundary of Tax Lot 300 and is the TRUE POINT OF BEGINNING, containing 0.52 acres or 22,500 square feet, more or less and as shown on the attached Exhibit "A"

PARCEL 2

Beginning at a point where the Southeast corner of Tax Lot 402 and the Southwest corner of Tax Lot 300 intersects, located in the Northwest ¼ of the Southeast ¼ of Section 8, Township 8 North, Range g West, Willamette Meridian, Clatsop County, Oregon in the City of Astoria and on the South bank of the Columbia River.

Thence riverward following an extension of the East boundary of Tax Lot 402, North and a distance of 95 feet, more or less to the TRUE POINT OF BEGINNING;

Thence continuing on said extension a distance of 150 feet more or less to a point that intersects with the Pierhead Line on the South Bank of the Columbia River;

Thence turning West and following Pierhead Line a distance of 150 feet more or less to a point;

Thence turning 90° South and traveling shoreward a distance of 150 feet more or less to a point;

Thence turning East and following a line that is parallel to the Pierhead Line and upstream a distance of 150 feet more or less, to the intersection of the East boundary of Tax Lot 402 and the TRUE POINT OF BEGINNING, containing 0.52 acres or 22,500 square feet, more or less and as shown on the attached Exhibit A.

Total combined number of 45,000 square feet or 1.04 acres, more or less.

Hereinafter referred to as "leasehold".

SECTION 1 - LEASE TERM; RENEWAL; TERMINATION

- 1.1 **Term:** This Lease will continue for a period of 15 years commencing on December 1, 2015 the month and date of which will be known as the "Lease Anniversary Date," and expiring on November 30, 2030, unless terminated earlier as provided under Section 1.4 or Section 7.2 below.
- 1.2 **Renewal:** Lessee may apply to renew this Lease for successive 15 year terms by submitting a completed lease renewal application form to State not less than 180 days prior to the expiration of the current term. Upon receipt of the application, State shall renew this Lease unless:

1.2.1 State determines, in its sole discretion, that Lessee has not complied with the terms of this Lease, the applicable statutes or Oregon Administrative Rules; or

1.2.2 Lessee is no longer the preference right holder as provided in ORS 274.040(1) and defined in OAR 141-082-0255; or

1.2.3 State determines that the renewal of this Lease for all or any portion of the Leasehold would be contrary to local, state, or federal law, or would be inconsistent with the policies set forth in OAR 141-082-0260.

1.3 Notice of Intent Not to Renew. Except as otherwise provided in this Lease, State shall provide written notice to Lessee two years in advance if State intends not to renew this Lease for all or any portion of the Leasehold. If State determines not to renew this Lease, but less than two years remain in the Lease term, State

shall, at Lessee's request, extend the term of this Lease to complete the two year notice period, within which time Lessee shall vacate that portion of the Leasehold upon which the Lease is not being renewed and relocate any sublessees in an orderly fashion.

1.4 Termination Upon Mutual Consent: This Lease may be terminated by mutual written consent of Lessee and State.

1.5 Holdover: If Lessee does not vacate the Leasehold at the expiration or upon termination of the Lease, State may treat Lessee as a tenant from month to month, subject to all of the provisions of this Lease except the provisions for term, renewal, and Rent. State may unilaterally establish a new Rent for the month-to-month tenancy, payable monthly in advance. If a month-to-month tenancy results from holdover by Lessee under this Section, the tenancy will be terminable at the end of any monthly rental period upon Notice from State given not less than 30 days prior to the termination date specified in the Notice.

SECTION 2 – RENT; OTHER ASSESSMENTS

2.1 Initial Annual Rent: The rental payment to be paid by Lessee to State (the "Rent") for the first year of the Lease is \$ 1,896.75 based on the following Flat Rate. Receipt of the first year's Rent is hereby acknowledged.

2.2 Annual Rent Adjustment: The Rent will be adjusted annually in accordance with the provisions of OAR 141-082-0100 in effect at the time. Each payment is due on the Lease Anniversary Date established in Section 1.1.

- 2.3 Address for Rent Payments: Until State provides notice of a change in address (using a method described in Section 10.4), Lessee shall deliver all Rent payments to the following address:
Department of State Lands
775 Summer St. NE, Suite 100
Salem, OR 97301-1279
- 2.4 Assessments: Lessee shall pay all taxes or assessments, or both, that are levied against the Leasehold, whether or not such taxes or assessments, or both, have been levied in the past against the Leasehold or State by the assessing agency.
- 2.5 Liens: With the exception of mortgages or other security interests authorized by State under Section 6, Lessee shall immediately cause to be discharged any lien or other charge placed on the Leasehold or its Improvements, arising directly or indirectly out of Lessee's actions. State may terminate this Lease if Lessee fails to discharge any lien or charge or provide State with a sufficient bond covering the full amount of the lien after ten days Notice to do so by State. Lessee shall pay and indemnify State for all costs, damages or charges of whatsoever nature, including attorney's fees, necessary to discharge such liens or charges whether the costs, damages or charges are incurred prior or subsequent to any termination of this Lease.
- 2.6 Late Charges and Interest: Late payments by Lessee of Rent and other charges due under the Lease will cause State to incur costs and other damages not otherwise addressed in this Lease, the exact amount of which will be difficult to ascertain, including costs associated with administrative processing and accounting. In recognition of the foregoing, the parties agree that, notwithstanding other remedies permitted under the Lease and in addition to these remedies, if Lessee has not made full payment of amounts due within 20 days of the date payment is due, Lessee shall pay an additional charge equal to five percent of the amount of the late Rent or other charge. In addition, all amounts due and owing under this Lease, including late charges, will bear interest at the lower of: (a) the highest interest rate allowable by law, or (b) 12% per year.

SECTION 3 - USE AND RESTRICTIONS ON USE

- 3.1 Authorized Use: This Lease grants to Lessee the right to use the Leasehold for the specific purpose(s) described below in accordance with the Lease terms and conditions, applicable local (including local comprehensive land use planning and zoning ordinances), state and federal laws and the applicable Oregon Administrative Rules.

Commercial Marina/Moorage for
City of Astoria floating dock and timber finger pier,
and includes US Coast Guard vessels

3.2 Restrictions on Use: Lessee shall:

3.2.1 comply with all applicable local, state and federal laws and regulations affecting the Leasehold and its use, including local comprehensive land use planning and zoning ordinances, and correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use;

3.2.2 dispose of all waste in a proper manner and not allow debris, garbage or other refuse to accumulate within the Leasehold, and, if Lessee allows debris, garbage or other refuse to accumulate within the Leasehold, allow State to remove the debris, garbage and other refuse, and collect the cost of such removal from Lessee;

3.2.3 not cut, destroy or remove, or permit to be cut, destroyed or removed, any vegetation that may be upon the Leasehold except with written permission of State, and promptly report to State the cutting or removal of vegetation by other persons;

3.2.4 conduct all operations within the Leasehold in a manner which conserves fish and wildlife habitat, protects water quality, and does not contribute to soil erosion or the growth of noxious weeds;

3.2.5 maintain all buildings, docks, pilings, floats, gangways, similar structures, or other improvements (each an "Improvement") in a good state of repair; and

3.2.6 not unreasonably interfere with the public's trust rights of commerce, navigation, fishing or recreation.

3.3 Condition of Leasehold and Improvements: Lessee represents that it has inspected the Leasehold and Improvements, if any, and accepts the Leasehold and all Improvements in their present condition, AS IS. State has made no oral or written representations concerning the condition of the Leasehold or its Improvements, if any, nor their fitness or suitability for any purpose.

3.4 Limitation on Improvements: Lessee may not construct or place upon the Leasehold any Improvement, with the exception of an Improvement related to National Security, that exceeds \$15,000 in cost or value unless Lessee has first obtained the prior written authorization of State or the Improvement is exempt under OAR 141-082-0300. State shall not unreasonably withhold or delay its approval for Improvements consistent with the purposes of this Lease. All Improvements must be consistent with the authorized use(s) of this Lease stated in Section 3.1 and in compliance with all applicable laws, regulations, and ordinances as stated in Section 3.2.1.

3.5 Disposition of Unauthorized Improvements or Structures: Lessee shall remove all unauthorized Improvements from the Leasehold upon receiving Notice from State, unless State elects to remove the Improvements at Lessee's cost and expense.

3.6 Removal of Authorized Improvements: Lessee shall remove all authorized Improvements within 90 days after the termination or expiration of the Lease or modification of the Lease under Section 4.2, unless otherwise agreed by the parties or the Improvement is exempt under OAR 141-082-0310. Lessee is responsible for any damage done to the Leasehold as a result of the removal of any Improvement. Any Improvement remaining on the Leasehold after the 90 days will at the option of State become the property of State, unless otherwise agreed by the parties.

3.7 Liability: Subject to the limits and provisions of ORS 30.260 to 30.300, the Oregon Tort Claims Act, and Article XI, Section 10 of the Oregon Constitution, Lessee shall defend, indemnify and hold State harmless from and against all claims, demands, actions, suits, judgment, losses, damages, penalties, fines, costs, and expenses, including expert witness fees and costs and attorney's fees in an administrative proceeding, at trial, or on appeal ("Claims") arising from or attributable, in whole or in part, to Lessee's acts or omissions on the Leasehold or otherwise related to the Lease.

3.8 Waste Water Disposal: In addition to any other applicable laws and regulations, Lessee shall obtain any permits required by state or local authorities and shall comply with Oregon Department of Environmental Quality and Oregon State Marine Board requirements for sewage collection and waste water disposal for boats and floating structures.

3.9 Hazardous Substances:

3.9.1 Lessee shall not use, store, or dispose of, or allow the use, storage, or disposal within the Leasehold of any material that may pose a threat to human health or the environment, including without limitation, hazardous substances, pesticides, herbicides, or petroleum products (a "Hazardous Substance") except in strict compliance with applicable laws, regulations and manufacturer's instructions, and Lessee shall take all necessary precautions to protect human health and the environment and to prevent the release of any Hazardous Substance on or from the Leasehold.

3.9.2 Lessee shall keep and maintain accurate and complete records of the amount of all Hazardous Substances stored or used on the Leasehold, and shall immediately notify State of any release or threatened release of any Hazardous Substance on or from the Leasehold or otherwise attributable to operations or activities on the Leasehold.

3.9.3 If any Hazardous Substance is released, and the release arises from or is attributable, in whole or in part, to any operations conducted or allowed by Lessee on the Leasehold, Lessee shall promptly and fully remediate the release in accordance with state and federal regulations and requirements. If Lessee fails to so remediate, State may remove and remediate any release of a Hazardous Substance on or from the Leasehold or attributable to operations or activities conducted or allowed by Lessee on the Leasehold and collect the cost of removal or remediation from Lessee either as additional Rent or as damages.

3.9.4 In addition to any duty to indemnify specified elsewhere in this Lease, Lessee shall indemnify State to the fullest extent allowed by Oregon law against any claim or costs arising from or related to a release of a Hazardous Substance arising from or attributable, in whole or in part, to any operations conducted or allowed by Lessee on the Leasehold.

- 3.10 Weed Control: Lessee shall control plant pests and diseases and noxious weeds, including aquatic weeds, within the Leasehold as directed by the local county weed control district, the Oregon Department of Agriculture or any other governmental authority which has authority for the prevention or control, or both, of noxious weeds, plant pests or diseases, or as may be authorized or directed by State.

SECTION 4 - MODIFICATION OF LEASEHOLD AREA OR USE

- 4.1 Change of Leasehold Area or Use: Lessee may request that State amend the Lease to expand or reduce the size, or change the authorized use, of the Leasehold using a form provided by State. However, no such amendment will be effective unless authorized in writing by State. State shall process and review requests to amend the Lease in the same manner as a new lease application.
- 4.2 Special Conditions Applicable to Reductions in Leasehold Area. This Lease may be amended to reduce the Leasehold area only if the portion of the Leasehold to be removed from the Lease does not contain any Improvement. If the amendment results in a reduction of Rent due under the Lease, the reduction will be effective commencing on the Lease Anniversary Date that falls at least 12 months after the later of: (a) the date of the reduction in the Leasehold area; or (b) the date on which the amendment is fully executed.
- 4.3 Lessee Liable for Violations. Notwithstanding any reduction in the Leasehold area under this section, Lessee shall remain liable for any violation of Section 3.8 or 3.9 occurring on lands removed from the Leasehold prior to the amendment removing such lands.

SECTION 5 – RESERVATIONS

- 5.1 Access: State reserves a right of access to the Leasehold, unless there is a National Security threat, natural disaster, or emergency preparations as determined by the US Coast Guard.
- 5.2 Minerals: State reserves all rights to coal, oil, gas, geothermal resources and other minerals, and all deposits of clay, stone, gravel and sand valuable for building, mining, or commercial purposes including, without limitation, the right to explore, mine, develop, produce and remove such minerals and other deposits, along with the right of ingress and egress for these purposes, and to terminate this Lease as to all or any portion of the Leasehold when required for these purposes with 120 days prior written notice to Lessee or as otherwise provided by law.
- 5.3 Easements: State reserves the right at any time to grant easements across the Leasehold for tunnels, telephone and fiber optic cable lines, pipelines, power lines, or other lawful purpose, along with the right of ingress and egress for these purposes, subject to the inclusion in any such grant of easement of a requirement that the easement holder take all reasonable precautions to ensure that exercise of their easement rights does not unreasonably interfere with Lessee's use(s) authorized in the Lease.
- 5.4 Public Access and Recreational Use: All state-owned submerged and submersible land must remain available and open to the public for commerce, navigation, fishing and recreation unless restricted or closed by State to public entry pursuant to the provisions of applicable Oregon Administrative Rules or in the event of a National Security threat, natural disaster, or emergency preparations as determined by the US Coast Guard. Lessee may request State, but State is not obligated, to close the Leasehold to public entry or restrict recreational use by the public on all or portions of the Leasehold to protect persons or property from harm arising from or in connection with Lessee's activities.
- This reservation does not grant the public any right to use or occupy, without Lessee's permission, Lessee-owned property or structures authorized under this Lease.
- 5.5 Other: State reserves all other rights not expressly granted to Lessee under this Lease.

SECTION 6 – ASSIGNMENTS; SUBLEASES

6.1 Assignment and Sublease:

6.1.1 The Lessee has a current sublease agreement with the US Coast Guard. Except as provided in Section 6.2, Lessee may not assign this Lease or sublease the Leasehold or any portion of the Leasehold nor enter into any third party agreement respecting the Lease or the Leasehold without first obtaining the prior written consent of State pursuant to the requirements of the applicable Oregon Administrative Rules. Requests must be in writing using an application form prescribed by State. The application must be received by State at least 30 calendar days prior to the proposed effective date of the sublease or assignment. State shall make a good faith effort to complete its review of Lessee's application within 30 days following receipt. If the application is incomplete, or if State requests additional information concerning the proposed assignment or sublease, the time period for reviewing applications may be extended and the proposed sublease or assignment may be delayed pending the completion of such review.

6.1.2 State reserves the right to condition its consent to an assignment or sublease as State deems reasonably prudent, including the right to require changes to the terms of this Lease. Each assignee, sublessee, and third party interest will be required to comply with all of Lessee's obligations under this Lease, and the applicable Oregon Administrative Rules. Lessee will remain liable for the performance of all obligations under this Lease unless State's written consent expressly releases Lessee from further liability.

