



# AGENDA

## ASTORIA CITY COUNCIL

February 6, 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. **PRESENTATIONS**

- (a) Advance Astoria: Project Update (Community Development)
- (b) Skip Hauke of Astoria-Warrenton Chamber of Commerce

6. **CONSENT CALENDAR**

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

- (a) City Council Minutes of 1/3/17
- (b) City Council Minutes of 1/17/17
- (c) Boards and Commissions Minutes
  - (1) Library Board Minutes of 11/29/16
- (d) Memorandum of Understanding Between Clatsop County and the Cities of Astoria, Seaside and Warrenton for Cooperation in the Provision of Library Services (Library)
- (e) Resolution Amending City of Astoria Nondiscrimination Policy (City Manager)
- (f) Oregon Infrastructure Finance Authority (IFA) Storm Damage Grant Acceptance (Public Works)
- (g) FEMA Emergency Shoreline Erosion Project Construction Contract Award (Public Works)
- (h) Veterans and War Memorial Grant Application to Restore the Doughboy Monument (Parks)
- (i) Authorization to Enter into an Agreement with Greenworks P.C. to Produce Site-Specific Park Plans at Shively and McClure Parks (Parks)

7. **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 Revising City Code Section 5.810 Providing for Identification of Dangerous Animals; Appeals; Restrictions Pending Appeal (2<sup>nd</sup> reading & adoption) (Police)
- (b) Ordinance Amending City Code Section 1.964A Pertaining to City Manager's Spending Authority (2<sup>nd</sup> reading & adoption) (City Council)
- (c) Waterfront Bridges Replacement Project (6<sup>th</sup> – 11<sup>th</sup> Streets) Funding Update and Loan Application (Public Works)

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

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



## CITY OF ASTORIA

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February 2, 2017

### MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: ASTORIA CITY COUNCIL MEETING OF TUESDAY, FEBRUARY 6, 2017

### **PRESENTATIONS**

**Item 5(a): Advance Astoria: Project Update (Community Development)**

Community Development Director Kevin Cronin will provide Council with an update regarding the Advance Astoria project.

**Item 5(b): Skip Hauke of Astoria-Warrenton Chamber of Commerce**

Astoria-Warrenton Chamber of Commerce Director Skip Hauke will make a presentation regarding the Chamber's services to the local business community for 2016 and 2017 year to date.

### **CONSENT CALENDAR**

**Item 6(a): City Council Minutes**

The minutes of the City Council meeting of January 3, 2017 are enclosed for review. Unless there are any corrections, it is recommended that Council approve these minutes.

**Item 6(b): City Council Minutes**

The minutes of the City Council meeting of January 17, 2017 are enclosed for review. Unless there are any corrections, it is recommended that Council approve these minutes.

**Item 6(c)(1): Boards and Commissions Minutes**

The minutes of the Library Board meeting of November 29, 2016 are enclosed. Unless there are any questions or comments regarding the contents of these minutes, they are presented for information only.



**Item 6(d): Memorandum of Understanding Between Clatsop County and the Cities of Astoria, Seaside and Warrenton for Cooperation in the Provision of Library Services (Library)**

Since 2010, the Astoria City Council has authorized Library staff to participate in Libraries ROCC! Rural Outreach to Clatsop County. Partners and collaborators include the school districts of Astoria, Jewell, Knappa, Seaside and Warrenton, the Northwest Regional Education Service District, Clatsop County, and the public libraries of Astoria, Seaside, and Warrenton. Libraries ROCC activities include library cards for all children ages birth to nineteen, a collaborative countywide summer reading program, and courier service between the Seaside, Warrenton and Astoria libraries. Clatsop County provided \$5000 in 2016 to assist with the program. A previous Intergovernmental Agreement (IGA) was signed by the cities on May 1, 2016. This Memorandum of Understanding (MOU) simply formalizes County participation and will be for a new three year period.

The Library Directors of the Seaside, Warrenton and Astoria libraries leverage the work of the past six years by seeking community and corporate donations to support ROCC library cards and summer programs and to establish an endowment fund. The financial impact of this MOU for the City of Astoria is estimated at \$850 a year for mileage and staff time to continue courier service. Courier service enables the libraries to continue sharing collections. This cost may be reduced if a grant paid Outreach Coordinator is able to assist with courier service. Any party may discontinue participation with a 90 day notice. This MOU is to be reconsidered in three years. The MOU has been reviewed and approved as to form by City Attorney Henningsgaard. It is recommended that Council approve and authorize the City Manager to sign the Memorandum of Understanding between the Cities of Astoria, Seaside, Warrenton, and Clatsop County for Cooperation in the provision of Library Services.

**Item 6(e): Resolution Amending City of Astoria Nondiscrimination Policy (City Manager)**

On September 15, 2014, the Astoria City Council adopted Resolution No. 14-25 establishing a Policy on Nondiscrimination. At their July 18, 2016 meeting, the City Council considered and approved a request to remove the “slash (/)” as used in “gender identity/expression”, and in its place, use the word “and” to read as follows: “gender identity **and** expression”. The City of Astoria Policy regarding Nondiscrimination was amended to read as follows:

“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.”

Since the policy was originally adopted by Resolution No. 14-25, the amended language also needs to be adopted by resolution. It is recommended that Council adopt the proposed Resolution implementing the change in language for the Nondiscrimination Policy.

**Item 6(f): Oregon Infrastructure Finance Authority (IFA) Storm Damage Grant Acceptance Public Works)**

During the period of December 6 through 23, 2015, the State of Oregon experienced severe weather that caused a damaging winter storm. The City of Astoria experienced erosion along the Columbia River shoreline and a washout along Pipeline Road where our 21" diameter water transmission main crosses a ravine. As a result of the widespread damage, a Federal Declaration of Emergency was declared on February 17, 2016 and Federal Emergency Management Agency (FEMA) Public Assistance Program funds became available to assist communities with the repair of their damages. FEMA funds will cover 75 percent of project costs and IFA will be providing matching grant funds for the additional 25 percent. A description of the two City of Astoria projects are included in the associated memo.

Following is a current project budget summary:

<u>Project Name</u>	<u>FEMA Grant Funding (75%)</u>	<u>IFA Grant Funding (25%)</u>	<u>Project Total</u>
Emergency Shoreline Erosion Project	\$82,356	\$27,452	\$109,808
Pipeline Road Waterline Stabilization Project (1)	\$110,869	\$36,956	\$147,825
Total	\$193,225	\$64,408 (2)	\$257,633

It is recommended that Council authorize the Mayor and City Manager to sign the IFA contract for the 25 percent matching grant funds for the two FEMA projects, Emergency Shoreline Erosion Project and Pipeline Road Bank Stabilization project.

**Item 6(g): FEMA Emergency Shoreline Erosion Project Construction Contract Award (Public Works)**

During the period of December 2015, a severe weather pattern caused damaging winter storms. The City of Astoria experienced erosion along the Columbia River shoreline at multiple locations during the event period. On February 17, 2016 a declaration of emergency was declared and Federal Emergency Management Agency (FEMA) Public Assistance Program funds became available to assist communities repair damages. FEMA has awarded funding for this project. Staff has received the Oregon Division of State Lands and Army Corp of Engineers' permit for the project. Since the Engineers' estimate was under \$100,000, per City Code, staff requested construction quotes from local contractors for the work. Following is a summary of the quotes received:

<u>Contractor</u>	<u>Total Quote</u>
Big River Construction	\$44,415.00
Clean Sweep Maintenance Inc.	\$87,652.50

Funding for the project will temporarily come from the Promote Astoria Fund and will be reimbursed by FEMA (75%) and Oregon's Infrastructure Finance Authority (25%). It is recommended that Council authorize the award of a contract to Big

River Construction, Incorporated, in the not-to-exceed amount of \$44,415.00 for the Emergency Shoreline Erosion Project.

**Item 6(h): Veterans and War Memorial Grant Application to Restore the Doughboy Monument (Parks)**

The Veterans and War Memorials Grant Program was created and established by the Oregon Parks and Recreation Department to provide funding assistance to local governments for the construction and restoration of veterans and war memorials. The program helps to honor Oregon's soldiers and veterans by commemorating their service to the country. The Parks Department, the American Legion Clatsop Post 12, Clatsop Community College's Historic Preservation Program, and the Community Development Department have collaborated to develop a plan to renovate the Doughboy Monument's interior, exterior, lighting system, and plumbing. The total cost for renovation work is estimated at \$23,605 and the grant requires a 10% cash match. A \$3,000 match from Astor West Urban Renewal Area Funds will be contributed toward this project as part of the larger Uniontown Reborn initiative. This partnership dovetails with other key public investments that are planned for Uniontown, including façade grants for residential and commercial properties, a new streetscape design for W. Marine Drive, Maritime Memorial expansion, and the reopening of two-way traffic on Bond Street. Furthermore, the Uniontown Association has expressed support for these investments to revitalize the historic business district. The Historic Preservation Program is providing \$6,480 in in-kind labor and Parks and Recreation Department staff are providing \$1,500 in in-kind administration. The total grant request is \$12,625. It is recommended that the City Council authorize submitting the Veterans and War Memorial Grant application for \$12,625 in grant funds to renovate the Doughboy Monument.

**Item 6(i): Authorization to Enter into an Agreement with Greenworks P.C. to Produce Site-Specific Park Plans at Shively and McClure Parks (Parks)**

The Parks and Recreation Department's Comprehensive Master Plan recommends completing site-specific park plans at several locations. The process would allow the Department to plan for specific improvements and new development, as well as long term maintenance at each site. The plans would assess alternative options for improvements and new development, and recommend the best option. The planning process would involve input from the community, specify landscape features and park amenities to be developed or improved, and include cost estimates, funding strategies, and a timeframe for implementation. It was recommended that site master plans for Shively Park and McClure Park be prioritized. During the community input process for the Parks and Recreation Comprehensive Master Plan, the public was asked to prioritize sites in need of master plans. The City of Astoria was awarded the Oregon Parks and Recreation Department Local Government Grant of \$40,000 to support funding site plans for Shively Park and McClure Park and approve the Local Government Grant Program Agreement. On October 17, 2016 City Council accepted the grant and committed the required 40% match, in the amount of \$16,000 cash budgeted in the Capital Improvement Fund and in-kind management and administration contribution of \$11,000. On November 7, 2016 City Council

authorized staff to request qualifications for a consultant or team of consultants specializing in community engagement, gathering, consolidating, and prioritizing community input, planning and landscape design and/or architecture. One statement of qualifications was received from Greenworks P.C. a Landscape Architecture and Environmental Design firm that has completed several projects with the City of Astoria. A selection panel comprised of Parks and Recreation Department staff, Community Development staff, neighbors of Shively Park, and a representative from the Friends of McClure Park evaluated the received statement of qualification. The consultant was evaluated based on proven experience, expertise, and technical merit for the requested services. Based on the successful evaluation of Greenworks submittal, Greenworks and City staff negotiated project management plan, budget and schedule for the project. At this time the project has fallen one month behind schedule. To catch-up and with the tentative timeline the Parks and Recreation Department seeks City Council authorization to enter into a contract with Greenworks P.C. for a team of consultants specializing in community engagement, gathering, consolidating, and prioritizing community input, planning and landscape design and architecture to create site-specific park plans for Shively and McClure in the amount of \$55,922.52. It is recommended that City Council approve the contract with Greenworks P.C. in the amount of \$55,922.52 to develop master plans for Shively and McClure Parks.

## **REGULAR AGENDA ITEMS**

**Item 7(a): Ordinance Revising City Code Section 5.810 Providing for Identification of Dangerous Animal; Appeals; Restrictions Pending Appeal (2<sup>nd</sup> reading & adoption) (Police)**

This ordinance received its first reading at the January 17, 2017 City Council meeting. 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 second reading and adopt the proposed ordinance.

**Item 7(b): Ordinance Amending Code Section 1.964A Pertaining to City Manager's Spending Authority (2<sup>nd</sup> reading & adoption) (City Council)**

The first reading of this ordinance was held at the January 17, 2017 City Council meeting. 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. 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 second reading and adopt the proposed ordinance.

**Item 7(c): Waterfront Bridges Replacement Project (6<sup>th</sup> – 11<sup>th</sup> Streets) Funding Update and Loan Application (Public Works)**

In September 2014, the City entered into an Intergovernmental Agreement with the Oregon Department of Transportation (ODOT) for the design phase of the Waterfront Bridges Replacement Project that will replace six bridge structures. In April 2015, OBEC Consulting Engineers, Inc., (OBEC) was hired by ODOT as the engineering design consultant. OBEC has performed design to 60% completion. City staff and ODOT staff are currently reviewing 60% design submittal. An updated project cost estimate indicates the construction cost increased slightly with the design refinement from the 30% submittal (see table below). As the project design has advanced, costs that are not reimbursed through ODOT have also been characterized. The two major City expenses are utility relocations (sewer and water) and repairs to the 11<sup>th</sup> Street extension outside the project limits to achieve highway load capacity. These expenses are currently estimated at \$337,000 and must be paid solely by the City.

The cost estimate prepared by OBEC is based on the results of investigations, research, and a much better understanding of the site conditions and constraints than when the project was originally scoped in 2013. Based on OBEC's analysis, a large part of the cost increase is attributed to deep bedrock that was discovered during the geotechnical explorations and larger project area that is necessary to connect the new structure to existing structures. OBEC estimates that the project funding needs to be increased by \$2,189,412 (\$224,853 City match). The project team is working with ODOT to confirm their support of the 60% design submittal, then a request to increase funding will be submitted.

The total estimated City funds contributed to this project is estimated to be \$1,698,548. To date, the City has contributed \$242,987 from Surface Transportation Program (STP) funds. The remaining match \$1,455,561 will need to be a loan that will be paid back by the City's future STP funds. STP Funds, which are managed by ODOT, are federal fuel tax dollars that are available to local agencies for transportation projects. Since 2008 the City has received between \$100,000 and \$112,000 annually in STP funds.

	<b><u>ODOT Funding</u></b>	<b><u>30% Design Cost Estimate</u></b>	<b><u>60% Design Cost Estimate</u></b>
ODOT Bridge Program Grant-----	\$8,512,685	\$10,702,097	\$11,018,975
City Funds-----	\$974,315	\$1,224,903	\$1,698,548
<b>PROJECT COST</b>	<b>\$9,487,000</b>	<b>\$11,927,000</b>	<b>\$12,717,523</b>
Annual Payment on 25-year Loan, 3.5% Interest -----	\$54,000	\$79,000	\$89,000

A public open house was held at City Hall on December 14<sup>th</sup> to share information about the project's proposed surface design features and discuss opinions. A comment card was provided for written comments, which included options to vote for the pedestal styles and concrete bridge color. In general, the comments were supportive of the project and its appearance. At the November 21<sup>st</sup> Council meeting, City Staff was authorized to submit the above options to ODOT for consideration with the basalt rock pedestals being the City's preferred alternative and the board-formed concrete as the second choice. ODOT staff is currently preparing documentation and recommendations to submit to the State Historic Preservation Office (SHPO) for their review and concurrence. Council will be presented with these options for a final decision. It is recommended that Council authorize submitting an application to the Business Oregon Infrastructure Finance Authority for loan funding to provide the remaining match funds for the Waterfront Bridges Replacement Project in the amount of \$1,455,561.

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

Councilors Present: Nemlowill, Brownson, Price, Jones, and Mayor LaMear.

Councilors Excused: None

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

## **OATHS OF OFFICE**

### **Item 3(a): Councilor Thomas Brownson, Ward 2**

Mayor LaMear administered the Oath of Office to Councilor Thomas Brownson, who was elected to a four-year term for Ward 2.

### **Item 3(b): Councilor Bruce Jones, Ward 4**

Mayor LaMear administered the Oath of Office to Councilor Bruce Jones, who was elected to a four-year term for Ward 4.

### **Item 3(c): Police Sergeant Andrew Randall**

Mayor LaMear administered the Oath of Office to new Police Department Sergeant Andrew Randall.

Chief Johnston announced that Candace Pozdolski would be the Police Department's first Lead Dispatcher, a new position that was recently created. She has eight years of dispatching experience and has been with the Astoria Police Department for three years.

## **REPORTS OF COUNCILORS**

**Item 4(a): Councilor Jones** thanked City Council for a warm welcome and gracious hospitality. He thanked Staff for giving him a thorough briefing and said he was grateful for the opportunity to work with this group of Councilors and the Mayor.

**Item 4(b): Councilor Price** commented that this new Council includes members with diverse backgrounds of leadership, civic, and governmental duties. She looked forward to working with each Councilor. She knew Council was committed to working together, with boards and commissions, with Staff, and with constituents.

**Item 4(c): Councilor Brownson** said he was pleased to have the opportunity to serve on this Council and to serve Astoria. After spending time with Mayor LaMear, Staff, and the other Councilors, he believed this Council would be a very good working group and he hoped to accomplish a lot while in office. He wanted to be accessible to all of Astoria, and his ward in particular, so he planned to hold regular monthly meetings. He could be reached on social media and through the City office. His Facebook page is Councilor Brownson and his Twitter page is @ThomasBrownson. He has also signed up on NextDoor.com as part of the South Slope Neighborhood, where he planned to write posts and receive messages. He has enjoyed working with Staff, who have been very helpful and knowledgeable.

**Item 4(d): Councilor Nemlowill** welcomed the new Councilors and said it was great to have new energy on City Council.



**Item 4(e): Mayor LaMear** said she was excited about the New Year and the new Council.

**CHANGES TO AGENDA** There were none.

## **PROCLAMATIONS**

### **Item 6(a): School Board Recognition Month**

Mayor LaMear read the proclamation declaring the month of January 2017 as School Board Recognition Month. She asked School Board members to stand for a round of applause and noted that she would deliver the proclamation to the School Board on Wednesday, January 4<sup>th</sup> at their meeting.

## **CONSENT CALENDAR**

The following items were presented on the Consent Calendar:

7(a) City Council Minutes of 12/5/16

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

## **REGULAR AGENDA ITEMS**

### **Item 8(a): Ordinance Readopting Certain State Statutes to Reflect Changes Made by the 2016 Oregon Legislature (1<sup>st</sup> Reading) (City Attorney)**

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 re-adoption," 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 first reading of the proposed ordinance.

**City Council Action:** Motion made by Councilor Brownson, seconded by Councilor Nemlowill, to conduct the first reading of the Ordinance readopting certain State Statutes to reflect changes made by the 2016 Oregon Legislature. Motion carried unanimously. Ayes: Councilors Price, Jones, Nemlowill, Brownson, and Mayor LaMear; Nays: None.

Director Pearson conducted the first reading of the ordinance.

### **Item 8(b): Ordinance Adopting Changes to 3 Percent Marijuana Tax on Sale of Marijuana Items by a Marijuana Retailer (1<sup>st</sup> Reading) (Finance)**

City Council Adopted Ordinance 16-02 on February 16, 2016 imposing a 3 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 (IGA) with Oregon Department of Revenue for the collection and distribution of the 3 percent 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 consider holding a first reading of the ordinance enacting the voter approved 3 percent marijuana tax with collection and enforcement language incorporated.

**City Council Action:** Motion made by Councilor Nemlowill, seconded by Councilor Brownson, to conduct the first reading of the Ordinance enacting the voter approved 3 percent marijuana tax with collection and enforcement language incorporated. Motion carried unanimously. Ayes: Councilors Price, Jones, Nemlowill, Brownson, and Mayor LaMear; Nays: None.

Director Brooks conducted the first reading of the ordinance.

**Item 8(c): Resolution Amending Fee Schedule for Astoria Aquatic Center (Parks)**

The Astoria Aquatic Center partners with the Astoria School District and the North Coast Swim Club (NCSC) to provide space within the lap pool for youth swim team members to practice. The Astoria Aquatic Center's current lane rental fee is \$25 per lane per hour, but neither the Astoria School District nor the NCSC can afford the \$25 per hour rate due to the length of their practices and amount of space they require.

During the November 7, 2016 City Council meeting, Staff suggested that in addition to our current \$25 per lane per hour rental fee, an additional rental option specifically for youth swim teams to practice be added to the fee resolution at a reduced rate of \$5 per lane per hour. This rate would be contingent upon the rented space being used by youth swim teams for the purpose of practicing for a minimum of 100 hours per year and that all participants would be required to purchase a monthly or daily pass. After public comment and a discussion by Council, City Council stated that private youth swim teams should pay less than \$5 per lane per hour and declared a 60 day moratorium on lane rental fees at the Astoria Aquatic Center charged to the Astoria School District and NCSC to allow staff time to re-negotiate with the organizations.

Negotiations with NCSC were conducted on December 1, 2016. During this meeting, City staff discussed the challenges and impacts swim teams have on the facility as well as options to reformat NCSC's current practice schedule to reduce the number of lanes utilized, thus reducing the additional cost incurred. NCSC explained that fee increases would negatively impact their organization and that reducing lanes was not a favored option. Differing rates were discussed between the NCSC and City staff. It was agreed that the parties would reconvene to discuss further.

On December 7, 2016, Parks and Recreation Director Angela Cosby discussed with the Parks, Recreation, and Community Foundation Board the possibility of partnering with NCSC on assisting with lane rental fees. The Parks, Recreation, and Community Foundation Board seemed very interested in partnering with the NCSC and requested that representatives from NCSC contact them to discuss the option further. Also on December 7, 2016 City staff met with NCSC representatives to negotiate a mutually agreeable fee. During this meeting, City staff shared the potential partnership with the Parks, Recreation, and Community Foundation; provided contact information; and encouraged the NCSC to contact them. Staff also attempted to negotiate a further reduced lane rental fee of \$2.50 per lane per hour. If the NCSC maintained its current practice schedule of two hours per day, in three lanes, for six days a week, the annual additional cost would be \$4,158. NCSC representatives were appreciative of the offered reduction and understood of the high costs associated with operating the Aquatic Center. They agreed to meet with the Parks, Recreation, and Community Foundation to see if they would be willing to pay the lane rental cost for the years to come before agreeing to the rate.

The NCSC is scheduled to meet with the Parks, Recreation, and Community Foundation on January 25, 2017. Unfortunately, no agreement has been made and City staff is requesting an additional 60-day moratorium to provide time to continue negotiating with the North Coast Swim Club and provide them an opportunity to seek out additional financial support. It is recommended that Council extend the moratorium on lane rental fees charged to the North Coast Swim Club and Astoria School District for an additional 60 days.

Mayor LaMear asked David Oser to speak, noting that Director Cosby would respond.

David Oser, 254 W. Irving, Astoria, said during discussion of these fees at a December City Council meeting, someone had noted that the School District pays the fees for its students. Unfortunately, this is not the case. Students, their families, and through fundraising efforts pay the swim team's pool use fees. Therefore, the students are in a position similar to the NCSC. He suggested the negotiations include Astoria School District Athletic Director Howard Rub.

Director Cosby stated she spoke with Mr. Rub and he agreed with most of Mr. Oser's comments. Mr. Rub had explained to her that fees are paid by the students, parents, fundraising by the Boosters, and School District funding. The School District has a very tight budget, so anytime fees increase, cuts are made elsewhere in the budget or more money has to be brought in somehow.

City Manager Estes added that while Staff has discussed fees with the NCSC, he and Director Cosby have discussed the fees with Astoria School District Staff. The School District is waiting to hear the final rate negotiated with the NCSC. He confirmed for Mayor LaMear that City Council had indicated they believed groups like the NCSC should pay rates lower than the High School Swim Team and directed Staff to negotiate the specific amounts.

Councilor Nemlowill confirmed that high school students pay for an Aquatic Center pass just like the NCSC participants.

Councilor Brownson understood the original fee of \$25 per hour was not being paid by the NCSC and this proposal was intended to rectify the situation. He asked if the high school had been paying the \$25 per hour lane fees. Director Cosby explained that the school swim team had been paying a different lane fee that averaged \$10 per hour.

Councilor Price stated she did not have a problem extending the moratorium on fees for both swim teams. One issue is the attempt to comply with the fee schedule and the other issue is the attempt to manage the Parks Department budget. Extending the moratorium would not solve the problem of compliance with the fee schedule, but it would help to manage the budget. She suggested the moratorium be extended until the budget hearings take place. Staff is working on the Parks' budget and one of the goals might be to reduce the amount of the General Fund that supports the Parks' budget.

City Manager Estes advised against waiting until budget time because Director Cosby would be making a presentation to City Council prior to the budget meetings, possibly within the next 60 days. Staff is considering how to work within the current Parks Department budget and avoid a year-end transfer. However, the current level of service provided by the Parks Department is not sustainable with the current budget. Therefore, cuts will be necessary throughout the entire Parks Department, as prioritized by City Council, or additional revenue will need to come in. Staff needs direction from Council on how to address the current budget, so they are considering a work session in the next few months to address Parks services in the current fiscal year.

Councilor Price said the second quarter budget summary would be presented to Council in January. She asked if the summary would give Council an idea of how big a year-end transfer might be necessary. City Manager Estes said it was too early to determine a year-end transfer because many times, expenses come at the end of the year. He noted some salary savings that occurred this year would likely not occur again next year.

Mayor LaMear confirmed that the NCSC planned to meet with the Parks and Recreation Foundation to see if the Foundation would be willing to pay the lane fees. She suggested the high school swim also approach the Foundation about paying for lane fees. Director Cosby noted that all three groups were non-profits and they would have to decide amongst themselves if they wanted to work together on this issue.

Councilor Price said she preferred to hear Staff's briefing before making a decision. City Manager Estes confirmed Staff could make a presentation on the Parks Department Budget before presenting a fee resolution for the swim clubs.

**City Council Action:** Motion made by Councilor Jones, seconded by Councilor Brownson to extend the moratorium on lane rental fees charged to the North Coast Swim Club and Astoria School District for an additional 60 days. Motion carried unanimously. Ayes: Councilors Price, Jones, Nemlowill, Brownson, and Mayor LaMear; Nays: None.

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

### **Item 9(a): Election of City Council President**

**City Council Action:** Motion made by Councilor Nemlowill, seconded by Councilor Brownson to elect Cindy Price as City Council President for 2017. Motion carried unanimously. Ayes: Councilors Price, Jones, Nemlowill, Brownson, and Mayor LaMear; Nays: None.

### **Item 9(b): City Council FY2017-18 Goal Setting Session**

The City Council will meet with Department Heads on Friday, January 6, 2017 from 8:00 am to 1:00 pm, as part of their goal setting preparation for Fiscal Year 2017-18. The Council will then meet with facilitator Wes Hare on Friday, January 13, 2017 beginning at 8:00 am, and if needed, Saturday January 14, 2017, to further conduct their Fiscal Year 2017-18 goal setting session. These sessions will be held in the Council Chambers located on the 2nd Floor of City Hall, 1095 Duane Street.

Mayor LaMear called for public comments.

Fred Bohne, 824 35<sup>th</sup> Street, Astoria, welcomed Councilor Jones and Brownson to City Council, noting that he lived in Ward 4. The previous day, he went to Fred Meyer for a flu shot. The doctor told him he had recently arrived and was unable to find a place to live in Astoria, but finally found a place in Warrenton. Mr. Bone had suggested the doctor call and encourage City Manager Estes and Director Cronin to support the Accessory Dwelling Unit ordinance currently being considered by City Council because it would provide additional housing. He supported the ordinance because he has a detached coach house behind his main house that would make a beautiful living accommodation. If the ordinance passes, he could make his coach house available to renters. He was not in favor of bed and breakfasts or anything for outsiders. Housing for the people that live here is desperately needed.

Patrick Wingard stated he wanted the new Councilors to have copies of the documents he previously submitted, including the letter, his presentation, and the one-page document showing the distribution of fees. He stated he would give these documents to Director Cosby.

## **EXECUTIVE SESSION**

### **Item 10(a): ORS192.660(2)(h) – Legal Counsel**

The City Council will recess to Executive Session to consult with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.

## **ADJOURNMENT**

There being no further business, the meeting was adjourned at 7:37 pm.

**ATTEST:**

**APPROVED:**

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Finance Director

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City Manager

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

Councilors Present: Nemlowill, Jones, Price, Brownson, and Mayor LaMear.

Councilors Excused: None

Staff Present: City Manager Estes, Community Development Director Cronin, Finance Director Brooks, Fire Chief Ames, Deputy Chief Halverson, City Engineer Harrington, Library Director Pearson, and City Attorney Henningsgaard. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

## REPORTS OF COUNCILORS

**Item 3(a): Councilor Jones** reported that he spent half of the previous day at the natural area at the east end of the Alderbrook Lagoon with Brook Stanley from the Northcoast Watershed Association and neighbors replacing invasive species with native plants. The Parks and Recreation Department has done a great job working with other agencies, non-profits, Chip-In events and volunteers to help maintain parks, especially considering the City's budget constraints. On Saturday, he attended a memorial service at Cape Disappointment for the crews of several commercial fishing vessels and Coast Guard boats. He was thankful to all who work in the maritime industries, commercial fishing, fish processing, Coast Guard, the Job Corps Seamanship program, shipping, as bar pilots, and the Port because they play a vital role in the local and regional economy. Maritime industries should be considered as the City develops the five-year economic development strategy.

**Item 3(b): Councilor Price** reported that she held a salonical on Thursday and about seven or eight people attended. She believed people would be happy with City Council's goal setting session. On Saturday between 11:30 am and 1:30 pm, there would be a Women's March downtown. All genders were welcome to participate in the march, which was intended to be peaceful and positive. The women that organized the event were from all over the county. Thursday night from 5:00 pm to 9:00 pm, Director Cronin and Planner Ferber would be hosting the first community meeting of the Advance Astoria Business Development Program. She asked Director Cronin to speak about the event.

Director Cronin said Tuesday would be full of focus group meetings and an advisory committee would meet at 3:30 pm on Thursday. The public open house would be from 5:00 pm to 7:00 pm with a panel presentation from 7:00 pm to 9:00 pm. He explained that the first phase of the Advance Astoria Program would be to complete an Economic Opportunities Analysis. The open house would have a lot graphs, charts, and maps displaying data discovered while doing research.

**Item 3(c): Councilor Brownson** reported that he spent the last few weeks meeting with department heads and City Staff and visited City facilities. He was impressed with the way department heads feel about their Staff and their positive attitudes toward what he believed would be a challenging year for the City. He was looking forward to watching their performance. City Council held their goal setting session on Friday and the *Daily Astorian* published a nice piece on the meeting. He believed the meeting was productive because Council was able to have reasonable discussions about some of the City's challenges. Council identified the issues and developed a good plan to move things forward and get things done. He planned to host Meet the Councilor sessions on the second Thursday of each month at Three Cups of Coffee at 4:00 pm.

**Item 3(d): Councilor Nemlowill** reported she was glad to see that people from Fort George were in the audience because the business side of Astoria really makes things work. She was also glad to see Chief Ames and hoped he was feeling good. She believed the goal setting session was very productive and so far, all of the Councilors were getting along. She hoped Council could continue such a positive and professional working relationship. She believed Council was taking the housing issues seriously. They are pursuing a housing strategy and Requests for Proposals (RFP) for a public/private partnership at Heritage Square. She understood the Public Works Department heard many complaints, but she heard Staff did a great job clearing the streets of ice.

**Item 3(e): Mayor LaMear** reported that Council had the most productive and positive goal setting session the City has had since 2008, when she first began serving on City Council. Each Councilor has their own opinion, but everyone has been able to work respectfully and congenially with each other. This working relationship is reflected in their goals. Council enjoyed spending a lot of time on each goal and hearing what everyone had to say about each issue. City Council will now host a work session on the first Wednesday of each month from 9:00 am to 11:00 am to discuss issues. The first work session will include a report from the City's auditor and a discussion on affordable housing.

**CHANGES TO AGENDA** There were none.

### **CONSENT CALENDAR**

The following items were presented on the Consent Calendar:

- 5(a) City Council Minutes of 12/19/16
- 5(b) Boards and Commission 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
- 5(c) 16<sup>th</sup> Street CSO Separation Project – Final Report (Public Works)**
- 5(d) Public Information Emergency Response (PIER) System Replacement (Police)

Councilor Nemlowill requested Item 5(c) be removed for further discussion.

**City Council Action:** Motion made by Councilor Nemlowill, seconded by Councilor Brownson, to approve Items 5(a), (b), and (d) of the Consent Calendar. Motion carried unanimously. Ayes: Councilors Price, Jones, Nemlowill, Brownson, and Mayor LaMear; Nays: None.

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

Councilor Nemlowill said she wanted to acknowledge and appreciate the Public Works Department for the report, adding that the project was completed \$118,000 under budget.

