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# AGENDA

## ASTORIA CITY COUNCIL

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March 7, 2016

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) 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 2/1/16
- (b) City Council Minutes of 2/16/16
- (c) City Council Special Meeting Minutes of 2/2/16
- (d) City Council Special Meeting Minutes of 2/4/16
- (e) Boards and Commissions Minutes
  - (1) Library Board Meeting of 1/26/16
- (f) Mutual Aid Agreement between City of Astoria Fire Department and Medix Ambulance (Fire)
- (g) Renewal of Intergovernmental Agreement between the City of Astoria and the State of Oregon for Hazardous Materials Emergency Response Team Services (Fire)
- (h) Request for Authorization to Submit Grant and Receive Funds for Pedestrian Safety Program (Police)
- (i) Dr. Edward Harvey Historic Preservation Award Nominations (Community Development)
- (j) Authorization to Light the Astoria Column a Teal Hue for the Month of April in Recognition of Sexual Assault Awareness Month (Parks)
- (k) Authorization to Submit Certified Local Government Grant Request (Community Development)

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) Resolution Approving Referral to the Electors of the City of Astoria the Question of Imposing a Three Percent Tax on the Sale of Marijuana Items by a Recreational Marijuana Retailer within the City (Police)

**7. REGULAR AGENDA ITEMS (*continued*)**

- (b) Request to Purchase City Owned Property Adjacent to 323 Alameda Avenue (Public Works)
- (c) Ordinance Granting a Nonexclusive Right and Franchise to CoastCom, Inc. (1<sup>st</sup> reading) (City Attorney/Finance)

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

**9. EXECUTIVE SESSION**

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

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



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

March 3, 2016

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

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: ASTORIA CITY COUNCIL MEETING OF MARCH 7, 2016

**PRESENTATIONS**

**Item 5(a): Astoria/Warrenton Chamber of Commerce**

Representatives from the Chamber of Commerce will provide Council with a report regarding their projects from the past year.

**CONSENT CALENDAR**

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

The minutes of the City Council meeting of February 1, 2016 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 February 16, 2016 are enclosed for review. Unless there are any corrections, it is recommended that Council approve these minutes.

**Item 6(c): City Council Special Meeting Minutes**

The minutes of the special City Council meeting of February 2, 2016 are enclosed for review. Unless there are any corrections, it is recommended that Council approve these minutes.

**Item 6(d): City Council Special Meeting Minutes**

The minutes of the special City Council meeting of February 4, 2016 are enclosed for review. Unless there are any corrections, it is recommended that Council approve these minutes.

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

The minutes of the Library Board meeting of January 26 is enclosed. Unless there are any questions or comments regarding the contents of these minutes, they are presented for information only.

**Item 6(f): Mutual Aid Agreement between City of Astoria Fire Department and Medix Ambulance (Fire)**

A Mutual Aid or Assistance Agreement has been in place between the City of Astoria Fire Department and Medix Ambulance Service since January 31, 1990. The Agreement has not been updated or amended since that time. A copy of the original Agreement is provided for Council's information. Astoria Fire Department personnel respond with Medix to requests for emergency medical assistance according to our established "Emergency Medical Response Dispatch Protocols" which is attached. Clatsop County and Medix Ambulance Service are currently negotiating a new contract for emergency medical response and patient transportation services throughout the County including the City of Astoria. Updating the mutual assistance Agreements between Medix and County fire agencies has been requested as part of the new Contract negotiation process. City Attorney Henningsgaard has reviewed and approved as to form the proposed Agreement. It is recommended that Council authorize approval of the updated Mutual Assistance Agreement between the City of Astoria Fire Department and Medix Ambulance Services, Inc.

**Item 6(g): Renewal of Intergovernmental Agreement between the City of Astoria and the State of Oregon for Hazardous Materials Emergency Response Team Services (Fire)**

The City of Astoria Fire Department has provided regional hazardous materials emergency response team services through an Intergovernmental Agreement (IGA) with the State of Oregon Office of State Fire Marshal (OSFM) since 1991. This agreement has been renewed every other year since then. The attached IGA spells out the responsibilities of the City of Astoria Fire Department and those of the OSFM including cost recovery procedures incurred by the Astoria Fire Department. Termination of the IGA between the City of Astoria and the Office of State Fire Marshal may be facilitated by mutual consent upon 180 days notice in writing. It is recommended that Council approve the Inter-governmental Agreement with the State of Oregon Office of State Fire Marshal for regional hazardous materials emergency response team Services.

**Item 6(h): Request for Authorization to Submit Grant and Receive Funds for Pedestrian Safety Program (Police)**

The Police Department has identified the ability to obtain funds to conduct overtime enforcement activities related to pedestrian safety. The grant funds are available from Oregon Impact. These dollars are specifically tied to pedestrian crossing enforcement targeting driver behavior. To comply with the grant terms, the Department must conduct the enforcement following strict guidelines issued by

Oregon Impact. These guidelines include doing the enforcement at marked crosswalks, during daylight hours and non-inclement weather. The non-inclement weather focuses the enforcement in the summer months in order to increase the likelihood of not having to cancel scheduled events. The Department feels it can adequately staff and perform two of these focused activities during the grant period while following the guidelines issued by Oregon Impact. These activities, and the cost of training the activity coordinator, would total approximately \$1,282.50. This is the amount of funds the department would request from Oregon Impact. It is recommended that Council approve the application for and acceptance of funds totaling \$1,282.50 from Oregon Impact.

**Item 6(i): Dr. Edward Harvey Historic Preservation Award Nominations (Community Development)**

The City of Astoria Historic Landmarks Commission is seeking nominations for the Dr. Edward Harvey Historic Preservation Award. The award is presented each year to recognize a property owner(s) who have completed exterior restoration or beautification of a building which exemplifies the historical attributes of the building or the architectural heritage of Astoria. The work must have been completed within the last two years. Nominations may include residential, commercial, public, and other types of buildings. The awards will be presented by the Mayor in June. Anyone wishing to submit a nomination should contact Sherri Williams at the City of Astoria, 503-338-5183, [swilliams@astoria.or.us](mailto:swilliams@astoria.or.us), or send a nomination (no form required) to the Community Development Department, City of Astoria, 1095 Duane Street, Astoria OR 97103. Nominations must be received no later than 5:00 p.m. on April 15, 2016.

**Item 6(j): Authorization to Light the Astoria Column a Teal Hue for the Month of April in Recognition of Sexual Assault Awareness Month (Parks)**

In partnership with the Domestic Violence Council, the Harbor, and the Friends of the Astoria Column, the Parks and Recreation Department is requesting permission to change the lighting color on the Astoria Column to a teal hue for the month of April 2016 in recognition of Sexual Assault Awareness Month. It is recommended that City Council authorize the change in lighting at the Astoria Column to a teal hue for the month of April 2016 in recognition of Sexual Assault Awareness Month.

**Item 6(k): Authorization to Submit Certified Local Government Grant Request (Community Development)**

The City of Astoria has previously submitted grant applications to the Certified Local Government (CLG) program of the State Historic Preservation Office (SHPO). This year, the City is eligible for funds again; the deadline for submission was February 26, 2016. Due to time constraints, the application was submitted prior to Council authorization. The application can be withdrawn if Council does not authorize submittal. \$11,000 in CLG grant funds were requested to provide façade improvement grants following a process utilized by the City in earlier approved façade improvement grants. Grants will be limited to \$3,000 and

matched by the property owner. In addition, staff proposes the CLG grant include \$1,000 in architectural design assistance to assist property owners in rehabilitating historic buildings. The total requested CLG grant is \$12,000; a 1:1 match is required from the City. The match would be met by current staffing and existing budget items on the above-mentioned projects. Volunteer hours associated with the CLG funded project, as well as Historic Landmarks Commissioner time, can also be applied to meet the match as in-kind support. It is recommended that Council authorize submittal of the grant request to the Certified Local Government Program of the State Historic Preservation Office in the amount of \$12,000.

## **REGULAR AGENDA ITEMS**

**Item 7(a): Resolution Approving Referral to the Electors of the City of Astoria the Question of Imposing a Three Percent Tax on the Sale of Marijuana Items by a Recreational Marijuana Retailer within the City (Police)**

At its February 16, 2016 meeting, Council adopted a resolution setting the ballot title, question, and summary that referred the implementation of an ordinance taxing recreational marijuana to the voters. During the meeting Council provided direction that they desired to edit the ballot title, question and summary. This edit was adopted by the Council. When staff attempted to publish the title on February 17, 2016 as required by law, they learned the title and question had exceeded the maximum word count allowed. This matter cannot be edited by staff since the issues were adopted by Council. Staff has prepared a new title and question that they believe reflect the intent of the Council and return it for Council consideration. To refer the matter to the voters, Council would adopt the resolution. This adoption will set the ballot title. The ballot title will be published in the "newspaper of general circulation in the city". After a period of review, if no objection to the ballot title is filed, the matter will be filed with the County Elections Official. It is recommended that Council consider adopting the proposed resolution to refer a 3 percent local option tax to the November 8, 2016 ballot.

**Item 7(b): Request to Purchase City Owned Property Adjacent to 323 Alameda Avenue (Public Works)**

A request has been received from Bruce Conner to purchase City-owned property directly southeast of his property located at 323 Alameda Avenue. The City property is approximately 1.0 acre (Lots 25 to 41, Block 17 Map number 80907CD, Tax Lot 06400). Mr. Conner intends to construct his retirement home on the property in the future. If Council is willing to consider the potential sale of this property, an appraisal will be ordered. Once the appraisal has been received and Mr. Conner has been notified of the appraised value, staff will return to Council with the information and the request that a public hearing be set to discuss the sale. It is recommended that Council consider the potential sale of City property across from 323 Alameda Avenue and direct staff to order an appraisal of the subject property.

**Item 7(c): Ordinance Granting a Nonexclusive Right and Franchise to CoastCom, Inc. (1<sup>st</sup> reading) (City Attorney/Finance)**

The City of Astoria has telecommunication franchise agreements with several telecommunication and utility service providers who utilize City public rights-of-way for the placement of infrastructure. In 2008, the City of Astoria granted CoastCom, Inc., nonexclusive right and entered into a five year franchise allowing CoastCom to construct, operate and maintain telecommunications system in the City's rights-of-way. Ordinance No. 08-03 with CoastCom, Inc., terminated September 19, 2013. CoastCom has continued to pay franchise fees to the City per the expired ordinance and wishes to renew nonexclusive right and franchise. CoastCom, Inc., provides telecommunications services to Clatsop County, LS Networks, Sunset Empire Transportation, and the City of Astoria. The provisions of this franchise are similar to franchise agreements negotiated with other users of public rights-of-way. Presented for Council's consideration is a proposed ordinance drafted by City Attorney Henningsgaard granting a franchise to CoastCom, Inc., for operation of telecommunications facilities within City rights-of-way. It is recommended that City Council conduct the first reading of the proposed ordinance.

**EXECUTIVE SESSION**

**Item 9(a): ORS 192.660(2)(i) – Performance Evaluations of Public Officers and Employees**

The City Council will meet in Executive Session to discuss performance evaluations.

A regular meeting of the Astoria Common Council was held at the above place at the hour of 7:15 pm.

Councilors Present: Nemlowill, Herzig, Warr, Price, Mayor LaMear

Councilors Excused: None

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

## REPORTS OF COUNCILORS

**Item 3(a): Councilor Warr** had no reports.

**Item 3(b): Councilor Price** reported that these dark days of winter are lean times for downtown shops. There are people who have not been downtown in a while and she had seen comments on Facebook indicating there was nothing downtown. However, downtown Astoria has everything. She encouraged people to shop at local businesses more often during the winter.

**Item 3(c): Councilor Herzig** reported that he attended the quarterly Columbia River Estuary Study Taskforce (CREST) meeting. The City pays CREST an annual fee in exchange for some services and he serves as the City of Astoria's representative on their board. He noted County Commissioner and CREST Chair Scott Lee had asked Mayor LaMear to confirm him as the City Council liaison. In his absence, Director Cronin or Planner Ferber would attend. The Astoria Warming Center would be open that night and he would be there after the City Council meeting. The previous night, the center had 22 overnight guests including a young local woman who was 20 weeks pregnant. This indicates there is a serious need in Astoria and the center is doing what it can to fill a gap in the services in Clatsop County.

**Item 3(d): Councilor Nemlowill** had no reports.

**Item 3(e): Mayor LaMear** reported that she has participated in the Clatsop Community College (CCC) Presidential Search Committee. The Committee has chosen four excellent candidates and whoever is selected will be a great president and a great addition to the community. She also attended the County Manager Candidates Meet and Greet and she looks forward to the County's selection of a new manager. The annual Chamber of Commerce meeting was held on Saturday, January 30<sup>th</sup>, where Dan Arnoth and Norma Hernandez were presented with the George Award. She explained that the George Award is given to those who never "let George do it."

## CHANGES TO AGENDA

City Manager Estes said Shirley Krepyk was unable to attend this meeting, so he requested Item 5(a) be removed from the agenda and rescheduled for another meeting. The agenda was approved with changes.

## PRESENTATIONS

**Item 5(a): Shirley Krepyk 25 Year Service (Police)**

This item was removed from the agenda during Item 4: Changes to the Agenda.

## CONSENT CALENDAR

The following items were presented on the Consent Calendar:

6(a) City Council Minutes of 1/4/16

- 6(b) Boards and Commission Minutes
  - (1) Library Board Meeting of 12/8/15
- 6(c) 2016 Trestle and Track Inspection – Personal Services Contract (Public Works)**
- 6(d) 2016 Trolley Trestle Repair Project – Authorization to Award Construction Contract (Public Works)**
- 6(e) Salary Resolution Establishing Basic Compensation Plan Cost of Living Wage Adjustments for the Astoria Public Safety Association and Police Sworn Management (Finance)
- 6(f) Oregon Library Association Resource Sharing Committee Passport Program Agreement (Library)**

City Manager Estes requested Items 6(c) and (d) be removed and Councilor Herzig requested Item 6(f) be removed for further discussion.

**City Council Action:** Motion made by Councilor Warr, seconded by Councilor Herzig, to approve Items 6(a), (b), and (e) of the Consent Calendar. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

**Item 6(c): 2016 Trestle and Track Inspection – Personal Services Contract (Public Works)**

**Item 6(d): 2016 Trolley Trestle Repair Project – Authorization to Award Construction Contract (Public Works)**

City Manager Estes explained that the trolley tracks along the waterfront need repair work. A detailed analysis of the work that needs to be done for the trestle will allow the trolley to continue running. The City's previous rail inspection consultant, Andy Cyrus, has recently retired. After evaluating several options, Staff selected OBEC Consulting Engineers to assist with track and trestle inspection services. The inspection is necessary to keep the line open and operating. ODOT Rail has jurisdiction over the rail lines and requires the lines be kept to a certain standard. The City's purchasing code allows the direct appointment of a consultant who is part of a qualified pool. In this case, OBEC is a member of an ODOT qualified pool, so Staff can make the direct appointment. Staff recommends OBEC because they worked with ODOT on prior rail inspections in Astoria and they are the design engineers for Astoria's street end project. Additionally, OBEC provided cost effective solutions for addressing deficiencies in prior years. OBEC also has experience working on the Willamette Shore Trolley, which is similar to Astoria's trolley. OBEC has provided a proposal for the comprehensive inspection of the trestles and the track from the trolley barn to 39<sup>th</sup> Street for an estimated cost of \$37,067. Promote Astoria Funds have been budgeted for this work and for construction repairs. Staff received quotes from two bidders for the construction repairs and both were under the engineer's estimate. The low bid was \$37,350. The total costs for the personal services contract and the construction contract are just within the budgeted amount of \$75,000. However, additional trestle and trolley repair work will be necessary, bringing the total estimate for work done this fiscal year to \$101,717. Staff recommends City Council approve the personal services contract for \$37,067 and the construction contract for \$37,350. Staff proposed to take the overage from the Promote Astoria Fund within the line item for Tourism Related Facilities Expenditures, which has an available budget of \$225,000. Only \$15,000 in expenditures from that line item is expected for the remainder of this fiscal year. He noted that the contract with OBEC will allow Staff to budget more efficiently for repairs in future years.

Councilor Herzig said any time Promote Astoria Funds are spent, it must be done very publicly because there is distrust about how the City disposes of those funds. The trolley is a great tourist draw and many Astorians use it. Making sure the trolley continues to operate safely is a good use of Promote Astoria Funds.

Councilor Price thanked City Manager Estes for the financial analysis of the Tourism Related Facilities Expenditures line item in the Promote Astoria Fund and said the information helped her make a decision.

**City Council Action:** Motion made by Councilor Price, seconded by Councilor Nemlowill, to approve Item 6(c) of the Consent Calendar. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

**City Council Action:** Motion made by Councilor Warr, seconded by Councilor Price, to approve Item 6(d) of the Consent Calendar. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

**Item 6(f): Oregon Library Association Resource Sharing Committee Passport Program Agreement (Library)**

Councilor Herzig said the Passport Program was a pilot program that allows Astoria Library cardholders to check out materials at other participating libraries. The pilot program was so successful that it is being turned into an ongoing program, which is a great asset to the community. The Library has worked hard to keep the program going.

**City Council Action:** Motion made by Councilor Herzig, seconded by Councilor Warr, to approve Item 6(f) of the Consent Calendar. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

Mayor LaMear introduced Lauren Williams, who was job shadowing her for the day. Ms. Williams is a student at Tongue Point studying finance.

**REGULAR AGENDA ITEMS**

- Item 7(a): Revised Findings of Fact for Appeals by Ron Zilli (Community Development)**
- (1) AP15-01 – New Construction Permit NC15-03 for Verizon Wireless**
  - (2) AP15-02 – Variance V15-03 for Verizon Wireless**
  - (3) AP15-03 – Wireless Communications Facility Permit WCF15-03 for Verizon Wireless**

Verizon Wireless LLC applied for a New Construction permit (NC15-03) to the Historic Landmarks Commission (HLC) to construct a new wireless communication facility at 1580 Shively Park Road within Shively Park as well as a Variance permit (V15-03) to the Astoria Planning Commission (APC) to construct a new wireless communication facility at 1580 Shively Park Road within Shively Park with a height of 150' which exceeds the 45-foot maximum height, and a Wireless Communications Facility permit (WCF15-03) to the Astoria Planning Commission (APC) to construct a new wireless communication facility at 1580 Shively Park Road within Shively Park. On September 15, 2015, the HLC held a public hearing and approved the New Construction request with conditions and on September 16, 2015, the APC held public hearings and approved the Variance V15-03 and Wireless Communications Facility WCF15-03 requests with conditions. Notices of Appeal on the HLC and APC decisions were submitted by Ron Zilli on September 30, 2015.

A complete record of each of the requests has been compiled and was provided for Council at the January 19, 2016 meeting. A public hearing on the Appeals were advertised and held November 16, 2015. At the request of Verizon, City Council continued the public hearing to December 7, 2015. At its December 7, 2015 meeting, Council continued the public hearing to January 4, 2016 due to the holidays to allow for greater public participation in the hearing. At its December 17, 2015 meeting, the City Council continued the public hearing to the January 19, 2016 meeting at the request of Verizon.

The appellant asserts that the NC15-01, V15-02, and WCF15-03 permits for the proposed 150-foot tall, metal wireless communications facility tower should be denied. The specific issues for denial on each of the permits appealed by Mr. Zilli were summarized and submitted to the Council for the public hearing. On January 19, 2016, the City Council held the public hearings and closed the public portion of the hearings. At that meeting, the Council voted 3 to 2 to tentatively deny the three requests and uphold the appeals pending adoption of revised Findings of Fact for denial. The Council decision on each appeal will need to be done with separate motions. Suggested Forms of Motion will be available for Council consideration at the Council meeting on February 1, 2016. It would be in order for the Council to adopt the revised Findings of Fact for the following three appeals: Appeal AP15-01 on New Construction Permit NC15-03, Appeal AP15-02 on Variance Permit V15-03 and Appeal AP15-03 on Wireless Communication Facility Permit WCF15-03.

City Attorney Henningsgaard said following Council's tentative decision to approve the appeals at the last City Council meeting, he had several conversations with representatives from Verizon who are scrambling to figure out how to fill their communication needs in Astoria. Several times during those conversations, representatives indicated that Verizon might have the ability to redesign the facilities they had planned for Shively Park. New designs could include a different size or shape of the tower, or a different location for the tower. However, at this point, Verizon still believes that Shively Park presents the best location for the proposed facility. Verizon

representatives asked him to suggest that City Council consider remanding the decisions back to the Planning Commission instead of approving the appeals. This would allow Verizon to provide a revised scope to the Planning Commission and repeat the process. If Verizon is required to choose a location other than Shively Park, a new application must be submitted. However, if Verizon is allowed to locate a facility within the general confines of Shively Park, only an amendment to the current application would be necessary. There would be no point in a remand if City Council opposes any wireless communication facility in Shively Park. But, Verizon is optimistic that they can present an acceptable solution.

Councilor Price indicated this could be perceived as the City Attorney working for Verizon. City Attorney Henningsgaard said he volunteered to offer this alternative to City Council to keep the discussion more open as opposed to having Verizon make a presentation. This is an opportunity for Council to ask him questions about the ramifications of their decision. He believed presenting the concept himself would be less adversarial and a decision could be worked out in public.

Councilor Warr confirmed that Verizon's lease at the Column expires in August. He asked if building a single tower above Reservoir Three leaves the south slope and areas in Williamsport without coverage. City Attorney Henningsgaard understood that the south slope area would lack coverage or have very impaired coverage if the lease at the Column is not extended and the only tower was at the reservoir.

Councilor Price asked why the City and Verizon would not renew the Astor Park lease in August. City Attorney Henningsgaard said City Council must decide if the lease should be renewed. However, until the City has a new location for its emergency communications facilities, the tower will remain at the Column. Councilor Price said she did not want a tower in Shively Park because the entire facility would be inappropriate for that park. She was not making a statement about whether Verizon should continue their service in Astoria. She was in favor of renewing the lease in August.

Councilor Nemlowill said she was uncomfortable having this discussion after the public hearing had closed without giving the Appellant the opportunity to speak. She could not evaluate a new construction proposal by Verizon at Shively Park with the current proceeding. The land use process does not allow City Council to consider anything besides the appeals. City Attorney Henningsgaard explained that City Council needed to decide which disposition was acceptable, a denial or a remand. He brought this up because the Applicant believes it would be more economical and more beneficial to the City and Verizon to remand the decisions.

Councilor Herzig said City Council considered and rejected a remand. He did not believe City Council could change its decision unless the public hearing was reopened. This discussion was not legitimate and the citizens who spoke were opposed to a tower in Shively Park. Moving the tower a little bit would not change the citizens' viewpoints. During the hearing, the Verizon representative said the tower must be of the shape and at the location they had proposed. Suddenly, this has changed, which means Verizon has been bluffing. Verizon will not walk away from this market and if Astoria stands firm with its denials, they will begin to explore other options. Verizon can submit a new application to the Planning Commission for a new design and a new location.

City Attorney Henningsgaard said he understood City Council's decision.

City Manager Estes said the revised Findings of Fact upheld the appeals and denied the permits. Councilor Price had previously submitted proposed amendments to the draft Findings so Staff would be prepared to include her changes if the rest of the Council concurred.

Mayor LaMear believed Council should make a decision on City Attorney Henningsgaard's proposal before discussing the Findings. She asked Council if they wanted to remand the decisions back to the Planning Commission.

Councilors Nemlowill, Herzig, and Price believed the appeals should be approved and Councilor Warr believed the appeals should be denied. Mayor LaMear confirmed that Council would move forward with approving the appeals.

Councilor Price said as a professional editor, she read Staff's proposed Findings very carefully. The changes she has proposed are not really amendments, just revisions that clarify the tower is not a structure. The words facility, structure, and tower were used interchangeably, but she wanted to clarify several sections of the

Findings to indicate that Council did not approve of the height of a monopole, the entire facility, the buildings, the retaining walls, its location, its width, the service vehicles, and many other elements. She reviewed her proposed changes with Special Projects Planner Johnson earlier in the day.

Planner Johnson confirmed that most of Councilor Price's issues were with clarifications of the language. She had used the words facility and structure interchangeably. Also, the width of the pole was mentioned at the last meeting, so she added language about the width. In many sections, Councilor Price has recommended Shively Park Road be referred to as a pedestrian pathway to clarify that the road is used by pedestrians. The terminology clarifies the difference between the facility and the structure. The original Findings had stated there was no new structure; however, the tower would be on the pathway and the enclosure would contain additional equipment. The new language clarified that the equipment and generator were part of the project and the design of some of the structure had not been reviewed because it was within a fenced enclosure. There were no changes to content, but the revised Findings were per Councilor Price's recommendations.

Councilor Herzig thanked Planner Johnson for making sense out of Council's rambling discussion. He was concerned about stating the pole was six feet wide instead of six feet in diameter. Planner Johnson confirmed that the width is the diameter.