6.1.3 For the purposes of this section, if Lessee is a corporation or partnership or limited liability company, the transfer of any corporate stock or partnership or membership interest (including by operation of law) will be deemed an assignment subject to the provisions of this section if the result of the transfer is a change of management control or controlling interest in Lessee.

6.1.4 Lessee may not grant a mortgage or security interest in this Lease without prior written consent of State, which consent shall not be unreasonably withheld. Any subsequent assignment by the creditor will require the prior written approval of State.

6.2 Permitted Assignments and Subleases: Notwithstanding Section 6.1 of this Lease, the following assignments, mortgages and security interests, and subleases of Lessee's interest in the Leasehold are permitted and written notice to State is not required:

6.2.1 subleases of portions of Lessee's interest in the Leasehold area in the ordinary course of Lessee's business for the purposes approved under Section 3.1;

6.2.2 the sublease of the entire Leasehold for a term that is less than one year for a purpose specified in Section 3.1; or

6.2.3 the transfer of Lessee's interest in the Lease to a surviving spouse or immediate family member following the death of Lessee; except that, any other transfer of ownership following the death of Lessee is considered an assignment requiring State's approval.

SECTION 7 – DEFAULT

7.1 Default: The following are events of default:

7.1.1 Failure of Lessee to pay any rent, tax, reimbursement or other charge or payment due under the Lease within 20 days after the date payment is due. For the purposes of this subsection, if the due date for payment is not otherwise stated in this Lease or otherwise defined in statute or administrative rule, payment is due on the date set forth in the Notice from State to Lessee informing Lessee of its obligation to pay the charge or payment.

7.1.2 Failure of Lessee to comply with any non-payment-related term or condition or obligation of the Lease within 30 days after Notice by State specifying the nature of the deficiency, or, in the event of an emergency, within the time specified by State to resolve the emergency. Upon timely request from Lessee, State may in its good faith discretion permit the deadline for curing non-compliance to be extended if it finds that: (1) the default cannot reasonably be cured within the 30 day period; (2) the interests of State will not be harmed by an extension; (3) default was not due to the willful act or gross negligence of Lessee; and (4) State and Lessee mutually agree upon a written plan and timeline for curing the non-compliance.

7.1.3 Any of the following:

- a) insolvency of Lessee;
- b) the filing by Lessee of a voluntary petition in bankruptcy;
- c) an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee;
- d) the filing of any involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within 30 days after filing; or
- e) attachment of or the levying of execution on the Leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten days.

If Lessee consists of two or more individuals or business entities, the events of default specified in this paragraph apply to each individual or entity unless within ten days after an event of default occurs the remaining individuals or entities produce evidence satisfactory to State that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned under Section 6 of this Lease, the events of default specified in this subsection apply

only with respect to the one then exercising the rights of Lessee under the Lease.

7.1.4 Notwithstanding the above, if State in good faith believes that a material default has occurred which may imperil State's rights in the land or the discharge of its Constitutional obligations with respect to the land, State may declare an immediate default without any right of Lessee to cure the deficiency.

7.2 Termination of Occupancy Upon Default: State may terminate Lessee's right to occupy the Leasehold for any default by Lessee that remains uncured past the time provided in Section 7.1. State shall exercise its right to terminate Lessee's occupancy under this section by providing Notice to Lessee of the default and of State's intent to terminate Lessee's right of occupancy under the Lease upon the date provided in the Notice. State may recover from Lessee all costs arising out of State's re-entry and, if State and Lessee mutually agree to terminate the Lease as provided in Section 1.4, all costs of re-letting the Leasehold. If State and Lessee mutually agree to terminate the Lease, State may recover the amount of unpaid rent that otherwise would have been required to be paid under the Lease from the date of default until a new Lease has been secured or, if State and Lessee do not agree to terminate the Lease and State is unable to secure another lessee for the Leasehold, until such time as the Lease expires. Lessee shall dispose of all Improvements as specified in Section 3.6 of this Lease. If Lessee owns a floating home and has placed the home on the Leasehold pursuant to the provisions of Section 3.1 of this Lease, the lease termination provisions of ORS chapter 90 will apply to the extent the provisions of this Lease are inconsistent with this chapter.

7.3 State's Right to Cure Defaults:

7.3.1 If Lessee fails to perform any obligation under this Lease, State may perform the obligation of the Lease 30 days after providing Notice to Lessee. All of State's expenditures to carry out the obligation must be reimbursed by Lessee on demand with interest at the rate of one percent per month accrued from the date of expenditure by State.

7.3.2 Notwithstanding Section 7.3.1, but subject to ORS chapter 90 if applicable, if any violation of a term or condition of this Lease, including without limitation use of the Leasehold in a manner not permitted under the Lease, is causing or threatens to cause personal injury or damage to the Leasehold or other property, or if damage to the Leasehold arises from some other cause, State may immediately enter upon the Leasehold and take such action as it deems necessary to stop the use or mitigate the injury or damage. If the injury or damage is due to a violation of the terms or conditions of this Lease, Lessee will be liable for all costs incurred by State as a result of the violation and the action taken by State to mitigate the injury or damage. State, at its option, may send Notice to Lessee of the violation and, upon receipt of the Notice, Lessee shall immediately cease the violation and repair the injury or correct all damage caused by the violation. State's failure to provide Notice of a violation may not be deemed a waiver of the violation by State or authorization to Lessee to continue or fail to correct the violation.

SECTION 8 – INSURANCE; BONDS

- 8.1 LESSEE shall maintain during the term of this Lease, the required insurance coverages described in attached Exhibit B.
- 8.2 Bond: State reserves the right to require Lessee to furnish to State a surety bond or an equivalent cash deposit or certificate of deposit, in an amount to be determined by State in the exercise of its reasonable discretion, which names the State of Oregon as co-owner to ensure that Lessee will perform in accordance with all terms and conditions of the Lease.

SECTION 9 - ADDITIONAL CONDITIONS AND STIPULATIONS

- 9.1 None.

SECTION 10 - MISCELLANEOUS

10.1 Entire agreement: This Lease, together with the attached exhibits and attachments, constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Lease will bind either party unless in writing. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given, and will be valid and binding only if it is signed by each party. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Lease. This Lease supersedes all prior or existing lease or rental agreements between the parties with respect to the Leasehold described in this Lease.

- 10.2 No Partnership: State is not a partner nor in a joint venture with Lessee in connection with any business carried on in connection with this Lease or the Leasehold and has no obligation for Lessee's debts or other liabilities.
- 10.3 Non-Waiver: Waiver by either party of strict performance of any provisions of this Lease will not be a waiver nor prejudice the party's right to require strict performance of the same provision in the future or of any other provision.
- 10.4 Notices:

10.4.1 Any communication required by the terms of this Lease to be given in writing (hereafter, a "Notice") must be given or be served by:

- a) depositing the same in the United States mail, postage prepaid; registered or certified mail, with return receipt requested; or
- b) personal delivery service with all charges billed to shipper; or
- c) expedited delivery service with all charges billed to shipper; or
- d) prepaid telegram, telex or facsimile;

addressed to the party for whom the Notice is intended at the address set forth below or at such other address as the party may designate from time to time.

For Notices to Tenant:
City of Astoria
1095 Duane St.
Astoria, OR 97103

For Notices to Landlord: Department
of State Lands
775 Summer Street, NE Suite 100
Salem, OR 97301-1279

10.4.2 Notice is deemed received:

- a) upon receipt if sent by telegram, telex or facsimile or if personally delivered (as long as delivery is confirmed by the receiving telex or facsimile operator, including electronic confirmation of receipt, or by the courier delivery service, as the case may be); or
- b) three business days after the date of deposit in a post office or other official depository under the care and custody of the United States Postal Service, if sent by United States mail; or
- c) on the date of delivery by any expedited delivery service, or
- d) on the date any party declines to accept any Notice given as provided in this section.

10.4.3 Each party shall have an address, for Notice purposes, that is within the continental United States and, if any party resides outside the continental United States, the party shall designate an agent for the purpose of receiving Notices whose address is within the continental United States. Any party may change its address for the purpose of receiving Notices by delivering a Notice of the change of address to the other party as described in this section

7.3.

10.4.4 Communications between the parties that are not required by this Lease to be in writing may be by any mutually acceptable method.

- 10.5 Governing Law; Venue: This Lease and all matters related to the rights and responsibilities of the parties under it are governed by and subject to the laws of the State of Oregon and the administrative rules of the Department of State Lands and the State Land Board, as they may change from time to time. The Oregon Administrative Rules contain terms and conditions which relate to the rights and responsibilities of the parties under this Lease, and all such terms and conditions (as they may change from time to time) are hereby incorporated by reference and made a part of this Lease. Any claim, action, suit or proceeding (collectively, a "Claim") between State and Lessee that arises from or relates to the Lease must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; except that, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

However, in no way is this section or any other provision of this Lease to be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, from any Claim or from the jurisdiction of any court. Lessee, by execution of this Lease, hereby consents to the personal jurisdiction of all such courts.

- 10.6 Binding on Successors: This Lease is binding on and will inure to the benefit of the successors and assigns of the parties to it, but nothing in this section may be construed as a consent by State to any disposition or transfer of the Lease or any interest in it by Lessee except as otherwise expressly provided in this Lease.
- 10.7 Nondiscrimination: The Leasehold must be used in a manner, and for such purposes, that assure fair and nondiscriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender, or national origin.
- 10.8 Right To Sue More Than Once: State may sue periodically to recover damages accrued to date and no action for damages will bar later actions for damages subsequently accruing.
- 10.9 Remedies Cumulative: The remedies contained in this Lease are in addition to, and do not exclude, any other remedy available at law or in equity, and the exercise by either party of any one or more of its remedies does not preclude the exercise by it at the same or different times of any other remedies for the same default or breach by the other party.
- 10.10 Attorney Fees: If suit or action is instituted in connection with any controversy arising out of or in connection with this Lease, the prevailing party is entitled to recover all costs and disbursements incurred, including such sums as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit or action, and in any bankruptcy case or proceedings. State's obligation under this section is subject to the limitations of Article XI, section 7 of the Oregon Constitution.
- 10.11 Exhibits: All Exhibits to which reference is made in this Lease are incorporated in this Lease by the respective references to them, whether or not they are actually attached. References to "this Lease" include matters incorporated by reference.
- 10.12 Survival: Termination or expiration of the Lease will not extinguish or prejudice State's right to enforce the provisions of this Lease relating to indemnification, access to records, governing law, venue and consent to jurisdiction.

Lessee, by the signature below of its authorized representative, hereby acknowledges that Lessee has read this Lease, understands it and agrees to be bound by its terms and conditions.

STATE:

The State of Oregon, acting by
and through the Oregon State
Land Board and the
Department of State Lands
775 Summer ST NE, STE 100
Salem, OR 97301-1279

LESSEE:

City of Astoria
Municipal Corporation
1095 Duane St.
Astoria, OR 97103

Authorized Signature/
Printed Name

Signature/Title

(Note requirement below)

Date

Date

Note: If Lessee is a corporation, partnership,
limited liability company or other form of
business entity, signer warrants that s/he has
the authority to sign the Lease on behalf of
such entity by resolution of its Board of
Directors or equivalent, or through delegation
of authority to the signer.

STATE OF _____)
County of _____) ss.

The foregoing instrument was acknowledged before me this _____ day of

_____, _____, by _____
(name of officer or agent of corporation)
the _____ of _____,
(title of officer or agent) (name of business entity)
a _____
(state or place of incorporation) (corporation, general partnership, limited liability company, etc.)

on behalf of said _____
(corporation, general partnership, limited liability company, etc.)

Notary Signature: _____

My commission expires _____

CERTIFICATE OF COMPLIANCE WITH OREGON TAX LAWS

By signature on this Lease for Lessee, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Lessee and that Lessee is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 (Amusement Device Taxes), 403.200 to 403.250 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 321 (Timber and Forest Land Taxation) and 323 (Cigarettes And Tobacco Products) and the elderly rental assistance program under ORS 310.630 to 310.706 and any local taxes administered by the Department of Revenue under ORS 305.620.

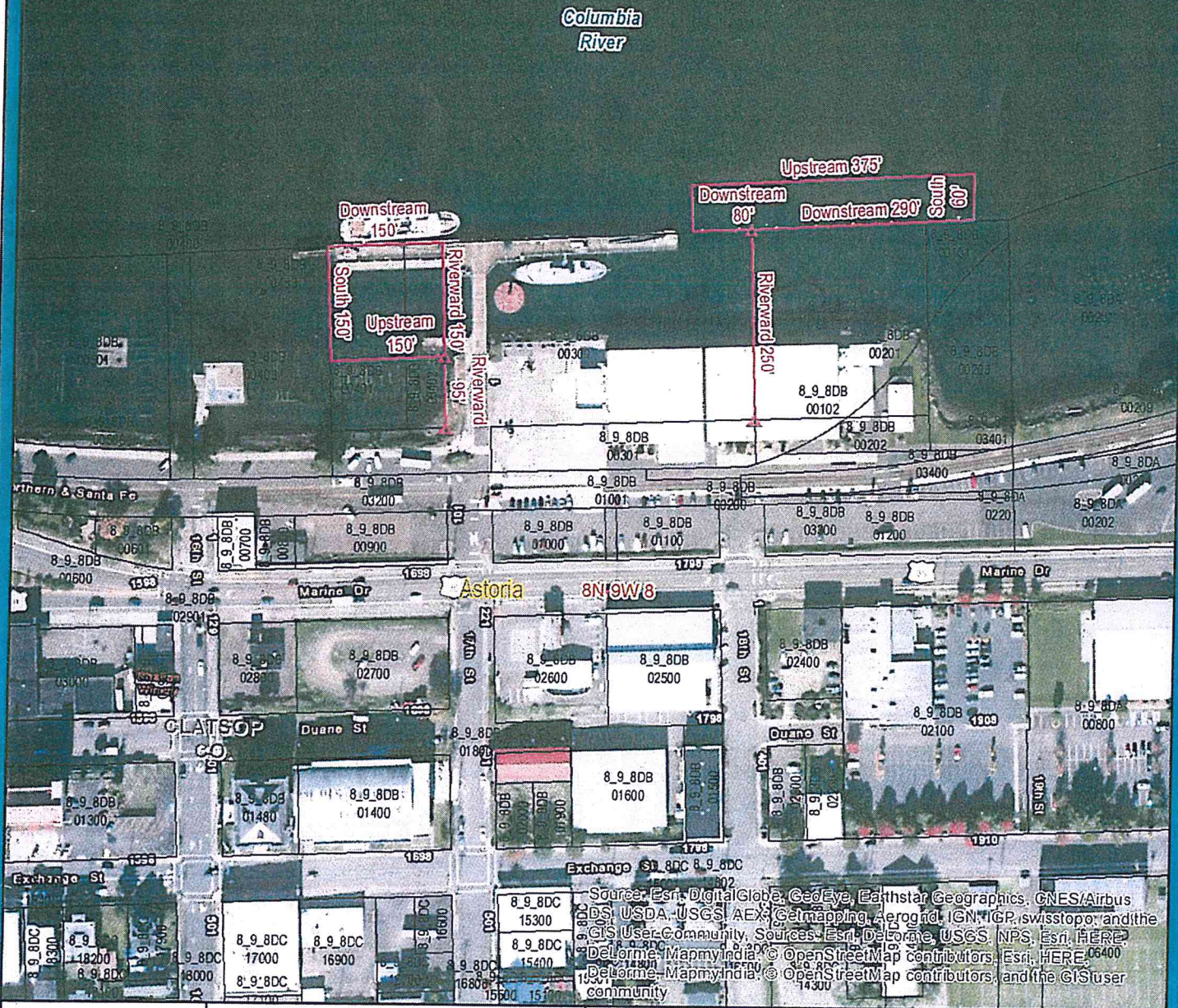
Signature: _____

Date: _____

Printed Name: _____

Title: _____

State of Oregon Department of State Lands

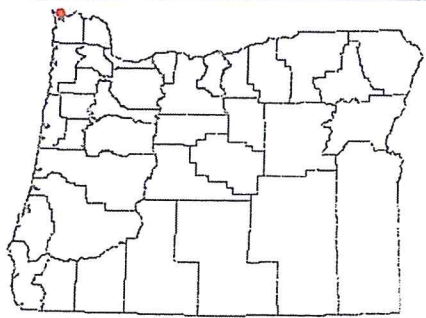


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 DeLorme, MapmyIndia, © OpenStreetMap contributors, Esri, HERE,
 DeLorme, MapmyIndia, © OpenStreetMap contributors, and the GIS user
 community



0 100 200
Feet

1 inch = 200 feet
 Map Projection:
 Oregon Statewide Lambert
 Datum NAD83
 International Feet



- Description Point
- Description Line

Exhibit A

State of Oregon
 Department of State Lands
 775 Summer St, NE, Suite 100
 Salem, OR 97301
 503-986-5200
www.oregon.gov/DSL

Date: 4/14/2016

This product is for informational purposes only
 and may not have been prepared for, or be
 suitable for legal, engineering, or surveying
 purposes. Users of this information should
 review or consult the primary data and information
 sources to ascertain the usability of the information.