Mayor LaMear noted that it is rare for the City to come in under budget and this was wonderful.

City Manager Estes noted no action by City Council was necessary for this item.

### **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 re-adoption," 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.

Director Brooks conducted the second reading of the ordinance.

**City Council Action:** Motion made by Councilor Price, seconded by Councilor Nemlowill, to adopt the Ordinance readopting certain State Statutes to reflect changes made by the 2016 Oregon Legislature. Motion carried unanimously. Ayes: Councilors Price, Jones, Nemlowill, Brownson, and Mayor LaMear; Nays: None.

#### **Item 6(b): Ordinance Adopting Changes to 3 Percent 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 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 percent 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 percent marijuana tax with collection and enforcement language incorporated.

Director Cronin conducted the second reading of the ordinance.

**City Council Action:** Motion made by Councilor Jones, seconded by Councilor Brownson, to adopt the ordinance enacting the voter approved 3 percent marijuana tax with collection and enforcement language incorporated. Motion carried unanimously. Ayes: Councilors Price, Jones, Nemlowill, Brownson, and Mayor LaMear; Nays: None.

**Item 6(c): Ordinance Revising City Code Section 5.810 Providing for Identification of Dangerous Animals; 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.

Deputy Chief Halverson explained that this item was prompted by a recent municipal court hearing about a dangerous dog. Judge Kaino found that the City Code had no burden of proof language he could use to make a determination.

City Attorney Henningsgaard confirmed he assisted Staff with the development of the proposed Code language. He explained that complaints of dangerous animals are submitted to the police chief, who conducts and investigation and creates findings. The animal's owner has the right to appeal the findings and it is the burden of proof on the appeal that is in question. Criminal sanctions are possible if an owner violates what has been imposed by the police chief. However, in this case, the Judge did not know whether to provide clear and convincing evidence beyond a reasonable doubt or just preponderance. This ordinance has been designed to resolve that issue for the judge.

**City Council Action:** Motion made by Councilor Jones, seconded by Councilor Price to conduct the first reading of the Ordinance revising City Code Section 5.810 providing for identification of dangerous animals; appeals; and restrictions pending appeal. Motion carried unanimously. Ayes: Councilors Price, Jones, Nemlowill, Brownson, and Mayor LaMear; Nays: None.

Chief Ames conducted the first reading of the ordinance.

**Item 6(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)**

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 would 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 might 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 6th 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 that 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.

Mayor LaMear explained that during the goal setting session, City Council learned many City processes were delayed by having to obtain Council's permission to apply for a grant. Council believed Staff should not have to ask permission to apply for grant funds and this amendment would speed up the grant application process. Council also believed the City Manager's spending limit was delaying City processes and created a lot of extra work for Staff. This was an effort to streamline the City's processes.

City Manager Estes confirmed for Councilor Price that all the expenditures he authorized were included in the quarterly financial reports provided to City Council. Councilor Price stated that while she trusted City Manager Estes, she wanted to make sure there was accountability.

**City Council Action:** Motion made by Councilor Nemlowill, seconded by Councilor Brownson to hold a first reading of the ordinance amending City Code Section 1.964A Pertaining to City Manager's Spending Authority. Motion carried unanimously. Ayes: Councilors Price, Jones, Nemlowill, Brownson, and Mayor LaMear; Nays: None.

Director Cronin conducted the first reading of the ordinance.

**City Council Action:** Motion made by Councilor Brownson, seconded by Councilor Jones to approve the proposed amendment to the City's grant application submittal policy, as stated in the Memorandum. Motion carried unanimously. Ayes: Councilors Price, Jones, Nemlowill, Brownson, and Mayor LaMear; Nays: None.

**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 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.

Councilor Nemlowill said she believed this was a very important project. She also believed the study and cost projections would reveal that replacing or upgrading the water main would be expensive. She confirmed with Staff that the grant did not contain any implementation requirements.

Mayor LaMear called for public comments.

George McCartin, 490 Franklin Avenue, Astoria, said the Environmental Protection Agency (EPA) was the source of these grant funds. If the grant money does not come through, the City of Astoria would still be responsible for paying for the engineering contract because the contract would be approved in the same motion as the grant.

City Manager Estes clarified that the IFA would be disbursing grant funds initially made available by the EPA. City Attorney Henningsgaard explained that the grant is in the form of a forgivable loan, which is subject to the availability of funds. The agreement would be nullified if the City does not receive the funds. Engineer Harrington added that the funds are reimbursable, so the City would have to spend money and then submit a disbursement request.

**City Council Action:** Motion made by Councilor Nemlowill, seconded by Councilor Brownson, to approve the resolution to accept the Oregon Infrastructure Finance Authority (IFA) grant (forgivable loan) for resiliency studies of important infrastructure, approve the IFA grant contract, and authorize the contract for Hart Crowser to assist with the study. Motion carried unanimously. Ayes: Councilors Price, Jones, Nemlowill, Brownson, and Mayor LaMear; Nays: None.

**NEW BUSINESS & MISCELLANEOUS, PUBLIC COMMENTS (NON-AGENDA)** There was none.

## **ADJOURNMENT**

There being no further business, the meeting was adjourned at 7:33 pm.

**ATTEST:**

**APPROVED:**

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Finance Director

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City Manager

## **Astoria Library Board Meeting**

Astoria Public Library

November 29, 2016

5:30 pm.

**Present:** Library Board members Kate Summers, David Oser, Susan Stein, Kimberley Chaput (via telephone) and Chris Womack; Staff Library Director Jimmy Pearson and Lindsay; and ALFA Representative Steve Emmons.

**Excused:** None

**Absent:** None

**Call to Order:** Chair Kate Summers called the meeting to order at 5:30 pm.

**Approval of Agenda:** The agenda was approved with the addition of New Business Item 8(a): Retirement Party for Patti Skinner.

**Approval of Minutes:** The minutes of October 25, 2016 were approved with the following corrections:

- Item 7(b) should state the next meeting would be held on Tuesday, November 29<sup>th</sup>, not Thursday.
- Item 9 – correct the spelling of Kristen Shauck's name.

**Board Reports:** Chair Summers reported that Write Astoria was going well and she recently spoke with the mayor about current Library Board business.

David Oser reported that as a school board member, he was trying to get paid school librarian positions reinstated and he might ask the public library to get involved.

**Library Director's Report:** Director Pearson noted his report packet included information about the performance and duties of Library Staff, which he believed could positively impact the library's services. He had been talking to people in the community about library services to find out how to improve outreach. He updated the Board on staffing changes, included Anne Odom's promotion, advertising the vacant part-time position, and Ami Kreider's resignation. He and Ms. Odom will take over Patti Skinner's administrative duties, the new part-time employee will focus on children and family services, and Ms. Kreider's replacement will focus on adult services. He gave an update on Staff's efforts to do some cosmetic maintenance and upgrades to the interior of the library. He reported on photography software from the American Library Association and explained how it could be used to promote the library. He was also working towards implementing computer reservation software and automating printing services, which will free up Staff time.

He recently spoke with the curator at the Maritime Museum and learned the Lewis and Clark journals were valued at \$140,000 with the original bindings. The journals have been rebound and he was confident they were being well cared for.

Director Pearson noted the following upcoming events:

- Friday, December 2<sup>nd</sup> – His meeting with library managers in the Timberland Library District about their processes and layouts.
- Saturday, December 10<sup>th</sup> – Gifts for Giving, hosted by ROCC
- Friday, December 16<sup>th</sup> – His meeting with State Librarian Mary Kay Dahlgreen about state library services.

At the next Library Board meeting, he planned to present a cost neutral proposal to open the library for four hours on Monday by closing an hour earlier on other days. He depends on the Board to advise on policies and wanted feedback on his proposal. The community has expressed support for increasing the library's hours of operations. Chair Summers said the change in hours could impact the writing group. David Oser added that people who work during the day depend on the library's evening hours.

He confirmed some of the overgrown and dying plants at the library would be removed. Staff is trying to declutter the library to make it more functional. He hoped a new look would make the library more attractive. He also noted that the mystery garbage issue in the parking lot had been resolved.

David Oser stated the Board believes the values used in the What's Your Library Worth to You calculator are too low. Director Pearson said he would look into the source and accuracy of the values.

Chris Womack asked how Staff has received Director Pearson's changes. Director Pearson described his efforts to get to know his Staff and their abilities. He has promised Staff he would not make changes without explanation and he wanted their input. He believed Staff has taken ownership of the library. Some employees have been at the library a long time and are used to doing things a certain way, so, he is making small changes over time to allow Staff to be more readily available to library patrons.

Lindsay confirmed Staff was enjoying some of the changes. Staff members are able to speak with Director Pearson and his direction was welcomed after six months without a library director. Director Pearson noted that Staff was proactive and he was trying to be respectful as he implemented new tasks. He seeks feedback from Staff and works to implement their ideas.

**Update on ALFA Activities:** Steve Emmons said ALFA's current balance was \$8,267.93. He listed upcoming expenditures, which included magazine subscriptions and furniture for the Flag Room. ALFA's annual meeting has been postponed and will be rescheduled in January.

Director Pearson explained how reorganizing the Flag Room would make it more functional. Volunteers would provide the labor needed to move items in and out of storage.

**Foundation Update:** David Oser said he would have an update in January. Based on Councilor Price's comments at a recent City Council meeting, he anticipated financial information would be available from Staff soon. Chair Summer added that posts to the Foundation's Facebook page continue to be well received.

#### **New Business:**

##### **Item 8(a): Retirement Party for Patti Skinner**

Director Pearson said Mary Kay Dahlgreen, State Librarian, planned to attend the retirement party.

Chair Summers noted the party was scheduled for December 15<sup>th</sup> from 5:00 pm to 7:00 pm.

**Old Business:** There was none.

**Public Comments:** Steve Emmons thanked the library and the City for continuing the Passport Program and said he recently received a Multnomah County library card through the program.

**Items for Next Meeting's Agenda:** The next meeting would be on Tuesday, January 24, 2016.

**Adjournment:** There being no further business, the meeting was adjourned at 6:08 pm.

Respectfully submitted,

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Paula Pinyerd, ABC Transcription Services, Inc.



## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

January 23, 2017

### MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM: BRETT ESTES, CITY MANAGER

SUBJECT: MEMORANDUM OF UNDERSTANDING BETWEEN CLATSOP COUNTY AND THE CITIES OF ASTORIA, SEASIDE AND WARRENTON FOR COOPERATION IN THE PROVISION OF LIBRARY SERVICES

### DISCUSSION / ANALYSIS

Since 2010, the Astoria City Council has authorized Library staff to participate in Libraries ROCC! Rural Outreach to Clatsop County. Partners and collaborators include the school districts of Astoria, Jewell, Knappa, Seaside and Warrenton, the Northwest Regional Education Service District, Clatsop County, and the public libraries of Astoria, Seaside, and Warrenton. Libraries ROCC activities include library cards for all children ages birth to nineteen, a collaborative countywide summer reading program, and courier service between the Seaside, Warrenton and Astoria libraries. Clatsop County provided \$5000 in 2016 to assist with the program. A previous Intergovernmental Agreement (IGA) was signed by the cities on May 1, 2016. This Memorandum of Understanding (MOU) simply formalizes County participation and will be for a new three year period.

The library directors of the Seaside, Warrenton and Astoria libraries leverage the work of the past six years by seeking community and corporate donations to support ROCC library cards and summer programs and to establish an endowment fund. The financial impact of this MOU for the City of Astoria is estimated at \$850 a year for mileage and staff time to continue courier service. Courier service enables the libraries to continue sharing collections. This cost may be reduced if a grant paid Outreach Coordinator is able to assist with courier service.

Any party may discontinue participation with a 90 day notice. This MOU is to be reconsidered in three years. The MOU has been reviewed and approved as to form by City Attorney Henningsgaard.

### RECOMMENDATION

It is recommended that Council approve and authorize the City Manager to sign the Memorandum of Understanding between the Cities of Astoria, Seaside, Warrenton, and Clatsop County for Cooperation in the provision of Library Services.

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

Jimmy Pearson, Director, Astoria Public Library

# **INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITIES OF ASTORIA, SEASIDE AND WARRENTON FOR COOPERATION IN THE PROVISION OF LIBRARY SERVICES**

This Memorandum of Understanding (Agreement) is between the Cities of Astoria, Seaside and Warrenton, municipal corporations of the State of Oregon. Each city has a library and by this Agreement will cooperate in the provision of library services within Clatsop County. This Agreement is effective on May 1, 2016.

## **Findings**

- A. The cities each have the legal authority to enter into this Agreement.
- B. The cities have legal authority under ORS Ch. 190, to enter agreements for intergovernmental cooperation for the performance of any function that one party to the agreement has the authority to perform.
- C. The cities each have Library Directors who are authorized to implement and administer this Agreement.
- D. The cities each deem it in the best interests of each governmental entity to cooperate in the provision of library services according to the following terms and conditions:

## **Agreement**

- 1. There will be courier services amongst the three cities. Inter-library courier services will continue and beginning on May 1, 2016 the costs of the service will be shared equally by the three cities.
- 2. The cities will provide for interlibrary catalog access. Each city will maintain its own system and automated interconnectivity with the other libraries will be maintained by each city. The libraries will strive to use the same system for the sake of efficiency.
- 3. Patrons of any of the three libraries will have the right to borrow materials from all three libraries' circulation collections. Each city will maintain its own collections and will endeavor to continue to fund library services at no less than the current level. Over the first three-years of this Agreement data will be accumulated and the cities will strive for parity of services.
- 4. The cities will collaboratively provide library cards for children age 0-19 in Clatsop County.

5. The cities will jointly plan and operate a summer reading and library outreach program for children in Clatsop County.

6. Cities agree to strive for the establishment of an independent foundation whose purpose is the on-going funding support of the reading outreach program.

7. The cities agree that the Friends of the Seaside Library (FOSL) will be the fiscal agent for donations designated for the reading outreach program, provided the FOSL is willing. The cities may agree to change the fiscal agent designation.

8. This Agreement will be administrated and implemented by the Library Director of each city.

9. The cities will annually review this Agreement and perform a cost analysis of the library services covered.

10. Any city may terminate this Agreement with no less than 90-day written notice to each other city.

11. Notices under this Agreement may only be given in writing by personal delivery or mailing, postage prepaid as certified mail, to the addresses below, or such other address as provided by any party. Any notice so addressed and mailed is deemed received five days after date postmarked.

City of Astoria:      Library Director.  
Astoria, OR 97103

City of Seaside:      Library Director  
Seaside, OR 97138

City of Warrenton      Library Director  
Warrenton, OR 97146

11 As permitted by the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution each city agrees to hold harmless, defend, and indemnify each other, including their officers, agents, and employees, against all claims, demands, actions, and suits (including attorney fees and costs) arising from the indemnitor's performance of this Agreement where the loss or claim is attributable to the negligent acts or omissions of that party. Each city is responsible for the acts, omissions, or negligence of its own officers, employees, and agents.

12. Each city agrees to maintain insurance levels, or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.



13. Each city agrees to give the other cities immediate written notice of any legal action filed or any claim made against it that may result in litigation in any way related to this Agreement.

14. This Agreement may be amended by mutual agreement of the three cities. Any amendment must be in writing, must refer specifically to this Agreement, and becomes effective when executed by all three cities.

15. This document contains the entire agreement between the cities on this subject.

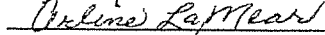
16. If any one or more of the provisions of this Agreement is invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of its remaining provisions is not affected or impaired.

17. By signature below, the cities certify that the individuals listed in this document as representatives are authorized to act to bind their city to this Agreement.

18. This Agreement may be executed in counterparts and any one of which will constitute the agreement between the cities.

The cities have executed this Agreement by the dates set forth below.

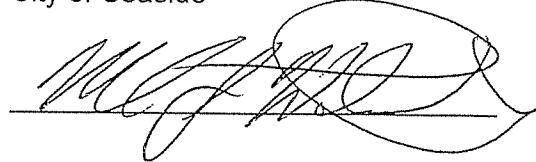
City of Astoria



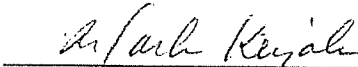
Arne LaMear, Mayor

  
Brett Estes, City Manager

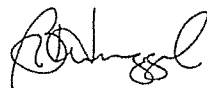
City of Seaside



City of Warrenton



Mark Kujala, Mayor



Digitally signed by  
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**MEMORANDUM OF UNDERSTANDING BETWEEN  
CLATSOP COUNTY AND THE CITIES OF ASTORIA, SEASIDE, AND  
WARRENTON  
FOR COOPERATION IN THE PROVISION OF LIBRARY SERVICES**

This Memorandum of Understanding (Agreement) is between the Cities of Astoria, Seaside and Warrenton, municipal corporations of the State of Oregon, and Clatsop County. Each city has a library and by this Agreement will cooperate in the provision of library services within Clatsop County. This Agreement is effective for three years from this date on \_\_\_\_\_, 2017.

**Findings**

- A. The cities and County each have the legal authority to enter into this Agreement.
- B. The cities and County have legal authority under ORS Ch. 190, to enter agreements for intergovernmental cooperation for the performance of any function that one party to the agreement has the authority to perform.
- C. The cities each have Library Directors who are authorized to implement and administer this Agreement.
- D. The cities and County each deem it in the best interests of each governmental entity to cooperate in the provision of library services according to the following terms and conditions:

**Agreement**

- 1. Patrons of any of the three libraries will have the right to borrow materials from all three libraries' circulation collections using interlibrary loan. Each city will maintain its own collections and continue to fund library services at no less than the current level. The cities will continue to strive for parity of services.
- 2. Together, each city will provide library cards for all children ages 0-19 residing in Clatsop County. Each child may sign up for a library card at the library closest to their residence.
- 3. The cities will jointly plan and operate a summer reading and library outreach program for children in Clatsop County in cooperation with the local school districts where feasible.
- 4. The County and cities agree to the importance of an independent Libraries Reading Outreach in Clatsop County 501c3 (formed in 2016), whose purpose is the on-going funding support of the reading outreach program.

5. This Agreement will be administrated and implemented by the Library Director of each city in agreement with the county manager.

6. The cities will annually review this Agreement and if desired, perform a cost analysis of the library services covered.

7. The County will support services with publicity and other support as appropriate.

7. Any city and/or the County may terminate this Agreement with no less than 180 day written notice to each of the other entities.

8. Notices under this Agreement may only be given in writing by personal delivery or mailing, postage prepaid as certified mail, to the addresses below, or such other address as provided by any party. Any notice so addressed and mailed is deemed received five days after date postmarked.

City of Astoria:      Library Director.  
Astoria, OR 97103

City of Seaside:      Library Director  
Seaside, OR 97138

City of Warrenton      Library Director  
Warrenton, OR 97146

Clatsop County      Clatsop County Manager  
Astoria, OR 97103

9. As permitted by the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution each city and the County agrees to hold harmless, defend, and indemnify each other, including their officers, agents, and employees, against all claims, demands, actions, and suits (including attorney fees and costs) arising from the indemnitor's performance of this Agreement where the loss or claim is attributable to the negligent acts or omissions of that party. Each city and the County is responsible for the acts, omissions, or negligence of its own officers, employees, and agents.

10. Each city agrees to maintain insurance levels, or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.

11. Each city and the County agrees to give the other entities immediate written notice of any legal action filed or any claim made against it that may result in litigation in any way related to this Agreement.

12. This Agreement may be amended by mutual agreement of the three cities and the County. Any amendment must be in writing, must refer specifically to this Agreement, and becomes effective when executed by all three cities and the County.

13. This document contains the entire agreement between the cities and the County on this subject.

14. If any one or more of the provisions of this Agreement is invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of its remaining provisions is not affected or impaired.

15. By signature below, the cities and the County certify that the individuals listed in this document as representatives are authorized to act to bind their city to this Agreement.

16. This Agreement may be executed in counterparts and any one of which will constitute the agreement between the cities.

The cities have executed this Agreement by the dates and signatures set forth below.

City of Astoria

City of Seaside

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City of Warrenton

Clatsop County Manager

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## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

January 27, 2017

### MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: RESOLUTION AMENDING CITY OF ASTORIA NONDISCRIMINATION  
POLICY

### DISUCSSION/ANALYSIS

On September 15, 2014, the Astoria City Council adopted Resolution No. 14-25 establishing a Policy on Nondiscrimination. At their July 18, 2016 meeting, the City Council considered and approved a request to remove the “slash (/)” as used in “gender identity/and expression”, and in its place, use the word “and” to read as follows: “gender identity **and** expression”. It is proposed that the City of Astoria Policy regarding Nondiscrimination be amended to read as follows:

“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.”

Since the policy was originally adopted by Resolution No. 14-25, the amended language also needs to be adopted by resolution. This is being brought to Council as a housekeeping measure to ensure the correct language is approved through a resolution.

### RECOMMENDATION

It is recommended that Council adopt the proposed Resolution implementing the change in language for the Nondiscrimination Policy.

By: Julie Yuill  
Julie Yuill, Executive Secretary  
To the City Manager

**RESOLUTION NO. 17-\_\_\_\_\_**

**A RESOLUTION AMENDING THE ESTABLISHMENT OF  
THE CITY OF ASTORIA POLICY ON NONDISCRIMINATION**

**WHEREAS**, on September 15, 2014, the Astoria City Council adopted Resolution No. 14-25 establishing a Policy on Nondiscrimination; and

**WHEREAS**, at their July 18, 2016 meeting, the City Council considered and approved a request to remove the “slash (/)” as used in “gender identity/expression”, and in its place, use the word “and” to read as follows: “gender identity **and** expression”; and

**WHEREAS**, it is proposed that the amendment to the Nondiscrimination Policy be implemented by Resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF ASTORIA:**

Section 1. The City of Astoria Policy regarding Nondiscrimination is amended to read as follows:

“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.”

Section 2. Repeal of Resolution. Resolution No. 14-25, adopted by the City Council on September 15, 2014, is hereby repealed and superseded by this resolution.

Section 3. Effective Date. This Resolution is effective on the date of its passage.

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			
Brown			
Price			
Jones			
Mayor LaMear			




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

February 1, 2017

## **MEMORANDUM**

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: **IFA STORM DAMAGE GRANT ACCEPTANCE**

### **DISCUSSION/ANALYSIS**

During the period of December 6<sup>th</sup> through 23<sup>rd</sup>, 2015, the State of Oregon experienced a severe weather pattern that caused damaging winter storms with straight-line winds, flooding, and landslides. The City of Astoria experienced erosion along the Columbia River shoreline and a washout in a location along Pipeline Road where our 21" diameter water transmission main crosses a ravine. As a result of the widespread damage, a Federal Declaration of Emergency was declared on February 17, 2016 and the Federal Emergency Management Agency (FEMA) Public Assistance Program funds became available to assist communities with the repair of their damages. FEMA funds will cover 75 percent of project costs and the Oregon Infrastructure Finance Authority (IFA) will be providing matching grant funds for the additional 25 percent.

### **PROJECT STATUS UPDATE**

**Emergency Shoreline Erosion Project** – This project involves repairing multiple erosion areas along the Columbia River damaged by the December 2016 storm event. Staff has received permits, requested quotes for the work and will be proceeding with construction. Under a separate request, Council will be authorizing a contract award for the construction.

**Pipeline Road Waterline Bank Stabilization Project** – This project involves the stabilization of the creek bank where erosion is threatening the City's water transmission main that supplies water to the City and our outlying water districts. Losing the service of this line would be unacceptable so this project is considered urgent to the City. Staff had worked hard to prepare the permit application for the project and to hire the professional staff to provide geotechnical and design services. Staff then requested quotes for the construction services and was prepared to make the repairs before the October 15<sup>th</sup>, 2016 in-water work period deadline when we were informed that the Army Corp of Engineers would not be issuing the required permit for the work. We were informed that the National Marine Fisheries Agency did



not want the existing riprap repaired and preferred a bioengineered solution. At that point staff consulted with FEMA and agreed to execute the construction contract and prepare the site for emergency placement of protective rock armoring during this winter storm season. The contract for this work was approved by Council at their September 19, 2016 meeting. Since that time staff has been working on an alternatives analysis looking at other options to either stabilize the pipeline or relocate it. The emergency rock has been placed after recent rainfall caused additional erosion placing the pipeline at further risk. Staff expects to implement a permanent solution during the summer of 2017. FEMA has told us that all costs for both the temporary protective measures and the permanent solution would be eligible for grant funding.

## **FUNDING UPDATE**

Staff has been participating in the program meetings and submittal requirements to date. FEMA has awarded funding for the project noted above and Council has accepted the funding at a previous meeting. Staff has been working with our IFA representative and is now bringing a contract for IFA grant funds to Council as noted in previous Council meetings. The FEMA and IFA funds will allow both projects to be fully reimbursed resulting in no cost to the City.

Following is a current project budget summary:

<b>Project Name</b>	<b>FEMA Grant Funding (75%)</b>	<b>IFA Grant Funding (25%)</b>	<b>Project Total</b>
Emergency Shoreline Erosion Project	\$82,356	\$27,452	\$109,808
Pipeline Road Waterline Stabilization Project (1)	\$110,869	\$36,956	\$147,825
Total	\$193,225	\$64,408 (2)	\$257,633

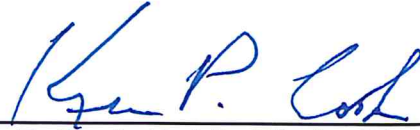
- (1) The current estimated cost for this project is for the original design of a riprap revetment. Once an alternative is established and approved, the revised project costs will be presented to both funding agencies for funding approval. It is our understanding at this time that both FEMA and IFA will adjust the grant amount to cover the re-designed project costs.
- (2) The above costs are estimates at this time. The budget number in the attached contract for the IFA match grant (\$73,187) differs due to different contingency levels and estimates between agencies.

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

## RECOMMENDATION

It is recommended that Council authorize the Mayor and City Manager to sign the IFA contract for the 25 percent matching grant funds for the two FEMA projects, Emergency Shoreline Erosion Project and Pipeline Road Bank Stabilization project.

Submitted By



Ken P. Cook, Public Works Director

Prepared By



Jeff Harrington, City Engineer

SPECIAL PUBLIC WORKS FUND EMERGENCY PROJECT  
FINANCING CONTRACT

Project Name: Astoria Shoreline Erosion and Waterline Bank Stabilization Repair Projects (FEMA Match)

Project Number: L17006

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 B ("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	Project Description
Exhibit C	Project Budget

**SECTION 1 - KEY TERMS**

The following capitalized terms have the meanings assigned below.

"Estimated Project Cost": \$292,750

"Grant Amount": \$73,187

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

"Project Completion Deadline": 36 months after the date of this Contract.

**SECTION 2 - FINANCIAL ASSISTANCE**

The IFA shall provide Recipient, and Recipient shall accept from IFA, a grant (the "Grant") in an aggregate amount not to exceed the Grant Amount; provided however that total disbursements under this Grant shall not exceed the total local matching funds requirement for federal disaster relief for the Project or 25 percent of the total Costs of the Project, whichever is less.

**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 shall terminate on the Project Closeout Deadline.

#### SECTION 4 - CONDITIONS PRECEDENT

- A. Conditions Precedent to Funding Commitment. 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) 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 IFA receives and approves evidence of (a) OR Emergency Management / FEMA approval of activities as described in the approved Project Worksheets (as described in Exhibit B) and (b) FEMA's payment of 75% of the requested reimbursement.
  - (6) 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.
  - (7) Any conditions to disbursement elsewhere in this Contract are met.

#### SECTION 5 - USE OF FINANCIAL ASSISTANCE

- A. Use of Proceeds. The Recipient shall use the Financing Proceeds only for the activities described in Exhibit B and according to the Project Budget in Exhibit C. Recipient may not transfer Financing Proceeds among line items in the Project Budget without the prior written consent of IFA. Recipient may not use any of the Grant proceeds for costs that are not allowed under the FEMA Project Worksheets described in Exhibit B or not in the Project Budget.
- 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 B.
- 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 6 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

The Recipient represents and warrants to IFA:

- A. Estimated Project Cost. A reasonable estimate of the Costs of the Project is shown in Section 1, and the Project is fully funded.
- B. Organization and Authority.
  - (1) The Recipient is a Municipality under the Act, and validly organized and existing under the laws of the State of Oregon.
  - (2) The Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract, and (b) incur and perform its obligations under this Contract.
  - (3) This Contract, executed and delivered by Recipient has 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 has been duly executed by Recipient, and when executed by IFA, is legal, valid and binding, and enforceable in accordance with its 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 perform all obligations required by this Contract. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in Exhibit B and Exhibit C 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 perform all obligations required by this Contract.
- E. No Defaults.
  - (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Contract.
  - (2) The Recipient has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Recipient to perform all obligations required by this Contract.
- F. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract will not: (i) cause a breach of any agreement, 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.
- G. Governmental Consent. The Recipient has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Contract, and undertaking and completion of the Project.

## SECTION 7 - COVENANTS OF RECIPIENT

The Recipient covenants as follows:

- A. Notice of Adverse Change. 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 perform all obligations required by this Contract.
- B. Compliance with Laws. The Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract, the Project and the operation of the road system of which the Project is a component. 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 Chapter 279A, 279B and 279C.
  - (2) State labor standards and wage rates found in ORS Chapter 279C.
  - (3) OAR 123-042-0165 (5) requirements for signs and notifications.

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

- C. Project Completion Obligations. Recipient shall:
- (1) Provide IFA with copies of all plans and specifications relating to the Project.
  - (2) Provide a copy of the bid tabulation and notice of award to IFA.
  - (3) Permit IFA to conduct field engineering and inspection of the Project at any time.
  - (4) 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.
  - (5) Complete the Project no later than the Project Completion Deadline, unless otherwise permitted by the IFA in writing.
  - (6) 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.
  - (7) Obtain and maintain as-built drawings for all facilities constructed as part of the Project.
- D. Ownership of Project. The Project is and will continue to be owned by Recipient for ten years after the Project Completion Date. 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. Operation and Maintenance of the Project. Recipient shall operate and maintain the Project in good repair and operating condition so as to preserve the long term public benefits of the Project, including making all necessary and proper repairs, replacements, additions, and improvements, for ten years after the Project Completion Date. On or before the Project Closeout Deadline, Recipient shall adopt a plan acceptable to IFA for the on-going operation and maintenance of the Project without reliance on IFA financing and furnish IFA, at its request, with evidence of such adoption. The plan must include

measures for generating revenues sufficient to assure the operation and maintenance of the Project during the usable life of the Project.

- F. Insurance, Damage. The Recipient shall maintain, or cause to be maintained, until ten years after the Project Completion Date, insurance policies with responsible insurers or self insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. Nothing in this provision precludes Recipient from exerting a defense against any party other than IFA, including a defense of immunity. If the Project or any portion is destroyed, any insurance proceeds will be paid to IFA, not to exceed the Grant Amount, unless IFA agrees in writing that the insurance proceeds may be used to rebuild the Project.
- G. Sales, Leases and Encumbrances. Unless specifically described in Exhibit B, for ten years after the Project Completion Date, Recipient shall not sell, lease, exchange, abandon, transfer or otherwise dispose of any substantial portion of or interest in the Project unless worn out, obsolete, or, in the reasonable business judgment of Recipient, no longer useful in the operation of the Project. Nevertheless, IFA may consent to such disposition if it has received 90 days' prior written notice from Recipient. Such consent may require payment of IFA's costs related to such consent and be conditioned upon receipt by IFA of an opinion of Bond Counsel to the effect that such disposition complies with applicable law and will not adversely affect the exclusion of interest on any Lottery Bonds from gross income for purposes of federal income taxation under Section 103(a) of the Code. The term "Bond Counsel" means a law firm determined by IFA to have knowledge and expertise in the field of municipal law and whose opinions are generally accepted by purchasers of municipal bonds. In the case of sale, lease, exchange, transfer or other disposition of any substantial portion of or interest in the Project, Recipient shall, within 30 days of receipt of any proceeds from such disposition, pay such proceeds to IFA, not to exceed the Grant Amount, unless IFA agrees otherwise in writing. If Recipient abandons the Project, Recipient shall repay the Grant Amount immediately upon demand by IFA, unless otherwise agreed by IFA.
- H. Condemnation Proceeds. Until ten years after the Project Completion Date, if the Project or any portion is condemned, within 30 days of receipt of any proceeds from such disposition, Recipient shall pay such proceeds to IFA, not to exceed the Grant Amount, unless IFA agrees otherwise in writing.
- I. Records; Accounts. The Recipient shall keep accurate books and records for the use of all Financing Proceeds and the expenditure or utilization of all resources used in the Project, 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.
- J. Inspections; Information. The Recipient shall permit IFA 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. The Recipient shall supply any related reports and information as IFA may reasonably require.
- K. 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 construction 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.