Councilor Nemlowill believed Staff did a good job coming up with new Findings and she found nothing wrong with Councilor Price's revisions.

Mayor LaMear reminded the public hearing was closed on January 19<sup>th</sup> and was continued to consider the revised Findings of Fact to approve the appeals.

City Manager Estes clarified that voting in favor of the revised Findings would uphold the appeals and deny Verizon's permits.

Mayor LaMear explained that she planned to vote against the appeals because she did not know where else the pole could be located. The other option would be to double the size of the pole at the Column, which she did not want. She agreed it would be wonderful if Shively Park could be kept completely open, but there may be no other practical way to give citizens cell phone service.

**City Council Action:** Motion made by Councilor Herzig, seconded by Councilor Price to adopt the Findings and Conclusions contained in the Staff report as revised by Councilor Price and approve Appeal AP15-01 on New Construction Permit NC15-03 by Ron Zilli. Motion carried 3 to 2. Ayes: Councilors Price, Herzig, Nemlowill, and Mayor LaMear; Nays: Councilor Warr and Mayor LaMear.

Mayor LaMear read the rules of appeal into the record.

**City Council Action:** Motion made by Councilor Herzig, seconded by Councilor Price to adopt the Findings and Conclusions contained in the Staff report as revised by Councilor Price and approve Appeal AP15-02 on Variance Permit V15-03 by Ron Zilli. Motion carried 3 to 2. Ayes: Councilors Price, Herzig, Nemlowill, and Mayor LaMear; Nays: Councilor Warr and Mayor LaMear.

Mayor LaMear read the rules of appeal into the record

**City Council Action:** Motion made by Councilor Herzig, seconded by Councilor Price to adopt the Findings and Conclusions contained in the Staff report as revised by Councilor Price and approve Appeal AP15-03 on Wireless Communication Facility Permit WCF15-03 by Ron Zilli. Motion carried 3 to 2. Ayes: Councilors Price, Herzig, Nemlowill, and Mayor LaMear; Nays: Councilor Warr and Mayor LaMear.

Mayor LaMear read the rules of appeal into the record

**Item 7(b): Local Option Tax – Marijuana Retailers (Police)**

Under House Bill 3400, cities may impose up to a 3 percent tax on sales of marijuana items made by those with recreational retail licenses. This tax must be imposed by referring an ordinance to the voters at a statewide

general election, meaning an election in November of an even-numbered year. There is no provision in law for taxing medical sales.

As with any revenue raising measure, it's important that the budget committee approve any proposed taxes as part of its approval of the budget. See the Department of Revenue "Tax Election Ballot Measures" manual for more information.

In anticipation of this matter being brought to City Council to consider referring the matter to the voters, Police Chief Johnston visited with the four existing medical marijuana retailers who have all "opted in" for recreational sales. All of the retailers were very open to the conversation. Some relevant points to the conversation included:

- Three of the four existing businesses plan to convert to recreational outlets. The fourth has plans to remain a medical outlet but will be opening an additional outlet that is a recreational outlet.
- Three of the four existing businesses were very supportive of the City pursuing the tax. The fourth was supportive after a discussion on the state tax plan. They initially believed that this three percent would be on top of the existing 25 percent being levied by the state. Once they learned that the tax would be imposed only on the licensed recreational facility that will have a state tax rate of 17 percent and not in addition to the higher "opt in" tax of twenty five percent they were supportive.
- Based on verbal estimates of what the businesses have seen for recreational sales since the October "opt in" sales began revenue is estimated to be in the neighborhood of \$100,000 annually.

Revenue estimates are very rough. Given the early sales this is a conservative number; however, what the sales will look like over time is difficult to gauge. The opt-in law only allowed sales of flower and not extracts or other marijuana related products. The retail price of edibles and other extracts is more expensive than that of flowers. How the availability of these products in the market shapes the sales is unknown. Additionally, it is unknown what tourism opportunities are available to this market. Several of the current owners have plans to market toward the tourist economy. They also see several other markets available that will require legislative change.

One concern that we tried to address is a concern that high tax will move people back to the black market. All four of the current retailers in Astoria do not believe they are competing on price with the black market. They instead are offering a variety, safety, and surety that the black market cannot. None thought that the tax would move people back to the black market.

To refer the matter to the voters, Council would hold a first reading and second reading of the ordinance at separate meetings then adopt the ordinance by a roll call. After adopting the ordinance Council would adopt the resolution. This adoption will set the ballot title. The ballot title will be published in the "newspaper of general circulation in the city." After a period of review, if no objection to the ballot title is filed the matter will be filed with the County Elections Official. It is recommended that Council consider holding a first reading of the proposed ordinance to refer a 3 percent local option tax to the November 8, 2016 ballot.

Chief Johnston explained that the State has imposed a 17 percent tax on recreational marijuana and it was originally believed local jurisdictions would not receive any portion of these funds because all of the tax revenue would be spent on enforcement measures. However, the legislature has allowed local jurisdictions to refer a local tax option to the voters. There are concerns that imposing a tax would raise prices enough to incentivize black market purchases. Additionally, people want to know how much revenue could be gained and how the revenue would be used. He visited the four medical marijuana dispensaries in Astoria that have opted into recreational sales to find out more information. Three of the businesses were very supportive of a local tax. The fourth did not seem to understand the taxing scheme and was initially opposed to a local tax. He explained to this business that the current 25 percent tax would lower to 17 percent on January 1, 2017 and only if the business has converted from medical to recreational sales. So, even a 3 percent increase would net a 5 percent drop in the tax rate. After learning how the taxing worked, this fourth business was also supportive of a local tax. All four of the businesses disagreed a local tax would incentivize black market purchases. Purchasing marijuana is now like going to a good taproom with 25 different varieties of beer, not walking up to a guy on the corner to buy one kind of marijuana. The experience is completely different from the black market and all of the vendors believe the experience is what they are offering. The vendors are selling marijuana legitimately, they have a selection, they know the tetrahydrocannabinol (THC) content of each flower, and they are offering a service. He considered the tax rates in other states and found that until July, Washington's tax rate was 47 percent. Washington has since lowered their tax rate to between 20 and 30 percent and Colorado charges both an excise

tax and a sales tax on marijuana in addition to the sales tax charged on general items. So, Oregon's 25 percent tax is lower than Washington and Colorado. The four dispensaries in town are selling a significant amount of flowers, which is the only marijuana product available to recreational buyers right now. Sales are expected to increase once extracts and other products can be sold because those products have higher retail prices and are more popular than the flowers. Based on current sales, he estimated three percent of flower sales would be about \$100,000 annually. Three of the four businesses plan to market to tourists in various ways, so it is difficult to tell what the retail sales will look like. If a sales tax is implemented, City Council and the Budget Committee would need to decide what to do with the revenue. As a continuous source of revenue, the money could be used for salaries. He encouraged Council to consider this as they begin making policies. The Police Department posted a link to an article in the *Daily Astorian* on their Facebook page and received some interesting comments that indicate some public education will be necessary. Staff is prohibited from making a recommendation on this issue and can only present the facts.

Councilor Herzig said he has received phone calls about this tax. There will not be a tax on medical marijuana, only recreational marijuana; however, the language in the ordinance states "the sale of marijuana items by a marijuana retailer." Chief Johnston explained that State statute defines a marijuana retailer as a recreational retailer that cannot sell medicinal marijuana. There is no provision in Oregon law that allows taxation on medical marijuana.

Councilor Herzig asked if the marijuana industry was still a cash only business, if the businesses could deposit money into a bank, and if not, how would the City charge taxes. Chief Johnston explained that the Federal Deposit Insurance Corporation (FDIC) regulates this issue. Banks and credit unions are trying to make this work, but the amount of work necessary to maintain FDIC insurance is significant. Therefore, marijuana is still a cash business.

City Manager Estes asked how businesses reported sales and taxes to the Oregon Liquor Control Commission (OLCC) and how their information was verified. Chief Johnston understood these details were still being worked out. OLCC has some regulatory authority on how sales and taxes are reported, but only over businesses that have applied for a license. Commercial operations that have never been licensed are under the authority of local law enforcement, not the OLCC. Marc Warren will be Astoria's inspector for both marijuana and alcohol, and he will also inspect Columbia and Tillamook Counties. City Manager Estes added the OLCC is developing the rules for marijuana retailers, which are expected to be implemented by the end of 2016.

Councilor Herzig said he hoped the country would legalize marijuana by 2017 so Astoria would not have to jump through these hoops.

Mayor LaMear asked if one store could sell both medical and recreational marijuana. Chief Johnston said the law currently requires a store to sell one or the other. The opt-in period allows medical businesses to sell flowers to recreational buyers, but once licensed as a recreational facility, the stores must sell only recreational products by a certain date. Two of the four businesses in Astoria are working to get this law changed. The one business in Astoria that does not plan to convert to recreational sales plans to open a separate recreational business.

Mayor LaMear was concerned because this whole discussion began when the government started hearing from people who really needed medical marijuana. She did not want all of the medical services to close, leaving only recreational sales. Chief Johnston said the products are the same, but the dosages are different. Medical marijuana has much higher dosages and is tax-free.

Councilor Price said she supported the tax and supported putting the tax on the ballot. All of the information that comes with the ballot title refers to "a marijuana retailer." She asked if the language should be changed to allow more than one marijuana retailer.

City Attorney Henningsgaard explained that the language in the ordinance was drafted by the League of Oregon Cities attorneys, but City Council could change the ordinance in any way. Chief Johnston said he looked at the language in some of Astoria's other tax ordinances and found that at least one of them was written in the singular. Councilor Price believed the wording in the marijuana tax ordinance needed to be more inclusive.

Councilor Nemlowill did not believe the tax would hurt the businesses and Astoria could do good things in the community with the money.

Councilor Herzig said this tax was discussed last year when Council was talking about other ballot measures. He understood Director Brooks was not familiar with the costs associated with adding measures to the ballot, and County employee Sheryl Holcomb has told him the costs are a moving target. He asked Staff to find out how much it would cost the City to put this tax on the ballot and if money could be saved by putting more than one measure on a ballot at the same time. City Council has previously discussed ballot measures regarding fluoride in the water and certain City charter amendments. City Manager Estes confirmed Staff would present this information at the next meeting.

Mayor LaMear called for public comments. There were none.

**City Council Action:** Motion made by Councilor Herzig, seconded by Councilor Nemlowill to conduct the first reading of the ordinance to refer a 3 percent local option tax to the November 8, 2016 ballot. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

Director Cronin conducted the first reading.

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

There was none.

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:15 pm.

**ATTEST:**

**APPROVED:**

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

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

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

Mayor LaMear called for a moment of silence for Sergeant Jason Goodding of Seaside.

Councilors Present: Nemlowill, Herzig, Warr, Price, Mayor LaMear

Councilors Excused: None

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

Mayor LaMear announced that Chief Johnston would be serving as Assistant City Manager in Brett Estes' absence.

### REPORTS OF COUNCILORS

**Item 3(a): Councilor Warr** reported that he visited the Senior Center that afternoon and was impressed. The end result of the renovation was wonderful and people seemed to like the new building a lot. He noted that one of his long time employees had passed away several days earlier.

**Item 3(b): Councilor Price** apologized for not being able to attend the Senior Center Grand Opening and ribbon cutting. However, she believed the Senior Center looked fabulous and better than before. She attended Sergeant Goodding's funeral with Mayor LaMear, the other Councilors, and Chief Johnston. She did not know Sergeant Goodding, but was overwhelmed by the outpouring of emotion from the community. The service reminded her that one of the main duties of City Council as local legislators is to provide such basics as public safety for Astoria's citizens before providing the extravagances that everyone enjoys. She encouraged people to do an internet search for Senator Johnson's remarks honoring Sergeant Goodding in a six-minute video that also addressed sentencing criminals, keeping prisoners in jail, legislative actions that would put criminals back on the streets, and supporting police officers, who put their lives on the line in an increasingly hostile environment. Sergeant Goodding's killer had been released seventeen times. She had posted the video and transcript on her website, [www.cindypriceastoria.com](http://www.cindypriceastoria.com). Sergeant Goodding was a good man who could be a role model for everyone. She wanted everyone to be aware of state and federal legislative actions that could put everyone in greater harm.

**Item 3(c): Councilor Nemlowill** reported that Sergeant Goodding's passing had been very sad for the community and his death had been a reminder for her and a lesson for her family that the Police Chief and the police officers have a dangerous job. She appreciates the work that the Police Department does.

**Item 3(d): Councilor Herzig** reported that he attended the Senior Center ribbon cutting as did Representative Bonamici. Many people were part of the renovation effort, including Larry Miller and Al Jaques. The renovation was quite an accomplishment for the City. At one of his Meet the Councilor meetings, he was asked what happened to the suggestion that signs be placed at either end of town saying Astoria was a pedestrian-friendly city and requesting drivers to drive safely. He was not sure if the suggestion was ever implemented, but wanted to say at least one person would like to see the signs installed. He received a check for \$900 from the Astoria branch of Columbia Bank for the Astoria Warming Center. The Astoria and Warrenton branches of the bank made the warming center one of the recipients of their Warm Hearts fundraising campaign over the winter. Collectively, the branches raised \$2,500 for the warming center. The bank also donated blankets and it is great to get such community support.

He noted that while volunteering at the warming center after the last City Council meeting, one of Astoria's regular homeless citizens had a seizure outside of the building and he thought about the terrible indignity of a person having to have a seizure in public because he or she had no home. The difficulties involved with treating

homeless people with medical conditions and the waste of public funds was tragic. The medical conditions of homeless people are not being treated because they have no fixed residence. This is a terrible situation and no one party is responsible. He thanked the medics and Fire Department for taking care of the man who had the seizure, adding he had another seizure the following night, which added to the difficulties facing the city. Everyone shares the sense of loss and mourning that a police officer was killed. He reminded that as elected officials, the City Council is allowed to make decisions on legislative actions that are being considered. However, it is not appropriate for public employees to make statements about legislation. The County ran into some difficulties last year when the County was advised by their attorney not to spend any money on anything reflected in the current legislative calendar. This advice was given in response to a suggestion to fund a presentation on marijuana use. Since legislation about sentencing was currently being considered, public employees should refrain from taking positions.

**Item 3(e): Mayor LaMear** reported that she attended Sergeant Goodding's funeral, which was a very moving experience. The funeral lasted about three hours and included police and emergency vehicles, police and emergency personnel from all over the United States and Canada, bagpipers, and trumpet soloists. The funeral was arranged by the Oregon Fallen Badge Association so the family did not have to do any of the work, including the video of the Sergeant's life, choosing a casket, arranging for the flag to be presented, the bagpipers, and the Honor Guard. It is such a relief to the family to have everything taken care of when in mourning. The City of Astoria wanted to make a \$1,000 donation to the Association in honor of Sergeant Goodding.

**City Council Action:** Motion made by Councilor Price, seconded by Councilor Warr, to donate \$1,000 to the Oregon Fallen Badge Association in honor of Sergeant Jason Goodding. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

#### **CHANGES TO AGENDA**

The agenda was approved with the addition of Regular Agenda Item 7 (c): Discussion of Crisis Respite Center, which was requested by Mayor LaMear.

#### **PRESENTATIONS**

**Item 5(a): Shirley Krepky 25 Year Service Pin (Police)**

Police Department Communications Operator Shirley Krepky will be presented with her 25-year service pin.

Assistant City Manager Johnston said Shirley Krepky was Astoria's longest tenured dispatcher and was one of three employees at the Police Department when he joined. He was honored to give her the 25-year pin and considers Ms. Krepky a friend and a diligent employee. He presented the pin and flowers to Ms. Krepky.

**Item 5(b): Columbia River Estuary Study Taskforce (CREST)**

The Columbia River Estuary Study Taskforce (CREST) is a local non-profit, membership-based organization known as a Council of Governments (COG) that provides a variety of services to local governments along the North Coast. Members include cities, counties, and ports. The City of Astoria pays annual dues to CREST in exchange for having technical experts do aspects of development review, such as wetland and riparian areas, in water projects, and habitat restoration projects. Denise Lofman, the Executive Director of CREST, will provide an overview of the organization and their activities in Astoria.

Denise Lofman, PO Box 206, Manzanita, OR 97130, thanked City Council for inviting her to do presentation about CREST. She explained that CREST is a council of governments and is considered a local government by State Statute. The council is made up of representatives from the jurisdictions that are members of CREST, which provides land use planning assistance and special projects assistance for the member jurisdictions, including the City of Astoria. As a result of the 2014 Biological Opinion, they are currently assisting Bonneville Power and the Army Corps of Engineers with their salmon recovery efforts on the Columbia River through habitat restoration of the estuary. She presented via PowerPoint the history of CREST, how CREST is structured as an organization, and the work CREST was currently doing in the community.

Councilor Nemlowill said she was impressed and thanked Ms. Lofman for the presentation. When she was on the Astoria Planning Commission, she saw the many times that CREST reviewed shoreland applications. The specialized services that CREST's planners provide to Astoria are invaluable. She added it is wonderful to see restoration projects being done.

Councilor Herzig said CREST serves all of Clatsop and Wahkiakum Counties even though their name only indicates the estuary. He was concerned about the Army Corps of Engineers calling a cormorant flock to Sand Island. Ms. Lofman confirmed that CREST had not provided any advice or participated in that event.

Mayor LaMear said originally she preferred that each Councilor attend a CREST meeting each year. However, after speaking with CREST, she decided to appoint Councilor Herzig as Astoria's representative on the CREST council. She believed it would be best to have the same person attend all of the meetings for consistency.

## CONSENT CALENDAR

The following items were presented on the Consent Calendar:

- 6(a) City Council Minutes of 1/19/16**
- 6(b) City Council Work Session Minutes of 1/12/16
- 6(c) Intergovernmental Agreement (IGA) Between the Cities of Astoria, Seaside, and Warrenton for Cooperation in the Provision of Library Services (Library)**
- 6(d) Astoria Senior Center Renovation Project Construction Contract Amendment #5 (Public Works)
- 6(e) Authorization to Purchase Pickup Truck (Public Works)

Councilor Herzig requested Items 6(a) and (c) be removed for further discussion.

**City Council Action:** Motion made by Councilor Nemlowill, seconded by Councilor Price, to approve Items 6 (b), (d), and (e) on the Consent Calendar. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

### **Item 6(a): City Council Minutes of 1/19/16**

Councilor Herzig requested that the ninth sentence of Doug Thompson's comments on Page 12 be changed to state, "He was a City Councilor for over a decade ago...", adding he understood from previous Mayor Van Dusen that Mr. Thompson had only served one term.

Councilor Warr said the minutes should reflect what was actually stated. Councilor Herzig believed the changes he requested did what was actually stated.

### **Item 6(c): Intergovernmental Agreement (IGA) Between the Cities of Astoria, Seaside, and Warrenton for Cooperation in the Provision of Library Services (Library)**

Councilor Herzig said the IGA was for the Libraries ROCC program. He believed City Council should always emphasize what the library does because they are essential to the community, life, and democracy. Three cities sharing library resources is a great thing.

**City Council Action:** Motion made by Councilor Herzig, seconded by Councilor Nemlowill, to approve Item 6(a) as amended and Item 6(c) on the Consent Calendar. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

## REGULAR AGENDA ITEMS

### **Item 7(a): Ordinance of the City of Astoria Imposing a Three Percent Tax on the Sale of Marijuana Items by a Marijuana Retailer and Referring Ordinance (2<sup>nd</sup> Reading and Adoption) (Police)**

This proposed ordinance received its first reading at the February 1, 2016 City Council meeting. The ordinance would allow cities an opportunity to impose up to a three percent tax on sales of marijuana items made by those with recreational retail licenses. This tax must be imposed by referring an ordinance to the voters at a statewide

general election, meaning an election in November of an even-numbered year. There is no provision in law for taxing medical sales. To refer the matter to the voters, Council would hold a first reading and second reading of the ordinance at separate meetings then adopt the ordinance by a roll call. After adopting the ordinance, Council would adopt the resolution as presented under Item 7(b). This adoption will set the ballot title. The ballot title will be published in the "newspaper of general circulation in the city." After a period of review, if no objection to the ballot title is filed, the matter will be filed with the County Elections Official. It is recommended that Council conduct a second reading and adopt the ordinance to refer a three percent local option tax to the November 8, 2016 ballot.

Councilor Herzig was concerned that the title did not exempt medicinal marijuana. The agenda packet stated the State has no taxing mechanism for medicinal marijuana and without this information in the ordinance, there is a lack of clarity for the public.

Mayor LaMear explained that a marijuana retailer is a recreational marijuana dealer, not medicinal. Assistant City Manager Johnston agreed. City Attorney Henningsgaard added that he had previously considered Councilor Herzig's concern. The ordinance was drafted by the League of Oregon Cities and defines a marijuana retailer as a person who sells marijuana to a consumer in the state.

Councilor Herzig wanted the City to have the ability to tax recreational marijuana and believed the definition needed to be clarified. If the City does not clearly state this tax is not on medicinal marijuana and if the public is confused about the issue, the ballot measure may fail. No one wants a tax on medicinal marijuana. The City must somehow make it clear that this tax specifically exempts medicinal marijuana.

Assistant City Manager Johnston stated that Section 2 of the proposed ordinance refers to Section 34(a) of House Bill 3400 [39:51], which strictly deals with recreational marijuana and has nothing to do with medicinal marijuana. This legislation enabled Ballot Measure 91. City Attorney Henningsgaard confirmed that Section 34(a) only allows the taxation of recreational marijuana.

Councilor Herzig suggested the language of Astoria's ordinance be amended to include the retail sales of recreational marijuana. He did not believe many voters would go online to look at House Bill 3400. It is important for the City to be very clear to the public about what would be taxed. Medicinal marijuana is of vital concern to many people. If the City does not make the issue clear to the public, the ordinance might be risked. City Attorney Henningsgaard explained that House Bill 3400 defines a marijuana retailer as a recreational seller.

Councilor Price agreed with Staff that House Bill 3400 only applies to retail marijuana. However, she would not have a problem with adding the word recreation to the ordinance or the resolution. City Attorney Henningsgaard believed such an amendment could be made as part of the second reading adoption. He suggested the amendment state that a marijuana retailer is a person who sells marijuana items to a recreational consumer.

Mayor LaMear asked if the ballot included an explanation underneath the title. City Attorney Henningsgaard answered yes, adding he was tasked with preparing the ballot title and explanation.

Mayor LaMear directed him to ensure the title and explanation stated the tax was for recreational marijuana retail stores. Assistant City Manager Johnston added that the resolution included the ballot title and explanation.

Councilor Price suggested the title in all capital letters be amended to state "...on the sale of recreational marijuana items by a marijuana retailer within the City." Councilor Herzig agreed, but believed City Attorney Henningsgaard was indicating this was not possible. City Attorney Henningsgaard explained that the language of the ordinance should be changed because the title is irrelevant once the ordinance has been adopted. The language in the ordinance will become part of the ordinances of the City of Astoria, but the title will not.

Councilor Price understood the ordinance superseded the resolution and wanted to know the difference between the two. Assistant City Manager Johnston explained that the function of the resolution is to refer the ordinance to the voters. The ordinance is the piece that can be enabled by the voters. Councilor Price said she had requested a third clause be added to the preamble of the resolution, which had been reviewed by City Council and City Attorney Henningsgaard. She confirmed with City Attorney Henningsgaard that her proposed clause should not be included in the ordinance as well.

Councilor Herzig believed the word recreational should be added to the ordinance because the resolution will sunset with the ballot. Assistant City Manager Johnston confirmed that Councilor Herzig's suggested edit would be in Section 1, Subsection 2. The word recreational would be inserted immediately before the word consumer. The amended ordinance would read "...a person who sells marijuana items to a **recreational** consumer in the state."

Councilor Nemlowill understood Councilor Herzig was mainly concerned about clarity and communication to the voters. While the ordinance is the binding document for the law, the communication aspect is important in the resolution.

Councilor Herzig said he wanted amendments to both because the public will refer to the resolution title. He believed the current discussion was just about amending the ordinance to reflect the City's intention and amending the resolution would be a separate discussion. He confirmed that the ordinance language suggested by Assistant City Manager Johnston would be appropriate, including that the word recreational did not need to be in the title if it was in the definition.

Councilor Nemlowill did not believe it mattered where the word recreational was used, as long it was included.

**City Council Action:** Motion made by Councilor Warr, seconded by Councilor Nemlowill [37:15] to conduct a second reading of the ordinance to refer a three percent local option tax to the November 8, 2016 ballot, as amended [46:38]. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

Director Cook conducted the second reading of the ordinance.

