



# AGENDA

## ASTORIA CITY COUNCIL

Tuesday, January 17, 2017  
7:00 p.m.  
2<sup>nd</sup> Floor Council Chambers  
1095 Duane Street · Astoria OR 97103

1. CALL TO ORDER
2. ROLL CALL
3. REPORTS OF COUNCILORS
4. CHANGES TO AGENDA
5. 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 12/19/16
- (b) Boards and Commissions Minutes
  - (1) Historic Landmarks Commission Meeting of 10/18/16
  - (2) Planning Commission Meeting of 9/27/16
  - (3) Planning Commission Meeting of 10/25/16
  - (4) Planning Commission Meeting of 12/6/16
- (c) 16<sup>th</sup> Street CSO Separation Project – Final Report (Public Works)
- (d) Public Information Emergency Response (PIER) System Replacement (Police)

### 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) Ordinance Readopting Certain State Statutes to Reflect Changes Made by the 2016 Oregon Legislature (2<sup>nd</sup> reading & adoption) (City Attorney)
- (b) Ordinance Adopting Changes to 3% Marijuana Tax on Sale of Marijuana Items by a Marijuana Retailer (2<sup>nd</sup> reading & adoption) (Finance)
- (c) Ordinance Revising City Code Section 5.810 Providing for Identification of Dangerous Animal; Appeals; Restrictions Pending Appeal (1<sup>st</sup> reading) (Police)
- (d) Ordinance Amending City Code Section 1.964A Pertaining to City Manager's Spending Authority / Submittal of Grant Applications (1<sup>st</sup> reading) (City Council)
- (e) Resolution Authorizing a Grant (Forgivable Loan) from the Safe Drinking Water Revolving Loan Fund and Authorization to Award Contract for the Pipeline Road Transmission Main Resilience Study (Public Works)

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

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



## CITY OF ASTORIA

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January 13, 2017

### MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: ASTORIA CITY COUNCIL MEETING OF TUESDAY, JANUARY 17, 2017

### **CONSENT CALENDAR**

**Item 5(a): City Council Minutes**

The minutes of the City Council meeting of December 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 10/18/16, (2) Planning Commission meeting of 9/27/16, (3) Planning Commission meeting of 10/25/16, and (4) Planning Commission meeting of 12/6/16 are enclosed. Unless there are any questions or comments regarding the contents of these minutes, they are presented for information only.

**Item 5(c): 16<sup>th</sup> Street CSO Separation Project – Final Report (Public Works)**

The 16<sup>th</sup> Street Combined Sewer Overflow (CSO) Separation Project consisted of installing over 12,000 feet of new storm water pipe within the existing roadway infrastructure. It also included replacing existing water and sewer pipe where construction of the new storm pipe compromised the integrity of the existing infrastructure. Most of the intersections were rebuilt and many of the intersection ramps were reconstructed within the project area. The final project costs (\$7,035,478) have been reconciled and were less than the Infrastructure Finance Authority (IFA) funding of \$7,213,000. IFA funding includes a \$525,000 grant and the balance of the project expenses (\$6,510,478) is a low-interest loan at 2.09% with a 25-year payback period. A portion of the CSO Surcharge fee will be utilized to repay the project loan. Gibbs & Olson performed the engineering design, bidding support, construction support and construction inspection and billed \$118,000 less than their contract amount, which was an important factor in the successful project that came within budget. Emery & Sons Construction Group was the construction contractor and worked well with City staff to keep this project

within budget. The City crew did an extraordinary amount of investigative work during design to prevent surprises during construction, which kept costs down. They were also an essential partner during construction and a critical resource for the contractor. This item is presented for information only and requires no action at this time.

**Item 5(d): Public Information Emergency Response (PIER) System Replacement (Police)**

The Astoria Police Department was notified that their PIER system is being discontinued effective January 31, 2017. The Department has located an alternative source for the service from Jetty and the City Manager has made a sole source determination as allowed by City Code. Staff is asking for authorization to enter into an annual computer services agreement. Total cost of the agreement annually is \$10,000. Funds will be expended from the Emergency Communications Fund and Materials and Services budget. It is recommended that Council approve the procurement of computer services in the form of a one year license with Jetty in the amount of \$10,000 along with the \$1,000 in support from iFocus.

**REGULAR AGENDA ITEMS**

**Item 6(a): Ordinance Readopting Certain State Statutes to Reflect Changes Made by the 2016 Oregon Legislature (2<sup>nd</sup> reading & adoption) (City Attorney)**

This ordinance received its first reading at the January 3, 2017 City Council meeting. The 2016 legislation passed by the Oregon Legislature, for the most part, became effective on January 1, 2017. Many of our City ordinances refer to or incorporate state statutes. Every year, the City routinely re-adopts all referenced ORS sections to pick up any changes made by the legislature. This is done by a "global readoption", which was the technique recommended by the League of Oregon Cities. The City is legally unable to prospectively adopt Oregon legislative changes, that is, we cannot adopt a state statute "as it now exists and is from time to time amended." The proposed ordinance has been reviewed and approved by the City Attorney. It is recommended that Council conduct the second reading and adopt the proposed ordinance.

**Item 6(b): Ordinance Adopting Changes to 3% Marijuana Tax on Sale of Marijuana Items by a Marijuana Retailer (2<sup>nd</sup> reading & adoption) (Finance)**

The first reading of this ordinance was held at the January 3, 2017 City Council meeting. On February 16, 2016 Council adopted Ordinance No. 16-02 imposing a 3% tax on the sale of marijuana items by a recreational marijuana retailer and referring ordinance to electors of Astoria. On November 8, 2016, Local Ballot Measure 4-180 passed with Yes votes totaling 3,420 and No votes totaling 1,251. Additionally, on November 29, 2016 City Council approved an intergovernmental agreement with Oregon Department of Revenue for the collection and distribution of the 3% tax on recreational marijuana sales. The Oregon Department of Revenue has worked in conjunction with the League of Oregon Cities to provide

suggested code language which provides authority for penalty and interest language in the enforcement of local marijuana tax collection. The attached ordinance, enacting the tax approval adopted by voters and adding language necessary for the collection and enforcement of the tax, was prepared by Attorney Henningsgaard and is attached for your consideration. Council would hold a first reading at the January 3, 2017 meeting and second reading at the January 17, 2017 meeting. It is recommended that Council hold the second reading and adopt the proposed ordinance enacting the voter approved 3% marijuana tax with collection and enforcement language incorporated and adopt.

**Item 6(c): Ordinance Revising City Code Section 5.810 Providing for Identification of Dangerous Animal; Appeals; Restrictions Pending Appeal (1<sup>st</sup> reading) (Police)**

Staff is recommending a change to the dangerous animals' ordinance. The change creates a burden of proof in appeal hearings related to the classification of a dangerous animal. There are two other changes proposed as well. One eliminates the requirement for signed written statements allowing for recorded statements as well. The other is to repair a typographical issue in the ordinance. It is recommended that Council conduct the first reading of the proposed ordinance.

**Item 6(d): Ordinance Amending Code Section 1.964A Pertaining to City Manager's Spending Authority / Submittal of Grant Applications (1<sup>st</sup> reading) (City Council)**

At the January 6, 2017 goal setting session, there was discussion regarding the City Manager's spending authority which is currently set at \$10,000. This amount has been in place since 1999. There was discussion from Council members to increase that limit to \$50,000. Spending authorities for managers in our area are as follows:

- Warrenton \$25,000
- Clatsop County \$30,000
- Seaside \$50,000
- Cannon Beach \$50,000

At the request of Council an ordinance revision has been prepared for consideration and is attached to this memorandum. In addition to replacing the \$10,000 amount with \$50,000, the reference to bulk fuel has been deleted since the new spending authority would accommodate those purchases. It should be noted that the City's purchasing ordinance will continue to dictate how bids, solicitations, and purchases will be made. In discussing the spending authority revision with City Attorney Henningsgaard, he noted that a subsequent review of the purchasing ordinance may be in order to better align the manager's spending authority with that code and to better align the City purchasing ordinance with changes in State statutes. Staff will begin review of the City's purchasing codes.



Also at the January 6<sup>th</sup> goal setting session, there was discussion regarding the City Council policy of sending grant applications to Council in advance of filing. There was direction to revise that policy as well. A revision is proposed below:

- Grant applications which require a City of Astoria cash match shall be forwarded to the City Council for consideration as a part of the application process.

This change will allow for staff to directly apply for grants which have no cash match commitment, but would allow for them to apply for grants with in-kind (staff time) matches. Applications which have a cash match commitment would continue to be reviewed by Council either before submittal, or possibly after, should the application be able to be rescinded (in cases where Council not wish to pursue the grant). As this is a policy, no ordinance is required.

If the City Council is in agreement with the proposed change in spending authority for the City Manager's spending authority, it is recommended that Council hold a first reading of the proposed ordinance. Additionally, should Council concur with the change in policy for grant applications, it would be in order for Council to vote on the proposed language as a separate motion.

**Item 6(e): Resolution Authorizing a Grant (Forgivable Loan) from the Safe Drinking Water Revolving Loan Fund and Authorization to Award Contract for the Pipeline Road Transmission Main Resilience Study (Public Works)**

The Oregon Infrastructure Finance Authority (IFA) has offered grants (forgivable loans) for resiliency studies of important infrastructure. At the April 4, 2016 meeting, Council authorized staff to submit a formal application to IFA requesting a \$20,000 grant for a resiliency study of the 12 mile long, 21 inch diameter transmission main that delivers water from the City Headworks at Bear Creek Reservoir to Reservoir #2 and Reservoir #3 in town. On October 17, 2016 IFA offered a \$15,500 to conduct the study. Hart Crowser has provided a proposal and cost of \$20,000 to perform the study. Staff proposes that the \$4,500 match be paid out of Engineering Department budget. The purpose of the study is to evaluate the existing water main route, determine its vulnerability in the event of a large seismic event, and identify possible new routes that would be more resilient and less susceptible to failure. While a larger seismic event will be the event considered for the study, the waterline is also susceptible to failure as a result of smaller seismic events, stream erosion and natural landslides. It is recommended that the City Council approve the resolution for acceptance of the grant and authorize the contract for Hart Crowser to assist with the study.

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

Councilors Present: Nemlowill, Warr, Price, Mayor LaMear, and Ward 2 vacant.

Councilors Excused: None

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

Mayor LaMear called for a moment of silence for Hal Snow, former City Attorney.

### REPORTS OF COUNCILORS

**Item 3(a): Councilor Warr** said he first came to Astoria 44 years ago on a six-month commitment. He was disappointed at first, but six months later decided to make Astoria his home. Over the years, he has had wonderful opportunities to volunteer in many facets of the community. He served as chair of the Merchant's Association, on the board of the Chamber of Commerce, the school board, on City Council, and in several other community organizations. The past 12 years as a Councilor have been special and it would be difficult for him to leave. The other Councilors have been good to work with and have led the City in the right direction. City Council has been able to do some spectacular things over the last 12 years. He was most proud of his efforts to bring Oregon Health and Science University (OHSU) into its partnership with Columbia Memorial Hospital. Many things in the community have improved. The tourism industry has helped supplant the resource industry, which was the only industry in Astoria before. He thought he would be happy when this day came, but he was not.

Mayor LaMear presented Councilor Warr with a plaque, stating City Council would particularly miss his work on transportation because he was the City's resource on Oregon Department of Transportation (ODOT) issues. She said Councilor Warr was always very fiscally responsible and made sure the City looked for the most efficient way to do things. The City would miss Council Warr very much.

Councilor Warr thanked the City for the plaque and welcomed his replacement, Bruce Jones, and the new City Councilor for Ward 2, Tom Brownson. He believed the City would be in good hands.

**Item 3(b): Councilor Price** said shortly after she was elected to City Council, she was surprised to see how often she and Councilor Warr agreed with each other. Their disagreements have been very congenial and she never felt as if there was a fence between them. She has known Tom Brownson for a long time and they brainstorm well together. She looked forward to getting to know Bruce Jones. The new Council would be great, but she would miss Councilor Warr a lot.

**Item 3(c): Councilor Nemlowill** reported that she took her kids to see Santa at the Flavel House. She thanked the Historical Society for the event and apologized for missing the Boards and Commissions Reception. She thanked Board and Commission members for their service. She was happy about the new Councilors coming on board, but was also sad that Councilor Warr would no longer be serving on the Council. She believed Councilor Warr's voice represented many Astorians and his decision-making has led to some of Astoria's proudest achievements. Noting there was nothing she could give to adequately represent the gift he gave to the city, she presented Councilor Warr with a gift of bread, peanut butter, and jelly to make up for all of the dinners he missed by staying late at City Council meetings. She thanked Councilor Warr for doing a thankless job and missing many dinners at home.

**Item 3(d): Mayor LaMear** reported that Councilors have been asked repeatedly to explain their decision not to designate Astoria as a Sanctuary City. She explained Sanctuary City is a term used by cities to inform their citizens that they will not cooperate with federal authorities to identify or prosecute undocumented immigrants. The term has become loaded, often used derisively by advocates of tougher immigration

restrictions. Both Police Chief Johnston and she have spoken at length with Jorge Gutierrez, Chair of the Lower Columbia Hispanic Council. Mr. Gutierrez indicated he believed the designation could be more polarizing than helpful in a community like Astoria. Council's decision not to declare Astoria a Sanctuary City was in response to the wishes of the Hispanic community. The Police Chief has assured her that the Police Department does not ask about immigration status unless it is related to a crime they are investigating. City Council, staff, and Police Chief Johnston will remain attentive to the concerns and civil rights of Astoria's immigrant community, a community the City values as a part of the larger Astoria community.

Mayor LaMear listed the following Board and Commission appointments and re-appointments for 2017:

- Historic Landmarks Commission – Mac Burns, Michelle Dieffenbach, and Katie Rathmell
- Hospital Authority – Craig Hoppes
- Planning Commission – Dave Pearson and Jennifer Cameron-Lattek

She noted that Tammy Loughran resigned from the Parks and Recreation Advisory Board, but her position would not be filled as the Board still has a quorum. McLaren Innes would be stepping down from the Planning Commission. She asked Ms. Innes to stand for a round of applause.

## **CHANGES TO AGENDA**

There were none.

## **CONSENT CALENDAR**

The following items were presented on the Consent Calendar:

- 5(a) City Council Minutes of 11/21/16
- 5(b) Boards and Commission Minutes
  - (1) Planning Commission Meeting of 10/25/16
- 5(c) Authorization to Enter into a Two-Year Consulting Agreement with Ellis and Associates (Parks)
- 5(d) Authorization to Designate Mill Pond and Apply for All-Star Grant to Fund New Interpretive Panel (Community Development)
- 5(e) 33<sup>rd</sup> Street and Highway 30 Street Lights – Authorization to Approve Intergovernmental Agreement (IGA) Amendment (Public Works)
- 5(f) Fuel System Replacement Project – Leaking Underground Storage Tank (LUST) Cost Recovery Agreement (Public Works)
- 5(g) Authorization of Lease Agreement for Riverwalk (Community Development)

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

## **REGULAR AGENDA ITEMS**

### **Item 6(a): Public Hearing regarding Appeal (AP16-01) by Heather Hansen of Conditional Use Permit (CU16-10) at 3930 Abbey Lane Building A Unit 104 (Community Development)**

On September 22, 2016, Daryl Bell applied for a Conditional Use permit (CU16-10) to the Astoria Planning Commission (APC) to locate a medical-recreational marijuana dispensary as a retail sales establishment at 3930 Abbey Lane in Building A Unit 104, zoned S-2A. "Tourist-Oriented Retail Sales" is an outright permitted use in the S-2A zone. A "Retail Sales Establishment" requires a conditional use permit in the S-2A zone. A Notice of Appeal on the APC decision was submitted by Heather Hansen on November 11, 2016. The Notice of Appeal, which details the appellant's concerns, can be found on Page 1 of the appeal packet. A complete record of the request has been compiled and itemized and is attached. It is recommended that the City Council hold the public hearing on the appeal and consider whether to uphold, reverse, or remand the Astoria Planning Commission decision for CU16-10.

Planner Ferber presented the staff report, which included a timeline, the criteria presented to the Planning Commission, criteria submitted by the Applicant, the Planning Commission's conditions of approval, information submitted earlier that day by the Applicant and Appellant, and Council's options for next steps. She noted the

Memorandum for this meeting erroneously stated the Notice of Appeal was submitted on November 11<sup>th</sup> and noted the correct date was November 14<sup>th</sup>.

Mayor LaMear opened the public hearing at 7:32 pm and asked if anyone objected to the jurisdiction of the City Council to hear this matter at this time. There were none. She asked if any Councilor had a conflict of interest or ex parte contact to declare.

Councilor Price declared that she visited the site to view the parking lot and entrances, but had no ex parte contact.

Mayor LaMear 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. She called for a presentation by the Appellant.

Heather Hanson, 3990 Abbey Lane, Astoria, thanked City Council for considering the appeal and said she did not anticipate a lot of public testimony. The evaluation of the review criteria, findings, and conclusions were included in the staff report and were adopted by the Planning Commission to support their decision. However, the evaluation did not address the fact that the proposed use would be in a residential building. The building is in a mixed-use zone and commercial uses are expected on the ground floor of the building, but that did not negate the residential uses that should be considered in the evaluation. Comments made by several Planning Commissioners at their hearing indicated that they felt compelled to approve the use since it met the criteria. There was also discussion about the ground floor being intended for commercial uses and implications that any commercial use would be approved. One Commissioner mentioned that this use could not be treated differently than any other commercial use.

- The commercial use category is very broad and includes personal and professional services, offices, retail, and other types of uses. The impacts of the specific uses within those categories on neighbors vary. When review criteria are clear and objective, such as a 20-ft setback or 30-ft height limit, staff can make a decision. However, when review criteria are subjective and discretionary, as they are for conditional uses, the decision is made by the Planning Commission. The Planning Commission is not required to approve all uses that may be allowed in a particular zone. In this case, one of the review criteria found in Section 30(a) (1) states that the use is appropriate at the proposed location. This is subjective. If the criterion means that the zoning allows a commercial use and must be approved, then there would be no need for a review by the Planning Commission. Webster defines appropriate as especially suitable or compatible. How can a decision maker determine whether a use is suitable or compatible without evaluating the impacts to the 30 residences in the same building and the 33 residences next door?
- She understood City Code does not regulate the number of dispensaries, but it does mention consideration of the availability of similar existing uses. There are already five existing permitted dispensaries in Astoria, one as close as 29<sup>th</sup> Street, and two more in the works. No valid argument can be made that another dispensary is needed so badly that the other five are not available. By comparison, there are three pharmacies and one liquor store in Astoria. Astoria does not need another dispensary so badly that it must be located in a building with 30 existing residences. If City Council does not believe the other five dispensaries are not sufficient or available, Council can consider the compatibility of the proposed dispensary with existing residences.
- This use is a cash only business selling a controlled substance and requires extra security that includes video cameras. The Applicants have said they would patrol the parking lot to make sure customers are not loitering or using the products on site. However, the requirements for patrols were not included as a condition of approval. Even if it were, the need for the extra security indicates the use may not be appropriate for the location. Additionally, there are no guarantees that the Applicants would manage the store. The State does not allow marijuana dispensaries in residential zones. Even though this regulation does not apply to this case, it indicates there are concerns about co-locating marijuana dispensaries with residences. A family with a young child lives in the unit directly above the dispensary's space and there are many single women and retirees who live in the two condominium buildings. Therefore, security is very important to their safety and well-being. The need to add video cameras at the entrance to the building will make the residents feel like they are living in an unsafe place.
- Access to the building is shared and includes locked doors to residential elevators and stairwells. However, residents can only access these locked doors after walking through the shared parking areas and passageways as the customers. Access to the store will be directly across from the locked door to the elevator near the mailboxes. Residents must stop at the locked door to get their keys out while constantly

looking over their shoulder to make sure no is right behind them. This is even more of a concern for a store with a lot of cash on hand. She had no idea how the building could be retrofitted to separate the residential and commercial accesses.

- The application indicates the store would be open for 12 hours, but the Applicant told the Planning Commission it would be open for 10 hours. However, the actual hours of operation were never mentioned or considered. She believed the hours of operation would impact the residences. The Applicant estimated the store would serve about 50 customers a day and she questioned what this was based on. If the estimate were accurate, there would be four to five customers per hour if customers arrived at even intervals throughout the day. The dispensary was described as being like a wine bar, but it is not legal to use the products on site like a wine bar. The other commercial uses in the building are appropriate and compatible because they are mainly offices and personal services that have a limited number of customers and deliveries per day.
- In the land use planning profession, the intent or purpose of the regulations is considered when there is uncertainty about how to apply a section of the Code. The purpose statement for conditional uses states that the purpose of the conditional use process is to allow, when desirable, uses that would not be appropriate throughout a zoning district or without the restrictions in that district and would be beneficial to the City if their number, area, location, design, and relation to the surrounding property are controlled. As a condominium resident and professional planner, she struggled to come up with an effective way to control for the negative impacts of the proposed retail use on the surrounding residential units. Limiting hours of operation would be a step in the right direction, but adding video cameras, security lighting, or parking lot patrols are not reasonable. None of the other dispensaries in Astoria share these issues. She asked if any of the Councilors would chose to live in those conditions. She also asked Council to consider the safety and well-being of the residents that would be impacted by their decision.

Mayor LaMear called for testimony in favor of the appeal.

Jim Ray, 62 West Bond, Astoria, said he was on the board of the Astoria Rescue Mission and was aware of the effects of addictive substances. He strongly opposed allowing a pot shop in a condominium complex. Every pot shop is a target of armed robberies, theft, and violent crimes. He questioned why the community's guardians would approve this proposal. Everyone in this room and everyone in society is alarmed at the trillions of dollars spent on building new prisons, operating expenses, maintaining prisons, and the more than two million individuals incarcerated. Court costs for processing criminal activities equals billions of dollars annually. Annual insurance payouts for drunk and impaired acts affect everyone by way of inflated insurance premiums. The pain and suffering of children and families caused by addictive behaviors cannot be measured. If it were possible to erase the effects of pot, drugs, and alcohol from the lives of every incarcerated person, the prison population would be reduced by more than 80 percent. For many years, he worked as the food buyer for every state institution in California, including prisons, hospitals, youth authority facilities, and special schools. He also served as a warehouse manager for Folsom Prison in California. He has had dozens of inmates in his custody, so he knew what he was talking about. Society is deteriorating. Liquor licenses have been denied to applicants because concerned citizens raised their voices with legitimate justifications. The residents who have invested their life savings in these condominiums will become victims of the crimes resulting from a pot shop on the ground floor of their homes. City Council can prevent this travesty. He did not believe Councilors would tolerate a pot shop in their own houses. Council knew about the recent fire in a local pot shop and he asked them to consider a fire in a high-density multi story housing complex. Many of the condominium residents are elderly and their attempt to escape from a pot related fire could prove fatal. He stated, "Do unto others as you would have them do unto you" and asked City Council to deny the application.

Mayor LaMear called for testimony opposed to the appeal.

Perry Salzhauer, Greenlight Law Group, Portland, representing the Applicant, stated all of the issues raised by the Appellant have been considered on multiple levels. While the Appellant claims a prohibition against retail dispensaries in an exclusively residential neighborhood represents a judgment call by the legislature, it also reflects a legislative determination that the use is appropriate for mixed-use neighborhoods. The State legislature has already considered these issues and City Council considered the issues by not prohibiting the dispensary. The Planning Commission also considered and approved the dispensary. This appeal is the third or fourth time the issue has been considered at both the State and local levels. A conditional use is not committed to absolute discretion and the use of the word appropriate in a very complicated land use context is very different from the use of the word in common parlance. If this issue and every conditional use application were committed

to absolute discretion, the entire point of the conditional use criteria would be eviscerated and allow for certain cooptions of the legislative process by angry citizens. The results of legislative processes do not always yield the desired result. However, the system is designed to consider these issues, just as the Planning Commission did in this case. The Development Code addresses this situation through the conditional use criteria and every criterion was considered, determined, and decided in the Applicant's favor. It is also important to note that the residential use, which is the focus of the appeal, is itself a conditional use within the S2-A zone. Additionally, this residential use likely has a greater impact on the Coastal Zone than a 950 sq ft retail establishment. The Appellant and the person who testified in support of the appeal presupposed that there would be negative effects. They did not provide any fact based evidence of their hypothetical and anecdotal claims. Oregon Liquor Control Commission (OLCC) dictates the hours of operation of retail dispensaries. The Applicants have made multiple attempts to work with the condominium association to address and mitigate impacts that may or may not occur.

City Manager Estes stated for the record that testimony was received in writing throughout the day and was available at the dais.

Daryl Bell, 3930 Abbey Lane, Astoria, said it did not feel good to be the harbinger of doom and he completely understood why there were concerns. However, his dispensary would be a good steward of the community if given the opportunity. The dispensary would maintain a clean, safe, and tasteful environment for the employees and customers while keeping in mind that the residents above the dispensary would want the same thing. He would provide comprehensive, state of the art surveillance and security that would exceed the requirements by the State in most cases. It seemed as if there were concerns about their surveillance, but he did not understand how it would compromise the integrity of the community. The premises would be monitored to ensure there is no loitering or suspect behavior, they would honor the parking assignments as stipulated by Cannery Lofts, carbon filter odor mitigation systems would be implemented, and the store would hire locally. He just wanted the opportunity to open the business and be a part of the community. The last thing he wanted was to be an impetus for some type of acrimony that flows into the community.

Tarell Buckner, Seaside, noted he had just moved and was unsure of his exact address. The fire in Astoria was a result of processing cannabis, which the proposed dispensary would not be doing on site. There is a fundamental difference between retail sales and processing. Processing uses highly flammable natural gas liquids, which will not be on the dispensary's site at all. Therefore, concerns about individuals escaping a fire should not be an issue. Safety was addressed in the previous hearing, but he would address the concerns again. It was brought to his attention that the building has had instances that made residents feel unsafe. So, in addition to securing the dispensary, he decided to go above and beyond what was required to benefit the residents and the community as a whole. The residents cannot have it two ways by saying they currently feel unsafe with a marijuana business in the building and that the proposed additional security would make them feel inherently unsafe as well. Most of the issues raised about the conditional use permit have already been addressed and the Applicants have already met the requirements necessary to operate a dispensary in the proposed location. No additional information has been presented by the Appellant that would or should reverse the Planning Commission's decision. Therefore, he hoped City Council would agree with the Applicants that the appeal should be denied.

Dr. Ted Forcum, 3990 Abbey Lane, Astoria, stated he owned the commercial unit that would be rented to the Applicants for the dispensary. He acquired many of the commercial units in the building in 2012 and this particular unit in 2014. During that time, the building went through the rezoning process. This unit has been vacant since 2007, in part because the residential mailboxes block the entrance egress to the space. He was working to resolve this issue through litigation between himself, his company, and the homeowners association's board. The adjacent units have leaks and mold that come from the residential units above the commercial space. The proposed location for the dispensary is the only dry commercial space in the complex. The original zoning of the building was for commercial use and the residential units were allowed as a conditional use. The Planning Commission approved this application for good reasons. He initially had a knee jerk reaction to the application for the marijuana dispensary. Over 16 people have asked to locate a dispensary in his commercial units, but he chose Mr. Bell's dispensary because of his willingness to add extra security and bring in local artisans to augment the business. He has done a lot of research on the impacts of dispensaries on mixed-use complexes, including site visits and peer reviews. He has received complaints about every commercial tenant at the complex, the day spa, mini-storage, mental health counselors, medical offices, law offices, charitable organizations, and yoga studios. This indicates there is no perfect commercial tenant for the Cannery Loft

residents and owners. However, nothing is perfect. He believed the dispensary would be a very viable tenant. He asked that City Council defer to the Planning Commission's decision.

Mayor LaMear called for a recess at 8:01 pm to allow Councilors time to read the written testimonies that had been submitted earlier that day. The City Council meeting reconvened at 8:06 pm. Mayor LaMear confirmed there was no more public testimony and called for the Appellant's rebuttal.

Ms. Hanson said she had brought up most of her issues prior to this hearing. However, issues that were not included in the staff report at the Planning Commission's hearing are completely different from public testimony. Public testimony comes from the perspective of someone who is complaining instead of from the perspective of a serious evaluation. If the residences in the building and next door had been part of staff's evaluation, she believed there would have been more discussion about how to access the building and where security cameras would be located. The Applicant has mentioned that they tried multiple times to work with the condominium association, but she was not aware that the dispensary had ever been mentioned to the association. She had asked people who attend the condominium association meetings and they could not recall the dispensary ever being mentioned. She was not sure why Mr. Bell stated his residential address was 3930 Abbey Lane because she was sure he did not live there. However, the address could be his business address or he was living in a condominium and she was not aware of it. State of the art surveillance is a problem because it would not normally be needed. People who live in large cities or areas where a lot of people come off the street and commit crimes in front of their buildings would want good security. However, this is not how people normally live in Astoria. There was discussion of people wandering in from the Riverwalk and using some of the buildings dark corners and areas as restrooms, but the reason for that is the building does not have on site management. The property manager is in Portland, so light bulbs are out for long periods of time, which leave many dark corridors and stairways. This would just add to that situation. She would not want to live in a place that has cameras everywhere. The dispensary would have an absentee landlord, as Dr. Forcum only lives at the condominium part time. This means there would be no one to deal with issues on a timely basis. A use like this dispensary would attract more of the public off of the Riverwalk. The local artisans proposed to be part of the business are not part of this application and are not being reviewed by City Council. She was unaware of complaints about other commercial uses, but understood that some people were generally grouchy and did not like anything to change. She is a renter, so this use would not have a long term impact on her. However, she cared about the people she has become friends with and this dispensary does not feel compatible to her. There are other options in Astoria and there are no other circumstances like this one.

Councilor Warr asked what percentage of Cannery Loft residents opposed the dispensary. Ms. Hanson said she could not remember, but the Planning Commission's staff report included quite a few signatures. Councilor Warr said there were 30 signatures and Ms. Hanson noted some people were not available to sign the petition in time. There was only one person who testified in favor of the application.

Councilor Nemlowill confirmed Ms. Hanson believed a large number of her neighbors agreed the dispensary was not a compatible use and that this type of business would not contribute to the attractiveness or the livability of the neighborhood.