- L. 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.
- M. Disadvantaged Business Enterprises. ORS 200.090 requires all public agencies to “aggressively pursue a policy of providing opportunities for disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans owned and emerging small businesses...” The IFA encourages Recipient in any contracting activity to follow good faith efforts as described in ORS 200.045, available at [https://www.oregonlegislature.gov/bills\\_laws/ors/ors200.html](https://www.oregonlegislature.gov/bills_laws/ors/ors200.html). Additional resources are provided by the Governor’s Policy Advisor for Economic and Business Equity. Also, the Certification Office for Business Inclusion and Diversity at the Oregon Business Development Department maintains a list of certified firms and can answer questions. Search for certified firms on the web at: <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.
- N. Professional Responsibility. A professional engineer or architect, as applicable, registered and in good standing in Oregon, will be responsible for the design and construction of the Project. All service providers retained for their professional expertise will be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty. Recipient shall follow standard construction practices, such as bonding requirements for construction contractors, requiring errors and omissions insurance, and performing testing and inspections during construction.
- O. 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.
- P. 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.
- Q. 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 IFA reasonably determines may be necessary or desirable.
- R. 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 used by IFA to fund the Financing Proceeds from gross income for purposes of federal income taxation, as governed by Section 103(a) of the Code. IFA may decline to disburse 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 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 that is guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or (ii) is 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. Recipient shall, at the request of IFA, cooperate with IFA to provide information IFA may need to compute any arbitrage rebate payments which may be due in connection with the Lottery Bonds. Recipient shall, at the request of IFA, report any information on expenditure of amounts that are paid to the Recipient under this Contract, which IFA reasonably requires to comply with the arbitrage compliance and rebate requirements which apply to the Lottery Bonds. 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. The Recipient further shall reimburse IFA for the portion of any expenses it incurs related to the Financing Proceeds 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 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 Lottery Bonds, and the interest thereon, including the application of any unexpended Financing Proceeds. The Recipient acknowledges that the Grant may be funded with the 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.

## SECTION 8 - DEFAULTS

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

- A. Any false or misleading representation is made by or on behalf of Recipient, in this Contract, or in any document provided by Recipient related to the Project, or in regard to compliance with the requirements of Section 103 and Sections 141 through 150 of the Code.
- B. Recipient fails to perform any obligation required under this Contract, other than that referred to in subsection A of this section 8, 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 9 - REMEDIES

- A. Remedies. Upon any Event of Default, IFA may pursue any or all remedies in this Contract, and any other remedies available at law or in equity to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to:
  - (1) Terminating IFA’s commitment and obligation to make the Grant or disbursements under the Contract.
  - (2) Barring Recipient from applying for future awards.
  - (3) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Contract, including as provided in ORS 285B.449.
  - (4) Requiring repayment of the Grant and all interest earned by Recipient on those Grant funds.
- B. Application of Moneys. Any moneys collected by IFA pursuant to section 9.A will be applied first, to pay any attorneys’ fees and other fees and expenses incurred by IFA; second, as applicable, to repay any Grant proceeds owed; third, to pay any other amounts due and payable under this Contract.
- 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 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 8 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 10 - MISCELLANEOUS

- A. Time is of the Essence. Recipient agrees that time is of the essence under this Contract.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
  - (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.



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.

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

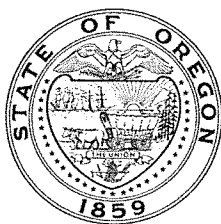
Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county).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

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

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

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

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



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

By: \_\_\_\_\_  
Robert Ault, Division Manager  
Business & Community Development

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



CITY OF ASTORIA

By: \_\_\_\_\_  
Brett Estes, Astoria City Manager

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

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 Brett Estes and Arline LaMear  
DN: cn=Brett Estes, o=City of Astoria, cn=Arline LaMear, o=City of Astoria  
Reason: I am the approving authority for this document.  
Date: 2020.07.13 15:02:11 -0700

## EXHIBIT A - GENERAL DEFINITIONS

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

“Act” means ORS 285B.410 through 285B.482, as amended.

“Award” means the award of financial assistance to Recipient by IFA dated 14 Dec 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 Proceeds” means the proceeds of the Grant.

“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 or Grant.

“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 - PROJECT DESCRIPTION

Recipient will complete the following projects as outlined in the FEMA-approved Project Worksheets (PW):

PW 148 Shoreline Erosion Repair; and

PW 290 Pipeline Road Waterline Bank Stabilization

## EXHIBIT C - PROJECT BUDGET

	IFA Funds	Other / Matching Funds
Activity	Approved Budget	Approved Budget
PW 148 Shoreline Erosion Repair	\$25,500	\$76,500
PW 290 Pipeline Road Waterline Bank Stabilization	34,500	103,500
Contingency	13,187	39,563
Total	\$73,187	\$219,563



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

February 1, 2017

**MEMORANDUM**

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: **FEMA EMERGENCY SHORELINE EROSION PROJECT – CONSTRUCTION CONTRACT AWARD**

**DISCUSSION/ANALYSIS**

During the period of December 6<sup>th</sup> through 23<sup>rd</sup>, 2015, the State of Oregon experienced a severe weather pattern that caused damaging winter storms with very high winds, flooding, and landslides. The City of Astoria experienced erosion along the Columbia River shoreline at multiple locations during the event period. As a result of the damage, a Federal declaration of emergency was declared on February 17, 2016 and the Federal Emergency Management Agency (FEMA) Public Assistance Program funds became available to assist communities with the repair of their damages.

Staff has completed all paperwork required by FEMA and has been awarded funding for the project. Staff has also received the required Oregon Division of State Lands and Army Corp of Engineers permit for the project. Since the engineers estimate was under \$100,000, per City code, staff requested construction quotes from local contractors for the work.

The project includes all labor, equipment and material required to construct bank stabilization in scour critical areas from 6<sup>th</sup> Street to 51<sup>st</sup> Street along the Columbia River (see attached map). This project is intended to stabilize several areas identified as threatening the integrity of City transportation (Riverwalk) and/or utility infrastructure. Approximately 565 cubic yards of riprap will need to be placed to shore up the eroded areas. Staff has been assisting the Columbia Maritime Museum with their repair project which is located to the east of their facility.

Following is a summary of the quotes received:


Contractor	Total Quote
Big River Construction	\$44,415.00
Clean Sweep Maintenance Inc.	\$87,652.50

Funding for the project will temporarily come from the Promote Astoria Fund and will be reimbursed by FEMA (75%) and Oregon's Infrastructure Finance Authority (25%).

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

**RECOMMENDATION**

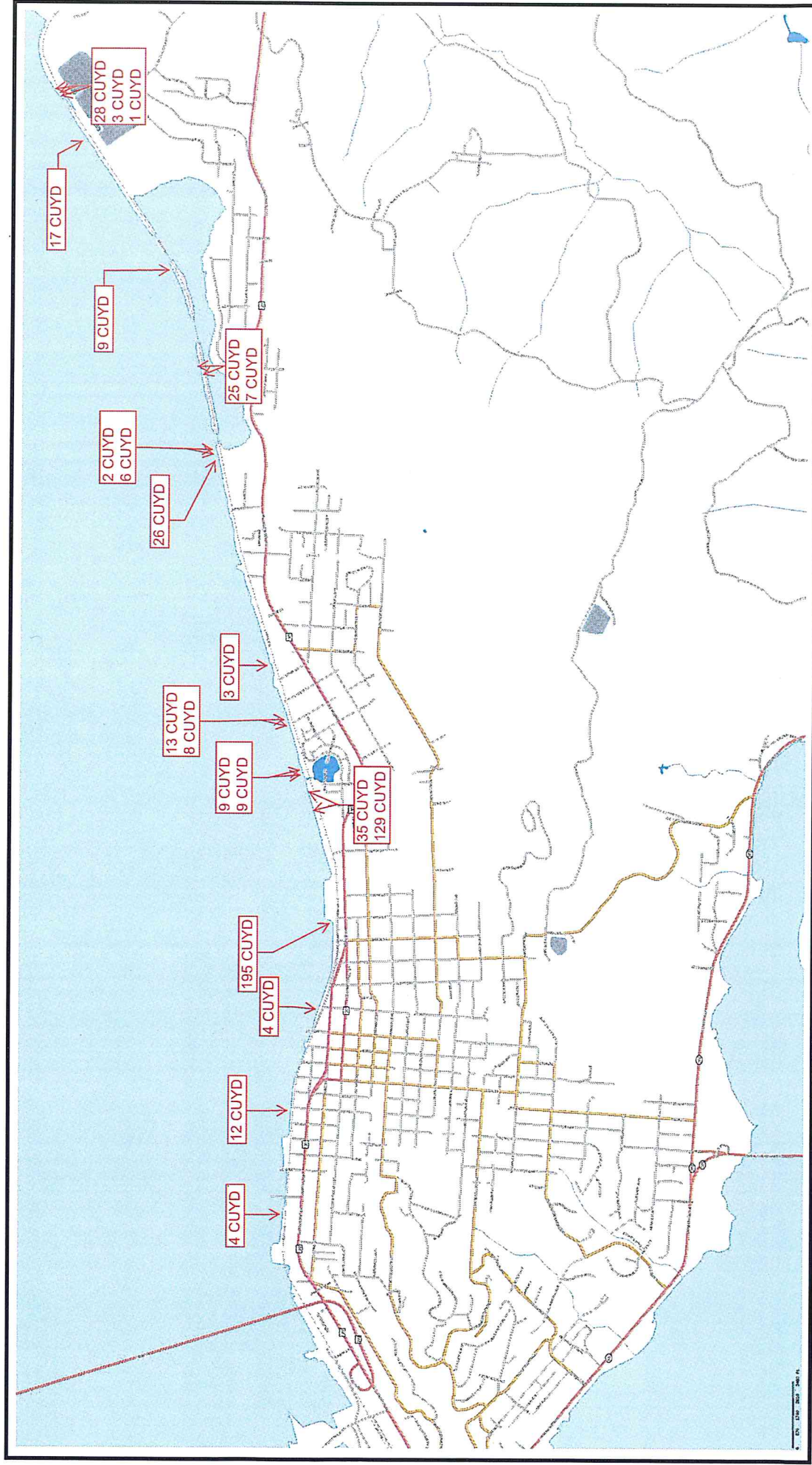
It is recommended that the City Council authorize the award of a contract to Big River Construction, Incorporated in the not-to-exceed amount of \$44,415.00 for the Emergency Shoreline Erosion Project.

Submitted By   
Ken P. Cook, Public Works Director

Prepared By   
Jeff Harrington, City Engineer



# City of Astoria Shoreline Storm Repair



## Clatsop County Webmaps

Disclaimer: This map was produced using Clatsop County GIS data. The GIS data is maintained by the County to support its governmental activities. This map should not be used for survey or engineering purposes. The County is not responsible for map errors, omissions, misuse or misinterpretation. Photos may not align with taxlots.





## **AGREEMENT**

### **1.00 - GENERAL**

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between Big River Construction, Inc., hereinafter called "**CONTRACTOR**" and the City of Astoria, a municipal corporation, hereinafter called "**CITY**."

WITNESSETH:

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

### **2.00 - DESCRIPTION OF WORK**

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

#### **FEMA Emergency Shoreline Erosion Project**

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

### **3.00 - COMPLETION OF CONTRACT**

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

- Substantial Completion – March 10, 2017
- Final Completion – April 9, 2017

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

### **4.00 - CONTRACT PRICE**

The Contract Price for this project is \$44,415.00. Payment will be made in accordance with ORS 279C.560 including progress payments at the end of each month. Retainage will be withheld in accordance with ORS 279C.550 - .565.

### **5.00 - CONTRACT DOCUMENTS**

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

### **6.00 - NONDISCRIMINATION**

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

### **7.00 - CONTRACTOR IS INDEPENDENT CONTRACTOR**

**A. CONTRACTOR** acknowledges that for all purposes related to this Contract, **CONTRACTOR** is and shall be deemed to be an independent **CONTRACTOR** and not an employee of **CITY**, shall not be entitled to benefits of any kind to which an employee of the **CITY** is entitled and shall be solely responsible for all payments and taxes required by law; and furthermore in the event that **CONTRACTOR** is found by a court of law or an administrative agency to be an employee of the **CITY** for any purpose, **CITY** shall be entitled to repayment of any amounts from **CONTRACTOR** under the terms of the Contract; to the full extent of any benefits or other remuneration **CONTRACTOR** receives (from **CITY** or third party) as result of said finding and to the full extent of any payments that **CITY** is required to make (to **CONTRACTOR** or to a third party) as a result of said finding.

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

#### **8.00 - SUBCONTRACTS - RELATIONS WITH SUBCONTRACTORS, ASSIGNMENTS AND DELEGATION**

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

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

#### **9.00 - NONWAIVER**

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

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

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

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

**CONTRACTOR** shall not permit any lien or claim to be filed or prosecuted against the **CITY** on account of any labor or material furnished.