**EXHIBIT B
INSURANCE REQUIREMENTS**

During the term of the Lease, Lessee shall maintain in force at its own expense, each insurance item noted below: **(State must check boxes for #2, #3, and #4 to indicate whether insurance is required or not.)**

1. **Required by State of lessee with one or more workers, as defined by ORS 656.027. Workers' Compensation.** All employers, including Lessee, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Lessee shall require and ensure that each of its sublessees (if permitted) complies with these requirements.
2. ☒ **Required by State** ☐ **Not required by State.**
(Commercial/General) Liability coverage, insuring against claims for bodily injury, death and property damage. Coverage must include contractual liability coverage for the indemnity provided under this Lease. **The commercial/general liability insurance coverages required under this Lease must include the State of Oregon, and its agencies, departments, divisions, commissions, branches, officers, employees, and agents as additional insureds. See Number 7 below.**

Lessee shall provide proof of liability or commercial general liability insurance in not less than the following amounts:

Bodily Injury/Death:

☒ \$1,000,000/\$2,000,000 combined single limit per occurrence/aggregate limit for all claims per occurrence.

or

☐ \$2,000,000/\$4,000,000 combined single limit per occurrence/aggregate limit for all claims per occurrence.

or

☐ \$ _____

3. ☐ Required by State ☒ Not required by State.

Marine Protection and Indemnity during the term of the Lease, marine protection and indemnity coverage. **Coverage.** Lessee shall obtain, at Lessee's expense and keep in effect Shall not be less than \$ _.

4. ☐ Required by State ☒ Not required by State.

Pollution Liability: Lessee shall obtain at Lessee's expense, and shall keep in effect during the term of the Lease, pollution liability insurance covering Lessee's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by Lessee, all arising out of Lessee's lease of the Leasehold. Shall not be less than \$ _____

5. **"Tail" Coverage.** If any of the required liability insurance is on a "claims made" basis, Lessee shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Lease, for a minimum of 24 months following the termination or expiration of the Lease.
6. **Certificates of Insurance.** As evidence of the insurance coverages required by this Lease, the Lessee shall furnish acceptable insurance certificates to State prior to commencing any work to be performed under the Lease. The certificate must specify all of the parties who are additional insureds. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to State. Lessee shall pay for all deductibles, self-insured retention and self-insurance
7. **Additional Insured.** The commercial general liability and automobile liability insurance coverages required under this Lease must include the State of Oregon, and its agencies, departments, divisions, commissions, branches, officers, employees, and agents as additional insureds but only with respect to Lessee's activities to be performed under this Lease. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
8. **Change in coverage or cancellation.** Lessee shall notify Lessor when a change in coverage or cancellation occurs. Lessee shall provide Lessor copies of new coverage upon effect of change. As stated in section 2, Lessee shall ensure required insurance coverage is maintained over the term of the lease.

SUBLEASE AGREEMENT

Dated: _____, 2016

PARTIES: Stopwater LLC ("Sublessor")
attn: Chris Farrell
100 16th Street
Astoria, OR 97103

AND: City of Astoria ("Sublessee")
attn: Jeff Harrington
1095 Duane St
Astoria, OR 97103

RECITALS

A. Oregon Department of State Lands ("DSL") is the owner of riparian land, also described as submerged land, abutting real property owned by Sublessor and further described on Exhibit A attached hereto and incorporated herein.

B. DSL and Sublessor are parties to a waterway lease ("Lease") attached hereto as Exhibit B and incorporated herein.

C. Sublessee owns a municipal dock and wishes to sublease the land described in Exhibit B ("premises") from Sublessor under the terms and conditions herein contained.

In consideration of the mutual promises and covenants herein contained, the parties agree as follows:

1. SUBLEASE.

1.1 Sublessee agrees to sublease the premises from Sublessor for the term set forth in section 2 of this agreement.

1.2 Sublessee shall pay to Sublessor a minimum base rent ("minimum rent") which shall be paid annually in advance between the first (1st) and tenth (10th) of January each calendar year during the term of this agreement in the following amounts:

1.2.1 Sublessee shall pay a minimum rent for the term of this agreement, in an amount equal to the rent charged to Sublessor under the Lease. In addition to minimum rent, an add-on amount will be charged to Sublessee by Sublessor, pursuant to this agreement.

1.2.2 The add-on amount of rent for the term of this agreement shall be \$250.00 per annum and shall be due and payable on the same date as the minimum rent.

1.2.3 Sublessee shall pay a one-time fee to the lessee of \$2500, to cover lease fees, survey costs and administrative costs. This payment shall be made at the time of execution of the sublease agreement.

1.2.4 All payments to Sublessor shall be sent to the address hereinabove for Sublessor.

2. TERM OF SUBLEASE. This agreement shall commence on the effective date of the Restated Submerged and Submersible Land Lease 20713-ML between Sublessor and the Oregon Division of State Lands. It shall continue until December 31, 2031, or until the effective date of any new sublease for the premises between Sublessee and Sublessor, whichever first occurs. Upon termination, vacation of premises by Sublessee, and payment of all amounts owing under this agreement, Sublessee shall have no further liability under the Lease and this agreement. At the discretion of Sublessor, this agreement is renewable for a one-year term, with additional terms and conditions to be mutually agreed upon between the parties.

3. USE OF PREMISES. Sublessee shall use the premises as a municipal dock and for no other purpose. Sublessee's use of the premises shall be consistent with terms of use of the Lease between DSL and Sublessor. At all times, Sublessee's use of premises is subordinate to DSL authority.

4. ACCESS AND PARKING. Sublessee is the owner of submerged lands and a municipal dock adjacent to the Exhibit B land ("abutting property") that provides access to the premises. This sublease agreement shall not grant sublessee any right of access to the Exhibit B property over any property owned by Sublessor.

5. LEASE. This agreement shall be subject to all of the terms and conditions of the Lease, which are incorporated herein by this reference. Sublessee acknowledges it has read the Lease and agrees to take the premises subject to all the terms and conditions of the Lease and to use the premises within the restrictions provided by the Lease.

6. OCCUPANCY. Subject to Sublessee's compliance with all terms and conditions of this Sublease, Sublessee shall have the exclusive use of the premises.

7. LIABILITY INSURANCE.

7.1 Sublessee shall obtain and maintain at all times during the Term, a policy of liability insurance at Sublessee's expense, insuring both parties against liability for damage to persons or property in or about the premises and abutting property, with the amount of such insurance not less than the requirements of ORS 30.270. Should the requirements of ORS 30.270 be amended, Lessee will alter their insurance to be consistent with any such amendments.

7.2 ADDITIONAL INSURED. The liability insurance coverage shall include STOPWATER and its officers and employees as Additional Insured but only with respect to SUBLESSEE'S activities to be performed under this sublease. Coverage will be primary and non-contributory with any other insurance and self-insurance. Prior to starting work under this Contract, SUBLESSEE shall furnish a certificate to STOPWATER from each insurance company providing insurance showing that STOPWATER 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.

7.3 NOTICE OF CANCELLATION OR CHANGE. There will be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from SUBLESSEE or its insurer(s) to STOPWATER. 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.

8. CONDITION OF PREMISES. Sublessee shall be responsible for and shall assume all risk of loss of its personal property, furniture, fixtures, equipment, and furnishings in the premises. Sublessor shall have no obligation to perform or pay the cost of any maintenance or repair to the premises or abutting property. Except as may be stated expressly in this agreement, Sublessor, DSL and their agents and employees shall not be liable for any warranty, representation, or other promise or statement regarding the condition of the premises or abutting property.

9. TRANSFER. Sublessee shall not assign its interest under the agreement without first obtaining Sublessor's prior written consent. Unless otherwise agreed, no assignment or sublease shall release Sublessee from its obligations under this agreement.

10. TAXES AND UTILITIES.

10.1 TAX PAYMENT. Sublessee shall pay any real and personal property taxes assessed against the Premises before the same become past due and shall be responsible for any available exemption from taxation.

10.2 UTILITIES. Sublessee shall promptly pay any charges for sewer, water, gas, electricity, telephone and all other charges for utilities which may be furnished to the Premises at Sublessee's request, including connection fees.

11. DEFAULT. If Sublessee fails to perform any obligation under this agreement within twenty (20) days of written notice of default, Sublessor shall have all rights and remedies allowed to Sublessor under the Lease and under applicable law.

12. NOTICES. Notices under this agreement shall be in writing and shall be effective when actually delivered or two days following deposit in the United States mail, certified, return receipt requested, directed to the other party at the address first set forth above. Either party may change its address for notices by written notice to the other party mailed or delivered as provided above.

13. LEGAL FEES. Should any party hereto institute any legal action to enforce any provision hereof, the prevailing party in such action shall be entitled to receive from the losing party such amount as the court may adjudge to be reasonable attorney fees at trial and on appeal.

14. PARTIAL INVALIDITY. If any term, covenant, condition or provision of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

15. ENTIRE AGREEMENT. This agreement shall continue in force and govern all relationships between the parties until canceled or terminated as provided for herein. It is agreed by all parties hereto that there are no oral or other agreements or understandings between them other than herein contained or herein referred to. With the exception of the Lease, which is specifically incorporated herein, this agreement supersedes all prior agreements with respect to the premises, whether written, oral or otherwise, made between the parties and all such prior agreements are hereby terminated.

16. WAIVER. The failure by either party at any time to require performance by the other party of any of the provisions hereof shall in no way affect the party's right hereunder to enforce the same, nor shall any waiver by either party of any breach hereof be held to be a waiver of any succeeding breach, or a waiver of this non-waiver clause.

17. CAPTIONS. Captions in this agreement are for convenience only and do not in any way limit or amplify the provisions of this agreement.

18. CHOICE OF LAW AND VENUE. This Agreement shall be governed, enforced, and construed by the laws of the state of Oregon. Venue for any action brought under, or in conjunction with, this agreement shall be in Clatsop County, Oregon.

SUBLESSOR:

STOPWATER LLC, an Oregon Limited
Liability Company

By: _____
Name: _____
Its: _____
Date: _____

SUBLESSEE:

The City of Astoria, a political subdivision of
the State of Oregon

By: _____
Name: _____
Date: _____



Hanmi Global Partner

4253-a highway 101 n | seaside, oregon 97138
503.738.3425 | fax 503.738.7455
www.otak.com

Exhibit A (1 of 2)

**Legal Description of In-water Lease Agreement
For Stopwater, LLC, an Oregon Limited
Liability Company**

February 17, 2016

A portion of the property conveyed to Stopwater LLC, and Oregon Limited Liability Company situated in Section 8, Township 8 North, Range 9 West, Willamette Meridian, City of Astoria, County of Clatsop, Oregon, more particularly described as follows:

Commencing at a point on the northerly extension of the West Line of 17th Street, said point also being the northerly extension of the east line of Block 133 of the Town (now City) of Astoria as laid out and recorded by John M Shively, where it intersects the Pier Head Line;

Thence along said Pier Head Line South 87°03'48" West (a record bearing of which is South 84°44'12" West as shown on Army Corps of Engineers map titled "Harbor Lines" CL-12-45) a distance of 150.01 feet more or less to the **True Point of Beginning**;

Thence continuing along said Pierhead line, South 87°03'48" West, a distance of 43.71 feet;

Thence South 02°56'18" East, a distance of 28.31 feet;

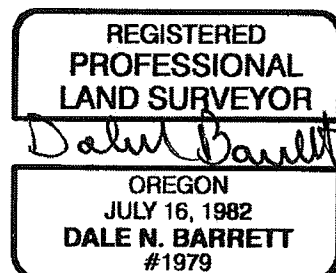
Thence North 87°03'48" East, a distance of 35.32 feet;

Thence South 02°08'26" East, a distance of 40.82 feet;

Thence North 87°51'34" East, a distance of 8.00 feet to the east line of that parcel conveyed to Stopwater LLC as described in instrument no. 200409350, recorded in Clatsop County, Oregon;

Thence along the east line of said Stopwater parcel, North 02°08'26" West, a distance of 69.24 feet to the **True Point of Beginning**,

Containing 1,559 square feet more or less.