**City Council Action:** Motion made by Councilor Warr, seconded by Councilor Price, to adopt the ordinance to refer a three percent local option tax to the November 8, 2016 ballot, as amended. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

**Item 7(b): Resolution Approving Referral to the Electors of the City of Astoria the Question of Imposing a Three Percent Tax on the Sale of Marijuana Items by a Marijuana Retailer within the City (Police)**

In order to impose the three percent tax as described in Item 7(a) "Ordinance of the City of Astoria Imposing a Three Percent Tax on the Sale of Marijuana Items by a Marijuana Retailer and Referring Ordinance", a resolution needs to be adopted that will set the ballot title. This title will refer to the electors of the City of Astoria the question of imposing a three percent tax on the sale of marijuana items by a marijuana retailer within the City. The ballot title will then be published in the "newspaper of general circulation in the City." After a period of review, if no objection to the ballot title is filed the matter will be filed with the County Elections Official. It is recommended that Council adopt the proposed resolution.

Assistant City Manager Johnston said Councilor Price had suggested an update to the resolution, which had been presented to City Council. Based on the discussion of Item 7(a), he suggested the following edits:

- Ballot Title – "To impose a City tax on **recreational** marijuana retailer sales of marijuana items."
- Ballot Question – "Shall the City of Astoria impose a three percent tax on the sale in the City of Astoria on marijuana items by a **recreational** marijuana retailer?"
- First and Second Paragraphs of the Summary – "**recreational** marijuana items"

Councilor Herzig said he was pleased with Staff's recommended amendments because they more clearly communicate the City's intentions to the voters. He read the third whereas statement suggested by Councilor Price and said he did not understand the point of adding it to the resolution.

Councilor Price explained she made the suggestion because generally whereas statements indicate why the City wants to adopt the resolution. The two statements already included in the resolution only indicate that the State allows the City to impose the tax and that the City has decided to impose the tax. She believed her statement would be a useful communication tool because it indicated why the City wanted to impose the tax.

Councilor Herzig believed Councilor Price's proposed language was vague and did not convey information about why Astoria would not receive a share of the State's marijuana tax. Councilor Price said she did not know how to address Councilor Herzig's concern because certain knowledge of the law is required when drafting language for resolutions.

Assistant City Manager Johnston believed the information was consistent with what Staff has been told by the League of Oregon Cities, Oregon Liquor Control Commission (OLCC), and other state officials. Based on the ten percent tax described in Ballot Measure 91, which enabled House Bill 3400, no one at the state level seems to believe that local jurisdictions will see much of the state tax revenue. The administrative costs for the recreational marijuana program are anticipated to use a majority of the state tax revenue.

Mayor LaMear polled the Council on whether the resolution should be amended to include the statement proposed by Councilor Price.

**City Council Action:** Motion made by Mayor LaMear without a second to amend the resolution to include the statement proposed by Councilor Price. Motion carried 3 to 2. Ayes: Councilors Price, Nemlowill, and Mayor LaMear; Nays: Councilors Warr and Herzig.

**City Council Action:** Motion made by Councilor Nemlowill, seconded by Councilor Price to adopt the resolution approving referral to the electors of the City of Astoria the question of imposing a three percent tax on the sale of marijuana items by a marijuana retailer within the City, with the following amendments with proposed amendments as read into the record by Assistant City Manager Johnston:

- Ballot Title – "To impose a City tax on **recreational** marijuana retailer sales of marijuana items."
- Ballot Question – "Shall the City of Astoria impose a three percent tax on the sale in the City of Astoria on marijuana items by a **recreational** marijuana retailer?"
- First and Second Paragraphs of the Summary – "**recreational** marijuana items"
- Preamble – the addition of "WHEREAS Astoria's share of the ten percent remainder left in the Oregon Marijuana Account after the OLCC withholds administrative and other monies as the law provides will likely be insufficient to address the impacts to Astoria."

Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

Councilor Warr indicated the amendments suggested Astoria's citizens were not as smart as citizens throughout the rest of the state who are being asked to vote on a resolution and ordinance that has been prepared by the League of Oregon Cities. He believed Astoria's voters were smarter.

Councilor Price said the draft written by the League of Oregon Cities was just a template and many other cities had added amendments, including statements indicating why they wanted to ask their voters for a tax. The language she had proposed was taken from Central Point's resolution. She did not believe the statement had anything to do with the intelligence of Astoria's voters.

#### **Item 7 (c): Discussion of Crisis Respite Center**

This item was added to the agenda during Item 4: Changes to the Agenda.

Mayor LaMear said a proposal had been made to locate the Crisis Respite Center in an area near the former Coryell's Crossing and Fred Meyer Grocery Store. The center had originally proposed a certain number of locked beds that would prevent a person from walking out of the facility. However, law enforcement and the community became concerned recently when this was removed from the center's plans. Councilor Price had proposed a letter of concern, which Mayor LaMear believed had great merit. She read the letter into the record and said if approved, the letter would be signed by City Council.

Councilor Herzig understood that the phrases "locked beds" and "secure beds" were used interchangeably in the letter and believed only one phrase should be used throughout. He also believed language referring to violent patients was extreme and said the respite center had not indicated whether they planned to accept violent patients. City Council has not heard from Rich Mays about his communications with Clatsop Behavioral Healthcare. He was also concerned that Councilors were being handed items at the start of Council meetings more often. These items require more consideration and he wanted to receive items prior to meetings so he has time to process the information.

Assistant City Manager Johnston said he has attended meetings with Clatsop Behavioral Healthcare, Columbia Memorial Hospital, and Clatsop County. Discussions at the meetings indicate that the respite center plans to accept non-compliant patients and patients with elopement issues.

Councilor Herzig asked how the center would be able to control a violent patient without locked beds. Assistant City Manager Johnston explained that area emergency rooms were currently facing this problem, which was also a significant concern of law enforcement. More and more, courts are restricting the police's ability to respond effectively to people who are non-compliant and as a result, law enforcement spends an inordinate amount of time dealing with this issue. When plans for the center were presented to law enforcement in September 2014, one of the great benefits of the center was that the County would finally have the ability to restrain people who were not compliant, which is essential to public safety. However, the Caring for Clatsop organization and others involved with the project philosophically disagree.

Councilor Herzig stated Sheriff Bergin has said for years that the county jail is not the place for people coping with mental illnesses and he had hoped the respite center would be. However, if the center is planning to accept violent patients and plans to call 911 when situations get out of control, they are going in the wrong direction. Assistant City Manager Johnston explained that the respite center believes putting people into a therapeutic environment will cause them to be compliant. He had a different view of human behavior, especially of those who are suffering from severe mental illnesses.

Mayor LaMear asked if the terms secure beds and locked beds were interchangeable and questioned whether the letter should contain just one term for consistency. Assistant City Manager Johnston did not believe there was a significant difference between the two.

Councilor Price confirmed she and some of her friends in law enforcement drafted the letter. She noted Assistant City Manager Johnston has represented Astoria at the respite center's planning meetings and this issue has been discussed several times. She appreciated the information Assistant City Manager Johnston was able to provide.

Councilor Nemlowill said she fully supported the letter, which she believed was very well written. She had told Assistant City Manager Johnston she would do anything she could to help advocate and the letter is a great start. She spoke to a Warrenton City Commissioner who was also concerned. Astoria only has two officers on the streets at any time, but Warrenton only has one. Warrenton is concerned about the center having violent offenders without secure beds and their inability to respond if issues occur. She understood some land use changes were necessary to help facilitate the center. Warrenton was supportive of the center, but now the plan has changed. However, this center is the only solution she has heard of from the hospital or the Astoria Police Department. The center is a good solution and she was not sure why the plan had changed. She believed the original idea should be implemented.

Mayor LaMear believed no one was sure why the plan had changed. The plan could have changed for financial reasons or for emphasis. Councilor Herzig understood a consultant hired by Clatsop Behavioral Healthcare recommended the center refrain from using locked beds, possibly to accommodate staffing levels or finances. He noted the spelling of Ms. Watkin's first name had been misspelled in the letter. He reiterated that it would be nice to receive items like this prior to Council meetings.

Mayor LaMear confirmed there were no public comments about the letter of concern to the Crisis Respite Center.

Councilor Price thanked City Council for their support. She was sure Warrenton, the County, and law enforcement throughout the county would be thankful as well.

**City Council Action:** Motion made by Councilor Price, seconded by Councilor Warr, to sign the letter of concern regarding the Crisis Respite Center addressed to Clatsop Behavioral Healthcare, Seaside Providence Hospital, Greater Oregon Behavioral Health, Columbia Memorial Hospital, and Rich Mays, acting Clatsop County Manager. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

Mayor LaMear confirmed she would edit the letter with the following changes:

- Correct the spelling of Ms. Watkins's first name.
- Change "secure beds" to "locked beds" in the third paragraph of the second page.

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

There was none.

City Council recessed to convene the Astoria Development Commission meeting at 8:09 pm. The City Council meeting reconvened at 9:21 pm.

**EXECUTIVE SESSION**

**Item 12(a): ORS192.660(2)(i) – Performance Evaluations of Public Officers and Employees**

The City Council met in Executive Session to discuss performance evaluations at 9:21 pm.

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 9:50 pm.

**ATTEST:**

**APPROVED:**

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

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

A special meeting of the Astoria Common Council was held at the above place at the hour of 10:00 am.

Councilors Present: Nemlowill, Herzig, Warr, Price, Mayor LaMear

Councilors Excused: None

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

### **STRATEGIC PLAN DISCUSSION**

City Manager Estes explained that during the City Council work session on January 12, 2016, the City Council goal of initiating a City of Astoria Strategic Plan was discussed. He had provided Council with a copy of Marty Jaecksch's resume, his methodology for strategic planning processes, and a framework for strategic planning processes that could work for the City of Astoria. A contract for work done this fiscal year would be within his spending authority, but he wanted to make sure City Council was comfortable with this approach since this was one of their goals. At the work session, Council expressed interest in meeting Mr. Jaecksch. He had given Council copies of the materials presented at the work session and invited Council to ask questions.

Marty Jaecksch thanked City Council for inviting him to discuss strategic planning. He said he was retired after working as a manager for Weyerhaeuser for 25 years, mostly in the North Pacific Paper Mill in Longview, WA. He managed most of the departments not directly related to operations because he was not a chemical or civil engineer. Most of his background is in social sciences. He started out as a trainer interested in improving the organizational side of the company through education. However, he learned that most of the barriers to improving organizational performance had nothing to do with training or knowledge. The organization's will and structure was more important. As a result, he spent his entire career working on organizational development and effectiveness in a variety of roles and departments. After 25 years, he loves trying to figure out how to bring people together in the organization to get their goals accomplished. Most organizations find it relatively easy to establish goals. However, executing and implementing those goals seems to be the biggest barrier. Over the last five or six years, he has focused on ways an organization can position itself, usually through strategic planning, to execute the goals. He can help organize, plan, and is good at facilitating large groups. It is empowering for communities and organizations to come together to express their opinions and see those opinions come together in a statement.

Mayor LaMear thanked Mr. Jaecksch for attending. Councilor Warr added he was impressed by Mr. Jaecksch perspective on what City Council wanted to do.

Councilor Nemlowill asked Mr. Jaecksch to describe the strategic planning process that he would recommend.

Mr. Jaecksch explained that creating a strategic plan begins with City Council's mission. City Council would agree on a mission as a City and as a Council, and then a vision would be established. The vision would be a statement about where the community wants to go. After the mission and vision had been established, a strengths, weaknesses, opportunities, and threats (SWOT) analysis would be completed to determine the current environment. The analysis sets the scene for accomplishing goals. The description of what the community wants would become the basis for selecting the top priorities that City Council would want to achieve over the next three to five years. After the high-level focus areas and goals are set, the plan must be refined to include operations that will allow the plan to be implemented. Many departments will have to execute the work in the plan, so another level of planning would be completed next. Communication is extremely important because once the plan is set, communicating the plan becomes the most important job of leadership. Once the plan is at the operational level, it will need to be reviewed periodically and adjusted as needed. The strategic planning process will take as long as City Council wants. The timeline depends on how much public participation is included in the process and how much consensus City Council needs before moving forward. He described the recent strategic planning process completed by the school district, which included a lot of public process during

the vision and mission phase because they believed this was the part of the process that had the most disagreement. Once the school district established values, they made it very clear that the rest of the planning process would move forward with the vision and mission guiding the process. This phase of the strategic planning took about 15 meetings. However, later in the process during budget discussions, those established values cleared up many arguments.

City Manager Estes added that City Staff would also be involved with the planning process so that Staff has ownership in the implementation of the plan. With the school district, many of the meetings about the vision and mission were internal.

Mr. Jaecksch said participation equals commitment. People who are involved in creating a plan are more likely to be committed to achieving the plan's goals. This costs money and time, so City Council would have to decide how many people should be involved. However, involving Staff is very powerful because Staff will have a clear understanding of the vision, mission, and values when it is time to implement the plan.

Councilor Herzig asked if Staff would feel free to express their opinions in the presence of their employers. Mr. Jaecksch said it depends on the culture of the organization. Some organizations are very open and feel free to express their opinions while others are more closed. As he facilitated input sessions, he would try to build trust and be clear about how their input would be used. People are more concerned about their daily work life rather than the high-level aspects of the mission, vision and values, so there is less threat during discussions at this level. Once adopted, the mission, vision, and values guide the process later on.

Mayor LaMear believed it was very important for City Council to be in sync with Staff because some of City Council's goals have been difficult for Staff to implement. Mr. Jaecksch said the SWOT analysis was an excellent opportunity for Staff to participate because it would allow Council to tap in to Staff's knowledge about the organization's strengths and weaknesses. He explained how threats from outside the organization could put constraints on the City's freedom of action, noting that Staff deals with these threats all the time.

Councilor Nemlowill asked how much experience Mr. Jaecksch had with municipal government. Mr. Jaecksch said he worked with Cowlitz County Council of Governments to redefine the values of the association. He worked with the cities of Kelso and Longview when they were discussing consolidating their services. He also worked with the Cowlitz County Commission to create a mission, vision, and value statement, as well as a strategic plan.

Councilor Nemlowill explained the City's hierarchy starting at the top with the citizens, then the elected officials, and then City Staff. In order for people to support what they create and in order for the Council to receive appropriate feedback to inform their decisions about the strategic plan, she believed intense public involvement would be important. She also agreed it would be appropriate to get feedback from Staff in the form of a focus group. In order to engage the most people, a variety of tactics must be provided. She asked Mr. Jaecksch to describe his experience with public input sessions and offer suggestions for various ways to get public input. Mr. Jaecksch said communications and public relations has always been part of his planning process, but not something he has ever executed. He has participated in planning community events, but not the execution of these events. City Manager Estes noted that when City Council first discussed a strategic plan, Council expressed interest in vetting the plan to the public after it was developed instead of beginning the planning process with public involvement.

Councilor Warr believed City Council should decide what the strategic plan should accomplish. Should the plan fulfill the dreams and wishes of Council's constituents or make the City work better? He understood a strategic plan was designed to make the City work better and more efficiently, which means Council would develop the plan and then take it to the public for approval or feedback. City Manager Estes added that the benefit of the framework described by Mr. Jaecksch allows Council to reach out to the public whenever Council believes it is appropriate to do so. The framework is flexible so that Staff can lead the public involvement processes. During the school districts planning process, there were times when training was provided to school district staff so they could lead the public input sessions. Utilizing City Staff to conduct some of the public processes keeps the overall costs down. City Council could establish milestones within the planning process to check in with the public.

Mayor LaMear said during previous discussions about strategic planning, Council has looked at plans online to see what other cities have done. Some members of Council would like to adapt an existing plan, but this is not Mr. Jaecksch strategy. City Council needs a framework before asking for input from the community. She wanted Council to develop a mission and vision and agreed with Mr. Jaecksch' plan for moving forward. The citizens will need something to base their input on. Mr. Jaecksch said it is very difficult to bring a blank piece of paper to a large group and get anything accomplished. Most of the processes he designs for participation involve an initial sub-group of knowledgeable people who make a statement. That group presents their statement to a larger group and invites feedback.

Councilor Herzig said Council has been establishing annual goals and strategic planning was new to City Council. The Council must learn how to formulate goals and state the goals before presenting them to the public. Mr. Jaecksch agreed and said Councilors should understand one another's thinking. The process outlined in the packet was developed without speaking to Council first. It was difficult for him to recommend a process without knowing what kind of culture the City had. He needed to know what City Council wanted from a strategic plan so that he could help the City craft a plan. The Cowlitz County Commission had originally said they wanted a plan for the county. However, the mission, vision, and values indicated the Commission wanted a plan for themselves. Then, the plan was opened up to the entire county. It is important for the Councilors to be clear with each other about what the plan will accomplish because he cannot design a plan without a consensus from City Council.

Councilor Price said she was impressed by the plan Mr. Jaecksch submitted without knowing anything about City Council and she believed he would be a good fit. She was not satisfied with Astoria's goal setting process because some of the goals are carried over for several years and they are not integrated into the work of the City. A good strategic plan will be a good communication tool when it is complete because a plan will make it easy for her to explain to people why the City is doing what it does.

Mr. Jaecksch understood City Council's goals were a list of specific projects. He explained that his recommended model for a planning process would include the specific projects at the third level of planning. The plan would demonstrate why projects would fit into the City's goals. A lot of the strategic planning energy for each individual will be deciding which projects should not be done over the next three to five years. Setting priorities is key because it forces focus. The projects that Council focuses on are more likely to get done, so those projects need to be the right projects. Council will have to give up some important projects in order to implement the most important projects.

Mayor LaMear said goal setting allows Council to plan from year to year, but Council agrees it should be making longer term plans. A strategic plan will allow Council to create a path for achieving five-year goals. Mr. Jaecksch noted that a strategic plan sets goals to be accomplished within three to five years.

Councilor Nemlowill said she wanted to create a vision for Astoria for 50 years from now to preserve Astoria's character. The policy decisions that City Council makes over the next three to five years will impact Astoria 50 years from now. The city will not see large impacts from vacation rentals in the next three to five years, but depending on the City's policies, vacation rentals could drastically impact how Astoria is 50 years from now. She understood the short term needs of a strategic plan, but she believed the vision statement to preserve Astoria's character is the most important. All of the short term strategic planning should be based around the vision. She wanted people who work in Astoria to be able to afford to live in Astoria. She did not want Astoria to be overrun with second homes.

Mr. Jaecksch asked if there was a common agreement with Councilor Nemlowill's statements. City Manager Estes explained that City Council had adopted a housing study that analyzed housing issues and the City is working towards changing the Development Code. Councilor Nemlowill added that housing is part of the Comprehensive Plan. Mr. Jaecksch believed housing would be worth discussing during the SWOT analysis. A first step towards a vision is to choose three to five top priorities. Therefore, if City Council's model is to consider how today's decisions will impact their 50 year goals for Astoria, Council must decide which priorities must be implemented today. He believed Councilor Nemlowill made some very specific policy statements and he would want to test them to make sure her vision was the common vision of everyone.

Councilor Nemlowill believed City Council did not want Astoria to become like Cannon Beach. Mr. Jaecksch recommended a more specific vision statement. Councilors have a picture in their minds that must be translated into words and a consensus must be built.

Councilor Price agreed with Councilor Nemlowill that retaining Astoria's character should be part of the vision or mission and next steps should be to ensure that people who work in Astoria could afford to live in Astoria, with final steps being much more targeted to specific projects.

Councilor Herzig said previous presentations explained the differences between a vision, a mission, and a value. He understood Mr. Jaecksch was offering a little bit of each and structuring the three so that a three to five year plan would point the City in the right direction. Part of this process is for City Council to define its role. He wanted to know how proactive City Council should be about the Comprehensive Plan and City documents as opposed to simply waiting for Staff to present recommendations. He hoped the strategic plan would allow Council to be engaged with larger issues and fit in with short and long term planning processes.

Mr. Jaecksch noted that Astoria's charter does not mention leadership. He was interested to know what Council believed its role was as a leadership position and how the leadership role was executed. He also wanted to know how Councilors supported each other. As a facilitator of the planning process, he would be committed to City Council and would help the Council achieve its goals as a group. If there were issues that jeopardized the Council's ability to achieve its goals, he would temporarily change his process to deal with the issues. Barriers that pop up along the way can interrupt the process and the process will be subject to time limitations. He would like City Council to get to the end of the process together, united, and supportive of each other. Therefore, if Council believes the vision should be a very strong 50 year statement while someone else wanted two or three sentences, he would stop to discuss values. He said he is very good at designing processes ad hoc and in the moment to resolve differences. Once an agreement was made, the process would move on with the goal of getting to the end together.

Councilor Nemlowill understood Mr. Jaecksch wanted the Council to get along after the process is complete; however, she wanted the public to feel good about the process as well. The City needs a facilitator to advise Council on a good public outreach strategy so that the public can be involved. She confirmed for Mr. Jaecksch that Astoria does not have an outreach or communications department. City Manager Estes explained that each department is in charge of their own communications. Mr. Jaecksch confirmed that City Council did not have its own communications department either. Councilor Nemlowill said she believed Mr. Jaecksch would fill this role as a facilitator. She hoped he could recommend ways for City Council and Staff to communicate with each other and with the public.

Mr. Jaecksch said he had experience with this situation working with unions and manufacturing, but not governments. This issue was very significant as he tried to change the socio-technical system in the paper mill. When newsprint became a dying industry, one company had to make some significant changes very quickly. While other newsprint companies went out of business, the company he worked with was still in business and was still profitable. He recognized that manufacturing and the public sector were not the same, but noted there were some similarities to the outreach process.

Councilor Herzig explained there was no consensus among Council on the current year's City Council goals. It is a lot easier to get public feedback when Council can agree on goals and values. He believed it would be more challenging than Mr. Jaecksch expected to get a consensus from City Council. Mr. Jaecksch said at this point in his career, he would welcome additional complexities because he enjoys the challenges.

Councilor Price was impressed with Mr. Jaecksch thoughtfulness and his level of involvement in this process. She was glad he was able to meet with Council.

Councilor Warr agreed and said Council needed Mr. Jaecksch to get them through the planning process as a group. He confirmed for Mr. Jaecksch that he had looked at some other strategic plans online and was not completely sold on the value of strategic plans. However, if Council can create a plan that works for the group, he would support it. He believed that City Council has five strong individuals who are going in five different directions. '

Councilor Nemlowill disagreed, noting that there were many instances when Council did not go five different directions. Councilor Warr said he was impressed with what Mr. Jaecksch had to say and how he has handled things.

City Manager Estes reminded that a contract with Mr. Jaecksch would be within his spending authority for this fiscal year, but he wanted Council's support before moving forward.

Mayor LaMear believed Staff should move forward with a scope of work and contract with Mr. Jaecksch, adding that the community should be involved in the planning process.

Councilor Warr recommended casual conversations at a table during the planning process, instead of sitting at the dais. Mr. Jaecksch confirmed that a public meeting had to be announced anytime three or more Councilors wanted to speak and that work sessions to develop a vision, mission, and values would be public meetings. Mayor LaMear explained that the public does not always have the right to interact, but they always have the right to attend meetings.

Councilor Herzig added that work sessions give Council more flexibility to engage in dialogue. It is very valuable to have the public present because the mayor can invite public comments if she chooses to do so. Mr. Jaecksch agreed a less formal discussion would be best. He suggested a round table with the public sitting around those at the table. City Manager Estes confirmed the meeting could be formatted in a less formal manner.

Councilor Nemlowill believed Mr. Jaecksch was a great candidate, but she preferred to choose from a pool of applicants.

City Manager Estes confirmed he would work with Mr. Jaecksch on a scope of work, which would be vetted to City Council.

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 10:58 am.

**ATTEST:**

**APPROVED:**

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

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

A special meeting of the Astoria Common Council was held at the above place at the hour of 12:18 pm.

Councilors Present: Nemlowill, Herzig, Warr, Price, Mayor LaMear

Councilors Excused: None

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

**HERITAGE SQUARE – EPA CLEANUP CONTRACT AMENDMENT**

City Manager Estes said Staff is requesting a contract amendment with AMEC in the amount of \$46,909.23.

**City Council Action:** Motion made by Councilor Warr, seconded by Councilor Nemlowill to approve the Heritage Square EPA grant cleanup contract amendment with AMEC in the amount of \$46,909.23, for a contract total not to exceed \$526,234. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

City Manager Estes said Staff would need to request approval of expenditures for the monitoring well, which will be paid with grant funds. Once the grant is approved, budget resolutions would be necessary.

Councilor Herzig asked if it was a possibility that the parking structure at Heritage Square would need to be removed and rebuilt if more cracks appear or shoring was not practical. City Engineer Harrington explained that the structural report determined how the parking structure could be used in an overall redevelopment. The parking structure south of the Legion is newer, so it depends on how the site is developed. The structure is more than adequate for a use like the Sunday Market, but not for a new building. He made sure the architect had copies of the structural report to use when developing estimates and concepts. The parking structure is old and it would depend on how it is maintained and used. The structure was built in the 1940s and 1950s with a nice array of columns that support the structure well; however, the City had not yet determined the structural integrity of the chair walls and timbers underneath the structure.

Councilor Herzig said Councilor Price posted on Facebook that the Arts and Cultural Tourism Fund increased to \$50,000. Director Brooks confirmed this was adopted at the last Budget Committee meeting.