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

#### **11.00 - CERTIFICATION OF COMPLIANCE WITH TAX LAWS**

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

#### **12.00 - CITY OCCUPATION TAX**

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

```
com.apple.iTunes.appleid.prd.49317556476244235477541445445
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D4
un=com.apple.iTunes.appleid.prd.49317556476244235477541445
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```

City Attorney

CITY OF ASTORIA, a municipal of the  
State of Oregon

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

ATTEST:

Contractor \_\_\_\_\_ Date \_\_\_\_\_

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



CITY OF ASTORIA  
Founded 1811 • Incorporated 1856

## Emergency Shoreline Erosion Project 6<sup>th</sup> Street to 51<sup>st</sup> Street REQUEST FOR QUOTES

The City of Astoria Engineering Division is requesting quotes to furnish all labor, equipment and material to construct bank stabilization in scour critical areas from 6<sup>th</sup> Street to 51<sup>st</sup> Street along the Columbia River. A wind storm combined with very high tides in December 2015 caused damage to the riverfront. This project is intended to stabilize several areas identified as threatening the integrity of City transportation and/or utility infrastructure. The selected contractor will be responsible for the following.

### Scope of work:

- Place a layer of Class 50 Rip-rap approximately 16 inches thick prior to large diameter boulder placement.
- Place primary rock protection; 1.5 to 3 foot angular boulders and/or Class 2000 Rip-rap, placed approximately 4 feet thick. The rock should be placed in a manner that keys the material together.
- The slope of the bank stabilization should be a maximum of 1.5 H: 1 V as practical.
- If possible a toe trench should be excavated to lock in the rip-rap. A toe trench of 4 feet will probably expose rock in most locations and should suffice. If existing rock is present, the rip-rap should be keyed into the existing material as practical.

#	Item Description	Quantity	Unit	Unit Price	Total
1	Mobilization	1	LS	\$ 5,500.00	\$ 5,500.00
2	Class 50 Rip-rap – East of 41 <sup>st</sup> Street Trestle	25	CY	\$ 210.00	\$ 5,250.00
3	Large Boulders/Class 2000 Rip-rap – East of 41 <sup>st</sup> Street Trestle	65	CY	\$ 116.00	\$ 7,540.00
4	Class 50 Rip-rap – West of 41 <sup>st</sup> Street Trestle	120	CY	\$ 55.00	\$ 6,600.00
5	Large Boulders/Class 2000 Rip-rap – West of 41 <sup>st</sup> Street Trestle	355	CY	\$ 55.00	\$ 19,525.00
Total Quote					\$44,415.00

The selected contractor will be responsible for accessing areas across railroad trestles in a safe manner that preserves the structural integrity of the structures. It is recommended that the rail be utilized when possible to cross the structures. See attached Corp permit for project conditions of construction.

Notice to proceed for this project is anticipated on February 8<sup>th</sup> 2017.

Please review the attached Exhibit Maps and sample City contract. The City will execute this contract with the selected Contractor. The Exhibit Maps show the bank stabilization locations. The quantities shown reflect the amount of large boulders/Class 2000 Rip-rap estimated.

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

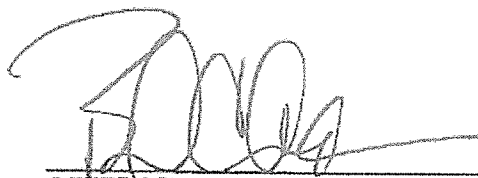
Contractor shall read and comply with the attached documents before finalizing a quote. Quotes are due January 25<sup>th</sup>, 2017 by 2:00 p.m. Please send sealed quotes or e-mail to:

Steve Ruggles  
Engineering Technician  
1095 Duane St  
Astoria, OR 97103

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

Total Quote: \$ 44,415.00

1/25/2017  
DATE SIGNED

  
OFFEROR

Bill Gunderson, VP  
SIGNED (NAME AND TITLE)  
1050 Olney Ave  
MAILING ADDRESS  
Astoria, OR 97103  
CITY, STATE, AND ZIP CODE  
PHONE NUMBER: 503-338-3878  
CORPORATION: X YES        NO  
IF NO, TAX ID NUMBER OR SOCIAL  
SECURITY NUMBER: 93-1317009  
CONTRACTOR BOARD NO. 147632





1"=100'  
2-10-2016

United States  
of America

City of Astoria

City of Astoria

City of Astoria

#1003  
1 CUYD

#1001  
29 CUYD

#1002  
3 CUYD

See Map A3

See Map A1

Shoreline Stabilization

**A2**





1"=100'  
2-10-2016

#1004  
20 CUYD

City of Astoria

City of Astoria

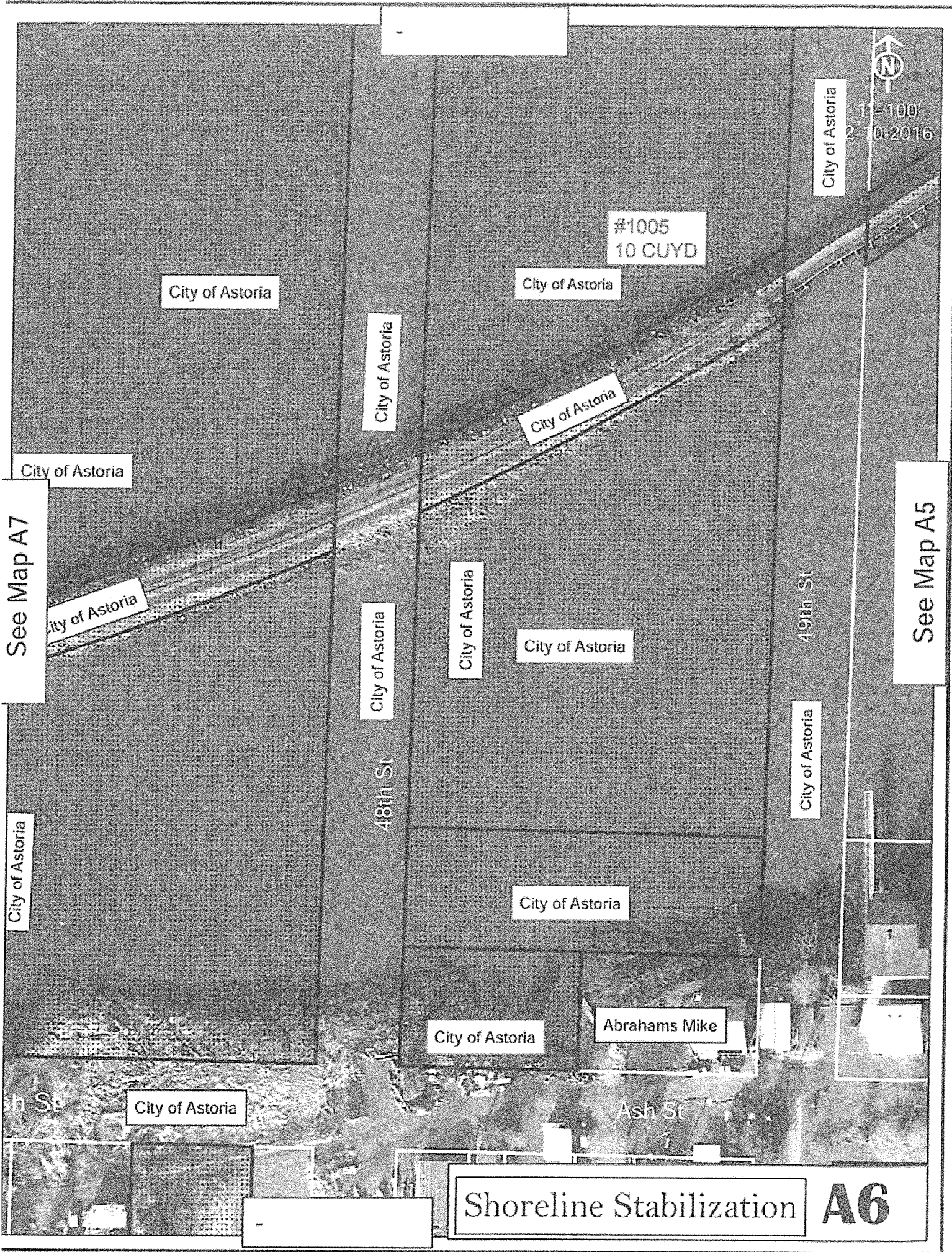
See Map A4

See Map A2

Shoreline Stabilization

**A3**





See Map A7

See Map A5

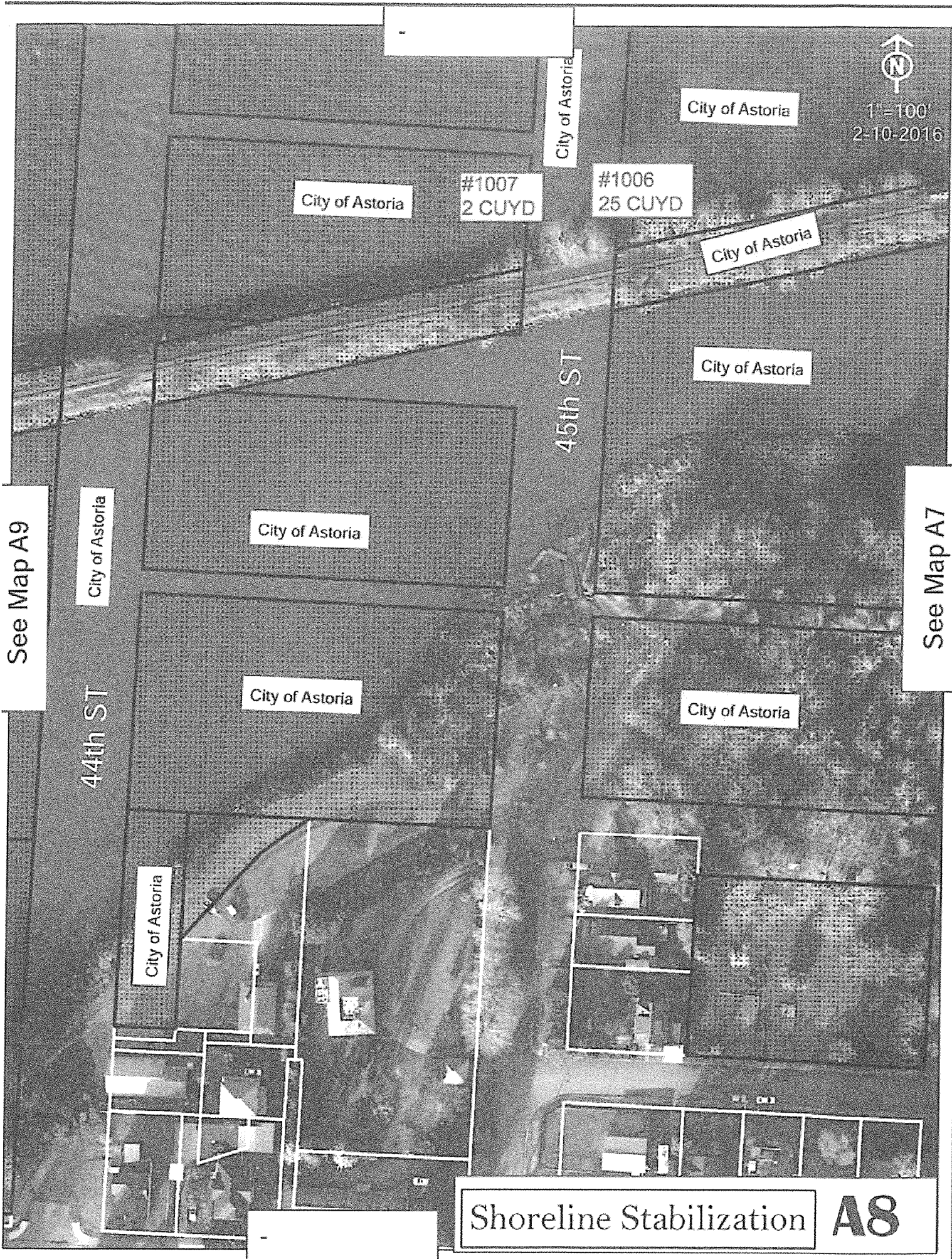
Shoreline Stabilization

**A6**





1"=100'  
2-10-2016



See Map A9

City of Astoria

44th ST

City of Astoria

City of Astoria

City of Astoria

City of Astoria

#1007  
2 CUYD

City of Astoria

#1006  
25 CUYD

City of Astoria

City of Astoria

City of Astoria

City of Astoria

See Map A7

Shoreline Stabilization

**A8**



#1008  
2 CUYD



1"=100'  
2-10-2016

NBSD LLC

City of Astoria

#1010  
26 CUYD

#1009  
6 CUYD

City of Astoria

City of Astoria

See Map A9

City of Astoria

City of Astoria

Shoreline Stabilization

**A10**

See Map G1





1"=100'  
2-10-2016

Port o

Safeway Inc

GAP

#1011  
3 CUYD

Bk 96 Pg 512

City of Astoria

See Map G5

eway Inc

See Map G3

City of Astoria

oria

32nd St

Lief Erikson

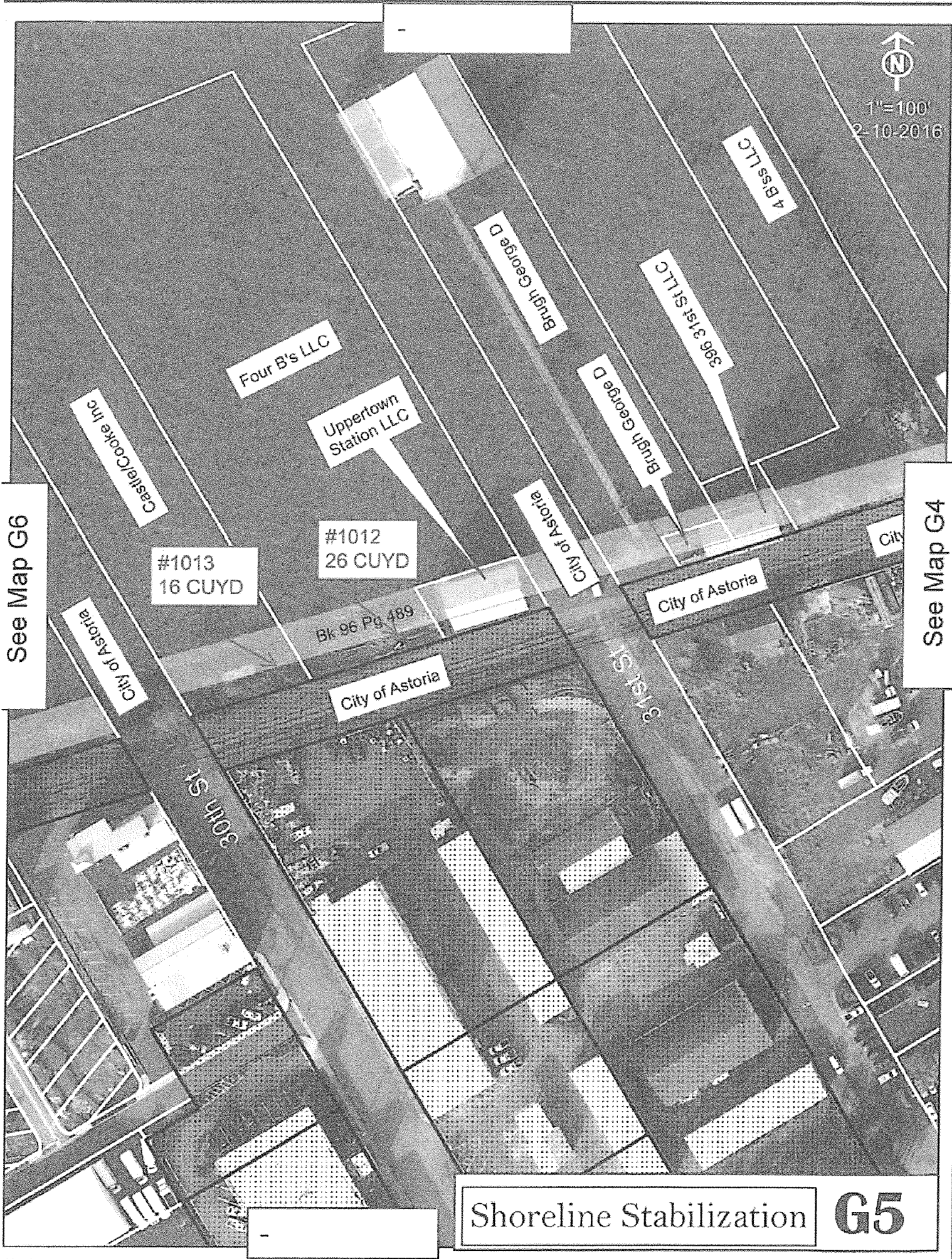
Shoreline Stabilization

**G4**





1"=100'  
2-10-2016



See Map G6

See Map G4

Shoreline Stabilization

**G5**



1"=100'  
2-10-2016

Van Horn Fed Jr

Phreds Phono & Games

City of Astoria

City of Astoria

City of Astoria

#1014  
9 CUYD

#1015  
9 CUYD

City of Astoria

City of Astoria

29th St

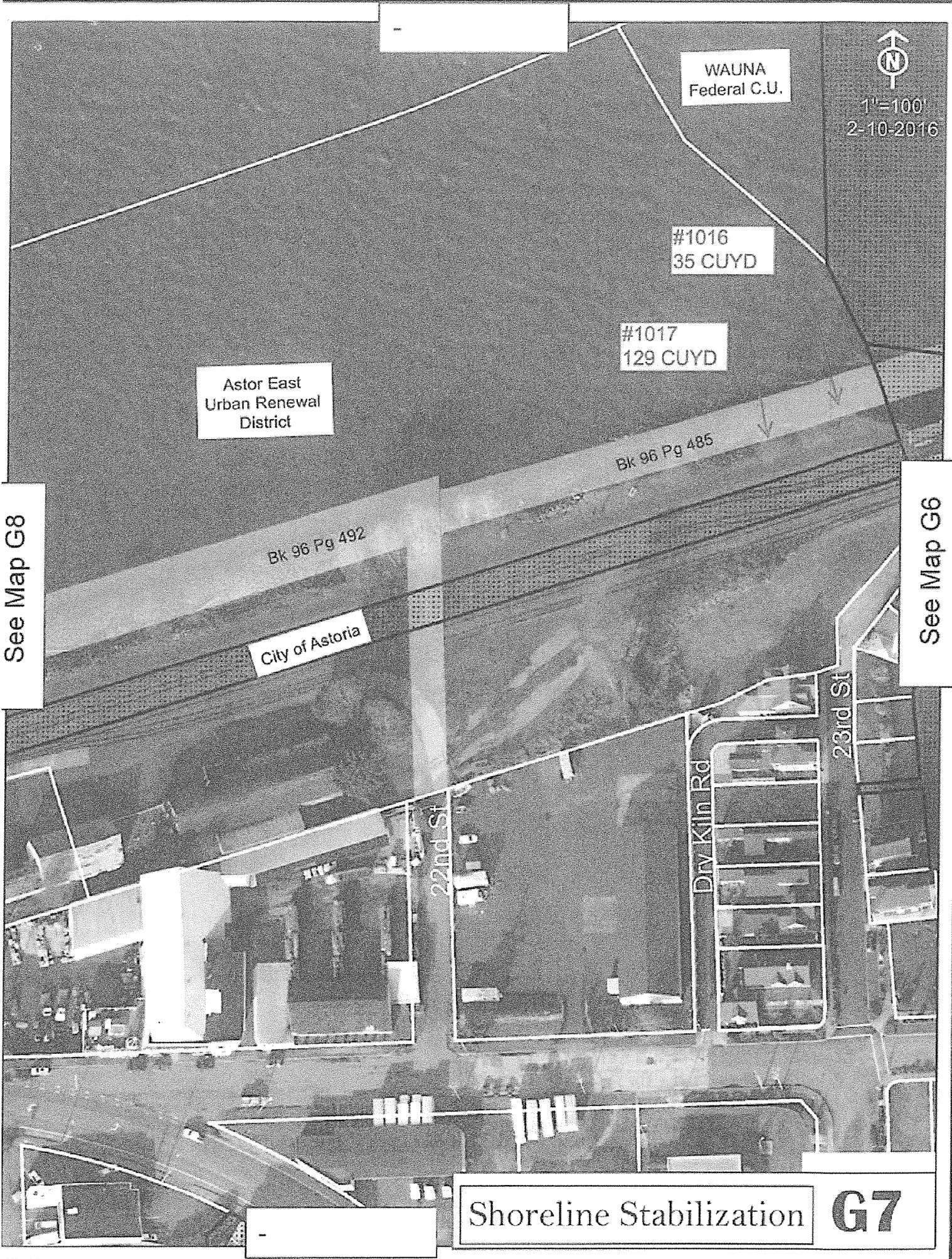
Shoreline Stabilization

G6

See Map G7

See Map G5





See Map G8

See Map G6

Shoreline Stabilization

**G7**





1"=100'  
2-10-2016

See Map D1

Columbia River  
Maritime Museum

City of Astoria

#1019  
198 CUYD

Columbia River  
Maritime Museum

City of Astoria

City of Astoria

CRMM

CRMM

CRMM

See Map G8

17th St

18th St

Shoreline Stabilization

**G9**





1"=100'  
2-10-2016



See Map D3

See Map D1

Shoreline Stabilization

**D2**



See Map D5



See Map D3

Shoreline Stabilization

**D4**



DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, PORTLAND DISTRICT  
P.O. BOX 2946  
PORTLAND, OREGON 97208-2946  
December 21, 2016

Regulatory Branch  
Corps No.: NWP-2016-389

Mr. Steve Ruggles  
City of Astoria  
1095 Duane St  
Astoria, OR 97103  
sruggles@astoria.or.us

Dear Mr. Ruggles:

The U.S. Army Corps of Engineers (Corps) received your request for Department of the Army authorization to repair a damaged riprap shoreline by placing approximately 534 cubic yards of riprap within 4,707 square feet below the High Tide Line at multiple locations. The project is located on the Columbia River, River Miles 14 through 19, from Columbia Avenue to Tongue Point, in Astoria, Clatsop County, Oregon, Sections 2,3,7,8,9,10, Township 8 North, Range 9 West. This letter verifies your project as depicted on the enclosed drawings (Enclosure 1) is authorized by Nationwide Permit (NWP) No.: 3, Maintenance (*Federal Register, February 21, 2012, Vol. 77, No. 34*).

The permittee will place approximately 534 cubic yards of class 200 riprap within 4,707 square feet below the High Tide Line of the Columbia River at multiple locations in order to repair an existing riprap shoreline that was damaged during the winter storms of 2015. The storms were declared a Federal Emergency Management Act (FEMA) emergency. The following table lists each impact separately.

Location	Latitude	Longitude	Riprap fill (cubic yards)	Area (square feet)
Columbia River A2	46.2024	-123.77267	31	359
Columbia River A3	46.202455	-123.774931	17	225
Columbia River A6	46.1982	-123.783534	8	150
Columbia River A8	46.196856	-123.789524	31	198
Columbia River A10	46.195856	-123.795235	34	292
Columbia River G4	46.193022	-123.808382	2	40
Columbia River G5	46.192212	-123.81166	20	275
Columbia River G6	46.191433	-123.814759	17	170
Columbia River G7	46.191104	-123.816235	165	1,375
Columbia River G9	46.189788	-123.824542	194	1,500
Columbia River D2	46.190312	-123.830814	4	48
Columbia River D4	46.191294	-123.836994	11	75
Total			534	4,707

The entire project will be constructed from the top of bank. No equipment will work in the water. Portions of the project east of 39th St. will be completed with a small excavator and a hi-rail equipped truck, utilizing the abandoned railroad line. Portions of the project west of 39th St. will be completed with a large excavator and trucks delivering rock, utilizing the river trail for access. Staging areas for rock and equipment will be located in existing gravel parking areas to the south of the railroad tracks. The Oregon Department of Fish and Wildlife Department (ODFW) determined in-water work period restrictions would not be required as long as repairs are conducted in the dry, during low tide (Enclosure 1).

In order for this authorization to be valid, you must ensure the work is performed in accordance with the enclosed Portland District NWP Regional Conditions (Enclosure 2); the NWP General Conditions (Enclosure 3); the Oregon Department of Environmental Quality (DEQ) 401 Water Quality Certification General Conditions (Enclosure 4); the Oregon Department of Land Conservation and Development (DLCD) Coastal Zone Management Concurrence Conditions (Enclosure 5); and the following special conditions:

1. The following special condition is a part of all Department of the Army permits that provide authorization under Section 10 of the Rivers and Harbors Act, regardless whether the permit provides such authorization under Section 10 alone, or in combination with authorization under other laws:

The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the U.S Army Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Upon starting the activities authorized in this permit/verification letter, Permittee shall notify the U.S. Army Corps of Engineers, Portland District, Regulatory Branch the work has started. Notification shall be provided by telephone at (503) 808-4368 or sent by e-mail to: [cenwp.notify@usace.army.mil](mailto:cenwp.notify@usace.army.mil) and the e-mail subject line shall include: Corps No.: NWP-2016-389 and Clatsop County.

3. Permittee shall perform all of the work from the top of the bank in order to reduce impacts to the aquatic system. Vegetation that will remain in place shall be clearly flagged to avoid accidental removal.

4. Permittee shall ensure all appropriate sediment and erosion control devices are installed and in proper working order prior to construction. Devices shall remain in place until the area is stabilized and construction is complete. If necessary, sediment and erosion control may be left in place after construction is complete to facilitate stabilization. However, upon stabilization all devices shall be removed from the area and disposed of in an upland location. The applicant shall control sediment-laden runoff from entering the waterway by some means such as, filter bags, straw bales, or sediment fencing as needed.

5. No equipment shall work in live water or operate below the Ordinary High Water Mark (OHWM) during any element of construction. All bank repairs shall be conducted during low tide.

We have reviewed your project pursuant to the requirements of the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act and the National Historic Preservation Act. We have determined the project complies with the requirements of these laws provided you comply with all of the permit general and special conditions.

The authorized work appears to comply with the DEQ 401 Water Quality Certification and the DLCD Coastal Zone Management Act concurrence for this NWP. No further coordination with DEQ or DLCD is required provided the work is performed in accordance with all of the enclosed conditions.

The Columbia River is a water of the U.S. If you believe this is inaccurate, you may request a preliminary or approved jurisdictional determination (JD). If one is requested, please be aware that we may require the submittal of additional information to complete the JD and work authorized in this letter may not occur until the JD has been completed.

NWP Regional Condition 16 and National General Condition 29 requires you to obtain the signatures(s) of the new owner(s) if you sell the property associated with this permit in order to transfer the permit to the new owner. For your convenience, the enclosed *Permit Transfer* form (Enclosure 6) can be prepared and submitted to document the permit transfer.

The verification of this NWP is valid until March 18, 2017, unless the NWP is modified, reissued, or revoked prior to that date. If the authorized work has not been completed by that date and you have commenced or are under contract to commence this activity before March 18, 2017, you will have until March 18, 2018, to complete the activity under the enclosed terms and conditions of this NWP. If the work cannot be

completed by March 18, 2018, you will need to obtain a new NWP verification or authorization by another type of Department of the Army permit.

Our verification of this NWP is based on the project description and construction methods provided in your permit application. You are cautioned that any change in the location or plans of the work will require submittal of revised plans to this office for approval prior to accomplishment. Failure to comply with all terms and conditions of this NWP verification invalidates this authorization and could result in a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act. You must also obtain all local, State, and other Federal permits that apply to this project.

Upon completing the authorized work, you must fill out and return the enclosed *Compliance Certification* form (Enclosure 7). We would like to hear about your experience working with the Portland District, Regulatory Branch. Please complete a customer service survey form at the following address:  
[http://corpsmapu.usace.army.mil/cm\\_apex/f?p=regulatory\\_survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey).

If you have any questions regarding this NWP verification, please contact Ms. Danielle Erb at the letterhead address, by telephone at (503) 808-4368, or e-mail: [Danielle.H.Erb@usace.army.mil](mailto:Danielle.H.Erb@usace.army.mil).

FOR THE COMMANDER, JOSE L. AGUILAR, COLONEL, CORPS OF ENGINEERS,  
DISTRICT COMMANDER:

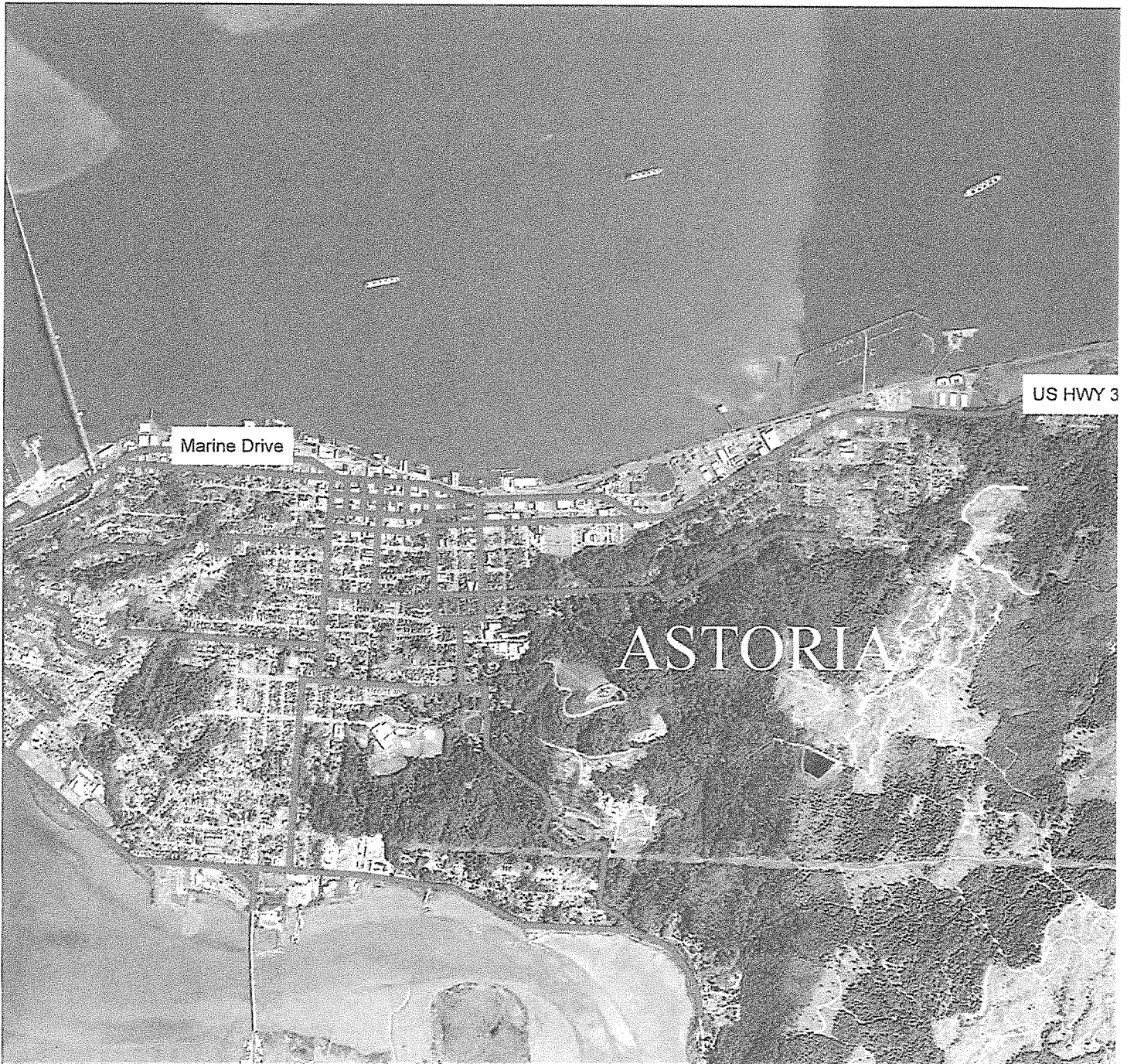
For Shawn H. Zinszer  
Chief, Regulatory Branch

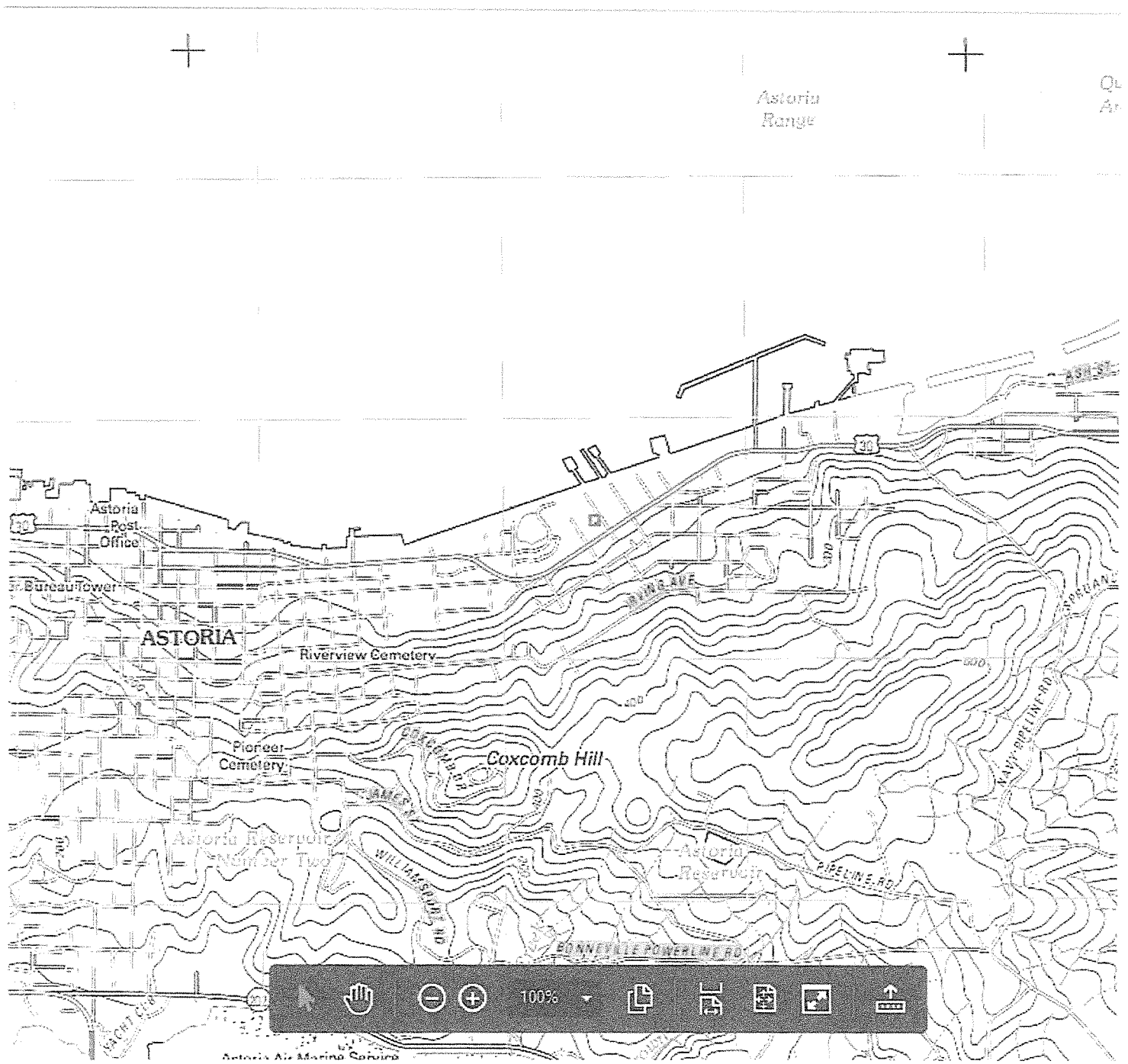
Enclosures

cc:

Oregon Department of State Lands ([richard.w.fitzgerald@dsl.state.or.us](mailto:richard.w.fitzgerald@dsl.state.or.us))  
Oregon Department of Environmental Quality ([roxy.nayar@state.or.us](mailto:roxy.nayar@state.or.us))  
Oregon Department of Land Conservation and Development ([patty.snow@state.or.us](mailto:patty.snow@state.or.us))  
[elizabeth.j.ruther@state.or.us](mailto:elizabeth.j.ruther@state.or.us))  
FEMA ([William.Kerschke@fema.dhs.gov](mailto:William.Kerschke@fema.dhs.gov))  
Oregon Department of Fish and Wildlife ([Ron.F.Rehn@state.or.us](mailto:Ron.F.Rehn@state.or.us))

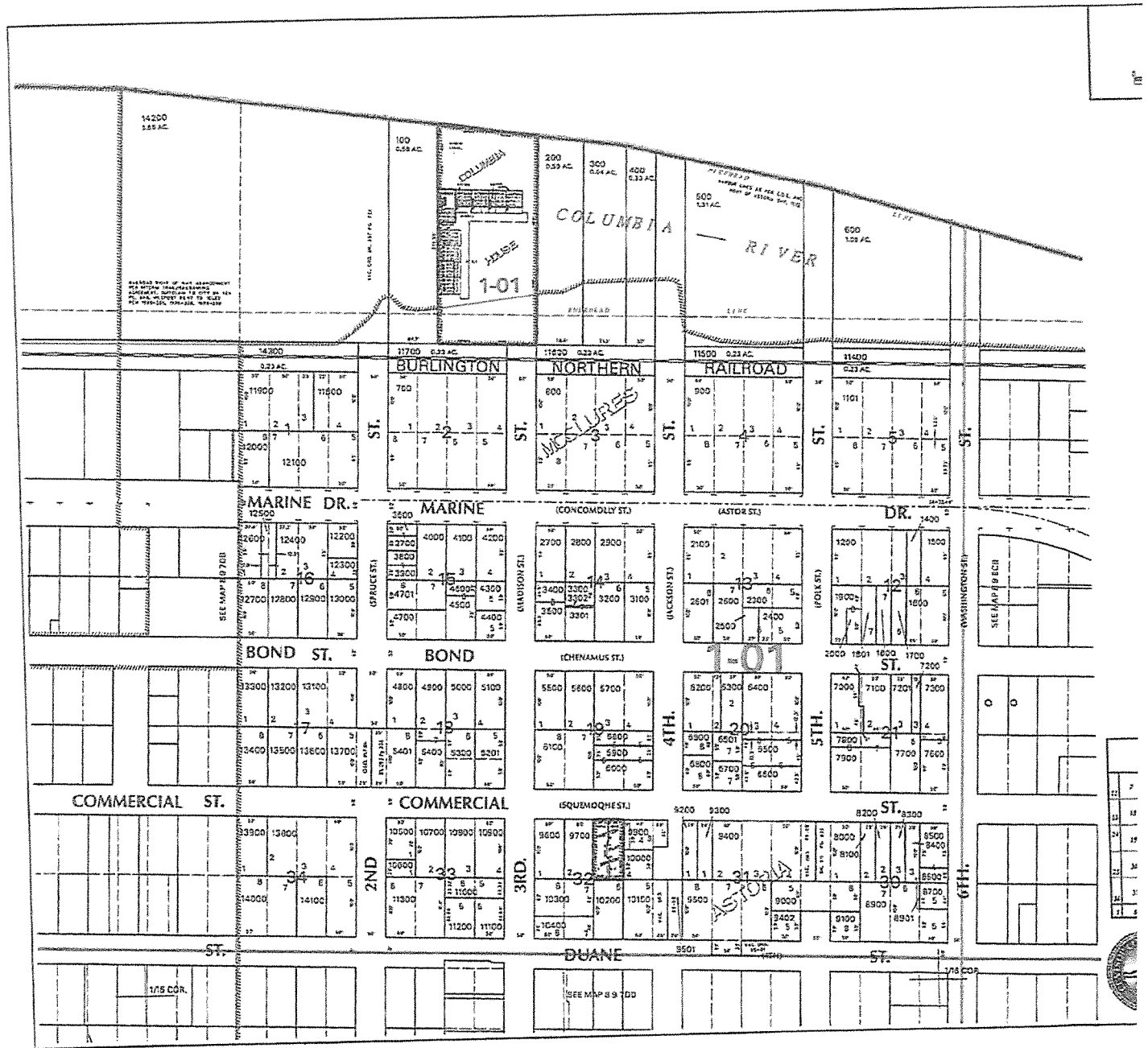




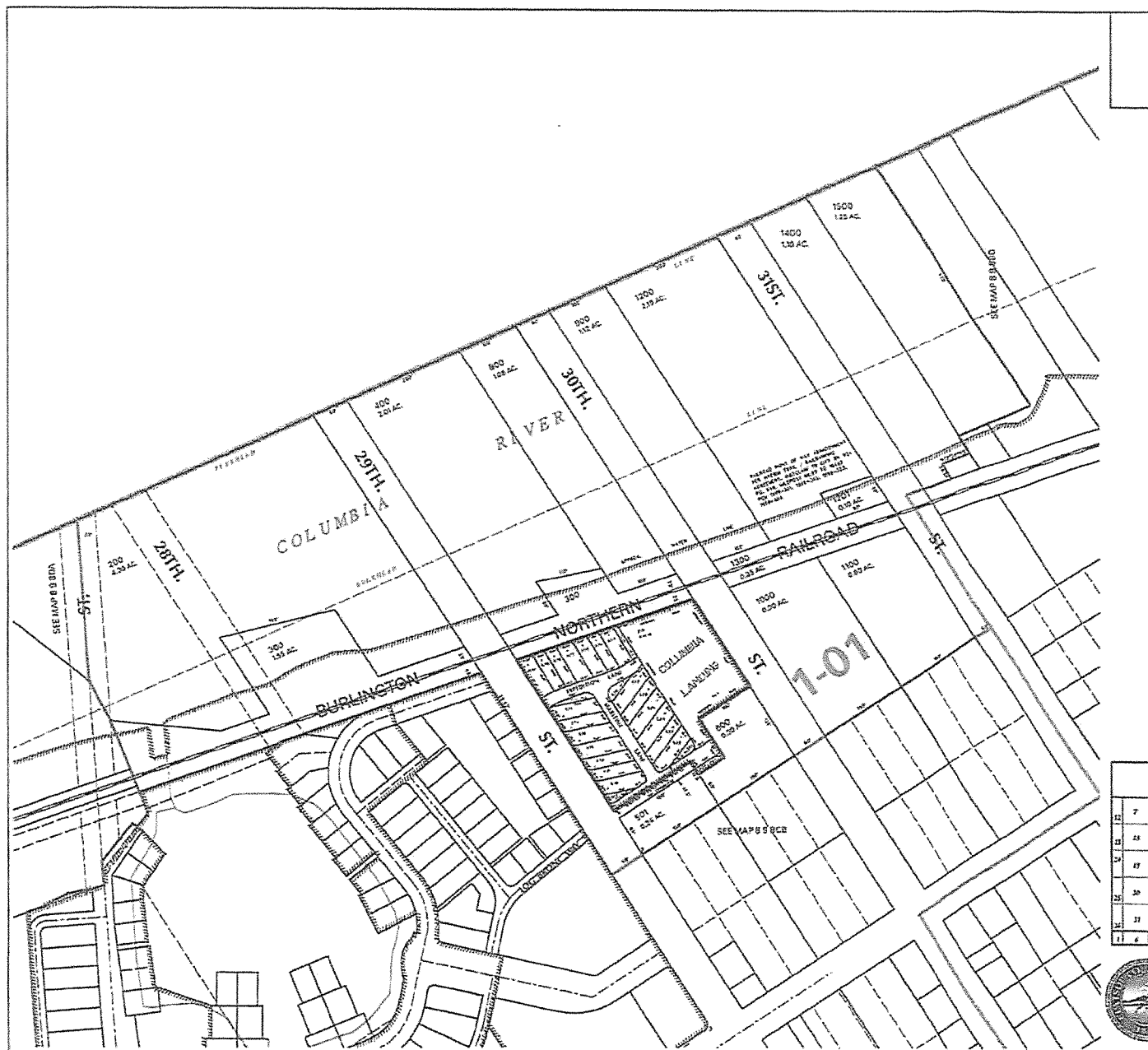


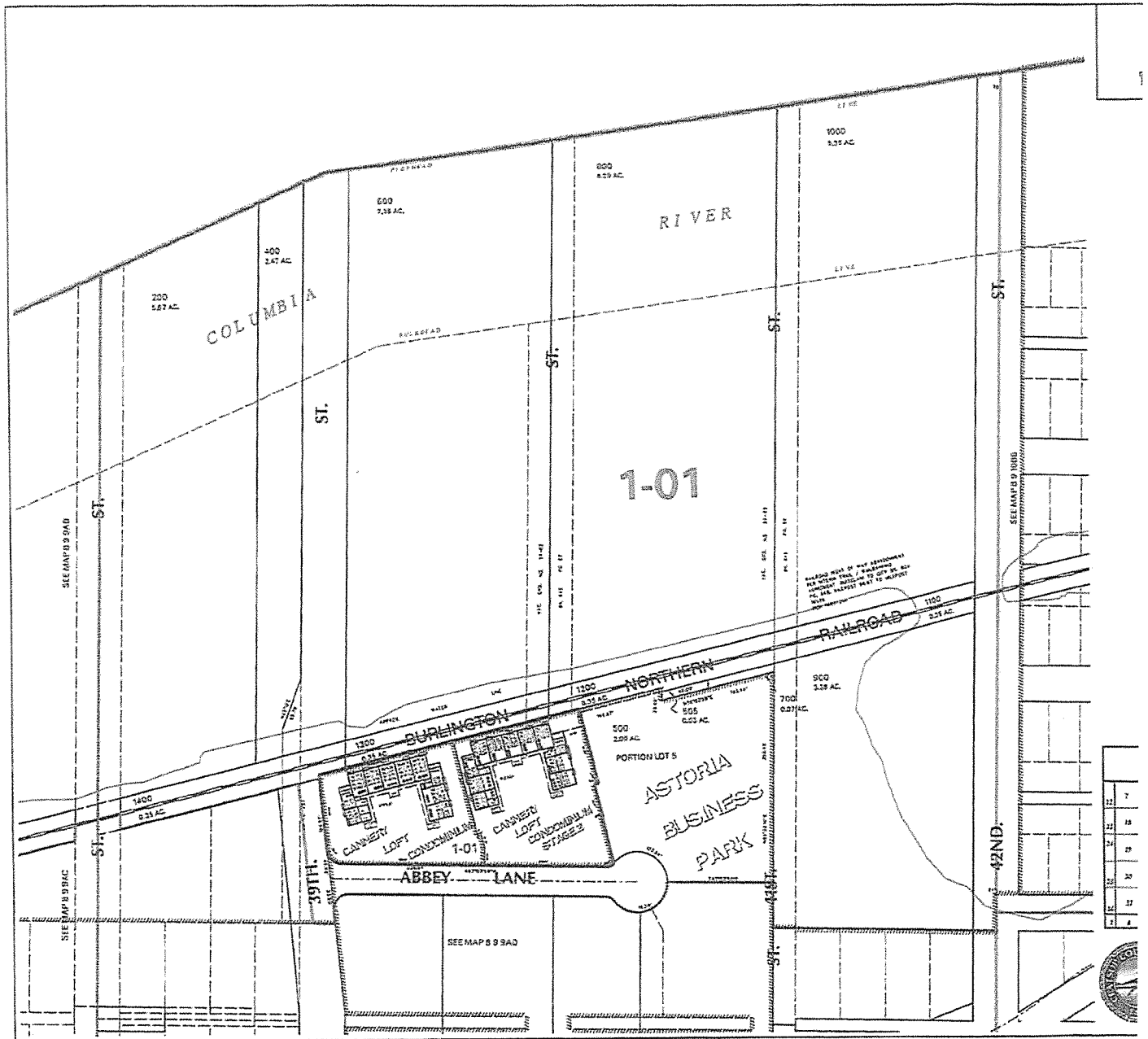




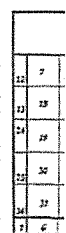


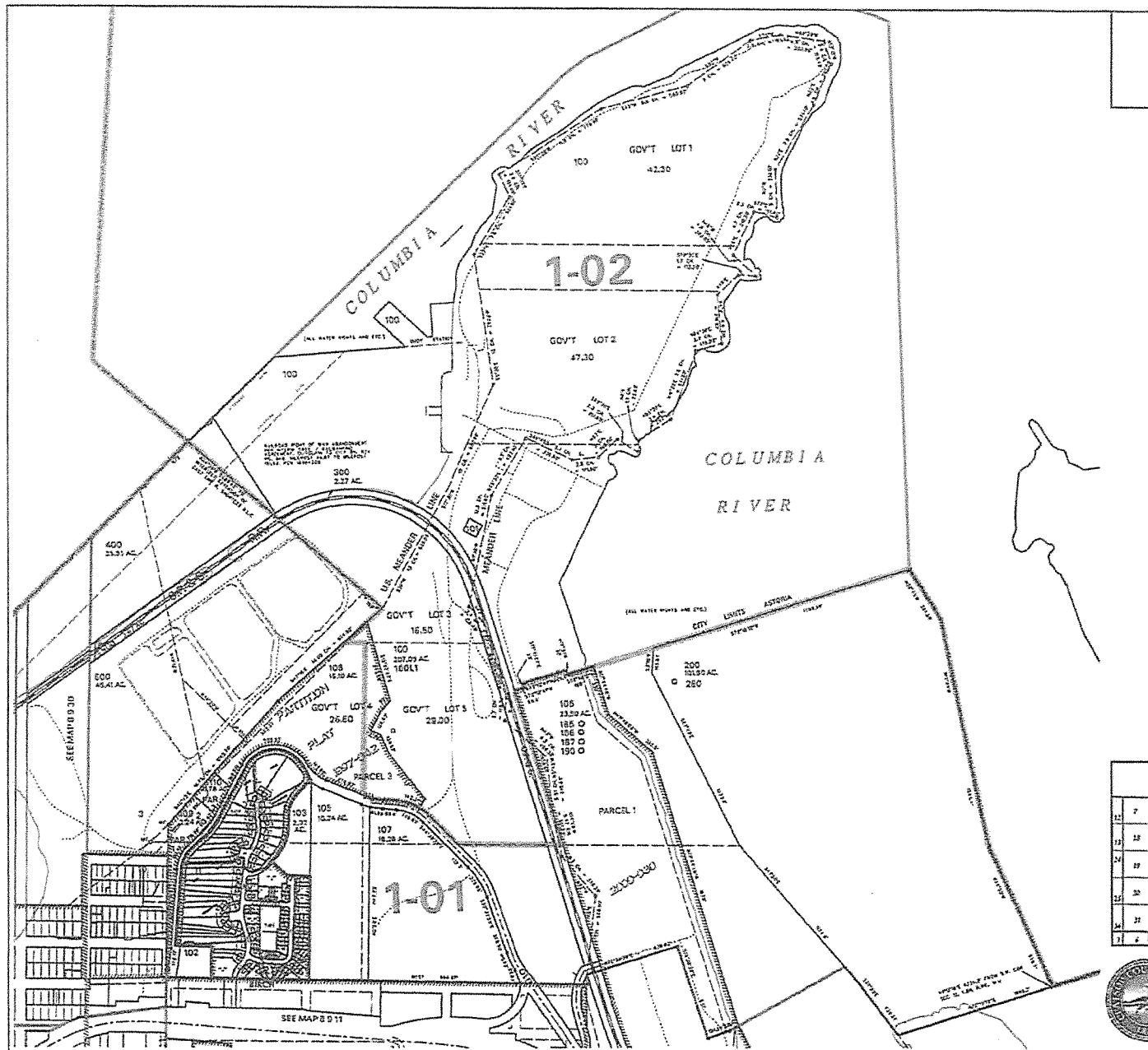


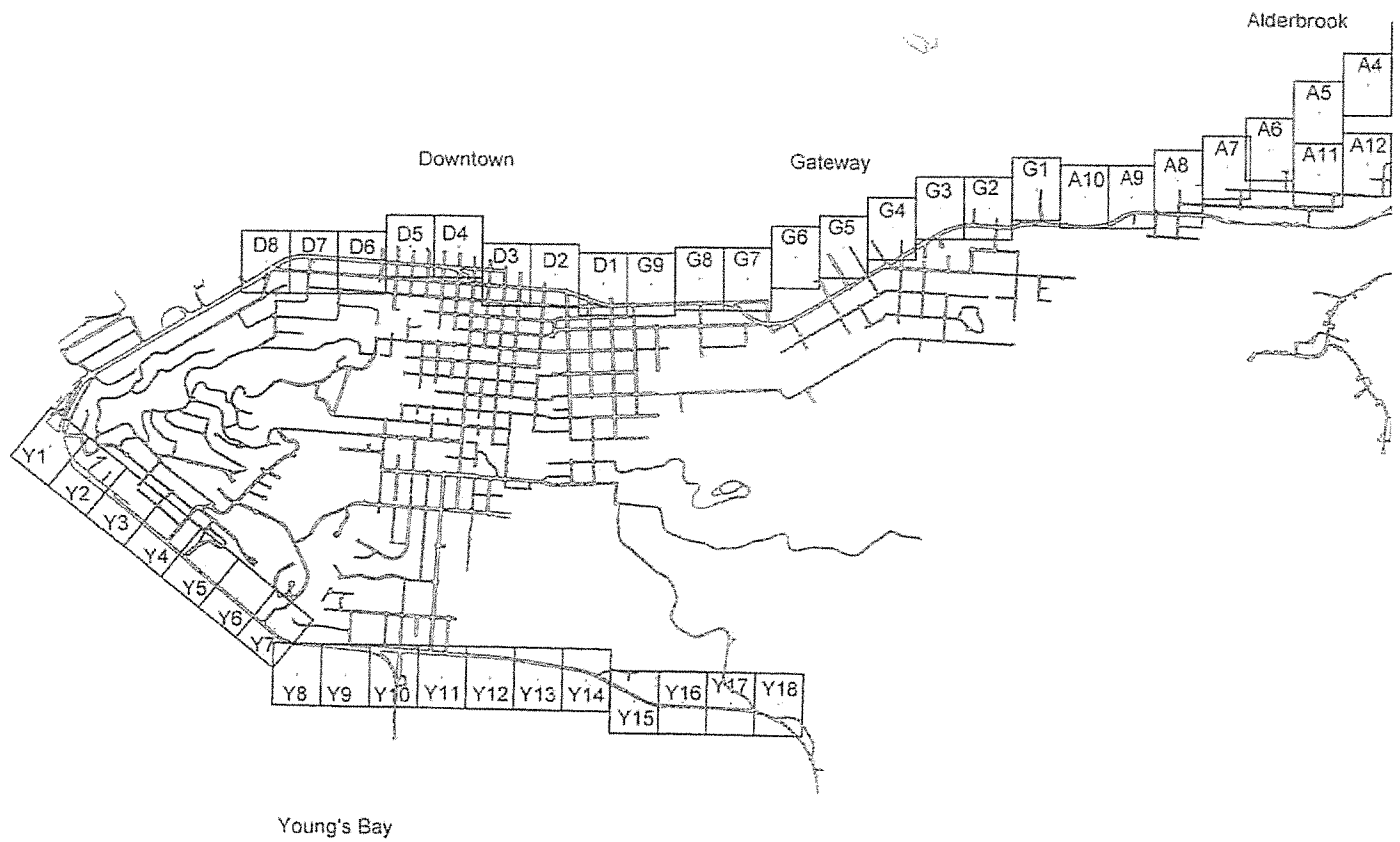






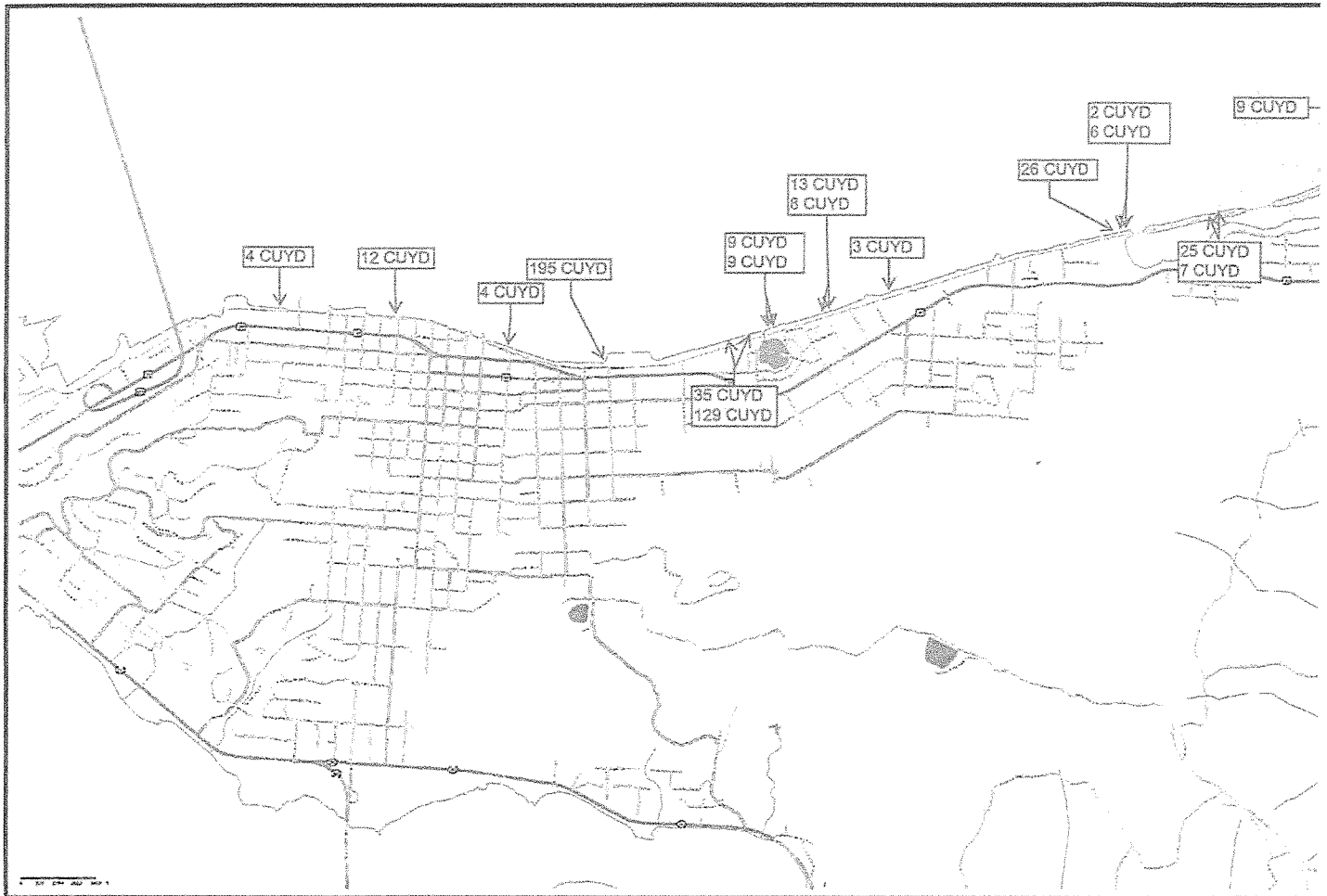








## City of Astoria Shoreline Storm Repair



### Clatsop County Webmaps

Disclaimer: This map was produced using Clatsop County GIS data. The GIS data is maintained by the County to support its governmental activities. This map should not be used for survey or engineering purposes. The County is not responsible for map errors, omissions, misuse or misinterpretation. Photos may not align with the map.



1"=100'  
2-10-2016

United States  
of America

City of Astoria

City of Astoria

City of Astoria

#1003  
1 CUYD

#1001  
29 CUYD

#1002  
3 CUYD

See Map A1

See Map A3

Shoreline Stabilization

**A2**





1"=100'  
2-10-2016

#1004  
20 CUYD

City of Astoria

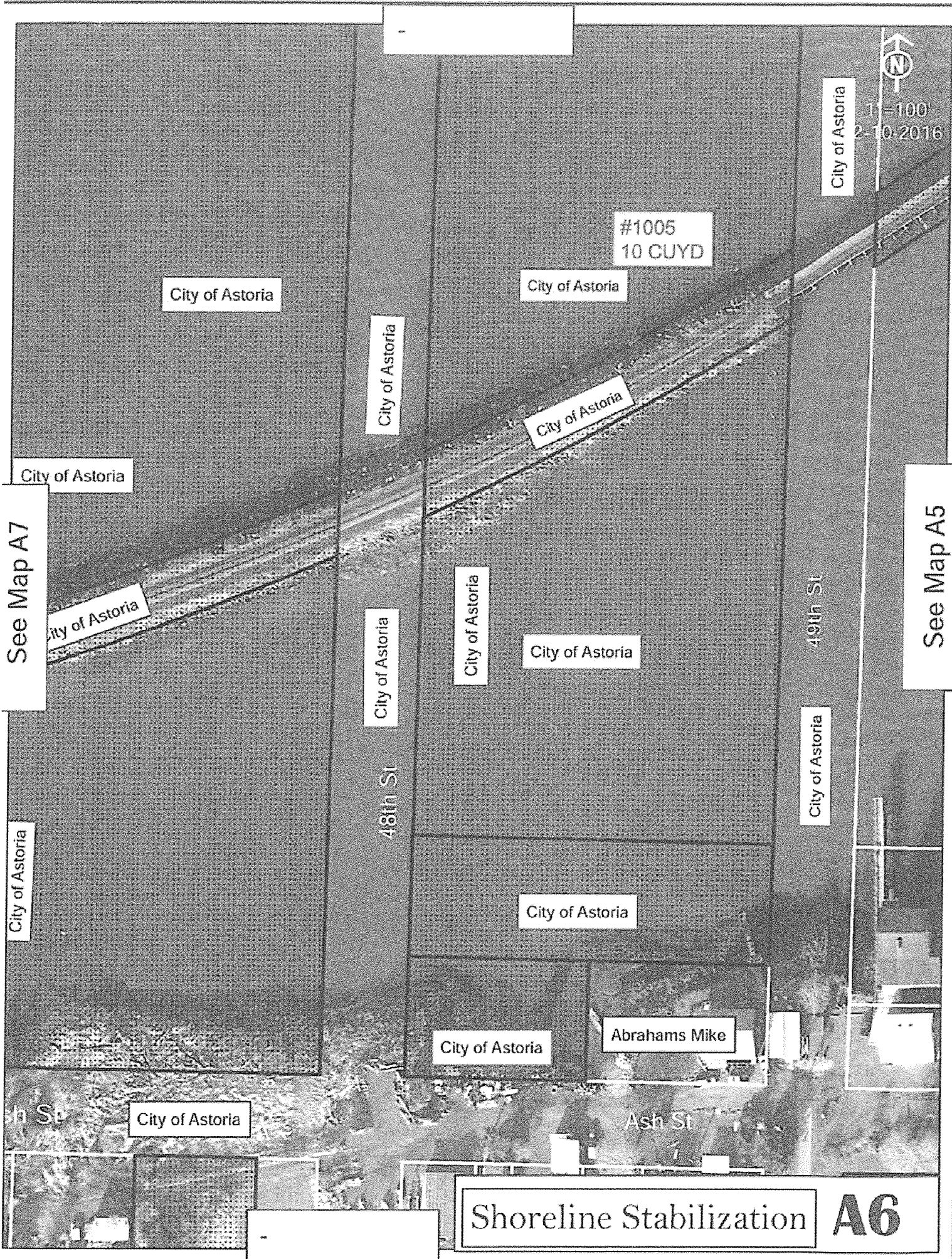
City of Astoria

See Map A2

Shoreline Stabilization **A3**

See Map A4

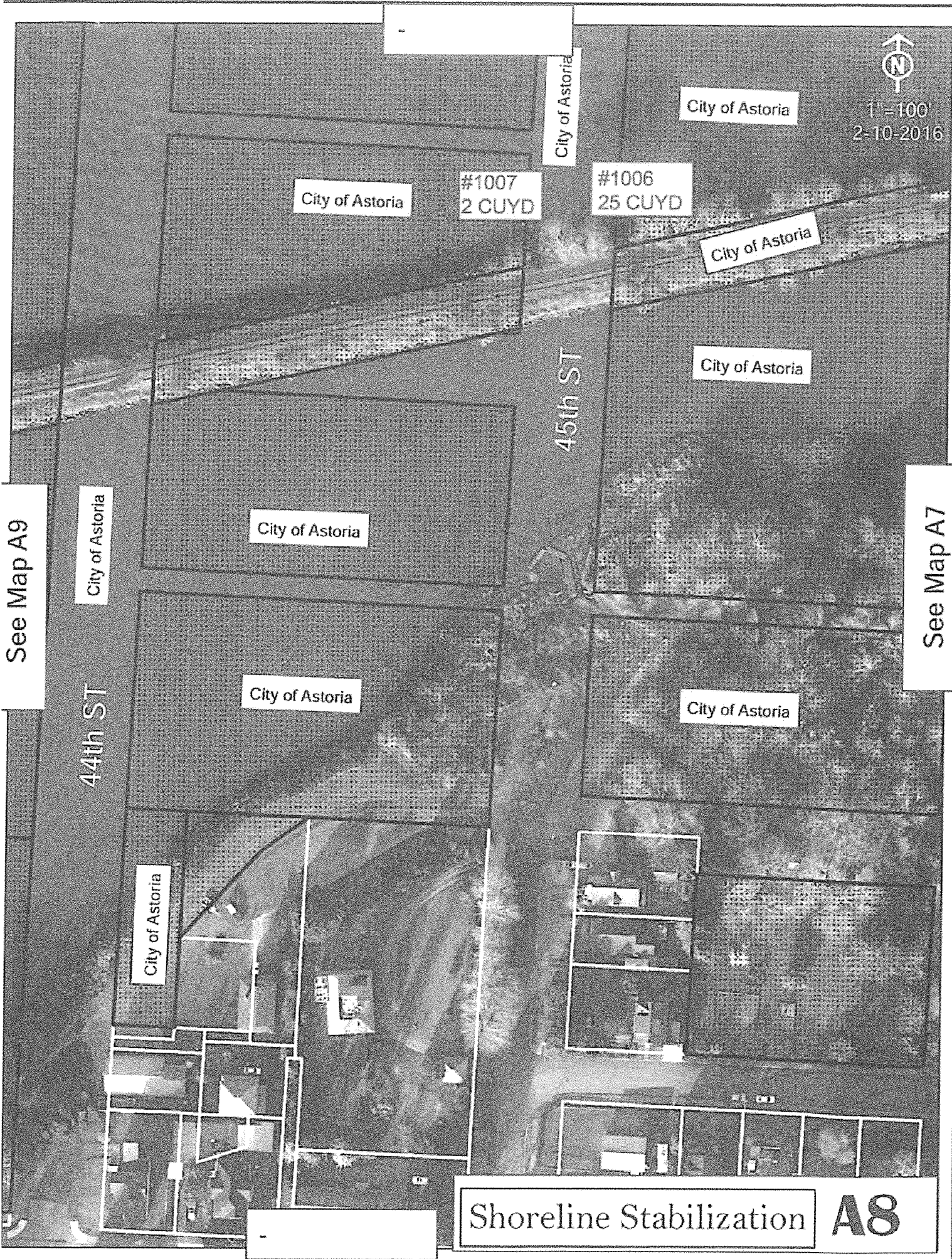








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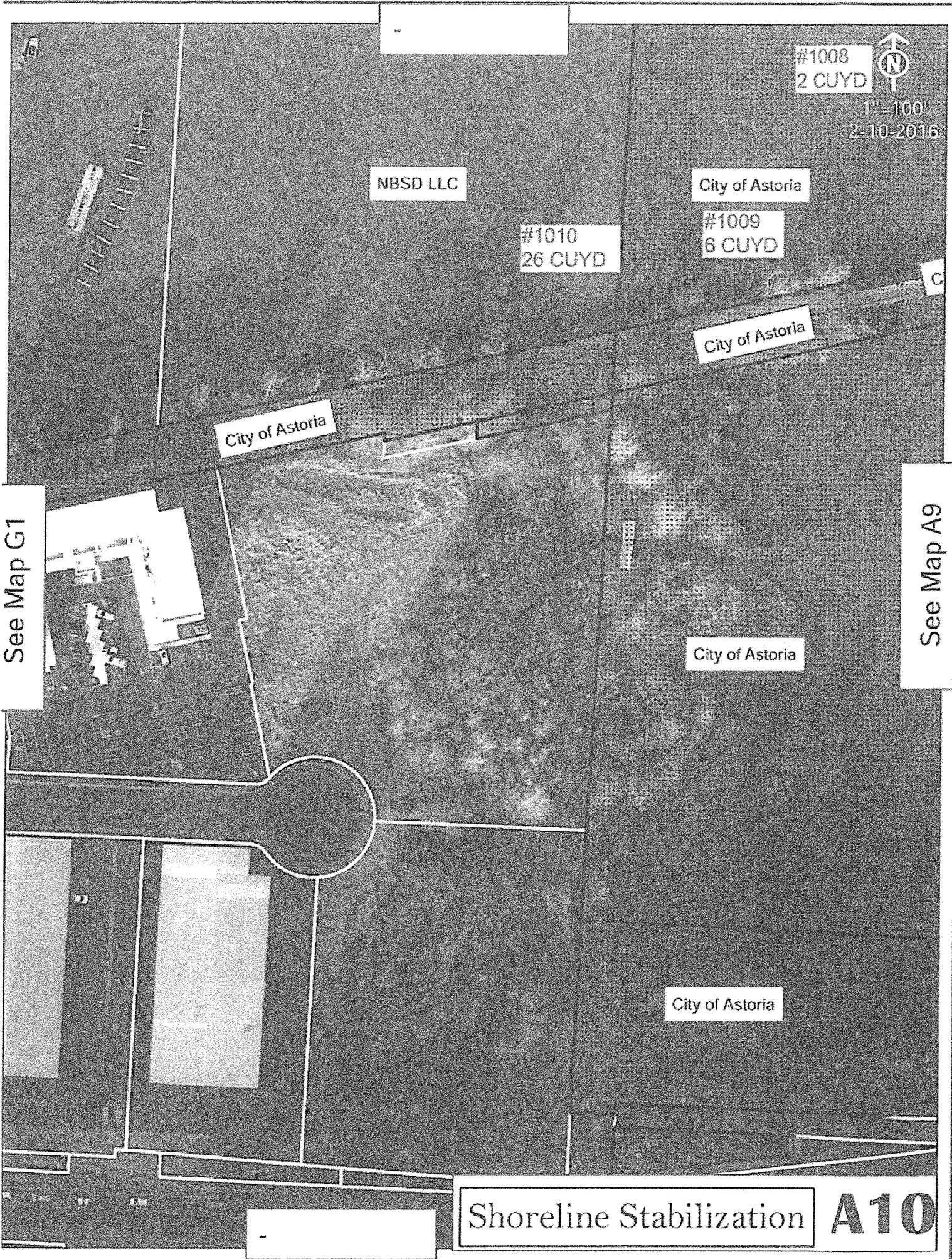


See Map A9

See Map A7

Shoreline Stabilization **A8**





#1008  
2 CUYD



1"=100'  
2-10-2016

NBSD LLC

City of Astoria

#1010  
26 CUYD

#1009  
6 CUYD

City of Astoria

City of Astoria

See Map A9

City of Astoria

City of Astoria

Shoreline Stabilization

**A10**

See Map G1





1"=100'  
2-10-2016

Port of

Safeway Inc

GAP

#1011  
3 CUYD

Bk 96 Pg 512

City of Astoria

See Map G5

eway Inc

See Map G3

City of Astoria

oria

32nd St

Lief Erikson

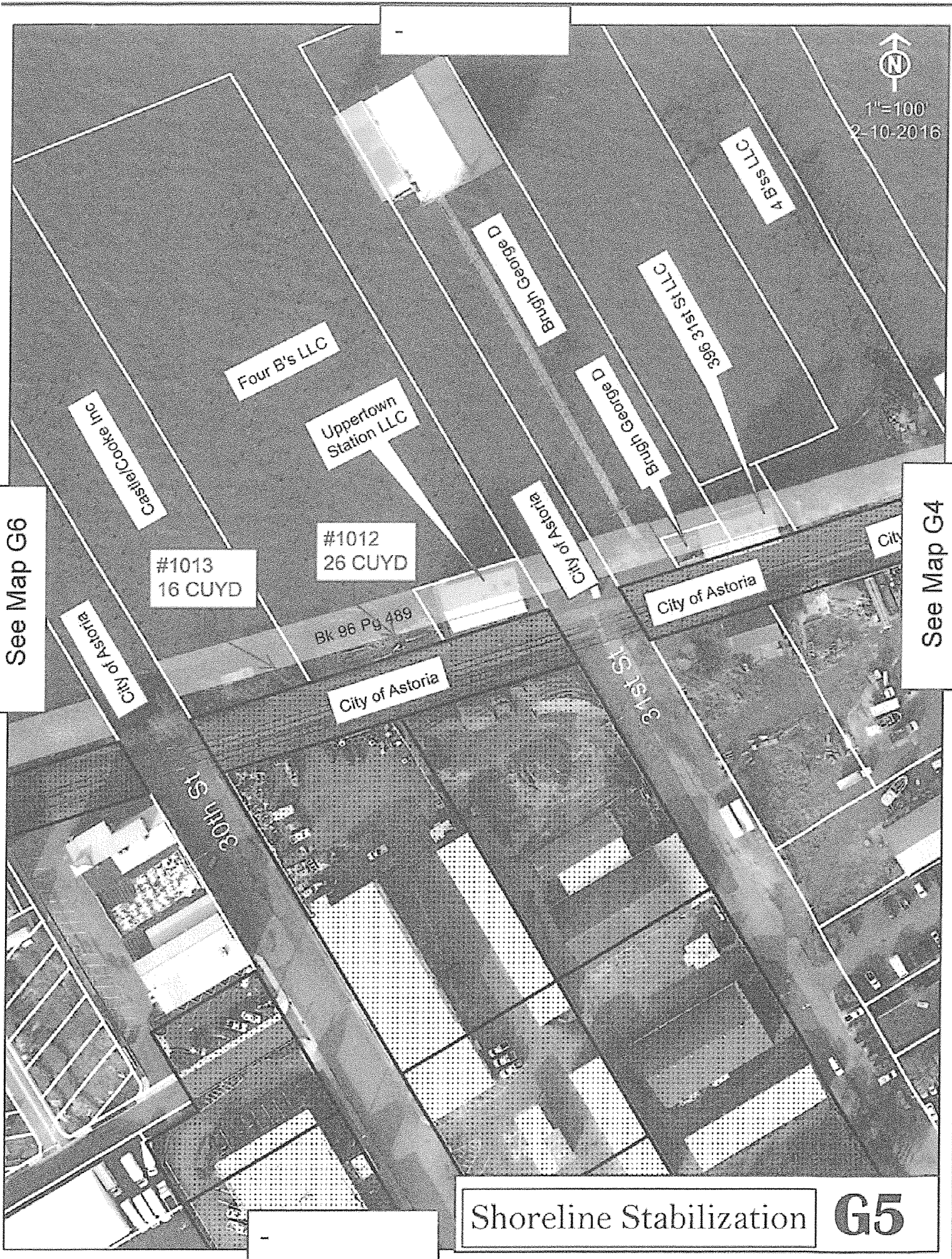
Shoreline Stabilization

**G4**





1"=100'  
2-10-2016



See Map G6

See Map G4

Shoreline Stabilization

**G5**



1"=100'  
2-10-2016

See Map G7

City of Astoria

Phreds Phono & Games

Van Horn Fred Jr

City of Astoria

City of Astoria

#1014  
9 CUYD

#1015  
9 CUYD

City of Astoria

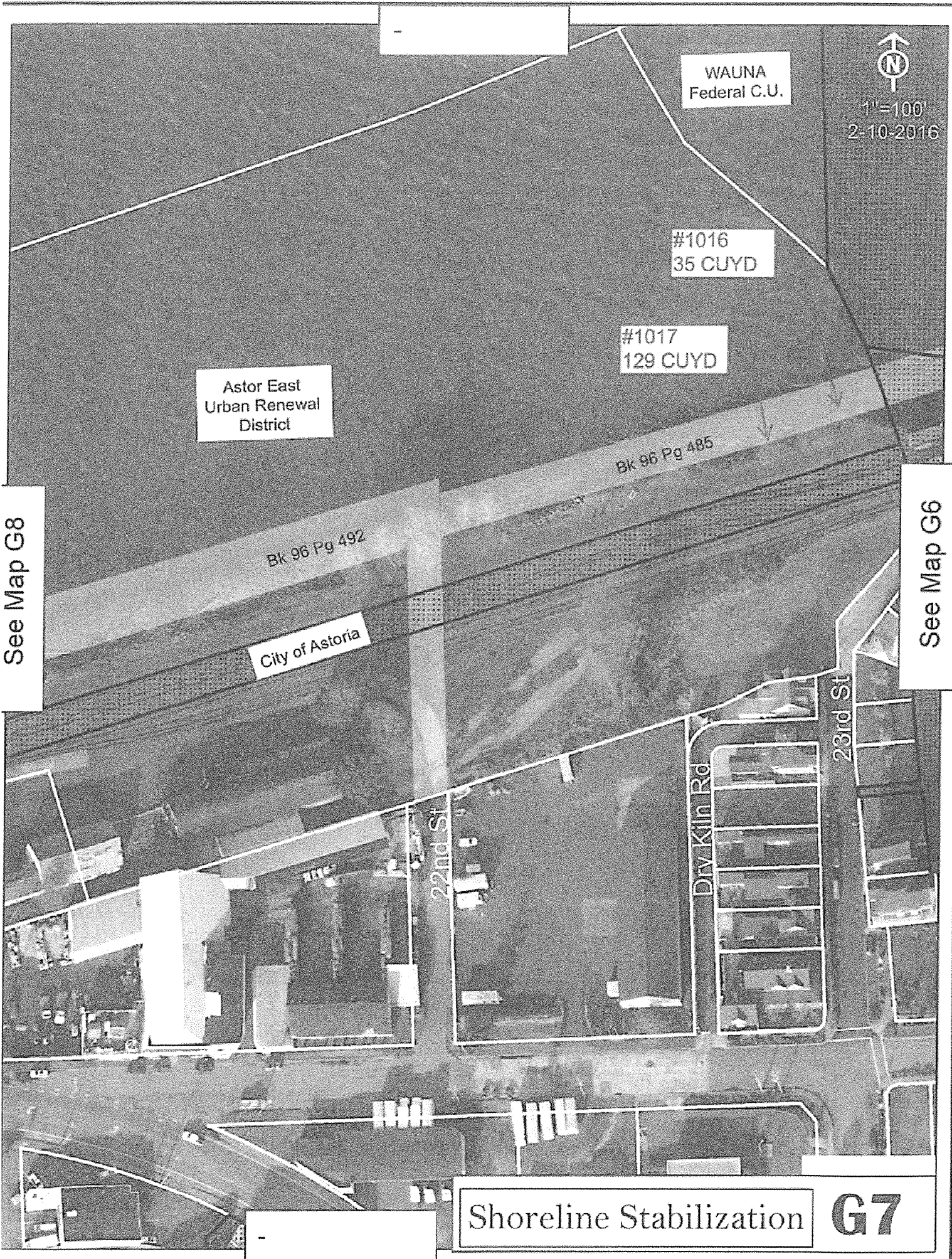
City of Astoria

29th St

Shoreline Stabilization

G6





See Map G8

See Map G6

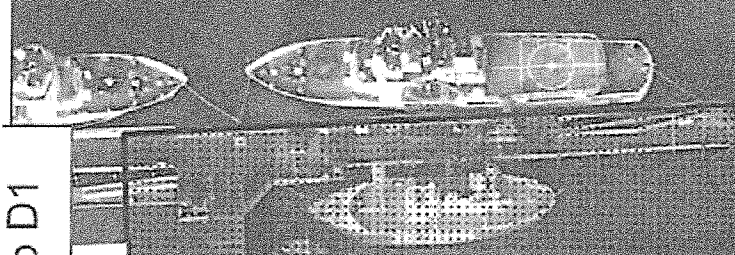
Shoreline Stabilization

**G7**





1"=100'  
2-10-2016



See Map D1

Columbia River  
Maritime Museum

City of Astoria

#1019  
198 CUYD

Columbia River  
Maritime Museum

City of Astoria

City of Astoria

CRMM

CRMM

CRMM

17th St

18th St

Shoreline Stabilization

G9

See Map G8





1"=100'  
2-10-2016

#20  
4 CUYD

See Map D3

Hippo Two LLC

Archival  
Properties LLC

Archival  
Properties LLC

Tonquin Resources Ltd

City of Astoria

Just Little LLC

Ch  
Prop

See Map D1

12th St

14th St

City of Astoria

Marine D

City of Astoria

City of Astoria

Shoreline Stabilization

**D2**



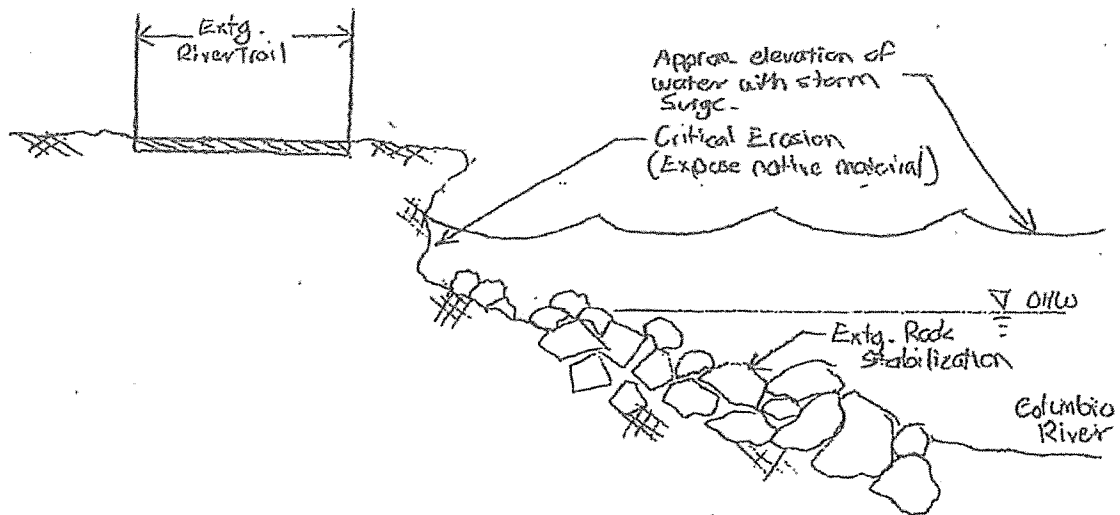
See Map D5

See Map D3

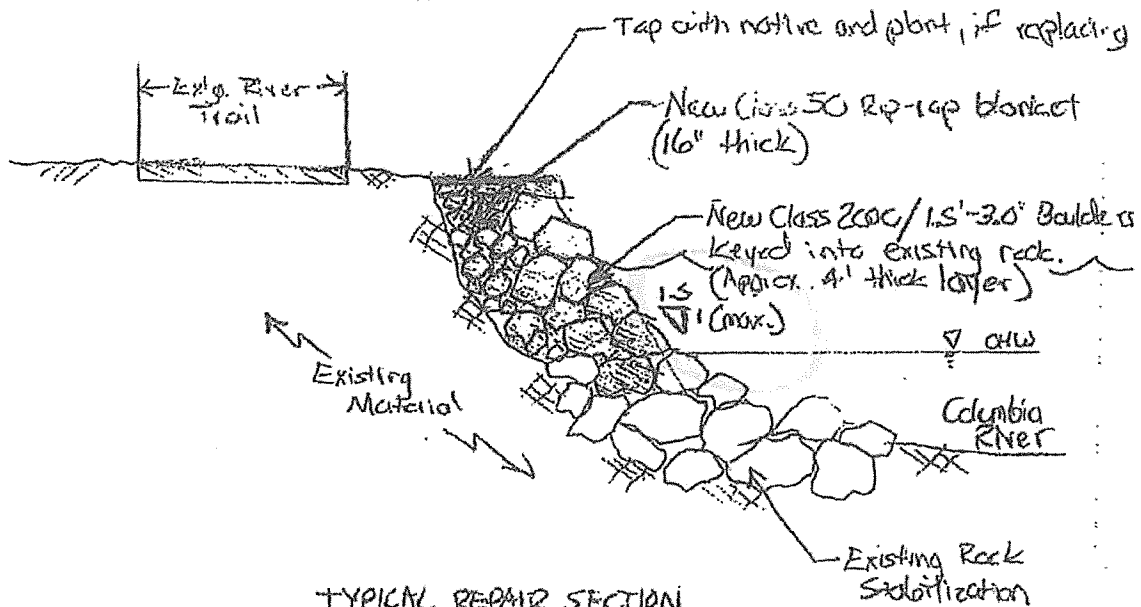
Shoreline Stabilization

D4

# Stabilization Project Grading Permit Sections



TYPICAL EXIST. SECTION  
NTS



TYPICAL REPAIR SECTION  
NTS



**US Army Corps  
of Engineers**  
Portland District

## **2012 Nationwide (NWP) Regional Permit Conditions Portland District**

The following Nationwide Permit (NWP) regional conditions are for the Portland District Regulatory Branch boundary. Regional conditions are placed on NWPs to ensure projects result in less than minimal adverse impacts to the aquatic environment and to address local resource concerns.

### ALL NWPs –

- 1. High Value Aquatic Resources:** Except for NWPs 3, 20, 27, 32, 38, and 48, any activity that would result in a loss of waters of the United States (U.S.) in a high value aquatic resource is not authorized by NWP. High value aquatic resources in Oregon include bogs, fens, wetlands in dunal systems along the Oregon coast, native eel grass (*Zostera marina*) beds, kelp beds, rocky substrate in tidal waters, marine reserves, marine gardens, vernal pools, alkali wetlands, and Willamette Valley wet prairie wetlands.

**NOTE:** There are other types of wetlands in Oregon, such as mature wooded wetlands and tidal swamps, which are also considered as providing high value and functions to the State's aquatic ecosystems. Impacts to these waters will be evaluated on a case-by-case basis for potential authorization under a Nationwide Permit. For more information about the State's Wetlands of Conservation Concern" please visit [http://www.oregon.gov/dsl/PERMITS/docs/wetland\\_cons\\_concern.pdf](http://www.oregon.gov/dsl/PERMITS/docs/wetland_cons_concern.pdf).

- 2. Cultural Resources and Human Burials-Inadvertent Discovery Plan:** In addition to the requirements in NWP General Conditions 20 and 21 permittee shall immediately notify the Portland District Engineer if at any time during the course of

the work authorized, human burials, cultural items, or historic properties, as identified by the National Historic Preservation Act and Native American Graves Protection and Repatriation Act, are discovered. The permittee shall implement the following procedures:

- a. Immediately cease all ground disturbing activities.
  - b. Project Located in Oregon: Notify the Oregon State Historic Preservation Office (503-986-0674).
  - c. Project Located in Washington: Notify the Washington Department of Archaeology and Historic Preservation (360-586-3077).
  - d. Notify the Portland District Engineer. Notification shall be made by fax (503-808-4375) as soon as possible following discovery but in no case later than 24 hours. The fax shall clearly specify the purpose is to report a cultural resource discovery. Follow up the fax notification by contacting the Portland District Engineer representative (by email and telephone) identified in the verification letter.
  - e. Failure to stop work immediately and until such time as the Portland District Engineer has coordinated with all appropriate agencies and Native American tribes, and complied with the provisions of 33 CFR 325 (Appendix C), the National Historic Preservation Act, Native American Graves Protection and Repatriation Act, and other pertinent regulations could result in violation of state and federal laws. Violators are subject to civil and criminal penalties.
- 3. In-water Work:** In order to minimize potential impacts to water quality, aquatic species and habitat, in-water work will be limited by the following timing considerations:
    - a. Permittee shall complete all in-water work within the preferred work window

specified in Oregon Department of Fish and Wildlife's (ODFW) "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources," June 2008, or most current version, available at: [http://www.dfw.state.or.us/lands/inwater/Oregon\\_Guidelines\\_for\\_Timing\\_of\\_InWater\\_Work2008.pdf](http://www.dfw.state.or.us/lands/inwater/Oregon_Guidelines_for_Timing_of_InWater_Work2008.pdf).

b. If work cannot be completed within the preferred timing window, despite every attempt to do so, permittee shall submit a request to work out side of the preferred window to the Portland District Engineer in writing. Permittee shall not begin any in-water work outside of the preferred window until they have received written approval from the District Engineer. The District Engineer will coordinate with the appropriate agencies prior to finalizing a decision.

- 4. Fish and Aquatic Life passage:** In addition to the requirements of NWP General Conditions 2 and 9, all activities authorized by a NWP shall not restrict passage of aquatic life beyond the necessary construction period. Aquatic life shall be interpreted to include amphibians, reptiles, and mammals whose natural habitat includes waters of the U.S. and which are generally present in and/or around waters of the U.S.
- a. Activities such as the installation of culvert, intake structures, diversion structures, or other modifications to stream channel morphology must conform to fish passage standards developed by the ODFW and the National Marine Fisheries Service (NMFS). ODFW's standards can be found at OAR 635-412-0035; ODFW provides an overview at <http://www.dfw.state.or.us/fish/passage/> and NMFS provides an overview at [http://www.nwr.noaa.gov/hydropower/hydropower\\_northwest/hydropower\\_in\\_the\\_nw.html](http://www.nwr.noaa.gov/hydropower/hydropower_northwest/hydropower_in_the_nw.html).
- 5. Fish Screening:** The permittee shall ensure that all intake pipes utilize fish screening that complies with standards developed by NMFS and ODFW ("Anadromous Salmonid Passage Facility

Design", July 2011). [http://www.nwr.noaa.gov/hydropower/hydropower\\_northwest/hydropower\\_in\\_the\\_nw.html](http://www.nwr.noaa.gov/hydropower/hydropower_northwest/hydropower_in_the_nw.html) or the most current version.

- 6. Work Area Isolation and Dewatering:** Appropriate best management practices shall be implemented to prevent erosion and sediments from entering wetlands or waterways.
- a. All in-water work shall be isolated from the active channel or conducted during low seasonal stream flows.
- b. Permittee shall provide for fish passage upstream and downstream of the worksite.
- c. Cofferdams shall be constructed of non-erosive material, such as concrete jersey barriers, sand and gravel bag dams, or water bladders. Constructing a cofferdam by pushing material from the streambed or sloughing material from the streambanks is not authorized.
- d. Sand and gravel bag dams shall be lined with a plastic liner or geotextile fabric to reduce permeability and prevent sediments and/or construction materials from entering the active stream channel.
- e. Upstream and downstream flows shall be maintained by routing flows around the construction site with a pump, bypass pipe, or diversion channel.
- f. A sediment basin shall be used to settle sediments in return water prior to release back into the waterbody. Settled water shall be returned to the waterbody in such a manner as to avoid erosion of the streambank. Settlement basins shall be placed in uplands.
- g. Fish and other aquatic species must be salvaged prior to dewatering. The State of Oregon requires a Scientific Take Permit be obtained to salvage fish and wildlife. Permittee is advised to contact the nearest ODFW office. For further information contact ODFW at <http://www.dfw.state.or.us>.



**7. Dredging:** For any NWP-authorized activities, including but not limited to NWP 3, 12, 13, 19, 27, 35, 36, 40, and 41 that involve removal of sediment from waters of the U.S. permittee shall ensure that:

- a. Any necessary sediment characterization regarding size, composition, and potential contaminants is conducted prior to dredging and the material is suitable for in-water disposal per the Sediment Evaluation Framework for the Pacific Northwest, 2009 (available at: <http://www.nwp.usace.army.mil/Missions/Environment/DMM.aspx>) or the most current version.
- b. The least impactful methodology and activity sequencing is used to ensure impacts to the aquatic system are minimized to the maximum extent practicable. Examples include using a hydraulic, closed-lipped clamshell bucket, toothed clamshell bucket, dragline and/or excavator.
- c. Dredged or excavated material is placed where sediment-laden water cannot enter waterways or wetlands in an uncontrolled manner. The discharge associated with the return of sediment-laden water into a water of the U.S. from an upland disposal site requires separate authorization from the District Engineer under NWP 16.

**8. Chemically Treated Wood – Withdrawn.**

**9. Mechanized Equipment:** In addition to the requirements in NWP General Condition 11, permittee shall implement the following to prevent or limit aquatic impacts from mechanized equipment:

- a. In all events use the type of equipment that minimizes aquatic impacts spatially and temporally.
- b. Use existing roads, paths, and drilling pads where available. Temporarily place mats or pads onto wetlands or tidal flats to provide site access. Temporary mats or

pads shall be removed upon completion of the authorized work.