RENEWAL DATE: DEC. 31, 17

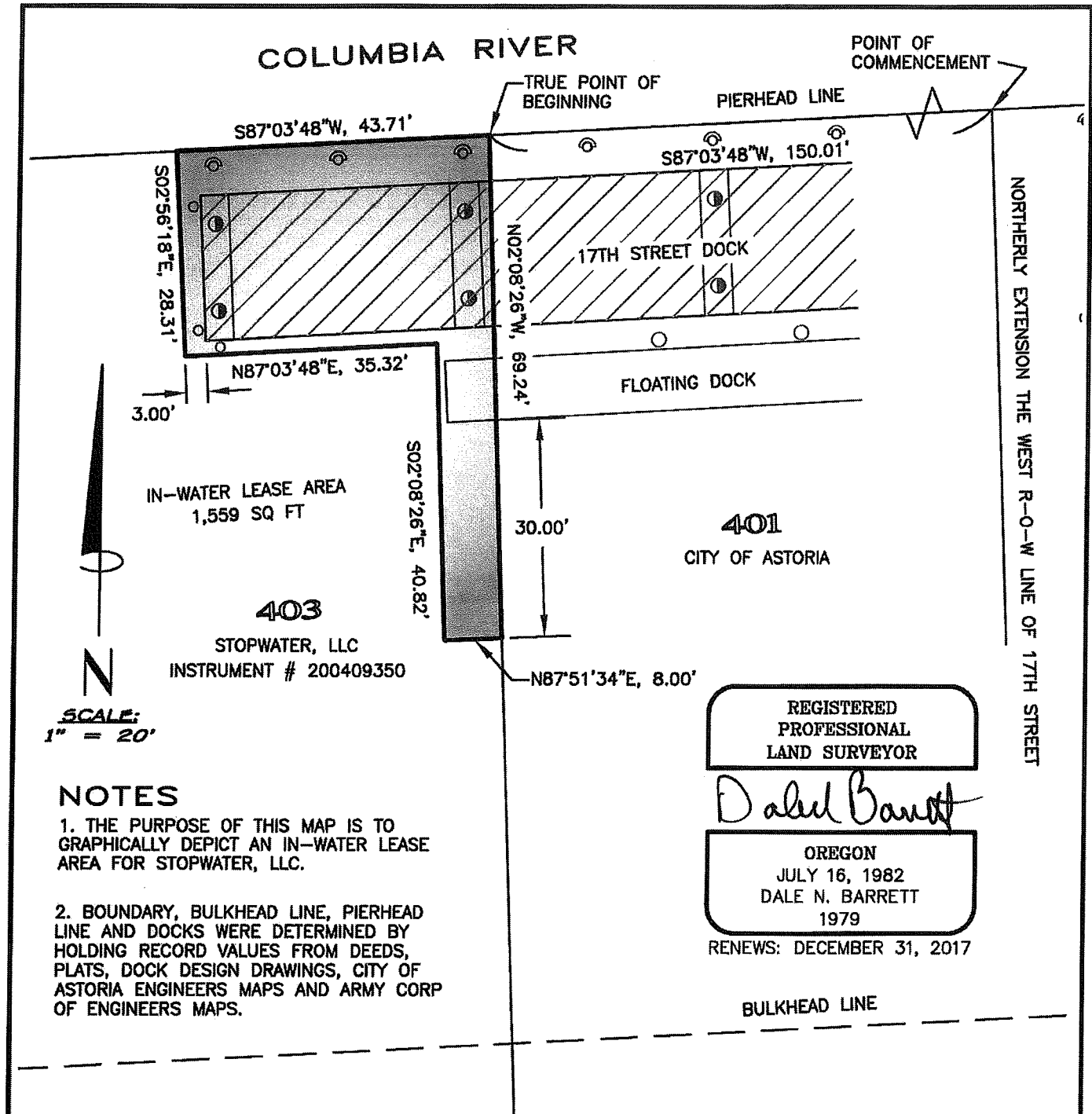


EXHIBIT MAP FOR:

STOPWATER, LLC

EASEMENT AREA

TAX LOT 403

MAP NO. 8-9-8DB

INSTRUMENT # 200409350

SE 1/4 SECTION 8, T8N, R9W, W.M.

CITY OF ASTORIA, CLATSOP COUNTY, OREGON



- SURVEYING
- CIVIL ENGINEERING
- PLANNING
- WATER & NATURAL RESOURCES
- WETLAND CONSULTING

CLATSOP COUNTY

4253-A HWY 101 N.
GEARHART, OR 97138
(503) 738-3425
FAX: (503) 738-7455

TILLAMOOK COUNTY

PHONE (503) 368-5394

PACIFIC COUNTY

PHONE (360) 842-4454

WWW.OTAK.COM

DATE	JOB NO.	EQUIPMENT	FIELD	DRAWN	CHECKED
FEB. 17, 2016	67918	N/A	N/A	RAP	DNB

STATE OF OREGON
DEPARTMENT OF STATE LANDS

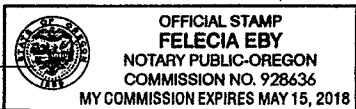
Consent to Sublease

-ML

For good and valuable consideration received, **Stopwater LLC** hereby requests the Department of State Lands consent to sublease on the terms and conditions of the attached sublease agreement. This request is made in accordance with lease number **58893-ML** dated _____, by and between the State of Oregon, acting by and through the Department of State Lands, as Lessor, and **Stopwater LLC**, as Lessee, covering the use of the real property and improvements described therein, situated in Clatsop County, State of Oregon and the applicable Oregon Administrative Rules. This consent is not valid until the Department of State Lands issues its written consent by executing this document. Lessee affirms that the attached agreement is a full and complete copy. Enclosed is \$ **750.00**, the required non-refundable application fee.

Dated this 1 day of June, 2016.

STATE OF Oregon
County of Clatsop



LESSEE

[Signature]
Authorized Signature

The foregoing instrument was acknowledged before me this 1 day of June, 2016, by Christopher J Farrell (officer or agent of corporation), the Secretary/Treasurer (title) of Stopwater LLC (corporation), on behalf of the corporation.

[Signature]
Signature
My Commission Expires: 5/15/2018

SUBLESSEE

The City of Astoria hereby acknowledge(s) waterway lease **58893-ML** and agree(s) to be bound by all the terms, conditions, obligations, and liabilities in any way connected with the said lease and to faithfully perform all provisions therein contained.

Dated this _____ day of _____, 2016.

SUBLESSEE

1095 Duane Street
(Address)
Astoria, OR 97138
(City/State/Zip)
(503) 325-5824
(Area Code) (Phone Number)

(Please print)

Signature

Title

STATE OF OREGON

County of Clatsop

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ (officer or agent of corporation), the _____ (title) of _____ (corporation), on behalf of the corporation.

Signature

My Commission Expires: _____

The State of Oregon, acting by and through the Department of State Lands in the above-mentioned Lease, acknowledges and consents to the attached sublease agreement.

Dated this _____ day of _____, 20____.

DEPARTMENT OF STATE LANDS

By: _____

DSL Authorized Signature

Printed Name





CITY OF ASTORIA

Founded 1811 • Incorporated 1856

October 7, 2016

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: PUBLIC SAFETY RADIO UPGRADE

DISCUSSION/ANALYSIS

The Public Safety communications network is comprised of multiple radios located at eight individual sites. These sites serve all the public safety agencies in Clatsop County. Having our communications deficiencies exposed in the 2007 wind-storm, the City of Astoria and our public safety partners began to build out a robust, redundant, and capable communications network. This network was designed to allow us a path towards simulcasting. Simulcasting allows the Dispatch Center to broadcast radio transmission from several sites simultaneously. The current system configuration requires the Dispatcher and field units to have knowledge of individual radio site locations, terrain, and as police or fire unit locations change, a different repeater may need to be selected. A Dispatcher must select the repeater for the correct area and broadcast radio traffic. If they use the wrong repeater or the unit they are trying to reach has moved to another geographic location, the repeater may not reach the unit in the field. This “geographic” approach potentially prohibits others from hearing priority traffic.

A simulcast system allows the disparate repeaters to act as one allowing for maximum coverage throughout the County. For instance, the Knappa Fire Chief located in Seaside would be able to hear Dispatch tone out a call for service to an incident in his district. This would enhance our first responder’s situational awareness and decrease response times. The current system was designed to enable us to use simulcast when we had the upgraded equipment purchased and deployed. We are now prepared to begin implementation.

In conjunction with the Astoria 9-1-1 Fire Subscribers, staff would like to purchase one (1) Motorola GTR 8000 base radio with associated software making simulcasting possible. The current Fire Repeater on Megler Mountain is at the end of its service life and needs replacement. By replacing this aging repeater with a GTR 8000, the Fire community will have taken their first step towards simulcasting. Having two county-wide simulcast channels has always been a communications goal for our Public Safety partners. We are very close to having a law enforcement frequency simulcast and it makes sense to begin moving fire towards that same goal now.

This base radio with associated equipment is WSCA (Western States Contracting Alliance) contract priced at \$10,640 each. The Emergency Communications Fund has \$2,500 available in Network Maintenance toward the purchase of one radio with the local Fire Departments contributing the balance of \$8,140. The ability to simulcast has been one of our long term communications infrastructure goals and with the financial partnership of the Astoria 9-1-1 Fire Subscribers we can take the first step towards our second simulcast frequency.

RECOMMENDATION

It is recommended that Council approve the purchase of one (1) GTR 8000 base radio by Astoria 9-1-1 totaling \$10,640 with the local Fire Departments reimbursing the Emergency Communications Fund \$8,140.



Jeff Rusiecki, Emergency Comm. Mngr.



October 10, 2016

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: ACCEPT GRANT FROM OREGON STATE PARKS AND RECREATION
DEPARTMENT TO SUPPORT SITE-SPECIFIC PARK PLAN AT
SHIVELY AND MCCLURE PARK

DISCUSSION/ANALYSIS

The Parks and Recreation Department has been successful in receiving \$40,000 in grant funding from the Oregon Parks and Recreation Department to support site-specific park planning at Shively Park and McClure Park.

The Parks and Recreation Department's draft Comprehensive Master Plan recommends completing site-specific park plans at several locations. The process would allow the Department to plan for specific improvements and new development, as well as long term maintenance at each site. The plans would assess alternative options for improvements and new development, and recommend the best option. The planning process would involve input from the community, specify landscape features and park amenities to be developed or improved, and include cost estimates, funding strategies, and a timeframe for implementation.

It was recommended that site master plans for Shively Park and McClure Park be prioritized. During the community input process for the Parks and Recreation Comprehensive Master Plan, the public was asked to prioritize sites in need of master plans. Shively Park ranked as the community's highest priority and a need to balance the park's rich history with a low maintenance and accessible design that meets the community's needs. McClure Park ranked as the second highest priority for site master plans with the community. The Friends of McClure Park have been active in fundraising to make improvements and add amenities. A master plan for McClure Park would ensure that new development is supported by the community and Parks and Recreation Department, and that it can be cared for and adequately maintained into the future.

The Oregon Parks and Recreation Department Local Government Grant Program provides Small Community Planning Grants to support site-specific park and outdoor recreation plans. These planning efforts target a specific site that has been identified in

a system-wide park and recreation plan. Site-specific planning projects include public outreach and an analysis process that leads to a detailed plan for full development or redevelopment a park or other recreational-use site. The plan must address priorities identified in a system-wide or comprehensive plan. The planning process must include the adoption of the planning document through the local land use approval process.

On May 2, 2016 City Council approved the application to the Oregon Parks and Recreation Department Local Government Grant Program in the amount of \$40,000 to support funding site plans for Shively Park and McClure Park and the required 40% match, in the amount of \$16,000 cash budgeted in the Capital Improvement Fund and in-kind management and administration contribution of \$11,000.

On September 15, 2016 the Parks and Recreation Department was informed that our grant application was successful and mailed a copy of the Local Government Grant Agreement, which is attached for your approval.

Once signed and returned, the Parks and Recreation Department will receive a notice to proceed letter, at which point we will begin the City procurement process to select a consultant. The tentative project timeline is as follows:

October, 2016: Notice to proceed from OPRD.

December, 2016: Designation of a project manager and procurement of a consultant.

January, 2017: Project kickoff, public notice of upcoming meeting dates.

February, 2017: Initial public meeting to collect input.

March, 2017: Development of design alternatives.

April, 2017: Public meetings to collect input on design alternatives.

May, 2017: Selection of preferred concepts for McClure and Shively Parks; development of implementation and funding strategy.

June, 2017: Adoption of plan documents for McClure and Shively Park.

RECOMMENDATION

It is recommended that City Council accept the Oregon Parks and Recreation Department Local Government Grant to support funding site plans for Shively Park and McClure Park and approve the Local Government Grant Program Agreement.

Submitted By: 
Angela Cosby
Director of Parks & Recreation



Oregon

Kate Brown, Governor

Parks and Recreation Department

Headquarters

725 Summer St NE Ste C

Salem, OR 97301-1266

(503) 986-0980

Fax (503) 986-0794

www.oregonstateparks.org



September 15, 2016

Angela Cosby
City of Astoria
1997 Marine Drive
Astoria, OR 97103

RE: **Project Agreement**
Local Government Grant Program
LG16-035 – Shively Park and McClure Park Master Planning

Angela:

Congratulations on your successful application for grant funds for the Shively Park and McClure Park Master Planning project.

Enclosed you will find two original copies of the **Local Government Grant Program Agreement** between Oregon Parks and Recreation Department (OPRD) and the City of Astoria. This agreement must be approved and signed by you or your designated representative, and our office, in order to receive grant funds.

Please sign both copies of this agreement and return them both to our office. We will then return a fully signed agreement to you along with a **Notice to Proceed** letter. **Work must not begin until you receive the Notice to Proceed letter and a copy of this agreement, signed by the State. Any work completed prior to receiving the Notice to Proceed is not eligible for reimbursement or as match.**

Timely implementation and completion of your project is extremely important. Your project must be completed by **October 31, 2018**. This will ensure continued credibility and success of the Local Government Grant Program by demonstrating effective results to citizens and policy makers.

We encourage you to offer appropriate media opportunities and, when possible, involve your local legislators to help build public awareness of the project's purpose and benefits. Please notify me for any event celebrating your project's beginning or completion.

If you have questions or if I can be of any assistance please feel free to contact me at 503-986-0591 or mark.cowan@oregon.gov. Thank you for helping make this valuable investment in Oregon's outdoor recreation.

Sincerely,

Mark Cowan
Grant Program Coordinator

Enclosures: LGGP Project Agreement (2)

Oregon Parks and Recreation Department

Local Government Grant Program Agreement

THIS AGREEMENT ("Agreement") is made and entered into by and between the State of Oregon, acting by and through its Oregon Parks and Recreation Department, hereinafter referred to as "OPRD" or the "State" and the **City of Astoria**, hereinafter referred to as the "Grantee".

OPRD Grant Number: **LG16-035**

Project Title: **Site-Specific Master Planning**

Project Type (purpose): **Planning**

Project Description: The project will initiate and complete Master Planning for two specific sites, Shively Park and McClure Park in Astoria, Oregon. The Project is further described in the Application included as Attachment B.

Grant Funds /

Maximum Reimbursement: **\$40,000** **(59.70%)**

Grantee Match Participation: **\$27,000** **(40.30%)**

Total Project Cost: **\$67,000**

Grant Payments: Grant funds are awarded by the State and paid on a reimbursement basis, and only for the Project described in the Agreement, and the original Application included as Attachment B. To request reimbursement, Grantee shall submit a State supplied Request for Reimbursement form, copies of project invoices, and documentation confirming project invoices have been paid. In addition to the final reimbursement requested upon completion of the Project, Grantee may request mid-Project reimbursement, as often as quarterly, for costs accrued to date. Advance payments may be provided under hardship conditions.

Reimbursement Procedures: Based on the estimated Project Cost of **\$67,000**, and the Grantee's Match participation rate of **40.30%**, **the reimbursement rate will be 59.70%**. Upon successful completion of the Project and receipt of the final reimbursement request, the State will pay Grantee the remaining Grant Funds balance, or **59.70%** of the total cost of the Project, whichever is less.

Matching Funds: The Grantee shall contribute matching funds or the equivalent in labor, materials, or services, which are shown as eligible match in the rules, policies and guidelines for the Local Government Grant Program. Volunteer labor used as a match requires a log with the name of volunteer, dates volunteered, hours worked, work location and the rate used for match, to be eligible.