Councilor Price said she went through the list of people who signed the petition and counted signatures from 19 units at 3930 Abbey Lane and 9 units at 3990 Abbey Lane. Ms. Hanson said a fair number of people stay at the condominiums on weekends and were not present to respond to the petition. She read in the staff report that Mr. Bell had been involved in building marijuana shops in other places in Oregon and asked if he was aware of any retail establishments in residential condominium buildings.

Mr. Bell said he was in the process of building a dispensary in a mixed-use condominium building in Rockaway. He confirmed he had the permits and the project was moving forward. With so many dispensaries in the state, there could be a dispensary located in a residential condominium building, but he was uncertain.

City Manager Estes clarified for Ms. Hanson that any clarifications from staff would occur once the public hearing is closed.

Ms. Hanson asked how the building in Rockaway was designed, and where the entrances and parking were located to understand if it was equivalent. There was no response.

Mayor LaMear closed the public hearing at 8:15 pm and called for Council's discussion with staff and deliberation.

Councilor Price said she was surprised to hear that the purpose of Development Code Section 11.010 is not considered a criterion and asked if that meant Council could not consider the purpose as well. She did not understand the point of Article 11 if the purpose were taken away. City Attorney Henningsgaard explained that the purpose statement of any statute is merely an aid to interpret the language that follows it. Purpose statements provide background and context for interpreting the rest of the statute and are not independent criterion.

Councilor Price confirmed with Mr. Henningsgaard that it would be appropriate for Council to consider the desirability about this project, to whom the project would be desirable, and how the project would benefit the City. She asked if staff agreed. City Manager Estes clarified that it was up to City Council to determine whether they agreed with the Planning Commission's decision. If City Council agrees with the Planning Commission, Council will need to adopt the findings that were adopted by the Planning Commission. If City Council does not concur with the Planning Commission, Council will need to provide staff with their reasons.

Councilor Nemlowill said she was concerned that so many residents at the Cannery Loft did not want this type of business on the ground floor. She has carefully reviewed the Planning Commission's work, the staff report, and the findings of fact. While the Community Development Director and Planner did an excellent job, she believed the findings were missing the housing elements. The staff report and findings of fact note that the proposal is compliant with the Comprehensive Plan. This may be, in terms of economic goals, but she did not believe it was compliant when it came to the housing element. The business would not be in a residential zone; however, there are a high amount of residences in the building. There are a few housing elements in the Comprehensive Plan that she believed applied to this project. CP.220.6 protects neighborhoods from incompatible uses. The Appellant has stated that this would not be a compatible use and there are many residents who feel the same way. CP.220.1 maintains attractive and liveable residential neighborhoods for all types of housing. The Appellant has stated she and others do not feel this would be attractive or good for the livability of that location. Because the housing element was not included in the staff report as applicable criteria, she recommended the housing element be included in the findings of fact and that the issue be remanded back to the Planning Commission.

City Manager Estes explained that the only way to remand this issue back to the Planning Commission would be to get an extension from the Applicant. The 120-day rule requires a final decision to be made in January.

Councilor Nemlowill said if the Applicant did not want to grant an extension, City Council's option would be to uphold the appeal now, which she supported.

Mayor LaMear asked who had jurisdiction over the parking at the complex. She wanted to know if the City's Comprehensive Plan and ordinances took precedence over condominium association by-laws.

Planner Ferber explained that parking issues were complicated at this site because of the rezoning and because it is a mixed-use building. Parking is always determined by use and the existing parking was determined by the site's original industrial zoning. City Manager Estes added that the Development Code specifies a certain number of required parking spaces per use. The requirement for this commercial use is one space for every 500 sq ft. In this case, two parking spaces are required. Additionally, covenants and restrictions that are part of the condominium development may include more parking provisions that the City cannot enforce. However, the homeowners association could enforce restrictions that are outside the City's requirements. For example, the City enforced design review requirements on the Mill Pond Zoning District, but the Mill Pond Homeowners Association has its own separate design review requirements. In this case, the Applicant would need to comply with both the City and the building's requirements.

Mayor LaMear said some of the reports state the number of police calls to existing marijuana dispensaries in Astoria has been high. She asked how much time these calls took from other police matters. Chief Johnston said the reports did not match his perception of the situation.

Mayor LaMear confirmed that all other marijuana dispensaries in Astoria were located in either a C-3 or C-4 Commercial Zone. She agreed with Councilor Nemlowill and Planning Commissioner Frank Spence's comments



in the minutes of the Planning Commission's meeting. These condominiums are zoned Shoreland Tourist, but all condominiums are residential buildings. She planned to vote in favor of the Appellant.

Councilor Price stated CP220.2 provides residential areas with services and facilities necessary for safe, healthy, and convenient urban living. She understood this area was a Shoreland S2-A Zone, not a residential zone. However, this issue is one of several that have come before City Council because they have not taken the time to discuss any regulations on the retail sales of marijuana. Portland specifically prohibits marijuana retailing in existing mixed-use buildings with a residential emphasis. She believed Astoria should consider this in addition to just the number of dispensaries. The closest dispensary is 11 blocks away, which does not create a burden. The great majority of residents feel this is not appropriate and it is clear that there is a wide availability of similar shops. Several sections of the Comprehensive Plan have to do with housing policies that she believed this dispensary would not comply with. Therefore, she planned to vote in favor of the Appellant. She suggested City Council reconsider Astoria's retail and medicinal marijuana policies.

Councilor Warr said during his time on City Council, he has always tried to vote based solely on the facts and the rules. However, in this case, since this will be his last vote, he would permit himself to vote emotionally. The condominiums were terribly built; they leaked, the siding did not hold the weather out, and the owners have spent thousands of dollars to repair issues that never should have happened. Most condominiums do not contain retail space that is zoned outside of the homeowners association. Under most conditions, the homeowners do not get a voice and it is time for these homeowners to get a break. Therefore, he planned to vote in favor of the Appellant.

City Manager Estes reminded that the existing findings support denial of the appeal, so staff must bring back revised findings at a future meeting before City Council can vote. Council can vote to tentatively approve the appeal and direct staff to prepare revised findings based on Council's comments. A new City Council will be in place before the next Council meeting, so it might be appropriate to schedule a special meeting next week to allow the current Councilors to review new findings.

City Attorney Henningsgaard added that the new Councilors were present and have heard the public testimony and Council's discussion. The new Councilors could vote next year if they can state that they have considered the record in full. However, a special meeting could be scheduled if Council wants to wrap up this issue this year.

Mayor LaMear said she preferred to schedule a special meeting.

Councilor Nemlowill asked what the process would be for reviewing revised findings of fact. She wanted to know if the Applicant would give testimony and if another public hearing would be conducted. City Attorney Henningsgaard said no, the public hearing has already been closed. Councilor Nemlowill said she was concerned about fairness because the Applicant has not had an opportunity to respond to the housing element issues raised by Council. The original staff report contained other findings of fact that the Applicant was able to respond to.

City Manager Estes confirmed with City Attorney Henningsgaard that if this issue was remanded back to the Planning Commission, dialogue with the Applicant would be necessary to find out if the Applicant would be willing to grant an extension to the 120-day rule. This discussion would need to take place at this meeting.

Councilor Warr was not sure how Council could refrain from remanding the issue back to the Planning Commission. City Manager Estes explained that under Oregon land use laws, the Applicant is the only one who can grant an extension to the 120-day rule. The extension would allow the additional time necessary to provide adequate notice. If this issue is remanded back to the Planning Commission, another appeal to City Council could be filed depending on the Planning Commission's decision.

Councilor Warr said he preferred City Council make a decision at this meeting. City Manager Estes reminded that staff was not prepared with revised findings.

Councilor Nemlowill said she did not want to make the decision messy and was concerned about the legal implications of adding findings that the Applicant has not had an opportunity to address. City Attorney Henningsgaard believed the housing issues had been raised. The property is unique and City Council is the decision making body. This is a matter of process and Council's decision with respect to the appropriate

development of the condominiums will carry a lot more weight than the Planning Commission's decision. City Council will set a precedent. Councilors have stated what they believe is and is not appropriate in this setting and there is no other property in Astoria like this one. Therefore, City Council's opinion on this matter is very valuable.

Councilor Nemlowill believed a denial would have to relate to the current findings. City Attorney Henningsgaard explained that City Council is not bound by the Planning Commission's findings in any way. Council must decide whether the evidence supports the application with respect to the Code. Applicable criteria are subjective rather than objective, so Council needs to consider whether the use is compatible and appropriate. These types of decisions are subject to differences of opinions, but it is City Council's opinion that carries more weight than the Planning Commission's. Therefore, he did not believe there would be a problem.

Councilor Price said her considerations that this use was not appropriate for this location was in accordance with the sections of the Comprehensive Plan mentioned by Councilor Nemlowill and herself, as well as the criteria considered by the Planning Commission.

**City Council Action:** Motion made by Mayor LaMear, seconded by Councilor Price to tentatively approve Appeal AP16-01 by Heather Hansen of Conditional Use Permit CU16-10 and direct staff to revise the Findings and Conclusion contained in the staff report. Motion carried unanimously. Ayes: Councilors Price, Warr, Nemlowill and Mayor LaMear; Nays: None.

City Manager Estes asked if Council wanted to schedule a special meeting in December to review the revised findings. After some discussion with staff about timing, workload, and availability, City Council agreed to review the revised findings at a special meeting on Thursday, December 29, 2016 at 10:00 am in City Council Chambers with some Councilors and staff attending via telephone.

#### **Item 6(b): Trolley Trestle Repair Project 2017 – Contract Amendment #1 (Public Works)**

At their October 17, 2016 meeting, the City Council approved a design services contract with OBEC Consulting Engineers, Inc., to assist the City with completion of critical trestle maintenance work. During the design process it became apparent that maintenance work will need to be postponed until early April. To allow the Trolley to safely operate during March, a supplemental inspection is needed to verify the condition of the critical portions of the trestles. OBEC provided an estimate for this work for a total not-to-exceed cost of \$12,665. The Riverfront Trolley Association has agreed to split the cost of the supplemental inspection in the amount of \$6,332.50. The additional inspection work does not guarantee Trolley operation but will assist staff in determining whether safe operation can be permitted. We anticipate being able to permit operation with only minor temporary repairs ahead of the larger maintenance project. Funding is available for Contract Amendment #1 in the Promote Astoria Fund; 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 the supplemental budget for Council consideration in March 2017 with the construction contract anticipated in April 2017. It is recommended that Council approve Contract Amendment #1 for additional inspection services for the 2017 Trolley Trestle Repair Project.

**City Council Action:** Motion made by Councilor Warr, seconded by Councilor Nemlowill to approve Contract Amendment #1 for additional inspection services for the 2017 Trolley Trestle Repair Project. Motion carried unanimously. Ayes: Councilors Price, Warr, Nemlowill and Mayor LaMear; Nays: None.

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

Chris Farrar, 3023 Harrison Avenue, Astoria, stated Council was aware of concerns about the quality of water being served to the citizens of Astoria. However, these concerns have never been fully revealed to the public. Over the last few days, he has spoken to several concerned citizens including a pregnant woman. He believed the public deserved to have all of the information the City has about its water and the substances in the water. If the City simply gives people the information they need, they will feel a lot better about the water quality. No one is pointing fingers or trying to cause problems, but the City can deflate concerns just by giving the public all of the information.

Mayor LaMear confirmed with Director Cook that a letter would be sent out to all water customers with their next bill. City Manager Estes added that the home page of the City's website contained a memorandum explaining all of the technical issues on the water quality and the Water Supervisor's contact information.

Mr. Farrar said he appreciated the City's efforts to inform people and confirmed that staff was not in the process of hiring a new water quality manager. He also stated that he appreciated his Councilor, Councilor Warr. Two nights each month for 12 years, Councilor Warr has had to come to meetings to listen to people like himself and review 200+ page packets. Councilor Warr rarely missed a meeting, always showed up very well prepared, and always stated his position clearly. While he was often on a different track from Councilor Warr, he appreciated the Councilor's more conservative side and ability to give people confidence in his representation of his constituents. It is important that this Council refrain from making unanimous decisions all the time and Councilor Warr gave people a voice.

Perry Salzhauer, Greenlight Law Group, Portland, stated he wanted the City's guidance on appropriate uses within the S2-A Zone, given City Council's decision on the appeal. He asked what types of businesses the City would consider appropriate and allowable, given the type of zone, compared to uses allowed outright within that zone. He also asked that the City provide clarification on parking, which is very limited in commercial zones. Earlier that day, only 20.7 percent of the available spaces were occupied, so parking spaces are highly available in that area. He understood everyone's concerns, but he had to look at the issues from a realistic standpoint. He also needs to determine which uses would be better and have a lower impact to the residences in that space.

City Attorney Henningsgaard said it would not be appropriate for staff to discuss this at this meeting and suggested Mr. Sauzauer contact Director Cronin after the hearing.

#### **ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:55 pm.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Finance Director

\_\_\_\_\_  
City Manager

## **HISTORIC LANDMARKS COMMISSION MEETING**

City Council Chambers

October 18, 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, and Thomas Stanley. Commissioner Paul Caruana arrived at approximately 5:23 pm.

Commissioners Excused: Commissioners Mac Burns and Kevin McHone.

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

President Gunderson welcomed John Goodenberger and his students from the Historic Preservation program at Clatsop Community College. She announced that the public hearing for Item 4(b): NC16-05 would be held first. She explained that Vice President Dieffenbach would have to step down from the dais during Item 4(a): EX16-10 and so the Commission was still waiting for one more Commissioner to have a quorum.

### APPROVAL OF MINUTES – ITEM 3(a):

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

Commissioner Stanley moved to approve the minutes of August 16, 2016 as presented; seconded by Commissioner Osterberg. Ayes: President Gunderson, Vice President Dieffenbach, Commissioners Osterberg, and Stanley. Nays: None.

### 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.

The Commission proceeded to Item 4(b): NC16-05 at this time.

### ITEM 4(a):

EX16-10 Exterior Alteration EX16-10 by Michelle Dieffenbach, Rickenbach Construction Inc. for Buoy Beer to install two roll-up doors, install windows in various locations, replace decking, add solar roof panels, and restore original signage on an existing commercial building at 2 7<sup>th</sup> Street in the A-2, Aquatic Two Development zone.

This item was addressed immediately following Item 4(b): NC16-05.

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 requested a presentation of the Staff report.



Planner Ferber presented the Staff report. She noted the Staff report listed the wrong property owner, but she would correct the mistake. Staff recommended approval with conditions. No correspondence has been received.

Commissioner Osterberg understood public notices were required for solar energy applications so that the public could give testimony at a public hearing. However, the HLC does not review any solar energy criteria. He asked if the HLC could consider testimony about the appearance and design of solar panels. Planner Ferber explained that this type of solar installation requires a Type 2 review, which includes a public notice. For efficiency, she included the public notice for the solar application with the public notice for the rest of the project. The Commission will not review the solar panel structure.

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

Jared Rickenbach, 37804 Eagle Lane, Astoria, said he appreciated the Staff report and Staff, as well as the HLC for hearing this matter. He offered to answer any questions.

Commissioner Osterberg understood the new roofing would be designed to match the existing roof top pop up. He asked what materials would be used on the roof and what the roofing would look like. Mr. Rickenbach explained that standard 24-inch corrugated metal agricultural panels would be used. The existing pop up, which is about 10 feet taller than the building, is used for forklift access above the loading zone. There is another building of the same design on the far east side that acts as a third story to the main building, which used to be a mechanical shed.

Commissioner Osterberg asked what materials would be used on the deck additions proposed for the west and north sides. He was also concerned about the handrail requirements on the decks. Mr. Rickenbach confirmed the site already contains both wood and concrete and the decks would be used for access and maintenance. Wood will be used on the new deck on the west side, but the deck on the north side already exists. The north deck is used for maintenance and is not accessible to the public because it does not have railings. However, this would be addressed during construction. He confirmed the deck extended over the river. He explained the existing railing along 45 to 50 feet of the building prevents access to maintain the siding, windows, and gutters. He will be required to comply with OSHA's construction and maintenance safety standards. Handrails are not required on over water decks if preservation devices are present. Therefore, no railings have been proposed.

President Gunderson asked if the corrugated metal would be replaced after the sign is removed. Mr. Rickenbach said the existing material is T1-11 or plywood. Once the sign is removed, the old ship lap siding would be painted and restored.

President Gunderson called for any presentations by persons in favor of the application.

Luke Colvin, 42 7<sup>th</sup> Street, Suite 100, Astoria, said he is one of the founders and Chief Executive Officer of Buoy Beer. He is present to answer questions about the business' operations.

Commissioner Osterberg asked if Mr. Colvin would be concerned about the safety of employees working on a wooden over-water deck without handrails. Mr. Colvin replied probably not. He explained that all of the buildings in the area traditionally operated as fish processing plants that never had railings. Life jackets and personal protection equipment (PPEs) are required. The deck will be used to access the siding and windows, which will require employees to be on a substantial ladder. So, a railing would do very little to protect an employee.

Commissioner Stanley noted the HLC does not review railings or any other safety features and that Commissioner Osterberg was simply asking out of curiosity. Mr. Colvin said he was happy to discuss railings even if the conversation was arbitrary. He noted OSHA had assured him that railings were not needed.

President Gunderson called for any testimony impartial to or against the application. Seeing none, she confirmed Staff had no closing remarks and closed the public testimony portion of the hearing. She called for Commission discussion and deliberation.



Commissioner Stanley stated the last two applications by Buoy Beer were approved and resulted in tremendous outcomes. He was excited about the restoration of the sign because it would add a lot to the overall ambiance of the town. He was in favor of the project.

Commissioner Caruana said he was excited that the business was growing and supported the request.

Commissioner Osterberg agreed the proposal met all of the criteria for approval and he supported the application.

President Gunderson said everything Buoy Beer has done has made the town better. Buoy Beer does first class work without cutting corners and they should be proud of their growth.

Commissioner Osterberg moved that the Historic Landmarks Commission (HLC) adopt the Findings and Conclusions contained in the Staff report and approve Exterior Alteration EX16-10 by Michelle Dieffenbach; seconded by Commissioner Stanley. Motion passed unanimously.

President Gunderson read the rules of appeal into the record.

Vice President Dieffenbach returned to the dais.

The Commission proceeded to Item 4(a) at this time.

ITEM 4(b):

NC16-05      New Construction NC16-05 by Jack E. Coffey, Jack E. Coffey Construction for Ken F. Thompson to construct an approximate 900 square foot detached garage adjacent to historic property at 3682 Franklin in the R-2, Medium Density Residential zone.

This Item was addressed immediately following Item 3: Approval of Minutes.

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. None declared. 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 for this permit, but during review of the variance approved for this project, one person expressed concerns about the compatibility of the garage to surrounding structures. All other comments were from adjacent property owners who had concerns about the variance, which has already been approved.

Commissioner Caruana arrived at approximately 5:23 pm.

President Gunderson noted two different sizes were stated in the Staff report and asked which size was correct. She also asked if the Commission needed to review lighting. Planner Ferber confirmed the correct size of the garage was 22 feet by 40 feet. No lighting was proposed, but the Commission could require lighting.

President Gunderson noted the application said T1-11 siding would be used, but the Staff report indicated the siding would be lap siding. She believed the Commission would prefer lap siding. The rendering seems to indicate there would only be one door on the three-car garage, but the Staff report indicates there would be three doors, each a different size. Planner Ferber understood the Applicant had proposed one man door and one garage door.

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

Jack Coffey, 1447 8<sup>th</sup> Street, Astoria, stated the project is small and he was present to answer questions.



Commissioner Osterberg asked for clarification on the doors. Mr. Coffey said the garage would be a three-car garage. Ken Thompson is the only person living on the property, and the garage will not be used as a three-car garage. The garage will store two cars and only one car will be used. The small door on the right will be used for the vehicle driven daily. The man door will be on the south side. Very few windows have been proposed and most neighbors will not have a direct line of site to the garage. He was trying to keep the roofline low to minimize the impact to people with a view from up on the hillside. The photograph in the Staff report does not do it justice. The garage will be tucked into the lower meadow at a lower elevation than the house. The roof of the garage will sit lower than the house and the property owner will be able to see all of the garage's entry doors from his kitchen. The garage will be secluded as he wanted to mitigate against break ins. The Code requires a light by the man door and possibly by the garage doors. He suggested the lights be put on a timer and aimed away from the neighbors. None of the neighbors will have a line of sight to the man door, and the garage door light would only be a concern if it were pointed straight forward. However, pointing the light straight forward would not light up anything useful for the property owner. There would likely be a single outlet between the two main garage doors with a flood light pointing sideways in each direction. The lights would be on a sensor and a timer, not lit up all the time. A 200-amp service panel in the house would provide electricity to the garage. An electrician has said it would provide more than enough power to feed a second building, so there will not be any overhead poles.

Commissioner Caruana asked if the lap siding would be smooth or wood grain. Mr. Coffey said the siding would be 5-inch concrete lap siding, which is the closest he can get to emulate the house. Standard Hardie plank lap siding would be used. He preferred to use wood grain, but would use smooth if the Commission required it because Mr. Thompson did not have a preference. The house has cedar lap siding of a unique size. The cedar siding is relatively smooth, but it also has rough patches. Additionally, the house has 80 years of paint covering the wood grain. Therefore, either finish would be fine.

Commissioner Caruana asked what sizes would be used on the fascia board, bargeboard, and garage door trim. Mr. Coffey stated he wanted to trim the garage with something similar to what is on the house. His pencil sketch did not depict this. He does not use computer aided drafting and does not usually sketch buildings.

Commissioner Caruana said the garage should match the house and the Commission usually prefers to see evidence of this. This house has substantial casings. Mr. Coffey explained that he does historic restoration work and any time the Commission is that interested in windows, doors, and everything else, he makes things match. He does not try to mix in modern designs. When trying to emulate a particular period, he does what was done in that period as much as possible.

Commissioner Caruana clarified that in the future, anyone who wants to challenge the HLC's vote must be able to come back to these documents and see what was approved. Personally, he trusted the great builders in the area. However, outsiders need to be able to see what the HLC approved. Mr. Coffey said a building like this would usually have a corner wrapping board. The house has a 1-inch by 6-inch corner board, so he would likely use the same on the garage. The house has been worked and reworked, but it would normally have 1 inch by 6 inch trim around the doors and windows as well. So, he planned to do this on the garage. He understood the Commission might object to the roof pitch, but he wanted to keep the roof low so as not to alarm the neighbor up the hill.

President Gunderson said the Commission usually prefers smooth siding and smooth garage doors without any wood grain. She asked if divided lites would be used at the top of the doors. Mr. Coffey confirmed he would use smooth siding and doors. He had listed divided lites as an option because he wanted to limit break-ins. He picked windows that are small and would be placed up high, making them more difficult to get into. He could install steel grids on the interior.

President Gunderson said she was concerned about the visibility of the structure if the trees were damaged in a storm. It is important that the garage is cohesive with the neighborhood. Mr. Coffey understood and added that the trees might not belong to Mr. Thompson, so they could be cut down by someone else. President Gunderson said she preferred windows so the garage did not look like a box. The windows could be covered from the inside. Mr. Coffey explained the lot is isolated and windows would increase the chances of someone getting in. Trees surround three sides of the lot. The only line of site to the building will be from Mr. Thompson's house. He did not want windows that could not be seen from the main 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.

President Gunderson asked if any of the Commissioners had ex parte contacts. Commissioner Osterberg confirmed he visited the site, but did not have any contact with anyone regarding this project. Commissioner Caruana confirmed he knew Mr. Coffey, but did not discuss this request.

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

Commissioner Stanley said without windows, the building is a box. He appreciated the concern for security, but he also believed the HLC was not tasked with deciding how windows should be secured. There is no way to predict what will happen to a property in the future. The doors need some kind of ornament, like windows, to make the garage look like it belongs in the neighborhood and because the garage will be more than half the size of the house.

Commissioner Osterberg stated that if the roof is not changed, the garage will need every bit of ornamentation that has been discussed, like the corner boards, trim, lites in the garage door, and smooth lap siding. All of these elements need to be added as conditions of approval in order to make the garage acceptable and meet the criteria for approval.

Commissioner Caruana said he preferred the garage match the house. A 5/12 pitch would only raise the roof by 11 inches, which he preferred. He also wanted casings on the doors, corner boards, and a smooth siding exposure that match the house as much as possible. He was not as concerned about the windows, especially on the garage doors. The house is a Craftsman, so the garage would need square windows to make it look like the house. An additional window would be nice, but he was more concerned about the trim, bargeboards, corner boards, roof pitch, and siding.

Vice President Dieffenbach said she agreed with Commissioner Caruana. Many garages do not have windows, but the detailing of the trim pieces and other components of the building needed to match the house.

President Gunderson said she preferred windows, but agreed the details that make the garage match the house were missing from the proposal.

Vice President Dieffenbach asked if the Commission needed to require lites on the garage doors.

Commissioner Caruana stated that would be an administrative decision. He explained that the drawings do not need to be fancy, but they usually lack all of the details the Commission wants to review. This requires the Commission to make approvals with all kinds of modifications. It would be nice to have an image or drawing that reflects what was approved. He added that this garage would be large and it would look like a manufactured home if the roof were too low and had few windows. However, if the roof were raised and the details matched the house, the structure would be tasteful.

President Gunderson confirmed she was comfortable with those conditions knowing that Planner Ferber would ensure compliance.

Commissioner Stanley believed windows would add a lot to the building.

Planner Ferber explained that she could add the Commission's conditions of approval. However, this would require a continuance so the HLC could adopt Findings of Fact. Alternatively, the Commission could require the Applicant to provide Staff with more details that could be approved administratively.

President Gunderson said she did not want to delay the project another month.

Commissioner Osterberg confirmed Condition 5 stated that if doors and windows had lites, they had to be true divided lites; however, the condition did not require doors and windows to have lites. He believed Condition 6 needed to be substantially revised. A condition describing how something is usually discouraged could not be



used to approve this proposal. The condition must state that something shall be required or submitted to Staff for administrative review.

Planner Ferber confirmed she had additional conditions of approval for the Commission to discuss. Electrical permits would need to be obtained from the County, the Staff report would be clarified to clearly indicate that lap siding would be used, the Applicant would be required to add casings around the doors and windows to match the house and corner boards, flood lamps must not cast a glare into any adjacent properties, and change the roof pitch to 5/12 or 6/12. She suggested the Commission ask the Applicant what type of lighting would be installed.

Vice President Dieffenbach believed the condition requiring trim must also require roof trim. She asked if Condition 6 would be omitted if the additional conditions were added. Planner Ferber said she could amend Condition 6 to say garage doors and siding shall have smooth siding.

Commissioner Caruana said he preferred a minimum 5/12 roof pitch. Additionally, window trim did not need to be required as long as the rest of the structure was trimmed well. President Gunderson and Vice President Dieffenbach agreed.

Commissioner Osterberg stated if the roof pitch were changed and trim elements were added, he would not be too concerned about the windows either. The Applicant could still choose to add trim to the windows, but the Commission did not need to require it.

Commissioner Stanley said he was outnumbered, so he would concede to the rest of the Commission.

Planner Ferber confirmed the 5/12 roof pitch was the minimum allowed by the Commission.

Vice President Dieffenbach believed the conditions in the Staff report should reflect that windows are not required in the doors. Planner Ferber noted the garage doors are a large design element, which she believed should be reviewed by the Commission. However, she would be happy to conduct an administrative review of the doors.

President Gunderson stated the windows would have to be square, but the windows shown in the Staff report were rounded. Commissioner Caruana believed if there were windows in the doors, there would be no windows in the walls. Commissioner Stanley clarified that he was not speaking about windows in the walls, only windows in the doors. He understood Mr. Coffey's safety concerns, but believed the doors and windows could be secured. The Commission agreed that if the doors have windows, they would have to be square and true divided because the structure would be a Craftsman-style building.

Vice President Dieffenbach moved that the Historic Landmarks Commission (HLC) adopt the Findings and Conclusions contained in the Staff report, with the following addition to the Conclusion and Recommendation:

"7. The applicant shall add corner boards, and ¼ or 1/5 casings around all doors and windows to match the house. The roof shall be trimmed and include fascia boards.

8. Per HLC discussion, no windows are required, however if they are included they shall be square in shape and any lites must be true divided.

9. The proposed roof pitch was deemed inappropriate for the design. The applicant shall construct roof with a minimum of 5:12 pitch.

10. The applicant proposed flood lamps during the HLC meeting. All exterior lighting shall be downcast and not glare into the neighbor's property. Prior to installation, lighting fixtures shall be submitted for review to the Community Development Department.

11. The garage door and garage siding shall be smooth and not have any faux texture.";

and approve New Construction NC16-05 by Jack E. Coffey. Motion seconded by Commissioner Caruana. Motion passed unanimously.

President Gunderson read the rules of appeal into the record.

The Commission proceeded to Item 4(a): EX16-10 at this time.

DRAFT



## REPORTS OF OFFICERS/COMMISSIONERS – ITEM 5:

This item was addressed immediately following Item 4(a): EX16-10.

Director Cronin updated the HLC on the following:

- Accessory Dwelling Unit (ADU) Code Amendments – The definition of ADUs will be expanded to include tiny homes. A work session is scheduled for October 19<sup>th</sup> and the continuance of the public hearing is scheduled for October 25<sup>th</sup>.
- Astor West Urban Renewal District Expansion – An open house is scheduled for October 25<sup>th</sup> from 4:30 pm to 6:00 pm in Council Chambers. The Planning Commission will be tasked with reviewing the expansion's consistency with the Comprehensive Plan.
- National Park Service (NPS) Partnership – The City has volunteered to assist with studying and developing recommendations for continuing Astoria's relationship with the NPS. He has already participated in some conference calls and webinars, and he would provide more updates in the future.
- Building Official/Code Enforcement Officer – The new employee, Ben Small, began a few weeks ago and he will be in training for at least the next six months. Jim Byerley, City of Warrenton's Building Official, will be mentoring Ben during training and doing commercial inspections.

Planner Ferber reported on a State Historic Preservation Office (SHPO) workshop in Salem. More information was available on SHPO's website. She also noted she would be attending a CLG workshop in November to discuss the façade improvement program.