Councilor Herzig confirmed that Director Cronin was not paid for his work at the Port.

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 12:24 pm.

**ATTEST:**

**APPROVED:**

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

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

## **Astoria Library Board Meeting**

Astoria Public Library

January 26, 2016

5:30 pm.

**Present:** Library Board members David Oser, Susan Stein, Kimberley Chaput (via telephone), and Chris Womack. Staff Library Director Jane Tucker and ALFA Representatives Steve Emmons.

**Excused:** Kate Summers

**Call to Order:** Director Tucker called the meeting to order at 5:31 pm.

**Approval of Agenda:** The agenda was approved.

**Approval of Minutes:** The minutes of December 8, 2015 were approved as presented.

### **Renovation Update:**

Director Tucker reported that City Council held a work session on January 12, 2016 to discuss the library and Heritage Square. No consensus was established, but the Council asked for more information about several options, including renovating the existing library building and a new building on Heritage Square. Council also wanted more information about expanding a renovated library into the existing parking lot space. The discussion will continue at the Development Commission meeting on February 1<sup>st</sup> at 6:00 pm.

Chair Pro Tem Oser said Councilors Nemlowill and Price had asked him and his wife for their opinions, so they wrote a presentation that Mrs. Oser presented at a City Council meeting. The presentation noted some of the preliminary work that has yet to be completed, like having the Finance Department analyze the true all-in costs of the proposed options because the Ruth Metz study was never meant to be used as a cost estimate. Staff needs to consider which option would be most attractive for fundraising because the ability to draw money in for different projects can vary widely. The funding gap is more important than the total project costs when it comes to fundraising. Their presentation to Council suggested Staff create a group of local experts in a variety of fields to get a sense of what kind of project would be attractive to fundraisers. In many discussions, the library has become linked to housing and preservation, but the focus should be on the library.

Director Tucker briefly reviewed the Library Building Plan from 1965, which assumed library users would get materials and leave the building. However, the Metz Study indicated 70 percent of the square footage should be used by library patrons. The Board and Staff discussed how project costs and staffing levels impacted the building plans and designs of other buildings and libraries.

Susan Stein explained how she had learned that every library must figure out how to make a renovation project successful in ways that are appropriate for the community they serve. She planned to gather and share more information about the methods and techniques that have been successful in other communities.

Director Tucker explained how construction costs, efficiency costs, and operating costs could be affected by the number of floors in a building. A three-story building has higher operating costs than a one-story building.

Susan Stein described her visit to Ballard Public Library and explained what she had learned about their renovation project, which originally included a public/private partnership. However, the partnership fell through and the library was still able to make the project work. Ballard's new library ended up being the catalyst for a lot of new sustainable growth in the community.

**Board Reports:**

**Item 5(a): Reports of Community Presentations**

**Library Director's Report:**

Director Tucker reported that she would retire on June 1, 2016. She talked about how much she loved her job, but she also believed it was a good time for the City to get another Library Director. She hoped the City would get someone who had experience building libraries.

She presented the Board with the Library's quarterly report and statistics. She noted Staff was developing a set of frequently asked questions about the library, building project, and the changes in use. Staff has been tracking Wi-Fi use and learned they had originally underestimated the library's Wi-Fi use by quite a bit. Staff is constantly doing research to ensure the monetary values assigned to uses are accurate.

The Board and Staff discussed the City's hiring process and the Board agreed the search committee selected to help find a new Library Director should include a Library Board member. Ms. Stein suggested the search committee be led by an objective person and include library staff and a Library Foundation member. Director Tucker said she would forward this information to City Manager Estes and suggest he use Ms. Stein as a resource.

Director Tucker updated the Board on the Library's programs. The fundraiser for the Little Free Libraries was scheduled for February 11<sup>th</sup> at the Seaside Convention Center. The live and silent auctions would occur from 6:00 pm to 8:00 pm. She asked the Board to help hang fliers advertising the event. Pacific Power gave \$3,000 to the Libraries ROCC program, which lowers the gap to \$10,000.

**Update on ALFA Activities:**

Steve Emmons reported that the ALFA balance is currently \$6,127.12. ALFA's annual meeting has been scheduled for March 9, 2016, one hour before Library Soup Night.

**New Business:**

**Item 8(a): Oregon Library Passport Program**

Director Tucker explained that the program, which started in 2012, allows libraries in Oregon to share resources. She described her participation in the development of the program, noting that the library association chose to model the program after Colorado's program. Libraries have the option to participate in the program and library users can get a library card and borrow materials at any participating library. Over 150 libraries joined the program and the program has not resulted in many of the problems that were originally anticipated. Most of the library users that get Passport Program cards from the Astoria Library are students at Clatsop Community College. She noted some statistics about the cards issued and material borrowed through the program. In December 2015, the State Library Association and the Oregon State Library converted the program from a trial program to an ongoing program. A new agreement for the ongoing program will be on the agenda for the February 1<sup>st</sup> City Council meeting.

**Old Business:** There was none.

**Public Comments:** There were none.

**Items for Next Meeting's Agenda:** There were none.

**Adjournment:** There being no further business, the meeting was adjourned at 6:19 pm.

Respectfully submitted,

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Jane Tucker, Director  
Astoria Public Library



# CITY OF ASTORIA

Founded 1811 • Incorporated 1856

February 26, 2016

## MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: MUTUAL ASSISTANCE AGREEMENT BETWEEN CITY OF ASTORIA AND  
MEDIX AMBULANCE SERVICE, INC.

### **DISCUSSION/ANALYSIS**

A Mutual Aid or Assistance Agreement has been in place between the City of Astoria Fire Department and Medix Ambulance Service since January 31, 1990. The Agreement has not been updated or amended since that time. A copy of the original Agreement is attached. Clatsop County and Medix Ambulance Service are currently negotiating a new contract for emergency medical response and patient transportation services throughout the County including the City of Astoria. Updating the mutual assistance Agreements between Medix and County fire agencies has been requested as part of the new Contract negotiation process.

The Astoria Fire Department and Medix Ambulance have a long history of working closely together to provide the highest level of emergency medical care for patients and those in need throughout the community. Astoria Fire Department personnel respond with Medix to requests for emergency medical assistance according to our established Emergency Medical Response Dispatch Protocols. A copy of the Dispatch protocol is attached for your information. While Astoria Fire does not respond to every call in Astoria with Medix, we do respond to significant number of EMS calls for service each year.

The updated Mutual Assistance Agreement that has been attached clearly defines the expectations and parameters that will allow the Astoria Fire Department and Medix to continue providing the best possible patient care to our citizens and visitors; allows for the re-stocking of certain medications and disposable and reusable supplies; and provides for stand-by services by Medix at greater alarm structure fires within the Astoria City Limits.

### **RECOMMENDATION**

Staff recommends authorizing approval of the updated Mutual Assistance Agreement between the City of Astoria Fire Department and Medix Ambulance Services, Inc.

By:



Ted Ames, Fire Chief

**MUTUAL ASSISTANCE AGREEMENT**  
**MEDIX AMBULANCE SERVICE, Inc.**  
And The  
**CITY OF ASTORIA FIRE DEPARTMENT**

This agreement is entered into by and between Medix Ambulance Service, Inc., herein "Medix" and the City of Astoria Fire Department, herein "Astoria Fire" for the sole purpose of Emergency Medical Service Mutual Assistance.

WHEREAS, the purpose of this agreement is to provide each of the parties hereto, through their mutual cooperation, a pre-determined plan by which each of them might render aid to the other in case of numerous medical responses, rescues, and/or disaster conditions which could create insufficient resources to allow for effective operation of Emergency Medical Services in that area; and to accommodate those times when one Party is in need of emergency assistance to a degree beyond the existing capabilities of either Party; and,

WHEREAS, it is deemed to be in the public interest for the parties hereto to enter into an agreement for mutual assistance in Emergency Medical Services and the Parties recognize that one Party may be more advantageously placed to provide effective Emergency Medical Services in the other Party's district due to distance, road, or weather conditions to assure providing reserves needed for adequate community protection;

NOW, THEREFORE, it is hereby agreed as follows:

1. Both Parties agree to furnish personnel and equipment to other Party when requested by competent authority, providing assisted Party has available adequate personnel and equipment to reasonably provide assistance.
2. The Parties agree to maintain compatible radio communications capabilities with each other.
3. It is mutually agreed and understood that this agreement shall not relieve either Party of the responsibility for Emergency Medical Services within its own response area, nor does this agreement create any right in, or obligation to, third parties by either Party which would not exist in the absence of this agreement. It is the intent of this agreement to provide reasonable assistance only, and not primary responsibility.
4. It is further agreed that both Parties will only dispatch the other Party to Emergency Medical incidents in Clatsop County. Incidents outside of Clatsop County will follow Mutual Aid and MCI (Mass Casualty Incident) protocols.

5. It is agreed that this agreement for mutual assistance shall constitute the sole consideration for the performance hereof between the Parties, and that neither Party shall be obligated to reimburse the other for use of equipment or personnel. During the course of rendering aid, the personnel of each Party shall be at risk of that Party. Each Party shall protect its personnel performing under this agreement by adequate workman's compensation insurance. Each Party shall obtain and maintain in full force and effect adequate public liability and property damage insurance to cover claims for injury to persons or damage to property arising from such Party's performance of this agreement. All costs associated with the provision of mutual assistance shall be the responsibility of the agency providing the service.
  
6. Medix agrees to restock or reimburse only those disposable and/or reusable supplies defined in "ATTACHMENT A" used by Astoria Fire on any patient Medix treats and/or transports. An authorized member of Astoria Fire shall submit a restock order (Attachment A) to Medix on a monthly, or as needed basis. Use of supplies that are available for re-stocking shall be tracked by Astoria Fire, and only those supplies used shall be ordered.
  
7. Nothing in this agreement shall preclude either Party from billing any patient treated or transported according to that Party's current adopted billing schedule.
  
8. This agreement shall be and remain in full force and effect from and after the date of execution set opposite the signature of each Party until terminated or modified. This agreement may be modified at any time by mutual consent of the Parties, and terminated by either Party upon thirty (30) days' notice.
  
9. In the event of a Presidential Disaster Declaration, or the State of Oregon Conflagration Act being invoked, this agreement shall not preclude or bar providers from claim for, or collection of, any type of reimbursement, payment or restitution.
  
10. It is agreed that Astoria Fire will maintain a written protocol with the Astoria 911 Center for the standardized dispatch of Medix to provide "fire standby" service to all "Working" or greater alarm (2<sup>nd</sup> Alarm, 3<sup>rd</sup> Alarm, and 4<sup>th</sup> Alarm) structure fires within the Astoria City Limits. Both Parties agree that Medix will provide "fire standby" service based on the availability of adequate personnel and equipment and without undo negative impact to other primary responsibilities.

IN WITNESS WHEREOF, the Parties have caused this agreement to be executed on the day set opposite the respective signature of each; said execution having been heretofore first authorized in accordance with law.

\_\_\_\_\_  
Medix Ambulance Services, Inc.

\_\_\_\_\_  
Date

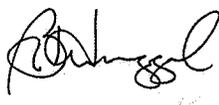
\_\_\_\_\_  
Arline LaMear, Mayor, City of Astoria

\_\_\_\_\_  
Date

\_\_\_\_\_  
Brett Estes, City Manager, City of Astoria

\_\_\_\_\_  
Date

**Approved as to form:**



Digitally signed by  
com.apple.idms.appleid.prd.49317566476d4  
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**“ATTACHMENT A”**

**MEDIX AMBULANCE SERVICE, Inc.**

**ASTORIA FIRE DEPARTMENT RE-SUPPLY LIST**

**Date:** \_\_\_\_\_ **Name:** \_\_\_\_\_ **Phone: 503.325.2345**

**Oxygen Delivery**

- \_\_\_\_\_ NRB Adult
- \_\_\_\_\_ NRB Pediatric
- \_\_\_\_\_ Nasal Cannula
- \_\_\_\_\_ Nebulizer Mask
- \_\_\_\_\_ Nebulizer Hand
- \_\_\_\_\_ BVM Adult
- \_\_\_\_\_ BVM Pediatric

**IV/IM SUPPLIES**

- \_\_\_\_\_ Op-site/Tagaderm
- \_\_\_\_\_ IV Fluid 500 ml
- \_\_\_\_\_ Drip Set 10 OR 15
- \_\_\_\_\_ 10 ml Saline Flush
- \_\_\_\_\_ Saline Lock

**Bandage/Splint**

- \_\_\_\_\_ Coban Wrap
- \_\_\_\_\_ Trauma Dressings
- \_\_\_\_\_ 8 x 10 Ab. Pads
- \_\_\_\_\_ Occlusive Dressings
- \_\_\_\_\_ OB Kits
- \_\_\_\_\_ Ice Pack
- \_\_\_\_\_ Hot Pack

**Endotracheal Tubes**

- \_\_\_\_\_ 2.5 \_\_\_\_\_ 3.0
- \_\_\_\_\_ 3.5 \_\_\_\_\_ 4.0
- \_\_\_\_\_ 4.5 \_\_\_\_\_ 5.0
- \_\_\_\_\_ 5.5 \_\_\_\_\_ 6.0
- \_\_\_\_\_ 7.0 \_\_\_\_\_ 8.0
- \_\_\_\_\_ ETT Holder Adult
- \_\_\_\_\_ Stylette
- \_\_\_\_\_ CO2 Detector

**IV Catheters**

- \_\_\_\_\_ 22 gauge
- \_\_\_\_\_ 20 gauge
- \_\_\_\_\_ 18 gauge
- \_\_\_\_\_ 16 gauge
- \_\_\_\_\_ 14 gauge

**Medications**

- \_\_\_\_\_ Dextrose 50%
- \_\_\_\_\_ Narcan
- \_\_\_\_\_ Epi 1:10,000
- \_\_\_\_\_ Epi 1:1,000
- \_\_\_\_\_ Lidocaine 2%
- \_\_\_\_\_ Amiodarone
- \_\_\_\_\_ Vasopressin
- \_\_\_\_\_ Ipratropium
- \_\_\_\_\_ Xopenex

**Oral Airway**

- \_\_\_\_\_ 40 mm \_\_\_\_\_ 50 mm
- \_\_\_\_\_ 60 mm \_\_\_\_\_ 80 mm
- \_\_\_\_\_ 90 mm \_\_\_\_\_ 100 mm
- \_\_\_\_\_ 110mm

**Nasal Airway**

- \_\_\_\_\_ 28fr
- \_\_\_\_\_ 32fr

**Syringe**

- \_\_\_\_\_ 5 cc
- \_\_\_\_\_ 10 cc
- \_\_\_\_\_ 30 cc
- \_\_\_\_\_ 60 cc

**Immobilization**

- Cervical Collars
  - \_\_\_\_\_ Infant
  - \_\_\_\_\_ Pediatric
  - \_\_\_\_\_ Adult Adjustable
  - \_\_\_\_\_ Adult No-Neck
  - \_\_\_\_\_ Adult Short
  - \_\_\_\_\_ Adult Regular
  - \_\_\_\_\_ Adult Tall
- \_\_\_\_\_ Disposable Head Beds

**Suction**

- \_\_\_\_\_ Suction Tubing
- \_\_\_\_\_ Suction Tip

**Miscellaneous**

- \_\_\_\_\_ Soft Restraints
- \_\_\_\_\_ Mega-Movers

Please remember, only items on this list will be provided by Medix as ordered by authorized Astoria Fire personnel.

E-Mail: \_\_\_\_\_@medix.org  
Medix Phone: (503) 861-1990 ext. 212  
Medix Fax: (503) 861-5555

**Revised: 02/26/2016**

## MUTUAL AID AGREEMENT

### Astoria Fire Dept. - Medix Ambulance Service

#### Routine response

It is understood and agreed that the Astoria Fire Dept. will initially respond with Medix in the performance of their mission and duties or respond to assist Medix for the benefit of the citizens of their fire district in the following situations and as described in the EMS response agreement with Medix Ambulance:

All MVA's not reported as non-injury  
Known or suspected need for heavy extrication  
Rescue situations other than MVA's  
Fire hazard or other hazardous situations

First response to emergency calls when Medix will be delayed  
Suspected cardiac arrest

Need for additional medical help  
Standby for fire hazard, extrication, or other hazardous situation  
Specialized assistance

Medix agrees to respond to any requests for emergency or non-emergency ambulance service as stated in it's contract with the Clatsop County Ambulance Service District.

#### Mutual response

Medix agrees to initiate a request for Astoria Fire Dept. on each EMS call situation which is described in the "Dispatch upon request criteria" section. Medix also agrees to attempt to monitor the application of the "Automatic dispatch criteria" by the 911 dispatcher for the timely dispatch of Astoria and other Clatsop County Fire Depts. to EMS calls. Astoria Fire Dept. agrees to initiate the dispatch of Medix to all EMS calls to which it responds, and assist in the monitoring of mutual response between Medix and other fire depts. dispatched by the Astoria 911 center.

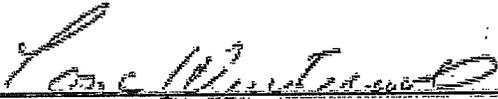
#### Fire Standby

Astoria Fire Dept. agrees to develop and maintain a written protocol with the Astoria 911 center for the standardized dispatch of Medix to all "working" structure fires in the fire district.

Medix

Supplies

Medix agrees to restock all disposable supplies used by Astoria Fire Dept. on any patients Medix crews and/or transports. Restocking is to be done on a call-by-call basis or by a single representative of the Astoria Fire Dept. on a routine and timely basis.



Chief  
Astoria Fire Dept.



President  
Medix Ambulance Service, Inc.

Date 1/3/1990



# City of Astoria **Fire Department**

*Fire / Rescue / EMS / Prevention*

555 30<sup>th</sup> Street  
Astoria, OR 97103

Phone: (503) 325-2345  
Fax: (503) 325-2346



## EMERGENCY MEDICAL RESPONSE DISPATCH PROTOCOL

1. All motor vehicle accidents (MVAs) including those reported as non-injury, with the exception of parking lots. ***A parking lot MVA with no injuries or hazards does not require a response from the fire department.***
2. Chest Pain; No Pulse; Cardiac Arrest
3. Difficulty Breathing; Not Breathing; Unconsciousness
4. Burns
5. Drowning or Near Drowning
6. Incidents / Injuries involving Electricity
7. Serious Injury (falls from heights, industrial accidents, etc.)
8. Seizures
9. Diabetic Emergencies
10. Stroke or Possible Stroke; Altered Level of Consciousness
11. Delayed Response by Medix or Request from Medix for Assistance



## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

February 26, 2016

### MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: RENEWAL OF INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF ASTORIA AND THE STATE OF OREGON FOR HAZARDOUS MATERIALS EMERGENCY RESPONSE TEAM SERVICES

### DISCUSSION/ANALYSIS

The City of Astoria Fire Department has provided Regional Hazardous Materials Emergency Response Team (RHMERT) services through an inter-governmental agreement (IGA) with the State of Oregon Office of State Fire Marshal (OSFM) since 1991. This agreement has been renewed every other year, or biennium since then. The attached IGA clearly spells out the responsibilities of the City of Astoria Fire Department and those of the OSFM including cost recovery procedures incurred by the Astoria Fire Department for the 2015-2017 Biennium. Termination of the IGA between the City of Astoria and the Office of State Fire Marshal may be facilitated by mutual consent upon 180 days notice in writing.

There are 13 Regional Hazardous Materials Response Teams located throughout the State of Oregon. The Astoria Fire Department hosts RHMERT-11. Haz-Mat Team 11 is currently composed of 11 members including seven from the Astoria Fire Department; Eric Halverson, Astoria Police Department; Jim Hatcher, Astoria Public Works; Chief Joey Daniels, Seaside Fire & Rescue; and Kurt Donaldson, Knappa Fire District and Clatsop Community College's MERTS Center. Team members meet on a monthly basis at the Astoria Fire Department for training on various topics and procedures associated with response to hazardous materials incidents.

### RECOMMENDATION

Staff recommends that Council approve the Inter-governmental Agreement with the State of Oregon Office of State Fire Marshal for Regional Hazardous Materials Emergency Response Team services for the 2015/2017 Biennium.

By:



Ted Ames, Fire Chief

**INTERGOVERNMENTAL AGREEMENT FOR  
REGIONAL HAZARDOUS MATERIALS EMERGENCY  
RESPONSE TEAM SERVICES**

**Between**

**THE STATE OF OREGON, ACTING BY AND THROUGH ITS  
DEPARTMENT OF STATE POLICE  
ON BEHALF OF ITS  
OFFICE OF STATE FIRE MARSHAL**

**And**

**CITY OF ASTORIA**

**STATE OF OREGON  
Kate Brown, Governor**

**State Fire Marshal**

**July 1, 2015**

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- Exhibit A - Regional Team Primary Response Area Boundary Description
- Exhibit B - Inventory of OSFM-Owned Equipment
- Exhibit C – Funding Available For The Purchase And Maintenance of OSFM-Owned Equipment
- Exhibit D - Specialized Training
- Exhibit E - Medical Surveillance
- Exhibit F – Extraordinary Response Cost Fee Schedule – Part I
- Exhibit G - Extraordinary Response Cost Fee Schedule – Part II
  - Compensation for Contractor’s Response Personnel
    - Non-Officer
    - Officer (Eligible for Overtime)
    - Officer/Salaried (Not Eligible for Overtime)
- Exhibit H - Funding for Contractor Program Outreach
- Exhibit I - Funding for Contractor Sub-Committee And Special Projects Participation
- Exhibit J – Summary: 2015-2017 Biennium Funding Available for Stand-By Costs
- Exhibit K – State Spill Response Revolving Fund

## INTERGOVERNMENTAL AGREEMENT FOR REGIONAL HAZARDOUS MATERIALS EMERGENCY RESPONSE TEAM SERVICES

### General Agreement Information

**Agreement Type:** This Agreement is between the State of Oregon, acting by and through its Department of State Police, for the benefit of its Office of State Fire Marshal (hereinafter "OSFM"), and the City of Astoria (hereinafter "Contractor") for the provision of regional hazardous materials emergency response team services as described herein and authorized under ORS 453.374 to 453.390.

### RECITALS

- A. In order to protect life and property against the dangers of emergencies involving hazardous materials, the State Fire Marshal may assign and make available for use in any county, city or district, any part of a Regional Hazardous Materials Emergency Response Team.
- B. The OSFM desires to enter into this Agreement to establish Contractor as a Regional Hazardous Materials Emergency Response Team, and Contractor desires to be so designated and to enter into this Agreement.

### STANDARD AGREEMENT TERMS AND CONDITIONS

#### 1.0 AGREEMENT TERM.

1.1 This Agreement shall be effective as of July 1, 2015 to June 30, 2017, unless terminated prior in accordance with other provisions of this Agreement.

1.2 Subject to Legislative approval, future Agreements will be awarded on a biennial basis.

#### 2.0 DEFINITIONS.

**"Agreement"** means this Intergovernmental Agreement, all attachments and exhibits hereto, and any future amendments.

**"Automatic Response"** means the authority to respond to any incident beyond the capabilities of local responders without approval prior to team response by the OSFM Duty Officer. Incident must involve a hazardous spill, leak, explosion, or injury, or potential thereof, with immediate threat to life, environment, or property.

**"Clean-up"** means the measures taken after Emergency Response to permanently remove the hazard from the incident site.

**"Contractor"** means the local government agency(s) by which the service or services will be performed under this Agreement, including those agencies under an approved inter-governmental or interagency agreement.

**"Emergency Response"** has the meaning as defined in OAR 837-120-0010(5), and includes those actions and services set out in OAR 837-120-0020(3).

**"Emergency Response Costs"** means the total Emergency Response expense, including team response costs, arising from a hazardous materials emergency. Such costs generally include, but are not limited to, all OSFM and Contractor expenses that result from the assessment and emergency phases of the response activity. Emergency response costs do not include clean up or disposal costs of hazardous

materials, except, as may be reasonably necessary and incidental to preventing a Release or threat of Release or in stabilizing the Emergency Response incident.

**“Extraordinary Response Costs”** shall mean and is equivalent to “team response costs”. See also OAR 837-120-0090(4).

**“Hazardous Materials”** means "hazardous substance" as that term is defined in ORS 453.307(5).

**“Incident”** means any actual or imminent threat of a Release, or any rupture, fire or accident that results in, or has the potential to result in, the loss or escape of a hazardous material into the environment.

**“Intergovernmental Agreement”** means an agreement between an agency or agencies and one or more units of local government of the State of Oregon.

**“Local Government Agency”** means a city, county, special district or subdivision thereof.

**“Oregon-OSHA”** means the Oregon Occupational Safety and Health Act as administered by the Occupational Safety and Health Division of the Department of Insurance and Finance.

**“ORS”** means Oregon Revised Statutes.

**“OSFM-Owned Equipment”** means all vehicles, equipment, and supplies loaned to RHMERTs as described in this Agreement and listed in Exhibit B.