Retention: OPRD shall disburse up to 90 percent of the Grant Funds to Grantee on a cost reimbursement basis upon approval of invoices submitted to OPRD. OPRD will disburse the final 10 percent of the Grant Funds upon approval by OPRD of the completed Project and the Final Report substantially in the form of Attachment C.

Progress Reports: Grantee shall submit written Progress Reports on forms provided by the State with each reimbursement request, or at a minimum, Progress Reports shall be submitted at six month intervals, starting from the effective date of the Agreement.

Agreement Period: The effective date of this Agreement is the date on which it is fully executed by both parties. Unless otherwise terminated or extended, the Project shall be completed by **October 31, 2018**. This Agreement shall expire on the date final reimbursement payment is made by OPRD to Grantee.

Project Sign: When project is completed, Grantee shall post an acknowledgement sign of their own design, or one supplied by the State, in a conspicuous location at the project site, consistent with the Grantee's requirements, acknowledging grant funding and the State's participation in the Project.

Agreement Documents: Included as part of this Agreement are:

Attachment A: Standard Terms and Conditions
Attachment B: Project Application including Description and Budget
Attachment C: Sample Progress Report form
Attachment D: Sample Request for Reimbursement form including guidelines

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents is as follows, listed from highest precedence to lowest precedence: this Agreement without Attachments; Attachment A; Attachment B; Attachment C; Attachment D.

Contact Information: A change in the contact information for either party is effective upon providing notice to the other party:

Grantee Administrator

Angela Cosby
City of Astoria 1997
Marine Drive
Astoria, OR 97103
503-325-7275
acosby@astoria.or.us

Grantee Billing Contact

Angela Cosby
City of Astoria 1997
Marine Drive
Astoria, OR 97103
503-298-2460
acosby@astoria.or.us

OPRD Contact

Mark Cowan, Coordinator
Oregon Parks & Rec. Dept.
725 Summer ST NE STE C
Salem, OR 97301
503-986-0591
mark.cowan@oregon.gov

Signatures : In witness thereof , the parties hereto have caused this Agreement to be properly executed by their authorized representatives as of the last date hereinafter written.

**CITY OF ASTORIA
GRANTEE**

By: _____
Arline LaMear, Mayor

Date

By: _____
Brett Estes, City Manager

Date

Oregon Department of Justice (ODOJ) approved
for legal sufficiency for grants exceeding \$150,000:

By: N/A
ODOJ Signature or Authorization

Printed Name/Title

Date

**STATE OF OREGON
Acting By and Through Its
OREGON PARKS AND RECREATION DEPT.**

By: _____
Tracy Loudon, Business and Tech. Solutions Administrator

Date

By: _____
Jan Hunt, Grants Section Manager

Date

By: _____
Mark Cowan, Grant Program Coordinator

Date

Attachment A – Standard Terms and Conditions

Oregon Parks and Recreation Department Local Government Grant Program Agreement

1. **Compliance with Law:** Grantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to implementation of the Project, including without limitation, OAR chapter 736, Division 6 (the Local Government Grant Program administrative rules).
2. **Compliance with Workers Compensation Laws:** All employers, including Grantee, that employ subject workers who provide services in the State of Oregon shall comply with ORS.656.017 and provide the required Worker's Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included.
3. **Amendments:** This Agreement may be amended only by a written amendment to the Agreement, executed by the parties.
4. **Expenditure Records:** Grantee shall document, maintain and submit records to OPRD for all Project expenses in accordance with generally accepted accounting principles, and in sufficient detail to permit OPRD to verify how Grant Funds were expended. These records shall be retained by the Grantee for at least six years after the Agreement terminates, or until all audits initiated within four years have been completed, whichever is later. The Grantee agrees to allow Oregon Secretary of State auditors, and State agency staff, access to all records related to this Agreement, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **Equipment:** Equipment purchased with Local Government Grant Program funds must be used as described in the Project Agreement and Application throughout the equipment's useful life. The Grantee will notify the State prior to the disposal of equipment and will coordinate with the State on the disposal to maximize the equipment's ongoing use for the benefit of the Local Government Grant Program.
6. **Use of Project Property:** Grantee warrants that the land within the Project boundary described in the Application (Attachment B) shall be dedicated and used for a period of no less than 25 years from the completion of the Project. Grantee agrees to not change the use of, sell, or otherwise dispose of the land within the Project boundary, except upon written approval by OPRD. Leases for projects placed on federally owned property must be at least 25 years.

Land acquired using Local Government Grant funds shall be dedicated, by an instrument recorded in the county records, for recreational use in perpetuity, unless OPRD or a successor agency, consents to removal of the dedication.

7. **Conversion of Property:** Grantee further warrants that if the Grantee converts lands within the Project boundary to a use other than as described in the grant application or disposes of such land by sale or any other means, the Grantee must provide replacement property acceptable to OPRD within 24 months of either the conversion or the discovery of the conversion.

If replacement property cannot be obtained within the 24 months, the Grantee will provide payment of the grant program's prorated share of the current fair market value to the State. The prorated share is that percentage of the original grant (plus any amendments) as compared to the original project cost(s). The replacement property must be equal to the current fair market value of the converted

property, as determined by an appraisal. The recreation utility of the replacement property must also be equal to that of the lands converted or disposed.

If conversion should occur through processes outside of the Grantee's control such as condemnation or road replacement or realignment, the Grantee will be required to pass through to the State that prorated share of whatever consideration is provided to the Grantee by the entity that caused the conversion. The monetary value of whatever consideration provided by the taking will normally consist of the fair market value of the property established by an appraisal.

The warranties set forth above are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. **Contribution:** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the Grantee (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Grantee in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Grantee on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the Grantee on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the Grantee is jointly liable with the State (or would be if joined in the Third Party Claim), the Grantee shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the Grantee on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Grantee on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Grantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

Grantee shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Grantee's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that

the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

9. **Condition for Disbursement:** Disbursement of grant funds by OPRD is contingent upon OPRD having received sufficient funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow OPRD, in the exercise of its reasonable administrative discretion, to make the disbursement.
10. **No Third Party Beneficiaries.** OPRD and Grantee are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as intended beneficiary of the terms of this Agreement.
11. **Repayment:** In the event that the Grantee spends Grant Funds in any way prohibited by state or federal law, or for any purpose other than the completion of the Project, the Grantee shall reimburse the State for all such unlawfully or improperly expended funds. Such payment shall be made within 15 days of demand by the State.
12. **Termination:** This Agreement may be terminated by mutual consent of both parties, or by either party upon a 30-day notice in writing, delivered by certified mail or in person to the other party's contact identified in the Agreement. On termination of this Agreement, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination. Full credit shall be allowed for reimbursable expenses and the non-cancelable obligations properly incurred up to the effective date of the termination.
13. **Governing Law:** The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
14. **Entire Agreement:** This Agreement constitutes the entire Agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, Agreements, or representations, oral or written, not specified herein regarding this Agreement. The Grantee, by signature of its authorized representative on the Agreement, acknowledges that the Grantee has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

Grant Application for

Site-Specific Master Planning

Contact

Application Type: PLANNING:

Applicant Agency:

City of Astoria Parks & Recreation Department

First Name:

Ian

Last Name:

Sisson

Title:

Planner, RARE AmeriCorps

Address 1:

1555 W Marine Drive

Address 2:

City:

Astoria

State:

OR

Zip Code:

97103

Contact Phone:

(503) 298-0742

Contact Fax:

Contact Email:

isisson@astoria.or.us

Federal Tax ID:

93-6002118

Project

Project Name:

Site-Specific Master Planning

Site Name:

Shively Park; McClure Park

Site City / Town / Area:

Astoria

Site County:

Clatsop

Funds Requested:

\$40,000.00

Matching Funds:

\$27,000.00

Total Cost:

\$67,000.00

Percent of Grant:

0.6000000000000000

Percent of Match:

0.4000000000000000

Brief Project Description (40 word limit):

The City of Astoria Parks and Recreation Department is finalizing a system-wide comprehensive planning process. Further planning, specific to individual park sites, is a top priority of the draft document. Priority sites have been identified through extensive public engagement.

Projected Start Date:

January 15, 2017

Projected End Date:

June 30, 2017

Site Description:

There are two park sites with similar challenges and goals. APRD wishes to execute a concurrent planning process for these parks, to encourage an efficiency and to maintain the high level of community involvement seen in the comprehensive planning process: Shively Park - historic 12-acre community park on a wooded hilltop, with parking, a craftsman style meeting hall, two picnic shelters, a swing set, open lawn area, loop road,

and informal forest trails. McClure Park - 1-acre neighborhood park nestled into the steep hillside and Shively-McClure National Register Historic District. There is an open grass area with a backstop, swing set, and picnic table.

Latitude:

46.178716103881406

Longitude:

-123.825112581253050

Township, Range & Section:

City of Astoria

Site Acreage:

13.00

Land Control:

Other

--

Supplemental

PROJECT NARRATIVE (Please limit all answers to 400 words or less.):

Park System Overview - List the parks in the current system, their size, predominant use (camping, day-use, etc.) and attendance figures, if available.:

Please see the attached Parks and Recreation Comprehensive Master Plan, Chapter 3, as well as the attached Parks Inventory Report.

Select the type of planning project being considered:

Site-Specific Park and Recreation Plan

A. PLANNING PROJECT NEEDS AND BENEFITS (0-25 Points):

A map clearly identifying the project location and the UGB or unincorporated community boundary drawn on it must be uploaded in the attachments section of this application. :

1. What is the overall purpose for the plan or study?:

The purpose of this plan is to develop a vision, design alternatives, preferred concepts, cost estimates, and funding strategies for two parks - Shively Park and McClure Park - where site-specific planning was identified as a high priority in the 2016 City of Astoria Parks and Recreation Comprehensive Master Plan.

2. What is the need and how was need determined?:

The need for site-specific planning at these sites stems from multiple issues, which were identified in the City's system-wide parks plan. The plan includes an existing conditions assessment for each park, trail, and indoor facility in Astoria. Park and facility conditions are generally poor at both Shively Park and McClure Park. These findings are also supported by data from two online surveys, fourteen stakeholder group meetings, and five public meetings, which were conducted during the system-wide planning process and engaged over 1,200 members of the community. Survey responses reflect the findings of the existing conditions assessment, and demonstrate the community's priorities and desire to see plans for improvement at these sites.

3. What benefits will the plan provide and what objectives will it meet for the community or county?:

Both Shively and McClure Parks are cherished by the community. McClure park is the site of family activities throughout the summer. Shively Park is a popular location for weddings and family reunions. Sadly, both are in poor condition. Developing plans for where and how to improve the parks will ensure that these highly valued places are safe, accessible, inspiring, and accommodate the needs of all their visitors. One of the greatest benefits the completion of these plans would provide, is confidence from the community in the Astoria Parks and Recreation Department's desire and ability to implement its system-wide master

plan. The planning process included extensive community engagement. Being able to demonstrate that the Parks and Recreation Department is committed to acting on input collected through that process would continue to build support in the community. Additionally, planning for improvements at Shively Park will meet the following objectives from the City of Astoria's Comprehensive Plan - Parks, Recreation, and Open Space Element (CP.270. Goals): The City of Astoria will work: 2. To reflect Astoria's special qualities and characteristics. 7. To promote general beautification. 8. To continue to plan for park programs. 9. To encourage a system of trails throughout the city. 10. To encourage downtown improvements.

B. CONSISTENCY With STATEWIDE PRIORITIES - SCORP Criteria (0-20 Points):

To what extent does the project address ONE OR MORE of the following FOUR (1-4) priorities identified in the 2013-2017 SCORP?:

1. MAJOR REHABILITATION projects involve the restoration or partial reconstruction of eligible recreation areas and facilities. If the project includes major rehabilitation, please check all that apply::

the recreation area or facility is beyond its normal life expectancy|the recreation area or facility is destroyed by fire, natural disaster or vandalism|the recreation area or facility does not meet health and safety codes/requirements|the recreation area or facility requires rehabilitation to ensure critical natural resource protection|the recreation area or facility does not meet access requirements of the Americans with Disabilities Act|changing recreation needs (e.g., changes in demographics within the service area) dictate a change in the type of recreation area or facility provided

2. NON-MOTORIZED TRAIL CONNECTIVITY - Trail connectivity involves linking urban trails to outlying Federal trail systems; linking neighborhood, community and regional trails; connecting community parks and other recreational public facilities; connecting parks to supporting services and facilities; connecting neighboring communities; and providing alternative transportation routes. To what extent does the project address non-motorized trail connectivity?:

McClure Park can be accessed from 8th Street, which is one of Astoria's primary arterials. Connecting the commercial Downtown Historic District with the hillside neighborhood of the Shively-McClure National Register Historic District, the sidewalks on 8th Street provide access for residents and visitors alike to enjoy the vistas of Downtown Astoria and the Columbia River from McClure Park. A 10-minute walk north to the foot of 8th Street includes several points of interest along the way and ends at Astoria's 6-mile waterfront trail, the River Walk. The plan for McClure Park would explore methods for increasing pedestrian and bicycle traffic to and from Downtown Astoria, through wayfinding and interpretive signage, as well as other amenities that would encourage walking and biking. Shively Park contains a quarter-mile paved loop road (closed to motorized traffic), as well as a network of informal soft-surface trails through its forested areas, and unmarked paths that connect with other parks and trails. A number of recommendations pertaining to Shively Park's trails and connectors are included in the City of Astoria's 2013 Trails Master Plan. The existing trails are greatly underutilized, and a plan for Shively Park would need to

address improvements such as mapping, clearing, and maintaining the trails, as well as installing wayfinding and interpretive signage. Shively Park has the potential to become the starting point to a network of trails, parks, and other points of interest in the area. These improvements would seek to meet the community's desire to have areas to for walking, jogging, hiking, observing nature, and trail running.

3. ACTIVE PARTICIPATION projects support or provide a base for individual active participation. 'Active' means those forms of recreation that rely predominantly on human muscles and includes walking, sports of all kinds, bicycling, running, and other activities that help people achieve currently accepted recommendations for physical activity. To what extent does the project support or improve access to individual active participation? :

McClure Park currently has some amenities for active recreation, including a swing set and an open grass area with a backstop. These amenities are generally in poor condition, underutilized, and in need of updates and improvements. The Friends of McClure Park is fundraising for new play equipment, but a plan is needed to determine the location and type of equipment that would provide the most benefit and get the most use from visitors to the park. Shively Park also has some amenities for active recreation, including a swing set and quarter-mile paved loop road. Both are underutilized, and the swing set is outdated and in poor condition. The plan for Shively Park would develop a strategy to increase active recreation, via improvements to the loop road and forest trails, and possibly new play equipment.

4. SUSTAINABILITY - To what extent does the project address sustainability recommendations for OPRD-administered grant programs? Please see Chapter Seven (pages 115-117) of the 2013-17 SCORP for sustainability recommendations.:

In the 2016 draft Parks and Recreation Comprehensive Master Plan, increasing system-wide sustainability is included as a priority. At McClure Park, the planning project would address OPRD sustainability recommendations (Major Rehabilitation Considerations) in a few ways. If amenities are planned which would require electricity, the use of solar energy sources would be explored. The park is not currently irrigated, but if improvements to the open grass or landscaped areas would require irrigation, there is great potential for the use of recycled water and gray water collection. The project could also evaluate the benefit of using bioswales for storm water retention and to help control flooding and landslides. Any new pathways or parking areas would be planned with the appropriate use of pervious or impervious surfaces in mind. The project would increase equitable distribution of park and recreation facilities and provide for an unmet need. The project would be designed to encourage physical fitness and reduce the obesity rate among residents. At Shively Park, OPRD sustainability recommendations for Major Rehabilitation would also be addressed in a number of ways. The project would involve the control and management of invasive plants. The project would restore damaged ecosystems. The project could potentially include the use of redeveloped buildings that are a minimum of LEED Silver. The project would involve an appropriate use of pervious or impervious surfaces. The project would provide new access for the public to recreate in sensitive natural areas using trails. The project would increase public awareness of the benefits of natural areas with interpretive signs or other educational materials. The project would provide the opportunity to enhance physical, mental, and social well-being as a result of interaction with nature.