President Gunderson called for a recess at 6:20 pm. The HLC meeting reconvened at 6:28 pm. Commissioner Stanley was excused from the remainder of the meeting.

## GUEST PRESENTATIONS:

### **Clatsop Community College Historic Preservation Course Design Review Process Questions and Answers**

Following introductions of the HLC and students present from the Historic Preservation Class, John Goodenberger briefly noted how the \_\_\_\_\_ and its 14 categories were developed to assist Staff as they consider what buildings or structures to protect in Astoria.

### **Lecture by John Goodenberger "Overlooked Astoria" on Astoria's historic resources and heritage**

John Goodenberger, Guest Lecturer, presented "Overlooked Astoria" via PowerPoint, which included a review of the history leading to and visual examples of the 14 categories in the \_\_\_\_\_. His presentation included highlights of development and redevelopment in the city as he recounted the history of Astoria, describing multiple external influences, which included new and evolving industries, various cultural and religious influences, and infrastructure that impacted Astoria's historic resources and heritage and resulted in the historic elements resources that currently exist in Astoria today. He emphasized the importance of context, noting oral history and urban legends are as important as actual history events, and shared several anecdotes related to some of Astoria's historic districts and structures. He cautioned that it was easy to justify demolition or removal of historic features or structures, especially small ones, and implored Astoria's citizens to be vigilant about maintaining the character and character defining elements of the city's homes, neighborhoods, and commercial areas.

President Gunderson thanked everyone for attending the presentation and invited them to attend the HLC's monthly meetings, noting the meeting agendas are posted on the City's website.

## ADJOURNMENT:

There being no further business, the meeting was adjourned at 7:51 pm.

**APPROVED:**

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Community Development Director

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## **ASTORIA PLANNING COMMISSION MEETING**

Astoria City Hall  
September 27, 2016  
CALL TO ORDER:

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

### ROLL CALL:

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

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:

**Item 3(a) July 26, 2016**  
**Item 3(b) August 2, 2016**

Commissioner Innes moved that the Astoria Planning Commission approve the minutes of July 26, 2016 and August 2, 2016, as presented; seconded by Vice President Easom. Motion passed unanimously.

### PUBLIC HEARINGS:

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

#### ITEM 4(a):

CU03-04 Permit Extension request for Conditional Use CU03-04 by Elisabeth Nelson for a temporary use permit for one year, to August 26, 2017 to operate the Astoria Conservatory of Music in the existing church structure at 1103 Grand Avenue in the R-3, High 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.

Vice President Easom declared that he was a member of the First Presbyterian Church, but this request would not affect his personal finances or his vote.

Commissioner Moore declared that his son is currently a student at the conservatory, but that would not affect his objectivity.

President Pearson called for the Staff report.

Planner Ferber reviewed the written Staff report.

President Pearson opened the public hearing and confirmed the Applicant was not present. 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 Mitchell believed using an existing building for a non-obstructive use was great. All of the Commissioners confirmed they supported the request.

Commissioner Moore moved that the Astoria Planning Commission adopt the Findings and Conclusions contained in the Staff report and approve Permit Extension request for Conditional Use CU03-04 by Elisabeth Nelson; seconded by Commissioner Mitchell. Motion passed unanimously.

President Pearson read the rules of appeal into the record.

#### ITEM 4(b):

A16-01 Amendment A16-01 by Community Development Director to amend the Astoria Development Code, Article 9 Administrative Procedures, City Wide. Development Code Standards Articles 9 and 10 are applicable to the request.

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 called for the Staff report.

Director Cronin reviewed the written Staff report and noted no significant changes had been made since April.

Commissioner Mitchell said she appreciated the level of detail that went into this work because it will solve problems down the road.

Commissioner Moore confirmed no major changes had been made since the last time the Planning Commission discussed the amendments.

Commissioner Fitzpatrick asked what changes had been made other than providing notices to people within 200 feet and posting notices at the site. Director Cronin clarified there were no other changes. He explained Staff had already been providing notices to people within 200 feet, but the current Code had only required a radius of 100 feet from the site.

President Pearson opened the public hearing and called for any testimony in favor of the application.

Jack Osterberg, 1711 Grand Ave., Astoria, stated he believed the proposed amendments made sense, added necessary information, and aligned the Code more with what the City has already been doing.

President Pearson called for any testimony impartial to the application.

Doug Thompson, 342 14<sup>th</sup> Street, #602, Astoria, said in theory he was supportive of streamlining administrative procedures regarding land use issues and he believed the proposed amendments looked good. He received information from Director Cronin that night that the Department of Land Conservation (DLCD) had a template for a model. He believed models were beneficial and he wanted to know in which areas Director Cronin had decided to vary from the model and why because that information did not appear to be included in the Staff report. He has known about this hearing for several weeks now, but the materials were not released until the middle of last week. He did not know the proposed language was almost identical to what was discussed last spring. He noted his concerns were not substantial. This issue quickly died last spring and now, six months later, the issue is being revisited. However, he only found out in the last several days that the language is identical to the previous work. Director Cronin has decided to link two chapters, so this hearing and the hearing on the Code amendments related to accessory dwelling units (ADU) should be continued. Many people have not had the opportunity to review the material.

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

Commissioner Mitchell asked why this hearing had been delayed. Director Cronin explained that this proposal was linked to the ADU proposal for efficiency and the two are not related in any way. He could have scheduled this hearing for April 2016, but Staff wanted to provide more opportunities for public comment. He apologized for not including the model code language in the Staff report and offered to provide the information to anyone who wanted it.

Commissioner Moore believed the Planning Commission was ready to move forward on Article 9 that last time they reviewed it and no changes have been made since then.

President Pearson said he supported the changes, particularly the higher standards for mailing notices because it increases transparency. Commissioner Moore added that the onsite notices will let renters know about what is going on.

Vice President Easom moved that the Astoria Planning Commission finds that Amendment A16-01 to be necessary and recommends approval to City Council; seconded by Commissioner Fitzpatrick. Motion passed unanimously.

#### ITEM 4(c):

A16-02            Amendment A16-02 by the Community Development Director to amend the Astoria Development Code, Article 3: Accessory Dwelling Units, Article 1: Definitions section to encourage more housing options as part of a larger affordable housing strategy, City Wide. Development Code Standards Articles 9 and 10 are applicable to the request.



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 called for the Staff report.

Director Cronin reviewed the written Staff report and noted no significant changes had been made since April.

Commissioner Moore understood that an existing detached garage could not be converted to an ADU, but the space above a detached garage could be. He recommended allowing detached garages to be converted because Astoria has many small detached garages that are not useful as garages and adding another story would be prohibitively expensive. He also believed the location of entrances should state whether the requirements apply to detached structures.

Commissioner Mitchell believed the Code language should ensure normal doors are used on converted garages to prevent someone from using a garage door as an entrance.

Following discussion, the Commission agreed that ADUs should not be mentioned in the paragraph about the location of entrances.

Commissioner Moore asked how many units Staff expected to create. Director Cronin said he could not predict the market, noting this was also discussed at the Lower Columbia Preservation Society (LCPS) meeting held just before this Planning Commission meeting. However, he was sure no additional units would be created under the existing Codes. The City has only received one application in five years. Commissioner Moore understood the City was trying to open up some opportunities for some additional low rent units. Director Cronin confirmed that he did not expect more than two or three applications per year.

Commissioner Moore asked how many lots would be affected by the changes in the lot size requirements. Director Cronin said he did not have the answer, but noted Staff is not receiving requests for lot partitions because of the current requirements. Staff could run a GIS analysis to determine the number of lots, but it would be a small number. Placing a tiny home or ADU on a flat 9,000 square foot lot is a more attractive option than waiting on the City to do something about the lot sizes.

Commissioner Moore understood tiny homes had to be constructed off site and attached to a foundation when placed on site. Director Cronin clarified tiny homes are not required to be built off site, but they usually are. The Code would allow a tiny home to be built on the property. The proposed changes create the ability to add detached units, but define a tiny home as a manufactured dwelling built off site.

Vice President Easom said the recommendation discusses reducing lot sizes from 5,000 to 4,500 square feet. Director Cronin explained the Staff report in the packet was included to keep the Findings of Fact available from the original Staff report.

Commissioner Fitzpatrick said he was also concerned about the original Staff report. Director Cronin clarified the Commission would be recommending the amendments, not the Staff report, to City Council and a new Staff report would be provided to City Council.

Vice President Easom disagreed with eliminating garages, which can increase on-street parking. However, he supported putting an ADU above a garage.

Director Cronin confirmed that a garage counted as a parking space when a driveway was present. However, Staff has found that no one uses their garages for parking anymore; they are used for storage.

Vice President Easom understood that ADUs would have to provide adequate parking, but the Code allows that parking to be on the street. Astoria has neighborhoods with parking issues and increasing on-street parking by eliminating a garage is a mistake.

Commissioner Fitzpatrick agreed.

President Pearson opened the public hearing and called for any testimony in favor of the application. Hearing none, he called for any testimony impartial to the application.



Doug Thompson, 342 14<sup>th</sup> Street, #602, Astoria, stated he was generally in favor of the concept of increasing density in Astoria. He was also in favor of a variety of housing types in order to accomplish increased density because density is directly related to affordability. There is a lot of pressure to increase density. In the past few days, the Obama Administration just released a 32-page toolkit available online for cities and counties to use when increasing density. This is not a politically pain-free exercise, but he believed it was necessary to increase the supply and the affordability of housing of all types. He commended Director Cronin and the Planning Commission for dealing with this issue. However, this issue is moving forward very quickly. He realized the City dealt with this issue six months ago, but he did not know the Staff report that was issued and made available to the public just last week was the identical to the Staff report from last spring. Now, he has learned that Staff report could not be relied upon 100 percent. Earlier that day, he received a notice in the mail from the City. The notices were mailed last Friday, September 23<sup>rd</sup>. It was a Notice of Public Hearing for the Astoria City Council on Monday, October 17<sup>th</sup> to consider the two items being discussed now. The notice says the Planning Commission has already recommended approval of the two requests. He asked for an explanation.

Director Cronin said he had not reviewed the notice before it was sent out, but explained that the City is required to send the notices in advance.

President Pearson confirmed the Planning Commission had not approved anything when the notices were sent.

Mr. Thompson understood that errors happen, but this public notice did not allow the public to understand when they would have the opportunity to comment.

Commissioner Mitchell stated the point of the public notice is to get people to attend the meeting and this notice worked.

President Pearson apologized for the mistake.

Mr. Thompson added that he was speaking as an individual, but he was also a member of the Lower Columbia Preservation Society (LCPS) Board of Directors and has been designated by that board to advocate for the LCPS. However, he was not present in that role because the board has not reviewed, discussed, or taken a position on these two requests. He asked the Planning Commission to continue this hearing to give the public the opportunity to look at the recommendations from today, not six months ago. The Sightline Institute in Seattle states on their website that they did an exhaustive study on ADUs within the last two years. The study included a survey of about 36 cities of all sizes in the northwest and the survey results were summarized in a 4-page matrix that he printed from the website, which he had available. The matrix identifies the seven criteria that those cities wrestled with to come to conclusion on as follows: the number of ADUs allowed per mile; off-street parking spaces required per ADU; must property owner live on site; how many people may live on the lot; how big may the ADUs be; where will ADUs be allowed; and must the exterior design of the ADU match the house. The Staff report addresses each of these points. It is possible that the Planning Commission held work sessions to deal with the issues in detail, but that would have been done six months ago. He questioned whether the public was engaged in the process. He understood a public engagement process would be time consuming and costly. The City did this with the Riverfront Vision Plan by dividing the process into bite sized chunks. He read in the newspaper that the City is now struggling to continue the process. He understood time was money, but believed this proposal to allow ADUs in every zone would affect every citizen in the city. He advised the Commission to engage the public. An education process is necessary because there were things in the Staff report he did not understand even though he served on this Commission for three years and on City Council for 11 years. He believed the public should have the opportunity to think about this proposal. As a Planning Commissioner, he was advised early on that the Commission's job is to sweat the details and deal with the minutia of the issues, allowing the Commission to tell Council that a lot of work went into their recommendation. If the Planning Commission has not looked at other cities, dealt with all of the issues, and tried to learn lessons from other jurisdictions through a thorough public discussion, then he urged the Commission to take the time to do this right.

Sarah Jane Bardy, 1661 Irving, Astoria, said she agreed with much of what Mr. Thompson said. She was not opposed to ADUs and understood they could address the housing crisis. People are moving to Astoria, but there is nowhere for them to go. However, she believed the amendments needed to be narrowed to ensure that they do fulfill housing needs before being approved. It is very important to include a clause ensuring that converted garages and newly built structures are rented at least on a month-to-month basis. This will prevent people from renting the units out as nightly vacation rentals. She was also concerned about the parking requirements. Some neighborhoods already have a parking shortage. Cars park on the sidewalk along one stretch of Irving because there are no driveways. The Code could prevent people in that neighborhood from having ADUs because the



parking is not adequate for more tenants. She believed new construction should not be visible from the street because the beauty of the town is a huge part of its charm. She has never seen a town this well preserved. The Planning Commission should not just say no to everything, so she believes the amendments are a good idea, but they need to be narrowed. She also wants new construction to match or be congruent with the style of the house. Years ago, she was thinking about converting her garage. The City told her no codes were in place for that type of project at the time. Her garage and house were built in 1905 and her converted unit would have matched the house. She believed all of her suggestions could be written in and the amendments have the potential to make the city more affordable to live in.

Katy Rathmell, Astoria, said she was speaking as a member of LCPS. She believed the comments made so far were correct. She wanted the process slowed down so that the issues could be discussed. She did not believe the community had enough information about how the amendments would impact the neighborhoods. The community has no idea how much density can be increased and it would be nice to know how many more housing units could be put in Astoria without overwhelming the system. She asked the Commission to continue the hearing and let the public have more time to discuss and think about the issues.

Dave Pollard, 1676 Jerome, Astoria, said he has lived in Astoria all his life. His family came to Astoria in 1900 and they have had a deep commitment to the city for a long time. He lives in a National Historic District and a designated historic home in an area that he believed would be significantly impacted by the proposed changes. He believed Astoria was experiencing a renaissance and much of the change is positive. However, he also believed the changes made were fragile. The number of vacant buildings downtown indicates there is a lot of potential for growth, but that growth has not yet occurred in the commercial areas. The people who come to Astoria are people who can go anywhere they want and their income is portable. If these people find another place that is exciting, they will go there instead of Astoria. He hated to say he was opposed to a proposal designed to create affordable housing, but he did not believe the proposal would actually create affordable housing. Last night, he looked online and found 13 vacation rentals by owners in Astoria, and Airbnb listed 35. There are also other homeowners who are renting out their properties without being officially listed on Airbnb. This has resulted in a tremendous demand for transient housing and recreational housing in Astoria. He has been very interested in how many homes are empty in his neighborhood. About a year ago, he walked the neighborhood. Clatsop Community College is on the south side of his house. There were 31 houses that were used for recreational housing and were not lived in full-time. Within the last 24 hours he passed by those same properties and found that there are now 29 houses not lived in full-time. This means people are buying the houses, but not living in them full-time or participating in Astoria's economy. These people own the properties but are not really a part of the community. He was afraid this proposal would become a Petri dish for creating Airbnb properties and transient housing. The government has problems enforcing the rules that have been established, especially because there is no system in place to enforce the rules. Can the City control who parks where or how many cars a person owns? Can the City control who lives in a house with an accessory dwelling? Those are pretty difficult to do. People may or may not live in the house or they may rent under the radar. People could be parking cars in spaces that could be used by residents or other individuals. He was concerned that this proposal would eventually cause the situation that occurred in Cannon Beach, where the number of vacation rentals ended up overwhelming them. The same thing has happened in Seaside and Gearhart. He was also concerned about density and parking. At about 11:00 am on weekdays, he must park several blocks away from his house. On Irving between 16<sup>th</sup> and 17<sup>th</sup> Streets, there are eight homes. On his street, there are three homes. All of those homes except one could have an accessory dwelling unit. What we're really talking about is increasing densities in areas that cannot handle higher densities because there is no parking. He appreciates when people have to come to the City Planning Department to get variances because there are controls set to limit how much the density would impact the neighborhoods and how it would impact the quality of life in those neighborhoods. He was also concerned about what these changes would do to the historic neighborhoods. Converting a basement into an accessory dwelling unit would not have a visual impact on how the neighborhood presents itself. One block from his house is an area where large houses are turned into five-plexes, duplexes, and rental units. He was not categorically opposed to those types of changes. However, he was concerned about what tiny houses would do to historic districts. He goes to every historic district he can find in every town he has traveled to and has never seen an area that successfully presented itself well with things like tiny houses and trailers. If his community is going to present itself to the City, the State, and to the world as a wonderful town that supports historic preservation and historic districts, the City needs to be very careful about the types of structures built into the Development Code. He also believed it was very important to protect the quality of life and ensure the changes will really do what the City hopes they will do. He asked the Commission to consider whose needs would be met by this proposal.

President Pearson called for any testimony opposed to the application.



Linda Oldenkamp, 1676 Jerome, Astoria, stated she was opposed to the proposal, particularly the tiny house concept. The Comprehensive Plan's general land and water use goals state the primary goal is to maintain Astoria's existing character by encouraging compact urban form, strengthening the downtown core and waterfront areas, and protecting the residential and historic character of the city. The intent of the Plan is to promote Astoria as a commercial, industrial, tourist, and cultural center. The Plan's housing policies state the historic neighborhoods are recognized as some of the City's most significant assets and should be protected through the Historic Preservation Ordinance and other actions. Wherever possible, renovation of existing structures should be carried out in lieu of demolition or new construction. If the Commission plans to vote in favor of the proposal, she wanted to hear from each Commissioner how tiny houses in all of the neighborhoods would protect the historic character of neighborhoods. The historic homes and residential areas are the most wonderful things about Astoria and they need to be protected. She did not believe tiny houses were the answer. Nothing could convince her that tiny homes would end up being affordable housing. The Findings of Fact state the ability to use land efficiently would allow property owners to partition lots, use proceeds to finance improvements to existing historic structures, and allow reuse of existing buildings. This will provide income for the building owners and facilitate restoration and maintenance of historic buildings. This is not a fact. People will not necessarily use money from tiny houses to work on their homes. She was concerned because people in Astoria do not know about this proposal. She knew the City held meetings, but people do not know what the meetings are about. She encouraged the City to do all it could to get the information out to people. The City needs to hold a meeting with the community before going any further because these are sweeping changes. It is not fair or right that people do not know about this proposal. Property owners and renters need to know what is being proposed.

Pamela Alegria, 1264 Grand Ave., Astoria, said Astoria's charm and economic engine are its historic buildings and vistas. Astoria is a destination, but the proposed amendments might negate this accomplishment. She was concerned about tiny homes. The housing study seemed to indicate there were other strategies that have been proposed and would be more effective at increasing affordable housing. If tiny houses are approved, she suggested they be approved as a Type 2 permit to provide opportunities for comments. She also recommended tiny homes be a conditional use, not a permitted use in any zone. She preferred tiny homes only be permitted in a manufactured home or recreational vehicle park. Design guidelines should be required, particularly in historic areas, because every home should have its own aesthetics. Many of Astoria's streets have parking problems and many people have two cars. The parking ordinance is too wishy-washy because there are no criteria for determining how to credit parking spaces. This creates a lot of contention. She wanted the location of entrances and the location of the tiny house to be part of the design guidelines. She also wanted tiny homes limited to a cluster zone. She hoped the Commission would consider the effect of tiny homes on the character of the city and whether they will actually increase affordable housing.

LaRee Johnson, 1193 Harrison Ave., Astoria, said she supported protecting and maintaining Astoria's historic neighborhoods. She agreed with the speakers before her. The historic neighborhoods are the charming parts of Astoria. She wanted to know how a tiny house would fit into affordable criteria. She had no idea how much tiny houses cost to build, but she was interested in looking it up. Her apartments are lower income apartments and she could not understand how she could rent a tiny house after the building costs, taxes, and other expenses. She wanted to see some of the empty downtown buildings reutilized, improved, and made into affordable housing. She was also concerned about parking. There are three churches within a block of her house and there is no parking on Sundays between 10:00 am and 1:00 pm, even for the residents. She believed this process was moving too quickly and she wanted a community discussion on this proposal. She questioned whether these amendments would help tax-paying residents with historic homes or people who move into the area without jobs and need affordable housing.

Jack Osterberg, 1711 Grand Ave., Astoria, said he had not prepared any comments because he just noticed the email about the hearing earlier that afternoon when he returned home from vacation. He stated he was a member of the LCPS and the Historic Landmarks Commission (HLC), but he did not believe his position on the HLC had any bearing on this testimony. He opposed the amendments and agreed with the comments made impartial to the proposal. He was concerned about the overall impact to historic districts. He believed the amendments included many shades of grey. He supported many aspects, but he was troubled by other elements. The existence and placement of tiny houses in historic districts could never be placed without adverse or negative impacts. Perhaps some locations could be allowed under certain circumstances. However, in general, he was in opposition because of the way the Staff report was presented. He must speak against the application because he did not support the entire proposal. He lives in a historic district and parks his cars in his garage. He agreed that parking was an issue and that more time should be spent on this request. The Commission might believe they had already done their work, but several committed individuals have brought up some good points. He urged the Commission to listen to the testimony given at this hearing and consider a continuance.



Mike Sensenbaugh, 110 Kensington, Astoria, said he did not own a historic property, but he was a member of the LCPS. He did own a lot that could potentially be subdivided and had enough area to build an ADU or a tiny home. However, he was opposed to the proposed amendments. This would start a slippery slope in the community. About a year ago, he relocated to Astoria from a neighborhood in Portland with many smaller homes, which were removed and replaced with skinny homes or larger homes that were out of place in the neighborhood. He was very concerned when he first saw this proposal six months ago because a lot of the changes that are taking place in Portland could start here. When the packet was first posted online about a week ago, he believed some of the Commissioners were confused about why the April Staff report was being reviewed again. However, he did appreciate that City Council would receive an updated Staff report. This proposal might be a good start, but the Code needs a number of revisions. This is an opportunity to prevent the destruction of the visual appeal of the neighborhoods. He and his wife came to Astoria for 10 years before deciding to move. If ADUs could be incorporated while preserving the appearance of the neighborhoods, and the amendments could be tweaked before they are passed, then he would favor the proposal. He did not see that the amendments addressed the number of ADUs. The proposal addresses size, but does not say there can only be one ADU. He was afraid a number of tiny houses would show up on a larger property. The Commission needs to make sure that the proposed changes are for affordable housing, not vacation rentals or Airbnb.

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

Commissioner Fitzpatrick thanked everyone for speaking because people voiced many of the concerns he had as well. He asked which of the seven issues mentioned by Mr. Thompson applied to the Planning Commission.

Director Cronin stated he did not have the list, so he could not say. He confirmed he would look into it.

Commissioner Fitzpatrick believed all seven of the issues were valid considerations. He agreed that each application should be reviewed individually. He was also concerned about how units would be used and how those uses would affect neighbors and the community. Parking is a major concern. He had sent an email discussing the infill of housing in his neighborhood over the past two years. There are many parking issues on Sundays. A number of chronic vacancies have been filling in. He listed two houses that had once been chronic vacancies and are now occupied with people who have at least one car each. The cars have spilled out into his block on Grand and in front of his house and church. These parking issues did not exist five years ago. It is important to realize how serious the parking issues are getting with existing residences. Allowing more residences and offering an on-street parking space will increase the issues and seriously impact the neighborhoods. He was in favor of a continuance since it seemed to be the consensus of the audience.

Commissioner Moore thanked everyone who commented. He believed it was obvious that everyone who attended wanted more information and he believed an informational session would benefit many people. During public testimony, he heard many questions that had already been addressed, like the questions about vacation rentals. Astoria does not currently have good enforcement, but Staff has not proposed anything that would make vacation rentals any more legal. It would still be illegal to have a nightly or weekly vacation rental, even in an ADU. He appreciated the design review process because the Commission certainly would not want to see pop-up shanties on the side of a house. He was unsure if this had already been addressed through the building permitting process and wanted more information. He proposed a work session or an informational session. He liked most of the proposed amendments, but did have some concerns. He preferred to spend more time on these issues.

Commissioner Mitchell said she could not think of any reason not to take more time to involve the public. Some of the issues mentioned at this hearing were things she had not considered in great detail. She lives in an 1890 house, but it is not in a historic district. The streets in her neighborhood are all dead ends and they have parking problems. Her neighborhood has single-family homes that were converted to multi-family or have units over the garage. Affordable housing has not been discussed as part of this hearing. She wants to protect the area from second home owners who do not participate in the community, but this proposal does not deal with that issue. She has lived in Astoria for more than 20 years and remembers when this was the affordable resource for people who were working in Cannon Beach and Gearhart. This was one of the arguments for keeping the community college in Astoria because there was affordable student housing. This is not the case anymore. She did not want to write off the people who contribute to the community. The City needs to find a way for people who work here to also live here, and that may not be through tiny homes, but she believed that is what Staff and City Council had in mind when they prepared this proposal. Astoria does not have a lot of vacant land for apartments. She understood that some people cared deeply about the issues. Parking is an issue, but some value choices will have to be made. She was happy to continue this discussion and possibly get more people to speak about the issues. She noted



she was also a member of the LCPS, but the community needs to recognize that Astoria is becoming so cute and popular that people from the cruise ships with a lot of money decide to buy houses; that is not what makes Astoria. The community needs to struggle to find ways for all income groups to live here.

Vice President Easom said he was concerned about parking. He did not believe the proposed amendments would serve as an affordable home remedy. Tiny homes and ADUs would be rented at the full market rates, not reduced rates. The units might not be seen from the street, but they will still be seen by the neighbors. The visual impact matters to all surrounding properties and the street. Adding an ADU to take care of a sick mother seems legitimate, but if the mother dies or something happens to the homeowner, it will become another rental unit. Instead of putting money into an ADU, that money could be put into maintaining the main house. An 800 square foot ADU is larger than most studio or one-bedroom apartments by 300 to 400 square feet, which is substantial. At least two people could be added to the ADU, which would definitely impact the neighborhood. He believed the Commission should take more time to consider the proposal.

Commissioner Innes agreed with much of what had been said. She thanked everyone for attending and speaking. She believed there was nothing to lose by continuing the hearing. She was pleased with all of the energy put into the various editions of the Staff reports. The audience has some good suggestions, adding that coping with affordable housing has only just begun.

Commissioner Spence thanked everyone for clearly identifying their concerns. He supported Mr. Thompson's presentation and said he wanted to see a copy of the matrix. It is important for Staff and the Commission to see what other cities have gone through. He did not believe adding mini houses to a historic district would be compatible. Historic districts must be preserved. Any accessory units must comply with design requirements and neighbors are allowed to participate. He was in favor of a continuance. Implementation of the Riverfront Vision Plan was very successful because the community was involved, the City received feedback and made adjustments, and it was supported in the end. It is important for the community to support what the Commission is trying to do. Astoria has important historic districts that must be preserved, but the City's boundaries are extensive. There are opportunities outside of the historic districts, so maybe an exclusion could be added. This definitely needs more work, more input, and more dialogue between neighbors and the Commission.

President Pearson thanked everyone for attending because the Commission appreciates all feedback, for and against. As Staff pointed out in the beginning, there has only been one ADU in the last five years. To many people, that could seem like something is not working right. This is a vital community that has to move forward and there should be more going on. Only one ADU means the Development Code is not healthy and is not working. He supported finding a way to make ADUs work. Historic preservation is never supposed to be a moment frozen in time. Astoria is about so much more and the community has always defied the odds because they have never allowed historic preservation to define the city. Astoria loves its historic buildings and this is just a small section of the Development Code that does not preempt anything else. The proposed amendments will not stop the good work of the HLC or the protections already in place. None of the on-street parking rules will be changed. This section is just about ADUs. The Planning Commission has always had to make difficult decisions and it is very rare that everyone agrees. The perception that the Commission has rushed a decision is unacceptable, so he favored a continuance. However, the Commission must move forward and present something to City Council, where there will be another opportunity for the public to speak during a hearing.

President Pearson moved that the Astoria Planning Commission continue the public hearing on Amendment A16-02 by the Community Development Director to October 25, 2016 at 6:30 pm; seconded by Commissioner Fitzpatrick. Motion passed unanimously.

Director Cronin confirmed that the on-street parking standard will not change. He explained he was trying to provide an on-street credit for property owners with an actual City street in front of their home; but the Commission can strike that from the proposal and require that the extra parking be an off-street space. He was just trying to creatively maximize space. The vacation rental dwelling standards will not change with an accessory dwelling unit. A homeowner could have a home stay lodging through an ADU, but the Commission could decide not to allow this. Astoria requires a design review in most of the city and if an ADU were proposed, the design would be reviewed by the Design Review Committee or the HLC. The Planning Commission was not being asked to review design standards. The proposed amendments do not include changes to the review types, which are determined by zoning categories.

#### REPORTS OF OFFICERS/COMMISSIONERS:

Commissioner Innes reported that she recently attended a civic leadership training session that focused on planning. She asked for specific information on affordable housing, tiny housing, distrust at public meetings, and transparency. They discussed the Planning Commission's relationship to City Council, hearing processes, ethics, and community relations. No conclusions were drawn, but experiences were shared. She learned that land use and planning guidelines were adopted by the State when farming and forestry were the focus. The guidelines lack terminology related to urban development. She also learned that other communities have had success with pre-hearing training sessions, where the Community Development Director explains procedures, the issues being discussed at upcoming meetings, and the criteria that the Commission is required to review. Commissioners should always be gracious hosts because remaining open, welcoming, and pleasant allows for the best result.

Director Cronin announced the following upcoming events:

- Economic Development Strategy presentation at Fort George on Wednesday at 6:00 pm.
- Astor West Expansion open house, which will be proposed to the Planning Commission on October 25, 2016.

Commissioner Fitzpatrick asked if the Commissioners should take public comments on the proposed amendments. Director Cronin explained the differences between a legislative hearing and a quasi-judicial public hearing. He confirmed Commissioners could discuss the amendments outside of public hearings because they are simply forwarding recommendations to City Council.

Commissioner Fitzpatrick asked if the microphones in the audience could be turned off because they magnify the sounds in the audience. Director Cronin explained those microphones are used to record the minutes.