**“Primary Response Area”** means that geographical region where the Contractor is principally responsible for providing regional Hazardous Materials Emergency Response services.

**“Regional Hazardous Materials Emergency Response Team” (RHMERT)** means the designated members of the Contractor who are expected to respond to, control, or stabilize actual or potential emergency releases of hazardous substances. A RHMERT operates within the limits discussed in Oregon-OSHA's OAR 437, Division 2, which is incorporated herein by this reference.

**“Release”** shall have the same meaning as that in ORS 465.200(22).

**“Responsible Person”** means the person or persons responsible for causing the emergency to which the Contractor responded. (See, e.g. ORS 453.382).

**“RHMERT Operations”** means Emergency Response operations conducted by the Contractor.

**“RHMERT Operations Rehabilitation Costs”** means the cost of providing rehydration and food for RHMERT team members during RHMERT Operations.

**“Stand-By Activities”** means Contractor's activities associated with specialized training, medical surveillance, and routine maintenance for vehicles and equipment.

**“Stand-By Costs”** means Contractor's costs associated with specialized training costs, medical surveillance costs, and vehicles and equipment loans, as provided in Section 4.1 of this Agreement.

**“State”** means the State of Oregon acting by and through the Department of State Police for the benefit of its Office of State Fire Marshal.

**“State Spill Response Revolving Fund”** means the revolving fund established under ORS 453.390.

**“Teams Advisory Group”** means a group consisting of one appointed member from each RHMERT, who provide technical advice to the State Fire Marshal on equipment, vehicles, operating guidelines and similar operational issues.

**“Team Response Costs”** means those Contractor expenses which are directly related to RHMERT Operations, are expressly allowed under this Agreement, and are approved by the OSFM. “Team response costs” are equivalent to “extraordinary response costs”. See also OAR 837-120-0090(4).

### **3.0 STATEMENT OF WORK.**

#### **3.1 SERVICES TO BE PROVIDED BY CONTRACTOR.**

- 3.1.1 During the term of this Agreement the Contractor agrees to provide RHMERT emergency response services within the boundaries of Contractor’s assigned Primary Response Area as generally depicted and described in "Exhibit A", Regional Team Primary Response Area Boundary Description, and by this reference incorporated herein. Contractor is hereby designated "HM 11".
- 3.1.2 Contractor response activities under this Agreement shall be limited to emergency operations, reporting and documentation activities arising from a Hazardous Materials Emergency Response as authorized by this Agreement, ORS 453.374 to 453.390, and OAR Chapter 837 Division 120.
- 3.1.3 Contractor shall not provide the following services as part of this Agreement, except where may be reasonably necessary to prevent a Release or threat of Release, or as required to stabilize an Incident:
- sampling,
  - testing and analysis,
  - treatment,
  - removal,
  - remediation,
  - recovery,
  - packaging,
  - monitoring,
  - transportation,
  - movement of hazardous materials,
  - cleanup,
  - storage, or
  - disposal of hazardous materials.
- 3.1.4 Contractor shall not provide the following services at or near the emergency response Incident to which the Contractor is dispatched:
- maintain general security or safety perimeters at or near sites and vessels,
  - locate underground utilities,
  - ensure appropriate traffic control services,
  - conduct hydrological investigations or analysis, or
  - provide testing, removal and disposal of underground storage tanks
- 3.1.5 Contractor shall make no representation(s) or warranty(s) to third parties with regard to the ultimate outcome of the hazardous materials services to be provided, but shall respond to the best of its abilities, subject to the terms of this Agreement.

3.1.6 Contractor personnel shall perform only those actions and duties for which they are trained and equipped.

**3.2 COMPLIANCE WITH REGULATORY REQUIREMENTS.** Contractor certifies that its employees, equipment, and vehicles meet or exceed applicable regulatory requirements. Contractor further agrees that all OSFM Owned Equipment in Exhibit B shall be maintained by the Contractor to meet or exceed all applicable regulatory requirements.

**3.3 PERSONNEL.**

3.3.1 Contractor shall provide an adequate number of trained, medically monitored, competent, and supervised RHMERT personnel as is necessary to operate within the safety levels of a RHMERT as specified in OR-OSHA's OAR 437, Division 2. Contractor shall limit its team activities to that within the safety and training levels specified by Oregon-OSHA for a Hazardous Materials response team.

3.3.2 To document training and experience Contractor shall ensure its team members complete the tasks in the Hazardous Material Technician Task Book within the established 24 month period. The established 24 month period consists of portions of two Task Book Cycles; continuation of the current Task Book cycle ending on December 31, 2015 and the cycle running January 1, 2016 through December 31, 2017.

3.3.3 Contractor shall submit annually the Task Book reporting form to the OSFM no later than 10<sup>th</sup> of January of each year.

**3.4 VEHICLES AND EQUIPMENT.**

3.4.1 Use of OSFM-Owned Equipment.

- i. The Contractor shall operate a RHMERT using the OSFM-Owned Equipment specified in Exhibit "B" of this Agreement.
- ii. Contractor shall limit its activities to that which can be safely accomplished within the technical limitations of the OSFM-Owned Equipment and vehicles and equipment provided to the Contractor.
- iii. Contractor shall at all times use equipment with reasonable and diligent care taking into consideration the type of equipment and its intended use. Contractor shall at all times use the equipment in accordance with all OSFM Standard Operating Guidelines (SOGs), available on the OSFM website.

3.4.2 Routine Maintenance/Physical Damage/Repairs.

- i. Routine Maintenance: The Contractor is responsible for all routine maintenance of OSFM-Owned Equipment. For purposes of this Agreement, routine maintenance means:
  - a. Daily, weekly, and monthly checks of vehicles and equipment.
  - b. Semiannual or mileage-related lubrication, oil and filter changes for vehicles and equipment.
  - c. Annual tune-up of vehicles and equipment as required for preventive maintenance.
  - d. Equipment checks and testing as outlined in the Oregon-OSHA standards and manufacturer's recommendations.
  - e. Personal Protective Equipment (PPE) to be tested as per Oregon-OSHA standards and manufacturer's recommendations.

- f. Communications equipment checked regularly.
  - ii. Physical Damage and Repairs: Contractor and OSFM each bear responsibility for loss and repair of physical damage to OSFM-Owned Equipment as follows:
    - a. Excluding ordinary wear and tear, when Contractor uses OSFM-Owned Equipment for purposes not authorized under this Agreement and ORS 453.374 to 453.390, including assistance to local government entities at events not meeting OSFM-authorized response criteria, Contractor is responsible for any physical damage to or loss of such OSFM-Owned Equipment, regardless of fault.
    - b. When Contractor uses OSFM-Owned Equipment for purposes authorized under this Agreement and ORS 453.374 to 453.390, including performance of routine maintenance, the OSFM is responsible for physical damage to or loss of OSFM-Owned Equipment, except that if such damage or loss is caused by the negligence or willful misconduct of Contractor, Contractor is liable for the damage or loss. OSFM's responsibility for physical damage or loss of OSFM-Owned Equipment is subject to the limitations and conditions of the Oregon Risk Management Division Policy 125-7-101 (Property Self-Insurance Policy Manual) Article XI, Section 7 of the Oregon Constitution, ORS 30.260 to 30.300 (Oregon Tort Claims Act), and the terms of this agreement.
    - c. Contractor is liable for all damage or loss caused by abuse or neglect of OSFM-Owned Equipment, including when used for purposes authorized under this Agreement and ORS 453.374 to 453.390.
- 3.4.3 The Contractor may use the OSFM-Owned Equipment provided in this Agreement in conjunction with non-Emergency Response activities, however the OSFM-Owned Equipment shall at all times be immediately available for Emergency Response having highest priority. Use of OSFM-Owned Equipment for non-Emergency Response activities is not a reimbursable expense by OSFM. In addition, use of OSFM-Owned Equipment for non-Emergency Response activities shall follow Contractor's established guidelines and policies for daily operations. OSFM-Owned Equipment shall not be used by anyone other than Contractor members, except as approved by OSFM.
- 3.4.4 Contractor shall submit monthly a vehicle usage log to the OSFM no later than the 10<sup>th</sup> of the following month. Contractor shall record the beginning and ending mileage for each trip, regardless of the activity; i.e., whether it is Emergency Response, training, maintenance, or any other activity.
- 3.4.5 Contractor shall not agree in writing or otherwise with other local government entities to provide the OSFM-Owned Equipment to assist those entities at events not meeting Emergency Response criteria unless OSFM also is a party to that agreement.
- 3.5 RIGHT OF REFUSAL.** The OSFM recognizes that the obligations of the Contractor in its own jurisdiction are paramount. If, on occasion, an Emergency Response under this Agreement would temporarily place an undue burden on the Contractor because Contractor resources are limited or unavailable within the Contractor Primary Response Area, and if prior or immediate notice has been provided to the OSFM Duty Officer, the Contractor may decline a request for an Emergency Response.

However, if the Contractor declines a request for an Emergency Response, the Contractor shall ensure the OSFM-Owned Equipment remains available for OSFM's use in this instance.

**3.6 STANDARD OPERATING GUIDELINES.** Contractor and OSFM agree that RHMERT operations shall be conducted in accordance with the OSFM's Standard Operating Guidelines as reviewed and recommended by the Teams Advisory Group and as mutually approved by the parties to this Agreement.

**3.7 ADMINISTRATIVE RULES.** The parties acknowledge that the OSFM has adopted OAR Chapter 837, Division 120, and Contractor agrees to comply with those administrative rules and ORS 453.374 to 453.390. If those rules relevant to this agreement are amended, such amendments shall be incorporated into this Agreement by written amendment and may require modification of the procedures, terms and conditions of this Agreement.

#### **4.0 CONTRACTOR COMPENSATION.**

There are two types of Contractor compensation under this Agreement: (1) Contractor Stand-By Costs, and (2) Contractor Team Response Costs. Each of these is discussed more fully below.

**4.1 CONTRACTOR STAND-BY COSTS.** Contractor shall be compensated by the OSFM under this Agreement for its OSFM-approved stand-by costs as provided herein. Such Stand-By Costs include:

- 4.1.1 **Specialized Training Costs.** The OSFM will provide funding for advanced training and education to Contractor RHMERT employees as specified in Exhibit "D" if approved by the OSFM in advance. All such training and selection of training or training providers must comply with all federal, state and local rules and regulations. If training is approved, the OSFM agrees to pay the cost of tuition, per diem, and travel expenses at OSFM-approved rates. With prior approval by the OSFM, one hundred percent of the funding specified in Exhibit "D" may be used to reimburse personnel costs incurred by employees attending specialized training.
- 4.1.2 **Medical Surveillance.** The OSFM will provide funding for baseline, maintenance and exit physicals for Contractor RHMERT employees as specified in Exhibit "E" of this Agreement. Cost will be based on competitive bid for the protocols covered in the OSFM Hazardous Materials Emergency Response Team Standard Operating Guideline T-015. Selection of health care provider must comply with all federal, state and local rules and regulations.
- 4.1.3 **Vehicle(s) and Equipment Loans.** The OSFM agrees to loan the Contractor the OSFM-Owned Equipment specified in Exhibit "B" of this Agreement. The parties agree that items of OSFM-Owned equipment may be added to or removed from the list in Exhibit B without requiring amendment of this agreement, but only if each change is mutually agreed to in writing by all parties. Funding available for the OSFM to purchase and maintain OSFM-Owned Equipment is specified in Exhibit "C" of this Agreement. Replacement of OSFM-owned capital equipment, expendable items, PPE, and other equipment will be provided as necessary by prior approval of OSFM, pursuant to Section 3.4 and OSFM's approved purchasing process.
  - a. Contractor shall be exclusively responsible for its selection of such replacement PPE suits, suit types or models to meet its own specific needs. The OSFM encourages contractor to follow the recommendation of the HazMat Equipment Committee for the selection of PPE suits, however the OSFM shall have no involvement in, no responsibility or liability whatsoever arising out of Contractor's choice of PPE suits, their safety, reliability, testing of the PPE suits, or their maintenance.

- b. OSFM-Owned PPE suits shall be procured according to the procedure established in Standard Operating Guideline T021, all applicable provisions of ORS chapters 279A and 279B, and Contractor's own procurement ordinances, codes, rules and regulations.

4.1.4 Contractor Stand-by Costs are not chargeable to a Responsible Person, but are reimbursed to the Contractor by the OSFM as provided in this Agreement, with the exception of the vehicle and equipment loans described in paragraph 4.1.3, for which Contactor is not reimbursed.

#### **4.2 CONTRACTOR'S TEAM RESPONSE COSTS.**

4.2.1 Contractor shall be compensated by the OSFM under this Agreement for certain OSFM-approved team response costs. Team response costs are the equivalent of "extraordinary response costs". The total funding available for team response costs as specified in Exhibit "K" of this Agreement is in addition to Contractor Stand-By Costs specified in section 4.1. Compensation of such team response costs shall be limited by the funds available in the State Spill Response Revolving Fund established under ORS 453.390 for the 2015-2017 biennium. Such Team response costs may include, but are not limited to:

- i. Compensation for use of Contractor-owned Materials, Vehicle(s) and Apparatus:
  - a. OSFM shall compensate contractor for OSFM-approved replacement of Contractor-owned materials and supplies expended or destroyed during a hazardous materials emergency response undertaken pursuant to this Agreement at the rates set forth in Section 1 of Exhibit "F" of this agreement.
  - b. Where the OSFM has approved the use of Contractor-owned vehicles and equipment, OSFM shall compensate Contractor at the rates described in Section 1 of Exhibit "F" of this Agreement.
  - c. Level A/B Personal Protective Equipment (PPE). If Contractor-owned PPE is severely damaged or destroyed during an authorized hazardous materials emergency response undertaken pursuant to this Agreement, OSFM shall reimburse Contractor for replacement of such PPE at the rates described in Section 1 of Exhibit "F" of this Agreement, provided, however, that the OSFM will only pay reimbursement for replacement PPE that meet or exceed all applicable regulatory requirements and National Fire Protection Association guidelines.
    - 1. .... Contractor shall be exclusively responsible for its selection of such replacement PPE suits, suit types or models to meet its own specific needs. The OSFM shall have no involvement in, and no responsibility or liability whatsoever arising out of Contractor's choice of PPE suits, their safety, reliability, testing of the PPE suits, or their maintenance.
    - 2. Contractor shall comply with all applicable public procurement laws, including the applicable provisions of ORS chapters 279A and 279B and Contractor's own procurement ordinances, codes, rules and regulations, in the solicitation of and contracting for the acquisition of the PPE suits.
- ii. Compensation for Contractor Personnel Response Costs: Contractor RHMERT personnel response costs that are approved and authorized under this Agreement are compensable at the rates described in Exhibit "G". Hourly personnel rates for the 2015-2017 biennium shall be calculated as follows:

##### **A. Base Hourly Rate/Non-officer**

Regional Hazardous Material Emergency Response Team Agreement – HM-11

1. Base Hourly Rate/Non-Officer/Straight Time is calculated at the base hourly rate for the highest paid, technician trained team member at this rank who is not an officer
  2. Base Hourly Rate/Non-Officer/Overtime shall be calculated at the hourly overtime rate, plus benefits, for the highest paid, technician trained team member who is not an officer
- B. Base Hourly Rate/Officer (eligible for overtime)
1. Base Hourly Rate/Officer/Straight Time is calculated at the base hourly rate for the highest paid, technician trained team member at this rank who is an officer .
  2. Base Hourly Rate/Officer/Overtime shall be calculated at the overtime rate, plus benefits for the highest paid, technician trained officer on the team.
- C. Base Hourly Rate/Salaried Officer (not eligible for overtime) - shall be calculated at the salary rate, plus benefits, of the highest paid, technician trained officer on the team.
- D. OSFM and Contractor understand that the base hourly rate of non-officers, officers, and salaried officers referred to in this section is subject to change pursuant to any collective bargaining agreement entered into between Contractor and Contractor's employees. It is the intent of OSFM and Contractor that if, during the term of this Agreement, the base hourly rate of Contractor's employees for non-officers, officers, or salaried officers changes due to a change in a collective bargaining agreement between Contractor and Contractor's employees, that on the date those changes become effective under a collective bargaining agreement, those changes will be incorporated in this Agreement by formally amending this Agreement in writing, and shall be used for purposes of calculating compensation for Contractor's Personnel Response Costs only after the effective date of the Amendment. Notwithstanding any retroactive payment provision contained in a collective bargaining agreement, the Contractor's Personnel Response Costs shall be calculated and reimbursed at the hourly rate set forth in the version of this Agreement which was in effect at the time the Contractor commenced the hazardous materials emergency response.
- E. A Response Availability Rate of \$15.5788 shall be added to each base hourly rate to determine the total hourly personnel response rate for each category. Contractor shall be required to document total hourly personnel response rates for each category utilizing the form provided by OSFM. That documentation is entered into this Agreement as Exhibit G. Contractor RHMERT personnel response costs shall be billed to the nearest one-fourth (1/4) hour period worked.
- iii. Emergency Expenses: Contractor's other necessary and reasonable Emergency Response costs related to services rendered under this Agreement are reimbursable at the rates described in Exhibit "F" of this agreement. All such costs must be based on actual expenditures and documented by the Contractor. Original receipts must be submitted with the response billing. Emergency Response purchases of up to \$100 per Emergency Response Incident may be made at the Contractor's discretion without prior approval by the OSFM. The Team Leader or authorized Contractor representative shall attempt to contact the OSFM Duty Officer for prior approval of Contractor emergency expenses exceeding \$100. Contractor claims for reimbursement must clearly document the nature of the purchases and

extent of the OSFM prior verbal approval of Contractor emergency expenditures. The OSFM reserves the right to deny any payment of unjustifiable Contractor expenditures.

A. Exposure exams resulting from a RHMERT Operations response will be included in the Contractor's team response costs to be billed to the responsible person and reimbursed by the OSFM. Where no responsible person is identified, reimbursement to the Contractor will be provided out of the State Spill Response Revolving Fund.

- 4.2.2 In addition to the compensable team response costs set forth in 4.2.1, Contractor's emergency response may also incur certain team response costs for which Contractor shall not be compensated by OSFM, set forth in Section 2 of Exhibit F. Contractor shall not be reimbursed for Contractor's use of OSFM-owned vehicles, equipment, and supplies, or for expenditures made by OSFM.
- 4.2.3 Team response costs may be charged to a Responsible Person.

#### **4.3 BILLING SYSTEM.**

- 4.3.1 Contractor must notify the OSFM's Emergency Response Unit within 24 hours of an Emergency Response. The OSFM will assign an Incident number to the response at that time. Contractor shall leave a voice-mail message if Contractor notification is made after business hours. OSFM will return a call to the Contractor the next business day. Contractor shall provide an estimate of Team Response Costs to the OSFM within 10 working days of the Emergency Response. Contractor shall submit an expenditure report and invoice to the OSFM within 30 days of the Emergency Response. Contractor shall submit its claim for reimbursement on OSFM approved forms and the claim must contain such documentation as is necessary to support OSFM cost-recovery operations and financial audits.
- 4.3.2 The OSFM may bill the Responsible Person within 30 days of receipt of Contractor invoice. The OSFM may bill Responsible Person(s) for the Emergency Response Costs, including Team Response Costs. Normally Contractor team response costs are collected by the OSFM from the Responsible Person prior to making payment to the Contractor. When payment has not been received by the OSFM within 30 days after the second billing to the Responsible Person, the Contractor's OSFM approved compensable Team Response Costs will be paid to the Contractor from the State Spill Response Revolving Fund. In no case shall the OSFM payment to the Contractor exceed 90 days after receipt of an acceptable Contractor invoice by OSFM; i.e., one that meets the requirements of 4.3.
- 4.3.3 Billing for OSFM-Owned Equipment. OSFM shall bill the Responsible Person(s) for Contractor's use of OSFM-owned equipment during emergency response activities, including responses to incidents within the Contractor's local jurisdiction, at the rates set forth in Exhibit F. The OSFM will prepare a statement for OSFM-Owned Equipment used and the OSFM will forward the statement to the identified Responsible Person any time OSFM-Owned Equipment is used for an Emergency Response.
- 4.3.4 Option for Waiver. The Contractor shall have the option of requesting a waiver of OSFM-Owned Equipment charges for response to any public agency within the jurisdictional boundaries of the Contractor. In addition, the Contractor may request a waiver of charges when there are extenuating circumstances, which would preclude a billing to the responsible person. Requests for waiver are subject to review and approval by the OSFM.

- 4.3.5 Priority of Reimbursements. If the OSFM successfully recovers payment from the Responsible Person, the monies shall first be used to pay the Contractor Team Response Costs, if these costs have not been paid in their entirety; then the monies will be used to reimburse the State Spill Response Revolving Fund for the amount previously paid to the Contractor and the OSFM. Any remaining funds will be used to pay Emergency Response Costs as billed. Contractor agrees to cooperate with the OSFM as is reasonable and necessary in order to bill Responsible Persons or parties and pursue cost recovery actions.
- 4.3.6 If a disputed billing is resolved in favor of the Responsible Person or party then the Contractor shall not be required to reimburse the OSFM for payments previously made.
- 4.4 INTEREST.** If the OSFM fails to make timely payments to Contractor as described in 4.3.2, interest shall be paid to Contractor by the OSFM on amounts past due at the rate of interest specified in ORS 293.462(3). Interest payments will be made only if Emergency Response Costs are invoiced by the Contractor on OSFM-approved forms and Responsible Person information supplied by the Contractor is correct to the best of the Contractor's knowledge or belief.
- 4.5 STATE FUNDING AVAILABLE.**
- 4.5.1 The OSFM has sufficient funds currently available and authorized for expenditure to finance the costs of the Agreement within the OSFM's 2015-2017 biennial appropriation or limitation. Contractor understand and agrees that the OSFM's payment of amounts under this Agreement attributable to work performed after the last day of the current biennium is contingent upon the OSFM receiving from the Oregon Legislative Assembly appropriations, limitations, or other expenditure authority sufficient to allow the OSFM, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.
- 4.5.2 State funding for Stand-By Costs available under this Agreement for the 2015-2017 biennium shall be the sum of the amounts specified in exhibits C, D, E, H and I to this Agreement and are summarized in Exhibit J of this Agreement.
- 4.5.3 The funding available as specified in Exhibits C, D, E, H and I to this Agreement does not include Contractor team response costs as specified in Section 4.2. Such team response costs are available in addition to Contractor Stand-By Costs and shall be limited by the funds available in the State's Spill Response Revolving Fund established under ORS 453.390 for the 2015-2017 biennium, by the limitations described in ORS 453.382 and 453.390 and as identified in Exhibit K, State Spill Response Revolving Fund, to this Agreement.
- 4.5.4 Additional Contractor compensation shall be paid under this Agreement only if specifically agreed to by the OSFM and the Contractor in writing, but the funds used shall not be provided under ORS 453.390.
- 4.5.5 OSFM payments under the terms of this Agreement shall be considered full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work authorized under this Agreement.
- 4.5.6 Acceptance of payment by the Contractor shall relieve the OSFM from all claims by Contractor for reimbursement of Team Response Costs and Stand-by Costs except where partial payment has been made due to limitations of the State's Spill Response Revolving Fund and subject to further payment as set forth above.

**4.6 PRIOR APPROVAL.** Contractor may not respond under this Agreement without prior written or verbal approval by OSFM as set forth in Section 4.7. Granting of response approval by the OSFM Duty Officer constitutes the OSFM agreement to pay Contractor its compensable Team Response Costs incurred in accordance with this agreement from the State Spill Response Revolving Fund if recovery from a Responsible Person or party is not obtained in a timely manner. Contractor agrees to make reasonable and good faith efforts to minimize Responsible Person and OSFM expenses.

**4.7 RESPONSE PROCEDURES AND LIMITATIONS; AUTOMATIC RESPONSE.**

4.7.1 If the Contractor has received state authority for automatic response, Contractor may, upon receipt of an Emergency Response request, provide Emergency Response services as specified under the terms of this Agreement and the OSFM's Standard Operating Guidelines, which is incorporated herein by this reference, and may be found on the OSFM's website. Contractor shall immediately thereafter notify the OSFM Duty Officer.

4.7.2 If the Contractor has *not* received state authority for automatic response or if the Emergency Response request does not meet the Standard Operating Guideline criteria, the Contractor shall refer the response request to the OSFM Duty Officer who will evaluate the situation and either authorize the Contractor response or decline the response request.

**4.8 STATE SPILL RESPONSE REVOLVING FUND.**

4.8.1 If the State Spill Response Revolving Fund becomes depleted or fiscally unsound, the OSFM shall immediately notify Contractor, who may upon receipt of such notice suspend response actions under this Agreement.

4.8.2 For purposes of this section, "fiscally unsound" shall mean the balance in the State Spill Response Revolving Fund is less than \$20,000, and "immediately" shall mean within twelve (12) hours of a Contractor receiving the emergency response request, which reduces the fund below the \$20,000 threshold.