C. PLANNING AND PUBLIC INVOLVEMENT PROCESS (0-20 Points):

1. Describe the methodology for developing the plan. Who will do the work? Who will manage the project to assure the plan or study is completed satisfactorily?:

For fiscal year 2016-17, funds have been allocated to support implementation of the 2016 Parks and Recreation Comprehensive Master Plan. Site-specific planning is identified as a priority in that plan. A consultant specializing in planning and landscape architecture for parks and recreation would be procured by the City to complete the site plans for McClure and Shively Parks. A project manager would be designated to oversee the procurement of the consultant, quality of the planning process, and satisfactory completion of the plans. The planning process would include an evaluation of the site conditions, a community visioning process, design alternatives for each site, community input on the design alternatives, the selection of a preferred concept for each site, an implementation strategy with cost estimates and funding sources, and adoption of the plans through the local land use approval process.

2. Please provide estimated dates for completing key benchmarks during the planning process.:

Oct-2016: Notice to proceed from OPRD. Nov/Dec-2016: designation of a project manager and procurement of a consultant. Jan-2017: Project kickoff, public notice of upcoming meeting dates. Feb-2017: Initial public meeting to collect input. Mar-2017: Development of design alternatives. Apr-2017: Public meetings to collect input on design alternatives. May-2017: Selection of preferred concepts for McClure and Shively Parks; development of implementation and funding strategy. Jun-2017: Adoption of plan documents for McClure and Shively Park.

3. What are the proposed start and end dates of the planning project?:

The project would begin in early to mid-January of 2017, and wrap up by June 30th, 2017.

4. Describe the public involvement strategy for this project. Indicate the role of elected officials such as the city council, county commissioners, or park board members in the planning process.:

The City of Astoria Parks Advisory Board, a mayor-appointed City commission, would be updated throughout the process and invited to provide input. The City Council and Planning Commission would also be updated throughout the process. The final plan documents would need to be approved by the Parks Advisory Board and Planning Commission before being presented to City Council for adoption. The Citizens of Astoria would be invited to participate throughout the process. At a minimum, there would be an initial meeting to describe the goals for the project and collect input to assist the consultant in developing design alternatives, and a later meeting to collect feedback on the design alternatives to assist the City in selecting a preferred concept.

D. COMMUNITY SUPPORT AND FINANCIAL COMMITMENT (0-10 Points):

1. What is the source of local matching funds for the project? A Resolution to Apply

must be submitted with this application to indicate a commitment of local match funding for the project.:

On May 2, 2016 the Astoria City Council unanimously approved the application for this grant and the allocation of \$16,000 from the City of Astoria Capital Improvement Fund. The remaining \$11,000 to fulfill the 40% match requirement will come in the form of in-kind contributions from the Parks and Recreation Director, Community Development Director, project manager, and additional staff support. Support throughout the process from the Friends of McClure Park will also serve as an in-kind contribution to the City's match.

2. To what extent has funding been secured to complete the project?:

\$16,000 has been allocated by the City from its Capital Improvement Fund for this project. Additional funds have been allocated FY 2016-17 for "Implementation of the Parks and Recreation Comprehensive Master Plan", which will cover the cost of personnel to manage this project. The remaining portion of the City's match will come in the form of in-kind contributions (staff time) from the Parks and Recreation Director, Community Development Director, City Manager, and Friends of McClure Park.

3. To what degree can you demonstrate community support for the project? Can you provide letters of support and/or survey analysis? If yes, please include supporting documentation with this application. :

The Friends of McClure Park is actively fundraising and hosting volunteer days for improvements to McClure Park. The Friends have raised over \$20,000 in grants, donations, and raffle ticket sales to support the purchase of new play equipment. A letter of support from the chair of that organization is attached. In community surveys and public meetings regarding the draft recommendations of the Parks and Recreation Comprehensive Master Plan, Shively and McClure Park ranked as top priorities for site master planning. Survey results also demonstrate that Shively Park is one of Astoria's most-visited parks, and that improving the park is a top priority. A letter of support for planning at Shively Park was provided by an active community member and neighbor of the park, which can be found in the attachments. Survey data to support this project is also attached.

E. IMPLEMENTATION OF THE PLAN (0-10 Points):

1. Describe how the plan will likely be implemented in the future.:

The plans for McClure and Shively Park will have an implementation strategy that outlines the phases needed for each project, with associated time frames, costs, and funding sources. As the plans will be adopted by the local land use approval process, the City will carry out implementation as outlined. Having the plans in place will enable the City to allocate or apply for the funds needed to implement the projects, and designate personnel to manage them.

F. ACCESSIBILITY FOR PEOPLE WITH DISABILITIES (0-5 Points):

1. Does your agency have a board or city council adopted/approved ADA Transition Plan and/or Self Certification? :

Yes

2. How will ADA requirements be incorporated into your planning document? :

The City of Astoria is committed to ensuring its parks, recreation facilities, and programs are accessible to people of all abilities. McClure Park and Shively Park are both in need of improvements to meet ADA requirements. McClure Park is in need of a designated disabled parking spot and improved surfaces to allow visitors with different mobility better access within the park. Shively Park is in need of improved access to its hilltop community hall facility, which is currently only accessible by a set of concrete stairs. The site master plans would provide the opportunity to plan and find funding for these much needed improvements and ensure that our public facilities meet ADA requirements and are accessible to all.

Description	Qty	Unit	\$/Unit	Cost	Match	Request	Source of Funding
Project Management	1	\$	\$8,500.00	\$8,500.00	\$8,500.00	\$0.00	City of Astoria in-kind (staff time)
Project Marketing and Public Notice	1	\$	\$1,500.00	\$1,500.00	\$1,500.00	\$0.00	City of Astoria in-kind (staff time)
Public Workshops	4	\$	\$1,500.00	\$6,000.00	\$6,000.00	\$0.00	City of Astoria Capital Improvement Fund
Development of Design Concepts	1	\$	\$50,000.00	\$50,000.00	\$10,000.00	\$40,000.00	City of Astoria Capital Improvement Fund
Selection of Preferred Concepts and Adoption of Plan Documents	1	\$	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	City of Astoria in-kind (staff time)
Totals				\$67,000.00	\$27,000.00	\$40,000.00	

Total Project Cost:	\$67,000.00
Total Match for Sponsor:	\$27,000.00
Grant Funds Requested:	\$40,000.00

PROGRESS REPORT FORM
LOCAL GOVERNMENT GRANT PROGRAM
QUARTERLY ☐ FINAL ☐

Date: _____

Project Name: _____

Project Number: _____

Project Sponsor/Grantee: _____

Date of Project Approval: _____ Date Work Started: _____

Describe Work Completed This Quarter:

Describe Any Problems or Delays:

Percentage of Project Completed to Date: _____ %

Report Completed By: _____

Title: _____

Billing: ☐ Partial ☐ Final

<u>TYPE OF EXPENSE</u>	<u>Costs Incurred This Period</u>	<u>Cost Previously Billed</u>	<u>Total Project Costs to Date</u>
Salaries and Wages (Agency Force Account)			
Contract Payments			
Equipment Rental (Owned/Outside)			
Materials and Supplies			
Consultant Services (Design/Engineering)			
Value of Donated labor, materials, equipment			
Approved Pre-Agreement Costs			
Real Property Costs			
Other			
Other			
Other			
A. TOTAL PROJECT COSTS			
B. Less Costs in Excess of Agreement			
C. TOTAL ELIGIBLE COSTS			
D. Sponsor Match (Multiply C by Required Match %)			
E. TOTAL REIMBURSEMENT REQUEST C minus D = E)			

Accounting:



Request for Reimbursement Guide

All files for projects benefiting from Oregon Parks and Recreation Department administered grant funds must be able to pass a State audit. When preparing to submit a Request for Reimbursement, plan on submitting the following documentation:

- ☐ **Progress Report Form** – Available online at:
<http://www.oregon.gov/oprd/GRANTS/Pages/local.aspx> → Application and Forms.
- ☐ **Request for Reimbursement Form** - Available online at:
<http://www.oregon.gov/oprd/GRANTS/Pages/local.aspx> → Application and Forms.
- ☐ **Project Invoices** – Please submit copies of all project **bills/invoices**.
- ☐ **Bill Payment Confirmation** – Please submit documentation confirming that all project bills/invoices have indeed been paid. The best way to document this is with some type of **Accounts Paid Report** for the project that lists **Payments, Payee, Payment Date and Check Number**. (This is different from an Accounts Payable Report which would only list payments pending.) If an Accounts Paid Report is not available, please submit copies of canceled payment checks (with account numbers blocked out).

Once the project is completed . . .

- ☐ **Project Pictures** – Please plan to submit 5-10 digital pictures of the completed project site, for the project file. Digital pictures can be sent as email attachments. For **Planning Projects**, rather than pictures, please submit a copy of the final **Planning Document**.
- ☐ **Acknowledgement Sign** - Is there any type of signage on site acknowledging OPRD grant support for the project? If not, we will send you one.

If you have questions, please contact:

Mark Cowan
Grant Program Coordinator
Oregon Parks and Recreation Dept.
725 Summer St. NE Suite C
Salem, OR 97301-1266
mark.cowan@oregon.gov
503-986-0591
www.oregon.gov/OPRD/GRANTS/index.shtml



Oregon

Kate Brown, Governor

Parks and Recreation Department
State Historic Preservation Office
725 Summer St NE STE C
Salem, OR 97301-1266
Phone (503) 986-0690
Fax (503) 986-0793
www.oregonheritage.org

August 25, 2016

Mr. Mark Cowan
Oregon Parks and Recreation Department
725 Summer St NE STE C
Salem, OR 97301



RE: SHPO Case No. 16-1450

OPRD LG Grant 3209, LGPP-16-03; Shively and McClure Parks Master Plans
Master plan
Shively Park and McClure Park, Astoria, Clatsop County

Dear Mr. Cowan:

Our office recently received a request to review your application for the project referenced above. In checking our statewide archaeological database, it appears that there have been no previous surveys completed near the proposed project area. However, the project area lies within an area generally perceived to have a high probability for possessing archaeological sites and/or buried human remains. In the absence of sufficient knowledge to predict the location of cultural resources within the project area, extreme caution is recommended during project related ground disturbing activities. Under state law (ORS 358.905 and ORS 97.74) archaeological sites, objects and human remains are protected on both state public and private lands in Oregon. If archaeological objects or sites are discovered during construction, all activities should cease immediately until a professional archaeologist can evaluate the discovery. If you have not already done so, be sure to consult with all appropriate Indian tribes regarding your proposed project. If the project has a federal nexus (i.e., federal funding, permitting, or oversight) please coordinate with the appropriate lead federal agency representative regarding compliance with Section 106 of the National Historic Preservation Act (NHPA). If you have any questions about the above comments or would like additional information, please feel free to contact our office at your convenience. In order to help us track your project accurately, please reference the SHPO case number above in all correspondence.

Sincerely,

Dennis Griffin, Ph.D., RPA
State Archaeologist
(503) 986-0674
dennis.griffin@oregon.gov



CITY OF ASTORIA
Founded 1811 • Incorporated 1856

October 3, 2016

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: CANCEL PUBLIC HEARING FOR A 16-01 – ARTICLE 9 – PROCEDURES
AND A 16-02 – Article 3 – ACCESSORY DWELLING UNITS

DISCUSSION/ANALYSIS

A public hearing notice for the October 17, 2016 City Council meeting regarding two separate Astoria Development Code amendment applications were mailed anticipating the Planning Commission's review would be complete in time for this October 17th meeting. However, the hearing remains open at the Planning Commission. These City Council hearings will be rescheduled after the Astoria Planning Commission has made a recommendation. Any required mailed notices and newspaper notice will be provided once the hearing date has been set. The Astoria Planning Commission will hold a work session for further discussion on A16-02 – Article 3: Accessory Dwelling Units on Wednesday, October 19, 2016 at 6:30 p.m. in the Council Chambers and will continue the discussion at their regular meeting on October 25, 2016 at 6:30 pm in the Council Chambers.

RECOMMENDATION

No action is required by the City Council; however the items had to be listed on the Council agenda since the public notice was provided.

Prepared By 
Kevin A. Cronin, Community Development Director



CITY OF ASTORIA
Founded 1811 • Incorporated 1856

October 11, 2016

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: **50TH STREET TRESTLE REPAIR PROJECT – CONSTRUCTION CONTRACT**

DISCUSSION/ANALYSIS

OBEC Consulting Engineers recently completed an inspection of the trestles and track associated with the City owned railroad right-of-way to determine condition and repair priorities. As part of this effort, timber trestles east of 39th Street were inspected to ensure appropriate repairs can be made to facilitate continued use of the River Trail. The inspection found that a number of structural members supporting the River Trail walkway over the 50th Street Trestle need immediate replacement.

The City coordinated with OBEC to develop a scope of work for the needed repairs. Staff used the informal Request for Quotes (RFQ) process since the work was estimated to cost less than \$100,000. The following competitive quotes for the project have been received:


Contractor	Total Quote
Columbia Dockworks	\$14,588.00
Mark Baldwin Construction	\$27,800.00
Bergerson Construction	\$31,446.00

Funding for this project is available in the Riverwalk- Trestles improvement budget of the Promote Astoria Fund. Additional trestle repairs will be required prior to trolley operation in 2017. See the agenda item for the 2017 Trolley Trestle Repair Project for additional details. The contract has been approved as-to-form by the City Attorney.

RECOMMENDATION

It is recommended that City Council authorize the award of a construction contract to Columbia Dockworks, Inc. in the amount of \$14,588.00 for the 50th Street Trestle Repair Project.

Submitted By 
Ken P. Cook, Public Works Director

Prepared By 
Nathan Crater, Assistant City Engineer

AGREEMENT

1.00 - GENERAL

THIS AGREEMENT, made and entered into this ____ day of _____, 2016, by and between Columbia Dockworks, Inc. 92660 Pearson Rd. Astoria, Oregon 97103, 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:

2.00 - DESCRIPTION OF WORK

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

50th Street Trestle Repair 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.

3.00 - COMPLETION OF CONTRACT

The **CONTRACTOR** agrees that the Work under this Contract shall be completed by the following dates:

- Substantial Completion – 30 days from Notice to Proceed
- Final Completion – 60 days from Notice to Proceed

If said **CONTRACTOR** has not fully completed this Contract within the time set or any extension thereof, it shall pay liquidated damages in accordance with Section 00180.85 of the General Conditions.

4.00 - CONTRACT PRICE

The Contract Price for this project is \$14,588.00. 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.