#### PUBLIC COMMENTS:

There were none.

#### ADJOURNMENT:

There being no further business, the meeting was adjourned at 8:20 pm.

#### **APPROVED:**

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Community Development Director



## **ASTORIA PLANNING COMMISSION MEETING**

Astoria City Hall  
October 25, 2016

### CALL TO ORDER:

President Pearson called the meeting to order at 6:36 pm.

### ROLL CALL:

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

Commissioners Excused: Vice President Kent Easom and Commissioner Sean Fitzpatrick

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

### APPROVAL OF MINUTES:

President Pearson asked for approval of the minutes of the June 28, 2016 and September 27, 2016 meetings. Commissioner Innes noted the following corrections:

- June 28, 2016 minutes, page 6, 4<sup>th</sup> paragraph, 2<sup>nd</sup> sentence – The first letter of the sentence needs to be capitalized.
- September 27, 2016, page 6, 3<sup>rd</sup> paragraph, 1<sup>st</sup> sentence – Laree Johnson's name was misspelled.

Commissioner Innes moved that the Astoria Planning Commission approve the minutes of June 28, 2016 and September 27, 2016 as corrected; seconded by Commissioner Mitchell. 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):

A16-02                      Amendment A16-02 by the Community Development Department to amend the Article 3: Accessory Dwelling Units. This is a continuance of a Public Hearing from September 27<sup>th</sup>. The Astoria Planning Commission will take public testimony, review the Staff report, and make a recommendation based on criteria in Article 10 of the Development Code.

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.

Director Cronin reviewed the written Staff report, noting that the most recent revisions were a result of the work session. Staff recommended that the Planning Commission approve the amendment, forward it to City Council for adoption, and require Staff to report on the effectiveness of the amendment after one year. He recommended the Commissioners read the housing series articles recently published in the *Daily Astorian* because they provide context and background information. Clerical errors in the original Staff report were corrected as follows: Jack Osterberg's comments were moved to the correct section of the Staff report, and historical data regarding accessory dwelling unit (ADU) applications was corrected to reflect that six applications have been submitted since 2004, only one of which received building permits. The unit is currently being used by a family member. One other applicant is actively working through the building permit process.



President Pearson confirmed the Commission did not have any questions for Staff and opened the public hearing. He called for public testimony in favor of the application.

Rachel Jensen, President of the Lower Columbia Preservation Society (LCPS), 389 12<sup>th</sup> Street, Astoria, said she was in favor of ADUs in general. The LCPS Board will submit written comments to Staff after this meeting. Astoria's residential neighborhoods have repeatedly responded to historic fluctuations in Astoria's housing demands. After the fire of 1922, many large homes were converted to apartments to help house people who had lost their homes and apartments downtown. When demand for housing increased again during World War II, the same residential neighborhoods remodeled older homes into apartments. Some of these remain multi-family dwellings and others have been converted to single-family homes. There is a way to provide more housing options in Astoria during this current surge in demand by allowing permitted ADUs in single-family homes, but the City needs to approach this in a way that does not undermine the spirit of the Comprehensive Plan or the Historic Preservation Ordinance, and does not negatively affect the character and livability of the historic neighborhoods. The LCPS Board has discussed this amendment in depth and recommended the following:

- Only one ADU per lot in all zones.
- Allow internal conversions that create a single ADU inside the current envelope of a single-family home in all zones, as long as criteria for parking and owner occupancy are met.
- Allow new attached and detached ADUs that extend beyond the existing envelope in all zones, subject to substantial design review. This design review should be in addition to any review done by the Historic Landmarks Commission (HLC). This issue was debated the most by LCPS.
  - It was stated at the work session that the only area of town not subject to design review standards was the south slope area. LCPS believes that statement is substantially misleading because large areas of Astoria have not been inventoried. Additionally, there are properties within historic districts that are not currently subject to reviews by the HLC. LCPS believes the current inventories of historic properties are inadequate to prevent incompatible infill on or near historic resources throughout the city. LCPS urges the City to continue their goal to survey the remaining neighborhoods as soon as possible.
- Restrict the siting of ADUs, requiring them to be placed in the rear or interior side yards and not adjacent to public rights-of-way.
- LCPS supports the recent prohibition of ADUs as home stay lodgings, but believes the ordinance was inadequately written. The current ordinance only prohibits the ADU from being used as a home stay and the LCPS believes the main dwelling should also be prohibited from being used as home stay. This will prevent a property owner from living in the ADU while renting out the main dwelling.
  - LCPS is also concerned about the specified date of creation. Currently, the Code states home stays are not allowed in ADUs created after January 1, 2017. The City has a backlog of ADUs that were never permitted and those ADUs could be used as home stays because they were built prior to January 1, 2017.
  - LCPS believes the design and building standards for tiny homes are ambiguous and requests that the definition of tiny homes and references to tiny homes be removed from the proposed amendments. LCPS commends the Commission and City Staff for making changes to the proposal throughout the process in response to public comments. She thanked the Commission for considering the LCPS's concerns. LCPS requested that the Commission ask Staff to make further changes based on their most recent recommendations before forwarding the amendments to City Council.

Nichole Williams, Chief Executive Officer, Clatsop Health District, 646 16<sup>th</sup> Street, Astoria, said lack of housing in Astoria has impacted Clatsop Health District's business. She explained that the district is a taxing district that serves about 160 residents primarily in Astoria and Warrenton and operates Clatsop Care Center, Clatsop Retirement Village, and Clatsop Care Memory Community. The District also provides in-home care services to about 50 people throughout Astoria, Warrenton, and the rural areas of the county. The District employs about 160 full time equivalent (FTE) positions, but has had issues keeping their facilities staffed. Lack of housing in the area has contributed to staffing issues. Caregiver positions make up the majority of the district's workforce and receive lower wages than other positions. The district recruits, hires, and trains for the caregiver positions only to have the new employees withdraw because they are unable to find permanent rental housing in the Astoria area. The district has also lost staff due to increases in rental rates. They recently hired a manager at \$58,000 per year and it took her over three weeks to find a permanent place to live. The manager would not have found a place if Ms. Williams had not assisted in her search for housing. The district began using a new food service management company last year. However, the contract had to be delayed by three months because the



company was unable to find residences for the managers they would be relocating into the area. The district appreciated the City and Commission for taking on this issue. The district is trying to provide services to the community and serve vulnerable populations in the county.

Kevin Leahy, 3560 Irving Avenue, Astoria, said he was speaking as Executive Director of Clatsop Economic Development Resources (CEDR) and Clatsop Community College Small Business Development Center (SBDC). Both entities support ADUs and detached ADUs, but wanted to emphasize the housing issues facing Astoria and the region. Over the last 14 years, occupied housing units in Clatsop County have gone up seven percent, but in Astoria, they have remained flat. Vacant housing units, vacation, and second homes have increased 19 percent in the county and 15 percent in Astoria. Total housing units in Clatsop County have gone up 10 percent and in Astoria up two percent over the last 14 years. The SBDC worked with over 120 businesses last year and housing and workforce training issues were discussed at almost every meeting with businesses of all sizes. Larger employers are not attracting talent because they cannot find homes. He is a fourth generation Astorian and serves on the Astoria Downtown Historic District Association (ADHDA). Astoria needs a vibrant downtown core. Every community in the county is working very diligently on the housing issues. We all need to work together collaboratively. This impacts all types of housing stock at every price. The average home price in Astoria is \$285,750 according to Zillow. In 2012, it was under \$225,000. People cannot afford to buy homes in Astoria. Clatsop Community College is working on a new strategic plan so they can attract more students from outside the area. These students could live in ADUs. Enrollment in the Astoria School District has also been impacted by housing issues. CEDR has been asked to serve on the Advance Astoria Committee, but housing is necessary for economic growth. We need to work together to honor Astoria's heritage and get this gridlock moving forward.

Loren Cross, 145 Duane St., Astoria, said she supported development and believed balance between housing and economic growth was necessary. People need a place to live, whether they own or rent. She was glad housing issues were being discussed.

President Pearson called for any testimony impartial to the application. There were none. He called for any testimony opposed to the application.

Linda Oldenkamp, 1676 Jerome, Astoria, said she would read an email from Kim Angelis because Ms. Angelis was unable to attend the meeting. The email was about Arcata, CA, where Ms. Angelis sister, Berta, and brother-in-law, Jaime lived. The email was as follows:

"Dear Linda, I just got off the phone with Berta. She told me that one of the most annoying negative impacts from tiny houses and rentals in garages has been the glut of cars parked on the streets. Parking spaces are at a premium and many times she and Jaime have had access to their own garage blocked. The house next door to them was sold in 2005 for \$365,000. Eleven years later, it is on the market for \$340,000. Unlike Astoria, property values in Arcata have not recovered. Investors from the bay area buy these units to rent out to students. There is no pride of ownership. A neighborhood that was formerly middle class has turned into a slum. Because people are allowed to live in garages, one of Berta's neighbors sheet rocked and paneled the garage but did not put in any plumbing. I am not going to tell you how they dealt with the lack of plumbing because it is pretty gross. Needless to say, the quality of life has dramatically diminished and the neighborhood is no longer a haven of owner-occupied residences. The historic character of the neighborhood has also been ruined. On one side of Berta and Jaime's house, a darling bungalow occupied a standard 50 ft by 100 ft lot. In the late 1980s, a matching bungalow was stuffed in front of the original home. It has T1-11 siding, sliding glass doors, and a deck. The only nods to historic detailing are the paint colors and the tiny knee braces. We don't want Astoria to go down the same path that Arcata took."

- After reading the email, Ms. Oldenkamp gave her own testimony. Almost all of her life, she has worked in poverty programs trying to help low-income people change their lives so they can enjoy some of the American dream. In 1976, she was hired by the college under the Comprehensive Employment and Training Act (CETA), which was a program to hire low income and unemployed people. Over the years, she loved working to help change peoples' lives. She wanted the Commission to know that she was aware of, sympathetic to, and supportive of expanding affordable housing. This is not a matter of aloofness or an uncaring attitude. She understood the problem. As a 40-year resident of Astoria, she believed Astoria's two big draws were the physical environment and the historic architecture, a combination impossible to beat anywhere. She sees herself as an evangelist for those who support preserving Astoria's historic houses and



commercial buildings. Astoria is an attractive and authentic community that still has neighborhoods with old houses and real downtown. This community was so well planned and designed that after all these years it still feels good and right to live here. People come by the droves to visit, live, to buy second homes, and to retire. It is the Commission's job to ensure that the planning and changes proposed enhance the neighborhoods and ensure that the consequences of the changes do not cause neighborhoods to deteriorate. Changes are being proposed without considering neighborhood livability or character and do not meet the requirements outlined in the Comprehensive Plan. She read on the City's website that it is the Commission's job to maintain the Comprehensive Plan. CP.051 General Land Use states, "It is the primary goal of the Comprehensive Plan to maintain Astoria's existing character by protecting the residential and historic character of the city's neighborhoods." There are no Findings of Fact addressed for CP.015. No facts have been presented that prove how these changes will protect the residential and historic character of the city's neighborhoods. CP.220.8 Housing Policies states, "Astoria's historic neighborhoods are recognized as some of the city's most significant assets and should be protected through the Historic Preservation Ordinance and other City actions to protect individual structures in neighborhoods." She did not think anyone believed the Findings of Fact that state the income generated by ADUs would be used by property owners to restore and maintain historic homes. The proposed changes for detached ADUs, tiny, and stick built houses would have extreme detrimental effects on the livability and historic character of the neighborhoods. Changes would not be noticeable after one year, but after several years, the changes would be very noticeable. New owners will not always support, understand, or care about historic character. Over time, detached ADUs will deteriorate, become unsightly, and neighboring house values would be negatively affected. Tiny and stick built houses would not fit current design review guidelines because their proportion, scale, and size are not compatible. The 2015 Affordable Housing Study offers nine other excellent options for additional housing. However, the options are challenging and would not be completed quickly. One recommendation was to implement an ad hoc housing task force immediately to identify locations for affordable housing, recommend regulatory changes, and other ideas to stimulate affordable housing. Putting the onus on homeowners to address the affordable housing issues might be the easiest option for City Staff, but it is not good for the livability and historic character of neighborhoods. It is not right or fair to those who have significantly invested in their homes. The changes do not meet the criteria stated in the Comprehensive Plan. She supported all of the recommendations made by LCPS except detached ADUs. She urged the Commission to refrain from acting on the proposed changes and instead, develop the ad hoc housing taskforce to include LCPS board members and others who own and live in historic homes. She urged the Commission to do this right so the City provides affordable housing and protects its historic homes and neighborhoods.

Judy Ronis, 475 Harrison, Astoria, said she moved to San Diego in 1970 to continue her college education. She fell in love with the little neighborhoods that were all over the city and very similar to the neighborhoods in Astoria. People had yards, gardens, and trees. Over the years, all that changed. Ordinances were approved allowing people to build in their back and front yards. The character of the city was no longer the same and parking became a nightmare. She purchased a 1926 bungalow and sometimes she had to walk three blocks after parking, which was dangerous at night. She would hate to see that happen in Astoria. She hoped decisions would be made in context and would preserve the character of Astoria.

Ted Osborn, 345 Alameda, Astoria, said he wrote a letter that was published in today's *Daily Astorian*. He commended the general desire to find more housing. When housing needs were identified about 18 months ago, the City considered itself somewhat responsible for the housing issues and was considering housing downtown as part of the library expansion. That seemed to hold some wisdom. When the plan for the library fell apart, the community heard nothing more about housing in large quantities downtown. Now, all of a sudden, homeowners up on the hill have to deal with additional families overtaking small lots. In his letter, he proposed residential infill along Duane and Marine, which would provide housing and establish a continuous downtown core. Developers would come to Astoria if they were incentivized. Incentives do not have to cost money and they allow Astoria to be receptive. Astoria can present itself as a city with a sense of being that can professionally support the work of the developers that want to build at the right cost, of the right quality, and within the right time schedule. He suggested the Community Development Department prequalify sites downtown by researching availability and the types of housing each property could support. A developer could come into Astoria and build quality products at the price point the City wants much more economically than individual homeowners scrambling to figure out what to do in their back yards. Astoria needs to go from being a city that is difficult to work with to being a professional and supportive team member.



Sarah Bardy, 1661 Irving, Astoria, said she was a member of LCPS and agreed with Ms. Jensen's comments. She also agreed with the concerns of those opposed to the amendments. Nobody wants to harm the historic character of the town, but everyone must seriously consider that developers are much scarier than carriage houses.

President Pearson confirmed there no more public testimony, closed the public hearing, and called for Commission discussion and deliberation, as well as comments from Staff.

Director Cronin confirmed the City had very in depth conversations with the community about doing a mixed-use project at Heritage Square and there was no consensus that housing was a solution at that site. None of the choices are easy and there is not a lot of low hanging fruit the City can bite off. These amendments are just one small piece of an overall strategy to solve the housing crisis. This proposal will not solve all of the problems and City Council has other options to consider. Tonight, ADUs are being considered as one solution, not the solution.

Commissioner Moore reminded the Commission that these changes only regarded ADUs. The Commission was not trying to solve the housing problem, just ease the problem by adding a few options. He liked the proposed amendments as presented and the prohibition of home stay lodgings. The changes do not incentivize anyone to build a structure they do not love. Historic preservation is essential to the character of Astoria. Currently, property owners could build a garage or shed, but this proposal would limit those owners to building detached ADUs. Therefore, he did not believe detached ADUs would create a huge problem or change the character. It would be more difficult to rent a garage than a unit, but there have been so few ADUs since 2004 and these amendments would not create a huge demand. Additionally, properties in the urban core are not likely to have the footprint to support an ADU.

Commissioner Mitchell asked for Staff's opinion on requiring a design review process for detached ADUs. Director Cronin reminded that the map displayed during the work session showed where design reviews were required. There are some areas of Astoria that have not been inventoried, but property owners on the south slope have requested their neighborhood be inventoried.

Commissioner Mitchell said the City has not received a significant number of ADUs proposals and she wanted to consider a review period so the Commission could determine how well the amendments were working. This was one small tool for a big problem and the City must continue to make small improvements. Staff has made a great effort and she appreciated those who spoke. She supported the amendments as proposed by Staff.

Commissioner Spence said he was primarily concerned with preserving historic districts. Some cities prohibit ADUs in historic districts. Astoria has a limited number of small lot sizes and the proposed amendments require ADUs to be compatible with the original dwelling structure and have one off-street parking spot. For those who use their garages for storage, this might be an incentive to clean out the garage and convert it to a unit. There is a need for additional dwelling units and the amendments contain safeguards. Additionally, there has only been one ADU in the last several years. People are worried about density and parking, but he believed the Commission needed to move forward one step at a time. Housing issues will not go away, but this will be one step in the right direction.

Commissioner Innes said she believed these amendments were a good start on the housing issues even though they would not draw a huge number of applications for ADUs. She hoped the amendments would attract some people to begin creating dwelling units. She agreed the amendments contained protections and it is up to everyone to keep dialoguing with the decision makers to ensure those protections are followed. Everyone needs to continue thinking of new ideas about where to put people who want to live and work in Astoria. She planned to vote in favor of the amendments.

President Pearson thanked everyone who attended the work session and public hearings because public participation is vital to the process. Along the way, some significant compromises have been made and he believed the document was better now because of the dialogue. This amendment is consistent with the Comprehensive Plan and he believed it would encourage more housing opportunities. He was pleased to see that home stay lodgings would be prohibited because the City is trying to create housing, not Airbnb units. This is one small part of a larger strategy. There has been a lot of testimony about historic preservation and he believed



this proposal was compatible with the historic nature of Astoria. There is nothing in the amendment that supersedes the good work of the Historic Landmarks Commission or the design review process. This conversation started almost eight months ago and he believed this document was ready for the City Council to consider.

Commissioner Spence moved that the Astoria Planning Commission adopt the Findings and Conclusions contained in the Staff report, approve Amendment A16-02 by the Community Development Department, and recommend adoption by City Council; seconded by Commissioner Innes. Motion passed unanimously.

President Pearson read the rules of appeal into the record.

Director Cronin confirmed he would need to speak with the Mayor before setting the date for the City Council public hearing, but once the date was set, public notices would be published.

#### ITEM 4(b):

CU16-10                      Conditional Use CU16-10 by Daryl Bell to locate a medical-recreational marijuana dispensary and retail sales establishment in an existing commercial building at 3930 Abbey Lane, Building A, Unit 104 in the 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. Hearing none, he asked Staff to present the Staff report.

Planner Ferber reviewed the written Staff report, noting a lot of public comments had been received, but many addressed issues not applicable to the criteria being reviewed. She displayed a chart showing how the applicable criteria correlated to some of the publics' concerns. Staff recommended approval of the request with the conditions listed in the Staff report.

Commissioner Moore asked Staff to define adjacent uses. Director Cronin explained adjacent uses would be properties next door or adjacent to the Applicant's. In this case, there are multiple tenant spaces on the same lot.

Commissioner Moore understood that there were currently only seven available parking spaces for commercial use. Planner Ferber clarified that 11 parking spaces were allocated for the entire site and each tenant that moves in receives its own review depending on the use. For retail, the number of required parking spaces is determined by the square footage.

Commissioner Moore said the Commission needed to consider the building's parking policy, which states only seven parking spaces are available for commercial use. Planner Ferber understood the City's regulations were for 11 spaces. When the property was rezoned, Staff considered specific uses that could go into the tenant spaces. The additional regulations were imposed by the condominium's association. She confirmed the Commission was tasked with reviewing the City's criteria.

Commissioner Mitchell stated that no processing would be done and the products would not be used on site. She asked how odor nuisances could arise. Planner Ferber said odor nuisances have been an issue at other similar sites, so she included how the applicant proposed to mitigate the nuisance in this Staff report.

Commissioner Mitchell asked if other existing sites have had parking issues. Planner Ferber said the Commission has only approved conditional uses permits for grow operations. Parking for grow operations is limited to the number of employees. Director Cronin confirmed no complaints have been received about the grow operations.

Commissioner Moore asked how the Applicant estimated that 50 people per day would visit the store. Planner Ferber confirmed the estimate was part of the Applicant's proposal, and asked the applicant to elaborate in his forthcoming testimony.

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



Daryl Bell, 2220 SE Ladd Avenue, Portland OR 97214, said marijuana sales could be discussed in perpetuity because it is a polarizing topic that ultimately results in diametric opposition. His company will be a good neighbor and a good steward of the community. The business intends to hire locally and pay taxes. He is considering dedicating a portion of the space to showcase local artists. However, this proposed use was withdrawn from the Conditional Use application. No smoking or consumption will be allowed on site and employees will patrol the parking lot to ensure compliance. The entire premises will be more secure because they will implement surveillance that exceeds the State's requirements. As a parent, he understood the public's concerns about the store's impact to the neighborhood, odors, and the demographics of the customers. The store will offer medicinal products that do not generate a psychoactive response. Their intent is to maintain a tasteful image by creating a floor plan similar to the Bridgewater Bistro. He hoped the Commission would consider the store less of an intrusion and more of a partnership to create an inclusive community.

Tyrell Buckner, 3930 Abbey Lane, Astoria, confirmed he knew there were a lot of concerns from the residents in the community. Marijuana is a new business in Oregon and he hoped those with concerns would be willing to speak with him. He attempted to estimate a realistic number of daily visitors to the store. The average time a person spends in a dispensary is about seven minutes. With the two parking spots allotted based on square footage, it is reasonable to assume there would be no increase in traffic. A steady and safe flow of traffic is expected. In the 10 hours the store would be open each day, each parking spot could accommodate six people if each person spent 10 minutes in the store. This would exceed the estimate of 50 visitors per day. He knew not every visitor would drive to the store. Additionally, there is plenty of on street parking, as shown on the map of the area. The company would like to work with the residents who are concerned about or have issues with odors. They take the issue very seriously and have proposed a very strong ventilation system that uses carbon filters and distributes fresh air into the retail space and outside. Other types of filtration systems can also be used to freshen the air. The products will be packaged and sealed, so very little smell will permeate from the products as customers leave the store. No processing or production has been proposed. The company has not received all of the residents' concerns, so he was unable to address those concerns at this time. However, he understood many residents believed the dispensary would diminish their property values. He believed property values would increase because the store would make the community safer by monitoring the property 24 hours a day. Residents and visitors will know there are cameras on site, which will make everyone feel safer. The store will create an environment of diverse commercial tenants, which will encourage property sales at that location. He looked forward to address any other concerns that arise.

Dr. Ted Forcum, 3990 Abbey Lane, Astoria, said he understood the condominium owners' apprehension and concerns. He worked hard to enhance the community by supporting the rezoning from General Industrial, which would have allowed less desirable businesses in the bottom floor of the complex. He would much rather have a dispensary than a chemical manufacturer. He does not use marijuana and has no interest in the business. Additionally, he has declined more than a dozen offers to put dispensaries into the complex. However, he decided to do some due diligence on Mr. Bell's offer after one of his patients encouraged him to look into marijuana. Cannabinoids are typically used for anxiety, PTSD, chronic pain, and cancer. Some of the condominium residents fit this demographic and are likely to use marijuana for medicinal purposes. He recently heard an Army medical doctor lecture on the use of cannabinoids in sports medicine, which is an emerging market. He researched security issues for dispensaries. A RAND study done in California found no significant increases in crimes around dispensaries. Several of his patients work for Oregon Liquor Control Commission (OLCC) and after asking them about OLCC's security concerns, he was satisfied that security would not be an issue. Additionally, he could require additional security measures that exceed OLCC's requirements. There have been several incidents on the property where cameras would have been helpful, so this will benefit the complex. He agreed to consider Mr. Bell's proposal because of the possibility that an artist space would be created. He appreciated that Mr. Bell wanted to help fill other needs in the area besides just the dispensary. An artist space could be permitted in the zone if it involved tourist-oriented retail sales. When the property was rezoned, a parking study was done, which indicated low use of parking spaces. Residents leave in the morning and return in the evening while some of the businesses use the spaces in the interim. Since the rezone, it has been difficult for him to find tenants for the bottom floor because all but one space has water leaks from the residential showers above. The space for the dispensary is the only space without leaks. He wants to make the spaces buildable and marketable. Odor mitigation will include an odor binding agent that is also used in locker rooms.

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



Zita Nyitrai, 3990 Abbey Lane, Unit 1205, Astoria, said as a condominium owner, she knew there was a lot of opposition. However, the commercial units have been experiencing challenges for several years now. She supported the dispensary because it would add security. The building has had problems in the past with transient residents living in the garages and in vacant units. She has never experienced any parking issues at the site and was shocked that parking is still discussed. She was also surprised to hear that the dispensary could diminish property values. The values were overstated when the building was built and the owners have had construction issues for more than a year now. Construction of the retail units will not decrease values. She keeps hearing about a housing crisis, but the building has several units for sale and those units are not flying off the market. As a business owner, she was positive that the due diligence done for this dispensary was adequate.

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

Nancy Walsh, 3990 Abbey Lane, Astoria, said she was concerned about having a pot shop in her home. It would be one thing if the product was given to people who medically needed it, but it is another thing to have products given to recreational users. Customers will not be allowed to smoke on the premises because the building has a no smoking policy. However, the customers could walk out to the Riverwalk to smoke, which could lead to arguments if they get a little bit high. A breeze could come off the river and waft up into her condominium. She is allergic to smoke and she would not care to have a smelly smoke in the area. Police have to come to the building when people argue because of drug deals. This pot shop would just aggravate the situation a little bit. Her nephews visit and many residents have grandchildren come to visit. She did not believe seeing these people would be a good example for the children. Federally, this is against the law and she did not care that Oregon has allowed marijuana dispensaries. Someday, this will come to haunt the community. Right now, the Applicant does not plan to manufacture, but they might decide to manufacture down the line. She asked how the residents could control this situation and stated the other dispensaries are not located in homes. She asked the Commission to think long and hard about this request because it is very upsetting to many of the residents. She also believed the residents should have more of a say.

Heather Hansen, 3990 Abbey Lane, Unit 208, Astoria, submitted a petition that was signed too late to have it included in the Staff report. She serves as Community Development Director for the County, and testified as staff many times. She rents her unit, so this request does not affect her over the long term in the same way it does owners. For two years, she rented a unit in Building A, where the dispensary is proposed to be located. Many of the owners have been through quite an ordeal since they purchased their units, including a lawsuit against the building contractor, a housing and economic downturn that affected property values, additional assessments to address construction defects, and living in a construction zone for over a year. The construction has made renting units difficult. The last thing the residents need is a new retail use that is likely to negatively affect property values and rental units. She was also concerned about impacts to personal safety and quality of life. If the store had been in the building when she first looked at the units, she would not have rented in that building.

- The criteria for conditional uses are not clear and objective and this is why the decision must be made by the Planning Commission instead of Staff. The Commission must decide if the proposed use could be approved with conditions that would adequately mitigate the negative impacts and the concerns raised by those most affected. She did not believe there was a reasonable or effective way to mitigate the negative effects of this use on existing residents. She did not care what would be sold, but was more concerned that this retail use would have people coming and going all day long. The Cannery Loft residents are a mix of retirees, local working families, couples, singles, renters, owners, full timers, and part timers. Since she has lived in the building, she has seen many units turned over to owners who live there full time.
- The standards for conditional uses address residential and non-residential, not mixed-use developments. Mixed-use developments have different impacts and different ways to address those impacts. This predominantly residential building already exists, so there is little that can be done now because the Development Code does not address this circumstance. This should be taken into account since 30 single-family residences will be directly impacted and 33 will be indirectly impacted by the Commission's decision. When the Code is unclear, the Commission must consider the purpose in the applicable section of the Code. In this case, the Code states that, "The purpose of the Conditional Use process is to allow, when desirable, uses that would not be appropriate throughout a zoning district or without the restrictions in that district, but would be beneficial to the City if their number, area, location, design, and relation to the surrounding property



are controlled.” She believed there was no effective way to control the negative impacts of the proposed retail use on the surrounding residential units since the existing building is predominately residential.

- There are already five marijuana dispensaries in Astoria and she did not believe the city needed another one so badly that it needed to go into a building with 30 residences. The use is not appropriate at the proposed location because the front doors of 30 residential units face the entrance to the retail space. The closest marijuana dispensary to the building is on 29<sup>th</sup> Street, so another one is not needed. Astoria only has three regular pharmacies and one liquor store. The Cannery buildings have no other retailers in the commercial spaces, but the other commercial uses in the buildings are appropriate and compatible because they provide personal services to a limited number of customers. These buildings are the last development on the east end of town before the Alderbrook neighborhood. Residents already deal with people coming from the Riverwalk and wooded areas east of town who are found sleeping in stairwells and rooms that do not lock securely, having sex in the stairwells, and urinating and defecating in the hallways and covered parking areas. The proposed use will only exacerbate the problem by bringing a stream of customers through the building each day, some of whom are likely to hang out around the building and along the Riverwalk.
- She did not believe the site layout was adequate because there are no dedicated parking spaces for the dispensary. The condominium bylaws do not allow dedicated parking spaces for commercial uses. Customers, estimated at 50 per day, will try to park near the main entrance to the building, which is adjacent to the main entrance to the condominiums. She displayed photographs of the entrances and the hallway with the mailboxes. Security cameras have been proposed, but she did not want to live in a place with cameras and lights everywhere. This is not Portland. The parking lot is close to capacity and residents cannot park near the building. As the commercial spaces fill up, the problem will only get worse. Parking issues are seasonal because some residents only come to Astoria on weekends or for part of the year. However, on most days she cannot find any parking close to the building. The Applicant does not have the authority to designate parking for the dispensary without the approval of the Condominium Association Board. She believed the City’s parking standards were out of date because parking is based on square feet without regard to the type of retail space. A yarn shop will not have the same parking needs as a convenience store.
- The Staff report recommends the Applicant abide by the condominium’s bylaws as a condition of approval. There are dark corners and stairwells accessible to the public and a retail use would bring more of the public into those unsecure areas. She showed photographs of a stairwell and the hallway to the elevator, which are dark even during the day. There is no onsite management and the management company is located in the Portland metro area. Many lights are burned out, exterior doors do not latch properly, and elevators are out of commission. The residents would appreciate better property management, but not video cameras, bright lights, and other security measures. The Applicant does not have the authority to add any improvements to the common areas without Condominium Association Board approval. She did not believe this use would contain an appropriate amount of landscaping buffering, setbacks, berms, or other separations from adjacent uses. Since the mixed-use building already exists, there are no effective retrofits to buffer the retail space from residences. The buildings are not in an established commercial quarter, but are on the edge of town with 63 residences. This is no amount of buffer or separation from existing residential uses in the same building. This is not an urban environment.