4.8.3 If Contractor commences an emergency response action subsequent to notification of fiscally unsound State Spill Response Revolving Fund balance, Contractor assumes the risk of non-payment if the OSFM is unable to obtain additional funding for the State Spill Response Revolving Fund, recover the Contractor team emergency response costs from a Responsible Person, or if there is no identifiable Responsible Person. Contractor shall immediately notify the OSFM Duty Officer of all emergency response activities undertaken pursuant to this Agreement.

4.8.4 If, after becoming depleted or fiscally unsound, additional funds become available in the State Spill Response Revolving Fund and Contractor has billed the OSFM as set forth in Section 4.3, the OSFM shall reimburse the Contractor for unpaid Team Response Costs to the extent funds are available and authorized under this agreement.

**5.0 WHERE NO RESPONSIBLE PERSON CAN BE IDENTIFIED.**

As provided in Section 4 and ORS 453.382, OSFM agrees to bill the person responsible for causing the hazardous materials emergency for total emergency response costs. Where there is no identifiable responsible person, or if the responsible person or party is unable to pay, the OSFM agrees to pay Contractor its compensable team response costs from the State Spill Response Revolving Fund provided funds are available and Contractor has complied with Section 4 herein.

**6.0 CONTRACTOR STATUS.**

Contractor certifies it is not an employee of the State of Oregon and is a local government agency or agencies.

**7.0 RETIREMENT SYSTEM STATUS, SOCIAL SECURITY, WORKERS COMPENSATION.**

Contractor is not entitled under this Agreement to any Public Employees Retirement System benefits and is responsible for payment of any applicable federal or State taxes. Contractor is not entitled under this Agreement to any benefits for payments of federal Social Security, employment insurance, or workers' compensation from the State of Oregon.

**8.0 ASSIGNMENTS; SUBCONTRACTS.**

Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Agreement, in whole or in part, without the prior written approval of the OSFM. Such written approval will not relieve Contractor of any obligations under this Agreement. Except where the OSFM expressly approves otherwise, Contractor shall remain liable as between the original parties to this Agreement as if no such assignment had occurred.

**9.0 SUCCESSORS IN INTEREST.**

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective successors and assigns.

**10.0 COMPLIANCE WITH GOVERNMENT REGULATIONS.**

Contractor agrees to comply with federal, state and local laws, codes, regulations and ordinances applicable to the work performed under this Agreement including, but not limited to, OAR 437-002-0100(18) (Hazardous waste operations and emergency response), which adopts 29 CFR 1910.120 (amended 2/8/13, FR vol. 78, no. 27, p. 9311).

**11.0 FORCE MAJEURE.**

Neither party to this Agreement shall be held responsible for delay or default caused by fire, riots, acts of God, or war, which is beyond that party's reasonable control. OSFM or Contractor may terminate this Agreement upon written notice after determining such delay or default will reasonably prevent performance of the Agreement.

**12.0 INDEMNIFICATION, CONTRIBUTION, SCOPE OF LIABILITY.**

**12.1 ACTIVITIES AUTHORIZED UNDER ORS 453.374 – 453.390:**

12.1.1 CONTRACTOR'S RHMERT MEMBERS: AS PROVIDED IN ORS 453.384, DURING EMERGENCY RESPONSE OPERATIONS UNDER ORS 453.374 TO 453.390 PURSUANT TO THIS AGREEMENT, THE STATE OF OREGON, BY AND THROUGH THE DEPARTMENT OF STATE POLICE, OFFICE OF STATE FIRE MARSHAL, SHALL PROTECT AND DEFEND CONTRACTOR'S RHMERT MEMBERS FROM LIABILITY UNDER ORS 30.260 TO 30.300 (OREGON TORT CLAIMS ACT). AS USED IN THIS SECTION, "OPERATIONS" MEAN ACTIVITIES DIRECTLY RELATED TO A PARTICULAR EMERGENCY RESPONSE INVOLVING A HAZARDOUS MATERIAL BY A RHMERT AS PROVIDED FOR UNDER THIS AGREEMENT. "OPERATIONS" ALSO INCLUDE ADVANCED TRAINING ACTIVITIES PROVIDED TO THE CONTRACTOR'S RHMERT MEMBERS AS PROVIDED FOR UNDER THIS AGREEMENT, BUT DO NOT INCLUDE TRAVEL TO AND FROM SUCH TRAINING.

12.1.2 CONTRACTOR: EXCEPT AS OTHERWISE PROVIDED UNDER PARAGRAPHS 12.1.1, 12.2, AND 3.4.2, AND AS PROVIDED IN SECTION 12.3 REGARDING THIRD PARTY CLAIMS, THE OSFM AND CONTRACTOR SHALL EACH BE RESPONSIBLE, TO THE EXTENT PERMITTED BY THE OREGON TORT CLAIMS ACT (ORS 30.260 THROUGH 30.300) AND THE OREGON CONSTITUTION (INCLUDING BUT NOT LIMITED TO ARTICLE XI, SECTION 7), FOR ANY LEGAL LIABILITY, LOSS, DAMAGES, COSTS AND EXPENSES ARISING IN FAVOR OF ANY PERSON, ON ACCOUNT OF PERSONAL INJURIES, DEATH, OR PROPERTY LOSS OR DAMAGE OCCURRING, GROWING OUT OF, INCIDENT TO OR RESULTING DIRECTLY FROM THEIR RESPECTIVE ACTS OR OMISSIONS UNDER THIS AGREEMENT.

**12.2 ACTIVITIES NOT AUTHORIZED UNDER ORS 453.374 - 453.390:** WHEN CONTRACTOR USES OSFM-OWNED EQUIPMENT OR STATE PROCEDURES OR TRAINING FOR ANY ACTION NOT AUTHORIZED UNDER ORS 453.374 TO 453.390 OR THIS AGREEMENT, THE CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE STATE, ITS OFFICERS, DIVISIONS, AGENTS, EMPLOYEES, AND MEMBERS, FROM ALL CLAIMS, SUITS OR ACTIONS OF ANY NATURE ARISING OUT OF THE ACTIVITIES OR OMISSIONS OF CONTRACTOR, ITS OFFICERS, SUBCONTRACTORS, AGENTS OR EMPLOYEES, SUBJECT TO THE OREGON TORT CLAIMS ACT, ORS 30.260 TO 30.300, AND THE OREGON CONSTITUTION.

**12.3 THIRD PARTY CLAIMS:**

12.3.1 IF ANY THIRD PARTY MAKES ANY CLAIM OR BRINGS ANY ACTION, SUIT OR PROCEEDING ALLEGING A TORT AS NOW OR HEREAFTER DEFINED IN ORS 30.260 ("THIRD PARTY CLAIM") AGAINST A PARTY (THE "NOTIFIED PARTY") WITH RESPECT TO WHICH THE OTHER PARTY ("OTHER PARTY") MAY HAVE LIABILITY, THE NOTIFIED PARTY MUST PROMPTLY NOTIFY THE OTHER PARTY IN WRITING OF THE THIRD PARTY CLAIM AND DELIVER TO THE OTHER PARTY A COPY OF THE CLAIM, PROCESS, AND ALL LEGAL PLEADINGS WITH RESPECT TO THE THIRD PARTY CLAIM. EITHER PARTY IS ENTITLED TO PARTICIPATE IN THE DEFENSE OF A THIRD PARTY CLAIM, AND TO DEFEND A THIRD PARTY CLAIM WITH COUNSEL OF ITS OWN CHOOSING. RECEIPT BY THE OTHER PARTY OF THE NOTICE AND COPIES REQUIRED IN THIS PARAGRAPH AND MEANINGFUL OPPORTUNITY FOR THE OTHER PARTY TO PARTICIPATE IN THE INVESTIGATION, DEFENSE AND SETTLEMENT OF THE THIRD PARTY CLAIM WITH COUNSEL OF ITS OWN CHOOSING ARE CONDITIONS PRECEDENT TO THE OTHER PARTY'S LIABILITY WITH RESPECT TO THE THIRD PARTY CLAIM.

12.3.2 EXCEPT AS OTHERWISE PROVIDED IN SECTIONS 12.1.1 AND 12.2, WITH RESPECT TO A THIRD PARTY CLAIM FOR WHICH THE STATE IS JOINTLY LIABLE WITH THE CONTRACTOR (OR WOULD BE IF JOINED IN THE THIRD PARTY CLAIM ), THE STATE SHALL CONTRIBUTE TO THE AMOUNT OF EXPENSES (INCLUDING ATTORNEYS' FEES), JUDGMENTS, FINES AND AMOUNTS PAID IN SETTLEMENT ACTUALLY AND REASONABLY INCURRED AND PAID OR PAYABLE BY THE CONTRACTOR IN SUCH PROPORTION AS IS APPROPRIATE TO REFLECT THE RELATIVE FAULT OF THE STATE ON THE ONE HAND AND OF THE CONTRACTOR ON THE OTHER HAND IN CONNECTION WITH THE EVENTS WHICH RESULTED IN SUCH EXPENSES, JUDGMENTS, FINES OR SETTLEMENT AMOUNTS, AS WELL AS ANY OTHER RELEVANT EQUITABLE CONSIDERATIONS. THE RELATIVE FAULT OF THE STATE ON THE ONE HAND AND OF THE CONTRACTOR ON THE OTHER HAND SHALL BE DETERMINED BY REFERENCE TO, AMONG OTHER THINGS, THE PARTIES' RELATIVE INTENT, KNOWLEDGE, ACCESS TO INFORMATION AND OPPORTUNITY TO CORRECT OR PREVENT THE CIRCUMSTANCES RESULTING IN SUCH EXPENSES, JUDGMENTS, FINES OR SETTLEMENT AMOUNTS. THE STATE'S CONTRIBUTION AMOUNT IN ANY INSTANCE IS CAPPED TO THE SAME EXTENT IT WOULD HAVE BEEN CAPPED UNDER OREGON LAW IF THE STATE HAD SOLE LIABILITY IN THE PROCEEDING.

12.3.3 EXCEPT AS OTHERWISE PROVIDED IN SECTIONS 12.1.1 AND 12.2, WITH RESPECT TO A THIRD

PARTY CLAIM FOR WHICH THE CONTRACTOR IS JOINTLY LIABLE WITH THE STATE (OR WOULD BE IF JOINED IN THE THIRD PARTY CLAIM), THE CONTRACTOR SHALL CONTRIBUTE TO THE AMOUNT OF EXPENSES (INCLUDING ATTORNEYS' FEES), JUDGMENTS, FINES AND AMOUNTS PAID IN SETTLEMENT ACTUALLY AND REASONABLY INCURRED AND PAID OR PAYABLE BY THE STATE IN SUCH PROPORTION AS IS APPROPRIATE TO REFLECT THE RELATIVE FAULT OF THE CONTRACTOR ON THE ONE HAND AND OF THE STATE ON THE OTHER HAND IN CONNECTION WITH THE EVENTS WHICH RESULTED IN SUCH EXPENSES, JUDGMENTS, FINES OR SETTLEMENT AMOUNTS, AS WELL AS ANY OTHER RELEVANT EQUITABLE CONSIDERATIONS. THE RELATIVE FAULT OF THE CONTRACTOR ON THE ONE HAND AND OF THE STATE ON THE OTHER HAND SHALL BE DETERMINED BY REFERENCE TO, AMONG OTHER THINGS, THE PARTIES' RELATIVE INTENT, KNOWLEDGE, ACCESS TO INFORMATION AND OPPORTUNITY TO CORRECT OR PREVENT THE CIRCUMSTANCES RESULTING IN SUCH EXPENSES, JUDGMENTS, FINES OR SETTLEMENT AMOUNTS. THE CONTRACTOR'S CONTRIBUTION AMOUNT IN ANY INSTANCE IS CAPPED TO THE SAME EXTENT IT WOULD HAVE BEEN CAPPED UNDER OREGON LAW IF IT HAD SOLE LIABILITY IN THE PROCEEDING.

**12.4 LIMITATIONS.** Except as provided in Section 3.4, this Agreement in no way limits a Contractor from responding with State owned vehicles, equipment and supplies under local authority, mutual-aid agreements, or other contracts under local authority.

**12.5 NOTIFICATIONS:** Contractor shall immediately report by telephone and in writing any demand, request, or occurrence that reasonably may give rise to a claim against the State. Such reports shall be directed to:

State Fire Marshal Hazardous Materials Duty Officer  
4760 Portland Road NE  
Salem, Oregon 97305  
503-378-3473  
After Business Hours/Holidays: 503-584-2763

Copies of such written reports shall also be sent to:

State Risk Management Division  
1225 Ferry Street SE.  
Salem, Oregon 97310

**13.0 SEVERABILITY.**

If any provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

**14.0 ACCESS TO RECORDS.**

Subject to the state's Public Record Laws, each party to this Agreement, the federal government, and their duly authorized representatives shall have access to the other party's books, documents, investigative reports, papers and records which are directly pertinent to this Agreement for the purpose of making financial, maintenance or regulatory audit. Such records shall be maintained for at least six (6) years, or longer where required by law.

**14.1 CONFIDENTIALITY.**

Except as otherwise provided by law, each party to this Agreement agrees that they shall not in any way, disclose each other's confidential information to a third party. The rights and obligations set forth in this section shall survive termination of the Agreement.

#### **15.0 AMENDMENTS.**

The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of OSFM and Contractor.

#### **16.0 PAYMENT OF CONTRACTOR OBLIGATIONS.**

Contractor agrees to make payment promptly, as due, to all persons furnishing services, equipment or supplies to Contractor. If Contractor fails, neglects, or refuses, to pay any such claims as they become due and for which the OSFM may be held liable, the proper officer(s) representing the OSFM, after ascertaining that the claims are just, due and payable, may, but shall not be required to, pay the claim and charge the amount of the payment against funds due Contractor under this Agreement. The payment of claims in this manner shall not relieve Contractor of any duty with respect to any unpaid claims.

#### **17.0 NON-DISCRIMINATION.**

Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Contractors are encouraged to recruit qualified women and minorities as RHMERT personnel.

#### **18.0 DUAL PAYMENT.**

Contractor shall not be compensated for work performed under this Agreement by any state agency or person(s) responsible for causing a hazardous materials emergency Incident except as approved and authorized under this Agreement.

#### **19.0 PAYMENT FOR MEDICAL CARE.**

Contractor agrees to make payment promptly, as due, to any person, partnership, association or corporation furnishing medical, surgical, hospital or other needed medical care to Contractor employees, except as noted in 4.1.2, Medical Surveillance. Such payment shall be made from all sums, which Contractor has agreed to pay for such services, and from all sums, which Contractor has 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. It is the intent of the parties that this section includes any collective bargaining agreements that the Contractor has entered into with Contractor employees.

#### **20.0 INSURANCE COVERAGE.**

Contractor shall obtain the insurance specified in this section 20 prior to performing under this Agreement and shall maintain it in full force and at its own expense throughout the duration of this Agreement and all warranty periods, if any. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in Oregon and that are acceptable to OSFM.

**20.1 WORKERS' COMPENSATION INSURANCE.** All employers, including Contractor, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Oregon workers' compensation coverage, unless such employers are exempt

under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

**20.2 COMMERCIAL GENERAL LIABILITY.** Contractor's insurance must cover Bodily Injury, Death and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Agreement. Contractor shall provide proof of insurance of not less than the following amounts:

**20.2.1 Bodily Injury/Death: Amounts not less than the amounts listed in the following schedule:**

Combined single limit per occurrence:

July 1, 2015 to June 30, 2016: \$2,048,300

July 1, 2016 and every year thereafter: The adjusted limitation as determined by the State Court Administrator pursuant to Oregon Revised Statute (ORS) 30.271.

Aggregate limit for all claims per occurrence:

July 1, 2015 to June 30, 2016: \$4,096,600

July 1, 2016 and every year thereafter: The adjusted limitation as determined by the State Court Administrator pursuant to Oregon Revised Statute (ORS) 30.271.

**20.2.2 Property Damage: Amounts not less than the amounts listed in the following schedule:**

Combined single limit per occurrence:

July 1, 2015 to June 30, 2016: \$112,000

July 1, 2016 and every year thereafter: The adjusted limitation as determined by the State Court Administrator pursuant to Oregon Revised Statute (ORS) 30.273.

Aggregate limits for all claims per occurrence :

July 1, 2015 to June 30, 2016: \$560,000

July 1, 2016 and every year thereafter: The adjusted limitation as determined by the State Court Administrator pursuant to Oregon Revised Statute (ORS) 30.273.

**20.3 AUTOMOBILE LIABILITY.** This insurance must cover each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable. Contractor shall provide proof of insurance of not less than the following amounts:

**20.3.1 Bodily Injury/Death: Amounts not less than the amounts listed in the following schedule:**

Combined single limit per occurrence:

July 1, 2015 to June 30, 2016: \$2,048,300

July 1, 2016 and every year thereafter: The adjusted limitation as determined by the State Court Administrator pursuant to Oregon Revised Statute (ORS) 30.271.

Aggregate limit for all claims per occurrence:

July 1, 2015 to June 30, 2016: \$4,096,600

July 1, 2016 and every year thereafter: The adjusted limitation as determined by the State Court Administrator pursuant to Oregon Revised Statute (ORS) 30.271.

**20.3.2 Property Damage: Amounts not less than the amounts listed in the following schedule:**

Combined single limit per occurrence:

July 1, 2015 to June 30, 2016: \$112,000

July 1, 2016 and every year thereafter: The adjusted limitation as determined by the State Court Administrator pursuant to Oregon Revised Statute (ORS) 30.273.

Aggregate limits for all claims per occurrence:

July 1, 2015 to June 30, 2016: \$560,000

July 1, 2016 and every year thereafter: The adjusted limitation as determined by the State Court Administrator pursuant to Oregon Revised Statute (ORS) 30.273.

**20.4 "TAIL" COVERAGE.** If any of the required liability insurance is on a "claims made" basis, "tail" coverage is required at the completion or termination of this Agreement for a duration of 24 months, or the maximum time period reasonably available in the marketplace. Contractor shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following Agreement completion or termination. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this Agreement. If Continuous "claims made" coverage is used, Contractor shall be required to keep the coverage in effect for a duration of not less than 24 months from the end of the Agreement. This will be a condition of the final acceptance of work or services.

**20.5 NOTICE OF CANCELLATION OR CHANGE.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days prior written notice from Contractor or its insurer(s) to OSFM.

**20.6 CERTIFICATES OF INSURANCE.** As evidence of the insurance coverage required by this Agreement, Contractor shall furnish acceptable insurance certificates to OSFM prior to commencing performance under this Agreement. The certificates must specify all of the parties who are Additional Insureds. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the State. Contractor shall pay for all deductibles, self-insured retentions and self-insurance.

**20.7 ADDITIONAL INSURED.** The Commercial General Liability and Automobile Liability insurance coverages required under this Agreement shall include the State of Oregon, and its agencies, departments, divisions, commissions, branches, officers, employees, and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

**21.0 GOVERNING LAW; VENUE; CONSENT TO JURISDICTION.**

This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of laws. Any claim, action, suit or proceeding (collectively,

“Claim”) between OSFM (and any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense of immunity, whether it is sovereign immunity or governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. CONTRACTOR, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

## **22.0 TERMINATION.**

- 22.1** This Agreement may be terminated by mutual consent of both parties. This Agreement may be terminated by either party upon 180 days’ notice, in writing, and delivered by certified mail or in person.
- 22.2** The OSFM or Contractor may terminate this Agreement at will effective upon delivery of written notice to the Contractor or OSFM, or at such later date as may be established by the OSFM or Contractor, under any of the following conditions:
- 22.2.1** if OSFM funding from federal, state, or other sources is not obtained or continued at levels sufficient to allow for payment of costs under the terms of this Agreement. As an alternative to termination, the parties may instead agree to modify in writing the Agreement to accommodate a reduction in funding.
  - 22.2.2** if federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or OSFM is no longer eligible for the funding proposed for payments by this Agreement.
  - 22.2.3** if any license or certification required by law or regulation to be held by the Contractor to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- 22.3** Any termination of the Agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.
- 22.4** Default. The OSFM or Contractor, by written notice of default (including breach of contract) to the other party, delivered by certified mail or in person, may terminate the whole or any part of this Agreement:
- 22.4.1** if the other party fails to provide services called for by this Agreement within the time specified herein or any extension thereof; or,
  - 22.4.2** if the other party fails to perform any other provision of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and, after receipt of written notice from the other party, fails to correct such failures within 10 days or such longer period as the notice may authorize.

## **23.0 APPROVAL AUTHORITY.**

Contractor's representative(s) certify by their signature herein that they have the necessary and lawful authority to enter into contracts and Agreements on behalf of the local government entity.

**24.0 INSUFFICIENT FUNDS.**

The obligation of the Contractor under this Agreement is contingent upon the availability and allotment of funds for response costs by the OSFM to Contractor. Contractor may, upon thirty (30) days' prior written notice, terminate this Agreement if funds are not available.

**25.0 WRITTEN NOTIFICATIONS.**

Any written notifications required for the administration of this Agreement shall be sent to the following:

Office of State Fire Marshal  
4760 Portland Rd. NE  
Salem, OR 97305

**26.0 MERGER; WAIVER.**

This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification, or change of terms of this Agreement shall bind all parties unless in writing and signed by both parties and all necessary state approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of OSFM to enforce any provision of this Agreement shall not constitute a waiver by OSFM of that or any other provision.

**27.0 REMEDIES.**

In the event that Contractor violates any term or condition under this Agreement, OSFM shall have all remedies available to it under law, in equity, and under this Agreement.

**28.0 NON-APPROPRIATION.**

The State of Oregon's payment obligations under this Agreement are conditioned upon OSFM receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow OSFM, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. Contractor is not entitled to receive payment under this Agreement from any part of Oregon state government other than OSFM. Nothing in this Agreement is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon.

**29.0 ALTERNATIVE DISPUTE RESOLUTION.**

The parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the effective date shown

in paragraph 1.1 above.

BY EXECUTION OF THIS CONTRACT, EACH PARTY HEREBY ACKNOWLEDGES THAT THEY HAVE READ THIS CONTRACT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

Signatures begin on following page.

**Approving Signatures:**

**On Behalf of the State of Oregon,**

Dated this \_\_\_\_ day of \_\_\_\_\_, 2015

Signature \_\_\_\_\_

Printed Name James Walker

**State Fire Marshal  
4760 Portland Road N.E.  
Salem, OR 97305-1760**

Dated this \_\_\_\_ day of \_\_\_\_\_, 2015

Signature \_\_\_\_\_

Printed Name Joel Lujan

**Major, Gaming & Employee Services Bureau  
Oregon Department of State Police  
255 Capitol Street N.E., Fourth Floor  
Salem, OR 97301**

**On Behalf of City of Astoria**

Dated this \_\_\_\_ day of \_\_\_\_\_, 2015

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ Zip \_\_\_\_\_

**On Behalf of City of Astoria**

Dated this \_\_\_\_ day of \_\_\_\_\_, 2015

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ Zip \_\_\_\_\_

On Behalf of City of Astoria

Dated this \_\_\_\_ day of \_\_\_\_\_, 2015

Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ Zip \_\_\_\_\_

On Behalf of City of Astoria

Dated this \_\_\_\_ day of \_\_\_\_\_, 2015

Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ Zip \_\_\_\_\_

On Behalf of City of Astoria

Dated this \_\_\_\_ day of \_\_\_\_\_, 2015

Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ Zip \_\_\_\_\_

On Behalf of City of Astoria

Dated this \_\_\_\_ day of \_\_\_\_\_, 2015

Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ Zip \_\_\_\_\_

Approved as to form:



Digitally signed by  
com.apple.idms.appleid.prd.49317566476d4a38  
67754144546f59324e744d354e773d3d  
DN:  
cn=com.apple.idms.appleid.prd.49317566476d  
4a3867754144546f59324e744d354e773d3d  
Date: 2016.03.01 08:54:22 -08'00'

**EXHIBIT A**

**Regional Team Primary Response Area Boundary Description**

Region 11 boundaries are identical to the Clatsop County boundaries, and within the boundaries of Clatskanie Rural Fire Protection District.

**EXHIBIT B**  
**INVENTORY OF**  
**OSFM-OWNED EQUIPMENT**  
**As of June 2015**

To be inserted by OSFM.

**EXHIBIT C**

**FUNDING AVAILABLE FOR THE OSFM TO PURCHASE AND MAINTAIN  
OSFM-OWNED EQUIPMENT  
2015-2017 Biennium Funding**

**Funding Available for the OSFM to  
Purchase and Maintain OSFM-Owned Equipment .....\$16,000.00**

**EXHIBIT D**

**SPECIALIZED TRAINING  
2015-2017 Biennium Funding**

Funds for approved Technician level specialized training are available under this Agreement as follows:

**Funding Available for Specialized Training .....\$34,112.00**

Contractor may elect to use up to 100% of funding available in this exhibit for the reimbursement of personnel costs incurred as a result of RHMERT employees attending advanced training. Reimbursement for personnel cost during 2015-2017 biennium is not to exceed \$34,112.00. Allowing 100% of funding available in this exhibit for the reimbursement of personnel costs is a pilot project for the 2015-2017 biennium and will be reviewed before the next contract cycle. OSFM will track how money is spent, and see if it is feasible to continue allowing 100% of funding available in this exhibit for the reimbursement of personnel costs in future contracts.