c. Operate equipment from the top of a streambank and conduct work outside of the active stream channel, unless specifically authorized by the District Engineer.

d. Isolate storage, staging, and fueling areas, and operate and maintain equipment in isolation from waters, wetlands, and riparian areas.

e. Maintain spill prevention and containment materials with ready access at vehicle staging areas. Permittee and staff shall be trained to effectively deploy the measures. Spill response materials include straw matting/bales, geotextiles, booms, diapers, and other absorbent materials, shovels, brooms, and containment bags. In the event of a spill of petroleum products or other chemicals with potential to affect waters or wetlands, permittee shall immediately report the spill to the Oregon Emergency Response Service (OERS) at 1-800-452-0311 and shall implement containment and cleanup measures, as directed.

**10. Deleterious Waste:** In addition to the requirements in NWP General Condition 6, permittee shall not dispose of biologically harmful or waste materials into waters or wetlands. These materials include but are not limited to the following:

- a. Petroleum products, chemicals, cement cured less than 24 hours, welding slag and grindings, concrete saw cutting by-products, sandblasted materials, chipped paint, tires, wire, steel posts, asphalt and waste concrete.
- b. Discharge water created during construction activities (such as but not limited to concrete wash out, pumping for work area isolation, vehicle wash water, drilling fluids, dredging return flows, and sediment laden runoff) shall be treated to remove debris, sediment, petroleum products, metals, and other pollutants and

discharged in a controlled fashion to avoid erosion. A separate Department of the Army permit and/or a National Pollutant Discharge Elimination System (NPDES) permit from Oregon Department of Environmental Quality's (DEQ) may be required prior to discharge. Permittee is directed to contact the nearest DEQ office (<http://www.deq.state.or.us/about/locations.htm>) for more information about the NPDES program.

## 11. Stormwater Discharge Pollution

**Prevention:** Activities that result in stormwater runoff passing over disturbed areas and impervious surfaces must include reduction measures, controls, treatment techniques and management practices to avoid discharge of soil, debris, toxics and other pollutants to waterways and wetlands.

a. **Erosion Control:** During construction and until the site is stabilized, the permittee shall ensure all practicable measures are implemented and maintained to prevent erosion and runoff. For proper erosion control measure selection and implementation, the permittee is referred to DEQ "Oregon Sediment and Erosion Control Manual," April 2005, available at: <http://www.deq.state.or.us/wq/stormwater/escmanual.htm>. Appropriate control measures and maintenance include, but are not limited to the following:

- 1) Permittee shall inspect and maintain control measures in good condition throughout construction and until permanent measures are well established. Permittee shall repair or replace any damages such as rips, broken stakes that result in loss of intended function. Permittee shall install additional control measures and reseed or replant with native and/or non-competitive species as necessary to achieve stabilization of the site. Spray-on mulches imbedded with benign sterile species may be used to temporarily stabilize the area until permanent controls are in place.

- 2) Once soils or slopes have been stabilized, permittee shall completely remove and properly dispose of or re-use all components of installed control measures.

### b. Post-Construction Stormwater

**Management:** If the activity will result in creation of new impervious surfaces and federally listed aquatic species or their habitat may be affected by the proposed activity permittee shall forward a copy of the post-construction stormwater management plan (SWMP) to the Portland District Engineer for our consultation under the Endangered Species Act. A copy of the SWMP must be submitted to the DEQ for their review and approval prior to initiating construction.

- 1) Submittal of the post-construction stormwater management plan to DEQ at the same time the application is submitted to the Corps will streamline the project review. DEQ's Stormwater Management Plan Submission Guidelines for Removal/Fill Permit Applications which involve impervious surfaces can be found at <http://www.deq.state.or.us/wq/sec401cert/docs/stormwaterGuidlines.pdf>. This document provides information to determine the level of detail required for the plan based on project type, scope, location, and other factors, as well as references to assist in designing the plan and a checklist for a complete submission.

**12. Upland Disposal:** Material disposed of in uplands shall be placed in a location and manner that prevents discharge of the material and/or return water into waters or wetlands unless otherwise authorized by the Portland District Engineer.

- a. Final disposition of materials removed from waters and wetlands to uplands may require separate approvals under Oregon State Solid Waste Rules. For more information please visit DEQ's Solid Waste

program at:  
<http://www.deq.state.or.us/lq/sw/index.htm>

b. Temporary upland stockpiles of excavated or dredged materials shall be isolated from waterways, wetlands, and floodwaters; stabilized prior to wet weather; and maintained using best management practices unless specifically authorized by the District Engineer.

**13. Restoration of Temporary Impacts:** To minimize temporal losses of waters of the U.S. construction activities within areas identified as temporary impacts shall not exceed two construction seasons or 24 months, whichever is less. For all temporary impacts, permittee shall provide the Portland District Engineer a description, photos, and any other documentation which demonstrates pre-project conditions with the Preconstruction Notification.

b. Site restoration of temporarily disturbed areas shall include returning the area to pre-project ground surface contours. Permittee shall revegetate temporarily disturbed areas with native, noninvasive herbs, shrubs, and tree species sufficient in number, spacing, and diversity to replace affected aquatic functions.

c. Site restoration shall be completed within 24 months of the initiation of impacts (unless otherwise required by the specific NWP). However, if the temporary impact requires only one construction season, site restoration shall be completed within that same construction season before the onset of seasonal rains.

**14. Permittee-responsible Compensatory Mitigation:** When permittee-responsible compensatory mitigation is required by the Portland District Engineer to replace lost or adversely affected aquatic functions, the permittee shall provide long-term protection for the mitigation site through real estate instruments (e.g., deed restriction or conservation easement) or other available mechanisms. The appropriate long-term protection mechanism will be determined by the Portland District Engineer based on

project-specific review and must be in place prior to initiating the permitted activity.

**15. Inspection of the Project Site:** The permittee shall allow representatives of the Portland District Engineer and/or DEQ to inspect the authorized activity to confirm compliance with nationwide permit terms and conditions. A request for access to the site will normally be made sufficiently in advance to allow a property owner or representative to be on site with the agency representative making the inspection.

**16. Sale of Property/Transfer of Permit:** Permittee shall obtain the signature(s) of the new owner(s) and transfer this permit in the event the permittee sells the property associated with this permit. To validate the transfer of this permit authorization, a copy of this permit with the new owner(s) signature shall be sent to the Portland District Engineer at the letterhead address on the verification letter.

#### **NATIONWIDE SPECIFIC CONDITIONS:**

##### **NWP 3 – Maintenance**

1. Permittee shall implement measures necessary to prevent streambed gradient alterations and streambank erosion.

##### **NWP 5 – Scientific Measurement Devices**

1. Permittee shall remove all scientific measurement devices including all associated structures and fills including anchoring devices, buoys, and cable within 30 days after research is completed.

##### **NWP 6 – Survey Activities**

1. Use of in-water explosives is not authorized.

2. Permittee shall isolate all in-stream exploratory trenching from the active channel.

##### **NWP 12 – Utility Line Activities**

1. Permittee shall install trench-blockers of a type and design sufficient to prevent the drainage of the wetland areas (e.g. bentonite clay plugs, compacted sand

bags, etc.) where utility lines are buried within or immediately adjacent to wetlands and other waters.

2. Permittee shall remove and separately reserve the topsoil from the subsurface soils during trenching. Permittee shall place the reserved topsoil as the final surface layer in backfilling the trench.

3. Agency coordination, per Nationwide Permit General Condition 31 (d), is required where utility lines are proposed in estuaries to ensure there are no impacts to native shellfish beds.

4. Manholes placed in streams or other waterways require specific approval by the District Engineer.

#### NWP 13 – Bank Stabilization

1. Permittee shall include the use of bioengineering techniques and natural products (e.g. vegetation and organic material such as root wads) in the project design to the maximum extent practicable and shall minimize the use of rock, except when it is anchoring large woody debris. Non-biodegradable materials, such as plastic netting, that may entrap wildlife or pose a safety concern shall not be used for soil stabilization. Riparian plantings shall be included in all project designs unless the permittee can demonstrate that such plantings are not practicable.

2. Riprap shall be clean (i.e. free of toxic contaminants and invasive species), durable, angular rock.

#### NWP 23 – Approved Categorical Exclusions

1. Pre-construction notification or other Corps-approved documentation is required for all activities which require a permit from the Portland District Engineer.

#### NWP 29 – Residential Developments

1. Wetland impacts associated with the construction or expansion of a single residence including attendant features (utility lines, roads, yards, etc) shall not exceed one-fourth (¼) acre.

#### NWP 41 – Reshaping Existing Drainage Ditches

1. All in-water work shall be isolated from the active stream channel or conducted during low seasonal stream flows.

#### NWP 43 – Stormwater Management Facilities

1. All in-water work shall be isolated from the active stream channel or conducted during low seasonal stream flows.

2. This NWP does not authorize the retention of water in excess of that required to meet stormwater management requirements for purposes such as recreational lakes, reflecting pools, irrigation, etc.

#### NWP 44 – Mining Activities

1. Reclamation, when required, must be achieved within 24 months of completing the mining activity.

2. In-stream mining including bar scalping is not authorized by this NWP.

3. Permittee shall ensure site includes appropriate grade controls to prevent headcutting of streams or bank erosion.

4. The use of in-water explosives is prohibited under this nationwide.

5. Excavated materials may be temporarily stockpiled within the channel above the plane of the water surface for up to seven (7) days. Excavated materials shall not be stockpiled in wetlands or flowing water.

#### NWP 48 – Commercial Shellfish Aquaculture Activities

1. Agency coordination, per NWP General Condition 31 (d), is required for all activities proposed under this NWP.

**NOTE:** For projects involving commercial aquaculture or mariculture cultivation of oysters, clams, and mussels on state submerged and submersible lands permittee is advised authorization may be required from the Oregon Department of Agriculture. For more information go to



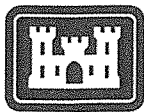
[http://www.oregon.gov/ODA/FSD/program\\_shellfish.shtml](http://www.oregon.gov/ODA/FSD/program_shellfish.shtml)

NWP 51– Land-Based Renewable Energy  
Generation Facilities

1. Agency coordination, per NWP General Condition 31 (d), is required for activities where aerial power transmission lines cross navigable waters.

NWP 52 – Water Based Renewable Energy  
Generation Pilot Projects

1. Agency coordination, per NWP General Condition 31 (d), is required for all activities proposed for verification under this NWP.
2. Activities authorized under this NWP shall comply with the siting requirements of the Oregon Territorial Sea Plan, which designates areas as suitable for such activities. For more information go to [http://www.oregon.gov/LCD/OCMP/Pages/Ocean\\_TSP.aspx](http://www.oregon.gov/LCD/OCMP/Pages/Ocean_TSP.aspx).



**US Army Corps  
of Engineers**  
Portland District

**Nationwide (NWP)  
Permit Conditions**  
33 CFR Part 330;  
Issuance of Nationwide  
Permits – March 19, 2012

**C. Nationwide Permit General  
Conditions**

**Note:** To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR §§ 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR § 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

**1. Navigation**

(a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation

of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

**2. Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

**3. Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

**4. Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

**5. Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

**6. Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

**7. Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

**8. Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

**9. Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course; condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

**10. Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

**11. Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

**12. Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

**13. Removal of Temporary Fills.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

**14. Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

**15. Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

**16. Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or Study River (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

**17. Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

**18. Endangered Species.**

(a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

**19. Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

**20. Historic Properties.**

(a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the



requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

**21. *Discovery of Previously Unknown Remains and Artifacts.*** If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district

engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

## **22. Designated Critical Resource Waters.**

Critical resource waters include NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

**23. Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a

final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, and ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and

legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation

may be required to reduce the adverse effects of the project to the minimal level.

**24. Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

**25. Water Quality.** Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

**26. Coastal Zone Management.** In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

**27. Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

**28. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is prohibited, except when the

acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

**29. Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

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(Transferee)

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(Date)

**30. Compliance Certification.** Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:



(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l) (3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

### **31. Pre-Construction Notification.**

(a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not

received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity.

The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation

demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

#### (c) Form of Pre-Construction

Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b) (1) through (7) of this general condition. A letter containing the required information may also be used.

#### (d) Agency Coordination:

(1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of

NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

## **F. Definitions**

### ***Best management practices (BMPs):***

Policies, practices, procedures, or structures

implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

***Compensatory mitigation:*** The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

***Currently serviceable:*** Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

***Direct effects:*** Effects that are caused by the activity and occur at the same time and place.

***Discharge:*** The term "discharge" means any discharge of dredged or fill material.

***Enhancement:*** The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

***Ephemeral stream:*** An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

***Establishment (creation):*** The manipulations of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

***High Tide Line:*** The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide

line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

**Historic Property:** Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

**Independent utility:** A test to determine what constitutes a single and complete non-linear project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

**Indirect effects:** Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

**Intermittent stream:** An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent

streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

**Loss of waters of the United States:** Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

**Non-tidal wetland:** A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

**Open water:** For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.



**Ordinary High Water Mark:** An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

**Perennial stream:** A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

**Practicable:** Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

**Pre-construction notification:** A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

**Preservation:** The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

**Re-establishment:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic

resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

**Rehabilitation:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

**Restoration:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

**Riffle and pool complex:** Riffle and pool complexes are special aquatic sites under the 404(b) (1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

**Riparian areas:** Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

**Shellfish seeding:** The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of

immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

**Single and complete linear project:** A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

**Single and complete non-linear project:** For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

**Stormwater management:** Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

**Stormwater management facilities:** Stormwater management facilities are those

facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

**Stream bed:** The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

**Stream channelization:** The manipulation of a stream’s course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

**Structure:** An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

**Tidal wetland:** A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

***Vegetated shallows:*** Vegetated shallows are special aquatic sites under the 404(b) (1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

***Waterbody:*** For purposes of the NWPs, a waterbody is a jurisdictional water of the United States. If a jurisdictional wetland is adjacent – meaning bordering, contiguous, or neighboring – to a waterbody determined to be a water of the United States under 33 CFR 328.3(a)(1)-(6), that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.



State of Oregon  
Department of  
Environmental  
Quality

## Oregon Department of Environmental Quality (DEQ) 401 Water Quality (WQC) General Conditions

In addition to all USACE permit conditions and regional permit conditions, the following 401 Water Quality Certification conditions apply to all Nationwide Permit (NWP) categories certified or partially certified Additional 401 Water Quality Certification category specific conditions follow, which must also be complied with as applicable.

**1) Turbidity:** All Permittees must implement all reasonably available technological controls and management practices to meet the standard rule of no more than a 10 percent increase in project caused turbidity above background levels. However, if all reasonably available controls and practices are implemented by a permittee, turbidity exceedances of more than 10 percent above background are allowed for limited times depending on the severity of the increase, as specified in this condition.

**a. Monitoring and Compliance Requirements:** Permittee must monitor and record in a daily log stream turbidity levels during work below ordinary high water, compare turbidity caused by authorization actions to background levels, and adapt activities to minimize project-caused turbidity. Required monitoring steps include:

i. Identify two monitoring locations:

A. Background location: A relatively undisturbed location, approximately 100 feet upcurrent from the disturbing activity; and,

B. Compliance location: A location downcurrent from the disturbing activity, at approximately mid-depth, within any visible plume, at the distance that corresponds to the size of the waterbody where work is taking place as listed on the table below:

WETTED STREAM WIDTH	COMPLIANCE DISTANCE
Up to 30 feet	50 feet
>30 feet to 100 feet	100 feet
>100 feet to 200 feet	200 feet
>200 feet	300 feet
LAKE, POND RESERVOIR	Lesser of 100 feet or Maximum surface dimension

ii. Determine Compliance:

A. At the start of work, measure turbidity at both locations and record in the daily log date, time, location, tidal stage (if waterbody is tidally influenced), and turbidity levels at each point and comparison. Permittee must also record in the daily log all controls and practices implemented at the start of the work.



B. During work, measure turbidity at both locations at the frequency directed in the tables below and record in the daily log date, time, location, tidal stage (if waterbody is tidally influenced), and turbidity measurements.

C. Turbidity measurements must be representative of stream turbidity when the activity is being conducted. Measurements cannot be taken during a cessation of activity.

D. If project caused turbidity is elevated above background, Permittee must implement additional controls and practices and monitor both points again as described below for either monitoring method. A description of the additional controls and the date, time, and location where they are implemented must be recorded in the daily log:

MONITORING WITH A TURBIDIMETER*		
ALLOWABLE EXCEEDANCE TURBIDITY LEVEL	ACTION REQUIRED AT 1 <sup>ST</sup> MONITORING INTERNAL	ACTION REQUIRED AT 2 <sup>ND</sup> MONITORING INTERNAL
0 to 5 NTU above background	Continue to monitor every 4 hours	Continue to monitor every 4 hours
5 to 29 NTU above background	Modify controls & continue to Monitor every 4 hours	Stop work after 8 hours at 5-29 NTU above background
30 to 49 NTU above Background	Modify controls & continue to Monitor every 2 hours	Stop work after 2 confirmed hours At 30-49 NTU above background
50 NTU or more above Background	Stop work	Stop work

VISUAL MONITORING*		
No plume observed	Continue to monitor every 4 hours	Continue to monitor every 4 hours
Plume observed within compliance distance	Modify controls & continue to Monitor every 4 hours	Stop work after 8 hours with an observed plume within compliance distance
Plume observed beyond compliance distance	Stop work	Stop work
*Note: Monitoring visually may require stopping work as soon as the visual plume exceeds the waterbody specific compliance distance. However, using a turbidimeter can allow work to continue based on more precise determination of the severity of the turbidity increase over time.		

iii. Work must **stop immediately for the remainder of the 24-hour period** if:

- A. A visible turbidity plume extends beyond the compliance distance; or,
- B. Turbidity is measured at the compliance point at:
  - I. 50 NTU or more over background at any time;
  - II. 30 NTU over background for 2 hours; or
  - III. 5-29 NTU over background for 8 hours.

iv. Work may continue if no visible plume is observed, turbidity measured at the compliance point is no more than 0-5 NTU above background, or additional control measures can be applied to keep the visible plume within the compliance distance, measured turbidity ranges, and durations listed in the tables above.

**b. Turbidity Control Measures** - The permittee must implement all reasonably available controls and practices to minimize turbidity during in-water work, which may include, but are not limited to:

- i. Schedule, sequence or phase work activities so as to minimize in-water disturbance and duration of activities below ordinary high water;
- ii. Install and maintain containment measures to prevent erosion of upland material to waterways and wetlands, isolate work areas from flowing waters, and prevent suspension of in-stream sediments to the maximum extent practicable;
- iii. Apply control measures for all in-stream digging, including but not limited to: employing an experienced equipment operator; not dumping partial or full buckets of material back into the wetted stream; adjusting the volume, speed, or both of loads or hydraulic suction equipment; or by using a closed-lipped environmental bucket;
- iv. Limit the number and location of stream crossing events. If equipment must cross a waterway, establish temporary crossing sites at an area with stable banks, where the least vegetation disturbance will occur, shortest distance across water, oriented perpendicular to the stream, and supplement with clean gravel or other temporary methods as appropriate;