Katie Murray, 3930 Abbey Lane, A305, Astoria, said she has lived in Astoria for over 20 years and at the Cannery Loft for just over a year. She and her husband submitted a written statement that was included in the agenda packet. The proposed retail establishment is not in keeping with the guidelines of the Astoria Riverfront Plan. The condominiums are in the Neighborhood Greenway area. The Plan states “respect and protect the visual character of the Alderbrook neighborhood and minimize the impacts of pedestrians and neighborhood residents.” The impacts of a pot shop on this area are likely to be severe. She has researched police calls on existing pot shops in Astoria and there have been many. Having the police called to her neighborhood regularly is not what she wants. By federal law, pot shops are not permitted to deposit their cash to banks so they keep large amounts of cash on premises making them attractive to burglars. Last week’s fire at a manufacturing facility on the other end of town was evidence that they are not appropriate tenants for residential buildings because Oregon and other regulators do not check marijuana facilities for compliance with fire safety.

Shelly Von Colditz, 3930 Abbey Lane, Unit 303, Astoria, said she moved to Astoria from Denver, CO about a year and a half ago. Denver also had issues establishing places to allow the sale of marijuana. She was not opposed to pot shops or a mixed-use art gallery/dispensary. She was concerned about the type of clients that would come to this type of retail establishment. She believed transients would come from the Riverwalk and people would be driving or walking in to buy marijuana. There are a lot of homeless people in the area and she



often sees them sleeping in the stairwells. Increased surveillance will not be appropriate. She did not buy a unit in this building so she could have robust surveillance and she did not want to come home to bright lights. She currently felt safe walking around at night, but this would be compromised if she had to look over her shoulder to see who was coming and going. She comes and goes during the day and there have been many times that she returned home and could not find a place to park. This does not happen often, but the numbers presented to the Commission were not representative of the parking. The residents do not have any assigned parking and she did not believe so many parking spaces could be dedicated to the retail space. She noted the only reason Dr. Forcum was allowed to serve on the property's board was because he owned so many retail spaces. No one can dictate what time of day people would come to buy marijuana, so the applicant cannot claim they would have a customer every six minutes. She did not want to have to park at the next building or in the street because she would have to move her car after the store closed. She believed the dispensary would decrease the value of her home. Many people bought units when market prices were high and they cannot sell now. She did not want any more surveillance in the building. This is a quiet community with retired people and families. One family with a little girl just signed a lease for the unit right above the proposed dispensary. As a parent, she would not feel comfortable bringing her little girl around or allowing her to ride her bike in the parking lot with people going in and out all day. This situation is unique because we do not typically see this type of retail use with residential units above. She asked the Commission to read the information that was presented to them. She believed there would never be an agreement about the parking because the issues depended on the day and time. The condominiums have many part-time residents, but her building has mostly full-time residents. This means a lot more people are parking at that building. The people who spoke in favor of this permit live in Building B where there are a lot of part-time residents. She loved Astoria, but if she had to buy the condominium today with a dispensary, she would never consider it.

President Pearson confirmed there were no more public comments and called for the Applicant's rebuttal.

Dr. Forcum clarified that he did not simply take Mr. Bell's word about the impact to the community. He visited other communities with dispensaries in Oregon, Washington, California, and Colorado, where he spoke with neighbors of dispensaries to ask about the impacts. None of the people he spoke with had any complaints. One person who lived in a mixed-use complex was unaware that a dispensary existed in the neighborhood. The parking at the condominiums was garnered under the General Industrial zoning and the covered parking was allocated to the commercial units because of how the building was developed. The commercial square footage had to be of a certain footprint to accommodate the residential units above the commercial area. The seven parking spaces reserved for commercial use were reserved that way for tenants who signed contracts under the General Industrial zoning. The building is now zoned Shoreline Tourism, so the covered spaces are now open to both commercial and residential uses. The complex is currently undergoing construction remediation and there have been times when the contractor has used 70 percent of the available parking spaces. Obviously, construction will not go on forever and those spaces will be open again. Currently, a large percent of the lights are out at the complex because the board has not instigated maintenance during construction. He believed the lighting issue would be corrected soon. The intent of a mixed-use complex is to develop a walkable community, which improves the value and health of the city. Portland has reduced healthcare costs by increasing walkability. People will live in a space and use the services below and walk or bike along the Riverwalk. This reduces the parking load. Currently, the complex is compliant with the Code's parking requirements for both commercial and residential uses.

Commissioner Moore asked if the Applicant planned to package the products on site.

The Applicants confirmed some products would be received already packaged, but some products would be packaged on site.

Commissioner Moore asked what interaction the applicants had with residents in the building prior to this hearing. Mr. Bell said his only interaction has been with Dr. Forcum. However, he was aware of the residents' concerns.

Tyrell Buckner believed his proposal satisfied the criteria for the Conditional Use Permit. He took detailed notes during the public testimony because he believed the residents deserved to have their concerns alleviated. He does not like smoke, so he plans to reduce any type of smell. There were concerns about people walking in from the Riverwalk and entering the residential units. That could happen now without a dispensary, so that issue is not



specific to his business at all. At least his dispensary could address those issues immediately. He is a father and understood the concerns about children. Someone stated the dispensary was federally illegal, but that is not the issue being discussed at this hearing. He believed the medicinal use of cannabis has been documented as a product that prevents and alleviates certain medical conditions that many of the residents may potentially have. The fire that was mentioned occurred at a processing facility that contained butane gas. His dispensary has not applied to do processing and he would not likely use any type of natural gas because there are safer alternatives. The current issues with people sleeping in vacant spaces and defecating on the property will not be exacerbated by the presence of a dispensary. Cannabis use does not encourage defecating on property or homelessness. The store would not be referred to as a pot shop because that term has negative connotations. His vision was to have a high class facility that would eliminate the unwanted crowd and he believed the price points would be too high for such a crowd to afford. He does not want certain guests there either, so they plan to do their best to eliminate any external presence that could be detrimental to the business. No examples were given about how the dispensary would negatively impact the space. He offered to speak privately with anyone who had concerns.

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

Commissioner Moore said he read all of the public comments and the Staff report. The applicants have addressed all of his concerns, including odors and parking. The residential section of the building exists as a result of the commercial space. The Planning Commission cannot review the type of shop that goes into the retail space, so the concerns specific to marijuana cannot be used as review criteria. The odor mitigation, parking, and retail use seem reasonable.

Commissioner Spence stated that all of the marijuana facilities in Astoria are in commercial or industrial zones and he considered this dispensary to be proposed for a residential area. The Code has not kept up with this. Each of the condominiums are individually owned, but the building envelope, parking, and other common areas are owned jointly by all through the condominium owners' association. In most cases, the association controls the entire property. In this case however, he did not believe the owners were aware that the commercial spaces would be controlled by an absentee owner, that they would not have any power, or that marijuana would be legalized. He believed this was a landmark case because the location is so unique. He did not believe the proposed use was appropriate at the proposed location because it was a residential area zoned for tourist related uses. The Code says, "Businesses including a restaurant or bar, which are engaged in selling merchandise to customers for personal, household, or farm use." The Code needs to be updated to take this particular circumstance into consideration. There are additional facilities and appropriate zones available throughout the city. However, the applicants have chosen to go into a residential building because they can get a nice arrangement. This type of business will be a disadvantage to the residents. He was opposed to the proposed location.

Commissioner Moore clarified that the proposed location was in a Shoreland Tourist zone, not a residential zone. Therefore, the Commission must review the criteria for the Shoreland Tourist zone. The State of Oregon does not allow marijuana dispensaries in residential zones.

Commissioner Spence stated that in his opinion, the residents do not negate the fact that the building is not zoned properly. He believed this needed to be addressed and the Code needed to be updated to address this situation.

Commissioner Moore explained the Commission needed to make its decision based on the Code as it is today.

Commissioner Innes said she viewed the residential units as individual homes, not just one location that is being affected. She was satisfied that the applicants have met the conditions that the Commission is asked to review. She has read every page of the Staff report and she believed odors, parking, and security would not be a problem. She planned to vote in favor of the application.

Commissioner Mitchell said she struggled with this request because conditions have changed since this building was built. She did not believe anyone considered what commercial uses would go in and marijuana dispensaries were not an issue at that time. The current Code does not define dispensaries as being different from normal commercial uses and the Commission must act within certain limitations. She could not find any reason to deny this request. She was pleased to hear that the applicants were trying to mitigate the concerns of the neighbors.



The beauty salon could be more of a problem than the dispensary because it could create more noise. She supported the request. Some of the photographs indicated there was less space between the residential and commercial entrances that she originally thought and it would be interesting to see how signage prevents the public from entering the residential areas. She did not believe it was a good idea to have specified zoning for particular kinds of uses.

President Pearson said the building has been a mixed-use site since the day it was built. The first floor is intended for commercial use. He understood the concerns and frustrations of the residents above, but the building is doing exactly what it was intended to do on the waterfront. The proposal meets all of the requirements the Commission has been asked to review for a conditional Use. The conditions are extensive and there are many controls in place to make sure the project goes as promised. He supported the request.

Commissioner Moore moved that the Astoria Planning Commission adopt the Findings and Conclusions contained in the Staff report, approve Conditional Use CU16-10 by Daryl Bell; seconded by Commissioner Innes. Motion approved 4 to 1. Ayes: President Pearson, Commissioners Innes, Moore, and Mitchell. Nays: Commissioner Spence.

President Pearson read the rules of appeal into the record.

President Pearson called for a recess at 9:06 pm; the meeting reconvened at 9:14 pm.

#### ITEM 4(c):

Astor West Urban Renewal Plan First Amendment - The Astoria Planning Commission will review the proposed Astor-West Urban Renewal Plan First Amendment, including its relationship to the Comprehensive Plan, and make a recommendation to the Astoria City Council. This is not a land use action. However, ORS 457 requires Planning Commission review for consistency with the Comprehensive Plan.

Director Cronin briefly introduced the amendment, noting the public process that has taken place to date. Most of the comments received at the open houses pertained to the reopening of Bond Street. He planned to present the public's concerns to the Traffic Safety Committee. The Planning Commission is tasked with ensuring the amendment is consistent with the Comprehensive Plan.

Elaine Howard, Elaine Howard Consulting, presented the details of the amendment contained in the Staff report and described the State statutes that apply to the amendment. She and Director Cronin discussed the projects planned for the Astor-West Urban Renewal Area (AWURA) and explained how those projects would be funded. She also presented the impacts to the taxing districts within the AWURA and noted next steps.

Commissioner Innes asked if the Port of Astoria's Central Waterfront Master Plan was an existing document. Director Cronin said the plan is a historical document that no longer has value. The Port Commission is working on a new Central Waterfront Plan that would govern how the waterfront develops over time. He has been asked to partner with the Port on the master planning process.

Commissioner Innes said the AWURA Plan amendment implies the Port's Master Plan exists. She believed the language in the AWURA Plan was carried over from when the AWURA was first developed. Director Cronin confirmed this would be a good time to refresh the language in the Plan.

President Pearson called for public comments.

Ted Osborn, 345 Alameda, Astoria, asked how the money available to improve the blighted housing along Bond Street would be transferred. He wanted to know if the AWURA would purchase the properties and redevelop them or if grants would be given to certain property owners.

Director Cronin said the specific details of the program have not yet been established because the City is still discussing the program with the Community Action Team and Clatsop Community Action. Property improvements could be funded by block grants given to one of the organizations or by the City giving direct



grants to recipients. Criteria also need to be developed. This amendment review is just to determine the amendment's consistency with the Comprehensive Plan. At some point, the Development Commission will want guidelines in place for the housing program. He encouraged Mr. Osborn to submit any ideas about how the program should work.

Daniel Carter, 100 W. Franklin, Astoria, stated his house sat at the top of the slide area indicated on the map. He was concerned about drainage and taxes. His taxes have increased and he pays a premium for a lot with a view. However, the City has not maintained its properties, so there are trees blocking his view. He wanted to know what would be built on the bump out that would create 12 additional lots. The property is still a slide and engineers need to address the drainage. Damming up the stream will cause the slide area to back up to his property. He did not know how much engineering had been done, if the City would take control of the property, or if the weeds and trees would be cleared so that he could have his view back.

Director Cronin said the City does not expect to acquire any additional property through this amendment. The City already owns a lot of property it does not know what to do with right now. The displays of Bond Street were very preliminary and were only intended to start a conversation between the City and the public. This amendment needs to be approved before funding will be available to do any engineering work on Bond Street. Once the designs and engineering are complete, the public will have the opportunity to view the designs. He confirmed which 12 lots Mr. Carter was referring to.

Ms. Howard explained the property would be added to the AWURA and it was already owned by the City. Director Cronin added that the property needed to be added to the AWURA in order to improve Bond Street. The City has no interest in developing the property because it is a slide zone.

Mr. Carter said he understood everyone loved trees, but they were a serious issue. Director Cronin suggested Mr. Carter talk with Mr. Kuehl at 96 W. Commercial, Astoria, to improve the area.

Jim Coolie, 194 Commercial, Astoria, said the presentation showed a small slide zone, but the map showed a larger slide zone. Director Cronin explained the crude circle he drew was just to indicate a general area. City Hall has GIS maps available that show the specific location of the slide zone.

Mr. Coolie asked if the new retaining wall would address the entire slide zone. Director Cronin said the retaining wall would just hold back one part of the slide zone to allow two-way traffic. The engineering done to date indicates the wall would hold up over time.

Mr. Coolie added that 3<sup>rd</sup> and Bond should be a four-way stop. He asked if any issues on Commercial would be addressed as part of this project. Director Cronin said no, but the commercial district would be revitalized.

Mr. Coolie did not believe a bike lane should be added to Bond Street because increased traffic, increased speed, narrower lanes, and freezing temperatures would be too dangerous for cyclists. Director Cronin explained the lane shown in the picture was a shared lane called a sharrow. There will be a sidewalk for pedestrians, but drivers need to be reminded to share the road with cyclists.

Commissioner Innes moved that the Astoria Planning Commission find that the First Amendment to the Astor-West Urban Renewal Plan conforms with the Astoria Comprehensive Plan and further recommends that the Astoria City Council adopt the proposed First Amendment to the Astor-West Urban Renewal Plan with the following amendment:

- Exhibit A, Page 2 – Remove the reference to the Port of Astoria's Central Waterfront Master Plan.

Motion seconded by Commissioner Mitchell. Motion passed unanimously.

#### REPORTS OF OFFICERS/COMMISSIONERS:

The Commission agreed to reschedule their December meeting to December 6, 2016.

#### ADJOURNMENT:

There being no further business, the meeting was adjourned at 9:43 pm.

**APPROVED:**

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Community Development Director



## **ASTORIA PLANNING COMMISSION MEETING**

Astoria City Hall  
December 6, 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, Sean Fitzpatrick, Daryl Moore, and Jan Mitchell

Commissioners Excused: Frank Spence and McLaren Innes

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

### APPROVAL OF MINUTES:

President Pearson asked for approval of the minutes of the October 25, 2016 meeting. Commissioner Fitzpatrick noted that Zita Nyitrai's name had been misspelled on Page 7.

Commissioner Moore moved that the Astoria Planning Commission approve the minutes as corrected; seconded by Commissioner Mitchell. Motion passed 4 to 0 to 1 with Vice President Easom abstaining.

### 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):

CU16-11 Conditional Use CU16-11 by Wendy Hemsley to locate a bed and breakfast in an existing single family dwelling at 1681 Franklin in the R-3, High 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. 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 called for a presentation by the Applicant.

Wendy Hemsley, 1681 Franklin, Astoria, said she did not prepare a presentation, but the application did include a narrative and she would be happy to answer questions.

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 said he believed this project would supply needed housing.

Commissioner Mitchell stated she preferred that this bed and breakfast be used for student housing, but did not know how that could be enforced. The biggest problem is the parking, but the house could handle adequate parking. The number of bedrooms and bathrooms create a nice set up for the desired function of the house. She believed it was a great idea as long as the owner was on site to manage the property.

Commissioner Moore said the building was in a good location for a bed and breakfast or student housing.



Commissioner Fitzpatrick stated he believed the application met the criteria for approval. His only concerns would be parking and an on site manager, but the house would have both. The house has been vacant and underutilized for several years.

President Pearson agreed the application met the criteria for a Conditional Use Permit. He supported the conditions of approval, particularly the condition that parking would be worked out with the City.

Vice President Easom moved that the Astoria Planning Commission adopt the Findings and Conclusions contained in the Staff report and approve Conditional Use CU16-11 by Wendy Hemsley; seconded by Commissioner Fitzpatrick. Motion passed unanimously.

President Pearson read the rules of appeal into the record.

ITEM 4(b):

V16-09                      Variance V16-09 by Rebecca Johnson for Vintage Hardware from the 64 square foot maximum signage allowed to do a total of 132 square feet; and from the maximum of one wall sign allowed per frontage to two wall signs at 1162-1180 Marine in the 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.

Vice President Easom and Commissioner Fitzpatrick declared that they have done business with Vintage Hardware and would again in the future. Vice President Easom stated he believed he could vote impartially. He and Commissioner Fitzpatrick confirmed they had not discussed this project.

President Pearson 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.

Vice President Easom asked how much total frontage the store had. Planner Ferber did not know the total frontage, but said the site allowed for a total of 64 square feet of signage at the front and back of the building.

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

Becky Johnson, 1162-1180 Marine, Astoria, said she did not prepare a formal presentation, but she hoped the Commission was willing to have a dialogue about recommendations or changes instead of simply voting yes or no. She is willing to do what is best for the community and work out any issues. An artist designed the signs. She was under the impression the building was located within a historic district and did not realize it was in a different zone. Unfortunately, two of the signs have already been made. Vintage Hardware is valued in the community and she hoped to make all of their locations look better, enticing, and contribute to the community. She has spent a lot of time and money refurbishing the building and has received great feedback. In her opinion, this was a matter of visual balance with the two man doors. She wanted to keep the dialogue open if the Commission had any questions about a blade sign or signage on the back along the Riverwalk. She will do what the Commission tells her to do. She thanked the Commission for their consideration and confirmed for Commissioner Easom that the building had 100 linear feet in the front.

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.

Commissioner Fitzpatrick said he supported Staff's recommendation. In the photograph, it appears as if the building has three or four spaces. Some of the other buildings on Commercial are 50 feet wide and have three storefronts that are each allowed 64 square feet of signage. This proposal is well within what someone would expect to see in the area.



Commissioner Moore stated he believed the sign ordinances were designed to prevent overbearing, untasteful, and too many signs. These signs do not fall into those categories; they look great. The Applicant has done a great job with the building and the signs will increase the renovation. The amount of signage is appropriate for the frontage.

Vice President Easom agreed that the square footage of the signage would be appropriate for the linear footage of the building and believed the Applicant had done a nice job on the signs.

Commissioner Mitchell added the building had been put together well. The font on the signs makes a major statement. The entire project is classy, tastefully done, and will be a great improvement to the block.

President Pearson said he agreed with Staff's recommendation. The historic photo in the Staff report was very helpful. The font style and layout is a good fit for that section of town.

Vice President Easom moved that the Astoria Planning Commission adopt the Findings and Conclusions contained in the Staff report and approve Variance V16-09 by Rebecca Johnson; seconded by Commissioner Moore. Motion passed unanimously.

President Pearson read the rules of appeal into the record.

#### REPORTS OF OFFICERS/COMMISSIONERS:

Planner Ferber provided updates on the following:

**Item 5(a): AWURA Expansion** – City Council recently approved the expansion and would be reviewing the Storefront Improvement Program soon.

**Item 5(b): Advance Astoria: Community Forum – January 19<sup>th</sup> at The Red Building** – More details to come.

**Item 5(c): Appeal of Abbey Lane Dispensary** – The appeal hearing before City Council has been scheduled for December 19, 2016.

**Item 5(d): A16-02 ADU Ordinance** – This hearing will be rescheduled to January or February.

Planner Ferber noted Director Cronin was preparing for City Council's goal setting session, so he wanted to know what the Planning Commission had planned for 2017. She confirmed she would email Director Cronin's request for feedback to the Commissioners.

Vice President Easom asked why the ADU hearing was delayed. Planner Ferber answered City Council wanted more time to discuss the ordinance.

Commissioner Mitchell asked the Commission and Staff to sign a card for Commissioner Innes, as this was to be her last meeting. Planner Ferber noted a Board and Commission appreciation event would be held in December. President Pearson said the entire Planning Commission appreciated Commissioner Innes's dedication over many years.

#### ADJOURNMENT:

There being no further business, the meeting was adjourned at 6:52 pm.

#### **APPROVED:**

---

Planner





**CITY OF ASTORIA**  
Founded 1811 • Incorporated 1856

January 9, 2017

**MEMORANDUM**

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: 16<sup>TH</sup> STREET CSO SEPARATION PROJECT – FINAL REPORT

**DISCUSSION/ANALYSIS**

The 16<sup>th</sup> St. Combined Sewer Overflow (CSO) Separation Project consisted of installing over 12,000 feet of new stormwater pipe within the existing roadway infrastructure. It also included replacing existing water and sewer pipe where construction of the new storm pipe compromised the integrity of the existing infrastructure. Most of the intersections were rebuilt and many of the intersection ramps were reconstructed within the project area.

The final project costs have been reconciled and were less than the Infrastructure Finance Authority (IFA) funding:

|  | IFA FUNDING        |                              |
|--|--------------------|------------------------------|
|  | AMOUNT             | ACTUAL EXPENSES              |
| Permitting, legal, advertising, etc.   | \$5,000            | \$5,821                      |
| Design and Bidding                     | \$665,100          | \$659,984                    |
| <b>TOTAL DESIGN/BID</b>                | <b>\$670,100</b>   | <b>\$665,805</b>             |
| Construction                           | \$5,489,180        | \$5,483,180                  |
| Construction Contingency               | \$552,720          | \$484,572                    |
| <i>CenturyLink reimbursement</i>       |                    | -\$2,758                     |
| <i>Clatsop Community College reimb</i> |                    | -\$49,000                    |
| <b>TOTAL CONSTRUCTION</b>              | <b>\$6,041,900</b> | <b>\$5,915,994</b>           |
| Archeological Monitoring               | \$77,000           | \$101,902                    |
| Geotechnical                           | \$11,000           | \$10,512                     |
| Monumentation                          | \$18,000           | (included with construction) |
| Materials Testing                      | \$20,000           | \$19,600                     |
| Construction Management                | \$150,000          | \$96,664                     |
| Construction Inspection                | \$225,000          | \$225,000                    |
| <b>TOTAL CONSTRUCTION SUPPORT</b>      | <b>\$501,000</b>   | <b>\$453,679</b>             |
| <b>TOTAL</b>                           | <b>\$7,213,000</b> | <b>\$7,035,478</b>           |

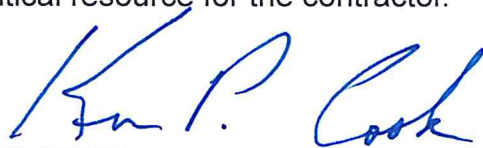
IFA funding includes a \$525,000 grant and the balance of the project expenses (\$6,510,478) is a low-interest loan at 2.09% interest rate with a 25-year payback period. A portion of the CSO Surcharge fee will be utilized to repay the project loan.

Gibbs & Olson performed the engineering design, bidding support, construction support and construction inspection. Gibbs & Olson did a great job on design and construction support. Due to their conscientious time management and working closely with City staff, Gibbs & Olson billed \$118,000 less than their contract amount, so they were an important factor in the successful project that came within budget.

Emery & Sons Construction Group (Emery) was the construction contractor for this project. Emery did quality work with professional crewmembers who worked well with City staff. They successfully overcame many challenges including difficult terrain in historically significant areas and delaying the project for Clatsop Community College. Emery was certainly a huge factor in keeping within budget.

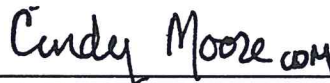
It is important to acknowledge that the City crew did an extraordinary amount of investigative work during design to prevent surprises during construction, which kept costs down. They were also an essential partner during construction and a critical resource for the contractor.

Submitted By:



Ken P. Cook, Public Works Director

Prepared By:



Cindy D. Moore, City Support Engineer





## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

December 27, 2016

### MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: PUBLIC INFORMATION EMERGENCY RESPONSE (PIER) SYSTEM  
REPLACEMENT

### **DISCUSSION/ANALYSIS**

Astoria Police, our 911 Center and its subscribers all depend on our Public Information Emergency Response or PIER system to deliver Public Safety related communications to the public as well as our Partners. The PIER site contains the contents of all active portions of the dispatch website, facilitates the publishing of the daily logs, fire department run sheets, distribute weather messages, road closure notifications and call out specialty teams such as the Sheriff's Dive Team when needed. This system allows us to choose to deliver it from text to phone, text, email or simply publishing to a website and social media. PIER is tightly tied to our social media accounts such as Facebook and Twitter. The PIER system also manages communications to the department for non-urgent matters. Astoria 9-1-1 was an early adopter of this "push-pull" technology allowing greater public access by adopting the PIER system in 2003.

In early December we were notified PIER was discontinuing their service and that we would lose all data as of December 31, 2016. Because of our long standing relationship with PIER we have been able to extend the deadline until the end of January. In today's media driven world we simply cannot lose this unique ability to communicate.

Staff investigated possible replacements and was unable to find a single product that would accomplish all that PIER had provided previously. Additionally, other clients would not allow us to import the records from PIER. We learned that most PIER clients wishing to continue using similar systems were migrating to a platform called Jetty that was developed by some of the founders of PIER.

Staff along with iFOCUS attended a webinar of the Jetty product and concluded it would meet our needs well into the future but most importantly allow us to remain operational prior to the shutdown deadline. No other product was available. The City Manager has made an attached determination that Jetty is the sole source available to engage for this service. City Attorney Henningsgaard has approved this procurement methodology.

The PIER software is currently budgeted at \$6,000 in the FY 16/17 Emergency Communications Fund. The replacement software, Jetty, would be an additional \$4,000. Staff anticipates sufficient funds to be available in the Materials and Services section of the Emergency Communications budget to accommodate the increase for changing the software and for an estimated \$1,000 in support from iFOCUS.

### **RECOMMENDATION**

It is recommended that Council approve the procurement of computer services in the form of a one year license with Jetty in the amount of \$10,000 along with the \$1,000 in support from iFocus. Funds will be expended from the Emergency Communications Fund and Materials and Services budget.

  
Jeff Rusiecki  
Emergency Communications Manager





## **Astoria 911 Jetty Proposal**

**Summary:** Jetty is a web based software solution for managing communication with internal and external audiences. It features an easy to use interface that works on all devices as well as interactivity with email, phone, and social media. Each Jetty includes a password protected administration area as well a public facing website for distributing information. Each Jetty allows for unlimited users.

**Annual license:** Annual license agreement includes: Hosting, 24/7 customer support, and software updates. Additional single Jetty licenses can be purchased.

**Item #1: Jetty License (unlimited users): \$10,000**

Includes: Dark site, and training site.

First year license total: \$10,000

Subsequent years: \$10,000

**First year total: \$10,000**

**Subsequent years total: \$10,000**

### **Additional Services**

Additional single Jetty license: \$6,000 annually

Response support: \$150 per hour + expenses

Drill support: \$150 per hour + expenses

Additional custom development: \$150 per hour

Additional training: \$150 per hour

### **Software Usage**

Usage: Phone usage should not exceed 100,000 minutes, SMS, and MMS (combined). Data transfer should not exceed 1 terabyte annually.

*Additional usage: Minutes, SMS, and MMS will cost \$.05 each.*

*Additional phone usage: \$.05 per call minute, SMS, and MMS  
Additional data transfer: \$1 per gigabyte*

## **Proposal Acceptance**

If the terms set forth in Proposal # Astoria 911 Jetty Software meet with your approval, please complete the following mail or email a copy to our office. An email indicating approval will also be accepted (please include proposal #).

Check or circle the items you would like to accept.

- ☐ Item #1 (Jetty Annual License)

Agreed and accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

For more information please contact:

Geoffrey Baron  
geoff@jettyapp.com  
360.393.0111



## DETERMINATION OF SOLE SOURCE

As authorized by Astoria City Code as purchasing manager I have made the following determinations.

1. The efficient continuation of the communications platform utilized by the Astoria Police Department on behalf of both the Police Department and the communications center's subscribers is a mission critical factor. This service is used to provide time critical information to the public, first responders, and media. It also allows for both sending and receiving information via phone, sms texts, email or via web documents.
2. Despite the best efforts of staff no other single product was found that would provide the capabilities of Jetty. All vendors explored that offered some capabilities would require secondary vendors to provide additional services.
3. The short timeline given by PIER related to the discontinuation of services does not allow for a long term search for replacement.
4. Given the number of systems required by emergency service providers, adding additional services increases the opportunity for error or confusion.
5. Staff has negotiated an annual contract with Jetty that is acceptable. The increase in ease of use and services over PIER justifies the increased cost.

Signed



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Brett Estes  
City Manager  
City of Astoria



## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

January 10, 2017

### MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: ORDINANCE READOPTING CERTAIN STATE STATUTES TO REFLECT  
CHANGES MADE BY THE 2016 LEGISLATURE

### **DISCUSSION/ANALYSIS**

The first reading of this ordinance was held at the January 4, 2016 City Council meeting. The 2016 legislation passed by the Oregon Legislature, for the most part, became effective on January 1, 2017. Many of our City ordinances refer to or incorporate state statutes. Every year, the City routinely re-adopts all referenced ORS sections to pick up any changes made by the legislature. This is done by a "global readoption", which was the technique recommended by the League of Oregon Cities. The City is legally unable to prospectively adopt Oregon legislative changes, i.e., we cannot adopt a state statute "as it now exists and is from time to time amended." The proposed ordinance has been reviewed and approved by the City Attorney.