5.00 - CONTRACT DOCUMENTS

The **CONTRACTOR** and the **CITY** agree that the plans, specifications (including the ODOT/APWA 2015 Oregon Standard Specifications for Construction and Contract Documents defined in Section 00110.20 of the Contract Documents General Conditions and all modifications thereto) and bid are, by this reference, incorporated into this Contract and are fully a part of this contract.

6.00 - NONDISCRIMINATION

It is the policy of the City of Astoria that no person shall be denied the benefits of or be subjected to discrimination in any City program, service, or activity on the grounds of age, disability, race, religion, color, national origin, sex, sexual orientation, gender identity and expression. The City of Astoria also requires its contractors and grantees to comply with this policy.

7.00 - CONTRACTOR IS INDEPENDENT CONTRACTOR

A. 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.

B. 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.

8.00 - SUBCONTRACTS - RELATIONS WITH SUBCONTRACTORS, ASSIGNMENTS AND DELEGATION

A. 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 contract. Any assignee or transferee shall be considered the agent of the **CONTRACTOR** and be bound to abide by all provisions of 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.

B. **CONTRACTOR** may not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055 or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225. If **CONTRACTOR** violates this prohibition, the **CITY** will regard the violation as a breach of contract and may either terminate the contract or exercise any other remedy for breach of contract.

9.00 - 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.

10.00 - 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 **CITY** 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.

11.00 - 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).

12.00 - 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.



CITY OF ASTORIA
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CITY OF ASTORIA 50TH STREET TRESTLE REPAIR PROJECT REQUEST FOR QUOTES

The City of Astoria Engineering Division is requesting quotes to furnish all labor, equipment and material to replace and/or supplement existing walkway support members on the 50th Street Trestle (Railroad MP 97.8).

Scope of Work:

Based on results of a recent structural inspection completed by OBEC Consulting Engineers, a number of long ties that support the pedestrian walkway serving the River Trail on the 50th Street trestle need to be replaced or supplemented with new members.

The existing members are 16 feet long, 8" x 8" treated railroad ties. Twenty-eight (28) of these long ties have been identified for immediate replacement. Replacement members shall be 6" x 8" ACZA Treated Doug Fir, 16 feet long. The existing members can be replaced or the new members can be added directly adjacent to the deteriorated ties to provide supplemental support. The new members shall be fastened to the existing trestle and walkway in a manner that provides sufficient support.

The lump sum "Mobilization" item includes mobilization and demobilization of personnel and equipment from the site. It shall include insurance, temporary facilities, and project administration costs.

The per each "Long Tie Replacement" cost shall include all work necessary to complete the project.

The 28 members are marked on the trestle with orange paint. Please note that access to the project site is limited. Access from the Alderbrook trailhead area is limited by a timber pedestrian bridge that is only 4.5 feet wide. Access from the west requires crossing two trestles that are load limited.

The selected Contractor shall notify the City 7 days prior to commencing work to coordinate placement of trail closure and detour signage.

All repair work will be per ODOT Bridge Maintenance Standards and the Oregon Standard Specifications for Construction with City of Astoria revisions.

#	Item Description	Quantity	Unit	Unit Price	Total
1	Mobilization	1	LS		\$ 2,800
2	Long Tie Replacement	28	EA	\$ 421	\$ 11,788
Total Quote					\$ 14,588

A sample City of Astoria construction contract is attached to this RFQ. Contractor shall read and comply with the attached documents before finalizing a quote. Additionally, an exhibit map and photos of the trestle are attached. We recommend that you visit the project site prior to finalizing a quote.

Estimated completion date if issued notice-to-proceed by October 17, 2016: 10/21

Quotes must be submitted no later than 2:00 pm on Thursday, September 29, 2016. The City will consider price and completion date in awarding work. Please send e-mail, fax or sealed quotes to:

Nathan Crater, PE
 1095 Duane Street
 Astoria, OR 97103
ncrater@astoria.or.us
 Office: 503-338-5173
 Fax: 503-338-6538

Total Quote: \$ 14,588

9/29/16
 DATE SIGNED

Columbia Dockworks Inc
 OFFEROR

[Signature] Tim Peitsch Pres.
 SIGNED (NAME AND TITLE)

92660 Pearson Rd
 MAILING ADDRESS

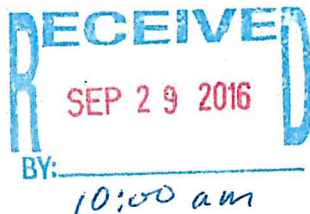
Astoria OR 97103
 CITY, STATE, AND ZIP CODE

PHONE NUMBER: 503 741 6383

CORPORATION: X YES NO

IF NO, TAX ID NUMBER OR SOCIAL
 SECURITY NUMBER: 46-0699697

CONTRACTOR BOARD NO. 200641



50th Street Trestle Repair Project

Exhibit Map of Project Area and Access



Lagoon Rd

50th Street Trestle
(RR MP 97.8)

East Access Location -
Alderbrook Trailhead

West Access
Location - 39th
Street, and across
2 trestles

Astoria Riverwalk

Alder St

53rd St

49th St

Ash St

Birch St

Cedar St

51st St

50th St

Blue Ridge

Old US Hwy 30

30

E Columbia River Hwy

Google earth

© 2016 Google

1000 ft

50th Street Trestle Photos

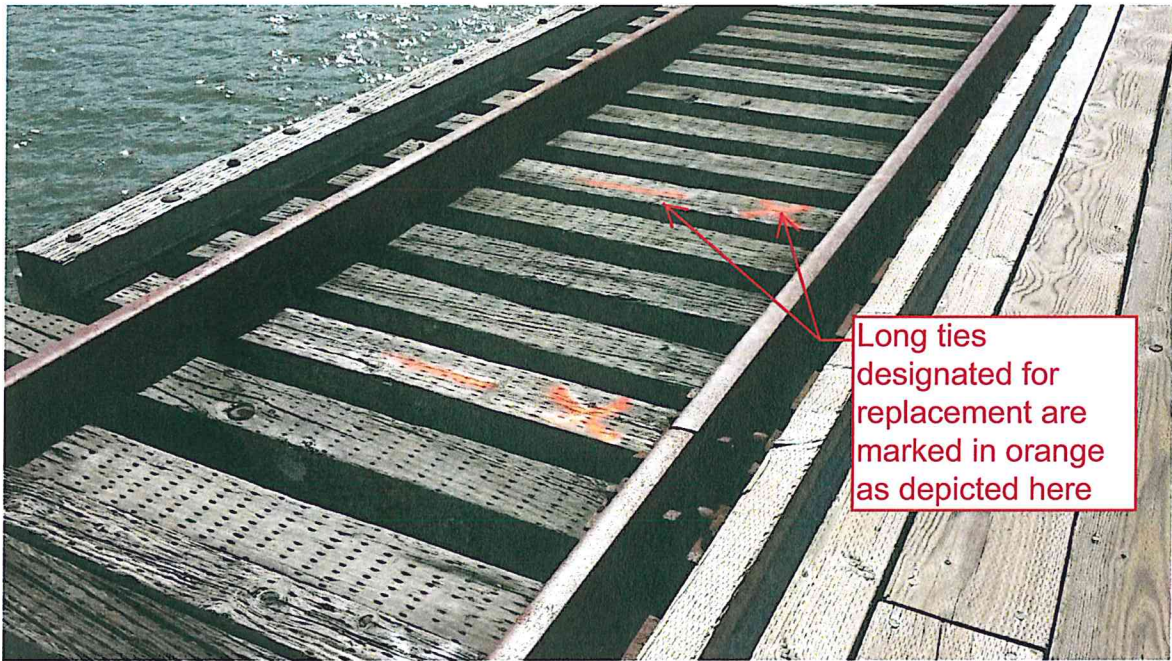


50th Street Trestle Looking West



Example of
previous
supplemental long
tie.

Previous repair with supplemental long tie



Long ties marked with orange "X" and line indicate members in need of immediate replacement



CITY OF ASTORIA
Founded 1811 • Incorporated 1856

October 11, 2016

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: **2017 TROLLEY TRESTLE REPAIR PROJECT – CONTRACT FOR DESIGN SERVICES**

DISCUSSION/ANALYSIS

The City of Astoria has approximately 4.7 miles of railroad track and 8 timber trestles formerly owned and operated by Burlington Northern Railroad from the Port of Astoria to Tongue Point. The Astoria Riverfront Trolley currently operates on approximately 3 miles of this track, and over 4 of the trestles. The Trolley provides passenger service from Portway Street to 39th Street.

Due to the age of the railroad infrastructure, the effort required to maintain the track and structures has been increasing rapidly. This year OBEC Consulting Engineers inspected the trestles and track to identify condition and determine repair priorities. The inspection report also provided the City with the information necessary to effectively manage and maintain proper Trolley operation as well as plan for future funding allocations needed for repairs in the upcoming years.

At the July 18, 2016 Council Meeting, City Staff presented three options for managing the maintenance needs of the Trolley and River Trail infrastructure. Council approved of a hybrid approach which focuses available funding resources on maintaining the structures and track west of 39th Street (active rail) and provides minimal repairs and more frequent inspection to ensure safe operation of the River Trail east of 39th Street.

Immediate maintenance needs for the trestles and track will need to be addressed prior to Trolley operation in 2017. OBEC provided a design services proposal to assist the City with completion of this maintenance work. Their scope of work includes design, permit review, bid support and construction assistance. This work is proposed to be completed for the not-to-exceed amount of \$23,122.

OBEC is listed on the ODOT Consultant List for Local Public Agencies so staff recommends executing a personal services contract for the 2017 Trolley Trestle Repair Project per Astoria Code Section 1.967C(3), Award from a Qualified Pool.

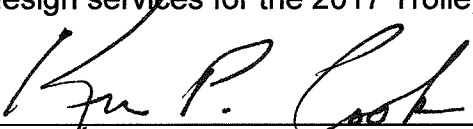
The immediate maintenance needs, including trestles and track repair, are estimated at around \$320,000 for the 2016/2017 fiscal year. Staff recommends funding the immediate repairs using the Promote Astoria Fund, and have begun discussions with the Riverfront Trolley Association regarding long term funding solutions. There is funding available in the Riverwalk- Trestles budget in the Promote Astoria Fund for the design services. However, a supplemental budget will need to be approved to appropriately fund construction of the trestle improvements prior to awarding a construction contract. We anticipate bringing approval of the supplemental budget for Council consideration before the end of the year, with the construction contract anticipated in January 2017.

The City Attorney has reviewed the contract and approved it as to form.

RECOMMENDATION

It is recommended that City Council authorize award of a personal services contract to OBEC Consulting Engineers in the amount of \$23,122 for design services for the 2017 Trolley Trestle Repair Project.

Submitted By


Ken P. Cook, Public Works Director

Prepared By


Nathan Crater, Assistant City Engineer

<p style="text-align: center;">CITY OF ASTORIA CONTRACT FOR PERSONAL SERVICES</p>

CONTRACT:

This Contract, made and entered into this ____ day of _____, 2016 by and between the City of Astoria, a municipal corporation of the State of Oregon, hereinafter called "CITY", and OBEC Consulting Engineers, 5000 Meadows Rd., Ste. 420, Lake Oswego, OR address hereinafter called "CONSULTANT", duly authorized to perform such services in Oregon.

W I T N E S S E T H

WHEREAS, the CITY requires services which CONSULTANT is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, CONSULTANT is able and prepared to provide such services as CITY does hereinafter require, under those terms and conditions set forth; now, therefore,

IN CONSIDERATION of those mutual promises and the terms and conditions set forth hereafter, the parties agree as follows:

1. CONSULTANT SERVICES

A. CONSULTANT shall perform professional services, as outlined in the Attachment A, to the City of Astoria regarding the design of the Trolley Trestle Repair Project 2017.

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 within 60 days of notice-to-proceed.

2. COMPENSATION

A. The CITY agrees to pay CONSULTANT a total not to exceed \$23,122.00 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.

3. CONSULTANT IDENTIFICATION

CONSULTANT shall furnish to the CITY the CONSULTANT'S employer identification number, as designated by the Internal Revenue Service, or CONSULTANT'S Social Security number, as CITY deems applicable.

4. CITY'S REPRESENTATIVE

For purposes hereof, the CITY'S authorized representative will be Nathan Crater, PE, City of Astoria, 1095 Duane Street, Astoria, Oregon, 97103, (503) 338-5173.

5. CONSULTANT'S REPRESENTATIVE

For purposes hereof, the CONSULTANT'S authorized representative will be Jason Kelly, PE.

6. CITY'S OBLIGATIONS

In order to facilitate the work of the CONSULTANT as above outlined, the CITY shall furnish to the CONSULTANT access to all relevant maps, aerial photographs, reports and site information which is in the City's possession concerning the project area. In addition, the CITY shall act as liaison for the CONSULTANT, assisting the CONSULTANT with making contacts and facilitating meetings, as necessary.

7. CONSULTANT IS INDEPENDENT CONSULTANT

A. CONSULTANT'S services shall be provided under the general supervision of City's project director or his designee, but CONSULTANT shall be an independent consultant for all purposes and shall be entitled to no compensation other than the compensation provided for under Section 2 of this Contract,

B. CONSULTANT acknowledges that for all purposes related to this Contract, CONSULTANT is and shall be deemed to be an independent 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. NONWAIVER

The failure of the CITY to insist upon or enforce strict performance by CONSULTANT of any of the terms of this Contract or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.

12. ATTORNEY'S FEES

In the event suit or action is instituted to enforce any of the terms of this contract, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorney's fees at trial or on appeal of such suit or action, in addition to all other sums provided by law.

13. APPLICABLE LAW

The law of the State of Oregon shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it.

14. CONFLICT BETWEEN TERMS

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the proposal of the CONSULTANT, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

15. INDEMNIFICATION

With regard to Comprehensive General Liability, CONSULTANT agrees to indemnify and hold harmless the City of Astoria, its Officers, and Employees against and from any and all loss, claims, actions, suits, reasonable defense costs, attorney fees and expenses for or on account of injury, bodily or otherwise to, or death of persons, damage to or destruction of property belonging to city, consultant, or others resulting from or arising out of CONSULTANT'S negligent acts, errors or omissions in services pursuant to this Agreement. This agreement to indemnify applies whether such claims are meritorious or not; provided, however, that if any such liability, settlements, loss, defense costs or expenses result from the concurrent negligence of CONSULTANT and The City of Astoria this indemnification and agreement to assume defense costs applies only to the extent of the negligence or alleged negligence of the CONSULTANT.

With regard to Professional Liability, CONSULTANT agrees to indemnify and hold harmless the City of Astoria, its Officers and Employees from any and all liability, settlements, loss, reasonable defense costs, attorney fees and expenses to the extent it arises out of CONSULTANT'S negligent acts, errors or omissions in service provided pursuant to this Agreement; provided, however, that if any such liability, settlements, loss, defense costs or expenses result from the concurrent negligence of CONSULTANT and the Client, this indemnification and agreement to assume defense costs applies only to the extent of negligence of CONSULTANT.

With respect to Commercial Liability and Professional Liability, CONSULTANT reserves the right to approve the choice of counsel.