- v. Place excavated, disturbed, and stockpiled material so that it is isolated from the edge of waterways and wetlands and not allowed to enter waters of the state uncontrolled; and
- vi. Apply other effective turbidity control techniques, such as those in Appendix D and throughout DEQ's *Oregon Sediment and Erosion Control Manual*, April 2005, <http://www.deq.state.or.us/wq/stormwater/docs/escmanual/appxd.pdf>.

**c. Reporting:** Copies of daily logs for turbidity monitoring must be made available to DEQ and other regulatory agencies upon request. The log must include:

- i. Background NTUs or observation, compliance point NTUs or observation, comparison of the points in NTUs or narrative, and location, time, date, and tidal stage (if applicable) for each reading or observation.
- ii. A narrative discussing all exceedances, controls applied and their effectiveness, subsequent monitoring, work stoppages, and any other actions taken.

**2) Stormwater Discharge Pollution Prevention:** All projects that involve land disturbance or impervious surfaces must implement prevention or control measures to avoid discharge of pollutants in stormwater runoff to waters of the state.

a. For land disturbances during construction, the permittee must obtain and implement permits where required (see: <http://www.deq.state.or.us/wq/stormwater/construction.htm>) and follow DEQ's *Oregon Sediment and Erosion Control Manual*, April 2005 (or most current version), <http://www.deq.state.or.us/wq/stormwater/docs/escmanual/appxd.pdf>.

b. Following construction, prevention or treatment of on-going stormwater runoff from impervious surfaces must be provided (including but not limited to NWP categories 3, 12, 14, 15, 28, 29, 31, 32, 36, 39, 42, 43, and 51). DEQ encourages prevention of discharge by managing stormwater on site through Low Impact Development principles and other prevention techniques. Assistance in developing an

approvable stormwater management plan is available in DEQ's *Stormwater Management Plan Submission Guidelines for Removal/Fill Permit Applications Which Involve Impervious Surfaces*, January 2012 (or most current version), available at:  
<http://www.deq.state.or.us/wq/sec401cert/docs/stormwaterGuidlines.pdf>.

- c. In lieu of a complete stormwater management plan, the applicant may submit:
  - i. Documentation of acceptance of the stormwater into a DEQ permitted National Pollutant Discharge Elimination Strategy (NPDES) Phase I or II Municipal Separate Storm Sewer System (MS4); or
  - ii. Reference to implementation of a programmatic process developed to achieve these expectations, and acknowledged by DEQ as adequately addressing pollution control or reduction through basin-wide post-construction stormwater management practices.

**3) Vegetation Protection and Restoration:** Riparian, wetland, and in-water vegetation in the authorized project area must be protected from unnecessary disturbance to the maximum extent practicable through methods including:

- a. Minimization of project and impact footprint;
- b. Designation of staging areas and access points in open, upland areas;
- c. Fencing or other barriers demarking construction areas;
- d. Use of alternative equipment (e.g., spider hoe or crane); and,
- e. Replacement - If authorized work results in unavoidable vegetative disturbance that has not been accounted for in planned mitigation actions; riparian, wetland and in-water vegetation must be successfully reestablished to a degree that it functions (for water quality purposes) at least as well as it did before the disturbance. The vegetation must be reestablished by the completion of authorized work.

**4) Land Use Compatibility Statement:** In accordance with OAR 340-048-0020(2) (i), each permittee must submit findings prepared by the local land use jurisdiction that demonstrates the activity's compliance with the local comprehensive plan. Such findings can be submitted using Block 7 of the USACE & DSL Joint Permit Application, signed by the appropriate local official and indicating:

- a. "This project is consistent with the comprehensive plan and land use regulations;" or,
- b. "This project will be consistent with the comprehensive plan and land use regulations when the following local approvals are obtained," accompanied by the obtained local approvals.
- c. Rarely, such as for federal projects on federal land, "this project is not regulated by the comprehensive plan" will be acceptable.

**5)** A copy of all applicable 401 WQC conditions must be kept on the job site and readily available for reference by the permittee, their contractors, DEQ, USACE, NMFS, USFWS, DSL, ODFW, and other appropriate state and local government inspectors.

**6)** DEQ may modify or revoke these 401 WQC conditions, in accordance with OAR 340-048-0050, in the event that project activities are having a significant adverse impact on state water quality or beneficial uses.

### Category Specific Conditions

In addition to all national and regional conditions of the USACE permit and the 401 Water Quality Certification general conditions above, the following conditions apply to the noted specific categories of authorized activities.

#### **NWP 7 – Outfall Structures and Associated Intake Structures:**

7.1) The following actions are denied certification:

- a. Discharge outfalls that are not subject to an NPDES permit; and,
- b. Outfalls that discharge stormwater without pollutant removal demonstrated to meet water quality standards prior to discharge to waters of the state.

7.2) If a permittee cannot obtain an NPDES permit or submit an approvable stormwater management plan per DEQ's Guidelines (at:

<http://www.deq.state.or.us/wq/sec401cert/docs/stormwaterGuidlines.pdf>), the permittee must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

#### **NWP 12 – Utility Lines:**

12. 1) For proposals that include directionally-bored stream or wetland crossings:

- a. All drilling equipment, drill recovery and recycling pits, and any waste or spoil produced, must be completely isolated, recovered, then recycled or disposed of to prevent entry into waters of the state. Recycling using a tank instead of drill recovery/recycling pits is preferable;
- b. In the event that drilling fluids enter a water of the state, the equipment operator must stop work, immediately initiate containment measures and report the spill to the Oregon Emergency Response System (OERS) at 800-452-0311.
- c. Prior to cleaning up drilling fluids spilled into waters of the state, cleanup plans must be submitted and approved by the regulatory agencies; and
- d. An adequate supply of materials needed to control erosion and to contain drilling fluids must be maintained at the project construction site and deployed as necessary.

#### **NWP 13 – Bank Stabilization:**

13.1) Projects that do not include bioengineering are denied certification, unless a registered professional engineer provides a written statement that non-bioengineered solutions are the only means to protect an existing transportation-related structure.

13.2) To apply for certification for a project without bioengineering, the permittee must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

#### **NWP 14 – Linear Transportation:**



**14.1)** For projects that include bank stabilization, bioengineering must be a component of the project, unless a registered professional engineer provides a written statement that non-bioengineered solutions are the only means to protect an existing transportation related structure.

**14.2)** To apply for certification for a project without bioengineering, the permittee must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

**NWP 16 - Return Water from Contained Upland Disposal Areas:** Water quality criteria and guidance values for toxics, per OAR 340-041-0033, are available in Tables 20, 33A, 33B, and 33C at: <http://www.deq.state.or.us/wq/standards/toxics.htm#Cur>.

**16.1)** Return to waters of the state of water removed with contaminated dredged material that exceeds a chronic or acute toxicity water quality standard is denied certification.

**16.2)** Water removed with contaminated dredged material that could or does exceed chronic water quality criteria must be contained and disposed of at an appropriately sized and sealed upland facility by evaporation or infiltration.

**16.3)** If a Modified Elutriate Test (MET) is performed for the known contaminants of concern (CoCs) and CoC concentrations are below DEQ chronic water quality criteria; return water discharge is not limited.

- a. The MET must be performed before dredging.
- b. DEQ must approve the list of CoCs and analytical method prior to the permittee performing the MET.
- c. DEQ must review the results and provide approval of discharge from return water, in writing, prior to dredging.

**NWP 20 – Response Operations for Oil and Hazardous Waste:**

**20.1)** Coordination with DEQ's Emergency Response program is required. See: <http://www.deq.state.or.us/lq/cu/emergency/index.htm>.

**NWP 22 – Removal of Vessels:**

**22.1)** Coordination with DEQ's Emergency Response program is required. See: <http://www.deq.state.or.us/lq/cu/emergency/index.htm>.

**NWP 31 – Maintenance of Existing Flood Control Facilities:**

**31.1)** Projects at existing facilities in streams with Temperature TMDLs and that propose net permanent, riparian vegetation removal are denied certification.

**31.2)** To apply for certification for projects where riparian vegetation removal is unavoidable and vegetation cannot be re-established, the permittee must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

**NWP 38 – Cleanup of Hazardous and Toxic Waste:**

**38.1)** For removal of contaminated material from waters, dredging method is limited to diver assisted hydraulic suction, hydraulic suction, closed-lipped environmental bucket, or excavation in the dry.

a. For in-water isolation measures, the permittee is referred to Appendix D of DEQ's *Oregon Erosion and Sediment Control Manual*, April 2005 (or most current version), at:  
<http://www.deq.state.or.us/wq/stormwater/docs/escmanual/appxd.pdf>.

**38.2)** Discharge to waters resulting from dewatering during dredging or release of return water from an upland facility is prohibited except as provided below.

a. All water removed with sediment must be contained and disposed of at an appropriately sized and sealed upland facility by evaporation or infiltration; or,

b. A Modified Elutriate Test (MET) may be performed for the known CoCs and if CoC concentrations are below DEQ chronic water quality criteria, return water discharge is not limited.

i. The MET must be performed before dredging.

ii. DEQ must approve the list of CoCs and analytical method prior to the permittee performing the MET.

iii. DEQ must review the results and provide approval of discharge from dewatering and return water in writing prior to dredging.

**38.3)** Dredged material must be disposed of in compliance with DEQ Rules governing Hazardous Waste (see: <http://www.deq.state.or.us/lq/hw/hwmanagement.htm>) or Solid Waste (see: <http://www.deq.state.or.us/lq/sw/index.htm>).

**38.4)** The new in-water surface must be managed to prevent exposure or mobilization of contaminants.

#### **NWP 41 - Reshaping Existing Drainage Ditches:**

**41.1)** To the extent practicable, permittees must work from only one bank in order to minimize disturbance to existing vegetation, preferably the bank with the least existing vegetation;

**41.2)** Following authorized work, permittee must establish in-stream and riparian vegetation on reshaped channels and side-channels using native plant species wherever practicable. Plantings must be targeted to address water quality improvement (e.g., provide shade to water to reduce temperature or provide bank stability through root systems to limit sediment inputs). Planting options may include clustering or vegetating only one side of a channel, preferably the side which provides maximum shade.

#### **NWP 42 – Recreational Facilities:**

**42.1)** For facilities that include turf maintenance actions, the permittee must develop and implement an Integrated Pest Management Plan (IPM) that describes pest prevention, monitoring and control techniques with a focus on prevention of chemical and nutrient inputs to waters of the state, including maintenance of adequate buffers for pesticide application near salmonid streams, or coverage under an NPDES permit, if required (information is available at: <http://www.deq.state.or.us/wq/wqpermit/pesticides.htm>).

#### **NWP 43 – Stormwater Management Facilities:**

**43.1)** Projects that propose the following elements are denied certification:

- a. In-stream stormwater facilities;
- b. Discharge outfalls not subject to an NPDES permit; and,
- c. Proposals that do not demonstrate pollutant removal to meet water quality standards prior to discharge to waters of the state.

**43.2)** To apply for certification for a project with in-stream stormwater facilities, without an NPDES permit, or without submittal of an approvable stormwater management plan per DEQ's Guidelines (at: <http://www.deq.state.or.us/wq/sec401cert/docs/stormwaterGuidlines.pdf>), the permittee must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

**NWP 44 – Mining Activities:**

44.1) Projects that do not obtain an NPDES 700-PM or Individual permit are denied certification.

44.2) To apply for certification for a project without an NPDES permit, the permittee must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

**NWP 51 – Land-Based Renewable Energy Generation Facilities:**

**51.1)** For associated utility lines with directionally-bored stream or wetland crossings proposed, condition 12.1) must be applied.



## Oregon Department Land Conservation And Development (DLCD)

Coastal Zone (CZM)  
Management Concurrence

### **Standard Oregon Coastal Management Program (OCMP) Coastal Zone Conditions**

The federal Coastal Zone Management Act provides that federal actions affecting any use or resource of the coastal zone,\* including projects permitted by the U.S. Army Corps of Engineers (USACE), must be consistent with the enforceable policies of a State's federally approved coastal management program. Oregon's approved program, the Oregon Coastal Management Program (OCMP), is a "networked" program that integrates authorities of local governments and other state agencies. The coastal zone conditions contained in this document reflect the networked nature of the OCMP, and reference the specific applicable enforceable policies.

**In addition to all USACE national and regional permit conditions, permitted projects in Oregon's coastal zone must comply with the following coastal zone conditions.**

If an applicant chooses not to follow one or more of the coastal zone conditions, DLCD will object to the permit issuance pursuant to 15 CFR § 930.63(e). In that instance, the permittee may appeal the state's objection by requesting that the Secretary of Commerce override the objection pursuant to 15 CFR 930, subpart H, within 30 days of receipt of the letter informing the applicant of the OCMP's objection. In order to grant an override request, the Secretary must find that the activity is

consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the OCMP and the USACE. The Secretary may collect fees from the permittee for administering and processing the override request.

\*Oregon's coastal zone generally includes the area lying between the Oregon/Washington border on the north, to the Oregon/California border on the south, seaward to the extent of the state's jurisdiction as recognized by federal law, and inland to the crest of the Coast Range Mountains, excepting:

(a) The Umpqua River basin, where the coastal zone extends to Scottsburg;

(b) The Rogue River basin, where the coastal zone extends to Agness; and

(c) The Columbia River basin, where the coastal zone extends to the downstream end of Puget Island.

### **CZ Condition 1. Consistency with Local Comprehensive Plans**

(1) Permitted projects must be consistent with or not subject to the applicable local comprehensive plan and implementing land use regulations, including the applicable estuary management plan, or the statewide land use planning goals where applicable. Permittee must obtain required permits or other authorizations from the applicable local government before initiating work under any USACE permit. Permittee must provide USACE and the OCMP with verification of the local jurisdiction's approval in the form of a completed block seven (7) of the Joint Permit Application. All appeals of the local jurisdiction's decision(s) must be resolved before any regulated work may begin.

(2) All conditions placed on an authorization or permit by the local government are incorporated by reference into the OCMP coastal zone conditions.

*[Enforceable Policy: ORS Chapter 197, Comprehensive Land Use Planning Coordination]*



### **CZ Condition 2. Consistency with Removal-Fill Law**

- (1) Permitted projects must be consistent with or not subject to the state requirements governing removal-fill in waters of the state. Permittee must obtain required permits or other authorizations from the Oregon Department of State Lands (DSL) before any regulated work may begin.
- (2) Projects requiring a DSL removal-fill permit must compensate for reasonably expected adverse impacts by complying to the full extent with DSL's compensatory mitigation requirements.

(3) Where DSL finds a project not subject to the Removal/Fill Law, permittee must submit to DSL any changes in project design or implementation that may reasonably be expected to require application of the Removal/Fill Law.

(4) All conditions placed on a Removal-Fill permit by DSL are incorporated by reference into the OCMP coastal zone conditions.

*[Enforceable Policy: ORS Chapter 196, Removal of Material; Filling]*

### **CZ Condition 3. Leases of State Lands**

(1) Permitted projects must be consistent with or not subject to state requirements governing use of state lands. Permittee must obtain any required lease, license, or other authorization for the use of state lands or waters from the Oregon Department of State Lands (DSL) before any regulated work may begin.

(2) All conditions placed on a lease, license, or authorization by DSL are incorporated by reference into the OCMP coastal zone conditions.

*[Enforceable Policy: ORS Chapter 274, Submersible and Submerged Lands]*

### **CZ Condition 4. Department of Environmental Quality**

(1) Permitted projects must be consistent with or not subject to the state requirements governing water quality. Permittee must obtain certification, if required, from the Oregon Department of Environmental Quality (DEQ)

through its 401 Water Quality Certification process before any regulated work may begin.

(2) All conditions placed on a license, permit, or authorization by DEQ are incorporated by reference into the OCMP coastal zone conditions.

*[Enforceable Policy: ORS Chapter 468B, Water Quality]*

### **CZ Condition 5. Ocean Shore**

(1) Permitted projects must be consistent with or not subject to state requirements governing use of the ocean shore. Permittee must obtain, if required, an ocean shore permit from the Oregon Parks and Recreation Department (OPRD) before any regulated work may begin.

(2) All conditions placed on an Ocean Shore permit by OPRD are incorporated by reference into the OCMP coastal zone conditions.

*[Enforceable Policy: ORS Chapter 390, Ocean Shores]*

### **CZ Condition 6. Aquaculture**

(1) Permitted projects must be consistent with or not subject to state requirements governing commercial aquaculture or mariculture cultivation of oysters, clams, and mussels. Permittee must obtain, if required, authorization from the Oregon Department of Agriculture (ODA) for use of state submerged and submersible lands for aquaculture purposes.

(2) All conditions placed on an aquaculture or mariculture operation by the ODA are incorporated by reference into the OCMP coastal zone conditions.

*[Enforceable Policy: ORS Chapter 622, Shellfish]*

### **Guidance: Permits Requiring Individual Review**

The Oregon Department of Land Conservation and Development (DLCD) has not extended

advance concurrence to, and will require individual review of, the following two classes of permits:

- Any permit where the project is within or directly impacts the Territorial Sea (waters and seabed extending three (3) nautical miles seaward from the coastline, in conformance with federal law), except for projects permitted under NWP 1: Aids to Navigation.
- Any project utilizing NWP 29 or NWP 39 that requires a local plan amendment, text amendment, zoning change, goal exception, discretionary decision, or action by a city or county council or commission.

The District Engineer shall be responsible for determining when proposed projects meet either of these circumstances. The discussion below provides additional guidance, and DLCD staff are available to assist in this determination. For projects not afforded advance concurrence, DLCD will undertake an individual review of the project to ensure consistency with the Oregon Coastal Management Program (OCMP).

### ***Territorial Sea***

Oregon's Territorial Sea extends from the shoreline seaward for a distance of three (3) nautical miles. Except for projects permitted under NWP 1: Aids to Navigation, DLCD must individually review any project which occurs on or under the Territorial Sea, or on or beneath the sea bottom, for consistency with the OCMP. In addition, DLCD will individually review any project which results in new or increased activity or impacts on or under the Territorial Sea.

Examples of projects requiring an individual review include:

- Construction of an offshore structure or platform;
- Installation of water-based renewable energy devices and related infrastructure;
- Installation of a buried or exposed cable;

- A new or expanded port facility which increases ship traffic in the Territorial Sea;
- A new or relocated shipping channel in the Territorial Sea.

These examples are illustrative, not comprehensive. Please direct any questions regarding specific projects to DLCD's Coastal Management Program office.

### ***NWP 29 and 39***

DLCD must individually review any project authorized by NWP 29 or 39 **and** requiring a local plan amendment, text amendment, zoning change, goal exception, discretionary decision, or action by a city or county council or commission. Block seven (7) of the Joint Permit Application identifies such projects.

Examples of projects requiring an individual review include projects where block 7 indicates one of the following:

- The project is **not** consistent with the comprehensive plan;
- The project would require an amendment to a comprehensive plan;
- The project would require a change in zoning;
- The project would require an exception to a Statewide Planning Goal.

These examples are illustrative, not comprehensive. Please direct any questions regarding specific projects to DLCD's Coastal Management Program office.



US Army Corps  
of Engineers  
Portland District

# Permit Transfer

This form may be used to transfer a Department of the Army (DA) Nationwide Permit verification, Regional General Permit verification, or Letter of Permission permit.<sup>1</sup> When the structures or work authorized by a DA permit are still in existence at the time the property is sold or transferred, the permittee may transfer the DA permit to the new owner(s). The DA permit may also be transferred when the permittee does not own the underlying property (e.g., structures on state aquatic lands). For some DA permits the permit must be transferred when the property ownership changes.

When a DA permit is transferred the terms and conditions of the permit, including any special conditions, will continue to be binding on the transferee. To validate the transfer of the DA permit and to accept the liabilities associated with complying with the terms and conditions of the permit, the transferee must sign and date below. This permit transfer form can be submitted by email at [cenwp.notify@usace.army.mil](mailto:cenwp.notify@usace.army.mil) or by regular mail at the following address:

U.S. Army Corps of Engineers  
CENWP-OD-G  
P.O. Box 2946  
Portland, OR 97208-2946

To transfer a Nationwide Permit verification a copy of the Nationwide Permit verification letter must be attached as required by Nationwide Permit General Condition 29.

Corps Number: NWP-2016-389

TRANSFeree:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Please print)

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, and Zip Code

<sup>1</sup> This form may not be used to validate the transfer of a standard individual Department of the Army permit. The individual permit form includes a section for the transferee's signature.



US Army Corps  
of Engineers  
Portland District

# Compliance Certification

1. **Permit Number:** NWP-2016-389

2. **Permittee Name:** City of Astoria

3. **County Location:** Clatsop

Upon completing the activity authorized by the permit, please complete the sections below, sign and date this certification, and return it to the U.S. Army Corps of Engineers, Portland District, Regulatory Branch. The certification can be submitted by email at [cenwp.notify@usace.army.mil](mailto:cenwp.notify@usace.army.mil) or by regular mail at the following address:

U.S. Army Corps of Engineers  
CENWP-OD-GL  
P.O. Box 2946  
Portland, OR 97208-2946

4. **Corps-required Compensatory Mitigation (see permit special conditions):**

a. Mitigation Bank / In-lieu Fee Credit Transaction Documents:

☐ Not Applicable ☐ Submitted ☐ Enclosed

b. Permittee-responsible mitigation (e.g., construction and plantings) has been constructed (not including future monitoring). As-built report:

☐ Not Applicable ☐ Submitted ☐ Enclosed

5. **Endangered Species Act – Standard Local Operating Procedures (SLOPES)**

(see permit special conditions):

a. SLOPES Action Completion Report:

☐ Not Applicable ☐ Submitted ☐ Enclosed

b. SLOPES Fish Salvage Report:

☐ Not Applicable ☐ Submitted ☐ Enclosed

c. SLOPES Site Restoration / Compensatory Mitigation Report:

☐ Not Applicable ☐ Submitted ☐ Enclosed

I hereby certify the work authorized by the above-referenced permit has been completed in accordance with all of the permit terms and conditions.

---

Signature of Permittee

Date





## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

January 30, 2017

### MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: VETERANS AND WAR MEMORIAL GRANT APPLICATION

### **DISCUSSION/ANALYSIS**

The Veterans and War Memorials Grant Program was created and established by the Oregon Parks and Recreation Department to provide funding assistance to local governments for the construction and restoration of veterans and war memorials. The program helps to honor Oregon's soldiers and veterans by commemorating their service to the country.