### **RECOMMENDATION**

It is recommended that Council the second reading and adopt the proposed ordinance.



ORDINANCE NO. 17\_\_\_\_\_

AN ORDINANCE READOPTING CERTAIN STATE STATUTES

THE CITY OF ASTORIA DOES ORDAIN AS FOLLOWS:

Section 1. Code Section 1.047 is amended to read as follows:

"Readoption of Oregon Revised Statutes. Oregon Revised Statutes adopted either referentially or directly in the Astoria Code, including but not limited to Astoria Code Sections 1.010, 1.015, 1.085, 1.211, 1.230, 1.345, 1.365, 1.555, 1.602, 1.608, 1.620, 1.632, 1.638, 1.640, 1.705, 1.900, 1.960, 1.961, 1.962, 1.963, 1.964; 1.965, 1.967, 1.970, 1.971, 2.220, 2.360, 2.700, 2.705; 2.710, 3.010, 3.015, 3.118, 5.000, 5.010, 5.100, 5.110, 5.255, 5.260, 5.300, 5.335, 5.385, 5.425, 5.726, 5.740, 5.925, 5.931, 5.933, 6.005, 6.010, 6.025, 6.030, 6.060, 6.135, 6.220, 6.250, 6.255, 6.305, 6.400, 6.500, 6.510, 6.520, 6.530, 6.550, 7.000, 7.005, 8.045.15, 8.045.17, 8.045.18, 8.104, 8.138, 9.005, 9.025, 9.030, 9.090, and 9.160, are hereby readopted to include all amendments, repeals, and additions made by legislative action of the State of Oregon, up to and including those of the 2016 legislative session."

Section 2. Repeal. Ordinance No. 16-01 adopted January 19, 2016 is repealed.

Section 3. This ordinance will be effective thirty (30) days after its passage.

ADOPTED BY THE COMMON COUNCIL THIS 17<sup>TH</sup> DAY OF JANUARY, 2017.

APPROVED BY THE MAYOR THIS 17<sup>TH</sup> DAY OF JANUARY, 2017.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Manager

| ROLL CALL ON ADOPTION | YEA | NAY | ABSENT |
|-----------------------|-----|-----|--------|
| Councilor Nemlowill   |     |     |        |
| Brownson              |     |     |        |
| Price                 |     |     |        |
| Jones                 |     |     |        |
| Mayor LaMear          |     |     |        |



## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

January 10, 2017

### MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: ORDINANCE ADOPTING CHANGES TO 3% MARIJUANA TAX ON SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER

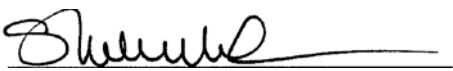
### DISCUSSION/ANALYSIS

The first reading of this ordinance was held at the January 3, 2017 City Council meeting. The City Council Adopted Ordinance 16-02 on February 16, 2016 imposing a three percent tax on the sale of marijuana items by a recreational marijuana retailer and referring ordinance to electors of Astoria. On November 8, 2016, Local Ballot Measure 4-180 passed with Yes votes totaling 3,420 and No votes totaling 1,251. Additionally, on November 29, 2016 City Council approved an intergovernmental agreement with Oregon Department of Revenue for the collection and distribution of the 3% tax on recreational marijuana sales. The Oregon Department of Revenue has worked in conjunction with the League of Oregon Cities to provide suggested code language which provides authority for penalty and interest language in the enforcement of local marijuana tax collection.

The attached ordinance, enacting the tax approval adopted by voters and adding language necessary for the collection and enforcement of the tax, was prepared by Attorney Henningsgaard and is attached for your consideration. Council would hold a first reading at the January 3, 2017 meeting and second reading at the January 17, 2017 meeting.

### RECOMMENDATION

It is recommended that Council conduct the second reading and adopt the proposed ordinance enacting the voter approved 3% marijuana tax with collection and enforcement language incorporated.

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



**ORDINANCE NO. 17-\_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF ASTORIA IMPOSING A THREE PERCENT TAX  
ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER**

**Recital**

Whereas, ORS 475B.345 provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a three percent tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

Whereas, during the November 8, 2016 general election, the voters of the City of Astoria approved a proposal to impose a three percent tax on the sale of marijuana items by a marijuana retailer in the City of Astoria.

Whereas the City Council of the City of Astoria wishes to provide for the effective collection of the tax approved by the voters.

**THE CITY OF ASTORIA DOES ORDAIN AS FOLLOWS:**

**Section 1. Definitions.**

**Marijuana item** has the meaning given that term in ORS 475B.015(16).

**Marijuana retailer** means a person who sells marijuana items to a consumer in this state.

**Retail sale price** means the price paid for a marijuana item, excluding tax, to a marijuana retailer by or on behalf of a consumer of the marijuana item.

**Section 2. Tax Imposed.** As described in ORS 475B.345 the City of Astoria imposes a tax of three percent on the retail sale price of marijuana items by a marijuana retailer in the City of Astoria.

**Section 3. Collection.** Every marijuana retailer shall collect this tax at the point of sale at the time at which the retail sale occurs.

**Section 4. Tax Returns.** Every marijuana retailer shall pay the taxes collected to the Oregon Department of Revenue and shall file all returns reporting this tax as required by any rules and procedures established by the Oregon Department of Revenue.

**Section 5. Interest and Penalty.**

- (A) Interest shall be added to the overall tax amount due at the same rate established under ORS 305.220 for each month, or fraction of a month, from the time the return to the Oregon Department of Revenue was originally required to be filed by the marijuana retailer to the time of payment.

- (B) If a marijuana retailer fails to file a return with the Oregon Department of Revenue or pay the tax as required, a penalty shall be imposed upon the marijuana retailer in the same manner and amount provided under ORS 314.400.
- (C) Every penalty imposed, and any interest that accrues, becomes a part of the financial obligation required to be paid by the marijuana retailer and remitted to the Oregon Department of Revenue.
- (D) Taxes, interest and penalties transferred to the City of Astoria by the Oregon Department of Revenue will be distributed to the City's General Fund.
- (E) If at any time a marijuana retailer fails to remit any amount owed in taxes, interest or penalties, the Oregon Department of Revenue is authorized to enforce collection on behalf of the City of the owed amount in accordance with ORS 475B.700 to 475B.755, any agreement between the Oregon Department of Revenue and the City of Astoria under ORS 305.620 and any applicable administrative rules adopted by the Oregon Department of Revenue.

**Section 6. Severability.** If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

**Section 7. Effective Date.** This ordinance will be effective thirty (30) days after its passage.

ADOPTED BY THE CITY COUNCIL THIS 17<sup>TH</sup> DAY OF JANUARY 2017.

APPROVED BY THE MAYOR THIS 17<sup>TH</sup> DAY OF JANUARY 2017.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Manager

|                       |     |     |        |
|-----------------------|-----|-----|--------|
| ROLL CALL ON ADOPTION | YEA | NAY | ABSENT |
| Councilor Nemlowill   |     |     |        |
| Brownson              |     |     |        |
| Price                 |     |     |        |
| Jones                 |     |     |        |
| Mayor LaMear          |     |     |        |





CITY OF ASTORIA  
POLICE DEPARTMENT

January 9, 2017

**M E M O R A N D U M**

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: PROPOSED AMENDMENT TO ASTORIA CITY CODE SECTION 5.810  
RELATED TO IDENTIFICATIONS AND HEARINGS ON DANGEROUS  
ANIMALS

**DISCUSSION/ANALYSIS**

During a recent hearing on a dangerous animal appeal it was noted by the Municipal Court Judge that there was no guidance on what to use as a burden of proof in hearings related to dangerous dogs. This revision attempts to resolve that issue, takes care of a scrivener's error and a modification to reflect changes in technology and practices at the Police Department allowing for the recording of statements instead of requiring signed written statements. A version showing the added and deleted language is attached along with a clean copy for consideration.

**RECOMMENDATION**

It is recommended that Council hold a first reading of the amendment to Astoria City Code Section 5.810.

A stylized, handwritten signature in dark ink, consisting of several sweeping, connected strokes.

---

Brad Johnston  
Chief of Police  
Assistant City Manager

ORDINANCE NO. 17-\_\_\_\_

AN ORDINANCE REVISING ASTORIA CITY CODE SECTION 5.810 PROVIDING  
FOR IDENTIFICATION OF DANGEROUS ANIMALS; APPEALS; RESTRICTIONS  
PENDING APPEAL

THE CITY OF ASTORIA DOES ORDAIN AS FOLLOWS:

**Section 1. Revision of Astoria City Code Section 5.810** Astoria City Code section 5.810 is revised to read as follows:

(A) The chief of police or the chief's designee shall have authority to determine whether any animal has engaged in the behaviors specified in Section 2. This determination shall be based upon an investigation that includes observation of and testimony about the animal's behavior. These observations and testimony can be provided by county animal control officer or by other witnesses who personally observed the behavior. They shall either be recorded or sign a written statement attesting to the observed behavior and agree to provide testimony regarding the animal's behavior if necessary.

(B) The chief of police or the chief's designee shall give the animal's owner written notice by certified mail or personal service of the animal's classification as a dangerous animal and of the additional restrictions applicable to that animal by reason of its classification. If the owner denies that the behavior in question occurred, the owner may appeal the decision to the municipal judge by filing a written request for a hearing with the chief of police within ten (10) days of the date the notice was mailed to the owner by certified mail or the owner was personally served.

(C) The municipal judge shall hold a public hearing on any appeal from the chief of police's decision to classify an animal as potentially dangerous. The owner and any other persons having relevant evidence concerning the animal's behavior as specified in section 2 shall be allowed to present testimony. The municipal judge shall determine by a preponderance of the evidence whether behavior specified in section 2 was exhibited by the animal in question. The municipal judge shall issue an order containing his or her determination, which shall be final.

(D) Once the owner has received notice of the animal's classification as a Level 1, 2, 3, or 4 dangerous animal pursuant to subsection (B) of this



**ORDINANCE NO. 17-\_\_\_\_**

**AN ORDINANCE REVISING ASTORIA CITY CODE SECTION 5.810 PROVIDING  
FOR IDENTIFICATION OF DANGEROUS ANIMALS; APPEALS; RESTRICTIONS  
PENDING APPEAL**

THE CITY OF ASTORIA DOES ORDAIN AS FOLLOWS:

**Section 1. Revision of Astoria City Code Section 5.810** Astoria City Code section 5.810 is revised to read as follows:

(A) The chief of police or the chief's designee shall have authority to determine whether any animal has engaged in the behaviors specified in Section 2. This determination shall be based upon an investigation that includes observation of and testimony about the animal's behavior. These observations and testimony can be provided by county animal control officer or by other witnesses who personally observed the behavior. They shall either be recorded or sign a written statement attesting to the observed behavior and agree to provide testimony regarding the animal's behavior if necessary.

(B) The chief of police or the chief's designee shall give the animal's owner written notice by certified mail or personal service of the animal's classification as a dangerous animal and of the additional restrictions applicable to that animal by reason of its classification. If the owner denies that the behavior in question occurred, the owner may appeal the decision to the municipal judge by filing a written request for a hearing with the chief of police within ten (10) days of the date the notice was mailed to the owner by certified mail or the owner was personally served.

(C) The municipal judge shall hold a public hearing on any appeal from the chief of police's decision to classify an animal as potentially dangerous. The owner and any other persons having relevant evidence concerning the animal's behavior as specified in section 2 shall be allowed to present testimony. The municipal judge shall determine by a preponderance of the evidence whether behavior specified in section 2 was exhibited by the animal in question. The municipal judge shall issue an order containing his or her determination, which shall be final.

(D) Once the owner has received notice of the animal's classification as a Level 1, 2, 3, or 4 dangerous animal pursuant to subsection (B) of this

section, the owner shall comply with the restrictions specified in the notice until such time as the chief of police or the chief's designee's decision may be reversed on appeal. Failure to comply with the specified restrictions pending the completion of all appeals shall be a violation of this ordinance for which a fine can be imposed. Additionally, the chief of police or the designee shall have authority to impound the animal pending completion of all appeals.

(E) If the chief of police or the designee finds that an animal has engaged in Level 5 behavior, the animal shall be impounded pending the completion of an appeal. If the chief of police or his/her designee's decision is upheld on appeal, the animal's owner shall be liable for the cost of the animal's impoundment.

**Section 2.**    **Effective Date.** This ordinance shall become effective 30 days after its adoption.

ADOPTED BY THE CITY COUNCIL THIS 6<sup>TH</sup> DAY OF FEBRUARY 2017

APPROVED BY THE MAYOR THIS 6<sup>TH</sup> DAY OF FEBRUARY 2017

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Manager

ROLL CALL ON ADOPTION  
Councilor Nemlowill  
          Brownson  
          Price  
          Jones  
Mayor LaMear

YEA    NAY    ABSENT



section, the owner shall comply with the restrictions specified in the notice until such time as the chief of police or the chief's designee's decision may be reversed on appeal. Failure to comply with the specified restrictions pending the completion of all appeals shall be a violation of this ordinance for which a fine can be imposed. Additionally, the chief of police or the designee shall have authority to impound the animal pending completion of all appeals.

(E) If the chief of police or the designee finds that an animal has engaged in Level 5 behavior, the animal shall be impounded pending the completion of an appeal. If the chief of police or his/her designee's decision is upheld on appeal, the animal's owner shall be liable for the cost of the animal's impoundment.

**Section 2.** **Effective Date.** This ordinance shall become effective 30 days after its adoption.

ADOPTED BY THE CITY COUNCIL THIS 6<sup>TH</sup> DAY OF FEBRUARY 2017

APPROVED BY THE MAYOR THIS 6<sup>TH</sup> DAY OF FEBRUARY 2017

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Manager

| ROLL CALL ON ADOPTION | YEA | NAY | ABSENT |
|-----------------------|-----|-----|--------|
| Councilor Nemlowill   |     |     |        |
| Brownson              |     |     |        |
| Price                 |     |     |        |
| Jones                 |     |     |        |
| Mayor LaMear          |     |     |        |



## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

January 12, 2017

### MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: CITY MANAGER'S SPENDING AUTHORITY / SUBMITTAL OF GRANT APPLICATIONS

### **BACKGROUND**

At the January 6, 2017 goal setting session, there was discussion regarding the City Manager's spending authority which is currently set at \$10,000. This amount has been in place since 1999. Current Astoria City Code language reads as follows:

1.964 Public Contracts - Authority of Purchasing Manager.

A. General Authority. The City Manager shall be the purchasing manager for the City of Astoria and is hereby authorized to issue all solicitations and to award all City of Astoria contracts for which the contract price does not exceed \$10,000, except that the purchasing manager is authorized to make bulk fuel purchases in an amount not to exceed \$25,000. Subject to the provisions of this Ordinance, the purchasing manager may adopt and amend all solicitation materials, contracts and forms required or permitted to be adopted by contracting agencies under the Oregon Public Contracting Code or otherwise convenient for the City of Astoria's contracting needs. The purchasing manager shall hear all solicitation and award protests.

There was discussion from Council members to increase that limit to \$50,000. Spending authorities for managers in our area are as follows:

- Warrenton \$25,000
- Clatsop County \$30,000
- Seaside \$50,000
- Cannon Beach \$50,000



At the request of the Council an ordinance revision has been prepared for consideration and is attached to this memorandum. In addition to replacing the \$10,000 amount with \$50,000, the reference to bulk fuel has been deleted since the new spending authority would accommodate those purchases. It should be noted that the City's purchasing ordinance will continue to dictate how bids, solicitations, and purchases will be made. In discussing the spending authority revision with City Attorney Henningsgaard, he noted that a subsequent review of the purchasing ordinance may be in order to better align the manager's spending authority with that code and to better align the City purchasing ordinance with changes in State statutes. Staff will begin review of the City's purchasing codes.

Also at the January 6<sup>th</sup> goal setting session, there was discussion regarding the City Council policy of sending grant applications to Council in advance of filing. There was direction to revise that policy as well. A revision is proposed below:

- Grant applications which require a City of Astoria cash match shall be forwarded to the City Council for consideration as a part of the application process.

This change will allow for staff to directly apply for grants which have no cash match commitment, but would allow for them to apply for grants with in-kind (staff time) matches. Applications which have a cash match commitment would continue to be reviewed by City Council either before submittal, or possibly after, should the application be able to be rescinded (in cases where Council not wish to pursue the grant). As this is a policy, no ordinance is required.

## **RECOMMENDATION**

If City Council is in agreement with the proposed change in spending authority for the City Manager's spending authority, it is recommended that the Council hold a first reading of the proposed ordinance.

Additionally, should Council concur with the change in policy for grant applications, it would be in order for Council to vote on the proposed language as a separate motion.

ORDINANCE NO. 17-\_\_\_\_\_

AN ORDINANCE REVISING THE ASTORIA CITY CODE RELATING TO  
LOCAL GOVERNMENT PUBLIC CONTRACTING REGULATIONS

THE CITY OF ASTORIA DOES ORDAIN AS FOLLOWS:

Section 1. Section 1.964A of the Astoria Code is amended to read as follows:

**“1.964 Public Contracts – Authority of Purchasing Manager.**

- A. General Authority.** The City Manager shall be the purchasing manager for the City of Astoria and is hereby authorized to issue all solicitations and to award all City of Astoria contracts for which the contract price does not exceed \$10,000 **\$50,000**, ~~except that the purchasing manager is authorized to make bulk fuel purchases in an amount not to exceed \$25,000.~~ Subject to the provisions of this Ordinance, the purchasing manager may adopt and amend all solicitation materials, contracts and forms required or permitted to be adopted by contracting agencies under the Oregon Public Contracting Code or otherwise convenient for the City of Astoria's contracting needs. The purchasing manager shall hear all solicitation and award protests.”

Section 2. The provisions of this ordinance shall take effect 30 days after its passage.

ADOPTED BY THE COMMON COUNCIL THIS \_\_\_\_\_ DAY OF FEBRUARY, 2017.

APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF FEBRUARY, 2017.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Manager

| ROLL CALL ON ADOPTION | YEA | NAY | ABSENT |
|-----------------------|-----|-----|--------|
| Councilor Nemlowill   |     |     |        |
| Brownson              |     |     |        |
| Price                 |     |     |        |
| Jones                 |     |     |        |
| Mayor LaMear          |     |     |        |

ORDINANCE NO. 17-\_\_\_\_\_

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Section 2. The provisions of this ordinance shall take effect 30 days after its passage.

ADOPTED BY THE COMMON COUNCIL THIS \_\_\_\_\_ DAY OF FEBRUARY, 2017.

APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF FEBRUARY, 2017.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Manager

| ROLL CALL ON ADOPTION | YEA | NAY | ABSENT |
|-----------------------|-----|-----|--------|
| Councilor Nemlowill   |     |     |        |
| Brownson              |     |     |        |
| Price                 |     |     |        |
| Jones                 |     |     |        |
| Mayor LaMear          |     |     |        |





**CITY OF ASTORIA**  
Founded 1811 • Incorporated 1856

January 5, 2017

**MEMORANDUM**

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: **PIPELINE ROAD TRANSMISSION MAIN RESILIENCE STUDY - GRANT  
APPROVAL AND CONTRACT AWARD**

**DISCUSSION/ANALYSIS**

The Oregon Infrastructure Finance Authority (IFA) has offered grants (forgivable loans) for resiliency studies of important infrastructure. The objective of the grant is to assist communities with water system planning and related activities that promote sustainable water infrastructure. At the April 4, 2016 City Council meeting, engineering staff requested Council authorization to submit a formal application to IFA requesting a \$20,000 grant. The specific project would consist of a resiliency study of the 12 mile long, 21 inch diameter transmission main that delivers water from the City headwork's at Bear Creek reservoir to Reservoir #2 and Reservoir #3 in town. The City was notified on October 17, 2016 that they were offered a grant in the amount of \$15,500. Staff proposes to match \$4,500 from the engineering budget to fund the \$20,000 scope identified by our consultant for the project. A resolution is required to accept the grant, as well as approval of an IFA financing (grant) contract.

The purpose of the study is to evaluate the existing watermain route, determine its vulnerability in the event of a large seismic event, and identify possible new routes that would be more resilient and less susceptible to failure. While a larger seismic event will be the event considered for the study, the waterline is also susceptible to failure as a result of smaller seismic events, stream erosion and natural landslides. The City has already experienced a waterline failure due to a landslide and a potential failure due to stream erosion.

Engineering staff will work closely with Hart Crowser staff to complete the study. City tasks will primarily consist of assistance with field review of the susceptible areas of the watermain route and cost estimating for reroute projects. The final report will be a document that can be used to help prioritize future projects, identify problem areas and plan for a more resilient water delivery system. Details of the study tasks can be found on the attached personal services agreement with Hart Crowser.

The attached documents have reviewed and approved by the City Attorney, Blair Henningsgaard.

### **RECOMMENDATION**

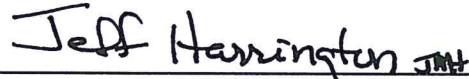
It is recommended that the City Council approve the resolution for acceptance of the grant, approve the IFA financing (grant) contract, and authorize the contract for Hart Crowser to assist with the study.

Submitted By

A handwritten signature in blue ink, appearing to read "Ken P. Cook", written over a horizontal line.

Ken Cook, Public Works Director

Prepared By

A handwritten signature in black ink, appearing to read "Jeff Harrington", written over a horizontal line.

Jeff Harrington, City Engineer

**RESOLUTION OF THE CITY OF ASTORIA**

**AUTHORIZING A FORGIVABLE LOAN FROM THE SAFE DRINKING WATER REVOLVING LOAN FUND  
BY ENTERING INTO A FINANCING CONTRACT  
WITH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY**

The Astoria City Council (the “Governing Body”) of the City of Astoria (the “Recipient”) finds:

A. The Recipient is a community water system as defined in Oregon Administrative Rule 123-049-0010.

B. The Safe Drinking Water Act Amendments of 1996, Pub.L. 104-182, as amended (the “Act”), authorize any community or nonprofit non-community water system to file an application with the Oregon Infrastructure Finance Authority of the Business Development Department (“the IFA”) to obtain financial assistance from the Safe Drinking Water Revolving Loan Fund.

C. The Recipient has filed an application with the IFA to obtain financial assistance for a “safe drinking water project” within the meaning of the Act, and the IFA has approved the Recipient’s application for financial assistance from the Safe Drinking Water Revolving Loan Fund.

D. The Recipient is required, as a prerequisite to the receipt of financial assistance from the IFA, to enter into a Financing Contract with the IFA, substantially in the form attached hereto as Exhibit A.

E. Notice relating to the Recipient’s consideration of the adoption of this Resolution was published in full accordance with the Recipient’s charter and laws for public notification.

NOW THEREFORE, BE IT RESOLVED by the Governing Body of the Recipient as follows:

1. Financing Loan Authorized. The Governing Body authorizes the Mayor and City Manager to execute the Financing Contract and the Promissory Note (the “Financing Documents”) and such other documents as may be required to obtain financial assistance including a loan from the IFA on the condition that the principal amount of the loan from the IFA to the Recipient is not more than \$15,500 and the interest rate is not more than 1%, which is eligible for complete principal forgiveness if contract conditions are met. The proceeds of the loan from the IFA shall be applied solely to the “Costs of the Project” as such term is defined in the Financing Contract.

2. Security. Amounts payable by the Recipient shall be payable from the sources described in Section 4 of the Financing Contract and the Oregon Revised Statutes Section 285A.213(5) which include:

- (a) Amounts withheld under subsection 285A.213(6);
- (b) The general fund of the Recipient;
- (c) Any other source.

3. Additional Documents. The Mayor and City Manager are hereby authorized to enter into any agreements and to execute any documents or certificates which may be required to obtain financial assistance from the IFA for the Project pursuant to the Financing Documents.



4. Tax-Exempt Status. The Recipient covenants not to take any action or omit to take any action if the taking or omission would cause interest paid by the Recipient pursuant to the Financing Documents not to qualify for the exclusion from gross income provided by Section 103(a) of the Internal Revenue Code of 1986, as amended. The Mayor and City Manager of the Recipient may enter into covenants on behalf of the Recipient to protect the tax-exempt status of the interest paid by the Recipient pursuant to the Financing Documents and may execute any Tax Certificate, Internal Revenue Service forms or other documents as shall be required by the IFA or their bond counsel to protect the tax-exempt status of such interest.

5. Effective Date. This Resolution shall be in force and effect from and after passage by the Governing Body.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF ASTORIA

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
Secretary

SAFE DRINKING WATER REVOLVING LOAN FUND  
FINANCING CONTRACT

Project Name: Astoria Pipeline Road Water Transmission Main Resilience Study

Project Number: S17010

This financing contract (“Contract”), dated as of the date the Contract is fully executed, is made by the State of Oregon, acting by and through the Oregon Infrastructure Finance Authority (“IFA”), and the City of Astoria (“Recipient”) for financing of the project referred to above and described in Exhibit C (“Project”). This Contract becomes effective only when fully signed and approved as required by applicable law. Capitalized terms not defined in section 1 and elsewhere in the body of the Contract have the meanings assigned to them by Exhibit A.

This Contract includes the following exhibits, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

- Exhibit A    General Definitions
- Exhibit B    Security
- Exhibit C    Project Description
- Exhibit D    Project Budget
- Exhibit E    Information Required by 2 CFR § 200.331(a)(1)

**SECTION 1 - KEY TERMS**

The following capitalized terms have the meanings assigned below.

Estimated Project Cost means \$15,500.

Forgivable Loan Amount means \$15,500.

Maturity Date means the 4<sup>th</sup> anniversary of the Repayment Commencement Date.

Interest Rate means 1.00% per annum, computed on the basis of a 360-day year, consisting of twelve 30-day months.

Payment Date means December 1.

Project Closeout Deadline means 90 days after the earlier of the Project Completion Date or the Project Completion Deadline.

Project Completion Deadline means 24 months after the date of this Contract.

Repayment Commencement Date means the first Payment Date to occur after the Project Closeout Deadline.

**SECTION 2 - FINANCIAL ASSISTANCE**

The IFA shall provide Recipient, and Recipient shall accept from IFA, financing for the Project as a non-revolving loan (“Loan”) in an aggregate principal amount not to exceed the Forgivable Loan Amount.

Notwithstanding the above, the aggregate total of Financing Proceeds disbursed under this Contract cannot exceed the Costs of the Project. If the Project is completed for less than the amount of the Estimated Project Cost, the availability of the Loan will be reduced accordingly.

### SECTION 3 - DISBURSEMENTS

- A. Reimbursement Basis. The Financing Proceeds shall be disbursed to Recipient on an expense reimbursement or costs-incurred basis. The Recipient must submit each disbursement request for the Financing Proceeds on an IFA-provided or IFA-approved disbursement request form ("Disbursement Request").
- B. Financing Availability. The IFA's obligation to make, and Recipient's right to request, disbursements under this Contract terminates on the Project Closeout Deadline.

### SECTION 4 - LOAN PAYMENT; PREPAYMENT; FORGIVENESS

- A. Promise to Pay. The Recipient shall repay the Loan and all amounts due under this Contract in accordance with their terms. Payments required under this Contract are, without limitation, payable from the sources of repayment described in the Act and this Contract, including but not limited to Exhibit B, and the obligation of Recipient to make all payments is absolute and unconditional. Payments will not be abated, rebated, set-off, reduced, abrogated, terminated, waived, postponed or otherwise modified in any manner whatsoever. Payments cannot remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of purpose, any change in the laws, rules or regulations of the United States of America or of the State of Oregon or any political subdivision or governmental authority, nor any failure of IFA to perform any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project or this Contract, or any rights of set off, recoupment, abatement or counterclaim that Recipient might otherwise have against IFA or any other party or parties; provided further, that payments hereunder will not constitute a waiver of any such rights.
- B. Interest. Interest accrues at the Interest Rate on each disbursement from the date of disbursement until the Loan is fully paid. All unpaid interest accrued to the Repayment Commencement Date is (in addition to the first regular installment payment due) payable on the Repayment Commencement Date.
- C. Loan Payments. Starting on the Repayment Commencement Date and then on each succeeding Payment Date, Recipient shall make level installment payments of principal and interest, each payment sufficient to pay the interest accrued to the date of payment and so much of the principal as will fully amortize the Loan by the Maturity Date, on which date the entire outstanding balance of the Loan is due and payable in full.
- D. Loan Prepayments.
- (1) Mandatory Prepayment. The Recipient shall prepay all or part of the outstanding balance of the Loan as required by this Contract.
  - (2) Optional Prepayment. The Recipient may prepay all or part of the outstanding balance of the Loan on any day except a Saturday, Sunday, legal holiday or day that banking institutions in Salem, Oregon are closed.



- E. Application of Payments. Regardless of any designation by Recipient, payments and prepayments by Recipient under this Contract or any of the Financing Documents will be applied first to any expenses of IFA, including but not limited to attorneys' fees, then to unpaid accrued interest (in the case of prepayment, on the amount prepaid), then to the principal of the Loan. In the case of a Loan prepayment that does not prepay all the principal of the Loan, IFA will determine, in its sole discretion, the method for how the Loan prepayment will be applied to the outstanding principal payments. A scheduled payment received before the scheduled repayment date will be applied to interest and principal on the scheduled repayment date, rather than on the day such payment is received.
- F. Forgiveness. Subject to satisfaction by Recipient of any special conditions in Exhibit C, if Recipient completes the Project by the Project Completion Deadline in accordance with the terms of this Contract, and provided that no Event of Default has occurred, IFA shall, 90 days after the Project Completion Date, forgive repayment of the forgivable Loan and any interest accrued thereon. The Forgivable Loan Amount and any interest forgiven remain subject to the requirements of OAR 123-049-0050, which survive payment of the Loan.