On a case by case basis, additional specialized training funds may be available for new team members to attend Technician Weeks 1 – 4.

**EXHIBIT E**

**MEDICAL SURVEILLANCE  
2015-2017 Biennium Funding**

Funds for approved medical surveillance exams are available for Contractor RHMERT employees under this Agreement as follows:

Up to 16 personnel may receive medical surveillance exam(s), up to a maximum cost of \$700 per person, not to exceed total funding available for medical surveillance shown below.

This amount shown above is the per-person maximum payable for medical surveillance exam(s) during the 2015-2017 biennium. It is understood that costs will vary for baseline, maintenance and exit exams, and therefore, the total funding available for medical surveillance *is not* based on the maximum per-person allowance, but rather on \$700 per person *average* cost. This allows *flexibility* in the per-person cost *within* the maximum funding available for medical surveillance.

**Funding Available for Medical Surveillance Exams**

**Not to Exceed.....\$11,200.00**

**EXHIBIT F**

**Extraordinary Response Cost Fee Schedule – Part I  
2015-2017**

**SECTION 1: Extraordinary Response Costs Reimbursed to Contractor**

Pursuant to Section 4 of this Agreement, OSFM shall reimburse Contractor and seek compensation from the Responsible Person(s) for OSFM-approved extraordinary response costs incurred by Contractor in response to a hazardous materials incident at the following rates:

<b><u>Item</u></b>	<b><u>Cost</u></b>
Each contractor owned Engine .....	\$100.00 per hour
Each contractor owned Ariel Ladder Vehicle .....	\$150.00 per hour
Each contractor owned Dump Truck .....	\$50.00 per hour
Each contractor owned Loader/Backhoe .....	\$100.00 per hour
Cellular, Mobile, and Specialized Mobile Radio .....	
.....	\$50.00 per incident per phone (SMR) Telephone Charge
Contractor-owned Personal Protective Equipment damaged or destroyed during the response to the Hazardous Materials Incident .....	Actual Replacement Expense
Contractor-owned Materials and Supplies.....	Actual Replacement Expense
Exposure Medical Exam.....	Actual Expense
RHMERT Operations Rehabilitation Costs .....	Actual Expense
Rental of equipment or materials by Contractor.....	Actual Expense

Any Contractor-owned vehicles and apparatus used during a RHMERT Operation not listed above will be charged at a rate identified in the OSFM State Mobilization Plan under Equipment Rates, available for review on OSFM’s website.

Source of replacement materials and supplies may be selected by contractor.

**EXHIBIT F (cont'd)**

**SECTION 2: Extraordinary Response Costs Not Reimbursed to Contractor**

OSFM shall not pay compensation to Contractor for the following non-reimbursed extraordinary response costs, but OSFM shall seek compensation from the Responsible Person(s) for Contractor's use of OSFM-owned vehicles, equipment, materials, and other extraordinary response costs incurred in response to a Hazardous Materials Incident at the following rates:

<u>Item</u>	<u>Cost</u>
Use of OSFM-owned HM Tractor Trailer Response Vehicle .....	\$200.00 per hour
Use of OSFM-owned HM Suburban and Trailer Response Vehicle .....	\$125.00 per hour
Repair or replacement of OSFM-owned Personal Protective Equipment damaged or destroyed during the response to the Hazardous Materials Incident .....	Actual Replacement Expense
OSFM-Owned Materials and Supplies .....	Actual Replacement Expense
Exposure Medical Exam .....	Actual Expense
Rental of equipment or materials by OSFM.....	Actual Expense

Source of replacement materials and supplies shall be selected by the OSFM.

**Other Associated Costs**

A response to a hazardous materials incident may incur other extraordinary response costs which cannot be anticipated. These costs may include, but are not limited to, replacement and repair costs for damaged or expended equipment and supplies. OSFM shall seek compensation from the Responsible Person(s) for these other associated extraordinary response costs on an actual cost basis.

**EXHIBIT G**

**Extraordinary Response Cost Fee Schedule – Part II**

**COMPENSATION FOR CONTRACTOR'S RESPONSE PERSONNEL  
2015-2017**

OSFM shall reimburse Contractor and seek compensation from the Responsible Person(s) for Contractor personnel utilized in response to a hazardous materials Incident at the following rates, calculated as set forth in hourly personnel response calculation worksheets in this Exhibit G.

<u>Personnel Category</u>	<u>Hourly Rate</u>
HazMat Team Member – Non Officer/Firefighter	\$58.7128
HazMat Team Member – Non Officer/Firefighter Volunteer	\$16.3748
HazMat Team Member – Non Officer/Engineer	\$61.7556
HazMat Team Member – Officer/Lieutenant/Law Enforcement	\$65.3869
HazMat Team Member – Officer/Captain	\$63.3690
HazMat Team Member – Salary/Non Dept Chief	\$88.0405

All other support personnel at actual costs.

As provided in section 4.2.1 of this Agreement, it is the intent of OSFM and Contractor that if, during the term of this Agreement, the base hourly rate of Contractor's employees for non officers, officers, or salaried officers changes due to a change in any collective bargaining agreement between Contractor and Contractor's employees, that on the date those changes become effective under a collective bargaining agreement, those changes will be incorporated in this Agreement by formally amending this Agreement in writing and shall be used for purposes of calculating compensation for Contractor's Personnel Response Costs only after the effective date of the Amendment. Notwithstanding any retroactive payment provision contained in a collective bargaining agreement, the Contractor's Personnel Response Costs shall be calculated and reimbursed at the hourly rate set forth in the version of this Agreement which was in effect at the time the Contractor commenced the hazardous materials emergency response.

**EXHIBIT G (cont'd)**  
Hourly Personnel Response Rate  
Calculation Worksheets

**NON-OFFICER**  
Firefighter

NOTE: Base Hourly Rate/Non-Officer is calculated using the overtime rate for the highest paid, technician trained team member at this rank who is not an officer

<b>BASE SALARY</b>	\$30.5850
Regular hourly rate \$20.39 x 1 ½ =	
<b>INSURANCE/BENEFITS</b>	\$ 6.0535
Premium paid per month \$1,473.00 ÷ 243.33 hours worked per month =	
<b>PERS</b>	\$ 4.4260
Employer's contribution paid per month \$1,077.00 ÷ 243.33 hours worked per month =	
<b>WORKERS COMP INSURANCE*</b>	\$ 0.3058
Base hourly rate \$20.39 x .015 =	
<b><u>FICA* (Medicare 1.45%, OASDI 6.2%)</u></b>	\$ 1.5598
Hourly rate \$20.39 x 7.65% =	
<b>UNEMPLOYMENT TAX**</b>	\$ 0.2039
Base hourly rate \$20.39 x 1 % =	
<b>PAYROLL TAX**</b>	\$ N/A
Base hourly rate \$20.39 x N/A % =	
<b>RESPONSE AVAILABILITY RATE</b>	\$15.5788
<b>TOTAL HOURLY RATE</b>	\$ 58.7128

\* Percentage for calculation provided by Oregon State Police Payroll, effective January 23, 2015.

\*\* Unemployment and Payroll Taxes are local taxes which, if applicable, are calculated by the percentage allowed by local laws.

**EXHIBIT G (cont'd)**  
Hourly Personnel Response Rate  
Calculation Worksheets

**NON-OFFICER**  
Firefighter Volunteer

<b>BASE SALARY</b>	\$15.00
Regular hourly rate = \$15.00	
<b>INSURANCE/BENEFITS</b>	\$ N/A
Premium paid per month \$N/A ÷ N/A hours worked per month =	
<b>PERS</b>	\$ N/A
Employer's contribution paid per month \$N/A ÷ N/A hours worked per month =	
<b>WORKERS COMP INSURANCE*</b>	\$ 0.225
Base hourly rate \$15.00 x .015 =	
<b><u>FICA* (Medicare 1.45%, OASDI 6.2%)</u></b>	\$ 1.1475
Hourly rate \$15.00 x 7.65% =	
<b>UNEMPLOYMENT TAX**</b>	\$ 0.0023
Base hourly rate \$15.00 x 0.015 % =	
<b>PAYROLL TAX**</b>	\$ N/A
Base hourly rate \$N/A x N/A % =	
<b>RESPONSE AVAILABILITY RATE</b>	\$ N/A
<b>TOTAL HOURLY RATE</b>	\$ 16.3748

\* Percentage for calculation provided by Oregon State Police Payroll, effective January 23, 2015.

\*\* Unemployment and Payroll Taxes are local taxes which, if applicable, are calculated by the percentage allowed by local laws.

**EXHIBIT G (cont'd)**  
 Hourly Personnel Response Rate  
 Calculation Worksheets

**NON-OFFICER**

Engineer

NOTE: Base Hourly Rate/Non-Officer is calculated using the overtime rate for the highest paid, technician trained team member at this rank who is not an officer

<b>BASE SALARY</b>	\$33.435
Regular hourly rate \$22.29 x 1 ½ =	
<b>INSURANCE/BENEFITS</b>	\$ 6.0535
Premium paid per month \$1,473.00 ÷ 243.33 hours worked per month =	
<b>PERS</b>	\$ 4.4260
Employer's contribution paid per month \$1,077.00 ÷ 243.33 hours worked per month =	
<b>WORKERS COMP INSURANCE*</b>	\$ 0.3343
Base hourly rate \$22.29 x .015 =	
<b>FICA* (Medicare 1.45%, OASDI 6.2%)</b>	\$ 1.7051
Hourly rate \$22.29 x 7.65% =	
<b>UNEMPLOYMENT TAX**</b>	\$ 0.2229
Base hourly rate \$22.29 x 1 % =	
<b>PAYROLL TAX**</b>	\$ N/A
Base hourly rate \$22.29 x N/A % =	
<b>RESPONSE AVAILABILITY RATE</b>	\$15.5788
<b>TOTAL HOURLY RATE</b>	\$ 61.7556

\* Percentage for calculation provided by Oregon State Police Payroll, effective January 23, 2015.

\*\* Unemployment and Payroll Taxes are local taxes which, if applicable, are calculated by the percentage allowed by local laws.

**EXHIBIT G (cont'd)**  
 Hourly Personnel Response Rate  
 Calculation Worksheets

**OFFICER (Eligible for Overtime)**  
 Lieutenant/Law Enforcement

NOTE: Base Hourly Rate/Officer is calculated using the overtime rate for the highest paid, technician trained team member at this rank who is an officer

<b>BASE SALARY</b>	\$ 36.84
Regular hourly rate \$24.56 x 1 ½ =	
<b>INSURANCE/BENEFITS</b>	\$ 6.0493
Premium paid per month \$1,472.00 ÷ 243.33 hours worked per month =	
<b>PERS</b>	\$ 4.4260
Employer's contribution paid per month \$1,077.00 ÷ 243.33 hours worked per month =	
<b>WORKERS COMP INSURANCE*</b>	\$ 0.3684
Base hourly rate \$24.56 x .015 =	
<b><u>FICA* (Medicare 1.45%, OASDI 6.2%)</u></b>	\$ 1.8788
Hourly rate \$24.56 x 7.65% =	
<b>UNEMPLOYMENT TAX**</b>	\$ 0.2456
Base hourly rate \$24.56 x 1 % =	
<b>PAYROLL TAX**</b>	\$ N/A
Base hourly rate \$24.56 x N/A % =	
<b>RESPONSE AVAILABILITY RATE</b>	\$15.5788
<b>TOTAL HOURLY RATE</b>	\$ 65.3869

\* Percentage for calculation provided by Oregon State Police Payroll, effective January 23, 2015.

\*\* Unemployment and Payroll Taxes are local taxes which, if applicable, are calculated by the percentage allowed by local laws.

**EXHIBIT G (cont'd)**  
 Hourly Personnel Response Rate  
 Calculation Worksheets

**OFFICER (Eligible for Overtime)**  
 Captain

NOTE: Base Hourly Rate/Officer is calculated using the overtime rate for the highest paid, technician trained team member at this rank who is an officer

<b>BASE SALARY</b>	\$ 34.95
Regular hourly rate \$23.30 x 1 ½ =	
<b>INSURANCE/BENEFITS</b>	\$ 6.0493
Premium paid per month \$1,472.00 ÷ 243.33 hours worked per month =	
<b>PERS</b>	\$ 4.4260
Employer's contribution paid per month \$1,077.00 ÷ 243.33 hours worked per month =	
<b>WORKERS COMP INSURANCE*</b>	\$ 0.3495
Base hourly rate \$23.30 x .015 =	
<b><u>FICA* (Medicare 1.45%, OASDI 6.2%)</u></b>	\$ 1.7824
Hourly rate \$23.30 x 7.65% =	
<b>UNEMPLOYMENT TAX**</b>	\$ 0.233
Base hourly rate \$23.30 x 1 % =	
<b>PAYROLL TAX**</b>	\$ N/A
Base hourly rate \$23.30 x N/A % =	
<b>RESPONSE AVAILABILITY RATE</b>	\$15.5788
<b>TOTAL HOURLY RATE</b>	\$ 63.3690

\* Percentage for calculation provided by Oregon State Police Payroll, effective January 23, 2015.

\*\* Unemployment and Payroll Taxes are local taxes which, if applicable, are calculated by the percentage allowed by local laws.

**EXHIBIT G (cont'd)**  
 Hourly Personnel Response Rate  
 Calculation Worksheets

**OFFICER/Salaried**  
 Non Dept Chief

NOTE: Base Hourly Rate/Officer is calculated using the overtime rate for the highest paid, technician trained team member at this rank who is an officer

<b>BASE SALARY</b>	\$ 54.0900
Regular hourly rate \$36.06 x 1 ½=	
<b>INSURANCE/BENEFITS</b>	\$ 8.4982
Premium paid per month \$1,473.00 ÷ 173.33 hours worked per month =	
<b>PERS</b>	\$ 6.2135
Employer's contribution paid per month \$1,077.00 ÷ 173.33 hours worked per month =	
<b>WORKERS COMP INSURANCE*</b>	\$ 0.5409
Base hourly rate \$36.06 x .015 =	
<b><u>FICA* (Medicare 1.45%, OASDI 6.2%)</u></b>	\$ 2.7585
Base hourly rate \$36.06 x 7.65% =	
<b>UNEMPLOYMENT TAX**</b>	\$ 0.3606
Base hourly rate \$36.06 x 1 % =	
<b>PAYROLL TAX**</b>	\$ N/A
Base hourly rate \$36.06 x N/A % =	
<b>RESPONSE AVAILABILITY RATE</b>	\$15.5788
<b>TOTAL HOURLY RATE</b>	\$ 88.0405

\* Percentage for calculation provided by Oregon State Police Payroll, effective January 23, 2015.

\*\* Unemployment and Payroll Taxes are local taxes which, if applicable, are calculated by the percentage allowed by local laws.

**EXHIBIT H**

**FUNDING FOR CONTRACTOR PROGRAM OUTREACH  
2015-2017 Biennium Funding**

Funds for approved outreach training, allowing team personnel to interface with, educate and train other local agencies.

**Funding Available for Contractor Program Outreach.....\$6,342.00**

**EXHIBIT I**

**FUNDING FOR CONTRACTOR SUB-COMMITTEE AND SPECIAL PROJECTS PARTICIPATION  
2015-2017 Biennium Funding**

Funds for approved sub-committee and special projects participation.

Funds can be used for personnel and backfill costs associated with team members participating on a sub-committee or special project. Associated travel and per diem costs shall also be deducted from this fund.

Funding available in this exhibit for the reimbursement of sub-committee or special projects costs is a pilot project for the 2015-2017 biennium and will be reviewed before the next contract cycle. OSFM will track how money is spent, and see if it is feasible to continue funding this exhibit for future contracts.

**Funding Available for Sub-Committee and Special Projects Participation.....\$5,000.00**

**EXHIBIT J****SUMMARY - 2015-2017 BIENNIUM FUNDING AVAILABLE  
FOR STAND-BY COSTS**

<b>Funding Available For The OSFM to Purchase And Maintain OSFM-Owned Equipment – 2015-2017 Biennium Funding - (See Exhibit C)</b>	<b>\$16,000.00</b>
<b>Specialized Training –2015-2017 Biennium Funding - (See Exhibit D)</b>	<b>\$34,112.00</b>
<b>Medical Surveillance –2015-2017 Biennium Funding - (See Exhibit E)</b>	<b>\$11,200.00</b>
<b>Funding for Contractor Program Outreach –2015-2017 Biennium Funding – (See Exhibit H)</b>	<b>\$6,342.00</b>
<b>Funding for Contractor Sub-Committee and Special Project Participation – 2015-2017 Biennium Funding (See Exhibit I)</b>	<b>\$5,000.00</b>
<b>Total 2015-2017 Biennium Funding Available for Stand-By Costs .....</b>	<b>\$72,654.00</b>

**EXHIBIT K**

**State Spill Response Revolving Fund**

**2015 -2017 Biennium Funding.....\$300,000.00**

This is the *Total* State Spill Revolving Funding limitation available for the 2015-2017 biennium RHMERT services by *all* Contracted RHMERT's. This does *not* guarantee that any Contractor will be reimbursed for any specific amount from the State Spill Revolving Fund; only that funding in this amount is available for reimbursement of emergency response team costs within any OSFM limitation or appropriation.



# CITY OF ASTORIA

Founded 1811 • Incorporated 1856

February 26, 2016

## MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: GRANT OPPORTUNITY – OREGON IMPACT

### DISCUSSION/ANALYSIS

The Police Department has identified the ability to obtain funds to conduct overtime enforcement activities related to pedestrian safety. The grant funds are available from Oregon Impact. These dollars are specifically tied to pedestrian crossing enforcement targeting driver behavior. To comply with the grant terms, the Department must conduct the enforcement following strict guidelines issued by Oregon Impact. These guidelines include doing the enforcement at marked crosswalks, during daylight hours and non-inclement weather. The non-inclement weather focuses the enforcement in the summer months in order to increase the likelihood of not having to cancel scheduled events.

The Department feels it can adequately staff and perform two of these focused activities during the grant period while following the guidelines issued by Oregon Impact. These activities, and the cost of training the activity coordinator, would total approximately \$1,282.50. This is the amount of funds the Department would request from Oregon Impact.

### RECOMMENDATION

It is recommended that Council approve the application for and acceptance of funds totaling \$1,282.50 from Oregon Impact.



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Brad Johnston  
Chief of Police  
Assistant City Manager



## PEDESTRIAN SAFETY MINI-GRANT

THIS AGREEMENT is made and entered into by and between the Oregon Impact, hereafter referred to as the Grantor, and Astoria Police Department hereafter called the Agency.

### RECITALS

1. Grantor and Agency agree that the principal purpose of this agreement is to conduct police pedestrian safety operations.
2. Definition: A police pedestrian safety operation is an intensive direct team law enforcement activity conducted at or near targeted pedestrian crossing locations within targeted time frames. The team generally will include an observer/recorder, a decoy pedestrian, and an adequate number of chase deputies to maximize the number of violator contacts. Although the primary focus of the operations are specific pedestrian-related violations, any observed safety related Vehicle Code violation may be addressed.

NOW THEREFORE, it is agreed by and between the parties hereto as follows:

### TERMS OF AGREEMENT

1. Grantor wishes to retain the services of Agency to perform the work as outlined on Exhibit "A," attached hereto and by this reference made a part of this agreement. Payment for said services shall not exceed a maximum amount of \$1282.50 in federal funds.
2. The work is to begin upon execution of the agreement by all parties and be completed no later than September 15, 2016.

### AGENCY OBLIGATIONS

1. Agency shall perform the work described on Exhibit A: Statement of Work

Agency shall submit reports and billings twice to the Grantor. The first is due no later than July 1, 2016. The last is due no later than September 15, 2016. *These bills must reflect 100% of the actual costs and work accomplished during the billing period.*

3. The only allowable charges under this agreement shall be to attend a pedestrian safety enforcement training (mileage, lodging and registration fees), to conduct police pedestrian safety operations and to run pedestrian safety diversion classes.
4. Agency shall not enter into any subcontracts for any of the work scheduled under this agreement without obtaining prior written approval from Grantor.
5. Agency agrees to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this agreement, including, without limitation,



the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, WHICH HEREBY ARE INCORPORATED BY REFERENCE. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the American with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. In addition the Agency agrees to comply with the requirements described on Exhibit B: FFY Agreements and Assurances.

6. Agency shall perform the service under this agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this agreement, including but not limited to PERS contributions, workers compensation, unemployment taxes and state and federal income tax withholdings.

7. Agency shall maintain all required records for three years after grantor makes final payments and all other pending matters are closed

#### **GRANTOR OBLIGATIONS**

1. In consideration for the services performed, Grantor agrees to pay Agency a maximum amount of \$1282.50. Grantor shall pay two billings received by Agency, if received by Grantor on or before the due dates for reporting (July 1st and September 15th).

2. Grantor certifies, at the time this agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this agreement within the limitations of Grantor's primary grant with Oregon Department of Transportation Safety Division and its current appropriation or limitation of current biennial budget.

#### **GENERAL PROVISIONS**

1. Agency, its subcontractors, if any are requested and approved, and all employers working under this agreement are 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.

2. This agreement may be terminated by mutual written consent of both parties upon 30 days notice.

Grantor may terminate this agreement effective upon delivery of written notice to Agency, or at such later date as may be established by Grantor, under any of the following conditions, but not limited to these conditions.

- a. If Agency fails to provide services called for by this agreement within the time specified herein or any extension thereof.



- b. If Agency fails to perform any of the other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from Grantor fails to correct such failures within 10 days or such longer period as Grantor may authorize. Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.
  - c. If Grantor fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the agreement.
3. Agency acknowledges and agrees that Grantor, the Oregon Department of Transportation, Transportation Safety Division, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by Grantor.
4. This agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of Grantor to enforce any provision of this agreement shall not constitute a waiver by Grantor of that or any other provision.



IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

**AGENCY**

*(the person signing this document and claim(s) cannot receive compensation from the grant)*

By (print) Brad Johnston

Signature [Signature]

Date 2/10/16

**GRANTOR**

By Janelle Lawrence

Signature \_\_\_\_\_

Date \_\_\_\_\_

**Agency Contact Information:**

Name: Sgt Brian Ayd

Title: Sergeant

Department: Astoria PD

Address: 555 30th St.

Astoria OR 97103

Phone: 503-325-4411

Email: baydt@astoria.or.us

**Grantor Contact Information:**

**Janelle Lawrence**  
Executive Director  
**Oregon Impact**  
PO Box 220010 Milwaukie OR 97269  
503-303-4954  
janelle@oregonimpact.org

For questions or assistance please contact:

**Yvonne McNeil**  
Community Traffic Safety Program Coordinator  
Oregon Impact  
PO Box 220010 Milwaukie OR 97269  
503-303-4954 X 105  
yvonne@oregonimpact.org



CITY OF ASTORIA  
Founded 1811 • Incorporated 1856  
COMMUNITY DEVELOPMENT

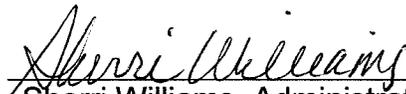
February 29, 2016

TO: MAYOR AND CITY COUNCIL  
FROM:  BRETT ESTES, CITY MANAGER  
SUBJECT: DR. EDWARD HARVEY HISTORIC PRESERVATION AWARD  
NOMINATIONS

The City of Astoria Historic Landmarks Commission is seeking nominations for the Dr. Edward Harvey Historic Preservation Award. The award is presented each year to recognize a property owner(s) who have completed exterior restoration or beautification of a building which exemplifies the historical attributes of the building or the architectural heritage of Astoria. The work must have been completed within the last two years. Nominations may include residential, commercial, public, and other types of buildings.

The awards will be presented by the Mayor in May.

Anyone wishing to submit a nomination should contact Sherri Williams at the City of Astoria, 503-338-5183 / [swilliams@astoria.or.us](mailto:swilliams@astoria.or.us) , or send a nomination (no form required) to the Community Development Department, City of Astoria, 1095 Duane Street, Astoria OR 97103. Nominations must be received no later than 5:00 pm on April 15, 2016.

By:   
\_\_\_\_\_  
Sherri Williams, Administrative Assistant

Through:   
\_\_\_\_\_  
Kevin Cronin, Community Development Director

## DR. EDWARD HARVEY AWARD

This Award is named for Dr. Edward Harvey who was a pioneer in recognizing the importance of historic preservation in Astoria. His original efforts of placing plaques denoting the brief history of a building are still seen throughout the City. He lobbied the Clatsop County Commissioners to establish a Historic Advisory Committee of which he served as the chairman for many years.