16. INSURANCE

Prior to starting work hereunder, CONSULTANT, at CONSULTANT'S cost, shall secure and continue to carry during the term of this contract, with an insurance company acceptable to CITY, the following insurance, written on an occurrence basis, in amounts not less than the limitations on liability for local public bodies provided in ORS 30.272 and ORS 30.273:

A. Commercial General Liability. CONSULTANT shall obtain, at CONSULTANT'S expense and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage. Coverage shall include consultants, subconsultants and anyone directly or indirectly employed by either.

B. Automobile Liability. Automobile Liability. CONSULTANT shall obtain, at CONSULTANT'S expense and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits).

C. Additional Insured. The liability insurance coverage shall include CITY and its officers and employees as Additional Insured but only with respect to CONSULTANT'S activities to be performed under this Contract. Coverage will be primary and non-contributory with any other insurance and self-insurance. Prior to starting work under this Contract, CONSULTANT shall furnish a certificate to CITY from each insurance company providing insurance showing that the CITY is an additional insured, the required coverage is in force, stating policy numbers, dates of expiration and limits of liability, and further stating that such coverage is primary and not contributory.

D. Professional Liability Insurance. The CONSULTANT shall have in force a policy of Professional Liability Insurance. The CONSULTANT shall keep such policy in force and current during the term of this contract.

E. Notice of Cancellation or Change. There will be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from CONSULTANT or its insurer(s) to CITY. Any failure to comply with the reporting provisions of this clause will constitute a material breach of this Contract and will be grounds for immediate termination of this Agreement.

17. CITY'S BUSINESS LICENSE

Prior to beginning work, the CONSULTANT shall have a current City of Astoria business license (occupational tax). Before permitting a sub-consultant to begin work, CONSULTANT shall verify that sub-consultant has a current City of Astoria business license.

18. WORKMEN'S COMPENSATION

The CONSULTANT, its subconsultants, if any, and all employers working under this Agreement are either subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers, or are employers that are exempt under ORS 656.126.

19. LABORERS AND MATERIALMEN, CONTRIBUTIONS TO INDUSTRIAL ACCIDENT FUND, LIENS AND WITHHOLDING TAXES

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

CONSULTANT shall pay all contributions or amounts due the Industrial Accident Fund from CONSULTANT or any subconsultants incurred in the performance of the contract.

CONSULTANT shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

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

20. NONDISCRIMINATION

It is the policy of the City of Astoria that no person shall be denied the benefits of or be subjected to discrimination in any City program, service, or activity on the grounds of age, disability, race, religion, color, national origin, sex, sexual orientation, gender identity and expression. The City of Astoria also requires its contractors and grantees to comply with this policy.

21. PAYMENT OF MEDICAL CARE

CONSULTANT shall promptly, as due, make payment to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury to the employees of such CONSULTANT, of all sums which the CONSULTANT agrees to pay for such services and all moneys and sums which the CONSULTANT collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

22. OVERTIME

Employees shall be paid for overtime work performed under this contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. Sections 201 to 209).

23. USE OF ENGINEER'S DRAWINGS AND OTHER DOCUMENTS

The CITY retains all drawings and other documents prepared by the CONSULTANT for the project after payment to CONSULTANT.

CONSULTANT will not be held liable for reuse of documents or modifications thereof for any purpose other than those authorized under this Agreement.

24. STANDARD OF CARE

The standard of care applicable to consultant's services will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time CONSULTANT'S services are performed. CONSULTANT will re-perform any services not meeting this standard without additional compensation.

25. NO THIRD PARTY BENEFICIARIES

This contract gives no rights or benefits to anyone other than the CITY and CONSULTANT and has no third party beneficiaries.

26. ASSIGNMENT

This contract is personal to Consultant and may not be assigned or any work subcontracted without consent from the CITY.

27. SEVERABILITY AND SURVIVAL

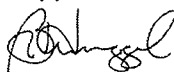
If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability shall survive termination of this Agreement for any cause.

28. COMPLETE CONTRACT

This Contract and its referenced attachments constitute the complete contract between CITY and CONSULTANT and supersedes all prior written or oral discussions or agreements. CONSULTANT services are defined solely by this Contract and its attachments and not by any other contract or agreement that may be associated with this Contract.

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

Approved as to form:



Attorney

Digitally signed by
com.apple.idms.appleid.prd.49317566476d4a3
857754144546139324e744d354e773d3d
DN:
cnc=com.apple.idms.appleid.prd.49317566476d
4a3867754144546139324e744d354e773d3d
Date: 2016.10.05 15:00:58 -08'00'

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

BY: _____
Mayor Date

BY: _____
City Manager Date

BY: _____
Consultant Date



Attachment A

EUGENE, OR
Corporate Office
541.683.6090

LAKE OSWEGO, OR
503.620.6103

SALEM, OR
503.589.4100

MEDFORD, OR
541.774.5590

VANCOUVER, WA
360.314.2391

www.obec.com

September 22, 2016

Nathan Crater, PE
Assistant City Engineer
City of Astoria
1095 Duane Street
Astoria, OR 97103

RE: Astoria Trolley Line Rehabilitation Project, Proposal P848-0004

Dear Mr. Crater:

OBEC Consulting Engineers (OBEC) is pleased to present this proposal for engineering services related to the Astoria Trolley Line Rehabilitation Project. OBEC staff recently completed an inspection of the eight (8) trestles on the trolley line and identified members to be replaced; this project also included the creation of ACAD plans of the trestles and their conditions. The City would like to move forward with necessary repairs and the City requires a bid package presenting the repair construction details. We recommend the following scope of work to prepare construction drawings for the bid package.

Scope of Work

- **Task 1 – Project Management and Coordination:** The major objectives of this task are to establish the lines of communication and set forth the priorities between Consultant and the City, coordinate and attend meetings between Consultant and the City as needed, and ensure all contract document preparation is submitted and approved in a timely manner.

Deliverables:

- A monthly invoice including a Project progress report.

- **Task 2 – Design:** Perform analysis, design repairs, prepare details and prepare technical specification notes. Update the existing ACAD plans to note specific members to be replaced, include technical specifications in note format on the existing ACAD and combine with repair details. Prepare a construction cost estimate.

Deliverables:

- Final Plans in ACAD format suitable to be used for a bid package. The drawings will be stamped by an engineer registered in the state of Oregon. One (1) electronic set of full-size PDF will be provided.
- Schedule of Bid items with Engineers Estimate for each trestle.
- **Task 3 – Permit Review:** Review the existing City environmental maintenance permit for the trolley line and provide an opinion related to the scope of this repair work. The City received permits from the Department of State Lands (DSL) and the US Army Corp of Engineers in 2015 and 2016 for repair work on the trestles. The intent of this task is to evaluate the existing permits and determine whether they cover the work designed in this Contract.

Deliverables:

- Permit Memorandum
- Task 4 – Bid Support: Consultant shall provide bidding assistance to the City for answering questions during the advertisement and bidding process to obtain a construction contractor for the Project.

Deliverables:

- Bidder question log as requested.
- Task 5 – Construction Support: Provide technical services during construction including construction observations and design consultation. Construction observations must be focused on monitoring the construction contractor's quality of work and compliance with the Plans and Specifications.

Deliverables:

- Construction Observation Reports.
- Responses to Contractor Request for Information (RFI).

Services Excluded

The following services are not included in this Scope of Work:

- Geotechnical design
- Seismic Analysis
- Environmental permitting
- Application for a building permit
- Construction Management

Assumptions

- The following timber trestle bridges will be included in the repair package:
 - 230-foot timber trestle at MP 97.3
 - 580-foot timber trestle at MP 97.8
 - 493-foot timber trestle at MP 98.1
 - 225-foot timber trestle at MP 98.4
 - 78-foot timber trestle at MP 99.5
 - 1,397-foot timber trestle at MP 100.4
 - 686-foot timber trestle at MP 100.9
 - 420-foot timber trestle at MP 101.1
- Task 2 assumes the following maximum number of sheets:
 - 1 updated cover sheet
 - 1 General note sheet
 - 17 updated Trestle Plan views with notes
 - 3 repair detail sheets
- Latent or hidden deficiencies may be discovered during construction that will require a change or expansion of the repair design.
- No requirement for geotechnical design is anticipated. If the need for geotechnical design services arises, OBEC will notify the City and request an amendment to the contract.

- It is assumed no building permit is required for this trolley trestle repair project.
- No 8.5x11 specifications will be prepared.
- The City is responsible for preparation of Division 1 contract documents.
- The City will prepare the bid package and all associated documentation. The budget allowance included for technical services during construction is based on 5 site visits for construction observations and 12 hours for design support equivalent to three (3) RFI's.
- Mileage expenses are predicated on six round trips between Astoria and Portland. Additional trips will require an amendment to the proposed expense estimate.

Schedule

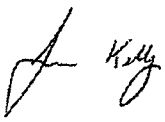
OBEC can deliver a draft package for the City to review within 60 days of NTP and deliver final plans 10 days following comments from the City.

Fee Estimate

The estimated fees for these engineering services are detailed in the attached spreadsheet. Labor rates are based on OBEC's 2016 salary rate table, attached for your reference. OBEC proposes to complete the services outlined in our scope of work on a time-and-materials basis for an estimated fee not to exceed (NTE) \$23,122. The estimated fee will not be exceeded without prior written authorization from The City of Astoria. Any changes to the scope of work, whether requested by the City or due to other circumstances, will be documented in writing and promptly communicated to the City.

We trust this proposal provides you with the information required for this bridge repair project and hope that it meets with your approval. If you have any questions, please do not hesitate to contact me at 971-634-2002.

Sincerely,

X 


Jason Kelly, PE,
Inspection Division Manager
971-634-2002



CITY OF ASTORIA
Founded 1811 • Incorporated 1856

October 10, 2016

M E M O R A N D U M

TO: MAYOR AND CITY COUNCIL
FROM:  BRETT ESTES, CITY MANAGER
SUBJECT: LEGAL SERVICES AGREEMENT

DISCUSSION/ANALYSIS

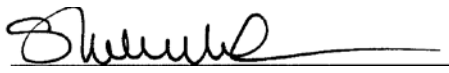
On September 6, an item regarding City Attorney Legal Services was deferred to a subsequent meeting, as Attorney Henningsgaard was unable to be in attendance. The provisions contained in the agreement for legal services between Blair Henningsgaard and the City of Astoria remains unchanged from what was included in the September 6th packet.

The agreement replaces the Legal Services agreement dated December 20, 2010. The compensation section includes an annual increase of \$3,000, from \$84,000 to \$87,000, for routine services and non-routine matters will increase \$10 per hour from \$180 per hour to \$190 per hour. No other changes are contained in this agreement. The effective date is August 1, 2016.

The Fiscal Year 2016-2017 budget includes a budget of \$87,000 for legal services in the City Attorney department of the General Fund.

RECOMMENDATION

It is recommended that Council consider the revised agreement.

By: 
Susan Brooks, CPA
Director of Finance & Administrative Services

LEGAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2016 by and between the CITY OF ASTORIA, hereinafter referred to as "City" and BLAIR HENNINGSGAARD, Attorney at Law, hereinafter referred to as "City Attorney".

W I T N E S S E T H:

That for and in consideration of the mutual covenants and promises between the parties hereto and the payment hereinafter to be made, it is hereby agreed as follows:

SECTION A – LEGAL SERVICES:

1) As routine services, City Attorney will:

- Advise City officials on matters relating to City business;
- Attend City Council, and Planning Commission, Historic Landmark Commission and Design if requested.
- Review Committee meetings.
- Perform functions of the City Prosecutor in municipal court.
- Prepare and review ordinances, resolutions, contracts, agreements, leases, deeds and related documents;
- Review current state and federal legislation and/or litigation as such may relate to the City and advise City officials thereon;
- Upon request, provide legal opinions on matters relating to City activities;
- Upon request, participate in the development of staff recommendations for action by the City Council;
- Advise and participate in code enforcement activities in municipal court;
- Make recommendations for updating existing City codes, resolutions and other policies and practices;
- Represent City in intergovernmental relations as appropriate;
- Attend City staff and/or department head coordination meetings, if requested;
- Maintain appropriate records and files;
- Perform related duties as necessary;
- Administer and coordinate annexations;
- Assist in elections;

2) As non-routine services, City Attorney will represent City in:

- Circuit Court actions, including threatened litigation;
- Proceedings before the Oregon Supreme Court, Court of Appeals and Land Use Board of Appeals;
- Proceedings before state and federal agencies.

- 3) Services performed by Attorney for City do not include:
- (A) Participation as a member of the management team and employment
 - Negotiations for wages, benefits and working conditions or staff support to the city manager on labor relations.
 - (B) Work involving bond issues.
 - (C) Any litigations arising out of sewer construction funds and redemption of sewer bonds wherein the services of bond counsel, at the time of the issuance of the bonds, shall become necessary.
 - (D) Areas of special expertise requiring outside counsel as the parties may mutually agree.

SECTION B – COMPENSATION

City shall pay to Attorney for routine services rendered in accordance herewith, a fee based upon an annual sum of \$87,000 which will be paid monthly in the amount of \$7,250. Services for non-routine matters will be billed at \$190 per hour. Billing for non-routine services and costs will be as incurred.

City shall be responsible for all out-of-pocket costs involved in Attorney's representation of City for both routine and non-routine matters. "Out-of-Pocket" costs include filing and recording fees, long distance phone calls, court reporter expenses, process service fees, mileage outside the City of Astoria, arbitration fees and costs, title company services, fax, postage charges, etc. Attorney will endeavor to have major copy work done at city hall by city staff. Mileage would be billed at the Internal Revenue Service rate.

Legal materials purchased by the City become city property unless other arrangements are made at the time of purchase.

SECTION C- CONFLICTS

In the event of a conflicts of interest in providing routine services, Attorney shall arrange for substitute counsel and shall be responsible for the compensation of the substitute counsel up to and including the first \$1,000.00 of such fees per fiscal year. If amounts for outside counsel exceed \$1,000.00 during the fiscal year, then City will pay the remaining one-half. In the event of conflicts of interest regarding non-routine services, Attorney shall assist City in arranging for suitable counsel and City shall be responsible for compensation of other counsel.

SECTION D – REPORTS

If requested, Attorney will report services with percentages or hours allocated to each department quarterly, broken down by month.

SECTION E – MUNICIPAL LAW LEGAL EDUCATION

City will pay the usual and reasonable expenses for City Attorney to attend the League of Oregon Cities / Oregon City Attorneys Association annual meeting and either the Oregon State Bar Government Law Section Annual Meeting or the OCAA Fall CLE.

SECTION F – REQUIRED CLAUSES

Professional Service Contracts now are encompassed within the state public contracting law. Therefore, the parties incorporate by this reference the clauses required by the following statutes:

ORS 279B. 220 – Conditions concerning payment, contributions, liens, withholding.

ORS 279 B.230 – Condition concerning payment for medical care and providing worker's compensation.

ORS 279 B.235 – Condition concerning hours of labor.

SECTION G – EFFECTIVE DATE – TERM

This agreement will be effective August 1, 2016 and shall continue until terminated.

SECTION H – TERMINATION

This contract shall be terminable by either party upon the giving of 90 days written notice.

SECTION I – REVIEW.

From time to time, the parties may review the working relationship and compensation, with particular emphasis on access to Attorney by City.

CITY OF ASTORIA

ATTORNEY

By: _____
Arline LaMear, Mayor

By: _____
Blair Henningsgaard

Attest: _____
Brett Estes, City Manager