## SECTION 5 - CONDITIONS PRECEDENT

- A. Conditions Precedent to IFA's Obligations. The IFA's obligations are subject to the receipt of the following items, in form and substance satisfactory to IFA and its Counsel:
- (1) This Contract duly signed by an authorized officer of Recipient.
  - (2) A copy of the ordinance, order or resolution of the governing body of Recipient authorizing the borrowing and the contemplated transactions and the execution and delivery of this Contract and the other Financing Documents.
  - (3) Such other certificates, documents, opinions and information as IFA may reasonably require.
- B. Conditions to Disbursements. As to any disbursement, IFA has no obligation to disburse funds unless all following conditions are met:
- (1) There is no Default or Event of Default.
  - (2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
  - (3) The IFA, in the reasonable exercise of its administrative discretion, has sufficient moneys in the Fund for use in the Project and has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.
  - (4) The IFA (a) has received a completed Disbursement Request, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as IFA may require, (c) is satisfied that all items listed in the Disbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project, and (d) has determined that the disbursement is only for costs defined as eligible costs under the Act and any implementing administrative rules and policies.
  - (5) The Recipient has delivered documentation satisfactory to IFA that, in addition to the Financing Proceeds, Recipient has available or has obtained binding commitments for all funds necessary to complete the Project.
  - (6) Any conditions to disbursement elsewhere in this Contract or in the other Financing Documents are met.

## SECTION 6 - USE OF FINANCIAL ASSISTANCE

- A. Use of Proceeds. The Recipient shall use the Financing Proceeds only for the activities described in Exhibit C and according to the budget in Exhibit D. The Recipient may not transfer Financing Proceeds among line items in the budget without the prior written consent of IFA.
- B. Costs of the Project. The Recipient shall apply the Financing Proceeds to the Costs of the Project in accordance with the Act and Oregon law, as applicable. Financing Proceeds cannot be used for costs in excess of one hundred percent (100%) of the total Costs of the Project and cannot be used for pre-Award Costs of the Project, unless permitted by Exhibit C.
- C. Costs Paid for by Others. The Recipient may not use any of the Financing Proceeds to cover costs to be paid for by other financing for the Project from another State of Oregon agency or any third party.

## SECTION 7 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

The Recipient represents and warrants to IFA:

- A. Estimated Project Cost, Funds for Repayment. A reasonable estimate of the Costs of the Project is shown in section 1, and the Project is fully funded. The Recipient will have adequate funds available to repay the Loan, and the Maturity Date does not exceed the usable life of the Project.
- B. Organization and Authority.
  - (1) The Recipient (a) is a Municipality under the Act, and validly organized and existing under the laws of the State of Oregon, and (b) owns a community water system, as defined in the Act and OAR 123-049-0010.
  - (2) The Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract and the other Financing Documents, (b) incur and perform its obligations under this Contract and the other Financing Documents, and (c) borrow and receive financing for the Project.
  - (3) This Contract and the other Financing Documents executed and delivered by Recipient have been authorized by an ordinance, order or resolution of Recipient's governing body, and voter approval, if necessary, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings.
  - (4) This Contract and the other Financing Documents have been duly executed by Recipient, and when executed by IFA, are legal, valid and binding, and enforceable in accordance with their terms.
- C. Full Disclosure. The Recipient has disclosed in writing to IFA all facts that materially adversely affect the Project, or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract and the other Financing Documents is true and accurate in all respects.
- D. Pending Litigation. The Recipient has disclosed in writing to IFA all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents.

E. No Defaults.

- (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Contract or any of the Financing Documents.
- (2) The Recipient has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents.

F. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract and the other Financing Documents will not: (i) cause a breach of any agreement, indenture, mortgage, deed of trust, or other instrument, to which Recipient is a party or by which the Project or any of its property or assets may be bound; (ii) cause the creation or imposition of any third party lien, charge or encumbrance upon any property or asset of Recipient; (iii) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (iv) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.

|   |
|---|
| <b>SECTION 8 - COVENANTS OF RECIPIENT</b> |
|---|

The Recipient covenants as follows:

- A. Notice of Adverse Change. The Recipient shall promptly notify IFA of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Project related to the ability of Recipient to make all payments and perform all obligations required by this Contract or the other Financing Documents.
- B. Compliance with Laws. The Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract or the other Financing Documents, and the operation of the water system. In particular, but without limitation, Recipient shall comply with the following, as applicable:
- (1) State procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C.
  - (2) SAFE DRINKING WATER IN OREGON: Program Guidelines & Applicant's Handbook for the Federally Funded Safe Drinking Water Revolving Fund & Drinking Water Protection Loan Fund (May 2015), as amended from time to time ("Safe Drinking Water Handbook"), including but not limited to the Federal Crosscutting Requirements described in the Safe Drinking Water Handbook.
  - (3) Lobbying. The Recipient acknowledges and agrees that the Costs of the Project will not include any Lobbying costs or expenses incurred by Recipient or any person on behalf of Recipient, and that Recipient will comply with federal restrictions on lobbying at 40 C.F.R. Part 34 and will not request payment or reimbursement for Lobbying costs and expenses. "Lobbying" means influencing or attempting to influence a member, officer or employee of a governmental agency or legislature in connection with the awarding of a government contract, the making of a government grant or loan or the entering into of a cooperative agreement with such governmental entity or the extension, continuation, renewal, amendment or modification of any of the above.



- (4) Federal Audit Requirements. The Loan is federal financial assistance, and the Catalog of Federal Domestic Assistance (“CFDA”) number and title is “66.468, Capitalization Grants for Drinking Water State Revolving Funds.” Recipient is a sub-recipient.

(a) If Recipient receives federal funds in excess of \$750,000 in the Recipient’s fiscal year, it is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Recipient, if subject to this requirement, shall at its own expense submit to IFA a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Contract and shall submit or cause to be submitted to IFA the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Contract.

(b) Audit costs for audits not required in accordance with 2 CFR part 200, subpart F are unallowable. If Recipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the funds received under this Contract.

(c) Recipient shall save, protect and hold harmless IFA from the cost of any audits or special investigations performed by the Federal awarding agency or any federal agency with respect to the funds expended under this Contract. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and the State of Oregon.

- (5) Disadvantaged Business Enterprises. The Recipient will implement the good faith efforts for solicitation and contracting with Disadvantaged Business Enterprises (“DBE”) described in the Safe Drinking Water Handbook. This applies to all solicitation and contracting for construction, equipment, supplies, engineering or other services that constitute the Project financed by this Contract. The Recipient will maintain documentation in a Project file and submit the required forms, as described in the Safe Drinking Water Handbook. The Recipient will ensure that all prime contractors implement the good faith efforts for solicitation and contracting, and comply with all DBE procurement forms, statements, and reporting requirements. The Recipient agrees to apply the current regional fair share objectives.

The Recipient will ensure that each procurement contract includes the following term and condition:

“The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.”

- (6) The recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this assistance agreement shall contain the following statement:

“This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement 98009015 to the State of Oregon. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in this document.”

- (7) Incorporation by Reference. The above state and federal laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.

C. Project Completion Obligations. The Recipient shall:

- (1) When procuring professional consulting services, provide IFA with copies of all solicitations at least 10 days before advertising, and all contracts at least 10 days before signing.
- (2) Complete the Project using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of financial assistance provided pursuant to this Contract.
- (3) Complete the Project no later than the Project Completion Deadline, unless otherwise permitted by the IFA in writing.
- (4) No later than the Project Closeout Deadline, provide IFA with a final project completion report on a form provided by IFA, including Recipient's certification that the Project is complete, all payments are made, and no further disbursements are needed; provided however, for the purposes of this Contract, IFA will be the final judge of the Project's completion.

D. Ownership of Water System. During the term of the Loan, the water system is and will continue to be owned by Recipient. The Project will be operated by Recipient or by a person under a management contract or operating agreement with Recipient. Any such management contract or operating agreement will be structured as a "qualified management contract" as described in IRS Revenue Procedure 97-13, as amended or supplemented.

E. Financial Records. The Recipient shall keep accurate books and records for the revenues and funds that are the source of repayment of the Loan, separate and distinct from its other books and records, and maintain them according to generally accepted accounting principles established by the Government Accounting Standards Board in effect at the time. The Recipient shall have these records audited annually by an independent certified public accountant, which may be part of the annual audit of all records of Recipient.

F. Inspections; Information. The Recipient shall permit IFA, the Oregon Secretary of State's Office, the federal government and their duly authorized representatives, and any party designated by IFA: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters, and financial statements or other documents related to its financial standing. The Recipient shall supply any related reports and information as IFA may reasonably require. In addition, Recipient shall, upon request, provide IFA with copies of loan documents or other financing documents and any official statements or other forms of offering prospectus relating to any other bonds, notes or other indebtedness of Recipient that are issued after the date of this Contract.

G. Records Maintenance. The Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Financing Proceeds until the date that is three years following the later of the final maturity of the Lottery Bonds, or the final maturity or redemption date of any obligation, or series of obligations, that refinanced the Lottery Bonds, or such longer period as may be required by other provisions of this Contract or applicable law. Such documentation includes, but may not be limited to, all documentation necessary to establish the uses and investment of the Loan proceeds, all contracts and invoices detailing the costs paid from Loan proceeds, and all contracts related to the uses of the Project, including leases, management contracts, and service contracts that relate to the use of the Project.

- H. Economic Benefit Data. The IFA may require Recipient to submit specific data on the economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion date. The Recipient shall, at its own expense, prepare and submit the data within the time specified by IFA.
- I. Professional Responsibility. All service providers retained for their professional expertise must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty.
- J. Notice of Default. The Recipient shall give IFA prompt written notice of any Default as soon as any senior administrative or financial officer of Recipient becomes aware of its existence or reasonably believes a Default is likely.
- K. Indemnity. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless IFA and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors; however, the provisions of this section are not to be construed as a waiver of any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.
- L. Further Assurances. The Recipient shall, at the request of IFA, authorize, sign, acknowledge and deliver any further resolutions, conveyances, transfers, assurances, financing statements and other instruments and documents as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Contract and the other Financing Documents.
- M. Exclusion of Interest from Federal Gross Income and Compliance with Code.
- (1) The Recipient shall not take any action or omit to take any action that would result in the loss of the exclusion of the interest on any Lottery Bonds from gross income for purposes of federal income taxation, as governed by Section 103(a) of the Code. IFA may decline to disburse the Financing Proceeds if it finds that the federal tax exemption of the Lottery Bonds cannot be assured.
  - (2) The Recipient shall not take any action (including but not limited to the execution of a management agreement for the operation of the Project) or omit to take any action that would cause any Lottery Bonds to be "private activity bonds" within the meaning of Section 141(a) of the Code. Accordingly, unless Recipient receives the prior written approval of IFA, Recipient shall not permit in excess of ten percent (10%) of either (a) the Financing Proceeds or (b) the Project financed or refinanced with the Financing Proceeds to be directly or indirectly used in any manner that would constitute "private business use" within the meaning of Section 141(b)(6) of the Code, including not permitting more than one half of any permitted private business use to be "disproportionate related business use" or private business use unrelated to the government use of the Financing Proceeds. Unless Recipient receives the prior written approval of IFA, Recipient shall not directly or indirectly use any of the Financing Proceeds to make or finance loans to persons other than governmental units, as that term is used in Section 141(c) of the Code.
  - (3) The Recipient shall not directly or indirectly use or permit the use of any of the Financing Proceeds or any other funds, or take any action or omit to take any action, which would cause any Lottery Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code.



- (4) The Recipient shall not cause any Lottery Bonds to be treated as “federally guaranteed” for purposes of Section 149(b) of the Code, as may be modified in any applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to “federally guaranteed” obligations described in Section 149(b) of the Code. For purposes of this paragraph, any Lottery Bonds will be treated as “federally guaranteed” if: (a) all or any portion of the principal or interest is or will be guaranteed directly or indirectly by the United States of America or any agency or instrumentality thereof, or (b) five percent (5%) or more of the proceeds of the Lottery Bonds will be (i) used in making loans if the payment of principal or interest is guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or (ii) invested directly or indirectly in federally insured deposits or accounts, and (c) none of the exceptions described in Section 149(b)(3) of the Code apply.
- (5) The Recipient shall assist IFA to ensure that all required amounts are rebated to the United States of America pursuant to Section 148(f) of the Code. The Recipient shall pay to IFA such amounts as may be directed by IFA to satisfy the requirements of Section 148(f) applicable to the portion of the proceeds of any tax-exempt bonds, including any Financing Proceeds or other amounts held in a reserve fund. The Recipient further shall reimburse IFA for the portion of any expenses it incurs related to the Project that is necessary to satisfy the requirements of Section 148(f) of the Code.
- (6) Upon IFA’s request, Recipient shall furnish written information regarding its investments and use of the Financing Proceeds, and of any facilities financed or refinanced therewith, including providing IFA with any information and documentation that IFA reasonably determines is necessary to comply with the arbitrage and private use restrictions that apply to the Lottery Bonds.
- (7) Notwithstanding anything to the contrary, so long as is necessary to maintain the exclusion from gross income for purposes of federal income taxation of interest on any Lottery Bonds, the covenants contained in this subsection will survive the payment of the Loan and the Lottery Bonds, and the interest thereon, including the application of any unexpended Financing Proceeds. The Recipient acknowledges that the Project may be funded with proceeds of the Lottery Bonds and that failure to comply with the requirements of this subsection could adversely affect any exclusion of the interest on the Lottery Bonds from gross income for federal income tax purposes.
- (8) Neither Recipient nor any related party to Recipient, within the meaning of 26 C.F.R. §1.150-1(b), shall purchase any Lottery Bonds, from which proceeds were used to finance the Project, in an amount related to the amount of the Loan.

#### **SECTION 9 - DEFAULTS**

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

- A. The Recipient fails to make any Loan payment when due.
- B. The Recipient fails to make, or cause to be made, any required payments of principal, redemption premium, or interest on any bonds, notes or other material obligations, for any other loan made by the State of Oregon.

- C. Any false or misleading representation is made by or on behalf of Recipient, in this Contract, in any other Financing Document or in any document provided by Recipient related to this Loan or the Project or in regard to compliance with the requirements of section 103 and sections 141 through 150 of the Code.
- D. (1) A petition, proceeding or case is filed by or against Recipient under any federal or state bankruptcy or insolvency law, and in the case of a petition filed against Recipient, Recipient acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal;
- (2) The Recipient files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, winding-up or composition or adjustment of debts;
- (3) The Recipient becomes insolvent or bankrupt or admits its inability to pay its debts as they become due, or makes an assignment for the benefit of its creditors;
- (4) The Recipient applies for or consents to the appointment of, or taking of possession by, a custodian (including, without limitation, a receiver, liquidator or trustee) of Recipient or any substantial portion of its property; or
- (5) The Recipient takes any action for the purpose of effecting any of the above.
- E. The Recipient defaults under any other Financing Document and fails to cure such default within the applicable grace period.
- F. The Recipient fails to perform any obligation required under this Contract, other than those referred to in subsections A through E of this section 9, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by IFA. The IFA may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

#### SECTION 10 - REMEDIES

- A. Remedies. Upon any Event of Default, IFA may pursue any or all remedies in this Contract or any other Financing Document, and any other remedies available at law or in equity to collect amounts due or to become due or to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to:
- (1) Terminating IFA's commitment and obligation to make any further disbursements of Financing Proceeds under the Contract.
- (2) Declaring all payments under the Contract and all other amounts due under any of the Financing Documents immediately due and payable, and upon notice to Recipient the same become due and payable without further notice or demand.
- (3) Barring Recipient from applying for future awards.
- (4) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Contract, pursuant to ORS 285A.213(6) and OAR 123-049-0040.
- (5) Foreclosing liens or security interests pursuant to this Contract or any other Financing Document.
- (6) Exercising any remedy listed in OAR 123-049-0040.

- B. Application of Moneys. Any moneys collected by IFA pursuant to section 10.A will be applied first, to pay any attorneys' fees and other fees and expenses incurred by IFA; next, to pay interest due on the Loan; next, to pay principal due on the Loan, and last, to pay any other amounts due and payable under this Contract or any of the Financing Documents.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to IFA is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Contract or any of the Financing Documents shall preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The IFA is not required to provide any notice in order to exercise any right or remedy, other than notice required in section 9 of this Contract.
- D. Default by IFA. In the event IFA defaults on any obligation in this Contract, Recipient's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of IFA's obligations.

## SECTION 11 - MISCELLANEOUS

- A. Time is of the Essence. The Recipient agrees that time is of the essence under this Contract and the other Financing Documents.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
  - (2) Nothing in this Contract gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
  - (3) This Contract will be binding upon and inure to the benefit of IFA, Recipient, and their respective successors and permitted assigns.
  - (4) The Recipient may not assign or transfer any of its rights or obligations or any interest in this Contract or any other Financing Document without the prior written consent of IFA. The IFA may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to IFA, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of IFA's Counsel and Bond Counsel. Any approved assignment is not to be construed as creating any obligation of IFA beyond those in this Contract or other Financing Documents, nor does assignment relieve Recipient of any of its duties or obligations under this Contract or any other Financing Documents.
  - (5) The Recipient hereby approves and consents to any assignment, sale or transfer of this Contract and the Financing Documents that IFA deems to be necessary.
- C. Disclaimer of Warranties; Limitation of Liability. The Recipient agrees that:
- (1) The IFA makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portion of the Project, or any other warranty or representation.
  - (2) In no event are IFA or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Contract or the existence, furnishing, functioning or use of the Project.



RESOLUTION OF THE CITY OF ASTORIA

AUTHORIZING A FORGIVABLE LOAN FROM THE SAFE DRINKING WATER REVOLVING LOAN FUND  
BY ENTERING INTO A FINANCING CONTRACT  
WITH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY

The Astoria City Council (the “Governing Body”) of the City of Astoria (the “Recipient”) finds:

A. The Recipient is a municipality that operates a community water system as defined in Oregon Administrative Rule 123-049-0010.

B. The Safe Drinking Water Act Amendments of 1996, Pub.L. 104-182, as amended (the “Act”), authorize any community or nonprofit non-community water system to file an application with the Oregon Infrastructure Finance Authority of the Business Development Department (“the IFA”) to obtain financial assistance from the Safe Drinking Water Revolving Loan Fund.

C. The Recipient has filed an application with the IFA to obtain financial assistance for a “safe drinking water project” within the meaning of the Act, and the IFA has approved the Recipient’s application for financial assistance from the Safe Drinking Water Revolving Loan Fund.

D. The Recipient is required, as a prerequisite to the receipt of financial assistance from the IFA, to enter into a Financing Contract with the IFA, substantially in the form attached hereto as Exhibit A.

E. Notice relating to the Recipient’s consideration of the adoption of this Resolution was published in full accordance with the Recipient’s charter and laws for public notification.

NOW THEREFORE, BE IT RESOLVED by the Governing Body of the Recipient as follows:

1. Financing Loan Authorized. The Governing Body authorizes the Mayor and City Manager to execute the Financing Contract and the Promissory Note (the “Financing Documents”) and such other documents as may be required to obtain financial assistance including a loan from the IFA on the condition that the principal amount of the loan from the IFA to the Recipient is not more than \$15,500 and the interest rate is not more than 1%, which is eligible for complete principal forgiveness if contract conditions are met. The proceeds of the loan from the IFA shall be applied solely to the “Costs of the Project” as such term is defined in the Financing Contract.

2. Security. Amounts payable by the Recipient shall be payable from the sources described in Section 4 of the Financing Contract and the Oregon Revised Statutes Section 285A.213(5) which include:

- (a) Amounts withheld under subsection 285A.213(6);
- (b) The general fund of the Recipient;
- (c) Any other source.

3. Additional Documents. The Mayor and City Manager are hereby authorized to enter into any agreements and to execute any documents or certificates which may be required to obtain financial assistance from the IFA for the Project pursuant to the Financing Documents.

4. Tax-Exempt Status. The Recipient covenants not to take any action or omit to take any action if the taking or omission would cause interest paid by the Recipient pursuant to the Financing Documents not to qualify for the exclusion from gross income provided by Section 103(a) of the Internal Revenue Code of 1986, as amended. The Mayor and City Manager of the Recipient may enter into covenants on behalf of the Recipient to protect the tax-exempt status of the interest paid by the Recipient pursuant to the Financing Documents and may execute any Tax Certificate, Internal Revenue Service forms or other documents as shall be required by the IFA or their bond counsel to protect the tax-exempt status of such interest.

5. Effective Date. This Resolution shall be in force and effect from and after passage by the Governing Body.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF ASTORIA

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
Secretary

SAFE DRINKING WATER REVOLVING LOAN FUND  
FINANCING CONTRACT

Project Name: Astoria Pipeline Road Water Transmission Main Resilience Study

Project Number: S17010

This financing contract ("Contract"), dated as of the date the Contract is fully executed, is made by the State of Oregon, acting by and through the Oregon Infrastructure Finance Authority ("IFA"), and the City of Astoria ("Recipient") for financing of the project referred to above and described in Exhibit C ("Project"). This Contract becomes effective only when fully signed and approved as required by applicable law. Capitalized terms not defined in section 1 and elsewhere in the body of the Contract have the meanings assigned to them by Exhibit A.

This Contract includes the following exhibits, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

- Exhibit A    General Definitions
- Exhibit B    Security
- Exhibit C    Project Description
- Exhibit D    Project Budget
- Exhibit E    Information Required by 2 CFR § 200.331(a)(1)

**SECTION 1 - KEY TERMS**

The following capitalized terms have the meanings assigned below.

Estimated Project Cost means \$15,500.

Forgivable Loan Amount means \$15,500.

Maturity Date means the 4<sup>th</sup> anniversary of the Repayment Commencement Date.

Interest Rate means 1.00% per annum, computed on the basis of a 360-day year, consisting of twelve 30-day months.

Payment Date means December 1.

Project Closeout Deadline means 90 days after the earlier of the Project Completion Date or the Project Completion Deadline.

Project Completion Deadline means 24 months after the date of this Contract.

Repayment Commencement Date means the first Payment Date to occur after the Project Closeout Deadline.

**SECTION 2 - FINANCIAL ASSISTANCE**

The IFA shall provide Recipient, and Recipient shall accept from IFA, financing for the Project as a non-revolving loan ("Loan") in an aggregate principal amount not to exceed the Forgivable Loan Amount.

Notwithstanding the above, the aggregate total of Financing Proceeds disbursed under this Contract cannot exceed the Costs of the Project. If the Project is completed for less than the amount of the Estimated Project Cost, the availability of the Loan will be reduced accordingly.



### SECTION 3 - DISBURSEMENTS

- A. Reimbursement Basis. The Financing Proceeds shall be disbursed to Recipient on an expense reimbursement or costs-incurred basis. The Recipient must submit each disbursement request for the Financing Proceeds on an IFA-provided or IFA-approved disbursement request form ("Disbursement Request").
- B. Financing Availability. The IFA's obligation to make, and Recipient's right to request, disbursements under this Contract terminates on the Project Closeout Deadline.

### SECTION 4 - LOAN PAYMENT; PREPAYMENT; FORGIVENESS

- A. Promise to Pay. The Recipient shall repay the Loan and all amounts due under this Contract in accordance with their terms. Payments required under this Contract are, without limitation, payable from the sources of repayment described in the Act and this Contract, including but not limited to Exhibit B, and the obligation of Recipient to make all payments is absolute and unconditional. Payments will not be abated, rebated, set-off, reduced, abrogated, terminated, waived, postponed or otherwise modified in any manner whatsoever. Payments cannot remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of purpose, any change in the laws, rules or regulations of the United States of America or of the State of Oregon or any political subdivision or governmental authority, nor any failure of IFA to perform any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project or this Contract, or any rights of set off, recoupment, abatement or counterclaim that Recipient might otherwise have against IFA or any other party or parties; provided further, that payments hereunder will not constitute a waiver of any such rights.
- B. Interest. Interest accrues at the Interest Rate on each disbursement from the date of disbursement until the Loan is fully paid. All unpaid interest accrued to the Repayment Commencement Date is (in addition to the first regular installment payment due) payable on the Repayment Commencement Date.
- C. Loan Payments. Starting on the Repayment Commencement Date and then on each succeeding Payment Date, Recipient shall make level installment payments of principal and interest, each payment sufficient to pay the interest accrued to the date of payment and so much of the principal as will fully amortize the Loan by the Maturity Date, on which date the entire outstanding balance of the Loan is due and payable in full.
- D. Loan Prepayments.
  - (1) Mandatory Prepayment. The Recipient shall prepay all or part of the outstanding balance of the Loan as required by this Contract.
  - (2) Optional Prepayment. The Recipient may prepay all or part of the outstanding balance of the Loan on any day except a Saturday, Sunday, legal holiday or day that banking institutions in Salem, Oregon are closed.

- E. Application of Payments. Regardless of any designation by Recipient, payments and prepayments by Recipient under this Contract or any of the Financing Documents will be applied first to any expenses of IFA, including but not limited to attorneys' fees, then to unpaid accrued interest (in the case of prepayment, on the amount prepaid), then to the principal of the Loan. In the case of a Loan prepayment that does not prepay all the principal of the Loan, IFA will determine, in its sole discretion, the method for how the Loan prepayment will be applied to the outstanding principal payments. A scheduled payment received before the scheduled repayment date will be applied to interest and principal on the scheduled repayment date, rather than on the day such payment is received.
- F. Forgiveness. Subject to satisfaction by Recipient of any special conditions in Exhibit C, if Recipient completes the Project by the Project Completion Deadline in accordance with the terms of this Contract, and provided that no Event of Default has occurred, IFA shall, 90 days after the Project Completion Date, forgive repayment of the forgivable Loan and any interest accrued thereon. The Forgivable Loan Amount and any interest forgiven remain subject to the requirements of OAR 123-049-0050, which survive payment of the Loan.

#### **SECTION 5 - CONDITIONS PRECEDENT**

- A. Conditions Precedent to IFA's Obligations. The IFA's obligations are subject to the receipt of the following items, in form and substance satisfactory to IFA and its Counsel:
- (1) This Contract duly signed by an authorized officer of Recipient.
  - (2) A copy of the ordinance, order or resolution of the governing body of Recipient authorizing the borrowing and the contemplated transactions and the execution and delivery of this Contract and the other Financing Documents.
  - (3) Such other certificates, documents, opinions and information as IFA may reasonably require.
- B. Conditions to Disbursements. As to any disbursement, IFA has no obligation to disburse funds unless all following conditions are met:
- (1) There is no Default or Event of Default.
  - (2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
  - (3) The IFA, in the reasonable exercise of its administrative discretion, has sufficient moneys in the Fund for use in the Project and has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.
  - (4) The IFA (a) has received a completed Disbursement Request, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as IFA may require, (c) is satisfied that all items listed in the Disbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project, and (d) has determined that the disbursement is only for costs defined as eligible costs under the Act and any implementing administrative rules and policies.
  - (5) The Recipient has delivered documentation satisfactory to IFA that, in addition to the Financing Proceeds, Recipient has available or has obtained binding commitments for all funds necessary to complete the Project.
  - (6) Any conditions to disbursement elsewhere in this Contract or in the other Financing Documents are met.

## SECTION 6 - USE OF FINANCIAL ASSISTANCE

- A. Use of Proceeds. The Recipient shall use the Financing Proceeds only for the activities described in Exhibit C and according to the budget in Exhibit D. The Recipient may not transfer Financing Proceeds among line items in the budget without the prior written consent of IFA.
- B. Costs of the Project. The Recipient shall apply the Financing Proceeds to the Costs of the Project in accordance with the Act and Oregon law, as applicable. Financing Proceeds cannot be used for costs in excess of one hundred percent (100%) of the total Costs of the Project and cannot be used for pre-Award Costs of the Project, unless permitted by Exhibit C.
- C. Costs Paid for by Others. The Recipient may not use any of the Financing Proceeds to cover costs to be paid for by other financing for the Project from another State of Oregon agency or any third party.

## SECTION 7 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

The Recipient represents and warrants to IFA:

- A. Estimated Project Cost, Funds for Repayment. A reasonable estimate of the Costs of the Project is shown in section 1, and the Project is fully funded. The Recipient will have adequate funds available to repay the Loan, and the Maturity Date does not exceed the usable life of the Project.
- B. Organization and Authority.
  - (1) The Recipient (a) is a Municipality under the Act, and validly organized and existing under the laws of the State of Oregon, and (b) owns a community water system, as defined in the Act and OAR 123-049-0010.
  - (2) The Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract and the other Financing Documents, (b) incur and perform its obligations under this Contract and the other Financing Documents, and (c) borrow and receive financing for the Project.
  - (3) This Contract and the other Financing Documents executed and delivered by Recipient have been authorized by an ordinance, order or resolution of Recipient's governing body, and voter approval, if necessary, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings.
  - (4) This Contract and the other Financing Documents have been duly executed by Recipient, and when executed by IFA, are legal, valid and binding, and enforceable in accordance with their terms.
- C. Full Disclosure. The Recipient has disclosed in writing to IFA all facts that materially adversely affect the Project, or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract and the other Financing Documents is true and accurate in all respects.
- D. Pending Litigation. The Recipient has disclosed in writing to IFA all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents.



E. No Defaults.

- (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Contract or any of the Financing Documents.
- (2) The Recipient has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents.

F. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract and the other Financing Documents will not: (i) cause a breach of any agreement, indenture, mortgage, deed of trust, or other instrument, to which Recipient is a party or by which the Project or any of its property or assets may be bound; (ii) cause the creation or imposition of any third party lien, charge or encumbrance upon any property or asset of Recipient; (iii) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (iv) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.

**SECTION 8 - COVENANTS OF RECIPIENT**

The Recipient covenants as follows:

- A. Notice of Adverse Change. The Recipient shall promptly notify IFA of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Project related to the ability of Recipient to make all payments and perform all obligations required by this Contract or the other Financing Documents.
- B. Compliance with Laws. The Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract or the other Financing Documents, and the operation of the water system. In particular, but without limitation, Recipient shall comply with the following, as applicable:
- (1) State procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C.
  - (2) SAFE DRINKING WATER IN OREGON: Program Guidelines & Applicant's Handbook for the Federally Funded Safe Drinking Water Revolving Fund & Drinking Water Protection Loan Fund (May 2015), as amended from time to time ("Safe Drinking Water Handbook"), including but not limited to the Federal Crosscutting Requirements described in the Safe Drinking Water Handbook.
  - (3) Lobbying. The Recipient acknowledges and agrees that the Costs of the Project will not include any Lobbying costs or expenses incurred by Recipient or any person on behalf of Recipient, and that Recipient will comply with federal restrictions on lobbying at 40 C.F.R. Part 34 and will not request payment or reimbursement for Lobbying costs and expenses. "Lobbying" means influencing or attempting to influence a member, officer or employee of a governmental agency or legislature in connection with the awarding of a government contract, the making of a government grant or loan or the entering into of a cooperative agreement with such governmental entity or the extension, continuation, renewal, amendment or modification of any of the above.