The Award has been presented yearly since 1988 to owners of residential, commercial, or public buildings who have completed exterior painting, rehabilitation, restoration, or beautification projects which have been sensitive to the historical attributes of the building and/or the architectural heritage of Astoria.



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

March 1, 2016

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

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: AUTHORIZATION TO LIGHT THE ASTORIA COLUMN A TEAL FOR  
THE MONTH OF APRIL IN RECOGNITION OF SEXUAL ASSAULT  
AWARENESS MONTH

**DISCUSSION/ANALYSIS**

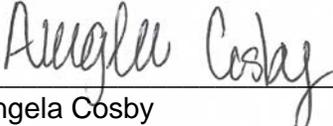
On February 18, 2014 the Astoria City Council gave direction to the Parks and Recreation Department to limit the use of colored lighting effects at the Astoria Column to twice a year when specifically authorized by City Council.

This direction came after colored lighting effects took place for the first time at the Astoria Column in October 2013 in an event organized by Columbia Memorial Hospital, the Friends of the Astoria Column, and the Parks and Recreation Department to light the Astoria Column Pink in recognition of Breast Cancer Awareness Month. This event was followed by a partnership between the Women's Resource Center, the Clatsop County Domestic Violence Council, the Friends of the Astoria Column, and the Parks and Recreation Department to light the Astoria Column teal for the month of April 2014 in recognition of Sexual Assault Awareness Month.

In partnership with the Domestic Violence Council, the Harbor, and the Friends of the Astoria Column, the Parks and Recreation Department is requesting permission to change the lighting color on the Astoria Column to a teal hue for the month of April 2016 in recognition of Sexual Assault Awareness Month.

**RECOMMENDATION**

It is recommended that City Council authorize the change in lighting at the Astoria Column to a teal hue for the month of April 2016 in recognition of Sexual Assault Awareness Month.

By:   
Angela Cosby  
Director of Parks & Recreation



CITY OF ASTORIA  
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COMMUNITY DEVELOPMENT

February 26, 2016

MEMORANDUM

TO: ASTORIA CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: CERTIFIED LOCAL GOVERNMENT GRANT REQUEST

**BACKGROUND**

In past years, the City of Astoria has submitted grant applications to the Certified Local Government (CLG) program of the State Historic Preservation Office (SHPO). Earlier funded projects include Geographic Information System downtown building inventory, historic property inventories, facade improvement grant programs, and architectural assistance for building and home owners. This year, the City is eligible to submit another CLG grant application. The deadline for submission of the grant request was February 26, 2016. Because of time constraint, this grant application had to be submitted prior to Council authorization. This application can be withdrawn if Council does not authorize submittal.

For the 2015-2016 grant cycle, staff proposes using the CLG funds to provide grants to residential and commercial property owners who would like to restore portions of their properties that have been modified over the years. Emphasis would be placed on restoration work on the primary facade of a building, particularly on windows, storefronts, and entryways. These are the architectural elements that have typically been modified the most. Individual grants would be processed by staff and reviewed by the Historic Landmarks Commission, if necessary. This follows process utilized by the City in earlier approved facade improvement grant programs. It is suggested that grants be limited to a maximum of \$3,000 and the grant would be matched by the property owner. For example, if an owner wanted to replace non-original aluminum windows on the front of the structure with wood or steel windows, and the cost to purchase and install the windows was \$4,200, the Facade Restoration Grant would provide \$2,100 toward the work. The grant would be a reimbursement only, and work done before the grant application would not be eligible. A total of \$11,000 is proposed to be used for the facade grant program.

In addition, staff proposes that the CLG grant application include a request for \$1,000 in architectural design assistance funds for historic buildings. The architectural assistance funds would be used to hire an architect or historic building designer to assist property owners in rehabilitating the exteriors of their buildings. Over the years, the City has retained John

Goodenberger as a temporary employee to serve in this capacity. The City has provided this service each year under the CLG Grant program. A grant request of \$1,000 would provide approximately 20 hours of design time.

The total requested CLG grant is \$12,000; a 1:1 match is required from the City. The match would be met by current staffing and existing budget items on the above-mentioned projects, Historic Landmarks Commission staff reports, and other general planning activities which are preservation related. Volunteer hours associated with the CLG funded project as well as Historic Landmarks Commissioner time can also be applied to meet the match as in-kind support. The grant and matching amounts would be included in the 2015-2016 Community Development Department budget.

### **RECOMMENDATION**

Staff recommends that the Council authorize submittal of the grant request to the Certified Local Government program of the State Historic Preservation Office in the amount of \$12,000.

By:

  
\_\_\_\_\_  
Nancy Ferber, Planner

Through:

  
\_\_\_\_\_  
Kevin Cronin, Community Development Director



# CITY OF ASTORIA

Founded 1811 • Incorporated 1856

March 7, 2016

## MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: BALLOT MEASURE REFERRAL – MARIJUANA TAX, CORRECTION

### **DISCUSSION/ANALYSIS**

At the February 16, 2016 meeting of the Astoria City Council, Council adopted a resolution setting the ballot title, question, and summary that referred the implementation of an ordinance taxing recreational marijuana to the voters. During the meeting Council provided direction that they desired to edit the ballot title, question and summary. This edit was adopted by the Council. When Staff attempted to publish the title on February 17, as required by law, they learned the title and question had exceeded the maximum word count allowed.

This matter cannot be edited by staff since the issues were adopted by Council. Staff has prepared a new title and question that they believe reflect the intent of the Council and return it for Council consideration.

To refer the matter to the voters, Council would adopt the resolution. This adoption will set the ballot title. The ballot title will be published in the “newspaper of general circulation in the city.” After a period of review, if no objection to the ballot title is filed the matter will be filed with the County Elections Official.

### **RECOMMENDATION**

It is recommended that Council consider adopt the proposed resolution to refer a 3 percent local option tax to the November 8, 2016 ballot.



---

Brad Johnston  
Chief of Police  
Assistant City Manager

RESOLUTION NO. 16-\_\_\_\_\_

A RESOLUTION APPROVING REFERRAL TO THE ELECTORS OF  
THE CITY OF ASTORIA THE QUESTION OF IMPOSING A THREE PERCENT TAX  
ON THE SALE OF MARIJUANA ITEMS BY A RECREATIONAL MARIJUANA  
RETAILER WITHIN THE CITY

WHEREAS, Section 34a of House Bill 3400 (2015) provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a three percent tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city; and

WHEREAS, the City of Astoria City Council adopted Ordinance No. 16-02, which imposes a tax of three percent on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the City; and

WHEREAS, Astoria's share of 10 percent of remainder left in the Oregon Marijuana Account after the OLCC withholds administrative and other monies as the law provides, will likely be insufficient to address the impacts to Astoria.

NOW, THEREFORE, THE CITY OF ASTORIA DOES ORDAIN AS FOLLOWS:

Section 1. Measure. A measure election is hereby called for the purpose of submitting to the electors of the City of Astoria a measure imposing a three percent tax on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the City, a copy of which is attached hereto as "Exhibit 1," and incorporated herein by reference.

Section 2. Election Conducted by Mail. The measure election shall be held in the City of Astoria on November 8, 2016. As required by ORS 254.465, the measure election shall be conducted by mail by the County Clerk of Clatsop County, according to the procedures adopted by the Oregon Secretary of State.

Section 3. Delegation. The City of Astoria authorizes the City Manager, or the City Manager's designee, to act on behalf of the City and to take such further action as is necessary to carry out the intent and purposes set forth herein, in compliance with the applicable provisions of law.

Section 4. Preparation of Ballot Title. The ballot title for the measure set forth as Exhibit 1 to this resolution is hereby adopted.

Section 5. Notice of Ballot Title and Right to Appeal. Upon receiving the ballot title for this measure, the Finance Director shall publish in the next available edition of a newspaper of general circulation in the City a notice of receipt of the ballot title, including notice that an elector may file a petition for review of the ballot title.

Section 6. Explanatory Statement. The explanatory statement for the measure, which is attached hereto as "Exhibit 2," and incorporated herein by reference, is hereby approved.

Section 7. Filing with County Elections Office. The Finance Director shall deliver the Notice of Measure Election to the County Clerk for Clatsop County for inclusion on the ballot for the Tuesday November 8, 2016 election.

Section 8. Repeal of Resolutions. Resolution No. 16-02 adopted by the City Council on February 16, 2016, is hereby repealed and superseded by this resolution.

Section 9. Effective Date. This resolution is effective immediately upon its enactment by the City Council.

ADOPTED BY THE CITY COUNCIL THIS 16<sup>TH</sup> DAY OF FEBRUARY, 2016.

APPROVED BY THE MAYOR THIS 16<sup>TH</sup> DAY OF FEBRUARY, 2016.

\_\_\_\_\_  
Mayor

ATTEST:

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

ROLL CALL ON ADOPTION	YEA	NAY	ABSENT
Councilor Nemlowill			
Herzig			
Price			
Warr			
Mayor LaMear			

Exhibit 1

BALLOT TITLE

Imposes city tax on retailer's sale of recreational marijuana items

QUESTION

Shall City of Astoria impose three percent tax on sale of recreational marijuana items by marijuana retailer?

## Exhibit 2

### SUMMARY

Under state law, a city council may adopt an ordinance to be referred to the voters of the city imposing up to a three percent tax or fee on the sale of recreational marijuana items in the city by a marijuana retailer.

Approval of this measure would impose a three percent tax on the sale of recreational marijuana items in the City of Astoria by a marijuana retailer. The tax would be collected at the point of sale and remitted by the marijuana retailer.

### EXPLANATORY STATEMENT

An impartial, simple and understandable statement explaining the measure and its effect for use in the county voters' pamphlet

*500 word limit under ORS 251.345 and OAR 165-022-0040(3)*

Approval of this measure would impose a three percent tax on the sale of recreational marijuana items by a marijuana retailer within the City of Astoria.

Under Measure 91, adopted by Oregon voters in November 2014 and amended by the Legislature in 2015, the Oregon Liquor Control Commission must license the retail sale of recreational marijuana. The 2015 Legislation provides a city council may adopt an ordinance imposing up to a three percent tax on the sale of marijuana items (which include marijuana concentrates, extracts, edibles, and other products intended for human consumption and use) by retail licensees in the city. The council must refer that ordinance to the voters at a statewide general election. The Astoria City Council has adopted an ordinance imposing a three percent tax on the sale of recreational marijuana items by a retail licensee in the City, and, as a result, has referred this measure to the voters.



February 19, 2016

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: **REQUEST TO PURCHASE CITY OWNED PROPERTY ADJACENT TO 323 ALAMEDA AVENUE**

**DISCUSSION/ANALYSIS**

The City has received a request from Bruce Conner to purchase City-owned property directly southeast of his property located at 323 Alameda Avenue. The City property is approximately 1.0 acre (Lots 25 to 41, Block 17 Map number 80907CD, Tax Lot 06400). Mr. Conner wishes to purchase a 13,875 square foot portion of this property associated with Lots 37 through 41, Block 17. He intends to construct his retirement home on the property in the future.

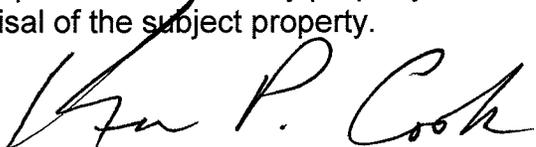
If Council is willing to consider the potential sale of this property, an appraisal will be ordered. Once the appraisal has been received and Mr. Conner has been notified of the appraised value, Staff will return to Council with the information and the request that a public hearing be set to discuss the sale.

Typically, staff would order an appraisal prior to submitting a property sale request to Council to determine if they wished to schedule a public hearing to take public comment prior to making a decision to sell. In an effort to avoid paying the additional cost of an appraisal (should Council have no interest in considering this sale) staff is requesting that Council determine if there is interest in potentially selling this property. Staff is not requesting a decision to be made now as to whether it should be sold; rather staff is requesting direction to avoid unnecessary expense if there is no interest.

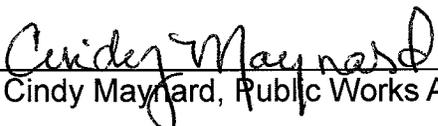
**RECOMMENDATION**

It is recommended the Astoria City Council consider the potential sale of City property across from 323 Alameda Avenue and direct staff to order an appraisal of the subject property.

Submitted By \_\_\_\_\_

  
Ken P. Cook, Public Works Director

Prepared By \_\_\_\_\_

  
Cindy Maynard, Public Works Admin Assistant

# City of Astoria Proposed Property Sale

## Lots 37,38, 39, 40,& 41

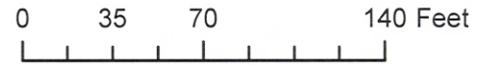
### Block 17, Taylors, Astoria



#### Legend



Proposed Property Sale





## CITY OF ASTORIA

Founded 1811 • Incorporated 1856

TO: MAYOR AND CITY COUNCIL

FROM:  BRETT ESTES, CITY MANAGER

SUBJECT: ORDINANCE GRANTING A NONEXCLUSIVE RIGHT AND FRANCHISE TO COASTCOM, INC.

### **DISCUSSION/ANALYSIS**

The City of Astoria has telecommunication franchise agreements with several telecommunication and utility service providers who utilize City public rights-of-way for the placement of infrastructure.

In 2008, City of Astoria granted CoastCom, Inc., nonexclusive right and entered into a five year franchise allowing CoastCom to construct, operate and maintain telecommunications system in the City's rights-of-way. Ordinance No. 08-03 with CoastCom, Inc., terminated September 19, 2013. CoastCom has continued to pay franchise fees to the City per the expired Ordinance and wishes to renew nonexclusive right and franchise. CoastCom, Inc., provides telecommunications services to Clatsop County, LS Networks, Sunset Empire Transportation, and the City of Astoria. The provisions of this franchise are similar to franchise agreements negotiated with other users of public rights-of-way.

Presented for your consideration is a proposed ordinance drafted by City Attorney Henningsgaard granting a franchise to CoastCom, Inc., for operation of telecommunications facilities within City rights-of-way. The ordinance:

- Requires CoastCom, Inc., to pay a fee to the City equal to 7.0% of the gross revenue earned within the City
- Provides procedures for amendment and renewal of the franchise.
- Imposes certain reporting requirements.

### **RECOMMENDATION**

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

By:   
Susan Brooks, Director of Finance  
and Administrative Services

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

AN ORDINANCE GRANTING TO COASTCOM INC., AN OREGON CORPORATION, AND TO ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE RIGHT AND FRANCHISE FOR A PERIOD OF TEN (10) YEARS TO CONSTRUCT, MAINTAIN AND OPERATE, IN, ON AND UNDER THE RIGHTS OF WAY OF THE CITY OF ASTORIA, CLATSOP COUNTY, OREGON, TELCOMMUNICATIONS FACILITIES FOR SERVICE TO THE CITY OF ASTORIA, THE INHABITANTS THEREOF AND OTHERS, SUBJECT TO THE TERMS AND CONDITIONS AND TO THE MAKING OF PAYMENTS SPECIFIED IN THIS ORDINANCE.

THE CITY OF ASTORIA ORDAINS AS FOLLOWS:

**SECTION 1. Grant of Franchise** The City hereby grants to CoastCom, Inc., an Oregon corporation, hereafter "CoastCom," the privilege to operate Utility Facilities in, under, along, over and across Rights of Way within the City, for the purpose of providing Communications services to the inhabitants of the City and persons and corporations beyond the limits thereof.

**SECTION 2. Definitions.**

"Utility facility" or "facilities" means any physical component of a system, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plant, equipment and other facilities, located within, under or above the rights of way, any portion of which is used or designed to be used to deliver, transmit or otherwise provide utility service.

"Communications services" means any service provided for the transmission of information including, but not limited to, voice, video, or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself. Communications service does not include: (1) cable service; (2) open video system service, as defined in 47 C.F.R. 76; (3) private communications system services provided without using the public rights of way; (4) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; and (5) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act.

"Gross Revenue" means any revenues received from utility operations within the City of Astoria less related net uncollectibles. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another when the utility purchasing the service is not the ultimate customer, or revenue from joint pole use.

"Rights of Way" mean the present and future streets, alleys and other public ways.

**SECTION 3. Term.** The term of this Franchise shall commence on the date of acceptance by CoastCom, as set forth in **Section 4** for Ten (10) years or until cancelled as provided herein.

**SECTION 4. Acceptance by CoastCom Networks, Inc.** Within sixty (60) days after the passage of this ordinance by the City, CoastCom shall file an unqualified written acceptance thereof, with the City Recorder, otherwise the ordinance and the rights granted herein shall be null and void.

**SECTION 5. Non-Exclusive Franchise.** The right to use and occupy the Rights of Way shall be nonexclusive and the City reserves the right to use the Rights of Way for itself and to grant others the right to use its rights of way.

**SECTION 6. City Regulatory Authority.** CoastCom shall comply with the Charter and all ordinances, rules and regulations adopted by the City. The City reserves its right to amend or adopt additional ordinances rules and regulations as may be desirable in the interests of its citizens in the exercise of its authority as an Oregon home rule city.

**SECTION 7. Indemnification.** The City shall in no way be liable or responsible for any loss or damage to property or any injury to, or death, of any person that may occur in the construction, operation or maintenance by CoastCom of its Utility Facilities. CoastCom shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of CoastCom's use of the Rights of Way within the City, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. Notwithstanding any provision hereof to the contrary, CoastCom shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or willful act or failure to act of the City or any of its officers or employees.

**SECTION 8. Annexation.**

8.1 Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Electrical Facilities owned, maintained, or operated by CoastCom located within any Rights of Way of the annexed territory shall thereafter be subject to all of the terms hereof.

8.2 When any territory is approved for annexation the City shall, within ten (10) working days after passage of the ordinance approving the annexation, provide a copy of the City's ordinance approving the annexation to CoastCom.

**SECTION 9. Planning, Design, Construction and Installation of Company Facilities.** All Utility Facilities installed or used under authority of this Franchise shall be used, constructed and maintained in accordance with applicable federal, state and city laws, codes and regulations. Any maintenance, operation, upgrading, and relocation may only be done in compliance with the applicable law and the ordinances of the City of Astoria.

**SECTION 10. Vegetation Management.** CoastCom or its contractor may prune all trees and vegetation which overhang the Rights of Way, whether such trees or

vegetation originate within or outside the Rights of Way, to prevent the branches or limbs or other part of such trees or vegetation from interfering with CoastCom's Utility Facilities. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300)* and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic. Nothing contained in this Section shall prevent CoastCom, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang streets.

**Section 11: Insurance.** CoastCom At all times during the term of this Franchise, CoastCom, at its own cost and expense, shall provide the insurance specified in this section.

11.1 Within 30 days of the effective date of this Franchise, CoastCom shall provide the City with a certificate of insurance executed by an authorized representative of the insurer or insurers, evidencing that CoastCom's insurance complies with this section.

11.2 Policies shall include a provision requiring written notice by the insurer or insurers to the City not less than 30 calendar days prior to cancellation, reduction, or material change in coverage. If insurance coverage is canceled, reduced or materially changed, CoastCom shall, prior to the effective date of such cancellation, reduction or material change, obtain the coverage required under this section, and provide the City with documentation of such coverage. CoastCom shall be responsible, to the extent not caused by the City's negligence or intentional misconduct, for the costs of any damage, liability, or injury, which are not otherwise covered by insurance or because of a failure to comply with this section.

11.3 During the term of this contract, CoastCom shall maintain in force, at its own expense, the following insurance:

- (1) Workers' compensation insurance for all subject workers; and
- (2) General liability 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, which coverage shall include contractual liability coverage for the indemnity provided under this contract, and naming the City, its officials, officers, employees and agents as additional insureds with respect to CoastCom's activities pursuant to this Franchise.

## **SECTION 12. Compensation.**

12.1 In consideration of the rights, privileges, and franchise hereby granted, CoastCom shall pay to the City from and after the effective date of the acceptance of this franchise, seven percent (7.0%) of its gross revenues derived from within the corporate limits of City. Payment shall be made to the City on a quarterly basis on January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup> and October 1<sup>st</sup> of each year. All amounts due under this

Section 12 shall be subject to review by the City; and CoastCom shall provide any information reasonably requested by City to conduct such review; provided that only payments which occurred during a period of thirty-six (36) months prior to the date the City notifies CoastCom of its intent to conduct a review shall be subject to such review. Notwithstanding any provision to the contrary, at any time during the term of this Franchise, the City may elect to increase the franchise fee amount to the maximum allowed by state law. The City shall provide CoastCom with prior written notice of such increase following adoption of the change in percentage by the City. The increase shall be effective sixty (60) days after City has provided such written notice to CoastCom.

12.2 Upon thirty days notice and in the event any law or valid rule or regulation applicable to this Franchise limits or increases amount provided herein as a the Franchise Fee, or as subsequently modified, CoastCom agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher or lower permissible amount, then CoastCom shall pay the higher amount commencing from the date of such repeal or amendment, up to the maximum allowable by law.

12.3 The franchise fee shall be in addition to the City's annual Utility Permit fee, Astoria Code § 2.700 *et seq*, to the extent such fee is reasonably related to the city's costs for inspection, supervision, and regulation in exercising its police powers.

12.4 CoastCom shall maintain a current name and telephone number for a contact person to address any questions by the City concerning compensation due the City or provision of services within the City.

12.5 CoastCom shall provide an annual report commencing April 1, 2016 and each April 1<sup>st</sup> thereafter, Licensee shall submit to the City Council an annual written report consisting of the following: (a) Summary of CoastCom's activities during the previous year, including any operational changes or improvements to services within the City; (b) Planned changes for the current year, including any operational changes or improvements to property or structures related to services within the City; (c) CoastCom's Gross Income for the previous year and a projection of Gross Income for the current year.

**SECTION 13. Continuous Service.** CoastCom shall maintain and operate an adequate system for Communication Services in the City. CoastCom shall use due diligence to maintain continuous and uninterrupted 24-hour a day service which shall at all times conform at least to the standards common in the business and to the standards adopted by state authorities and to standards of the City which are not in conflict with those adopted by the state authorities. Under no circumstances shall CoastCom be liable for an interruption or failure of service caused by an act of God, unavoidable accident or other circumstances beyond the control of CoastCom through no fault of its own.

**SECTION 14. Renewal.** At least 120 days prior to the expiration of this Franchise, CoastCom and the City shall agree to either extend the term of this Franchise for a mutually acceptable period of time or the parties shall use best faith efforts to renegotiate a replacement Franchise. CoastCom shall have the continued right to use the Rights of Way of the City as set forth herein in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise.

**SECTION 15. No Waiver.** Neither the City nor CoastCom shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

**SECTION 16. Transfer of Franchise.** CoastCom shall not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, unless the City shall first give its approval in writing.

**SECTION 17. Amendment.** At any time during the term of this Franchise, the City, through its City Council, or CoastCom may propose amendments to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this Franchise shall be effective until mutually agreed upon by the City and CoastCom and formally adopted as an ordinance amendment.

**SECTION 18. Non-Contestability--Breach of Contract.**

17.1 Neither the City nor CoastCom will take any action for the purpose of securing modification of this Franchise before either the Oregon Public Utility Commission or any Court of competent jurisdiction; provided, however, that neither shall be precluded from taking any action it deems necessary to resolve difference in interpretation of the Franchise nor shall CoastCom be precluded from seeking relief from the Courts in the event Oregon Public Utility Commission orders, rules or regulations conflict with or make performance under the Franchise illegal.

17.2 In the event CoastCom or the City fails to fulfill any of their respective obligations under this Franchise, the City, or CoastCom, whichever the case may be, will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy which would have the effect of amending the specific provisions of this Franchise shall become effective without such action which would be necessary to formally amend the Franchise.

**SECTION 19. Notices.**

18.1 Unless otherwise specified herein all notices from CoastCom to the City pursuant to or concerning this Franchise shall be delivered to:

The Astoria City Manager  
1095 Duane Street

Astoria, OR 97103

18.2 Unless otherwise specified herein, all notices from the City to CoastCom pursuant to or concerning this Franchise shall be delivered to:

CoastCom, Inc.  
151 E Olive Street  
Newport, OR 97365

18.3 Either party may change their notice address by written notice to the other.

**SECTION 20. Severability.** If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction thereof or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

**SECTION 20:** This ordinance shall take effect thirty (30) days after its enactment by the Council and approval by the Mayor, but shall become null and void unless within thirty (30) days after such effective date CoastCom shall file with the City CoastCom's written acceptance of the terms, conditions and obligations to be complied with or performed by it hereunder.

**PASSED by the City Council of the City of Astoria Oregon this \_\_\_\_ day of March 2016**

**MAYOR**

\_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**FINANCE DIRECTOR, CITY OF ASTORIA**

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

**ROLL CALL ON ADOPTION**

**YEA**

**NAY**

**ABSENT**

**Commissioner Nemlowill  
Herzig  
Price  
Warr**

**Mayor LaMear**