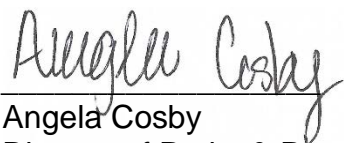
The Parks Department, the American Legion Clatsop Post 12, Clatsop Community College's Historic Preservation Program, and the Community Development Department have collaborated to develop a plan to renovate the Doughboy Monument's interior, exterior, lighting system, and plumbing. Portions of the work will be carried out through workshops organized by the Historic Preservation Program to offer educational opportunities to its students. Plumbing, electrical, and work addressing leaks in the structure's roof will be completed by local contractors.

The total cost for renovation work is estimated at \$23,605 and the grant requires a 10% cash match. A \$3,000 match from Astor West Urban Renewal Area can be contributed toward this project (as part of the larger Uniontown Reborn initiative). This partnership dovetails with other key public investments that are planned for Uniontown, including façade grants for residential and commercial properties, a new streetscape design for W. Marine Drive, Maritime Memorial expansion, and the reopening of two-way traffic on Bond Street.

Furthermore, the Uniontown Association has expressed support for these investments to revitalize the historic business district. The Historic Preservation Program is providing \$6,480 in in-kind labor and Parks and Recreation Department staff are providing \$1,500 in in-kind administration. The total grant request is \$12,625.

### **RECOMMENDATION**

It is recommended that the City Council authorize submitting the Veterans and War Memorial Grant application for \$12,625 in grant funds to renovate the Doughboy Monument.

Submitted By:   
Angela Cosby  
Director of Parks & Recreation



## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

January 30, 2017

### MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH  
GREENWORKS P.C. TO PRODUCE SITE-SPECIFIC PARK PLANS AT  
SHIVELY AND MCCLURE PARK

### **DISCUSSION/ANALYSIS**

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

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

The Oregon Parks and Recreation Department Local Government Grant Program provides Small Community Planning Grants to support site-specific park and outdoor recreation plans. These planning efforts target a specific site that has been identified in a system-wide park and recreation plan. Site-specific planning projects include public outreach and an analysis process that leads to a detailed plan for full development or redevelopment a park or other recreational-use site. The plan must address priorities identified in a system-wide or comprehensive plan. The planning process must include the adoption of the planning document through the local land use approval process.

The City of Astoria was awarded the Oregon Parks and Recreation Department Local Government Grant of \$40,000 to support funding site plans for Shively Park and McClure Park and approve the Local Government Grant Program Agreement. On October 17, 2016 City Council accepted the grant and committed the required 40% match, in the amount of \$16,000 cash budgeted in the Capital Improvement Fund and in-kind management and administration contribution of \$11,000. The tentative project timeline is as follows:

October, 2016: Notice to proceed from OPRD.  
December, 2016: Designation of a project manager and procurement of a consultant.  
January, 2017: Project kickoff, public notice of upcoming meeting dates.  
February, 2017: Initial public meeting to collect input.  
March, 2017: Development of design alternatives.  
April, 2017: Public meetings to collect input on design alternatives.  
May, 2017: Selection of preferred concepts for McClure and Shively Parks;  
development of implementation and funding strategy.  
June, 2017: Adoption of plan documents for McClure and Shively Park.

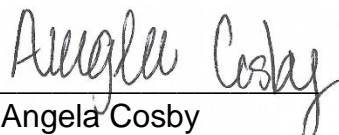
On November 7, 2016 City Council authorized staff to request qualifications for a consultant or team of consultants specializing in community engagement, gathering, consolidating, and prioritizing community input, planning and landscape design and/or architecture. One statement of qualifications was received from Greenworks P.C. a Landscape Architecture and Environmental Design firm that has completed several project with the City of Astoria. A selection panel comprised of Parks and Recreation Department staff, Community Development staff, neighbors of Shively Park, and a representative from the Friends of McClure Park evaluated the received statement of qualification. The consultant was evaluated based on proven experience, expertise, and technical merit for the requested services. Based on the successful evaluation of Greenworks submittal, Greenworks and City staff negotiated project management plan, budget and schedule for the project.

At this time the project has fallen one month behind schedule. To catch-up and with the tentative timeline the Parks and Recreation Department seeks City Council authorization to enter into a contract with Greenworks P.C. for a team of consultants specializing in community engagement, gathering, consolidating, and prioritizing community input, planning and landscape design and architecture to create site-specific park plans for Shively and McClure in the amount of \$55,922.52.

Attached to this memorandum is the professional services contract and scope of work which has been reviewed and approved as to form by City Attorney Henningsgaard.

### **RECOMMENDATION**

It is recommended that City Council approve the contract with Greenworks P.C. in the amount of \$55,922.52 to develop master plans for Shively and McClure Parks.

Submitted By:   
Angela Cosby  
Director of Parks & Recreation

## CONTRACT:

This Contract, made and entered into this \_\_\_\_ day of \_\_\_\_\_, by and between the City of Astoria, a municipal corporation of the State of Oregon, hereinafter called "CITY", and GREENWORK P.C. hereinafter called "CONSULTANT ", duly authorized to perform such services in Oregon.

## WITNESSETH

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

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

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

### 1. CONSULTANT SERVICES

A. CONSULTANT shall perform; community engagement, gathering, consolidating, and prioritizing of community input, planning and landscape design and/or architecture services for the City of Astoria as defined in Attachments: A, Scope and B, Schedule.

B. Consultant's services are defined solely by this Contract and not by any other contract or agreement that may be associated with this project.

C. The CONSULTANT'S services shall be performed as expeditiously as is consistent with professional skill and the orderly progress of work.

### 2. COMPENSATION

1. The CITY agrees to pay CONSULTANT a total not to exceed \$55,922.52, for performance of those services provided herein;

2. The CONSULTANT will submit monthly billings for payment.

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 Angela Cosby, Parks and Recreation Director, [acosby@astoria.or.us](mailto:acosby@astoria.or.us), (503) 298-2460 or designee.

5. CONSULTANT'S REPRESENTATIVE

For purposes hereof, the CONSULTANT'S authorized representative will be Mike Faha, Phone (503) 222-5612 E-Mail: [mikef@greenworkspc.com](mailto:mikef@greenworkspc.com).

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 information that may be required in order to qualify for grant funds. 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 CONTRACTOR

A CONSULTANT'S services shall be provided under the general supervision of City's Parks and Recreation Director or her designee, but CONSULTANT shall be an independent CONTRACTOR for all purposes and shall be entitled to no compensation other than the compensation provided for under Section 2 of this Contract,

B. CONSULTANT acknowledges that for all purposes related to this Contract, CONSULTANT is and shall be deemed to be an independent contractor and not an employee of the City, shall not be entitled to benefits of any kind to which an employee of the City is entitled and shall be solely responsible for all payments and taxes required by law; and furthermore in the event that CONSULTANT is found by a court of law or an administrative agency to be an employee of the City for any purpose, City shall be entitled to offset compensation due, or, to demand repayment of any amounts paid to CONSULTANT under the terms of the Contract, to the full extent of any benefits or other remuneration CONSULTANT receives (from City or third party) as result of said finding and to the full extent of any payments that City is required to make (to CONSULTANT or a third party) as a result of said finding.

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

8. CANCELLATION FOR CAUSE

CITY may cancel all or any part of this Contract if CONSULTANT breaches any of the terms herein or in the event of any of the following: Insolvency of CONSULTANT; voluntary or

involuntary petition in bankruptcy by or against CONSULTANT; appointment of a receiver or trustee for CONSULTANT, or any assignment for benefit of creditors of CONSULTANT. Damages for breach shall be those allowed by Oregon law, reasonable and necessary attorney's fees, and other costs of litigation at trial and upon appeal. CONSULTANT may likewise cancel all or any part of this contract if CITY breaches any of the terms herein and be therefore entitled to equivalent damages as expressed above for CITY.

9. ACCESS TO RECORDS

CITY shall have access to such books, documents, papers and records of contract as are directly pertinent to this contract for the purposes of making audit, examination, excerpts and transcripts.

10. FORCE MAJEURE

Neither CITY nor CONSULTANT shall be considered in default because of any delays in completion of responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the party so disabled provided the party so disabled shall within ten (10) days from the beginning such delay notify the other party in writing of the causes of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation.

11. NONWAIVER

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

12. ATTORNEY'S FEES

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

13. 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.

14. INDEMNIFICATION

With regard to Comprehensive General Liability, CONSULTANT agrees to indemnify and

hold harmless the CITY, City of Astoria, its Officers, and Employees against and from any and all loss, claims, actions, suits, 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 CITY any obligation 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, its Officers and Employees from any and all liability, settlements, loss, reasonable defense costs, attorney fees and expenses arising 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 agreement 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.

## 15. INSURANCE

Prior to starting work hereunder, CONSULTANT, at CONSULTANT'S cost, shall secure and continue to carry during the term of this contract, with an insurance company acceptable to CITY, the following insurance:

A. 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 with limits of not less \$1,000,000 per occurrence and the annual aggregate not less than \$2,000,000. Coverage shall include CONSULTANT'S, sub-consultants and any directly or indirectly employed by either. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than \$1,000,000 for each job site or location. Each annual aggregate limited will not be less than \$2,000,000.

B. 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). Combined single limit per occurrence will not be less than \$1,000,000.

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. 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.

E. Professional Liability Insurance. The CONSULTANT shall have in force a policy of Professional Liability Insurance in an amount not less than \$1,000,000. The CONSULTANT shall keep such policy in force and current during the term of this contract.

#### 16. WORKMEN'S COMPENSATION

The Contractor, its subcontractors, 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.

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

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

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

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

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

#### 18. PAYMENT OF CLAIMS BY PUBLIC OFFICERS

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

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



19. PAYMENT OF MEDICAL CARE

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

20. OVERTIME

Consultant's 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).

21. USE OF DRAWINGS AND OTHER DOCUMENTS

The ADC shall own all drawings and other documents prepared by the CONSULTANT for the project along with all common law, statutory and other reserved rights, including the copyright. CONSULTANT shall provide computer aided design (CAD) drawings on media designated by and to a scale acceptable by CITY.

CONSULTANT may reuse all drawings and other documents prepared by the CONSULTANT for the project for any purpose without written authorization of CITY.

22. 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.

23. OCCUPATIONAL TAX

CONTRACTOR shall pay the City of Astoria Occupational Tax as provided in Astoria Code Sections 8.000 to 8.035.

24. NO THIRD PARTY BENEFICIARIES

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

25. 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.

26. NONDISCRIMINATION

It is the policy of the City of Astoria that no person shall be denied the benefits of or be subject 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/expression. The City of Astoria also requires it's contractors to comply with this policy.

27. 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:

\_\_\_\_\_

City Manager

Date

BY:

\_\_\_\_\_

Contractor

Date

# Shively and McClure Park Master Plans

---

## Scope of Work

### Task 1.0 Project Orientation and Analysis

- 1.1 Project Start-up Meeting with City and Site Visit. Two to three brief (30-45 minutes) individual or small group meetings will be conducted with key stakeholders on the same day. Stakeholders may include representatives of the Friends of McClure Park, Chamber of Commerce representatives, City department staff, and/or members of the Parks Advisory Board.
- 1.2 Compile base information, research background information, and identify regulatory requirements for each Park. This research is only to identify the general requirements and restriction for proposed park within the scope of this proposal and may include such requirements as: landscape areas, street trees, screening and buffering, tree counts, setbacks from sensitive areas, historic district regulations, utilities for water, sanitary sewer and storm drainage, and review condition of existing site walls and structures (excluding Shively Hall)
- 1.3 Prepare site inventory and analysis, site sections, existing photos and program precedent boards. Assessments of existing vegetation, slope and site conditions, on-site utilities, and existing exterior walls will inform opportunities and constraints of the site.
- 1.4 City Meetings – Open House #1:

We will meet with the City, Stakeholders and Public to present site inventory analysis and gather feedback for the sites' programming. The Open House meetings will be separate for each park in Task 1. Community input from these 2 meetings will be the basis for developing the design options in task 2.0. We will also assess the schedule and considerations for upcoming tasks. City staff will publicize the meeting via the City's Website, a media release and contact with the Daily Astorian, and meeting flyers posted in local gathering places, including at the two parks. Parks Advisory Board Members will be encouraged to attend the Open Houses. The Consultant will prepare text for the media release and website announcement and the meeting flyer.
- 1.5 Additional Public Outreach Activities:

Additional community outreach and feedback beyond Open House #1 will be conducted and compiled by city staff. Potential activities include one or more pop-up meetings at McClure and/or Shively Parks and project materials posted on the City's Website. The consultant team will work with staff to identify and advise on the schedule and process for conducting these activities.



- 1.6 Teleconference meeting with city staff to review community input from Open House #1 and other outreach activities.

Task 1.0 Deliverables:

- *Site Inventory and Analysis Plan for each site.*
- *Site Sections*
- *Existing Conditions Photo Boards*
- *Precedent Image Boards of Program Elements.*
- *Open House #1 Agenda, outreach text, and materials*
- *Project Schedule*

Task 1.0 Assumptions:

- *City will provide GIS or AutoCad base information, including: Property lines, utilities, topography.*
- *This scope does not include contracting for Arborist or Geotechnical Engineer for site assessments.*
- *This scope excludes a site survey and structural assessment of Shively Hall building. The structural review input will assess exterior landscape walls.*
- *Consultant team members will prepare agenda and other materials for Open House #1 and will facilitate the meeting with City staff support.*
- *City staff to compile community input from open house #1 for GreenWorks review.*
- *Additional community outreach and feedback beyond Open House #1 will be conducted and compiled by city staff.*
- *This scope is based on the understanding that McClure Park and Shively Park Master Planning will occur on the same timeline, but with separate open house meetings.*

**Task 2.0 Develop Design Options**

- 2.1 Prepare (2) preliminary design options for each park:

The design options during this phase includes hand drawn sketches for up to two (2) layouts for the park based on anticipated program elements. These elements include: playgrounds, ball court(s), picnic areas, landscaping, paths and connections to adjacent trails.

- 2.2 Prepare revised design options based on city staff review. Graphics prepared will be computer generated plans of proposed program layouts with hand sketched perspectives.

2.3 City Meeting – Open House #2:

We will meet with the City, Stakeholders and Public to review the design options for the two sites. The Open House meetings will be separate for each

park in task 2. Community Input from these meeting will be the basis for developing the preferred alternative in task 3.0. We will also assess the schedule and considerations for upcoming tasks. City staff will publicize the meeting via the City's Website, a media release and contact with the Daily Astorian, and meeting flyers posted in local gathering places, including at the two parks. The Consultant will prepare text for the media release and Website announcement and the meeting flyer.

2.4 Additional Public Outreach Activities:

Additional community outreach and feedback beyond Open House #1 will be conducted and compiled by city staff. Potential activities include one or more pop-up meetings at McClure and/or Shively Parks and project materials posted on the City's Website. The consultant team will work with staff to identify and advise on the schedule and process for conducting these activities.

2.5 Teleconference meeting with city staff to review community input for preferred option from Open House #2 and other outreach activities.

Task 2.0 Deliverables:

- *Printed graphic boards for:*
  - *(2) Preliminary Design options for each park*
  - *Perspective sketch for each concept option*
  - *Boards will be used by City as pop-up outreach materials*
- *Open House #2 Agendas, outreach text, and materials*

Task 2.0 Assumptions:

- *City staff to compile community input from open house #2 for GreenWorks review.*
- *This scope is based on the understanding that McClure Park and Shively Park Master Planning will occur on the same timeline, but with separate open house meetings.*

**Task 3.0 Develop Preferred Master Plan**

- 3.1 Prepare Preferred Design Option and cost estimate with potential funding sources for each park based on community input from Open House #2: Graphics prepared will be computer rendered plan with hand draw sketch.
- 3.2 Teleconference review of preferred option and cost estimate with city staff.
- 3.3 Prepare Final Master Plan and cost estimate for each site to be delivered electronically to city staff.
- 3.4 Compile Master Plan Document for each site to include up to 5 pages of narrative describing the final plan, site analysis, and design process. City Staff will present these master plan documents to City Council for adoption.



Task 3.0 Deliverables:

- (1) *Final Design Option and cost estimate for each park*
- *Perspective sketch for preferred option*
- *Final Master Plan Document for each park as described in task 3.4.*

Task 3.0 Assumptions:

- *Based on this scope, design team will not be attending City Council meetings or update the master plan based on City Council comments. We can work with the City to address comments with a contract amendment if necessary.*

**TERMS OF AGREEMENT**

**Fee Schedule**

Professional fees for the scope of work can be broken down as follows:

Tasks 1.0-3.0 .....	\$ 54,826.00
<i>Reimbursable Expenses at 2%.....</i>	<i>\$ 1,096.52</i>
<b>TOTAL .....</b>	<b>\$ 55,922.52</b>

This total fee of \$ 55,922.52 is on a time and materials not to exceed basis and includes reimbursable expenses. See attached spreadsheet for proposed tasks and hours.

**Hourly rates**

This proposal is based upon the hourly rates outlined below for the current calendar year. If this proposal is accepted or work begun in the following calendar year, our fees will be revised to incorporate the billing rates then in effect. If work continues into subsequent calendar years we reserve the right to revise and update our fees.

Principal/Technical Director.....	\$175.00 per hour
Senior Associate II .....	\$145.00 per hour
Landscape Architect III .....	\$140.00 per hour
Landscape Architect II .....	\$125.00 per hour
Landscape Designer III .....	\$120.00 per hour
Landscape Architect I .....	\$115.00 per hour
Landscape Designer II .....	\$90.00 per hour
Landscape Designer I .....	\$80.00 per hour
Clerical/Administrative .....	\$95.00 per hour
Consultants .....	Cost + 10%

**Direct Reimbursable Expenses**

Project expenses such as mileage, delivery services, printing and reproductions, supplies, and communication will be billed at cost, plus ten percent and added to monthly invoices.

**Additional Work**

Client agrees to promptly notify Landscape Architect if Client's schedule or budget changes. Client acknowledges that significant changes to the Project or construction schedule or budget or to the Project's scope may require Additional Services of Landscape Architect. Fees for additional work, beyond the scope of work as outlined in this agreement, will be invoiced as provided above, or according to our regular rates in effect at the time. We will notify you before performing additional services.

Sincerely,



Mike Faha, ASLA LEED AP  
**Principal**  
**GreenWorks PC**  
503.222.5612 | mikef@greenworkspc.com

**Accepted by:**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Date

# Shively and McClure Park Master Plans - Project Schedule

1/27/2017

Task	Jan. '17	Feb. '17	March '17	April '17	May '17	June '17
<i>Notice to Proceed</i>		▼				
<b>1.0 PROJECT ORIENTATION AND ANALYSIS</b>						
Start-up Meeting / Site Visit (Feb 8th)		■				
Compile Base / Code Research		■				
Inventory Analysis		■	■			
<b>Open House #1 (March 1/2)</b>			1			
Meeting for Input Review			■			
<b>2.0 DESIGN OPTIONS</b>						
Prepare Preliminary Design Options			■	■		
City review and revisions				■	■	
<b>Open House #2 (TBD)</b>				2		
<b>Extended Outreach</b>				■	■	
Meeting for input review					■	
<b>3.0 FINAL MASTER PLAN</b>						
Prepare Preferred Design and Estimates					■	■
Meeting review with city						■
Final Plan and estimate revisions						■
<b>Compile Master Plan Report</b>					■	■
City Council Presentation (City staff)					■	■

## Legend

- Major Task Duration 
- Sub Task Duration 
- Milestones 
- City Council Presentation 



CITY OF ASTORIA  
POLICE DEPARTMENT

January 20, 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**

This ordinance received its first reading at the January 17, 2017 City Council meeting. 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 second reading and adopt 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 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 20, 2017

### MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: ORDINANCE REVISING CITY CODE SECTION 1.964A PERTAINING TO CITY MANAGER'S SPENDING AUTHORITY

### **BACKGROUND**

This ordinance had its first reading at the January 17, 2017 City Council meeting. 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.

### **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 second reading and adopt the proposed ordinance.

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 \$50,000. 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. Repeal. Ordinance No. 06-03 adopted June 5, 2006 is repealed.

Section 3. Effective Date. The provisions of this ordinance shall take effect 30 days after its passage.

ADOPTED BY THE COMMON 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 26, 2017

## **MEMORANDUM**

TO: MAYOR AND CITY COUNCIL

FROM: BRETT ESTES, CITY MANAGER

SUBJECT: **WATERFRONT BRIDGES REPLACEMENT PROJECT (6<sup>TH</sup> – 11<sup>TH</sup> STREETS)  
FUNDING UPDATE AND LOAN APPLICATION**

### **DISCUSSION**

Where each of the City's numbered streets between 6<sup>th</sup> and 11<sup>th</sup> Streets meet the Columbia River, a short bridge connects the solid-ground road to the over-water pier structure. These waterfront bridge structures are of utmost importance to the City as they provide access to critical portions of our waterfront. They provide both pedestrian, vehicular, and trolley access to many businesses and attractions. In addition, they provide essential emergency vehicle access to the waterfront. Currently the structures are all vehicular load limited.

In September 2014, the City entered into an Intergovernmental Agreement with the Oregon Department of Transportation (ODOT) for the design phase of the Waterfront Bridges Replacement Project that will replace these six bridge structures. Then in April 2015, OBEC Consulting Engineers, Inc. (OBEC) was hired by ODOT as the engineering design consultant for this project. Since that time, OBEC has performed design to 60% completion.