- (4) Federal Audit Requirements. The Loan is federal financial assistance, and the Catalog of Federal Domestic Assistance (“CFDA”) number and title is “66.468, Capitalization Grants for Drinking Water State Revolving Funds.” Recipient is a sub-recipient.

(a) If Recipient receives federal funds in excess of \$750,000 in the Recipient’s fiscal year, it is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Recipient, if subject to this requirement, shall at its own expense submit to IFA a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Contract and shall submit or cause to be submitted to IFA the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Contract.

(b) Audit costs for audits not required in accordance with 2 CFR part 200, subpart F are unallowable. If Recipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the funds received under this Contract.

(c) Recipient shall save, protect and hold harmless IFA from the cost of any audits or special investigations performed by the Federal awarding agency or any federal agency with respect to the funds expended under this Contract. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and the State of Oregon.

- (5) Disadvantaged Business Enterprises. The Recipient will implement the good faith efforts for solicitation and contracting with Disadvantaged Business Enterprises (“DBE”) described in the Safe Drinking Water Handbook. This applies to all solicitation and contracting for construction, equipment, supplies, engineering or other services that constitute the Project financed by this Contract. The Recipient will maintain documentation in a Project file and submit the required forms, as described in the Safe Drinking Water Handbook. The Recipient will ensure that all prime contractors implement the good faith efforts for solicitation and contracting, and comply with all DBE procurement forms, statements, and reporting requirements. The Recipient agrees to apply the current regional fair share objectives.

The Recipient will ensure that each procurement contract includes the following term and condition:

“The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.”

- (6) The recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this assistance agreement shall contain the following statement:

“This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement 98009015 to the State of Oregon. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in this document.”

- (7) Incorporation by Reference. The above state and federal laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.

C. Project Completion Obligations. The Recipient shall:

- (1) When procuring professional consulting services, provide IFA with copies of all solicitations at least 10 days before advertising, and all contracts at least 10 days before signing.
- (2) Complete the Project using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of financial assistance provided pursuant to this Contract.
- (3) Complete the Project no later than the Project Completion Deadline, unless otherwise permitted by the IFA in writing.
- (4) No later than the Project Closeout Deadline, provide IFA with a final project completion report on a form provided by IFA, including Recipient's certification that the Project is complete, all payments are made, and no further disbursements are needed; provided however, for the purposes of this Contract, IFA will be the final judge of the Project's completion.

D. Ownership of Water System. During the term of the Loan, the water system is and will continue to be owned by Recipient. The Project will be operated by Recipient or by a person under a management contract or operating agreement with Recipient. Any such management contract or operating agreement will be structured as a "qualified management contract" as described in IRS Revenue Procedure 97-13, as amended or supplemented.

E. Financial Records. The Recipient shall keep accurate books and records for the revenues and funds that are the source of repayment of the Loan, separate and distinct from its other books and records, and maintain them according to generally accepted accounting principles established by the Government Accounting Standards Board in effect at the time. The Recipient shall have these records audited annually by an independent certified public accountant, which may be part of the annual audit of all records of Recipient.

F. Inspections; Information. The Recipient shall permit IFA, the Oregon Secretary of State's Office, the federal government and their duly authorized representatives, and any party designated by IFA: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters, and financial statements or other documents related to its financial standing. The Recipient shall supply any related reports and information as IFA may reasonably require. In addition, Recipient shall, upon request, provide IFA with copies of loan documents or other financing documents and any official statements or other forms of offering prospectus relating to any other bonds, notes or other indebtedness of Recipient that are issued after the date of this Contract.

G. Records Maintenance. The Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Financing Proceeds until the date that is three years following the later of the final maturity of the Lottery Bonds, or the final maturity or redemption date of any obligation, or series of obligations, that refinanced the Lottery Bonds, or such longer period as may be required by other provisions of this Contract or applicable law. Such documentation includes, but may not be limited to, all documentation necessary to establish the uses and investment of the Loan proceeds, all contracts and invoices detailing the costs paid from Loan proceeds, and all contracts related to the uses of the Project, including leases, management contracts, and service contracts that relate to the use of the Project.



- H. Economic Benefit Data. The IFA may require Recipient to submit specific data on the economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion date. The Recipient shall, at its own expense, prepare and submit the data within the time specified by IFA.
- I. Professional Responsibility. All service providers retained for their professional expertise must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty.
- J. Notice of Default. The Recipient shall give IFA prompt written notice of any Default as soon as any senior administrative or financial officer of Recipient becomes aware of its existence or reasonably believes a Default is likely.
- K. Indemnity. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless IFA and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors; however, the provisions of this section are not to be construed as a waiver of any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.
- L. Further Assurances. The Recipient shall, at the request of IFA, authorize, sign, acknowledge and deliver any further resolutions, conveyances, transfers, assurances, financing statements and other instruments and documents as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Contract and the other Financing Documents.
- M. Exclusion of Interest from Federal Gross Income and Compliance with Code.
- (1) The Recipient shall not take any action or omit to take any action that would result in the loss of the exclusion of the interest on any Lottery Bonds from gross income for purposes of federal income taxation, as governed by Section 103(a) of the Code. IFA may decline to disburse the Financing Proceeds if it finds that the federal tax exemption of the Lottery Bonds cannot be assured.
  - (2) The Recipient shall not take any action (including but not limited to the execution of a management agreement for the operation of the Project) or omit to take any action that would cause any Lottery Bonds to be "private activity bonds" within the meaning of Section 141(a) of the Code. Accordingly, unless Recipient receives the prior written approval of IFA, Recipient shall not permit in excess of ten percent (10%) of either (a) the Financing Proceeds or (b) the Project financed or refinanced with the Financing Proceeds to be directly or indirectly used in any manner that would constitute "private business use" within the meaning of Section 141(b)(6) of the Code, including not permitting more than one half of any permitted private business use to be "disproportionate related business use" or private business use unrelated to the government use of the Financing Proceeds. Unless Recipient receives the prior written approval of IFA, Recipient shall not directly or indirectly use any of the Financing Proceeds to make or finance loans to persons other than governmental units, as that term is used in Section 141(c) of the Code.
  - (3) The Recipient shall not directly or indirectly use or permit the use of any of the Financing Proceeds or any other funds, or take any action or omit to take any action, which would cause any Lottery Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code.

- (4) The Recipient shall not cause any Lottery Bonds to be treated as “federally guaranteed” for purposes of Section 149(b) of the Code, as may be modified in any applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to “federally guaranteed” obligations described in Section 149(b) of the Code. For purposes of this paragraph, any Lottery Bonds will be treated as “federally guaranteed” if: (a) all or any portion of the principal or interest is or will be guaranteed directly or indirectly by the United States of America or any agency or instrumentality thereof, or (b) five percent (5%) or more of the proceeds of the Lottery Bonds will be (i) used in making loans if the payment of principal or interest is guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or (ii) invested directly or indirectly in federally insured deposits or accounts, and (c) none of the exceptions described in Section 149(b)(3) of the Code apply.
- (5) The Recipient shall assist IFA to ensure that all required amounts are rebated to the United States of America pursuant to Section 148(f) of the Code. The Recipient shall pay to IFA such amounts as may be directed by IFA to satisfy the requirements of Section 148(f) applicable to the portion of the proceeds of any tax-exempt bonds, including any Financing Proceeds or other amounts held in a reserve fund. The Recipient further shall reimburse IFA for the portion of any expenses it incurs related to the Project that is necessary to satisfy the requirements of Section 148(f) of the Code.
- (6) Upon IFA’s request, Recipient shall furnish written information regarding its investments and use of the Financing Proceeds, and of any facilities financed or refinanced therewith, including providing IFA with any information and documentation that IFA reasonably determines is necessary to comply with the arbitrage and private use restrictions that apply to the Lottery Bonds.
- (7) Notwithstanding anything to the contrary, so long as is necessary to maintain the exclusion from gross income for purposes of federal income taxation of interest on any Lottery Bonds, the covenants contained in this subsection will survive the payment of the Loan and the Lottery Bonds, and the interest thereon, including the application of any unexpended Financing Proceeds. The Recipient acknowledges that the Project may be funded with proceeds of the Lottery Bonds and that failure to comply with the requirements of this subsection could adversely affect any exclusion of the interest on the Lottery Bonds from gross income for federal income tax purposes.
- (8) Neither Recipient nor any related party to Recipient, within the meaning of 26 C.F.R. §1.150-1(b), shall purchase any Lottery Bonds, from which proceeds were used to finance the Project, in an amount related to the amount of the Loan.

#### **SECTION 9 - DEFAULTS**

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

- A. The Recipient fails to make any Loan payment when due.
- B. The Recipient fails to make, or cause to be made, any required payments of principal, redemption premium, or interest on any bonds, notes or other material obligations, for any other loan made by the State of Oregon.

- C. Any false or misleading representation is made by or on behalf of Recipient, in this Contract, in any other Financing Document or in any document provided by Recipient related to this Loan or the Project or in regard to compliance with the requirements of section 103 and sections 141 through 150 of the Code.
- D. (1) A petition, proceeding or case is filed by or against Recipient under any federal or state bankruptcy or insolvency law, and in the case of a petition filed against Recipient, Recipient acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal;
- (2) The Recipient files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, winding-up or composition or adjustment of debts;
- (3) The Recipient becomes insolvent or bankrupt or admits its inability to pay its debts as they become due, or makes an assignment for the benefit of its creditors;
- (4) The Recipient applies for or consents to the appointment of, or taking of possession by, a custodian (including, without limitation, a receiver, liquidator or trustee) of Recipient or any substantial portion of its property; or
- (5) The Recipient takes any action for the purpose of effecting any of the above.
- E. The Recipient defaults under any other Financing Document and fails to cure such default within the applicable grace period.
- F. The Recipient fails to perform any obligation required under this Contract, other than those referred to in subsections A through E of this section 9, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by IFA. The IFA may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

#### SECTION 10 - REMEDIES

- A. Remedies. Upon any Event of Default, IFA may pursue any or all remedies in this Contract or any other Financing Document, and any other remedies available at law or in equity to collect amounts due or to become due or to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to:
- (1) Terminating IFA's commitment and obligation to make any further disbursements of Financing Proceeds under the Contract.
- (2) Declaring all payments under the Contract and all other amounts due under any of the Financing Documents immediately due and payable, and upon notice to Recipient the same become due and payable without further notice or demand.
- (3) Barring Recipient from applying for future awards.
- (4) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Contract, pursuant to ORS 285A.213(6) and OAR 123-049-0040.
- (5) Foreclosing liens or security interests pursuant to this Contract or any other Financing Document.
- (6) Exercising any remedy listed in OAR 123-049-0040.



- B. Application of Moneys. Any moneys collected by IFA pursuant to section 10.A will be applied first, to pay any attorneys' fees and other fees and expenses incurred by IFA; next, to pay interest due on the Loan; next, to pay principal due on the Loan, and last, to pay any other amounts due and payable under this Contract or any of the Financing Documents.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to IFA is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Contract or any of the Financing Documents shall preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The IFA is not required to provide any notice in order to exercise any right or remedy, other than notice required in section 9 of this Contract.
- D. Default by IFA. In the event IFA defaults on any obligation in this Contract, Recipient's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of IFA's obligations.

## SECTION 11 - MISCELLANEOUS

- A. Time is of the Essence. The Recipient agrees that time is of the essence under this Contract and the other Financing Documents.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
  - (2) Nothing in this Contract gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
  - (3) This Contract will be binding upon and inure to the benefit of IFA, Recipient, and their respective successors and permitted assigns.
  - (4) The Recipient may not assign or transfer any of its rights or obligations or any interest in this Contract or any other Financing Document without the prior written consent of IFA. The IFA may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to IFA, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of IFA's Counsel and Bond Counsel. Any approved assignment is not to be construed as creating any obligation of IFA beyond those in this Contract or other Financing Documents, nor does assignment relieve Recipient of any of its duties or obligations under this Contract or any other Financing Documents.
  - (5) The Recipient hereby approves and consents to any assignment, sale or transfer of this Contract and the Financing Documents that IFA deems to be necessary.
- C. Disclaimer of Warranties; Limitation of Liability. The Recipient agrees that:
- (1) The IFA makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portion of the Project, or any other warranty or representation.
  - (2) In no event are IFA or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Contract or the existence, furnishing, functioning or use of the Project.

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

If to IFA: Program Services Division Manager  
Infrastructure Finance Authority  
Oregon Business Development Department  
775 Summer St NE Suite 200  
Salem OR 97301-1280

If to Recipient: City Engineer  
City of Astoria  
1095 Duane St  
Astoria OR 97103-4524

E. No Construction against Drafter. This Contract is to be construed as if the parties drafted it jointly.

F. Severability. If any term or condition of this Contract is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.

G. Amendments, Waivers. This Contract may not be amended without the prior written consent of IFA (and when required, the Department of Justice) and Recipient. This Contract may not be amended in a manner that is not in compliance with the Act. No waiver or consent is effective unless in writing and executed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.

H. Attorneys' Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract is entitled to recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to IFA by its attorneys. The Recipient shall, on demand, pay to IFA reasonable expenses incurred by IFA in the collection of Loan payments.

I. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

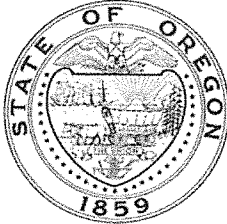
Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

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

J. Integration. This Contract (including all exhibits, schedules or attachments) and the other Financing Documents constitute the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.

K. Execution in Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

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



STATE OF OREGON  
acting by and through the  
Oregon Infrastructure Finance Authority



CITY OF ASTORIA

By: \_\_\_\_\_  
Robert Ault, Manager  
Program Services Division

By: \_\_\_\_\_  
The Honorable Arline LaMear  
Mayor of Astoria

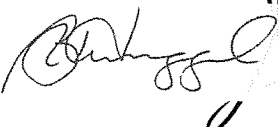
Date: \_\_\_\_\_

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

**APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:**

\_\_\_\_\_  
Not Required per OAR 137-045-0030

Approved as to form:

  
Digitally signed by  
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Date: 2017.01.13 09:20:16 -08'00'



## EXHIBIT A - GENERAL DEFINITIONS

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

“Act” means the Safe Drinking Water Act Amendments of 1996, Public Law 104-182, as amended.

“Award” means the award of financial assistance to Recipient by IFA dated 5 October 2016.

“C.F.R.” means the Code of Federal Regulations.

“Code” means the Internal Revenue Code of 1986, as amended, including any implementing regulations and any administrative or judicial interpretations.

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

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

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

“Financing Documents” means this Contract and all agreements, instruments, documents and certificates executed pursuant to or in connection with IFA’s financing of the Project.

“Financing Proceeds” means the proceeds of the forgivable Loan.

“Lottery Bonds” means any bonds issued by the State of Oregon that are special obligations of the State of Oregon, payable from unobligated net lottery proceeds, the interest on which is exempt from federal income taxation, together with any refunding bonds, used to finance or refinance the Project through the initial funding or refinancing of all or a portion of the Loan.

“Municipality” means any entity described in ORS 285B.410(9).

“ORS” means the Oregon Revised Statutes.

“Project Completion Date” means the date on which Recipient completes the Project.

## EXHIBIT B - SECURITY

General Fund Pledge. The Recipient pledges its full faith and credit and taxing power within the limitations of Article XI, sections 11 and 11 b, of the Oregon Constitution to pay the amounts due under this Contract. This Contract is payable from all legally available funds of Recipient.

## EXHIBIT C - PROJECT DESCRIPTION

### I. PROJECT DESCRIPTION

The Recipient will contract with a licensed engineer to complete a resilience study to assess the existing route of its 12-mile-long water transmission main to deliver water to the city limits from the source at Bear Creek Dam, to determine its vulnerability and risks during a large seismic event, and identify possible new routes.

### II. PROJECT SPECIAL CONDITION

The Recipient must complete an asset management activity and a community engagement component, as selected by the Recipient from a list of eligible activities provided by IFA.

## EXHIBIT E - INFORMATION REQUIRED BY 2 CFR § 200.331(A)(1)

Federal Award Identification:

- (i) Subrecipient\* name (which must match registered name in DUNS): ASTORIA, CITY OF
- (ii) Subrecipient's DUNS number: 00-615-6467
- (iii) Federal Award Identification Number (FAIN): 98009015
- (iv) Federal Award Date: 9 Sep 2015
- (v) Sub-award Period of Performance Start and End Date: 24 months from Contract execution
- (vi) Total Amount of Federal Funds Obligated by this Contract: \$15,500
- (vii) Total Amount of Federal Funds Obligated by this initial Contract and any amendments: \$15,500
- (viii) Total Amount of Federal Award to the pass-through entity: \$16,232,300
- (ix) Federal award project description: Oregon's Drinking Water State Revolving Fund: This grant increases the capacity of Oregon to ensure that its public water systems continue to provide safe drinking water. This is done by (1) continuing loan financing to public water systems and support for newly proposed priority projects, (2) providing grant support for covering administrative expenses, small public water system technical assistance, State program management and local assistance, and (3) continuation of the loan fund to finance source water protection project initiatives, including acquiring conservation easements.
- (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity:
  - (a) Name of Federal awarding agency: U.S. Environmental Protection Agency
  - (b) Name of pass-through entity: Oregon Infrastructure Finance Authority
  - (c) Contact information for awarding official of the pass-through entity: Robert Ault, Program Services Division Manager, 503-551-0917
- (xi) CFDA Number and Name: 66.468 Safe Drinking Water State Revolving Fund  
Amount: \$15,500
- (xii) Is Award R&D? No
- (xiii) Indirect cost rate for the Federal award: N/A

\*For the purposes of this Exhibit E, "Subrecipient" refers to Recipient and "pass-through entity" refers to IFA.

## Exhibit D: Project Budget

|                   | IFA Funds       | Other / Matching Funds |
|-------------------|-----------------|------------------------|
| Activity          | Approved Budget | Approved Budget        |
| Feasibility Study | \$15,500        |                        |
|                   |                 |                        |
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| Total             | \$15,500        |                        |



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

CONTRACT:

This Contract, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017 by and between the City of Astoria, a municipal corporation of the State of Oregon, hereinafter called "CITY", and Hart Crowser, 6420 SW Macadam Avenue, Suite 100, Portland, Oregon, 97239, 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 Pipeline Road Water Transmission Main Resilience Study.
- B. CONSULTANT shall comply with additional contract requirements as outlined in attachment B.
- C. Consultant's services are defined solely by this Contract and its attachments and not by any other contract or agreement that may be associated with this project.
- D. The CONSULTANT'S services shall be performed as expeditiously as is consistent with professional skill and the orderly progress of work. All work shall be completed no later than June 30, 2017.

2. COMPENSATION

- A. The CITY agrees to pay CONSULTANT a total not to exceed \$20,000 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 Jeff Harrington, P.E. City Engineer, City of Astoria, 1095 Duane Street, Astoria, Oregon, 97103, (503) 338-5173.

5. CONSULTANT'S REPRESENTATIVE

For purposes hereof, the CONSULTANT'S authorized representative will be Timothy W. Blackwood, PE, GE, CEG, Principal Geotechnical Engineer.

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:

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

Attorney

BY: \_\_\_\_\_  
Mayor Date

BY: \_\_\_\_\_  
City Manager Date

BY: \_\_\_\_\_  
Consultant Date





December 19, 2016

Mr. Jeff Harrington  
City of Astoria  
1095 Duane Street  
Astoria, OR 97103

**Re: Agreement for Services**  
Pipeline Road Water Transmission Main Resilience Study  
Clatsop County, Oregon  
16-S-1540-028

Dear Mr. Harrington:

## Introduction

This confirms the agreement between the City of Astoria (City) and Hart Crowser, Inc. as a representative of Salus Resilience (Salus/Hart Crowser), to complete the first phase of a resilience study of the City's water transmission main (water main). The City's water main is a 12-mile-long steel pipeline from Bear Creek Dam to the City's Reservoir #2 within City limits. Its route transits the Oregon Coast Range, which is subject to landsliding under normal conditions and even more vulnerable in the case of a large earthquake. Landslides have directly affected the pipeline in the past, even temporarily severing water services to the City, and many landslides are near and possibly within the water main route. The City is interested in assessing the resiliency of the water main and has received a forgivable loan from Business Oregon to conduct the first phase of the resilience study. The study's purpose is to evaluate the existing water main route, determine its vulnerability in the event of a large seismic event, and identify possible new routes that would be more resilient and less susceptible to failure. Although not included in this phase of the work, future plans would be to move the water main to more resilient locations where advisable, as other work is completed and funds allow. The following sections provide our proposed scope of work and fees to complete the requested work.

## Scope of Services

The purpose of our services is to evaluate the existing water main alignment in order to determine its vulnerability to instability and failure during typical seasonal conditions as well as during a design seismic event. This information will be used to guide future efforts in determining more resilient and stable locations for all or portions of the alignment, which are not found to be sufficiently resilient. Specifically, services to be completed by Salus/Hart Crowser include the following.



## **Salus /Hart Crowser Performed Services**

- Meet with the City for a project kick-off meeting.
- Meet with representatives of NW Natural and other possible partners in the project to evaluate the use of information from them and/or other sources.
- Review literature available from the City, state of Oregon, our files, and other sources to evaluate broad geologic conditions within the study area. The review will identify the locations of previous landsliding, as well as potential more stable routes for portions of the alignment should rerouting be recommended.
- Conduct a geologic reconnaissance of the alignment. Our reconnaissance will use information gathered from the City and other sources to locate areas of potential instability, past instability, and other relevant landforms.
- Map features located in the field and interpreted to be relevant to landsliding, including active, dormant, and ancient deep-seated landsliding; areas of erosion; and other features with the potential to adversely affect the water main.
- Evaluate areas of potential realignment for the pipeline, where rerouting may be advisable.
- Develop a GIS database with the information collected from our above reconnaissance.
- Evaluate the information collected and develop conclusions on the vulnerability of the pipeline to landsliding under normal and seismic conditions.
- Provide a report with the results of our reconnaissance, our conclusions regarding pipeline vulnerability to landsliding and seismic events, and our recommendations for stabilization and rerouting to increase the resilience of the pipeline. Our report will include:
  - A map and accompanying data base of historic landsliding near the water main,
  - A map and accompanying data base of areas of past mitigation/repair of unstable areas near the water main,
  - A map and accompanying data base of areas of potential landsliding that may adversely affect the pipeline,
  - Conclusions regarding areas of the alignment that are likely to be affected by landsliding under existing and seismic conditions, and
  - Recommendations for rerouting or stabilizing areas that may be vulnerable to landsliding and seismic events. Identify risks to reroute areas as well.
  - A qualitative ranking of the recommended areas to assist in prioritizing repairs and reroutes.



- Work with the City to develop estimated lengths of standard construction and boring installation required for each route.
- Provide a scope and estimated fees to complete site-specific evaluations of the recommended areas of reroute or stabilization.
- Provide project management and consultation during our work, including via e-mail, telephone calls, or other media as requested.

### **City Performed Services**

Hart Crowser will work collaboratively with the City to complete the assessment. Supplementary to Salus/Hart Crowser's work, the City will complete the following tasks.

- Provide GIS mapping, analysis, and support.
- Identify required easements for repairs or reroute options.
- Identify and work with potentially affected stakeholders.
- Provide cost estimating services for repair or rerouting.

### **Assumptions and Limitations**

This agreement is based on the following assumptions and limitations.

- Our assessment will be interpretive only and no subsurface explorations are included in this phase of the project.
- Our results will be preliminary and site-specific work will be completed for final design where repairs or realignment are recommended.

Our work does not include efforts related to easements or public involvement.

### **Terms and Authorization**

The scope of work outlined above will be billed on a time and materials basis in accordance with the attached Rate Schedule. In house laboratory services and field equipment rental and supplies will be billed in accordance with our Schedule of Laboratory and Field Charges. We estimate that our work will result in approximate total fees of \$20,000 per the attached spread sheet. We will not complete additional work without your prior approval. Our services will be performed in accordance with the standard of care of our profession.



Astoria Waterline Resilience Study  
December 19, 2016

16-S-1540-028

Page 4

We understand that the City will issue a professional services contract for this work, incorporating the scope and fees described in our proposal. Hart Crowser is prepared to complete our services upon receiving written notice to proceed (NTP). We anticipate initiating our work within approximately 2 weeks after receiving NTP. Except for delays beyond our control, we expect to complete our work and issue a draft report within approximately 2 months of NTP.

We appreciate this opportunity to submit our proposal and look forward to your favorable consideration. If we may provide any additional information or clarification of this proposal, please call us.

Sincerely,

**HART CROWSER, INC. (REPRESENTING SALUS RESILIENCE)**

**TIMOTHY W. BLACKWOOD, PE, GE, CEG**  
Principal, Geotechnical Engineer

**ALLISON M. PYRCH, PE, GE**  
Associate, Geotechnical Engineer

Attachments:

Rate Schedule (HC2015)

Summary of Hours and Expenses

\\Pdxsrv\data\Notebooks\16S1540028\_Salus-Astoria Waterline Resilience\Deliverables\Proposal-Resilience 12-19-16\Astoria Waterline Assessment Salus Geotech Svcs.docx



## HART CROWSER RATE SCHEDULE

|                             |       |
|-----------------------------|-------|
| Staff                       | \$99  |
| Sr. Staff                   | \$125 |
| Project                     | \$145 |
| Sr. Project                 | \$165 |
| Numeric Modeler             | \$175 |
| Associate                   | \$185 |
| Sr. Associate               | \$205 |
| Principal                   | \$235 |
| Sr. Principal               | \$255 |
| Drafter                     | \$115 |
| Project Assistant           | \$82  |
| Technician (4-hour minimum) | \$85  |

### DIRECT CHARGES

|  |                             |
|--|-----------------------------|
| Auto Mileage                                 | Current Federal Standard    |
| Truck/Van Rental (Half-day minimum)          | \$95/day + 25¢/mile over 50 |
| Subcontractors and Outside Vendors           | Cost + 15%                  |
| Communication Charge                         | 5% of Billed Labor          |
| Second and Third Shift Weekend and Holidays* | \$20/hr premium             |

The current Schedule of Laboratory and Field Charges for in-house laboratory services and field equipment rental and supplies is available upon request. All rates are subject to change without notice.

\*Second and Third Shifts are those starting between 4 PM and 4 AM. Extended and back to back shifts with more than 10 total hours will have hours in excess of 10 billed with premium.

Preparation for testimony and appearance at depositions and testimony will be charged at 1.5 times the specified rate.

HC2015



# HART-CROWSER

www.hartcrowser.com

## 16-S-1540-028 Astoria Waterline Resilience Study

### Summary of Hours and Expenses

| Task Descriptions                                       | Summary of Hours and Expenses |           |                  |           |                   |                |         |              |       |         |                   |            |   | Professional Staff Fees Subtotal | Reimbursables / Expenses | Total    |
|---|-------------------------------|-----------|------------------|-----------|-------------------|----------------|---------|--------------|-------|---------|-------------------|------------|---|----------------------------------|--------------------------|----------|
|   | Senior Principal              | Principal | Senior Associate | Associate | Numerical Modeler | Senior Project | Project | Senior Staff | Staff | Drafter | Project Assistant | Technician |   |                                  |                          |          |
| Billing Rates (2015)                                    | \$255                         | \$235     | \$205            | \$185     | \$175             | \$165          | \$145   | \$125        | \$99  | \$115   | \$82              | \$85       |   |                                  |                          |          |
| Meetings (Kick-off and 1 progress meeting) <sup>1</sup> |                               | 5         |                  | 10        |                   |                |         |              |       |         |                   |            |   | \$3,025                          |                          | \$3,025  |
| Records Review  |                               | 1         |                  | 4         |                   |                | 24      |              |       |         |                   |            |   | \$4,455                          |                          | \$4,455  |
| Geologic Reconnaissance                                 |                               | 1         |                  | 1         |                   |                | 32      |              |       |         |                   |            |   | \$5,060                          |                          | \$5,060  |
| Mapping Coordination                                    |                               | 2         |                  | 2         |                   |                | 4       |              |       |         |                   |            |   | \$1,420                          |                          | \$1,420  |
| Report Preparation                                      |                               | 2         |                  | 8         |                   |                | 10      | 10           |       |         |                   |            |   | \$6,062                          |                          | \$6,062  |
| TOTAL   | 0                             | 11        | 0                | 25        | 0                 | 0              | 70      | 10           | 0     | 8       | 6                 | 0          | 0 | \$20,022                         | \$0                      | \$20,022 |

**Additional Contract Requirements for contracts with  
Professional Services Contractors  
for projects funded by Safe Drinking Water financing**

**SAM Registration and DUNS number are required for all entities that enter into direct contracts with the recipients of Safe Drinking Water Revolving Loan funds**

|   |   |
|---|---|
| <p><b>SAM Registration:</b> <a href="http://www.sam.gov/portal/public/SAM/">http://www.sam.gov/portal/public/SAM/</a></p> <p>NOTE: The SAM registration expires annually and must be kept active until the SDWRLF project is closed</p> | <p><b>DUNS Number</b> <a href="http://www.dnb.com/get-a-duns-number.html">http://www.dnb.com/get-a-duns-number.html</a></p> |
|---|---|

**1. Source of Funds**

Work under this contract is funded by the federal Safe Drinking Water Revolving Loan Fund through the Oregon Business Development Department and a partnership of Local and/or Private Funds.

**2 Non Discrimination**

"The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies."

**3. Intellectual Property**

"Contractor hereby grants to the U.S. E.P.A. a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes, any intellectual property developed under this contract. Contractor shall secure from third parties the same license in the name of the U.S. E.P.A. regarding any intellectual property developed by third parties as subcontractors to perform this project, or developed under contract with the Contractor specifically to enable Contractor's obligations related to this project."

"Contractor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

**4. Procurement of Recovered Materials**

"Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the

Resource Conservation and Recovery Act, including procurement of recovered materials in a manner designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247.”

## 5. Prohibition on the Use of Federal Funds for Lobbying

### CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signed

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Title

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Date

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