City staff and ODOT staff are currently reviewing the 60% complete design submittal from OBEC. An updated project cost estimate was provided with the submittal that indicates the construction cost increased slightly with the design refinement from the 30% submittal (see table below). As the project design has advanced, costs that are not reimbursed through the ODOT funding have also been characterized. The two major City expenses are utility relocations (sewer and water) and repairs to the 11<sup>th</sup> Street extension outside the project limits to achieve highway load capacity. These expenses are currently estimated at \$337,000 and this entire cost must be paid solely by the City.

The cost estimate prepared by OBEC is based on the results of investigations, research and a much better understanding of the site conditions and constraints than when the project was originally scoped in 2013. Based on their analysis, a large part of the cost increase is attributed to deep bedrock that was discovered during the geotechnical explorations and larger project area that is necessary to connect the new structure to existing structures at appropriate locations. The design team estimates that the project funding needs to be increased by \$2,189,412 (\$224,853 City match) to account for these project factors. In April, the City submitted a request to ODOT to increase the funds and this request was denied because



ODOT decided they wanted to wait until the project design advanced to at least 60% complete. The project team is working with ODOT to confirm their support of the 60% design submittal, then another request to increase funding will be submitted in the near future.

The total estimated City funds contributed to this project is estimated to be \$1,698,548. To date, the City has contributed \$242,987 from Surface Transportation Program (STP) funds. The remaining match amount of \$1,455,561 will need to be a loan that will be paid back by the City's future STP funds. STP Funds, which are managed by ODOT, are federal fuel tax dollars that are available to local agencies for transportation projects. Since 2008 the City has received between \$100,000 and \$112,000 annually in STP funds. During that time the funds were used as the match for the Franklin Avenue Bridge Replacement Project and the Irving Avenue Bridge at 19<sup>th</sup> Street Replacement Project.

	ODOT Funding	30% Design Cost Estimate	60% Design Cost Estimate
ODOT Bridge Program Grant	\$8,512,685	\$10,702,097	\$11,018,975
City Funds	\$974,315	\$1,224,903	\$1,698,548
<b>PROJECT COST</b>	<b>\$9,487,000</b>	<b>\$11,927,000</b>	<b>\$12,717,523</b>
Annual Payment on 25-year Loan, 3.5% Interest	\$54,000	\$79,000	\$89,000

A public open house was held at City Hall on December 14<sup>th</sup> to share information about the project's proposed surface design features and discuss opinions. A comment card was provided for written comments, which included options to vote for the pedestal styles and concrete bridge color. We received 15 returned comment cards from the approximately 20 attendees. In general, the comments were supportive of the project and its appearance. There was significant discussion about keeping the structures and design features simple so as not to distract from the beauty of the Columbia River and natural surroundings.

Voting totals are as follows:

Pedestals

Basalt rock 10  
Board-formed concrete 4

Concrete Bridge Color

Light grey 5  
Medium grey 4  
Dark grey 6

At the November 21<sup>st</sup> Council meeting, City Staff was authorized to submit the above options to ODOT for consideration with the basalt rock pedestals being the City's preferred alternative and the board-formed concrete as the second choice. ODOT staff is currently preparing documentation and recommendations to submit to the State Historic Preservation Office (SHPO) for their review and concurrence. Council will be presented with the outcome of the ODOT and SHPO review when we receive notification from these agencies. If more than one option is approved by ODOT and SHPO, then Council will be presented with these options for a final decision. SHPO concurrence on any design option is required as federal funds are being used for this project.

## RECOMMENDATION

It is recommended that Council authorize submitting an application to the Business Oregon Infrastructure Finance Authority for loan funding to provide the remaining match funds for the Waterfront Bridges Replacement Project in the amount of \$1,455,561.

Submitted By:

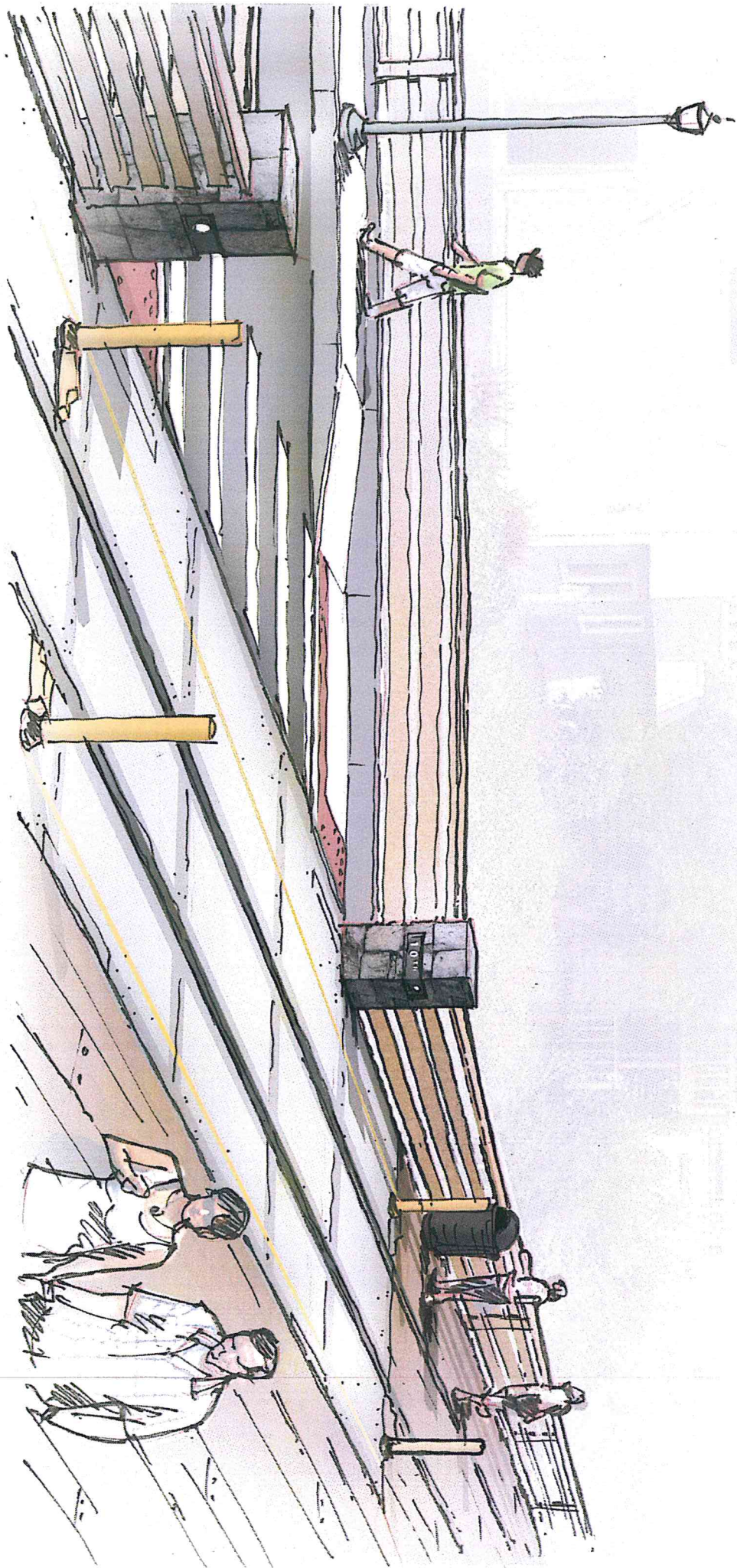


Ken P. Cook, Public Works Director

Prepared By:



Cindy D. Moore, City Support Engineer







# **AGENDA**

## **ASTORIA DEVELOPMENT COMMISSION**

February 6, 2017  
Immediately Follows Council Meeting  
2<sup>nd</sup> Floor Council Chambers  
1095 Duane Street · Astoria OR 97103

**1. CALL TO ORDER**

**2. ROLL CALL**

**3. REPORTS OF COMMISSIONERS**

**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 Astoria Development Commission 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) ADC Minutes of 12/5/16

(b) Award Design Contract for Bond Street Retaining Wall Project (Public Works)

**6. REGULAR AGENDA ITEMS**

All agenda items are open for public comment following deliberation by the ADC. 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.

**7. EXECUTIVE SESSION**

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

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



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

February 2, 2017

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

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: ASTORIA DEVELOPMENT COMMISSION (ADC) MEETING OF FEBRUARY 6, 2017

**CONSENT CALENDAR**

**Item 5(a): ADC Minutes**

The minutes of the ADC meeting of December 5, 2016 are enclosed for your review. Unless there are any corrections, it is recommended that the ADC approve these minutes.

**Item 5(b): Award Design Contract for Bond Street Retaining Wall Project (Public Works)**

As a result of a landslide in 2007, Bond Street has been closed to two way traffic. Only one westbound lane of traffic is allowed limiting east west traffic to Marine Drive. In addition, water and sewer lines have been rerouted above the street. The Public Works Department commissioned a geotechnical analysis completed in August 2015 to study the feasibility of adding a retaining wall. The results of the study concluded that is indeed feasible. Based on the results, the Public Works Department prepared an "order of magnitude" cost estimate of \$395,000 to construct a retaining wall, repair Bond Street for two way traffic, and include low cost traffic calming measures to mitigate potential speeding along a narrow street in a dense neighborhood of residential buildings.

The Astoria Development Commission (ADC) recently completed a boundary expansion of the Astor West Urban Renewal District (AWURD). The expansion includes an area from Columbia Avenue to the City owned slide area adding roughly 4 acres to the district. The expansion was targeted to achieve reopening Bond Street to two way traffic and potentially revitalizing residential properties. The ADC is now ready to proceed with the Bond Street Retaining Wall Project. Staff requested Cornforth Consultants prepare a proposal for geotechnical and civil engineering design services for the project. Staff will prepare bid documents, bid the project and provide construction management, with Cornforth providing inspection assistance. Staff will also prepare a traffic calming strategy for the



segment of Bond Street in the vicinity of the project. The engineering fees for the project provided by Cornforth are estimated at a not-to-exceed amount of \$74,950. Cornforth is listed on the ODOT Consultant List for Local Public Agencies so staff recommends executing a professional services contract for the design services per Astoria Code Section 1.967C(3), Award from a Qualified Pool. Funds for this project would come from the AWURD. It is recommended that the Astoria Development Commission execute a contract with Cornforth Consultants for a total not-to-exceed amount of \$74,950 for geotechnical and civil engineering services for the Bond Street Retaining Wall Project.

## **EXECUTIVE SESSION**

### **Item 7(a): ORS 192.660(2)(e) – Real Property Transactions**

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

**ASTORIA DEVELOPMENT COMMISSION**

City Council Chambers  
December 5, 2016

**ADC JOURNAL OF PROCEEDINGS**

A regular meeting of the Astoria Development Commission was held at the above place at the hour of 8:33 pm.

Commissioners Present: Price, Herzig, Warr, Nemlowill, Mayor LaMear, Ward 2 Vacant.

Commissioners Excused: None

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

**REPORTS OF COMMISSIONERS:** No reports.

**CHANGES TO AGENDA:** No changes.

**CONSENT CALENDAR:**

The following items were presented on the Consent Calendar:

- 5(a) ADC Minutes of 9/19/16
- 5(b) ADC Minutes of 10/3/16

**Commission Action:** Motion by Commissioner Price, seconded by Commissioner Nemlowill, to approve the Consent Calendar. Motion carried unanimously. Ayes: Commissioners Warr, Nemlowill, Herzig and Price, and Mayor LaMear. Nays: None.

**REGULAR AGENDA ITEMS:**

**Item 6(a): Heritage Square EPA Grant – AMEC Contract Amendment #4 Appropriation of Funds (Public Works)**

The City of Astoria was awarded a United States Environmental Protection Agency (EPA) brown field pilot grant in 2012 for assessment and cleanup of the Heritage Square site. The City has used Astor East Urban Renewal District funds pay for the grant match and project cost overages to date. Council is now being asked to authorize a contract amendment with AMEC Foster Wheeler for a not-to-exceed amount of \$18,100. There are also additional fees, currently estimated at \$6000, needed for Oregon Department of Environmental Quality (DEQ) oversight for the project. The combined costs for both AMEC and DEQ is \$24,100 and would be funded out of the Astor East Urban Renewal District fund. Staff will be going before the City Council at the December 5th Council meeting for authorization to enter into a contract amendment with AMEC for the additional work. It is recommended that the Astoria Development Commission approve the expenditure of \$24,100 for the additional work for the Heritage Square EPA Grant Project.

**Commission Action:** Motion by Commissioner Price, seconded by Commissioner Warr, that the Astoria Development Commission approve the expenditure of \$24,100 for the additional work for the Heritage Square EPA Grant Project. Motion carried unanimously. Ayes: Commissioners Warr, Nemlowill, Herzig and Price, and Mayor LaMear. Nays: None.

**ADJOURNMENT:**

There being no further business, the meeting was adjourned at 8:35 pm.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Secretary

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




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

February 1, 2017

**MEMORANDUM**

TO: ASTORIA DEVELOPMENT COMMISSION

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: **AWARD DESIGN CONTRACT FOR BOND STREET RETAINING WALL PROJECT**

**DISCUSSION/ANALYSIS**

As a result of a landslide in 2007, Bond Street has been closed to two way traffic. Only one westbound lane of traffic is allowed limiting east west traffic to Marine Drive. In addition, water and sewer lines have been rerouted above the street. The Public Works Department commissioned a geotechnical analysis completed in August 2015 to study the feasibility of adding a retaining wall. The results of the study concluded that is indeed feasible. Based on the results, the Public Works Department prepared an "order of magnitude" cost estimate of \$395,000 to construct a retaining wall, repair Bond Street for two way traffic, and include low cost traffic calming measures to mitigate potential speeding along a narrow street in a dense neighborhood of residential buildings.

The Astoria Development Commission (ADC) has recently completed a boundary expansion of the Astor West Urban Renewal District (AWURD). The expansion included an area from Columbia Avenue to the City owned slide area adding roughly 4 acres to the district. This included the Bond Street right-of-way. The expansion was targeted to achieve the reopening of Bond Street to two way traffic and potentially revitalize residential properties. With the recent expansion completed, the ADC is now ready to proceed with the Bond Street Retaining Wall Project.

Staff has requested that Cornforth Consultants prepare a proposal for geotechnical and civil engineering design services for the project. Staff will be preparing bid documents, bidding the project and providing construction management of the project with Cornforth providing inspection assistance to assure that the project is built to their recommendations and in manner that minimizes risk of land movement. Staff will also be preparing a traffic calming strategy for the segment of Bond Street in the vicinity of the project. The engineering fees for the project provided by Cornforth are estimated at a not-to-exceed amount of \$74,950.

Cornforth is listed on the ODOT Consultant List for Local Public Agencies so staff recommends executing a professional services contract for the design services per Astoria Code Section 1.967C(3), Award from a Qualified Pool. Funds for this project would come from the AWURD.

The attached contract has been reviewed and approved as to form by the City Attorney Blair Henningsgaard.

### **RECOMMENDATION**

It is recommended that the Astoria Development Commission execute a contract with Cornforth Consultants for a total not to exceed amount of \$74,950 for geotechnical and civil engineering services for the Bond Street Retaining Wall Project.

Submitted By



Ken P. Cook, Public Works Director

Prepared By



Jeff Harrington, City Engineer

<p style="text-align: center;"><b>ASTORIA DEVELOPMENT COMMISSION CONTRACT FOR PROFESSIONAL SERVICES</b></p>
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CONTRACT:

This Contract, made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2017, by and between the Astoria Development Commission, hereinafter called "ADC", and Cornforth Consultants, hereinafter called "CONSULTANT", duly authorized to perform such services in Oregon.

W I T N E S S E T H

WHEREAS, the ADC 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 ADC 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 for construction document preparation for the Bond Street retaining wall as defined in Exhibit A.
- B. Consultant's services are defined solely by this Contract and not by any other contract or agreement that may be associated with this project.
- C. The CONSULTANT'S services shall be performed as expeditiously as is consistent with professional skill and the orderly progress of work.

2. COMPENSATION

- A. The ADC agrees to pay CONSULTANT a total not to exceed \$74,950 for performance of those services provided herein;
- B. The CONSULTANT will submit monthly billings for payment.
- C. ADC certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract.



3. CONSULTANT IDENTIFICATION

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

4. ADC'S REPRESENTATIVE

For purposes hereof, the ADC'S authorized representative will be Jeff Harrington, City Engineer – Public Works Engineering, City of Astoria, 1095 Duane Street, Astoria, Oregon, 97103, (503) 338-5173, [jharrington@astoria.or.us](mailto:jharrington@astoria.or.us).

5. CONSULTANT'S REPRESENTATIVE

For purposes hereof, the CONSULTANT'S authorized representative will be Andy Vessely. Address: 10250 SW Greenburg Rd., Suite 111, Portland, OR 97223. Phone: 503-452-1100.

6. ADC'S OBLIGATIONS

In order to facilitate the work of the CONSULTANT as above outlined, the ADC 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 ADC shall act as liaison for the CONSULTANT, assisting the CONSULTANT with making contacts and facilitating meetings, as necessary.

7. CONSULTANT IS INDEPENDENT CONTRACTOR

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

B. CONSULTANT acknowledges that for all purposes related to this Contract, CONSULTANT is and shall be deemed to be an independent contractor and not an employee of the City of Astoria (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, ADC 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 ADC or third party) as result of said finding and to the full extent of any payments that ADC 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

ADC may cancel all or any part of this Contract if CONSULTANT breaches any of the terms herein 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 ADC breaches any of the terms herein and be therefore entitled to equivalent damages as expressed above for ADC.

9. ACCESS TO RECORDS

ADC 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 ADC 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 ADC 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 ADC, City of Astoria, its Officers, and Employees against and from any and all loss, claims, actions, suits, 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 ADC and City of Astoria any obligation 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 ADC and City of Astoria, its Officers and Employees from any and all liability, settlements, loss, reasonable defense costs, attorney fees and expenses arising 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 agreement 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. 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. WORKMEN'S COMPENSATION

The Contractor, its subcontractors, 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.

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

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

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

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

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

19. PAYMENT OF CLAIMS BY PUBLIC OFFICERS

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

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

20. PAYMENT OF MEDICAL CARE

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

21. OVERTIME

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

22. USE OF DRAWINGS AND OTHER DOCUMENTS

The ADC shall own all drawings and other documents prepared by the CONSULTANT for the project along with all common law, statutory and other reserved rights, including the copyright. CONSULTANT shall provide computer aided design (CAD) drawings on media designated by and to a scale acceptable by ADC.

CONSULTANT may reuse all drawings and other documents prepared by the CONSULTANT for the project for any purpose without written authorization of ADC.

23. 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.

24. NO THIRD PARTY BENEFICIARIES

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



25. 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.

26. NON-DISCRIMINATION


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.

27. COMPLETE CONTRACT

This Contract and its referenced attachments constitute the complete contract between ADC 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:

 Digitally signed by  
com.apple.idms.appleid.prd.49317566476d4a38  
67754144546f59324e744d354e773d3d  
DN:  
cn=com.apple.idms.appleid.prd.49317566476d4  
a3867754144546f59324e744d354e773d3d  
Date: 2017.01.30 15:13:23 -08'00'

Attorney

ASTORIA DEVELOPMENT COMMISSION

BY: \_\_\_\_\_  
ADC Chair Date

BY: \_\_\_\_\_  
ADC Manager Date

[CONSULTANT]

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



EXHIBIT A

10250 S.W. Greenburg Road, Suite 111  
Portland, Oregon 97223  
Phone 503-452-1100 Fax 503-452-1528

January 17, 2017

P-1358

City of Astoria  
1095 Duane Street  
Astoria, OR 97103  
Attn: Jeff Harrington, P.E., City Engineer

**Proposal for Construction Document Preparation  
Bond Street Retaining Wall  
Astoria, Oregon**

Dear Mr. Harrington:

In accordance with your request, this proposal presents a scope of work and cost estimate to prepare plans and technical specifications for a proposed retaining wall along Bond Street near Hume Avenue.

**Background**

A landslide occurred upslope of Bond Street in 2007. The landslide deposited debris on the eastbound lane of Bond Street just east of Hume Avenue. To prevent further destabilizing the landslide, the debris fan was left in place, and Bond Street was converted to a one-way street utilizing the westbound lane. Large concrete blocks were stacked at the base of the debris fan to retain the toe of the fan and to constrict the roadway to one lane. In August 2015, a retaining wall was designed by Cornforth Consultants' Landslide Technology division. The retaining wall was designed to reestablish the roadway for two-way traffic and to improve the stability of the debris fan toe. The objective of this proposal is to develop construction drawings and technical specifications for the City to put the project out for construction bids.

**Scope of Work**

We propose to develop construction plans and technical specifications for geotechnical aspects of the work. Geotechnical plan drawings would be developed on an existing basemap provided by the City, and would be prepared in Microstation format. Geotechnical drawing files would be converted to AutoCAD and submitted to the City following printing efforts. We propose to retain Otak's Seaside, Oregon office to design civil portions of the work. Civil plan sheets would be prepared in AutoCAD and provided to the City following printing efforts. Tasks included in the proposed scope of work are described in more detail below.

***Project Management/Meetings.*** Project management tasks would include contract management with the City and subconsultants as well as coordination of project staffing. We also propose to attend two meetings with the City to present working drawings for City comment.

**Materials Source Evaluation.** One goal of the project is to reuse the existing large concrete blocks currently retaining the landslide debris fan as the facing for the new retaining wall. Additional blocks will be required, so we would coordinate with the redi-mix plant that produced the original blocks to confirm that the existing blocks will be compatible with blocks that they currently produce. We would also obtain material specifications for drain rock and crushed rock commonly available in the Astoria area to be included in technical specifications.

**Construction Drawings.** Construction drawings would be prepared for geotechnical aspects of the project. Drawings would be developed on a basemap provided by the City, and would be prepared in Microstation format. Drawings would be printed in pdf format and submitted electronically to the City for printing. Drawing files would be converted to AutoCAD format and provided to the City for future use. We anticipate the following sheets would be required to adequately convey the construction for bidding purposes.

- Title page with vicinity map and index of sheets
- General notes sheet
- Plan view of site and wall
- Elevation view of wall (2 sheets estimated)
- Typical section and actual cross sections
- Isometric views of wall model
- Details (block dimensions, grid connection, facing corner details, backfill details at corners, wall drain detail, grid overlap detail)

**Technical Specifications.** We propose to prepare technical specifications for earthwork and wall construction using the City's standard specifications (based on 2015 ODOT). Earthwork specifications would address the need to perform excavation and wall construction in short segments for global landslide stability concerns. Earthwork specifications would include information for excavation, subgrade preparation, backfill placement, and drain construction. Wall construction specifications would address wall materials and sequencing. Specifications would be provided in Microsoft Word format so that the City can include them with City-prepared general provisions.

**Post-Bid Assistance.** We propose to assist the City with reviewing contractor submittals prior to construction. At this time, we anticipate submittals would primarily consist of retaining wall and backfill material certificates. Due to the presence of the landslide, we will ask the contractor to prepare a narrative describing how excavation and backfill will be performed in a staged manner. In our opinion, this is important to ensure the contractor has the proper equipment and project understanding to complete the work without creating undue risk of upslope movements.

**Civil Design.** Civil design drawings would be prepared for 60% design and 100% design submittals. Our civil subconsultant has indicated the following drawings are anticipated to be required for the project:

- Cover sheet with project information, general notes, vicinity map, project map

- Composite site plan (1 sheet) showing proposed roadway, sidewalk, storm utility, water utility, sanitary utility, and referenced components of Geotechnical design.
- Road, signage, striping, and grading plan (1 sheet) finish grade contours at two-foot intervals with spot elevations for asphalt, sidewalk, curb, and proposed utilities.
- Water construction plan and profile (1 sheet) for connection to City of Astoria public water system.
- Storm sewer plan and profile (1 sheet) include public collection and conveyance to City of Astoria standards.
- Erosion control plan (1 sheet) meeting the requirements of City of Astoria.
- Construction Detail sheets (2 sheets).

Civil designers would provide preliminary plans as background drawings to coordinate with dry utilities. It is assumed that plans for dry utilities would be provided by others. They would also prepare preliminary quantities for civil design to be used by the City in preparing an estimate.

**Construction Assistance.** We propose to perform periodic site visits during excavation and wall construction to confirm that work is being completed in accordance with the design intent. We would rely on City inspectors to perform day-to-day inspection and to keep us informed of the progress via e-mail or telephone. We propose to coordinate regularly with them regarding what work is being performed and how it is being completed. This will enable us to time our site visits more efficiently. Daily field reports with annotated photographs and a summary of our observations during site visits would be prepared for the City's records.

#### **Cost Estimate**

Our estimated fee to complete the scope of work outlined above is a Not-to-Exceed total of \$74,950. A breakdown of costs by task is provided on Table 1 below.

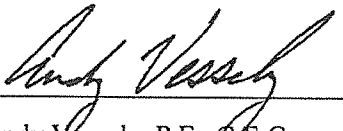
Table 1 – Cost Breakdown	
Project Management/Meetings	\$3,800
Materials Source Evaluation	\$2,300
Construction Drawings	\$26,500
Technical Specifications	\$11,800
Post-Bid Assistance	\$2,300
Civil Design	\$17,000
Construction Assistance	\$11,250
Total \$74,950	

\*Includes CCI labor and reimbursables

We appreciate this opportunity to be of service and trust that this submittal is sufficient for your current requirements. If there are any questions, please call Gerry Heslin or Andy Vessely at 503-452-1100.

Sincerely,

CORNFORTH CONSULTANTS, INC.

By \_\_\_\_\_  
Andy Vessely, P.E., C.E.G.,  
President